



COLORADO RIVER INDIAN TRIBES

Colorado River Indian Reservation

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August 15, 2023

Amanda Erath
Colorado River Post-2026 Program Coordinator
United States Bureau of Reclamation
Attn: Post-2026 (Mail Stop 84-55000)
P.O. Box 25007
Denver, Colorado 80225

via email: crbpost2026@usbr.gov

Subject: The Colorado River Indian Tribes Comments in Response to Notice of Intent to Prepare an Environmental Impact Statement and Notice to Solicit Comments and Hold Public Scoping Meetings on the Development of Post-2026 Operational Guidelines and Strategies for Lake Powell and Land Mead, 88 Fed. Reg. 39455 (June 16th, 2023).

Dear Ms. Erath:

Please accept the following comments from the Colorado River Indian Tribes ("CRIT") in response to the Notice of Intent to Prepare an Environmental Impact Statement and Notice to Solicit Comments and Hold Public Scoping Meetings on the Development of the Post-2026 Operational Guidelines and Strategies for Lake Powell and Lake Mead ("Notice" re: "Post-2026 Operational Guidelines").

The Colorado River ("River") is vital to the CRIT. The Mohave and Chemehuevi people have lived along the banks of the River in what is now the Lower Basin since time immemorial. Our Ancestors lived through droughts and floods while living and farming sustainably in this region for innumerable generations. The CRIT, now comprised of members from the Mohave, Chemehuevi, Navajo, and Hopi Tribes live, farm, run businesses including River-based recreation, and continue to conduct ceremonial and religious practices on our Aboriginal land near Parker, Arizona and on the CRIT Reservation.

As Reclamation is well aware, the CRIT has federally reserved water rights, which are described by the Supreme Court in *Arizona v. California* as present perfected water rights to divert water. Reclamation has a trust obligation to protect the CRIT's water rights for our present and future use. To that end, we appreciate the ongoing dialogue between our two governments regarding the use of our water to assist in alleviating the impacts of drought and climate change. We were

honored by the recent visit to our reservation by Commissioner Touton and applaud her stated desire to work with the CRIT on resolving barriers to our participation in these issues. It is our view that many of the themes raised in current discussions between our staffs on removing barriers to allow for our participation in basin-wide solutions addressing water shortage, are themes that must be discussed in development of Post-2026 Operational Guidelines and disclosed in the related Draft Environmental Impact Statement ("DEIS").

I. Issues That Must Be Addressed in the DEIS

- A. Ensuring the CRIT's ability to continue using up to its fully decreed water right. Aspects of water delivery, shortage conditions, potential regulation of water users, development and use of Intentionally Created Surplus, and System Conservation are expiring. As Reclamation and the Basin States are negotiating updates to these policies, Reclamation must avoid agreeing to any policy that would either reallocate water from the CRIT or prevent the CRIT from fully using its present perfected rights. The alternatives and analysis in the DEIS must include full development and/or use of the CRIT's water allocation.
- B. Purpose and Need must reflect and/or acknowledge senior tribal water rights like the CRIT's. The statement of purpose and need must include a commitment to protect the priority of water rights, including the CRIT's present perfected rights in all administration of water rights in the Lower Basin.
- C. Alternatives that include uncompensated and/or authorized reallocation of water are not reasonable under NEPA and must not be included in the DEIS. NEPA requires alternatives to be reasonable. Any potential alternative seeking to reallocate water supplies away from the CRIT would be an unconstitutional taking of property, a violation of the decree in *Arizona v. California*, and a repudiation of the *Winters* doctrine. Therefore, any such alternative would, by definition be unreasonable and contrary to law. Simply put, we will oppose any alternative in the post-2026 NEPA process that seeks to involuntarily reallocate the CRIT's water rights with or without just compensation.
- D. Inclusion of the CRIT in all mechanisms to address and create a more resilient water supply. As noted above, existing mechanisms to conserve existing supplies are expiring and we anticipate either new programs to be developed or existing ones to be renewed. As a senior water rights holder, the CRIT should be part of the solution. It makes no sense, therefore, for any policies seeking to conserve use to be developed in a manner that does not allow for the CRIT to participate. Currently, there are too many impediments for the CRIT to participate fully in System Conservation, Intentionally Created Surplus, and paid forbearance. The DEIS must analyze and disclose these impediments along with proposals on how to allow the CRIT, and other similarly situated Tribal Nations, to fully participate in these actions.
- E. Impacts to the CRIT by all alternatives must be fully analyzed. Post-2026 operations could have significant economic, cultural, environmental, religious, and recreational impacts on the CRIT. For example, the CRIT is one of the largest employers in La Paz County and there are many other jobs in the community that are directly linked to the CRIT's farming operations. Impacts on all of the CRIT's resources must be fully analyzed.
- F. Changes to the Multi-Species Conservation Program ("MSCP") must be fully disclosed. We anticipate there will be changes to the MSCP. As part of this analysis, the role of wildlife resources agencies on developing and permitting habitat restoration on tribal lands

must be disclosed and evaluated to permit full voluntary participation by the CRIT on reservation lands in both Arizona and California.

II. Process Concerns

A. Post- 2026 Operational Guidelines should be separate from the Supplemental Environmental Impact Statement for Near-term Colorado River Operations process ("SEIS"). We believe the Post-2026 Operational Guidelines and the SEIS are two distinct actions and they must be kept separate. Nonetheless, should Reclamation decide it will use information and analysis from the SEIS in the Post-2026 Operational Guidelines process, Reclamation must share the States' proposal and its environmental analysis of that proposal before proceeding too far with the environmental review for the Post-2026 Operational Guidelines. We are concerned the SEIS process and final decision based thereon will directly impact the environment and operational water levels that will be the baseline for the Post-2026 Operational Guidelines. Simply put, if Reclamation is seeking to incorporate any information from the SEIS process for Near-term Operations, all information regarding the States' proposals must be publicly released prior to the selection of alternatives to be analyzed in the DEIS for the Post-2026 Operational Guidelines.

B. Previous comments from the CRIT are incorporated into these comments. Comments on the SEIS for Near-term Colorado River Operations dated December 29, 2022, and October 26, 2022, are hereby incorporated into these comments in full and copies are attached hereto for your convenience.

C. Key information is missing from the Notice. The Notice does not include key information usually included in a Notice such as a preliminary description of the proposed action, the purpose and need for the proposed action, the alternatives likely to be considered, and a brief summary of anticipated impacts. Hence, our ability to provide responsive comments at this time is constrained by the lack of information and we expressly reserve all rights to comment on specific aspects of the DEIS as it becomes publicly available.

III. Engagement in the Development of Post-2026 Policy

A. We reiterate our desire for continuing consultation that is timely and meaningful. As we have expressly stated many times over the past several years and as is inherent in our comments above, we can be part of the solution. But to be part of the solution, the consultation process must be both continuing and meaningful. And Reclamation must avoid taking positions that have the effect of harming the CRIT. We urge Reclamation to look for more ways to allow the CRIT to be at the table when decisions regarding our water rights are being made. We welcome the opportunity to discuss with Reclamation our thoughts on concepts for Post-2026 Operations that would more fully allow the CRIT and other Tribal Nations to be part of the long-term solution for a sustainable River.

In conclusion, the CRIT will continue to be a collaborative partner to Reclamation and other water users in the Lower Basin. The key to a constructive working relationship is respect: respect for CRIT's sovereignty, respect for CRIT's decreed water rights, and respect for the solutions the CRIT can bring to the table. We look forward to working with Reclamation and other parties to resolve the challenges facing the Colorado River.

Saving the life of the River and all of nature that depends on its continued flow to survive.

COLORADO RIVER INDIAN TRIBES



Amelia Flores
Chairwoman



COLORADO RIVER INDIAN TRIBES

OFFICE OF THE ATTORNEY GENERAL

October 26, 2022

The Honorable Debra Haaland, Secretary of the Interior
Department of the Interior
1849 C Street, NW
Washington, D.C. 20240

The Honorable Brian Newland, Assistant Secretary Indian Affairs
Department of the Interior
1849 C Street, NW
Washington, D.C. 20240

The Honorable Tanya Trujillo, Assistant Secretary for Water and Science
Department of the Interior
1849 C Street, NW
Washington, D.C. 20240

The Honorable Camille CalimlimTouton, Commissioner
Bureau of Reclamation
Department of the Interior
1849 C Street, NW
Washington, D.C. 20240

Sent via email to all addressees

Re: System losses and the Colorado River Indian Tribes

Dear Secretary Haaland, Assistant Secretary Newland, Assistant Secretary Trujillo and
Commissioner Touton:

Officials within the Department of Interior have announced that Reclamation is developing a process to assess "system losses" in the Lower Basin of the Colorado River. System losses are water lost by the Colorado River and its reservoirs from evaporation, seepage and "other losses."

The water rights allocation of the Colorado River Indian Tribes is not subject to an assessment of system losses.

Background on System Losses

Each year Reclamation estimates that the evaporation from Lake Mead, seepage from the River and water use by phreatophytes results in approximately 1.2 million acre-feet (maf) of system losses each year. This is referred to as the *structural deficit*. Reclamation does not account for these losses as "uses." This results in reductions in water in Lake Mead that is not attributed to water users.

An example illustrates this situation. If Reclamation releases 7maf from Glen Canyon Dam to Lake Mead and the intervening inflows between Glen Canyon Dam and Lake Mead are 500,000af this provides a potential available new annual supply for delivery from Lake Mead of 7.5maf. To deliver 7.5maf from Lake Mead to points of diversion for water users, Reclamation must include an additional 600,000af release to compensate for seepage and other losses from the River. Depending on the elevation of the surface and the climatic conditions, the evaporation losses from Lake Mead may average an additional 600,000af per year. Completing this example, in a water year in which Lake Mead receives 7.5maf of inflow Reclamation releases 8.1maf to deliver 7.5maf to water users in the Lower Basin results and Lake Mead loses 600,000af to evaporation this results in a water depletion from Lake Mead of 8.7maf. This *structural deficit* of 1.2maf has not been accounted for within the Lower Basin for decades. Reclamation announced recently that they are working on a process to assess this system loss against the water users.

System losses are not assessable against the allocation for the Colorado River Indian Tribes

The Mohave people and the Chemehuevi people of the Colorado River Indian Reservation (CRIR) have been irrigating and farming with the water of the Colorado River from time immemorial. The CRIR was established from Mohave homelands in 1865. Congress appropriated money for irrigation ditches to divert water directly from the mainstream of the Colorado River to the CRIR for use by the Mohave people on the Reservation in 1867. The CRIT have used direct diversions from the mainstream of the Colorado River for farming ever since; first from hand dug ditches, then pumps in the River, and since 1944 through Headgate Rock Dam.

Headgate Rock Dam was funded and constructed by the United States to deliver water to the Reservation through the Colorado River Irrigation Project which is operated by the Bureau of Indian Affairs. The construction of Headgate Rock Dam was funded under the Rivers and Harbors Act. Both Headgate Rock Dam and the Colorado River Irrigation Project are federal projects, but neither are Reclamation projects or facilities.

The CRIT water rights were adjudicated and quantified by the United States Supreme Court in the 1963 case of *Arizona v. California* (373 U.S. 546 (1963)) and included in the 1964 decree.

(*Arizona v. California*, 376 U.S. 340, 344 (1964)) They have been increased since 1964 in subsequent decrees to account for lands that were not included within the original federal assessment of reservation lands.

The CRIT have federal Indian reserved water rights to divert water from the mainstream as they have done throughout millennia. The reservation of water for the CRIR was made at the time the Reservation was created—decades before the formation of the Reclamation Service or the construction of Reclamation projects and facilities on the Colorado River. This is not a water right based on storage in a Reclamation project or delivery through a Reclamation facility. This is a water right for direct diversion from the Colorado River.

The Supreme Court characterizes the CRIT reserved water right as an allocation from the mainstream.

Arizona v. California

The water rights of the CRIT and the attributes of those rights were confirmed by the United States Supreme Court decision in 1963 (*Az v Ca*, 373 U.S. 546 (1963)) and the 1964 Decree. (*Az v Ca*, 376 U.S. 340 (1964)) This has carried forward to the 2006 Consolidated decree without change except to increase in the volume of water available for the CRIT use. (*Arizona v. California*, 547 U.S. 150, 158 (2006))

The United States prepared and presented claims on behalf of the CRIT in the litigation between the states of Arizona and California over the states' apportionment of the Colorado River. The United States claimed the right to **divert water flowing in the mainstream of the Colorado River** sufficient to satisfy the agricultural purpose for which the CRIR was established. This amount of water is quantified as sufficient water to irrigate all the practicably irrigable acreage on the Reservation. The Special Master and the Court agreed. (*Az. V. Ca.* 373 at 595 – 601)

The CRIT water right was quantified for present and future use by the CRIT. The holding of the Court and the Decree make clear that the CRIT water right is a right to directly divert water from the mainstream of the Colorado River, it is not based on storage in Lake Mead. It is different from contractual water rights to storage behind Hoover Dam as authorized in the Boulder Canyon Project Act.

The exact language of the Supreme Court confirming the water delivery to the CRIT from the mainstream is excerpted below.

“The Government, on behalf of five Indian Reservations in Arizona, California, and Nevada, asserted **rights to water in the mainstream of the Colorado River.**” (emphasis added, *Az v Ca*, 373 U.S. at 595)

"The Master found both as a matter of fact and law that when the United States created these reservations [the five Indian reservations in the Lower Basin including the CRIR] or added to them, it reserved not only land but also the use of enough water **from the Colorado** to irrigate the irrigable portions of the reserved lands." (*Az v Ca*, 373 at 596)

"The Court in *Winters* concluded that the Government, when it created that Indian Reservation, intended to deal fairly with the Indians by reserving for them the waters without which their lands would have been useless.... We follow [*Winters*] now and agree that the United States did reserve the water rights for the Indians effective as of the time the Indian Reservations were created. This means, as the Master held, that these water rights, having vested before the Act became effective on June 25, 1929, are "present perfected rights" and as such are entitled to priority under the Act." (*Az v Ca*, 373 U.S. 600)

"We also agree with the Master's conclusion as to the quantity of water intended to be reserved. He found that the water was intended to satisfy the future as well as the present needs of the Indian Reservations and ruled that enough water was reserved to irrigate all the practicably irrigable acreage on the reservations." (*Az v Ca*, 373 at 600)

The Decree also includes an injunction against the United States from delivering water other than as set forth in the Decree. This includes the CRIT reserved water right.

The United States is enjoined:

"From releasing water controlled by the United States for use in the States of Arizona, California, and Nevada for the benefit of any federal establishment named in this subdivision (D) except in accordance with the allocations made herein;

.....

(4) The Colorado River Indian Reservation in annual quantities not to exceed (i) 719,248 acre-feet of diversions from the mainstream or (ii) the quantity of mainstream water necessary to supply the consumptive use required for irrigation of 107,903 acres and for the satisfaction of related uses, whichever of (i) or (ii) is less...." (*Az v Ca*, 376 at 341 and 344-45)

The Court held that the CRIT allocation is a Present Perfected Right and defined of "Perfected Right" as "water rights **created by the reservation of mainstream water for the use of federal establishments** under federal law whether or not the water has been applied to beneficial use...." (*Az v Ca*, 376 at 340)

The definition of "Present Perfected Rights (PPRs)" is perfected rights, as here defined, existing as of June 25, 1929, the effective date of the Boulder Canyon Project Act." (*Id.*)

Non-Tribal Holders with Present Perfected Rights entered Contracts with the United States

The CRIT do not hold a contract for delivery of water from Hoover Dam. Other holders of PPR's do have Reclamation contracts and those contracts permit the assessment of system losses. Reclamation asserted this authority in the contracts authorized under the Boulder Canyon Project Act and the contractors agreed with it.

At the time of the Boulder Canyon Project Act most water diversions were in California. The holders of PPRs, for the most part, entered contracts with the United States for delivery of water from storage behind Hoover Dam in Lake Mead as authorized in Section 5 of the Boulder Canyon Project Act. These contracts contain uniform terms and requirements in addition to the terms specific to the project repayment obligations.

First, each contract includes the exact language of the 1931 Seven Party Agreement with Reclamation. (Available at: <https://www.usbr.gov/lc/region/pao/lawofrvr.html#7pty>) The 1948 Hoover Dam compilation of laws and regulations notes that Reclamation, by regulation, also required at least two other standard provisions.

Using the Imperial Irrigation District (IID) as an example, Reclamation and IID entered the Contract for Construction of Diversion Dam, Main Canal, and Appurtenant Structures and for Delivery of Water with the United States on December 1, 1932 (IID 1932 Contract). The IID 1932 Contract includes the following two provisions that are also included in the other contracts with holders of PPRs in California.

The first provision confirms that the water for delivery to IID is water from Lake Mead, not that of a direct diversion from the River:

[T]he United States shall from **storage available in the Boulder Canyon Reservoir [Lake Mead]**, deliver to the District each year at a point in the Colorado River... so much water as may be necessary to supply the District a total quantity" of its water right. (Art. 17 of the IID 1932 Contract)

The second common provision addresses the complete authority of Reclamation to regulate the amount of water delivered, which includes the authority to assess system losses.

Rules and Regulations: There is reserved to the Secretary the right to prescribe and enforce rules and regulations not inconsistent with this contract, governing the diversion and delivery of water hereunder to the District and to other contractors. Such rules and regulations may be modified, revised and/or extended from time to time after notice to the District and opportunity for it to be heard....The District hereby agrees that in the operation and maintenance of its diversion works at [the point of diversion], all such rules and regulations will be fully adhered to. (Art. 24 of the IID 1932 Contract)

Other Reclamation Contracts

Reclamation entered a contract with the Metropolitan Water District of Southern California (1930 MWD Contract) in 1930 (amended in 1931) for delivery of water from storage in Lake Mead, referred to at the time as the Boulder Canyon Reservoir. The MWD Contract includes an almost exact version of the Rules and Regulations paragraph quoted above authorizing Reclamation to “prescribe and enforce” rules and regulations and the agreement of the contractor to adhere to them. (See 1930 MWD Contract at Paragraph (15))

In 1944 Reclamation entered a Contract with the State of Arizona for delivery of water from storage in Lake Mead to water users in the State.

The 1944 Contract with the State of Arizona at **Paragraph 7(d)** specifically addresses system losses.

7(d) The obligation to deliver water at or below Boulder Dam...shall be subject to such reduction on account of evaporation, reservoir and river losses, as may be required to render this contract in conformity with said compact and said act.

The Reclamation contract for construction and operation of the Central Arizona Project is subject to the terms of the 1944 Contract with the State of Arizona including Paragraph 7(d) quoted above. The original 1972 Reclamation Contract with the Central Arizona Water Conservation District states at Paragraph 8.7(b):

The quantity of Colorado River water available under this contract for project purposes shall not exceed the quantity of water available to Arizona under the aforementioned Supreme Court Decree in Arizona v. California and in **Arizona’s water delivery contract with the United States after first providing for satisfaction of:**

(i) present perfected rights and perfected rights described in Article II(D) of the Decree and the rights of other Federal reservations established prior to September 30, 1968....

This CAP contract provision confirms that the delivery of water to the CAP is subject to “reduction on account of evaporation, reservoir and river losses, as may be required to render this contract in conformity with said compact and said act.” (See 1944 Contract with Arizona). It is also subordinate to the CRIT water right which is a present perfected right.

Conclusion

The United States does not have the authority to assess system losses against the delivery of water to the Colorado River Indian Reservation. The water right for the Colorado River Indian Tribes is for the diversion of water from the mainstream and dates back to the establishment of the reservation in 1865.

Reclamation by contract has imposed restrictions on water users specifically related to the assessment of system losses as in the Arizona contract and through the requirement to abide

by rules and regulations adopted by Reclamation that is included in Reclamation contracts for delivery of water from Lake Mead.

The United States presented a claim on behalf of the CRIT before the Special Master in Arizona v. California for diversion of the water flowing in the mainstream of the Colorado River. This claim was accepted by the Special Master and the Court and the CRIT were allocated 719,248 acre-feet of diversions from the mainstream or (ii) the quantity of mainstream water necessary to supply the consumptive use required for irrigation of 107,903 acres and for the satisfaction of related uses, whichever of (i) or (ii) is less. (This total is from *Az v Ca*, 547 U.S. 150, 158 (2006))

Reclamation knows the difference between a right to divert water delivered from storage in Lake Mead and the CRIT right to divert water directly from the mainstream with a measurement of the full water right at the point of diversion.

The CRIT water right is for diversion from the mainstream, it pre-dates any Reclamation projects on the River and the CRIT never entered a contract for delivery of water from storage in Lake Mead. Therefore, Reclamation does not have the authority to assess system losses against the CRIT water right.

Sincerely,

COLORADO RIVER INDIAN TRIBES



Rebecca Loudbear
Attorney General

cc:

Tommy Beaudreau, Deputy Secretary

Sam Kuhn, Counselor to the Assistant Secretary for Indian Affairs

Lisa Lance, Solicitor

Robert Snow, Solicitor

Pamela Williams, Director, Secretary's Indian Water Rights Office

Reclamation 2007 Interim Guidelines SEIS Project Manager
Upper Colorado basin Region,
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Salt Lake City, Utah 84138

Sent via email to: CRinterimops@usbr.gov

Re: Scoping Comments on SEIS



December 29, 2022

The Colorado River Indian Tribes are aware of and have studied the current crisis on the Colorado River. The Mohave and Chemehuevi people have always lived along the banks of the River in what is now the Lower Basin. Our ancestors lived through previous droughts and floods.

We thank Reclamation for conducting this Supplemental Environmental Impact Study that is necessary to understand the impacts of less water in the River. We expect that Reclamation will prepare its alternatives with the full knowledge of the unique aspects of each tribe's water rights including the unique nature of the decreed water rights of the Colorado River Indian Tribes. We do not have a Reclamation contract, our water is not delivered through a Reclamation facility, and we are not part of a state water rights system. Reclamation, as part of the United States government, has a trust obligation to protect our first-priority decreed water rights for our present and future use.

We incorporate in these comments the letter from Attorney General Rebecca Loudbear to Secretary Haaland, et al dated October 26, 2022, regarding the potential assessment of system losses against the CRIT.

Considerations for the SEIS

Mechanisms need to be developed and in place as soon as possible for all water users in the Basin to voluntarily contribute some of their water to the system.

A flowing River is very important and religiously and culturally significant to our community and to many tribes along the River and its tributaries. Because of this fact CRIT has been voluntarily leaving water in Lake Mead as part of the Pilot System Conservation Program and the Arizona DCP Agreements. The CRIT submitted a proposal to continue leaving its water in the system in 2023 through 2025. All water users must be included in these types of programs.

The protection of Glen Canyon Dam is important to everyone in the basin. However, we, as Lower Basin water users should not be the only entities sacrificing for this objective. Our water cannot go into Lake Powell. The NOI and the information in the public webinars indicate that

the primary mechanism for protecting Glenn Canyon Dam is to deliver less water to Lake Mead. This puts the burden of protecting Glenn Canyon Dam on us as a lower basin water user. Other mechanisms for broader participation should be included in the alternatives.

The Colorado River is a living River with fish, animals, plants, and people who depend on it to continue. All potential action alternatives should include a component for water to continue to flow from Lake Powell through the Grand Canyon, through Black Canyon, through Lake Havasu, through the wildlife refuges, the tribal Reservations and on to Mexico. We do not know, and may not be able to know, the full extent of the damage that will be done if operations of the dams prevent the flow of the Colorado River through any part of its course. Reclamation must protect against this catastrophe.

We recommend that Reclamation study an alternative that will include maintaining system conservation water that was created through a compensation program as water in the system. This water may remain in Lake Mead to maintain the minimum pool and may be released to maintain the base flows through the River needed for environmental and habitat protection. System conservation is currently accounted for and delivered as a source of inflow. It is delivered to water users as early as the water year following creation. The Reclamation system conservation program can be modeled after the ICS program by creating a separate account and establishing parameters for delivery or release for the purpose of preserving the system. The parameters would include specified River conditions triggering a release for system preservation and for conditions that permit the water to be delivered to water users.

Climate change has resulted in less water within the Colorado River. But, it is the use of that water that is causing the current crisis. We must all contribute to save the life of the River and our contributions of water should be used to maintain the River's life.

Thank you for consideration of our comments.

Please direct any correspondence regarding these comments to: Rebecca Loudbear, Attorney General, Colorado River Indian Tribes: rloudbear@critdoj.com

CC:

Tom Buschatzke; tbuschatzke@azwater.gov

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GILA RIVER INDIAN COMMUNITY

Executive Office of the Governor & Lieutenant Governor

"Gila River Strong"

Stephen Roe Lewis
Governor



Monica Lynn Antone
Lieutenant Governor

August 15, 2023

VIA E-MAIL (crbpost2026@usbr.gov)

Bureau of Reclamation
Attn: Post-2026 (Mail Stop 84-55000)
P.O. Box 25007
Denver, CO 80225

Re: Gila River Indian Community's Comments Regarding the Bureau of Reclamation's Notice of Intent To Prepare an Environmental Impact Statement and Notice To Solicit Comments and Hold Public Scoping Meetings on the Development of Post-2026 Operational Guidelines and Strategies for Lake Powell and Lake Mead

Dear Program Coordinator Erath,

This letter transmits the Gila River Indian Community's (the "Community's") comments to the Bureau of Reclamation's ("Reclamation's") "Notice of Intent To Prepare an Environmental Impact Statement and Notice To Solicit Comments and Hold Public Scoping Meetings on the Development of Post-2026 Operational Guidelines and Strategies for Lake Powell and Lake Mead," 88 Fed. Reg. 39455 (June 16, 2023). The Community appreciates the opportunity to provide its comments to Reclamation "concerning the scope of specific operational guidelines, strategies, and any other issues that should be considered on or before August 15, 2023," *id.*, in the upcoming environmental impact statement ("EIS") for the Post-2026 Colorado River reservoir operational guidelines and strategies for Lake Powell and Lake Mead (referred to as "Post-2026 Operations"). The Community has demonstrated its repeated commitment to work with Reclamation to address the challenges caused by drought, climate change, and aridification that will almost certainly lead to lower runoff conditions in the Colorado River Basin over the foreseeable future. The Community remains committed to working with Reclamation, Basin States, Basin Tribes, and other stakeholders to develop, under the National Environmental Policy Act ("NEPA") process, Post-2026 Operations that:

1. Are able to respond to varied hydrologic and storage conditions within the Colorado River System.
2. Adopt flexible tools to encourage conservation, both voluntary and involuntary, to protect critical elevations at Lake Powell and Lake Mead.

3. Stabilize operations by addressing the imbalance between supply and demand within the Colorado River System in a fair and equitable manner that shares the burden of any reductions across all water entitlement holders in the Basin.
4. Take into account Reclamation's statutory trust responsibility to protect, develop, and defend Tribal water resources.

Moreover, the negotiation process for the development of the Post-2026 Operations should include all sovereigns in the Basin, building upon the substantial progress made in the first meeting of all sovereigns that Reclamation held on August 10, 2023, in Phoenix, Arizona.

The Record of Decision for the Colorado River Interim Guidelines for Lower Basin Shortages and Coordinated Operations for Lake Powell and Lake Mead ("2007 Interim Guidelines") was never intended to address the imbalance between supply and demand within the Colorado River System, but was instead "designed to provide a greater degree of certainty to water users about timing and volumes of potential water delivery reductions, and additional operating flexibility to conserve and store water in the system."¹ During the implementation of the 2007 Interim Guidelines, it became clear that additional responsive actions were needed and that "due to the persistence and magnitude of the drought, had Reclamation continued operations solely according to the [2007 Interim Guidelines], the risk of reaching critically low elevations in Lake Powell and Lake Mead by 2026 was projected to increase substantially over what was projected in the Final EIS and at the time of the adoption of the [2007 Interim Guidelines]," and "[i]n light of this increased risk, additional voluntary adaptive management actions were conceptualized and adopted, including through the Upper and Lower Basin DCPs."²

In 2021, Reclamation and Lower Basin States and parties, including the Community, worked together to supplement system conservation measures to shore up the Drought Contingency Plans ("DCPs") through the "500+ Plan." Moreover, in 2022, the Department of the Interior took unprecedented emergency action to protect critical elevation and infrastructure at Lake Powell and initiated a Supplemental Environmental Impact Statement process that contemplated unprecedented curtailment of water deliveries in the Lower Basin.³ Given what we have all learned and experienced since the 2007 Interim Guidelines were adopted, the Community believes that all Colorado River water users must now address the imbalance between supply and demand within the Colorado River System.

1. Purpose and need.

The EIS must seek to stabilize the Colorado River System to ensure that the 40 million people who rely on the Colorado River will have a stable water supply, and, most significant to the Community, allow the United States to continue to meet its obligations to protect water rights held in trust by

¹ Bureau of Reclamation, Review of the Colorado River Interim Guidelines for Lower Basin Shortages and Coordinated Operations for Lake Powell and Lake Mead at 1 (Dec. 18, 2020) (hereinafter "7.D. Review").

² *Id.* at 41-42.

³ See generally Notice of Intent To Prepare a Supplemental Environmental Impact Statement for December 2007 Record of Decision Entitled Colorado River Interim Guidelines for Lower Basin Shortages and Coordinated Operations For Lake Powell and Lake Mead, 87 Fed. Reg. 69042 (Nov. 17, 2022).

the United States on behalf of Tribes under Congressionally approved water settlements. Operations of the Colorado River System should be able to respond to varied hydrologic and storage conditions within the system, incorporate flexible tools to protect critical elevations at Lake Powell and Lake Mead, and most importantly, stabilize operations by addressing the imbalance between supply and demand within the Colorado River System in a fair and equitable manner, with all water users having to share fairly in any reductions that might be required.

2. Scope of specific operational guidelines.

To the extent feasible, the EIS should address the operations of the entire Colorado River System. Ideally, a global approach addressing the operations of the entire Colorado River System under a single process to coordinate Endangered Species Act issues, natural, recreational, and cultural resources concerns. Upper Basin reservoir operations would be preferable to what currently exists; an assortment of Record of Decisions (“RODs”), programs, and plans that all impact operations but have been developed separately with different scopes and operate on different timelines.⁴ The Community acknowledges that it would be impractical to revisit all of these agreements, but to the extent possible, Reclamation should strive to develop an EIS that addresses the operations of Lake Mead and Lake Powell by using all available water supplies in reservoirs operated by Reclamation, including available supplies in the “Initial Units” under the Colorado River Storage Project Act (70 Stat. 105). This would continue the operations that have been incorporated in the DCPs, allowing for releases from the Initial Units when water is available in them and need to shore up critical elevations at Lakes Mead and Powell.

The Community acknowledges that the EIS must be developed within the legal framework of the 1922 Colorado River Compact, the Boulder Canyon Project Act of 1928 (45 Stat. 1057), the Utilization of Waters of the Colorado and Tijuana Rivers and of the Rio Grande, Treaty Between the United States of America and Mexico, Treaty Series 994 (59 Stat. 1219), the Colorado River Storage Project Act, the Consolidated Decree entered by the Supreme Court of the United States in *Arizona v. California*, 547 U.S. 150 (2006), and other statutes and minutes that comprise the Law of the River. But the Community also recognizes that the foundations of the Law of the River were largely developed to encourage the development of non-Tribal water projects within the Colorado River Basin with no concern or appreciation of where the Colorado River Basin is today; with demand not in balance with supply, and continued aridification of the region the likely long-term impact of climate change. Long term, the Colorado River Basin faces unprecedented risks and Reclamation should develop an EIS that enables it to exercise its full authority to manage the Colorado River System in a fair and equitable manner that stabilizes operations by addressing the imbalance between supply and demand within the Colorado River System.

More specifically, the scope of the EIS should address the management of Lake Powell and Lake Mead operations to: (1) reduce the risk of reaching critical elevations in either reservoir; (2) address the imbalance between supply and demand within the Colorado River System in a fair and

⁴ See, e.g., Record of Decision, Lower Colorado River Multi-Species Conservation Plan (Apr. 2005); Record of Decision, Operation of Flaming Gorge Dam Final Environmental Impact Statement (Feb. 2006); Record of Decision for the Navajo Reservoir, Navajo Unit – San Juan River New Mexico, Colorado, Utah Final Environmental Impact Statement (July 2006); Record of Decision for the Aspinall Unit Operations Final Environmental Impact Statement (Apr. 2012); Record of Decision for the Glen Canyon Dam Long-Term Experimental and Management Plan Final Environmental Impact Statement (Dec. 2016).

equitable manner; (3) build on the success of storage and conservation programs under the 2007 Interim Guidelines, and expand the program to apply to the entire Colorado River System; (4) develop programs for augmentation of Colorado River supplies and of supplies within Lower Basin States like Arizona with a view to replacing on a long-term basis any reduced water supplies held in trust by the United States on behalf of Tribes under Congressionally approved water settlements; (5) adopt a fair, equitable, and stable system for imposing mandatory reductions; and (6) develop surplus criteria.

To begin, Lake Powell and Lake Mead operations should be managed in a manner that will minimize the risk of reaching critical elevations in either reservoir. The EIS must incorporate predictable and comprehensible criteria for releases from Lake Powell to Lake Mead. The criteria should further include provisions that will allow for adapting to unexpected changes in hydrology, as well as updated science and accurate modeling. Achieving this balance will reduce the risk of reaching critical elevations in Lake Powell and Lake Mead, while simultaneously providing Colorado River water users with the certainty required to manage water supplies in the long term.

Next, the EIS should address the existing imbalance between available water supplies and demands in the Colorado River Basin. The heavy demand of the Lower Basin, combined with the multidecadal drought and other effects of climate change that have negatively affected runoff, has drastically reduced storage in Lake Powell and Lake Mead. In the Upper Basin, irregular hydrology affects the availability of water supplies each year on a source-by-source basis. Despite voluntary actions involving significant financial investments to reduce demands over the last twenty (20) years—including crucial actions taken by the Community—the Lower Basin is now implementing weighty mandatory supply reductions. The EIS must identify necessary measures to balance the available water supplies and the uses that rely on the Colorado River. In doing so, the EIS must address this imbalance in a fair and equitable manner, considering all Colorado River water entitlement holders, particularly those to whom Reclamation owes a statutorily created trust responsibility, who have already contributed to drought mitigation through conservation. Numerous parties in the Lower Basin, including the Community, have partnered with Reclamation in the past to conserve hundreds of thousands of acre-feet of Colorado River water to protect Lake Mead. The Community itself has already contributed over 730,000 acre-feet of its Colorado River entitlement to improve elevation levels at Lake Mead, resulting in over ten (10) feet of additional elevation.

Due to the supply imbalance and the United States' overreliance on at-risk water supplies like Central Arizona Project ("CAP") water, particularly Non-Indian Agricultural Priority CAP water, to address Indian Tribes water rights claims to senior water rights (*e.g.*, many of the Community's claims were for time immemorial rights), many federal trust resources established through water settlements are at risk. The EIS must acknowledge this reality and that the United States will not be able to meet its Congressionally mandated obligations to settling Tribes like the Community unless the United States develops programs for augmentation of Colorado River and Lower Basin supplies for these Tribes and/or develops programs to find replacement water of any reduced water supplies held in trust by the United States on behalf of Tribes under Congressionally approved

water settlements.⁵ Further, the EIS should include a framework with incentives for augmenting Colorado River supplies generally. Augmentation can be developed through binational programs, such as desalination, or regional programs within the United States, and the EIS should evaluate how such augmentation projects can help mitigate the impact of reductions. The EIS must support the development of these programs to mitigate the impacts of what will almost certainly be reductions in Colorado River water supplies in the Lower Basin under new Post-2026 Operations.

The EIS should build off the successes of the 2007 Interim Guidelines, especially with respect to conservation programs. The EIS should further develop storage and conservation programs that maximize voluntary reductions in water use throughout the Colorado River Basin, including the aforementioned framework for augmentation of Colorado River water supplies. The EIS should evaluate existing mechanisms, such as intentionally created surplus ("ICS"), for voluntary conservation and storage to provide flexibility to individual contractors and protect the Colorado River System as a whole. Although the Community has voluntarily conserved nearly 320,000 acre-feet through ICS, the program's parameters should be reevaluated to ensure it properly incentivizes conservation while avoiding negative impacts to Colorado River water users. Furthermore, the EIS should identify sustainable programs that can incentivize voluntary conservation and maximize water efficiencies and technologies across all sectors throughout the Basin. And, to the extent that financial incentives are included in the programs, a sustainable funding source must be identified.

Moreover, Reclamation should enhance the predictability of mandatory reductions for all water users. Colorado River water users will face mandatory reductions to their water supplies given the depleted storage, long-term drought, and other effects of climate change. Water users will benefit from additional certainty regarding how such reductions will be distributed. Accordingly, the EIS should define mandatory reductions and evaluate ways to reduce the risk associated with those mandatory reductions under fluctuating hydrology. In doing so, the EIS should adopt a fair, equitable, and stable mechanism for imposing mandatory reductions.

Lastly, the EIS should consider alternatives that include criteria for distributing surplus in the Lower Basin. While the likelihood of experiencing surplus conditions in the future is unlikely, Reclamation should be prepared for such a possibility and develop clear criteria to appropriately manage the additional water supplies, with a preference for using these supplies to create "buffers" to reduce the impacts of periods of sustained low hydrology.

3. Strategies.

The EIS should look at ways in which the Lower Basin can more equitably share reductions in use. Strategies could include:

- Finding replacement water for water users that have junior water rights in the system;

⁵ The EIS should also anticipate the need to request from Congress the resources necessary to establish meaningful long-term voluntary system conservation programs in the Basin, as well as additional infrastructure and water augmentation funding.

- Adopting an evaporation and system loss formula in the Lower Basin; and/or
- Establishing public health and safety, and tribal cultural and homeland protection volumes to ensure that all water users can count on at least a minimum amount of water even during times when large volume cuts may be necessary.

For Lower Basin operations, Reclamation should re-examine how it makes mandatory cuts.

4. Other issues.

In addition to holding the recently established Federal-State-Tribal Group meetings, Tribal Information Exchange meetings and the Post-2026 Integrated Technical Education Workgroup meetings, Reclamation must engage the Community, and any other Basin Tribes that have requested formal consultation, in meaningful and robust Nation-to-Nation consultation throughout the EIS process. President Biden recently ordered that consultations must ensure all applicable information is readily available to consulting parties and that Federal and Tribal officials have adequate time to communicate.⁶ Reclamation must then take the Tribal input it receives into account; and provide an explanation of how Tribal input was received, how that Tribal input was addressed, and the reasoning for any instance in which Tribal suggestions were not incorporated into the Departmental action or any instance where consensus could not be obtained.⁷ Reclamation must also timely disclose to affected Basin Tribes the outcome of consultation and decisions made because of consultations.⁸

To satisfy these consultation requirements, Reclamation must consult the Community and other requesting Basin Tribes before and after each of its decision points. Reclamation must consider the concerns of Basin Tribes, and provide information based on the differentiated impacts they may feel from federal action. While the EIS will be conducted within a tight timeframe, Reclamation should provide sufficient time for Tribes, such as the Community, to meaningfully respond to information provided before and after the draft EIS is released at the end of 2024, and before and after any key milestones throughout the NEPA process. Reclamation should also create and share a model with Tribes, such as the Community, who have requested it to illustrate for decision-makers how proposed cuts may affect Tribal water supplies. And, if there are consensus alternatives being discussed, the Community and other requesting Basin Tribes need to know what is under discussion. Ideally, the opportunity to discuss of consensus alternatives will be provided in the Federal-State-Tribal Group meetings and in individual consultation sessions.

While Reclamation should consider the ways in which Basin Tribes differ from other water users and the ways in which Basin Tribes differ from each other, Reclamation should not imbue certain Basin Tribes with more protection than others. Reclamation has a statutory trust responsibility to Tribes, like the Community, that have accepted statutory trust entitlements to Colorado River water delivered through CAP. This responsibility requires a high degree of care and protection, and which creates a trust claim for the affected Tribe in a manner different than others with contractual

⁶ White House, Memorandum on Uniform Standards for Tribal Consultation § 2 (Nov. 30, 2022) (“WH Memo”); *see also* 512 Department of the Interior, Departmental Manual at § 5.5(B) (Nov. 9, 2015) (“DM”).

⁷ 512 DM § 5.5(C).

⁸ WH Memo § 7(b).

entitlements to Colorado River water.⁹ Moreover, these Tribal trust entitlements to Colorado River water through CAP are no less important than other Basin Tribes' rights to divert directly from the Colorado River. Reclamation has a money-mandating duty to consider and protect the Community's statutory entitlement to Colorado River water held in trust by the United States.¹⁰ At every step, Reclamation must consider and appropriately account for its trust responsibilities, especially protecting statutorily protected Tribal trust resources. As part of its trust responsibility, Reclamation must consider whether any reductions in Colorado River deliveries to a Tribe with a statutory entitlement to such water is likely to be permanent or nearly permanent, thereby necessitating the need to find replacement water for such lost entitlement.

Thank you for considering the Community's views on what the EIS should cover. We look forward to continuing our work together during this process.

Respectfully,



Stephen R. Lewis, Governor
Gila River Indian Community

Cc: Senator Kyrsten Sinema
Senator Mark Kelly
Lt. Governor Monica Antone
Gila River Indian Community Litigation Team
Thomas Murphy, Acting General Counsel
Don Pongrace
Jason Hauter

⁹ See Arizona Water Settlements Act, Pub. L. 108-451, 118 Stat. 3499 (2004) ("AWSA"); see also, e.g., Ak-Chin Water Rights Act of 1984, Pub. L. 98-530, 98 Stat. 2698 § 2a ("[T]he Secretary shall deliver annually a permanent water supply from the main project works of the Central Arizona Project to the southeast corner of the Ak-Chin Indian Reservation of . . . surface water[.]"); Salt River Pima-Maricopa Indian Community Water Rights Settlement Act of 1988, Pub. L. 100-512, 102 Stat. 2549 (1988).

¹⁰ See AWSA § 204(a)(2); see also *In re the General Adjudication of All Rights to Use Water in the Gila River System and Source*, Contested Case No. W1-207, Judgment and Decree dated Sept. 13, 2007, at ¶ 6 (Ariz. Superior Ct., County of Maricopa) ("The Water Rights described in . . . this Judgment and Decree shall be held in trust by the United States on behalf of the Community and the Allottees as provided in section 204 of the [AWSA].").



HAVASUPAI TRIBAL COUNCIL

P.O. Box 10 • Supai, Arizona 86435
(928) 448-2731 • Fax (928) 448-2551

Amanda Erath

Colorado River Post-2026 Program Coordinator

United States Bureau of Reclamation

Attn: Post-2026 (Mail Stop 84-55000)

P.O. Box 25007

Denver, Colorado 80225

via email: crbpost2026@usbr.gov

Subject: The Havasupai Tribe Comments in Response to Notice of Intent to Prepare an Environmental Impact Statement and Notice to Solicit Comments and Hold Public Scoping Meetings on the Development of Post-2026 Operational Guidelines and Strategies for Lake Powell and Land Mead, 88 Fed. Reg. 39455 (June 16th, 2023).

Dear Ms. Erath:

Greetings from the Havasupai Tribe. We are the Havasu 'Baaja, the People of the Blue-Green Waters. We have coexisted with the rich natural resources in the Grand Canyon including, most importantly, the canyon and its water that sustains our livelihood. We have been connected with, and a part of, these lands and waters since time immemorial. Our historical connection to these lands and waters were recognized by President Biden on August 8th in his remarks as he was creating the Baaj Nwaavjo l'tah Kukveni Grand Canyon National Monument.

While our reservation lands are not on the Colorado River and we do not receive Colorado River supplies, we are physically connected to the river through our groundwater from two separate aquifers that create seeps and springs throughout our reservation lands and our larger homelands. It is also these aquifers that feed Havasu Creek, the source of water for our village and the natural environment that sustains all life in our Canyon. Havasu Creek flows into the Colorado River in the Grand Canyon National Park and provides approximately 50,000 acre-feet of inflows on an annual basis to the Colorado River. Before addressing activities by the United States government that have the potential to harm our resources, we wanted you to understand our relationship to our lands and our water resources- both those on the surface and those below the surface.

It is with this backdrop we have reviewed your Notice of Intent (Notice) to Prepare an Environmental Impact Statement and Notice to Solicit Comments and Hold Public Scoping Meetings on the Development of Post-2026 Operational Guidelines and Strategies for Lake Powell and Land Mead, 88 Fed. Reg. 39455 (June 16th, 2023). We are concerned that actions taken by Reclamation in operating the Colorado River system could have indirect, yet significant, impacts to the Tribe's water resources. Such potential impacts must be identified and evaluated.

GROUNDWATER IMPACTS

Reductions in surface water deliveries that will be part of any alternative will likely result in increased groundwater use to supplement water demands. As noted above, the Tribe relies almost entirely on groundwater which supplies the springs the Tribe uses for consumptive use and holds in cultural and spiritual significance. Groundwater fed springs are also the primary supply of water to the Tribe's surface water sources, including Havasu Creek, which feeds the waterfalls and pools that drives the Tribe's tourism-based economy.

The effects of increased groundwater use that will result from reduced deliveries of Colorado River water must be identified and addressed. The Tribe is concerned that increased groundwater use may have the following effects on Tribal water resources and is of the view that these impacts must be analyzed and disclosed:

1. The Reservation is located adjacent to the rim of the Grand Canyon where the Redwall-Muav Aquifer discharges its groundwater at springs located along the rim of the Grand Canyon and along the other canyon walls within the Reservation. The Redwall-Muav Aquifer is a regional aquifer and the primary groundwater source for the Tribe's water. Recharge to Redwall-Muav Aquifer occurs upgradient at San Francisco Peaks and Mogollon Rim, as well as from upgradient underflow and infiltration from surrounding groundwater basins. The Tribe is one of the most downgradient users of the Redwall-Muav Aquifer and consequently is also one of the last users of Redwall-Muav Aquifer groundwater. As a result, the Tribe will be one of the users affected the most from increased groundwater withdrawals. The DEIS must acknowledge and analyze this potential impact.
2. Previous modeling has shown some springs within the Reservation to be highly susceptible to decreases in flow caused by increases in groundwater pumping. The Tribe is concerned that the effects of increased groundwater use may cause decreased discharges or even the complete drying of springs that the Tribe relies on for consumptive, cultural, spiritual, and tourism use. The DEIS must evaluate the connection between lack of surface water supplies and how increases in groundwater may impact discharges at Tribal springs.
3. The Tribe is concerned that the reduction in groundwater levels caused by increases in groundwater use may lead to existing wells within Coconino County becoming less productive, causing municipalities and other water users to have to explore drilling new wells in more rural areas to meet their water demands. The Tribe is concerned that such exploration will lead to more wells being drilled in rural areas near the Reservation. Previous modeling efforts have shown that wells pumping closer to the Reservation have increased effects of causing decreases in discharge at Tribal Springs. This must be evaluated and analyzed.

4. The Tribe has existing and proposed wells on the Coconino Plateau that will be used for consumptive use as the Tribe continues to work towards developing additional housing for Tribal members. The changes in groundwater use described in points 1-3, has the potential to decrease well productivity, increase power costs for pumping groundwater, and increase well drilling costs (applies only to proposed wells) for existing and proposed Tribal wells on the Coconino Plateau. The DEIS must include consideration the of effects of increased groundwater use on Tribal groundwater development on the Coconino Plateau.

5. Increases in groundwater use will cause changes in groundwater gradients. Changes in groundwater gradients in the vicinity of uranium mines on the Coconino Plateau have the potential to change to create pathways, that otherwise would not exist, for potentially released uranium to migrate into Tribal groundwater resources. The potential threat of uranium releases to Tribal groundwater resources is of great concern to the Tribe. The DEIS must evaluate this potential impacts.

THREATS TO HUMPBAC CHUB

Humpback Chub have been released in Havasu Creek since 2011 in a currently successful effort to re-introduce Humpback Chub back into Havasu Creek. The Tribe is concerned that the efforts to prevent Smallmouth Bass from spawning below Glen Canyon Dam may result in driving Smallmouth Bass into warmer, tributary waters of the Colorado River such as Havasu Creek where the Smallmouth Bass can establish and threaten the Humpback Chub. The potential for such a scenario, and associated conservation efforts, must be addressed in the DEIS.

CLOSING COMMENTS

1. As Reclamation is developing alternatives, we wish to remind you that any action by the United States as a trustee of the Havasupai Tribe must protect the unquantified Federal Reserved Water Rights and Water Resources of the Havasupai Tribe.

2. The Tribe since 1997 has been objecting to any major groundwater development in the Plateau. The lack of Colorado River surface water will result in groundwater development in the Plateau and thus will have adverse effects on the springs, water resources, and spectacular falls of the Havasupai Tribe, which are a national treasure.

Thank you for your time and attention to our concerns.

Sincerely,



Thomas Siyuja, Sr.

Chairman



Timothy L. Nuvangyaoma
CHAIRMAN

Craig Andrews
VICE-CHAIRMAN

August 11, 2023

Via Email (crbpost2026@usbr.gov)

Bureau of Reclamation
Attn: Post-2026 (Mail Stop 84-55000)
P.O. Box 25007
Denver, CO 80225

Re: The Hopi Tribe's Comments on the Development of Post-2026 Operational Guidelines and Strategies for Lake Powell and Lake Mead

Dear Post-2026 Colorado River Operational Strategies Manager

The Hopi Tribe submits the following comments in response to the "*Notice of Intent to Prepare an Environmental Impact Statement and Notice to Solicit Comments and Hold Public Scoping Meetings on the Development of Post-2026 Operational Guidelines and Strategies for Lake Powell and Lake Mead*," dated June 16, 2023 (88 Fed. Reg. 39455)

Modeling and Demand Assumptions

Consistent with the United States' trust obligations, the modeling approach developed by the United States for post-2026 operational strategies should account for undeveloped and unsettled Hopi water rights.

The Hopi Tribe asserts rights to water from the Colorado River (including a share of Arizona's 50,000 acre foot Upper Basin Colorado River entitlement) and other off-reservation resources to fulfill the homeland purpose of the Reservation. According to 2020 provisional numbers, approximately 39,000 afy of Arizona's Upper Basin Colorado River entitlement is not currently being used. The modeling approach developed by the United States for post-2026 operational strategies should assume that this Upper Basin water will ultimately be used on the Hopi and Navajo Reservations in Arizona, and that pending use Hopi and Navajo will control the water for purposes of marketing and creation of intentionally created surplus. In addition, the Arizona Water Settlement Agreement among the United States of America, the State of Arizona, and the Central Arizona Water Conservation

District dated August 16, 2004 sets aside 3,500 acre feet of uncontracted Arizona fourth priority mainstream Colorado River water for use in a future Navajo-Hopi Indian water rights settlement. As with the unused Arizona Upper Basin Colorado River water, the modeling approach developed by the United States for post-2026 operational strategies should assume that this Lower Basin water will ultimately be used on the Hopi and Navajo Reservations in Arizona, and that pending use Hopi and Navajo will control the water for purposes of marketing and creation of intentionally created surplus. The unused tribal water has value in the system. The United States should account for the unsettled federal reserved water rights, including the Hopi Tribe's federal reserved water rights.

Tribal Consultation


The Hopi Tribe has numerous tribal trust assets, resources, and interests in the Colorado River Basin that may be affected by a change in operations. All alternatives must address any potential impacts to Hopi trust assets, resources, or interests. Potential impacts disclosed and analyzed must be direct and indirect. Reclamation has an obligation to disclose to Hopi in government-to-government consultation the potential impacts to Hopi of any proposed changes in operations.

Tribal Engagement

As the Hopi Tribe has stated previously, the Tribe is committed to being part of the solution to the Colorado River system crisis. Water is LIFE to the people of Hopi. The Grand Canyon River corridor is a place of paramount sanctimony and sacredness. It is the place of emergence and where Hopi return when they pass on. It is the place where we made our covenant to be stewards of the land, including the land encompassing the Grand Canyon. Being stewards is the most important core value of Hopi. Involvement in managing this precious resource allows us to be stewards on behalf of our ancestral lands and allows us to fulfill our sacred covenant.

The Hopi Tribe supports the recent efforts of the Bureau of Reclamation to create a forum for the Federal Government, the States, and the Basin Tribes to share information and find solutions for the future operations of the system. The Hopi Tribe wishes for continued fair and equal consultation among other stakeholders in this process.

Sincerely,



Timothy L. Nuvangyaoma, Chairman
Hopi Tribe

Cc: File

The Great Spirit created Man and Woman in his own image. In doing so, both were created as equals. Both depending on each other in order to survive. Great respect was shown for each other; in doing so, happiness and contentment was achieved then, as it should be now.

The connecting of the Hair makes them one person; for happiness or contentment cannot be achieved without each other.

The Canyons are represented by the purples in the middle ground, where the people were created. These canyons are Sacred, and should be so treated at all times.

The Reservation is pictured to represent the land that is ours, treat it well.



The Reservation is our heritage and the heritage of our children yet unborn. Be good to our land and it will continue to be good to us.

The Sun is the symbol of life, without it nothing is possible – plants don't grow – there will be no life – nothing. The Sun also represents the dawn of the Hualapai people. Through hard work, determination and education, everything is possible and we are assured bigger and brighter days ahead.

The Tracks in the middle represent the coyote and other animals which were here before us.

The Green around the symbol are pine trees, representing our name Hualapai – PEOPLE OF THE TALL PINES –

HUALAPAI TRIBE OFFICE OF THE CHAIRPERSON

Sherry J. Parker
Chairperson

P.O. Box 179 / 941 Hualapai Way • Peach Springs, Arizona 86434
(928) 769-2216

Shelton "Scott" Crozier
Vice Chairman

August 1, 2023

Hon. Camille Calimlim Touton
Commissioner
Bureau of Reclamation
1849 C Street NW
Washington DC 20240-0001

Re: Comments of the Hualapai Tribe on Colorado River operations after 2026

Dear Commissioner Touton:

The Hualapai Tribe (Tribe) submits these comments in response to the invitation from Bureau of Reclamation Upper and Lower Colorado River Basin Regional Directors Jacklyn N. Gould and Wayne G. Pullan for tribal leaders to submit views on the Department's plan for operations in the Lower Basin of the Colorado River after 2026.

In Part I, we describe the water needs of the Hualapai Tribe and the Tribe's water rights settlement ratified by Congress last year, which includes an allocation to the Tribe of Colorado River water. In Part II, we discuss the protections that the federal trust responsibility requires you and Secretary Haaland to secure for the Tribe's congressionally approved right to water from

the Colorado River, enshrined in the Hualapai Tribe settlement and, we believe, in the other tribal water settlements in Arizona that utilize Colorado River water.

I.

On January 2, 2023, President Biden signed the Hualapai Tribe Water Rights Settlement Act of 2022, Pub. L. No. 117-349, 136 Stat. 6225 (2023). The Act comprehensively settles all of the Hualapai Tribe's federally reserved water rights claims for its Reservation and trust lands, including the Tribe's right to water from the Colorado River. The Act allocates 4,000 acre-feet a year of Central Arizona Project (CAP) water to the Tribe from the Colorado River. Within the CAP, this entire water allocation has a non-Indian agricultural (NIA) priority. However, the Act provides that 1,115 acre-feet a year of the water will be "firmed" (half by the United States and half by the State) to municipal and industrial (M&I) priority status—the highest priority within the CAP—but only until 2108.

As is true of many other tribal water settlements in Arizona, most of the Central Arizona Project water allocated to the Hualapai Tribe is NIA water, which is the lowest priority water in the CAP system. Under the CAP priority system, NIA water is the first block of water to be cut when shortages are declared.

This NIA water was set aside for future tribal water settlements by the Arizona Water Settlements Act of 2004. At the time that statute was enacted, the general expectation was that shortages would be relatively rare, and that tribes could "bank" water in wet years that could be withdrawn from the "bank" for use in dry years when shortages occur. This general expectation still prevailed in 2012 when the framework for the Hualapai water settlement was negotiated between the Tribe, the State of Arizona, and a number of large water producers in Arizona. In

the decade that followed, it became clear that the drought—which had initially been seen as part of the cyclical pattern of wetter and drier periods observed as alternating throughout the prior century—is actually a more permanent, structural phenomenon resulting in large part from worldwide climate change. This structural change largely accounts for the deep shortages in Colorado River flows in the past several years that have led to the present necessity for the Department of the Interior to impose drastic reduction of water deliveries in the Lower Basin in order to preserve long term system operations.

The Hualapai Settlement Act also authorized the appropriation of \$312 million of federal monies for a trust fund the Tribe may use to construct an infrastructure project to deliver up to 3,414 acre-feet of water from the Colorado River to the Reservation, and for other purposes. The project, as currently planned by the Tribe, will divert water from the Colorado River on the Reservation where Diamond Creek enters the River and then deliver it through a 70-mile pipeline both to Peach Springs—the community where virtually all the Tribe’s members reside on the Reservation—and to Grand Canyon West, which is the Tribe’s primary economic enterprise on the Reservation. The water allocated to the Tribe in the Act is absolutely essential to enable the Hualapai Reservation to serve as an economically self-sufficient permanent homeland for the Hualapai Tribe and its members.

The Hualapai Reservation encompasses approximately one million acres in northwestern Arizona. All lands on the Reservation are tribal trust lands; there are no allotments or fee inholdings. The Colorado River forms the 108-mile northern boundary of the Reservation through a portion of the Grand Canyon.

The Reservation is arid and has no significant surface streams other than the Colorado River. It has very limited groundwater resources, which the Tribe now depends on for all its needs. The Tribe's groundwater wells are a depletable resource and well levels on the Reservation have been dropping for years. The Tribe's principal residential community at Peach Springs relies exclusively on three groundwater wells near the Reservation's southern boundary. Those wells were installed in 1975, so the piping for the well system is 48 years old and has failed in the recent past, leaving the community without water for several days. One of the wells has also suffered episodes of dangerous E-coli and coliform contamination. When that well is out of service because of contamination, the Tribe is unable to supply sufficient water to the Peach Springs community and has been forced to implement strict mandatory conservation measures. Because this groundwater is the only source of water for residential needs on the Reservation, the Tribe is very vulnerable to any short-term interruptions in supply from these wells, and also to the long-term decline in the water levels in the aquifer.

The situation is even worse elsewhere on the Reservation. There is a small well on the east side of the Reservation that provides water to ranchers and wildlife in that area, but the water is not potable for human consumption. And there are two wells at West Water, which is located on a dirt road that runs from Peach Springs to the Tribe's economic enterprise at Grand Canyon West on the western rim of the Grand Canyon. The West Water wells, which are 35 miles from Grand Canyon West, previously provided all of the water for the Tribe's activities there. But several years ago, the water table in those wells suddenly dropped because of the current long-term drought in the settlement, and both wells failed. Since then, the Tribe has been forced to curtail some of its operations at Grand Canyon West because of a lack of water and has resorted to pumping groundwater near Peach Springs and hauling it by truck to the West Water

site, where the water is then pumped to Grand Canyon West. This patchwork system is insecure and very expensive, but it is the only way the Tribe can continue any operations at Grand Canyon West, the centerpiece of the Tribe's economy.

Grand Canyon West is vitally important to the economic wellbeing of the Hualapai Tribe. The Hualapai Reservation does not have the natural resources to permit commercial agriculture, timber or mineral development. But the Reservation's virtually unique location on the Grand Canyon gives the Tribe a strong basis to create a self-sustaining tourism-based economy.

Prior to the pandemic, Grand Canyon West employed more than 1,500 workers (more than 550 of whom were non-tribal members). At that point, the Hualapai Tribe was the second largest employer in Mohave County, Arizona, and Grand Canyon West hosted over 1 million visitors a year. Operations at Grand Canyon West are now slowly returning to normal capacity as the pandemic continues to ease.

But Grand Canyon West requires a secure source of water in order to operate and the Tribe's current reliance on its declining groundwater resources is not sustainable. The Tribe needs the water from the Colorado River that it was promised in its water rights settlement, as ratified by Congress, in order to support the basic domestic needs of its on-Reservation population and to sustain its on-Reservation economy, particularly at Grand Canyon West.

II.

The major deficiency thus far in the Department's consideration of how to respond to shortages in the Colorado River has been its failure, as an indispensable part of any plan for future Colorado River operations, to protect the security of Colorado River water allocated by congressionally approved water settlements to Arizona tribes, including to the Hualapai Tribe.

Indeed, protecting tribal water rights should be a priority for the Department, which has a trust responsibility to safeguard these congressionally approved tribal water allocations—allocations which quantify the tribes’ water rights under the well-established *Winters* doctrine. The water allocated to tribes in these settlements is generally taken into trust for the tribes under statutes ratifying the settlements, as was done in the Hualapai settlement. *See* Pub. L. No. 117-349, § 5(a)(1)(D). Thus, these water allocations are federal trust assets.

The Department’s obligation to protect tribal water rights should be viewed against the historical backdrop of Department’s too often failure to do so in the past. In 1908, the Supreme Court held in *Winters v. United States*, 207 U.S. 564 (1908), that Indian tribes have water rights under federal law that are legally senior to non-Indian uses commenced after the date the tribe’s reservation was established—water rights which the tribes can use to satisfy their future needs. But the United States in the decades immediately following *Winters* egregiously failed to assert in court the rights of tribes in Arizona and other states against non-Indian water appropriations that were legally junior to the rights of tribes as determined in *Winters*.

One stark example of this failure was the 1935 Globe Equity Decree in Arizona. Although the United States in 1925 filed suit in federal court against non-Indian water users upstream of the Gila River Reservation in Arizona—ostensibly to protect the water rights of the Gila River Indian Community—the Justice Department successfully resisted the attempt of the Community to intervene as a party in that suit.¹ The United States then entered into the Globe

¹ *Arizona Water Settlements Act: Joint Hearing on S. 437 Before the Subcomm. On Water and Power of the Comm. On Energy and Nat. Res & the Comm. On Indian Affs.*, 108th Cong. 27 (2003) (a statement of Richard P. Narcia, Governor of the Gila River Indian Cmty).

Equity consent decree in 1935 that awarded the Community far less water than it had historically used, agreeing to a decree apportioning the additional water the Community needed to upstream non-Indian users.²

In *Arizona v. California*, 373 U.S. 546, 595-601 (1963), the Supreme Court expressly reaffirmed and followed *Winters* and its core holding that tribal reserved water rights are senior to any other rights commenced after the tribes' reservations were established. But when the United States intervened in the case to protect federal interests, the Justice Department failed utterly to assert the water rights of the Hualapai Tribe to water in the Colorado River—although it did assert rights to water for several downstream Indian tribes and several non-Indian federal uses. As the National Water Commission's Final Report aptly summarized this history in 1973:

During most of this 50-year period [following the decision in *Winters v. United States*, 207 U.S. 564 (1908)], the United States was pursuing a policy of encouraging the settlement of the West and the creation of family-sized farms on its arid lands. In retrospect, it can be seen that this policy was pursued with little or no regard for Indian water rights and the *Winters* doctrine. With the encouragement, or at least the cooperation, of the Secretary of the Interior—the very office entrusted with protection of all Indian rights—many large irrigation projects were constructed on streams that flowed through or bordered Indian Reservations, sometimes above and more often below the Reservations. With few exceptions the projects were

² *Id.*

planned and built by the Federal Government without any attempt to define, let alone protect, prior rights that Indian tribes have had in the waters used for the projects. . . . In the history of the United States Government's treatment of Indian tribes, its failure to protect Indian water rights for use on the Reservations it set aside for them is one of the sorrier chapters.³

In the past five decades following the *Arizona v. California* decision, tribes have themselves actively and vigorously defended their reserved water rights in court. During this period, over thirty-five tribes have negotiated settlement agreements, approved by Congress, quantifying their *Winters* doctrine reserved rights. Twelve of these settlements have been for tribes in Arizona; most of these settlements contain allocations of CAP water to the tribe.

It is the obligation of the Department to protect the Colorado River water rights allocated to tribes under these settlements. As part of bargaining for these settlements and in order to secure Federal, State, and congressional support for the settlements, the Arizona tribes, including the Hualapai Tribe, have generally been required to waive all past claims against both the United States and non-Indian water users for past injuries to or encroachment upon the tribes' legally senior water rights, as well to waive as all past claims against the United States for the abject historical failures of the federal government to protect their rights.

These waivers constitute major concessions by the tribes because they have allowed legally junior non-Indian users to continue to use water to which the tribes, by law, hold a senior legal priority. Because of the historic failure by the United States throughout the 20th century to

³ NAT'L WATER COMM'N, WATER POLICIES FOR THE FUTURE – FINAL REPORT TO THE PRESIDENT AND TO THE CONGRESS OF THE UNITED STATES 474-75 (Washington: Government Printing Office, 1973).

protect tribal water rights, non-Indians have been able to develop long-established water uses. And the Hualapai Tribe and other tribes were then forced to recognize those non-Indian uses in their negotiated water settlements by waiving their legal rights to contest those legally junior uses in order to obtain the political support from Arizona officials and stakeholders, and from the State's congressional delegation, that was necessary to enact the settlement.

Since the waivers given by the tribes are permanent and binding and cannot now be rescinded by the tribes, the allocation of water that the tribes received in exchange for those waivers should not now be subject to a *de facto* rescission in the form of severe reductions, or even elimination, of the tribal water rights simply because the water allocated to tribes is lower priority NIA water and thus the most vulnerable water to whatever shortages the Department imposes on the CAP.

Rescinding or eliminating tribal allocations of water solely because it is NIA priority water would impose a fundamental unfairness on the tribes that have entered these settlements in good faith: on the one hand, the tribes would remain fully bound by *all* of the waivers they have given to the State and Federal parties in these settlements, but on the other hand, the benefit of the bargain the tribes received in exchange for these waivers—a right to take delivery of a bargained-for and agreed-upon allocation of Colorado River water in a quantity necessary to sustain a permanent livable homeland on their reservations—would be drastically reduced, if not entirely eliminated. The non-Indian and Federal parties would continue to get everything they bargained for in these settlements and the tribes would get little—or even nothing—in return.

That result would be a clear miscarriage of justice. The Department must ensure that whatever plan it adopts to manage Colorado River operations after 2026 should be carefully

crafted to prevent the blatant unfairness of this unbalanced result. We strongly urge you and Secretary Haaland to require that any shortages imposed on the State of Arizona be met by curtailing the delivery of water only to non-Indian users, and that the water allocated to Indian tribes by congressionally approved tribal water settlements not be reduced.

There is historical precedent for the Secretary to take this kind of protective action. In December 1980, Interior Secretary Cecil Andrus established an allocation of 308,000 acre feet a year of CAP water to certain Arizona Indian tribes and published a decision in the Federal Register providing that the amounts allocated to these tribes would be accorded co-equal priority with all M&I users in Arizona, *see* 45 Fed. Reg. 81265 (December 10, 1980), a copy of which is enclosed.⁴ This allocation and protection was established by Secretary Andrus administratively in the exercise of the Secretary's executive discretion and authority to manage Colorado River operations and withdrawals, and was not part of a congressionally approved settlement of any tribe's *Winters* doctrine reserved water rights.

In the current situation, where Congress has approved both the quantification of a tribe's water rights and the provision of CAP water to satisfy those rights, you and Secretary Haaland should now ensure, in any decision by the Department in this matter, that the water rights recognized by legislation quantifying and settling the water rights of Arizona tribes are exempt from any shortages imposed on the State of Arizona. Although a strict equivalence with Secretary Andrus' 1980 decision would entitle the tribes covered by a congressional settlement only to a co-equal priority with CAP M&I water users in Arizona, in the present situation, where

⁴ On January 10, 1983, Interior Secretary James Watt modified Secretary Andrus' 1980 allocation in some respects, mostly by relatively small reductions in the amounts allocated to some tribes.

CAP M&I use will likely be reduced by the shortages, tribal users should be afforded even greater protection than M&I users.

Failure by you and the Secretary to adopt the protections we propose for tribal water rights, or a comparably effective set of protections, would subordinate the senior legal priority of tribal water rights under the *Winters* doctrine to legally junior non-Indian uses. This would recapitulate the sorry and discredited failure of the United States to assert and protect tribal reserved rights in the 1920s and subsequent decades following *Winters*, and would result in a comparable subversion of tribal rights. You and the Secretary should not allow the United States in the 2020s to repeat the appalling derelictions of its trust responsibility that occurred a century ago.

Accordingly, the Hualapai Tribe strongly urges the Department to require any final plan on Colorado River operations after 2026 to provide protection and security to the CAP water allocations that Arizona tribes have received in congressionally approved water rights settlements, such as the protections we have proposed in these comments.

Sincerely,



Sherry J. Parker
Chairwoman

Copy to:

Secretary Haaland
Solicitor Anderson
Assistant Secretary Newland

during, or after the meeting. To the extent that time permits, the Council Chairperson will allow public presentation of oral statements at the meeting.

All communications regarding this Council should be addressed to Cleo E. Hancock, Jr., Staff Director, National Professional Standards Review Council, Health Standards and Quality Bureau, Room 4520, Health and Human Services Building, 330 Independence Avenue, SW, Washington, D.C. 20201, (202) 245-6097.

Cleo E. Hancock, Jr.,
Staff Director, National Professional
Standards Review Council.

[FR Doc. 80-38308 Filed 12-9-80; 8:45 am]

BILLING CODE 4110-35-M

Health Resources Administration

National Advisory Council on Health Professions Education; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory body scheduled to meet during the month of January 1981:

Name: National Advisory Council on Health Professions Education

Date and time: January 12-14, 1981, 8:45 a.m.

Place: Conference Room 10, 6th Floor,

Building 31, C Wing, National Institutes of Health, Bethesda, Maryland 20205

Open January 12 and 14 all day

Closed January 13, 8:45 a.m.-12:30 p.m.

Open January 13 remainder of day

Purpose: The Council advises the Secretary with respect to the administration of programs of financial assistance for the health professions and makes recommendations based on its review of applications requesting such assistance. This also involves advice in the preparation of regulations with respect to policy matters.

Agenda: The meeting will be closed to the public on January 13, from 8:45 a.m. to 12:30 p.m. for the review of applications for grants for Family Medicine Residency, Family Medicine Faculty Development and Health Professions Capitation. The closing is in accordance with the provision set forth in section 552b(c)(6), Title 5 U.S. Code, and the Determination by the Administrator, Health Resources Administration, pursuant to Public Law 92-463. The agenda for the open portion of the meeting will include; report of the Administrator; welcome and opening remarks; budget update; legislative update; health promotion and disease prevention; GMENAC; future agenda items; consideration of minutes of previous meeting; and discussion of future meeting dates.

Anyone wishing to obtain a roster of members, minutes of meetings, or other

relevant information should write to or contact MR. ROBERT L. BELSLEY, Bureau of Health Professions, Health Resources Administration, Room 4-27, Center Building, 3700 East-West Highway, Hyattsville, Maryland 20782, Telephone (301) 436-6564.

Agenda items are subject to change as priorities dictate.

Dated: December 5, 1980.

Irene D. Skinner,
Advisory Committee Management Officer,
HRA.

[FR Doc. 80-38288 Filed 12-9-80; 8:45 am]

BILLING CODE 4110-83-M

National Advisory Council On Nurse Training; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), announcement is made of the following National Advisory body scheduled to meet during the month of January 1981:

Name: National Advisory Council on Nurse Training

Date and time: January 28-28, 1981, 9:00 a.m.

Place: Conference Room 7-32, Center

Building, 3700 East-West Highway,

Hyattsville, Maryland 20782

Open January 26, 9:00 a.m.-12:00 noon

Open January 27, 3:30 p.m.-5:00 p.m.

Closed remainder of meeting

Purpose: The Council advises the Secretary and Administrator, Health Resources Administration, concerning, general regulations and policy matters arising in the administration of the Nurse Training Act of 1975. The Council also performs final review of grant applications for Federal assistance, and makes recommendations to the Administrator, HRA.

Agenda: Agenda items for open portion of meeting will cover announcements; consideration of minutes of previous meeting; discuss future meeting dates; and administrative and staff reports. The remainder of the meeting will be devoted to the review of grant applications for Federal assistance, and will therefore be closed to the public in accordance with provisions set forth in section 552b(c)(6), Title 5 U.S. Code, and the Determination by the Administrator, Health Resources Administration, pursuant to Public Law 92-463.

Anyone wishing to obtain a roster of members, minutes of meeting, or other relevant information should write to or contact DR. MARY S. HILL, Bureau of Health Professions Health Resources Administration, Room 3-50, Center Building, 3700 East-West Highway, Hyattsville, Maryland 20782, Telephone (301) 436-6681.

Agenda items are subject to change as priorities dictate.

Dated: December 4, 1980.

Irene D. Skinner,
Advisory Committee Management Officer,
HRA.

[FR Doc. 80-38283 Filed 12-9-80; 8:45 am]

BILLING CODE 4110-83-M

National Advisory Council on Nurse Training Rechartering

Pursuant to the Federal Advisory Committee Act, Public Law 92-463, (5 U.S.C. Appendix I), the Health Resources Administration announces the rechartering by the Secretary, HHS, on November 26, 1980, of the following advisory Council:

Council	Termination date
National Advisory Council on Nurse Training..... Continuing.	

Authority for this Council is continuing and a Charter will be filed no later than December 24, 1982, in accordance with section 14(b)(2) of Public Law 92-463.

Dated: December 4, 1980.

Irene D. Skinner,
Advisory Committee Management Officer,
HRA.

[FR Doc. 80-38287 Filed 12-9-80; 8:45 am]

BILLING CODE 4110-M

Health Services Administration

National Advisory Council on the National Health Service Corps; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), announcement is made of the following National Advisory body schedule to meet during the month of January 1981:

Name: National Advisory Council on the

National Health Service Corps

Date and Time: January 26-27, 1981, 9:00 a.m.

Place: Conference Rooms I-J, Parklawn

Building, 5600 Fishers Lane, Rockville,

Maryland 20857

Open for entire meeting

Purpose: The Council will advise and make appropriate recommendations on the National Health Service Corps (NHSC) program as mandated by legislation. It will also review and comment on proposed regulations promulgated by the Secretary under provisions of the legislation.

Agenda: Agenda items include discussions of: criteria for designation of Health Manpower Shortage Areas; the

Graduate Medical Education National Advisory Committee's report on physician supply and distribution; and a report on the newly formed Bureau of Health Personnel Development and Service.

The meeting is open to the public for observation and participation. Anyone wishing to participate, obtain a roster of members, or other relevant information, should write to or contact Ms. Charolotte Walch, National Health Service Corps, Health Services Administration, Parklawn Building, Room 6A-14, 5600 Fishers Lane, Rockville, Maryland 20857. Telephone: (301) 443-4046.

Agenda items are subject to change as priorities dictate.

Dated: December 1, 1980.

William H. Aspden, Jr.,
Associate Administrator for Management.

[FR Doc. 80-38285 Filed 12-9-80; 8:45 am]

BILLING CODE 4110-84-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Child Custody Proceedings; Receipt of Petition for Reassumption of Jurisdiction; Lac Courte Oreilles Band of Lake Superior Chippewa Indians, Hayward, Wis.

November 26, 1980.

This notice is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary, Indian Affairs by 209 DM 8.

The Indian Child Welfare Act of 1978 provides, subject to certain specified conditions, that Indian tribes may petition the Secretary of the Interior for reassumption of jurisdiction over Indian child custody proceedings.

This is notice that a petition has been received by the Secretary from the Lac Courte Oreilles Band of Lake Superior Chippewa Indians, for the tribal reassumption of jurisdiction over child custody proceedings. The petitioner is under review, and may be inspected and copied at the Great Lakes Agency Office, Bureau of Indian Affairs, Ashland, Wisconsin 54806.

William Hallett,

Acting Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 80-38281 Filed 12-9-80; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

Arizona; Public Land, Wilderness Intensive Inventory Final Decision Protest Period Extension Date

This notice extends the deadline for receiving written protests on the Arizona wilderness intensive inventory final decision from December 15, 1980 to December 30, 1980. The extension is necessary to assure that the public has had adequate time to review supporting documents and maps.

Protest and Appeal Procedures

The decision for each inventory unit is considered individually and separately from the decision for every other inventory unit. These decisions will become effective on December 30, 1980 unless timely protests are received by the Arizona State Director.

Persons wishing to protest any of the decisions announced herein must file a written protest with the State Director, Bureau of Land Management, Arizona State Office, 2400 Valley Bank Center, Phoenix, Arizona 85073 on or before 4:15 p.m., December 22, 1980. Only those protests received by the Arizona State Office by time and date specified will be accepted.

The protest must specify the inventory unit(s) to which it is directed. It must include a clear and concise statement of the reasons for the protest, as well as data to support the reasons stated.

At the conclusion of the protest period, the State Director will publish in the Federal Register a notice of those decisions that were not protested, and those decisions which are under formal protest. The notice will identify those inventory units under protest and will announce that the decision on the units will not become final pending a decision on the protest and any resulting appeal.

The State Director will issue a written decision on any protest which is filed according to the above requirements and will publish a notice in the Federal Register of the action taken in response to the protest.

Any person adversely affected by the State Director's decision on a written protest, may appeal such decision under the provisions of 43 CFR Part 4.

Clair M. Whitlock,

State Director.

November 19, 1980.

[FR Doc. 80-38282 Filed 12-9-80; 8:45 am]

BILLING CODE 4310-84-M

Fish and Wildlife Service

[Int Fes 80-521]

Availability of a Final Environmental Impact Statement (FEIS) on the Management of River Flows to Mitigate the Loss of the Anadromous Fishery of the Trinity River, California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that a Final Environmental Impact Statement on the management of flow releases to the Trinity River to protect and restore declining fishery resources is available for public review.

The U.S. Department of the Interior proposes to increase flows on the Trinity River in northern California for the primary purpose of protecting and restoring chinook salmon and steelhead trout populations. Increasing flows for fishery conservation purposes would reduce economic benefits associated with agricultural irrigation and hydroelectric power generation; increase economic benefits associated with commercial, sport and Indian harvest of fish; improve water quality on the Trinity; reduce the availability of water for meeting other needs of the Central Valley of California; and improve water-dependent recreational opportunities on the Trinity.

Three agencies within the Interior Department are involved in the proposal—the U.S. Fish and Wildlife Service (FWS), the U.S. Water and Power Resources Service (WPRS), and the U.S. Bureau of Indian Affairs (BIA). The Secretary of the Interior designated FWS as the lead agency because the proposal directly addresses problems associated with declining populations of anadromous salmonid resources. Because the proposal would also impact operation of a Federal water resource project and Indian utilization of the fishery resource, both WPRS and BIA have been cooperating agencies in the preparation of the EIS.

Pre-project (and general restoration goals) versus post-project (present) runs of adult chinook salmon and steelhead trout into the Trinity River above the North Fork are estimated as follows:

	Preproject (goal)	Postproject (present)
Chinook salmon.....	50,000	11,000
Steelhead	24,000	10,000

The Secretary of the Interior has authority under the authorizing

legislation for the Trinity River Division' (69 Stat. 719) to increase flow releases from Lewiston Dam. Under Section 2 of the Trinity River Act (Pub. L. 84-386) the Secretary is " * * authorized and directed to adopt appropriate measures to insure the preservation and propagation of fish and wildlife, including, but not limited to, the maintenance of the flow of the Trinity River below the diversion point at not less than one hundred and fifty feet per second for the months of July through November * * *"

Eight flow release alternatives are presented in the EIS. They span a range of flows varying from a low of 120,500 acre-feet per year (the minimum release level established by prior agreement between WPRS and the California Department of Fish and Game) to a high of 340,000 acre-feet per year. The proposed course of action is:

340,000 acre-feet annual fishery release in normal years; 220,000 acre-feet fishery release in dry years; 140,000 acre-feet fishery release in critically dry years. ;

This proposed course of action reflects a recognition that although it would be desirable to sustain environmental values through high releases to the Trinity River in all years, there are compelling needs and uses outside of the basin for water and power which require a reasonable compromise between water export and instream releases—especially in water-short years. It is suspected that the flows to be released in dry and critically dry years may be insufficient to support desirable levels of salmon and steelhead habitat. However, the flows to be allocated for dry and critically dry years will help to allow habitat below Lewiston Dam to be maintained at levels at least comparable to those which would have existed during dry and critically dry years in the absence of the project.

FOR FURTHER INFORMATION CONTACT: Jody Hoffman, U.S. Fish and Wildlife Service, 2800 Cottage Way, Room E-2727, Sacramento, California 95825, (916) 484-4731.

Anyone requiring a copy of the FEIS for review should immediately contact the above individual.

Dated: December 5, 1980.

Approved:

James H. Rathlesberger,
Special Assistant to Assistant Secretary of the Interior.

Lynn A. Greenwalt,
Director, U.S. Fish and Wildlife.

(FR Doc. 80-38254 filed 12-9-80; 8:45 am)

BILLING CODE 4310-55-M

Office of the Secretary

Central Arizona Project; Allocations of Project Water to Indian Tribes

AGENCY: Office of the Secretary, Department of the Interior.

ACTION: Notice of water allocations.

SUMMARY: The purpose of this action is to allocate Central Arizona Project (CAP) water to Indian tribes. This notice allocates 309,828 acre-feet of water to Indian reservations, with the stipulation that in times of shortages, the Indian supply will be reduced on a proportional basis with the municipal and industrial (M&I) supply. This proportion will be determined according to the amount of water used by each of two classes in the most recent year in which a full supply was available for both classes. This action adjusts allocations made previously by the Department.

FOR FURTHER INFORMATION CONTACT: Steve Lanich, Office of the Assistant Secretary, Land and Water Resources, Department of the Interior, Washington, D.C. 20240. Telephone: (202) 343-4931.

SUPPLEMENTARY INFORMATION: On August 8, 1980, the Secretary of the Interior gave notice in the Federal Register (45 FR 52938) of proposed allocations of water from the Central Arizona Project (CAP) to Indian tribes in Arizona. The notice invited written comments, suggestions or objections from interested persons. Subsequently, the Secretary announced in the Federal Register on August 15, 1980, (45 FR 54452) that public hearings would be held in three locations in Arizona on the proposed allocations and that written comments on the proposal would be received and considered until October 7, 1980. In making his decision on allocations of project water to Indian tribes, the Secretary has considered the testimony of the 98 witnesses at the public hearings and the written comments. These decisions are made pursuant to the authority vested in the Secretary of the Interior by the Act of June 17, 1902, as amended, (32 Stat. 388, 43 U.S.C. 391) and the Colorado River Basin Project Act of September 30, 1968 (82 Stat. 885, 43 U.S.C. 1501) and in recognition of the Secretary's trust responsibility to the central Arizona Indian Tribes.

Summary of Comments Received on Proposed Allocations

The testimony at the public hearings and the written comments addressed the issues of substitute water, conservation of groundwater and priority of use of project water; suggested revisions to the proposed allocations; and presented

options for the eventual completion of the full project. Statements summarizing those comments and testimony are presented below.

A. Substitute water. The notice of proposed allocations included a proposal to provide, through water service contracts with the Indian tribes, for the substitution of non-CAP water for Indian CAP allocations. This was to be accomplished under certain criteria which assured that there would be no diminution of the tribes' total allocation and no additional cost to the tribes. Commentators presented evidence in favor of and in opposition to this proposal, with most comments addressed to the use of treated municipal wastewater as the main source of substitute water. The tribes uniformly opposed the use of this effluent water. Concerns about this source included the effects of effluent water use on human and livestock health, long-term impacts of effluent water application on cropping patterns, soils and groundwater, and the legal and economic questions related to effluent water use. Other commentators urged that substitution be considered not only for sewage effluent but also for local water supplies whose chemical constituents are better suited to agriculture.

B. Conservation of groundwater. In authorizing the Central Arizona Project, Congress recognized the serious overdrafting of groundwater resources in Arizona. Section 304(c) of the Colorado River Basin Project Act (Pub. L. 90-537, 82 Stat. 887, 891) provides that each contract for CAP water service shall require that:

(1) There be in effect measures, adequate in the judgment of the Secretary, to control expansion of irrigation from aquifers affected by irrigation in the contract service area; (2) the canals and distribution systems * * * (for delivery of CAP water have) * * * linings adequate in his judgment to prevent excessive conveyance losses; and (3) (no groundwater pumping may occur within die) * * * service area of a contractor receiving water from the Central Arizona Project for any use outside * * * the service area unless the Secretary and * * * contractor shall agree, or shall have previously agreed that * * * a surplus of groundwater exists and drainage is or was required.

The Secretary has regarded this provision as requiring the reform of groundwater management by the State prior to allocation of CAP water for non-Indian use. In response to this view, the State of Arizona enacted on June 12, 1980, a comprehensive groundwater law to manage the future use of most groundwater reserves. As State law, this statute is not applicable to activities on

Indian reservations, some of which lie in areas where acute overdrafting now occurs. Some commentators asked that Indian use of groundwater be controlled similar to non-Indian use. Others argued that Indian groundwater resources were being depleted by non-Indian pumping adjacent to the tribes' lands.

C. Priority of use. The proposed allocations address the problem of shortages of project water which will occur in times of drought and in the later years of the project as the Upper Basin States begin to use their full entitlement to water from the Colorado River. The notice proposed the concept of a shared first priority between Indian and municipal and industrial (M&I) users. In times of shortage, miscellaneous uses would first be reduced pro rata to zero, followed by similar pro-rata reductions for non-Indian agricultural uses. Deliveries to Indian tribes and M&I users would then concurrently be reduced in the same manner, in a proportion based on use of project water in the most recent year when no shortage occurred; that is the last year when the full amount of CAP water specified in water service contracts was delivered to the Indian and M&I allottees of CAP water. Commentators questioned this concept, suggesting that CAP water be committed first to domestic needs, both Indian and non-Indian, before any agricultural uses. Others proposed that all Indian CAP water supplies be of first priority, regardless of shortages.

D. Suggested revisions. Some commentators suggested that substantial reductions—or substantial increases—be made in the Indian allocations. The Secretary's method for computing the individual tribes' shares was questioned, and specific comments were made concerning Congressional action on the quantification of water rights of the Ak-Chin and Papago Reservations.

The notice of proposed allocations also proposed that CAP water be credited against the Indian water rights finally adjudicated under the Winters doctrine. Some Indian commentators objected to this. Several commentators proposed that, to achieve the greatest social benefit from the CAP at the least cost to Arizona, all project water be allocated to the tribes. Others proposed increases in project water allocations to non-Indian agriculture, mining and power generation facilities. Several potential M&I contractors presented

requests for new or increased CAP allocations.

E. ~~Completion options~~ Completion options. The size and complexity of the CAP have required phased planning and construction stages, in addition to the planning still to be done for local distribution systems. Thus, there were comments on the value and advisability of constructing a dam at the confluence of the Salt and Verde Rivers; on the size, location and route of the aqueduct serving the Tucson area; and on the possible technique of making "block" allocations to large areas within the CAP service area rather than specific and separate allocations to water user organizations. While these issues are all important to the final configuration of the CAP, no decisions can be made at this time on matters other than the Indian allocation. Accordingly, the Department and the Water and Power Resources Service will continue the appropriate studies of these matters so that decisions can be made on the remaining issues in the future.

Analysis and Consideration of the Comments and Testimony Received

The Departmental decision making process included consideration of the administrative record of the 1976 allocations and information collected and up-dated in the period before the present proposed allocation, the collection of testimony at three public hearings in Arizona and the opportunity for public comment called for in the Federal Register on August 8, 1980, (45 FR 52938) and August 15, 1980, (45 FR 54452), analysis and consideration of testimony and comments received, evaluation of alternatives, evaluation of possible environmental impacts, and meetings with Indian and non-Indian interests.

A. ~~Substitute water~~ Substitute water. The notice of proposed allocations included a proposal to provide, through water service contracts with the Indian tribes, for the substitution of non-CAP water for Indian CAP allocations. This was to be accomplished under criteria which assured that the quantity, quality, suitability and delivery facilities of the substitute water would be appropriate for the beneficial uses to which that water was to be put. All additional costs were to be borne by the Central Arizona Water Conservation District or the benefiting subcontractor, and any favorable cost differential was to inure to the benefit of the tribes or the Federal Government. Included in the proposal, was a statement that the Secretary has

discretion to require a substitution under specified conditions.

At present, the largest source of substitute water in the project area is effluent water. Among the potential advantages to using effluent water are expanding the flexibility of use of CAP water and reducing the need to pump groundwater. Moreover, it may afford the highest and best use of both CAP and effluent water. Substitute water would not be subject to the shared priority concept in times of shortage, so the Indian allocation could be considerably more reliable with a constant supply of substitute water than with the variable CAP allocation. Similarly, the use of some substitute water by Indian tribes would reduce the impact of shortages on M&I users. During the public comment period, many parties offered comments on the issue of substitute water. These are summarized below.

1. State of Arizona

a. The State believes the substitution of effluent water for CAP water is essential to its ability to meet future water demand from M&I users.

b. It believes that the affected tribes should be required to take effluent as substitute water as soon as the effluent becomes available.

c. It objected to the Department's position that substitutions be required only after the municipality has exhausted all other water resources available (including other CAP water, such as non-Indian agricultural water).

2. Indian Tribes

a. Without exception, the tribes are vigorously opposed to a mandatory substitute water concept, especially involving effluent.

b. They believe that effluent will restrict their choices of crops to be grown on the reservations, and they point out that the long-term effects of effluent use as irrigation water are unknown.

c. The tribes described several situations where the use of effluent water by Indians would be uneconomical (pumping effluent upstream from Tucson to the San Xavier Reservation when downstream users are available) or where requiring exchanges might affect ongoing negotiations for voluntary substitution (Chandler and Scottsdale exchanges with Gila and Salt River communities.)

3. Cities

a. Most of the cities recognize the value of their effluent as a water resource. They also believe that effluent will be a reliable source of water available in the future, and that planning for exchanges now makes good resource management sense.

b. The cities are generally supportive of the State's proposal that the tribes be required to accept effluent as soon as it becomes available.

c. The cities prefer that contractual terms for exchange agreements not be limited to effluent. Non-potable groundwater suitable for agricultural or industrial use could also be exchanged for CAP water. The cities also contend that any exchanges must be on an acre-foot for acre-foot basis. In addition, they note that exchanges solely between non-Indians should also be allowed.

There are potential constraints on the use of effluent water as the primary component of any large substitution of non-CAP water for CAP supplies. Many of these are technical in nature, relating to the long-term impact of effluent water on human and livestock health and cropping patterns and the absorptive capacity of soils and groundwater quality. Concern about these effects has led to a series of requirements by State and Federal authorities which restrict the use of effluent water to purposes which do not directly impinge on public health. An expanding body of research, however, and improved treatment techniques may lead to wider use of effluent water and general recognition of it as an important water resource. Many commentators who addressed this subject submitted technical information on these issues. After studying this, it has been determined that the use of effluent water for limited agricultural and industrial purposes is worth pursuing as a substitute for some CAP water. Given Central Arizona's arid climate, and its pressing need to manage all of its water resources wisely, some substitution of effluent water and other local water unfit for municipal uses, for CAP water, where appropriate, may be required of all contractors.

To allow for the possibility of water substitution the CAP allocations to Central Arizona Indians contain a provision for substitution and a similar provision will be included in their respective water service contracts.

The Department has developed, in consultation with all affected interests, contract language which provides that Indian tribes may be required to enter into substitute water agreements with nearby cities, but only after a series of stringent conditions have been met. The

conditions are designed to protect the tribes' interests by assuring that the water will be of a suitable quality and available at the time and place most beneficial to the tribes. Additionally, the conditions provide that the costs of the substitution (including treatment plant costs) will be borne by the beneficiaries of the exchange; i.e., the CAWCD or the M&I subcontractor needing the CAP water.

Representatives of some Phoenix area municipalities stated that twenty to thirty percent of their ground water supplies are unfit for municipal uses. They urged that substitution not be confined to sewage effluent but include these other sources as well. This suggestion underscores the need to assure that all water resources in Central Arizona be applied to compatible needs. Thus the substitute water concept appears appropriate not only to these Indian allocations but also to the non-Indian allocations which will be made in the near future.

B. *Conservation of groundwater.* In authorizing the Central Arizona Project in 1968, Congress recognized the serious problems associated with overdrafting of groundwater resources in Arizona. Currently, water demands in Arizona are such that the State relies on groundwater resources for more than sixty percent of its water supply, and water needs are met at the expense of overdrafting or "mining" groundwater. In some areas, there are reports that groundwater levels have fallen 4-8 feet in a single year. Land subsidence has occurred, and intensive use of surface water has reduced natural recharge of aquifers. Falling water tables have also resulted in significantly higher energy costs for pumping, with pump lifts exceeding 400 feet in parts of the project area. Given the limited rainfall and snowpack in Arizona and the present full utilization of surface waters, groundwater remains the State's only available water reserve. Its management, both in terms of quality and quantity, is a major purpose of the Central Arizona Project.

In response to this problem, the State of Arizona enacted on June 12, 1980, a comprehensive ground water management law. Uses of groundwater are sharply curtailed under the statute, and existing wells will be monitored to control pumping. The goal for most of Central Arizona is to reach a balance of pumping and natural recharge by the year 2025.

Many commentators proposed that the concepts in the State's groundwater law be applied to Indian groundwater pumping in order to ensure the eventual balance of pumping and natural

recharge. Most of the Indian commentators, however, charged that Indian lands have systematically been depleted of groundwater by the pumping activities of adjacent non-Indian owners, both public and private. They argue that they have not been able to fully develop their groundwater resources and the aquifers under their reservations have been depleted by non-Indian users. Groundwater pumping on tribal lands is arguable less, proportionately, than pumping throughout the region as a whole for two reasons: the reservations do not have dense urban settlements, and they have less irrigated land. The tribes also have been severely restricted in their ability to tap underground water by their lack of financial resources and access to capital. Nonetheless, much of Central Arizona Indian agriculture depends on groundwater.

In response to these concerns, the Secretary has determined subsequent to the comment period and public hearings that Indian water service contracts shall contain provisions requiring the integrated management and control of surface and groundwater on Indian reservations receiving CAP water to the end that groundwater withdrawals are managed on a responsible basis.

C. *Priority of use.* The proposed allocations address the problem of shortages of project water which will occur in times of drought and in the later years of the project as the Upper Basin States begin to use their full entitlement to water from the Colorado River. The Central Arizona Project will alleviate only the most urgent water supply problems of the area, and shortages will be increasingly more frequent in the future. Under the best of circumstances, CAP could initially deliver as much as 2.1 million acre-feet, but the average yield is expected to be about 1.2 million acre-feet over the life of the project. More important, the assured yield will total only one-third to one-half of the average yield. Given the variable conditions affecting supply and the growing needs of Central Arizona, the Secretary has decided that Indian users and M&I users will share a first priority in project water deliveries during times of shortage, with the limitation that the Indians' participation in the shared priority will first be reduced by ten percent of the water allocated for Indian agricultural uses.

This revised priority is made because the 1976 decision was unfair, in part, to the Indians who received allocations. Moreover, the decision omitted several Indian reservations which were able to receive, and in need of, project water.

Under the 1976 allocation, Indian irrigation water would have been reduced drastically after the year 2005. From 257,000 acre-feet per year in the first 20 years of the project, Indian supplies would be decreased in the later years of the project to either 10 percent of the project supply or 20 percent of the agricultural supply, whichever was to the tribes' advantage. This abrupt reduction would have effectively worked against permanent investments in irrigation facilities and placed an inequitable burden on the Indians in order to make up for deficits in overall water supplies of Central Arizona. Under the post-2005 priority system used in the 1976 allocations, the water available to the tribes would not have been nearly enough to irrigate the lands previously subjugated. In other words, any economic growth stimulated in the early years of the project would have been only temporary, and achievement of a permanent tribal homeland would have been only illusory.

The shared priority system intends to redress this inequity. Instead of the first, but temporary priority for the tribes proposed in the 1976 notice, the Indians will share a first priority with the non-Indian M&I allottees of CAP water for the life of the project. In times of shortage, the Indian allocation will be a percentage to the total supply that is based on the relation of the Indian allocation to the non-Indian M&I allocation.

For the limited purpose of establishing the relative Indian and non-Indian M&I percentages of the shared priority, non-Indian M&I allocations beyond 510,000 acre-feet, including conversions from agriculture to M&I, will not be permitted to be included in the calculations of the non-Indian portion of the shared priority. (This is not to say that future Secretarial allocations for M&I use, or agricultural conversions to M&I use might not take the total non-Indian allocations to a figure greater than 510,000 acre-feet; it is an absolute limit when calculating the shared priority between Indian and M&I use in times of shortage).

As discussed above, ten percent of the Indian agricultural allocation will be eliminated from the shared priority in times of shortage. That represents approximately 26,000 acre-feet of the Indian allocation. Thus, assuming that full use of both the Indian and non-Indian M&I allocations occurred in a year when water was available, the Indian percentage of the shared priority in a subsequent year of short supply would be approximately thirty-six (36%) percent of the available supply. Such

limits on non-Indian and Indian participation in the shared priority provide for relative stability and predictability for all allottees over the life of the project, a feature which was missing from the 1976 allocations.

In addition to the need to redress the inequity in the priority system of the 1976 allocation, the Federal Government has since that decision developed two policies which mandated reconsideration of the earlier allocation. First, the President's Water Policy Message to Congress on June 6, 1978, recognized the need to develop water resources on or near Indian reservations to serve as an important component in the development of permanent tribal homelands. It is clear that in an arid area like Central Arizona a relatively dependable, long-term supply of water for domestic and economic development activities is critical if these homelands are to exist. Second, the President also announced at that time his intent to settle Indian water claims through negotiation whenever possible. Pursuant to this policy, the Secretary has used CAP allocations to assist in the settlement of Indian claims to local water supplies.

D. Suggested Revisions: During the public review period, many comments were received which questioned the accuracy and/or equities of the proposed adjustments in comparison to the 1976 tribal allocations. These comments are summarized as follows:

1. **Gila River Pima-Maricopa Indian Reservation:** The Gila River Indian Community has requested that its proposed allocation of 173,100 acre-feet per year be increased by an additional 103,476 acre-feet per year, bringing the total requested annual allocation to 276,576 acre-feet. The Community asserts that the Secretary erred in calculating presently developed acreage (by underestimating), available surface water supplies (by overestimating), and available groundwater (by overestimating).

a. **Lands presently developed for irrigation:** The Community stated that more reservation lands are presently developed for irrigation than were included in the 1976 allocation. The Community also alleges that all Indian land in the San Carlos Irrigation Project, whether or not actually developed, should be included in the total of presently developed acreage.

b. **Surface Water:** The Community maintains that the surface water supply available to the reservation was overestimated by at least 9,300 acre-feet (3,400 acre-feet of water at Gila Crossing and 5,900 acre-feet of water at Maricopa Colony).

c. **Groundwater:** The Community states that the Department's estimate of effective groundwater yields on the reservation should be reduced by approximately 10,000 acre-feet annually because of salinity problems.

2. **Salt River Pima-Maricopa Indian Reservation:** The Salt River Indian Community claimed that the presently developed acreage on the reservation is 14,858 acres and not 13,061 acres as reported in the 1976 allocation.

3. **Fort McDowell Mohave Apache Indian Community:** Concern was expressed that the allocation to Fort McDowell was conditioned on the construction of Orme Dam and relocation of part of the reservation.

4. **Ak-Chin Indian Community:** The Community supported the proposed allocation but expressed concern that the shared priority concept would jeopardize the Secretary's ability to fulfill his responsibility to deliver water to the reservation as required in the Ak-Chin Water Rights Settlement Act (Pub. L. 95-328). The State of Arizona has objected to the proposed Ak-Chin allocation, claiming that most of the tribe's needs set forth in the Settlement Act should be met by sources other than the CAP, leaving the proposed 58,300 acre-feet for allocation to non-Indian users.

5. **Papago:** The tribe claimed that the 1976 allocation of 8,000 acre-feet to Chuichu is mistaken because it is insufficient to sustain an economic farm unit. The tribe also requested that any water that would have been allocated to the Gila Bend portion of the Papago Reservation be used to augment the allocations to San Xavier or Chuichu, if economically feasible.

6. **Camp Verde:** The tribe has requested that their allocation be increased from 1,200 to 1,800 acre-feet per year. It has also been requested that the allocation be based on the permanent tribal homeland concept.

7. **San Carlos Apache Tribe:** The Tribe requested more water but did not allege any error in the proposed allocation.

8. **Pascua Yaqui:** The Tribe has requested an additional allocation of 400 acre-feet per year, for maintenance of a permanent tribal homeland.

9. **Tonto Apache:** The Tribe has requested an additional allocation of 130 acre-feet per year, for maintenance of a permanent tribal homeland. In addition, a study by the Salt River Project indicates that the Tribe requires 18 acre-feet per year more than proposed in the August 8 Notice.

10. **Yavapai Prescott:** The Tribe has requested an additional allocation of 500 acre-feet per year, for maintenance of a permanent tribal homeland.

The tribes' comments would require allocation of approximately 117,000 acre-feet annually in addition to the 309,810 acre-feet in the proposed allocation. Most of that increment is attributable to alleged technical errors in the assessment of available water supplies and presently developed acreage on the five reservations which were allocated water in 1976. In addition, a proposed revision in the definition of lands described as "presently developed for irrigation" accounts for some of the claimed water. The remainder of the increase is requested by some tribes for more extensive development of their reservations as permanent tribal homelands. This latter portion of the requested increase is for reservations which were not included in the 1976 allocations.

The August 8 Notice proposed no adjustment in the quantity of CAP water allocated to the five tribes in 1976. The only objectives of the August 8 adjustment were: to provide project water to additional Central Arizona Indian reservations which have need of water and which can reasonably benefit from a CAP allocation; and to establish an equitable priority for Indian use of CAP water.

Because of the limited objectives in adjusting the allocation, and because Indian tribes are but one of an intended group of CAP beneficiaries, the Secretary has decided to make only a single numerical adjustment to the August 8 proposed allocations. Therefore, the final notice allocates an additional 18 acre-feet per year to the Tonto Apache, bringing their total allocation to 128 acre-feet per year.

The 1976 allocation did not take into account the ability to serve some of the Indian reservations located beyond the physical reach of CAP facilities by means of the exchange provisions in section 304 of the Act. (See Cong. Rec. H3819, May 15, 1968). In addition, some reservations able to receive a direct allocation of CAP water were not included in the 1976 allocation. The August 8 Notice proposed allocations to these reservations (Camp Verde, Tonto Apache, Yavapai Prescott, Pascua Yaqui, San Carlos, Shuk Toak, and San Xavier) primarily for the purpose of maintaining permanent tribal homelands. These allocations represent an increase of 52,810 acre-feet per year over the amount allocated in 1976. Water is allocated to these reservations in quantities sufficient to provide a minimum water resource for development and growth of municipal

needs, as well as other uses necessary to sustain a permanent tribal homeland.

The final allocations to these tribes remain essentially the same as those proposed in the August Notice with two corrections. As mentioned above, the Tonto Apache will receive an additional 18 acre-feet per year, and the Camp Verde allocation is designated in the final notice as water supplied for the purpose of contributing to the maintenance of a permanent tribal homeland.

The proposed allocation to the Fort McDowell Reservation appeared to some commentators to be contingent on the construction of Orme Dam and the relocation of part of the reservation. This is not the case. The allocation to Fort McDowell is intended to contribute to the maintenance of the reservation as a permanent tribal homeland. Water for this purpose is needed whether or not Orme Dam is built.

The allocation to the Ak-Chin Community in 1976 was 58,300 acre-feet. The quantity of that allocation was not proposed to be increased although the Ak-Chin Water Rights Settlement Act requires the Secretary to deliver to the reservation an interim water supply of 58,300 acre-feet and a permanent water supply of 85,000 acre-feet beginning in 2003. The permanent supply to Ak-Chin probably will be comprised of % groundwater underlying the public lands, the CAP allocation, and remaining groundwater under the reservation and such additional water from other sources as may be necessary.

It is clear that the CAP is intended to contribute to the permanent water supply to which Ak-Chin is entitled to under Pub. L. 95-328. To insure that the variable CAP supply or lack of reservation groundwater will not prevent full deliveries to Ak-Chin, the water delivery system from the well field will be designed to transport 85,000 acre-feet of water annually to the reservation from nearby Federal lands.

The State of Arizona has strongly objected to including Ak-Chin in the proposed adjustment to the 1976 allocation which creates the shared priority with non-Indian M&I users. The State believes that Ak-Chin should rely upon the development of well fields underlying Federal lands near the reservation, leaving the Ak-Chin CAP supply after the year 2005 available to non-Indians. After consideration of the alternatives, the Secretary has decided to affirm the August 8 allocation of 58,300 acre-feet of CAP water to Ak-Chin. Complete reliance on the proposed well fields would have several serious consequences, all of them detrimental to future water use. Preliminary analysis

shows that underground water reserves capable of being tapped for Ak-Chin probably are not sufficient to support the pumping of such large quantities of water for a sustained period beyond 25 years. Moreover, conservation of groundwater, and not its depletion, is a primary purpose of the CAP. Finally, financial estimates of the relative cost of using the well field versus the use of CAP water argue for employing both sources to achieve the greatest cost-effectiveness.

The decision to make only limited adjustments in the Indian allocation is not intended to suggest that the Central Arizona Indian tribes may not need additional water. To the extent that the Indians have outstanding water rights or needs which need to be fulfilled, the Department will look to remedies other than the CAP to fulfill them.

E. Other Issues: The Notice of proposed allocations to Indian tribes dated August 8, 1960, contained proposals on several associated issues. These were credits against Winters Rights, possible additional water for the tribes, and non-Indian water use.

1. Credits Against Winters Rights: These proposed allocations to the tribes will be credited against the reservations' Winters rights as and when finally adjudicated, or as finally determined by Congressional action. This stipulation will be included in the contracts with the tribes for these allocated supplies.

To the extent that a CAP allocation is credited against Winters rights, the reservation being so credited will be able to use such water in any manner and for any uses permitted under its Winters rights.

In this context it should be added that the allocation of CAP water to the tribes will not constitute a taking, either directly or by implication, of any water rights of the tribes; no will it constitute the Department's opinion as to the legal rights of these tribes.

2. Possible Additional Water For the Tribes: Except as specifically provided in the allocations, the tribal allocations are limited to irrigation uses on the reservations. The tribes, however, are not precluded from contracting for project M&I water just as any other entity in central Arizona may so contract. As long as such water has not been contracted to other uses, such contracts may be made through the Secretary of the Interior. If the tribes do decide to contract for this M&I water, they should be prepared to execute a contract with the Secretary at the same time as other M&I users contract with the CAWCD and the Secretary.

3. Non-Indian Water Use: In 1976, the Arizona Water Commission, now the

Department of Water Resources, recommended water allocations for non-Indian M&I and agricultural users. In the four years since the recommendations various conditions have changed, including the proposed increased tribal allocation contained herein, and increased estimates of the potential cost of CAP water.

In light of these changed circumstances, I have asked the DWR to revise its original recommendations for both M&I and agricultural use. I have been advised by Governor Babbitt that the State's revised recommendations for the allocation of CAP non-Indian water supplies will be submitted promptly following the publication of this notice.

F. Evaluation of Environmental Impacts. The requirements of the National Environmental Policy Act have been integrated into all phases of the Central Arizona Project. A programmatic Environmental Impact Statement was completed in 1972 and site-specific statements have been or are in the process of being done on particular phases of the project. The Bureau of Reclamation (now the Water and Power Resources Service) prepared an environmental assessment of the Indian allocations of CAP water as proposed on April 18, 1975—(40 FR 17927). Based on the assessment, the Bureau concluded in a "Negative Determination of Environmental Impact," dated June 4, 1976, that the proposed allocations did not significantly affect the quality of the human environment. The Solicitor's office reviewed and approved the assessment and negative finding.

Since the preparation of those documents, several other reports evaluating the potential environmental effects of possible CAP allocations have been written. These include:

An environmental evaluation of the AWC-recommended M&I allocations (March 1979);

A two-part conceptual and technical assumptions review of the AWC recommendations (November 9, 1979 and December 31, 1979);

A supplemental environmental evaluation analyzing the potential M&I users rejected by the AWC (December 1979);

A report on potential water use by non-Indian agriculture as recommended by the AWC (December 1979).

Finally, the Water and Power Resources Service has completed an environmental assessment on the Indian allocations as proposed in the August 8 Notice. Water and Power has concluded in a Finding of No Significant Impact (FONSI) dated October 15, 1980, that these allocations do not significantly affect the quality of the human environment and therefore preparation

of an Environmental Impact Statement is not required. Copies of that assessment and subsequent FONSI are available to the public upon request.

Authority and Purpose for Allocations

I take this action in recognition of my trust responsibilities to the Indians, and pursuant to the authority vested in the Secretary of the Interior by the Act of June 17, 1902, as amended, (32 Stat. 388, 43 U.S.C. 391) and the Colorado River Basin Project Act of September 30, 1968 (82 Stat. 885, 43 U.S.C. 1501). In making these decisions, I have carefully considered many interrelated factors, the testimony given at the public hearings and comments received during the public comment period. I have met on many occasions with representatives of the central Arizona tribes, with other potential users of CAP water, and with Governor Bruce Babbitt and members of the Arizona Congressional delegation. Also, I have reviewed at length the voluminous data which this Department has compiled over many years in regard to the CAP.

In these decisions, I have adjusted the water-use priorities and allocation of water to Indians announced by Acting Secretary of the Interior, Kent Frizzell, on October 12, 1976, 40 FR 45883. I am making these adjustments to correct certain omissions in the 1976 notice and to accommodate certain supervening conditions.

Among the factors which have prompted me to make these adjustments are the following:

(1) Under the 1976 allocation, Indian irrigation water would have been reduced drastically after the year 2005. From 257,000 acre feet per year in the first 20 years of the project, it would be decreased in the later years of the project to either 10 percent of the project supply or 20 percent of the agricultural supply, whichever was to the tribes' advantage. It is my opinion that this abrupt reduction in Indian supply is unfair to the Indians. Under the post-2005 formula used in the 1976 allocations, the economic growth permitted on the reservations in the early years of CAP operation would be only temporary, and both the Government and the tribes would be faced with the costs of a return to depressed economic conditions. Therefore, I have tried to assure the tribes of a more dependable supply of water throughout the life of the project.

(2) The 1976 allocations did not provide project water to all the Indian tribes which could reasonably benefit from the project. For example, the San Carlos Apache Tribe, which was mentioned specifically in the legislative

history of the project as an intended recipient of project water, did not receive an allocation.

Besides the factors listed above, there are other reasons for my adjustment of the 1976 allocations:

(1) Subsequent to the 1976 decision, Congress committed the United States Government to provide the Ak-Chin lands with a permanent water supply. Additionally, the Honorable Morris K. Udall has introduced a bill, H.R. 7640, which would similarly provide permanent water for lands of the Papago Tribe.

(2) President Carter, in his Water Policy Message to Congress of June 6, 1978, recognized that Indian reservations are intended to be maintained as permanent tribal homelands. In an arid region such as central Arizona, a relatively dependable long-term water supply is critical if these homelands are to exist.

(3) Also in his June 6, 1978 message, the President announced his Administration's intent to settle Indian water claims through negotiation, wherever possible. Several Water claims are now being litigated in Arizona and others are likely to be filed. On several occasions, I have stated that, pursuant to the President's policy, CAP water will be used in the settlement of outstanding claims, where possible.

Projected Water Supply

Before describing the procedures used to determine the allocations set forth below, I will point out certain hydrologically related aspects of the CAP. This is arid country with a limited supply of surface and groundwater, and many agricultural and M&I Water users rely exclusively on groundwater. This dependence has been so great that the groundwater table has been dropping at an alarming rate. The Arizona Water Commission has estimated that the annual overdraft in the counties of Maricopa, Pinal and Pima is 1.9 million acre-feet.

In response to this problem, the Arizona State Legislature, on June 11, 1980, enacted the Ground Water Management Act of 1980. This law is far-reaching and should help alleviate this serious drawdown of groundwater reserves. I commend the Governor, the Legislature, and the Arizona Groundwater Management Study Commission for their serious and sustained efforts to improve the management of Arizona's limited water resources.

Despite the virtues of this new law, however, no one expects it to "solve" Arizona's water problems; nor should any one expect the CAP to work

miracles. What the CAP will do is this: It will alleviate to some extent the agricultural drain on the groundwater supply in the early years of the project, and it will provide a supply of municipal and industrial water on a permanent basis.

In making my allocations, I have studied data prepared by the Arizona Water Commission (AWC) and by the Water and Power Resources Service. Both reports estimate the total CAP supply based on assumptions relating to the hydrology of the Colorado River Basin, local runoff, the way in which the mainstem Colorado River reservoirs are operated, the rate at which the Upper Basin States develop their supplies, and a variety of other factors. But while they are in general agreement as to the various factors involved in these calculations, the two reports make different predictions.

Based on its assumptions, the Water and Power Resources Service (WPRS) has assumed that the minimum amount of Colorado River water available for diversion into the CAP during the most critical drought years will be 400,000 acre-feet. Due to losses, less than that, perhaps as little as 300,000 acre-feet, would be delivered to users during drought years, according to WPRS.

However, the Executive Director of the Arizona Water Commission (now the Department of Water Resources) has referred to his agency's CAP projection of 550,000 acre-feet of supply for diversion in drought years and 500,000 acre-feet for actual delivery as "quite conservative." The AWC conclusion relies on the assumption that the rate of development in the Upper Colorado River Basin will be slower than that predicted by WPRS, and on different assumptions regarding the operation of Hoover Dam.

From these numbers, the disagreement between the two agencies is obvious. For the purpose of this decision, however, I am accepting neither of these projections as definitive. My allocations do not reduce the tribal amounts after 2005 as did the 1976 allocations. Instead, my allocations rely on the concept of a "shared priority" between Indian users and municipal and industrial users throughout the life of the project. This concept, which is discussed in more detail below, provides that these two classes of users will suffer together and proportionally in shortage years.

Although it is important to all parties involved to have accurate forecasts of Colorado River water supplies, these projections are not as important to my allocations—because of the shared priority concept—as they were to Acting Secretary Frizzell's. At this point, since

only time will tell which agency made better predictions about the future, I have found it useful to consider both reports in calculating the possible long-term ramifications of various allocation scenarios.

Indian Allocations

I considered 14 reservations for allocations of CAP water. (I should explain and emphasize what I mean by an "allocation." It is an offer to contract for CAP water. By no means does the allocation, by itself, commit the Department to deliver water to the various potential users to whom water is allocated. In all cases, contracts or subcontracts must be made and executed with the Secretary of the Interior as a party to them. It is only through the contracting process that water is firmly committed to the users.) I have tried to consider the particular circumstances of each tribe in making my decisions. I have found that there is no single formula to be used in determining the allocations of all the tribes.

I first considered the five reservations allocated water in 1976. These reservations are the Ak-Chin, Gila River, Salt River, Papago (Chuichu) and Fort McDowell. The rationale used in making those allocations is explained in detail in the 1976 Federal Register notice.

Based on a review of the comments on the August 8 proposals and the record of the allocation, I have decided not to adjust the quantity of the original 257,000 acre-feet allocated to the five tribes:

	Acre-feet
Ak-Chin.....	58,300
Gila River.....	173,000
Salt River.....	13,300
Papago Chuichu.....	8,000
Fort McDowell.....	4,300

These allocations will, however, be subject to a revised priority system described below.

The August 8 proposals included allocations to seven tribes which were not allocated water in 1976. (Camp Verde, Tonto Apache, Yavapai Prescott, Pascua Yaqui, San Carlos, Shuk Toak, and San Xavier). The addition of these allocations represents an increase of 52,810 acre-feet in the total Indian share of CAP water. In general, the allocations were expected to contribute to the maintenance of permanent tribal homelands for these tribes; that is, they represent enough water to provide a minimum water resource for development and growth of reservation economies.

The proposed allocations are hereby affirmed, with two changes. The Tonto

Apache allocation is increased by 18 acre-feet per year to a total of 128 acre-feet, and the Camp Verde allocation is designated as a water supply for the purpose of contributing to the maintenance of a permanent tribal homeland. Those allocations are displayed in the following table:

	Portion solely for irrigation (acre-feet)	Portion for tribal homeland (acre-feet)
Camp Verde.....		1,200
Tonto Apache.....		128
Yavapai Prescott.....		500
Pascua Yaqui.....		500
San Carlos.....	2,700	10,000
Shuk Toak.....		10,800
San Xavier.....		27,000

As in the 1976 decisions, the allocations to Ak-Chin, Gila River, Salt River, Fort McDowell, Chuichu, and 2,700 acre-feet of the San Carlos allocation are limited to irrigation uses on the reservation, except to the extent modified by the Winters rights credit discussed below.

The full allocation to San Xavier, Shuk Toak, Pascua Yaqui, Tonto Apache, Camp Verde, and Yavapai and 10,000 acre-feet of the San Carlos allocation may be used for domestic, irrigation and M&I purposes, consistent with the purpose of maintaining tribal homelands. All of these allocations are also limited to uses on the reservations, except to the extent modified below.

Priority of Use in Times of Shortage

While the non-Indian agricultural supply of water will vary from year to year, even under pessimistic projections of water supply, Indian agricultural users and M&I users will receive their full allocations of water in most years. However, it is likely that there will be some years, probably after the turn of the century, in which there will not be enough water to satisfy Indian and M&I users completely.

In these shortage years, Indian users and M&I users will share a first priority on water, with the limitation that the Indians' participation in the shared priority will first be reduced by ten percent of the water allocated for Indian agricultural uses.

Under this concept, the scheme for reducing water deliveries in times of shortage will work this way: First, miscellaneous uses will be reduced pro rata until exhausted; next, non-Indian agricultural uses will be reduced in the same way until exhausted. Then, ten percent of Indian agricultural uses will

be reduced. Thereafter, water for Indian and M&I uses will be reduced on a proportional basis, and within each class on a pro rata basis. The proportional basis between these two classes will be fixed as a ratio of the amount of water used by each class in the most recent year in which a full supply was available for both classes. (A year of "full supply" is one in which the total amounts of water specified in the M&I subcontracts and the Indian contracts are delivered, while the pro rata diminution within each class will be based on the actual use of water in the most recent year in which a full supply was available to the class).

For the limited purpose of establishing the relative Indian and non-Indian M&I percentages of the shared priority, non-Indian M&I allocations beyond 510,000 acre-feet, including conversions from agriculture to M&I, will not be permitted to be included in the calculations of the non-Indian portion of the shared priority. (This is not to say that future Secretarial allocations for M&I use, or

agricultural conversions to M&I use might not take the total non-Indian allocations to a figure greater than 510,000, but that 510,000 acre-feet is an absolute limit when calculating the shared priority between Indian and M&I use in times of shortage).

As discussed above, the percent of the Indian agricultural allocation will be eliminated from the shared priority in times of shortage. That represents approximately 26,000 acre-feet of the Indian allocation. Thus, assuming that full use of both the Indian and non-Indian M&I allocations occurred in a year when water was available, the Indian percentage of the shared priority in a subsequent year of short supply would be approximately thirty-six (36%) percent of the available supply. Such limits on non-Indian and Indian participation in the shared priority provide for relative stability and predictability for all allottees over the life of the project, a feature which was missing from the 1976 allocations.

subcontractor securing the benefit of CAP Water by substitution (however, this requirement will not preclude the use of Environmental Protection Agency grants, or non-federal financial assistance, to deliver effluent water to the reservations);

(3) Prior to December 31, 2005, exchanges may not exceed twenty percent of an individual tribe's CAP allocation and will be on the basis of delivery of not less than two acre-feet of substitute water for each acre-foot of project water exchanged. Thereafter, exchanges will be limited to fifty percent of each tribe's allocation, will be on not less than an acre-foot for acre-foot basis, and the party proposing substitution must establish to the satisfaction of the Secretary that there is no reasonable or prudent alternative to the proposed substitution available to that party for current or reasonably anticipated M&I use.

(4) Negotiations for the proposed substitution of supply will be between the tribe and the party offering water. Under procedures to be developed by the Department, the Secretary will reserve the authority to approve a substitution if it is determined that tribal agreement is being withheld unreasonably.

No doubt, there are substantial legal, technical, and environmental aspects of this concept to be worked out. But there is also no doubt that if appropriate use is made of the effluent, shortages will fall less severely on all users served by the Central Arizona Project.

Also, in an effort to identify more water which could be made available to mitigate the adverse effects of shortage years, the August 8 Notice directed the Assistant Secretary for Land and Water Resources to review whether operating criteria for Lower Basin Colorado River reservoirs permit, or could be modified to permit, the use of additional water for CAP purposes. The State of Arizona's CAP water availability projections differ from those of the Water and Power Resources Service. One purpose of this review was to determine if these differences are significant, and if so, whether or not they can be resolved, thus making some additional water available to the project. This review has been completed and based on its findings, I have concluded that the facts do not presently justify any modification in the operating criteria for the reservoirs.

Conservation of Groundwater

This subject was not addressed in the August 8 Notice. However, many comments were received from the non-Indian community which suggested that

Summary of Allocations and Priorities to Indian Tribes

[Acre-feet per year]

Tribe	(C).....4.....		(B)	
	(B).....		Portion solely	
Portion for.....	—40 per maximum.....		Allocation..... for irrigation	
tribal homeland.....	irrigation base in shortage year.....			
Ak-Chin.....	58,300	58,300	52,470	
Gila River.....	173,100	173,000	155,790	
Salt River.....	13,300	13,300	11,970	
Chualar.....	8,000	8,000	7,200	
Fort McDowell.....	4,300	4,300		
Camp Verde.....	1,200	1,200		
San Carlos.....	12,700	2,700	10,000	2,430
San Xavier.....	27,000	27,000		
Schuk Toak.....	10,800	10,800		
Pascua Yaqui.....	500	500		
Tonto Apache.....	128	128		
Yavapai.....	500	500		
Total.....	309,828	255,400	54,428	229,860

Possible Substitution of Non-Cap Water

By improving the Indian supply in the later project years, it is apparent that the position of the M&I users will be less favorable than under the 1976 notice. In an effort to make the M&I supply as dependable as possible, these allocations permit the substitution of non-CAP water for Indian CAP water, and provisions addressing such substitutions will be included in the Indian water service contracts. The Department has developed, in consultation with the affected interests, proposed contract language which provides that Indian tribes may be required to enter into substitute water agreements, but only after a series of stringent conditions are met. These

include:

(1) The suitability of the substitute water will be determined by the Secretary on stated criteria: (a) that the delivery facilities are equivalent to CAP facilities, (b) that the supply is available in comparable quantities at the time and place of need, (c) that the quality of the water meets all applicable regulatory requirements, including, but not limited to those relating to treatment and delivery, and (d) that the water shall be of suitable quality for the beneficial uses under a reasonably diversified cropping pattern customary for lands of like character in the region.

(2) All costs of substitution will be borne by the Central Arizona Water Conservation District or by the

Indians who benefit from the CAP should be required to meet the same water conservation and groundwater requirements as non-Indians. Most of the Indian commentators, however, charged that Indian lands have been systematically depleted of groundwater by the pumping activities of their non-Indian neighbors. The Indians argue that they have not been able to develop their groundwater resources fully, and that the aquifers under their reservations have been depleted by non-Indian users. Groundwater pumping on tribal lands is arguably less, proportionately, than pumping throughout the region as a whole for two reasons: The reservations lack dense urban settlements, and they have less irrigated agriculture, the tribes also have been severely restricted in their ability to tap underground water by their lack of financial resources and access to capital. Despite these concerns, a principal purpose of the CAP remains the conservation and management of groundwater. For this reason, Indian water service contracts will contain provisions requiring the integrated management and control of surface and groundwater on Indian reservations receiving CAP water to the end that groundwater withdrawals are managed on a responsible basis.

Credits Against Winters Rights

These allocations to the tribes will be credited against the reservations' Winters rights, as and when finally adjudicated or finally determined by Federal legislative action. This stipulation will be included in the contracts with the tribes for these allocated supplies.

Th the extent that a CAP allocation is credited against Winters rights, the reservation being so credited will be able to use such water in any manner and for any uses permitted under its Winters rights.

In this context it should be added that the allocation of CAP water to the tribes will not constitute a taking, either directly or by implication, of any water rights of the tribes; nor will it constitute the Department's opinion as to the legal rights of these tribes.

Possible Additional Water for the Tribes

Except as specifically provided in the above allocations, the tribal allocations are limited to irrigation uses on the reservations. The tribes, however, are not precluded from contracting for project M&I water just as any other entity in central Arizona may so contract. As long as such water has not been contracted to other users, such contracts may be made through the Secretary of the Interior. If the tribes do

decide to contract for this M&I water, they should be prepared to execute a contract at the same time, and under the same conditions as other M&I users contract with the CAWCD and the Secretary.

In a related matter, the asserted needs for tribal irrigation water exceed the allocations. It is my view that tribal irrigation requests above and beyond these allocations should be treated in the same way as requests from others seeking irrigation water.

Non-Indian Water Use

In 1976, the Arizona Water Commission, now the Department of Water Resources, recommended water allocations for non-Indian M&I and agricultural users. In the four years since the recommendations various conditions have changed, including the proposed increased tribal allocation contained herein, and increased estimates of the potential cost of CAP water.

In light of these changed circumstances, I have asked the DWR to revise its original recommendations for both M&I and agricultural use. I have been advised by Governor Babbitt that the State's revised recommendations for the allocation of CAP non-Indian water supplies will be submitted promptly following the publication of this notice.

Evaluation of Environmental Impacts

The requirements of the National Environmental Policy Act have been integrated into all phases of the Central Arizona Project. A programmatic Environmental Impact Statement was completed in 1972 and site-specific statements have been or are in the process of being done on particular phases of the project. The Bureau of reclamation (now the Water and Power Resources Service) prepared an environmental assessment of the Indian allocations of CAP water as proposed on April 18, 1975—(40 FR 17927). Based on that assessment, the Bureau concluded in a "Negative Determination of Environmental Impact," dated June 4, 1976, that the proposed allocations did not significantly affect the quality of the human environment. The Solicitor's Office reviewed and approved the assessment and negative finding.

Since the preparation of those documents, several other reports evaluating the potential environmental effects of possible CAP allocations have been written. These include:

An environmental evaluation of the AWC-recommended M&I allocations (March, 1979);

A two-part conceptual and technical assumptions review of the AWC recommendations (November 9, 1979 and December 31, 1979);

A supplemental environmental evaluations analyzing the potential M&I users rejected by the AWC (December, 1979);

A report on potential water use by non-Indian agriculture as recommended by the AWC (December, 1979).

Finally, the Water and Power Resources Service has completed an environmental assessment on the Indian allocations as proposed in the August 8 Notice. Water and Power has concluded in a Finding of No Significant Impact (FONSI) dated October 15, 1980, that these allocations do not significantly affect the quality of the human environment and therefore preparation of an Environmental Impact Statement is not required. Copies of that assessment and subsequent FONSI are available to the public upon request.

Effect on Previous Decisions

The adjustments to the 1976 allocation have been made with the understanding that Secretarial decisions are precedent in the Department and are not generally revised without substantial reason. However, the temporary priority for Indian water use under the 1976 allocation is unreasonable and justifies a revision from a first, but temporary, priority in CAP water, to a shared priority with M&I users over the life of the project. In addition, we are aware of no decisions which have been made by the non-Indian community in reliance on the 1976 allocations which would restrict the Secretary from revising the allocation for good cause.

My final decisions on the allocations contained herein supersede the decisions published by Acting Secretary Frizzell on October 15, 1976 and by Secretary Morton on December 15, 1972, 37 FR 2802; and insofar as those decisions are inconsistent with these final decisions, they are rescinded.

Dated: December 5, 1980.

Cecil D. Andrus,
Secretary of the Interior.

(FR Doc. 80-38307 Filed 12-8-80; 8:46 am)
BILLING CODE 4310-10-M

Regional Oil Shale Coal Team; Meeting

Pursuant to the Federal Advisory Committee Act (Public Law 92-163), notice is hereby given of a meeting of the Regional Oil Shale Team, composed of the Green River-Hams Fork and Uinta-Southwestern Utah Regional Coal Teams of the Federal-State Coal Advisory Board, to be held at 10:00 a.m., Tuesday, January 6, 1981, in Room 503, Federal Court House, 1921 Stout Street, Denver, Colorado 80202. The Team will meet to discuss a Memorandum of Understanding covering its

responsibilities relating to Federal oil shale leasing and the criteria to be used in delineating and ranking oil shale tracts for possible leasing.

Attendance is open to the interested public. There will be a public comment period. For further information concerning this meeting, contact Jack White, Bureau of Land Management, Room 5640, 18th and E Streets, NW., Washington, D.C. 20240; telephone: (202) 343-4437.

Dated: December 3, 1980.

James W. Curlin,

Deputy Assistant Secretary.

[FR Doc. 80-38240 Filed 12-9-80; 8:45 am]

BILLING CODE 4310-10-M

Water and Power Resources Service

Contract Negotiations With Yakima-Tieton Irrigation District, Washington; Intent to Begin Contract Negotiations for a Rehabilitation and Betterment Contract

The Department of the Interior, through the Water and Power Resources Service, intends to open negotiations with the Yakima-Tieton Irrigation District, Yakima, Washington, leading to a contract pursuant to the Rehabilitation and Betterment Act of 1949 (63 Stat. 724, 64 Stat. 11), as amended, for the repayment of funds to be used in improving the existing canal systems.

The proposed Rehabilitation and Betterment program will provide up to \$62,133,000 to enable the district to replace the existing 320 miles of open canals, laterals, and low-head pipe with 210 miles of pressure pipelines. A regulating dam will also be constructed with the reservoir serving as the headworks for the pressure pipeline to serve district lands. The contract repayment schedule will provide for full repayment of funds, commensurate with water users' payment capacity, over a period not to exceed 40 years.

The terms and conditions of the proposed contract are dependent upon the Secretary of the Interior's approval of the form of the proposed contract, and a maximum 60-day congressional review period of the terms of repayment.

The public may observe any negotiating sessions. Advance notice of such meetings, if any, will be furnished on request. Requests must be in writing and must specify that the requesting party is interested in the proposed Yakima-Tieton Irrigation District contract. Inquiries should be addressed to the Regional Director, Water and Power Resources Service, Attention

Code 440, 550 West Fort Street, Box 043, Boise, Idaho 83724.

The availability of a proposed draft contract for public review will be announced in the local news media. Following that announcement, a 30-day period will be allowed for receipt of written comments. All written correspondence concerning the proposed contract will be made available for review or inspection upon receipt of written request pursuant to the Freedom of Information Act (80 Stat. 383), as amended.

For further information on scheduled negotiating sessions and copies of the proposed contract form, please contact Ms. Cathy Kent, Repayment Contracts Assistant, Repayment and Statistics Branch, Division of Water, Power, and Lands, Water and Power Resources Service, at the above address, or telephone (208) 334-1161.

Dated: December 4, 1980.

Clifford I. Barrett,

Assistant Commissioner of Water and Power Resources.

[FR Doc. 80-38289 Filed 12-9-80; 8:45 am]

BILLING CODE 4310-09-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-6 (Sub-80F)]

Burlington Northern Inc., Abandonment Between Quincy and Mendon, IL; Findings

Notice is hereby given pursuant to 49 U.S.C. 10903 that by a Certificate and Decision decided December 2, 1980, a finding, which is administratively final, was made by the Commission, Review Board Number 5, stating that, subject to the conditions for the protection of railway employees prescribed by the Commission in Oregon Short Line R. Co.—Abandonment Goshen, 3601 C.C. 91(1979), and further that BN shall keep intact all of the right-of-way underlying the track, including all the bridges and culverts for a period 120 days from the decided of the certificate and decision to permit any state or local government agency or other interested party to negotiate the acquisition for public use of all or any portion of the right-of-way, the present and future public convenience and necessity permit the abandonment by the Burlington Northern Inc. of its line of railroad known as the Quincy to Mendon line extending from railroad milepost 70.30 near Quincy, IL, to railroad milepost 55.77 at the end of the line near Mendon, IL, a distance of 14.53 miles, in Adams County, IL. A certificate of public

convenience and necessity permitting abandonment was issued to the Burlington Northern Inc. Since the investigation has been completed, the requirement of § 1121.38(a) of the Regulations that publication of notice of abandonment decisions in the Federal Register be made only after such a decision becomes administratively final was waived.

Upon receipt by the carrier of an actual offer of financial assistance, the carrier shall make available to the offeror the records, accounts, appraisals, working papers, and other documents used in preparing Exhibit I (Section 1121.45 of the Regulations). Such documents shall be made available during regular business hours at a time and place mutually agreeable to the parties.

The offer must be filed with the Commission and served concurrently on the applicant, with copies to Ms. Ellen Hanson, Room 5417, Interstate Commerce Commission, Washington, DC 20423, no later than 10 days from publication of this Notice. The offer, as filed, shall contain information required pursuant to § 1121.38(b)(2) and (3) of the Regulations. If no such offer is received, the certificate of public convenience and necessity authorizing abandonment shall become effective 30 days from the service date of the certificate.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 80-38278 Filed 12-9-80; 8:45 am]

BILLING CODE 7035-01-M

Motor Carrier Finance Applications; Decision-Notice

Correction

In FR Doc. 80-32209 appearing at page 68762 in the issue for Thursday, October 16, 1980, make the following correction:

On page 68765, in the third column, in paragraph MC 116273 (Sub-256F), application of D&L Transport, Inc., in the eighth line, "MI, MO" should have read "MI, MN, MO".

BILLING CODE 1505-01-M

Motor Carrier Temporary Authority Application

Correction

In FR Doc. 80-32883 appearing at page 70136 in the issue for Wednesday, October 22, 1980, make the following correction:

On page 70140, in the third column, in paragraph MC 119399 (Sub-5-28TA), application of Contract Freighters, Inc.,



Jicarilla Apache Reservation
February 11, 1887-1987

The Jicarilla Apache Nation

EXECUTIVE OFFICES

P.O. Box 507 • Dulce, New Mexico • 87528-0507 • (575) 759-3242

VIA EMAIL to crbpost2026@usbr.gov

August 15, 2023

Bureau of Reclamation
Attn: Post-2026 (Mail Stop 84-55000)
P.O. Box 25007
Denver, CO 80225

Re: Jicarilla Apache Nation's Comments in Response to Bureau of Reclamation's June 16, 2023 Notice of Intent To Prepare an Environmental Impact Statement and Notice To Solicit Comments and Hold Public Scoping Meetings on the Development of Post-2026 Operational Guidelines and Strategies for Lake Powell and Lake Mead

The Jicarilla Apache Nation appreciates the opportunity to submit these comments on the scope of specific operational guidelines, strategies, and other issues to be considered in connection with development of the post-2026 Colorado River reservoir operational strategies for Lake Powell and Lake Mead.

The Jicarilla Apache Nation's reservation lands span more than 879,000 acres in north central New Mexico. The Nation's lands are in the upper reaches of the San Juan River Basin and straddle the Continental Divide. The Navajo River, which is a tributary to the San Juan River, is a perennial stream on the Reservation and the primary source of the Nation's domestic water supply. The Nation has settled water rights to more than 45,000 acre-feet of Colorado River water as well as claims related to other river systems.

We are at a pivotal moment in the history of the Colorado River. With more than 100 years of outdated law and policy behind us, and a rapidly changing and erratic climate before us, it is time for the federal government, Basin states, tribes, and Mexico to move forward together create new systems to preserve and protect the river itself, and to support the people, plants, animals, and ecosystems that the river supports. We should reject the historical exclusion of tribes and other outdated policies that have led to inequitable and unsustainable results and take advantage of this opportunity to create a more equitable and sustainable management system for the Colorado River.



As the purpose, need and scope of the new framework are more specifically defined and developed, the Nation urges prioritization of the following goals and guiding principles:

Ensuring Meaningful Tribal Inclusion

Both the process for developing the post-2026 strategies, and the parallel processes for addressing emergent issues within the Basin, must meaningfully include tribal sovereigns to rectify the historical exclusion of tribes from Colorado River policy and decision making. The Nation appreciates Interior's commitment, as stated in the notice, to develop an outreach approach that "enhances tribal engagement and inclusivity" and to "prioritize regular, meaningful, and robust consultation with Tribal nations." To fulfill this commitment, and consistent with the federal government's trust responsibility, the Nation proposes that Interior create a formal and permanent structure for tribal inclusion in Colorado River decision-making, as those discussions occur.

Specifically, the Nation suggests that Interior establish a regular schedule of meetings among the sovereigns—tribal, state, and federal—to discuss proposals currently on the table and the status of efforts to address emergent challenges. To adequately protect the Nation's interests, we must be part of the discussions as they occur, not simply be provided an opportunity to comment after policies and programs have been developed by others. Success will require active participation and accountability from all participants and it is the federal government's obligation to create an environment in which this occurs. In so doing, the federal government can work to uphold its obligation to include tribes in a meaningful and transparent manner, allowing for collaborative and informed decision-making processes that respect tribal sovereignty.

Preserving and Protecting Tribal Water

It is essential that all involved parties have realistic expectations, based on the best available science, regarding the amount of water available from the Colorado River system and where that water comes from. While the Nation recognizes the value of short-term actions, such as temporary voluntary compensated reductions, the Nation encourages focus on the long-term goal—stabilizing and protecting the river for years to come. Long-term stability cannot occur if non-tribal water users continue to rely on large quantities of "unused" tribal water to serve their needs. Long-term stability will require development of systems that recognize the value of Basin Tribes' water contributions, allow Basin Tribes to be fully and fairly compensated for those contributions, and preserve and protect the rights of Basin Tribes to develop and use tribal water when and how they best determine. The post-2026 framework must ensure that sufficient flexibility is created and preserved for tribes to develop and participate in programs that serve these purposes, and must make accommodations, when appropriate, for treating tribes different from other water users within the Colorado River system.

Investment in Infrastructure

There is a critical need for infrastructure to allow tribes to fully and efficiently use their water resources. As part of the post-2026 process, or as part of a parallel process, the Nation proposes the establishment of a robust infrastructure funding source aimed at ensuring equitable access to water for tribes. This could include supporting the construction of pipelines, canals, and reservoirs, as well as implementing modernization measures and advanced water management technologies. Investing in modern, efficient water infrastructure not only enhances water supply reliability but also supports economic development, safeguards ecosystems, and strengthens the resilience of tribal communities. As such, investment in infrastructure is an essential component of any effort to preserve, protect, and facilitate access to tribal water.

Broader Conditions and Additional Measures

The Nation appreciates BOR's acknowledgement that despite higher-than-average runoff conditions for 2023, the Colorado River system is still in the midst of a historic and severe drought. As such, it is imperative that the next management framework be based on realistic expectations, include a broader range of potential conditions, and allow for flexibility in responding to those conditions. The new framework should include additional measures to protect lake levels and power production at Powell, clear rules for allocation of evaporation and system losses in the Lower Basin, and establishment of systems that allow tribes to realize the value of their water while protecting that water for future development. In addition to facilitating use of water for humans, the new management structure should also support regular river restoration activities, environmental projects, and measures to protect the river as a living being.

Flexibility and Support for Parallel Processes


The new management system should provide certainty and stability for water users. At the same time, it must be adaptive and provide sufficient flexibility to meet the variable climate and changing needs. While the Nation recognizes that the NEPA process can be limiting, the Nation encourages Bureau of Reclamation to take a wholistic approach to future management of the Colorado River and to focus on long-term sustainable solutions. When this cannot be done within the NEPA process, the Nation encourages Reclamation to support complimentary parallel processes, such as any program to address unused and undeveloped tribal water, and to proceed with framework development in a manner that supports and does not hinder such processes.

Conclusion

As indigenous people, we recognize the inextricable connection to the land and water, which brings a profound sense of balance and responsibility. We eagerly anticipate working collaboratively in the months and years ahead to protect the Colorado River system, honor the ancestral ties, and uphold the rights and well-being of the people, plants, and species that depend on the Colorado River. Acknowledging the historical exclusion of tribes from river management

decisions, we emphasize the paramount importance of forging a partnership built on mutual respect, active engagement, and a genuine understanding of the indigenous perspective. By embracing this holistic approach, we can address the challenges at hand, develop sustainable solutions, and ensure the long-term vitality of the Colorado River for ourselves and for future generations to come.

Very truly yours,

A handwritten signature in black ink, appearing to read "Edward Velarde". The signature is fluid and cursive, with a prominent initial "E".

Edward Velarde, President
Jicarilla Apache Nation



August 15, 2023

Amanda Erath
 Colorado River Post-2026 Program Coordinator
 Bureau of Reclamation
 Attn: Post-2026 (Mail Stop 84-55000)
 P.O. Box 25007
 Denver, CO 80225

CRBpost2026@usbr.gov

Re: Upper Basin Dialogue Participants' Shared Comments to Bureau of Reclamation's
"Notice to Solicit Comments and Hold Public Scoping Meetings on the Development of Post-2026 Operational Guidelines and Strategies for Lake Powell and Lake Mead."

The six Upper Basin Tribal Nations and ten conservation groups with a shared vision in the resilience of the Upper Colorado River Basin have formed a group referred to as the Upper Basin Dialogue ("UBD"). The UBD facilitates sharing of information and resources to help pursue common goals related to water rights and resources in the Upper Colorado River Basin. As part of our Upper Basin collaboration, we, the undersigned, which comprise a majority of UBD members, submit these comments in response to the Bureau of Reclamation's (Bureau) *"Notice to Solicit Comments and Hold Public Scoping Meetings on the Development of Post-2026 Operational Guidelines and Strategies for Lake Powell and Lake Mead"* as published in Federal Register Notice, 88 FR 39455 on June 16, 2023.

First, we would like to thank the Bureau for acknowledging the serious situation we face as a Colorado River Basin community. As we work with the Bureau to develop river policy that will govern in years to come, it is imperative that we acknowledge that the river has never had the volume originally apportioned under the 1922 Colorado River Compact, that the current volume

is declining rapidly, and that we may never return to the flows that we have been accustomed to experiencing in previous decades. While the Colorado River community as a whole has to learn to live with less, Tribal Nations must also be allowed the same opportunities to develop their federal reserved water rights to provide clean drinking water, adequate sanitation, clean energy, and economic opportunities that have been historically prioritized to the rest of the Basin community.

We also want to thank the Bureau for recognizing the importance of active and meaningful involvement by all sovereigns – including the thirty Colorado River Basin Tribal Nations and Mexico – in developing and implementing river management policy from the outset of the development of the Post-2026 Colorado River operational strategies. The Basin’s Tribal Nations have recognized rights to use water rights to approximately twenty-five percent of Colorado River water (under senior or high priority, reserved rights), and many of these Tribal Nations are in the process of quantifying additional rights to Colorado River water. Given this volume of Tribal water, it is imperative that Tribal Nations be involved in crafting workable solutions with the federal government and the states and it is time to correct the historical wrong of Tribal exclusion. Indeed, we will need to bring all expertise and interests to bear to meet the challenges we face going forward.

The solicitation for comments on the Post-2026 NEPA process seeks input and recommendations “concerning the scope of specific operational guidelines, strategies, and any other issues that should be considered on or before August 15, 2023.” The solicitation recognizes that “circumstances have changed” in the Colorado River Basin since adoption of the 2007 Colorado River Interim Guidelines for Lower Basin Shortages and the Coordinated Operations for Lake Powell and Lake Mead (2007 Interim Guidelines). Entities relying on the Colorado River face increased individual and collective risk of water supply interruptions that will inevitably impact society, economies, and the environment in the southwestern United States. Management systems have also started to evolve. Policies to recognize and incorporate Tribal values and self-determined study and analysis of Tribal needs (e.g., Colorado River Basin Ten Tribes Partnership Tribal Water Study) and environmental analyses to protect, improve, or enhance river assets in key areas (e.g., Upper Colorado River Endangered Fish Recovery Program, San Juan River Basin Recovery Implementation Program, Glen Canyon Dam Long-Term Experimental Management Program) provide information on the need to acknowledge and integrate Tribal rights and ecological, spiritual, and cultural values when considering strategies for stabilizing storage and operating infrastructure at Lake Powell. As such, as the Bureau is planning to develop a modernized operational and management framework, we encourage the agency to use an inclusive and transparent process that will allow states, Tribal Nations, and other Basin partners to explore operational strategies under highly variable and uncertain conditions and to address challenges with an eye toward garnering broad-based support.

It is with these understandings that the undersigned participants outline the following principles, purpose, and strategies to inform the scope of the Post-2026 Guidelines for the Colorado River.¹

¹This joint comment letter focuses on the shared interests of the undersigned parties as they relate to the Upper Colorado River Basin. Additional comments that address different or broader perspectives may be submitted by any or all the undersigned parties under separate cover.

Touchstone Principles to Guide Development of Post-2026 Framework

Integrity: An overarching goal of the Post-2026 Guidelines should be to help ensure the overall integrity of the Colorado River and its tributaries while providing water for Tribal Nations and for other human and environmental uses.

Ethic Toward Resilience: The future of the Colorado River and its tributaries depends on whether the Basin can adapt and adjust to the hotter, drier, and more extreme climate conditions confronting the Basin. To be successful, future management strategies and operations must incorporate resilience principles that focus on using modern science as well as Indigenous Knowledge to establish the sustainable use of the Colorado River and its tributaries for people and the rest of nature for years to come.

Managing Beyond Crisis Mode: The Post-2026 Guidelines must move beyond managing from crisis to crisis. To provide greater water security for the Colorado River community, management operations must consider and be nimble enough to anticipate and buffer the possible extremes in hydrology, reservoir storage, and Basin conditions to implement actions that are both known and expected to provide predictability and stability for all water users, uses, and ecological, spiritual, and cultural resources within the Basin.

Purpose for the Post-2026 Guidelines

The Purpose and Need of the Environmental Impact Statement for the 2007 Interim Guidelines failed to address the Colorado River Basin's operational and management needs for the 21st Century. The purpose of the next guidelines must be to establish a framework that will direct how the Basin will be managed and operated proactively to help provide water security for Tribal Nations, water users, communities, and economies. Such actions must account for hydrologic extremes and variable storage conditions due to drought and climate change conditions, and work to support the continued integrity of the Colorado River Basin's ecological, spiritual, and cultural resources. This purpose is achieved only if the Post-2026 Guidelines are developed in a manner that acknowledges and incorporates the rights and authorities of all Basin sovereigns and provides opportunities for considering and incorporating the varied interests of the full Colorado River community.

At minimum, achieving the contemporary goals and needs of the Basin community will require measures that go beyond the purpose of the 2007 Interim Guidelines to:

1. Recognize Tribal sovereignty by:
 - a. Providing Tribal Nations their rightful role in negotiations and decision-making processes that influence and/or affect their rights, authorities, and interests in Colorado River water;
 - b. Acknowledging Tribal rights to self-determination; and
 - c. Protecting and providing pathways for the realization of all Tribal apportionments in the Colorado River Basin.

2. Provide opportunities to steward and support ecological, spiritual, and cultural values to ensure the environmental integrity of watersheds and spiritual connection to Basin resources;
3. Provide solutions and strategies for preserving long-term stability and sustainability;
4. Develop strategies that contribute to the Basin's resilience to unpredictable water futures in order to guard against Colorado River system failures in a manner that protects ecological, spiritual, and cultural values;
5. Plan to minimize the vulnerability of the Colorado River water supply and of ecological, spiritual, and cultural resources; and
6. Reduce the threat of litigation.

Strategies for Accomplishing the Purpose for the Post-2026 Guidelines

Conceptual strategies for accomplishing a useful purpose for Post-2026 Guidelines require process and substantive measures.

Process Measures:

1. Establish a governance structure that provides Tribal Nations a shared role in decision-making processes – consistent with their sovereign status – that implicate and/or affect their respective rights, interests, and resources within the Basin;
2. Develop a transparent and robust process for meaningfully engaging with Upper Basin Colorado River stakeholders to fully consider and inform operational and management decisions based on the contemporary diversity of needs, interests, priorities, historical use patterns, and the realities of drought and climate change;
3. Respond to the realities of a changing climate and the resulting hydrology;
4. Provide for flexible water management strategies that contribute to and reflect unique legal, geographical, practical, and political characteristics of both Lower and Upper Basin water security and that accommodate human use of and reliance on the natural systems and the Basin environment;
5. Identify stewardship principles that recognize environmental, spiritual, and cultural values that contribute to the long-term integrity of the Basin;
6. Coordinate operational and management decisions with separate but parallel efforts to build resiliencies that are needed to help the Basin survive and thrive going forward; and
7. Identify and analyze the full extent of benefits and impacts of potential operational and management actions on all Basin communities and resources.

Substantive Measures:

1. Advance proactive, comprehensive, and holistic practices that withstand a broad range of future conditions to provide:
 - a. Operational and planning stability for all water users; and
 - b. Support Colorado River ecological, spiritual, and cultural values that are foundational to the integrity of the Basin.
2. Incorporate flexible tools that help reliably manage the Colorado River reservoir system and sustain the integrity of the Basin's resources;
3. Provide reliable access to clean drinking water and adequate sanitation for all Tribal Nations and Colorado River communities;

4. Integrate environmental stewardship practices into operational and management decisions that ensure respect for and protection of ecological, spiritual, and cultural values within the Basin; and
5. Allow for adaptation to changing conditions by advancing mechanisms that will help accommodate future arrangements/agreements in furtherance of Basin stability and resilience.

Specific Strategies:

At minimum, specific strategies for implementing the goals and concepts for Post-2026 Guidelines will have to incorporate:

1. Measures to protect the Basin's physical infrastructure;
2. Clarity and transparency on:
 - a. Full participation of Tribal Nations as coequal sovereign governments, in support of self-determination, in the negotiations and decisions for the implementation of the future strategies that will work to protect Tribal water and water-related resources, rights, and interests in the Colorado River.
 - b. How Colorado River water supply and demand will be balanced for actual water availability conditions within the Basin;
 - c. How reservoir systems will be collectively operated under variable and unpredictable hydrology and changing demands;
 - d. Whether and how Upper Basin reservoirs will be utilized in Basin management systems; and
 - e. Whether, when, and under what authorities reductions in consumptive uses may be planned in the Upper Basin,
 - f. Federal processes to account for and deduct Tribal Nations' federal reserved water rights from the state apportionments of system water used for decision making.
3. How currently developed, undeveloped, and unresolved Tribal reserved water rights will be accounted for in operational and decision-making considerations;
4. Consideration of continuing and growing needs for sustainable energy supplies, especially for Tribal, rural, and otherwise disadvantaged communities;
5. Flexible tools that advance basin integrity and proactive management of the system in a manner that fully represents the rights and interests of Tribal Nations;
6. Resource protection and mitigation practices into operational and management decisions; and,
7. Opportunities to leverage parallel processes (current/future) to help build resilience and mitigate the effects of drought in the Basin.

We value the opportunity to inform the scoping process for the NEPA efforts related to the Colorado River's Post-2026 Guidelines. The undersigned conservation groups and Tribal Nations stand ready to support strategies outlined above and look forward to working with you in the months and years to come.

Sincerely,

[Signatures on Next Page]

Melvin J. Baker
Chairman, Southern Ute Indian Tribe

Corina Bow
Chairwoman, Paiute Indian Tribe of Utah

Manuel Heart
Chairman, Ute Mountain Ute Tribe

Edward Velarde
President, Jicarilla Apache Nation

Taylor Hawes
The Nature Conservancy

Bart Miller
Western Resource Advocates

Kevin Moran
Environmental Defense Fund

Jennifer Pitt
National Audubon Society

Alex Funk
Theodore Roosevelt Conservation Partnership

Matt Rice
American Rivers

Sara Porterfield
Trout Unlimited

John Shepard
Sonoran Institute

John Weisheit
Living Rivers

Garrit Voggesser
National Wildlife Federation

cc: Camille Calimlim Touton, Commissioner, US Bureau of Reclamation
David Palumbo, Deputy Commissioner, US Bureau of Reclamation
Wayne Pullan, Regional Director, Upper Colorado River, US Bureau of Reclamation
Jaci Gould, Regional Director, Lower Colorado River, US Bureau of Reclamation



The Navajo Nation **DR. BUU NYGREN** **PRESIDENT**
Yideeskáadi Nitsáhákees **RICHELLE MONTTOYA** **VICE PRESIDENT**

August 15, 2023

Bureau of Reclamation
Attn: Post-2026 (Mail Stop 84-55000)
P.O. Box 25007
Denver, CO 80225
CRBpost2026@usbr.gov

Re: Navajo Nation's Comments to Bureau of Reclamation's "Notice to Solicit Comments and Hold Public Scoping Meetings on the Development of Post-2026 Operational Guidelines and Strategies for Lake Powell and Lake Mead"

To Whom It May Concern:

Colorado River Reservoir Operations directly and greatly impact the Navajo Nation and its people in numerous ways. Life-sustaining water resources, energy production, food production, economic development projects, and cultural and traditional practices are impacted by these reservoir operations. With current and forecasted hydrologic conditions, impacts to the Navajo Nation are broader than previously anticipated, making paramount the need for active and meaningful engagement with the Navajo Nation throughout the development of Post-2026 Operational Guidelines, and adequate accounting of the impacts to the Navajo Nation.

It is critical for the Navajo Nation to continue to develop its water rights. It is also important to acknowledge and understand that the Navajo Nation has unquantified water rights in the Upper and Lower Colorado River Basins. The development of Post-2026 Operational Guidelines and Strategies presents a unique opportunity to advance water security for the Navajo people, economy, and environment, and live up to the promises of Executive Order 14096 (Revitalizing Our Nation's Commitment to Environmental Justice for All). In addition to supporting safe drinking water and wastewater systems for homes and communities, undeveloped and unquantified water rights should be considered.

At Lake Powell, the Navajo Nation has energy, water, and economic concerns. Large projects like the Navajo Indian Irrigation Project and Navajo-Gallup Water Supply Project rely on the Colorado River Storage Project for power. The importance to hydropower to the Navajo Nation demands consideration of operational changes that will impact the Navajo people as firm electric service customers. The LeChee Chapter and surrounding communities' water supply is extracted from Lake Powell. Fluctuating Lake Powell reservoir elevation levels have impacted operations at Antelope Point Marina and other tourism initiatives, and fluctuating reservoir elevation levels have cultural and environmental consequences. The Navajo Nation requires a comprehensive understanding of the impacts associated with post-2026 strategies.

For the reasons set forth above, the Navajo Nation must be actively and meaningfully involved in the development of Post-2026 Operational Guidelines and Strategies and the management of reservoirs in the Colorado River Basin. History has shown that unprecedented emergency releases considered without consultation with the Navajo Nation impact the Nation's secured water rights. Notification to Tribes after decisions are made and effectuated by the Federal Government and Basin State Principals is unacceptable. The Navajo Nation is hopeful that the Federal-States-Tribes Group organized by the Bureau of Reclamation will provide an opportunity for substantive dialogue between sovereigns and identify workable solutions.

To ensure foreseeable impacts on the Navajo Nation and its people are adequately accounted for and meaningful engagement is realized, the Navajo Nation submits this letter for comment on 88 FR 39455: Notice of Intent to Prepare an Environmental Impact Statement and Notice to Solicit Comments and Hold Public Scoping Meetings on the Development of Post-2026 Operational Guidelines and Strategies for Lake Powell and Lake Mead.

Sincerely,

A large, stylized handwritten signature in black ink, appearing to read 'Buu Nygren', with a long horizontal flourish extending to the right.

Dr. Buu Nygren, *President*

THE NAVAJO NATION

PASCUA YAQUI TRIBE

OFFICE OF THE CHAIRMAN

August 15, 2023



Via Email: crbpost2026@usbr.gov

U.S. Bureau of Reclamation
Attn: Post-2026 (Mail Stop 84-55000)
P.O. Box 25007
Denver, Colorado 80225

Re: Pascua Yaqui Tribe's Comments to the Notice of Intent to Prepare a Supplemental Environmental Impact Statement and Notice to Solicit Comments and Hold Public Scoping Meetings on the Development of Post-2026 Operational Strategies for Lake Powell and Lake Mead, 88 Fed. R. 39455 (June 16, 2023)

Dear Project Manager:

By this letter, the Pascua Yaqui Tribe ("Tribe") submits its comments to the Notice of Intent to Prepare a Supplemental Environmental Impact Statement and Notice to Solicit Comments and Hold Public Scoping Meetings on the Development of Post-2026 Operational Strategies for Lake Powell and Lake Mead, 88 Fed. R. 39455 (June 16, 2023) ("NOI").

The Pascua Yaqui Tribe is located in southern Arizona and holds a CAP Contract with the Secretary of the Interior dated December 11, 1980 for 500 acre-feet of Indian priority Central Arizona Project ("CAP") water. Each year, our Tribe uses the full allocation of our CAP water to meet our municipal water needs on the Pascua Yaqui Reservation and any reduction in that supply threatens our ability to provide water to meet the needs of our People on our Reservation. Our Tribe is also one of several Tribes in Arizona whose water rights have yet to be quantified in Arizona's General Stream Adjudication, although we are actively engaged in settlement negotiations at this time.

The management of the Colorado River system and the availability of water from this system directly impacts the Tribe's ability to plan for its own water future and to negotiate a full and fair settlement of its water rights claims in the basin. As competition for this most precious resource is elevated, the potential for Tribes being the ones who are disadvantaged also increases. The past 150 years of water management in the West gave little consideration to the lives of our Tribal people and essentially destroyed entire Tribal economies when water was diverted for non-Indian use. Now, with drought and climate change, our Tribal communities are again feeling the pressures of resource scarcity and we are concerned that we will, once again, experience new threats to our water supplies, including our CAP water entitlements.

Accordingly, the Bureau of Reclamation's consideration of Post-2026 operational strategies must take into consideration the United States' trust responsibility to Tribes and seek to implement management solutions on the Colorado River that will protect deliveries of Colorado River water supplies to the Tribes, including the Pascua Yaqui Tribe. Our request is also consistent with the Biden Administration's commitment to Tribes.

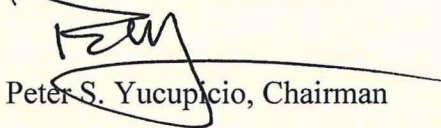
And where Colorado River water deliveries to Tribes may be reduced, assistance should be directly provided to Tribes to replace those water supplies through other means, particularly in cases where the reduction to a Colorado River water supply threatens Tribal public health, will result in damage to a Tribal economy, or would impair or impede the ability of a Tribe to reach a water rights settlement.

The Tribe welcomes the opportunity to continue to engage in consultation with Reclamation as you work to formulate a management system for the Colorado River Basin that is cognizant of the needs of the Tribes which is informed by the context of history.

Please include me, our Attorney General, Mr. Fred Urbina, and our Water Counsel, Ms. Robyn Interpreter, on all future communications related to this matter. Thank you.

Yours Truly,

PASCUA YAQUI TRIBE


Peter S. Yucupicio, Chairman

cc: Fred Urbina, Attorney General, Pascua Yaqui Tribe (alfredu@pascuayaqui-nsn.gov)
Robyn Interpreter, Montgomery & Interpreter, PLC (rinterpreter@milawaz.com)



QUECHAN INDIAN TRIBE
Ft. Yuma Indian Reservation
Office of Tribal Administration

P.O. Box 1899
Yuma, Arizona 85366-1899
Phone (760) 919-3600
Fax (760) 572-2962

August 15, 2023

The Honorable Camille Touton
Commissioner
U.S. Bureau of Reclamation
1849 C Street, NW
Washington, D.C. 20240
mtouton@usbr.gov
crbpost2026@usbr.gov

Re.: Fort Yuma Quechan Indian Tribe Comments to Reclamation's Post-2026 EIS Notice

By E-mail

Dear Commissioner Touton:

The Bureau of Reclamation's *Notice of Intent To Prepare an Environmental Impact Statement and Notice To Solicit Comments and Hold Public Scoping Meetings on the Development of Post-2026 Operational Guidelines and Strategies for Lake Powell and Lake Mead*, Fed. Reg. Vol. 88, No. 116, p. 39455 (June 16, 2023), requested "that the public submit comments concerning the scope of specific operational guidelines, strategies, and any other issues that should be considered" in connection with the preparation of that Environmental Impact Statement (EIS). On behalf of the Fort Yuma Quechan Indian Tribe (Tribe), I now submit the following comments in response to this Notice.

As we have previously explained to you, the Colorado River has been the lifeblood of the Quechan people since time immemorial, and we have a deep and abiding responsibility to be good stewards of the River – for the Tribe and its members, for the species and ecosystems that it sustains, and for the benefit of our fellow tribes and non-Indian neighbors throughout the entire Colorado River Basin (Basin). The development of the next management framework for the Basin will profoundly affect all of these interests. It is therefore critical that we get this EIS process right, both in process and in substance.

As to process, an essential starting point is ensuring the inclusion of Basin tribes in every step of the development and analysis of potential alternatives, the identification of a preferred alternative, and the implementation of the suite of actions that the Bureau of Reclamation

(Reclamation) ultimately adopts through a Final EIS and Record of Decision (ROD). We are encouraged that you seem to have taken to heart the spirit of the [comment](#) we provided last year, that “[t]he most effective way we see to ensure appropriate tribal inclusion in the process of developing a post-2026 management framework is for the United States to serve as the convener of the forum in which the substantive negotiations over that framework are to take place.” The all-sovereigns meeting you convened in Phoenix on August 10 was a positive step in this direction, particularly your commitment there that this gathering was only a beginning, and that regular and continued engagement remains necessary as we move forward in charting our collective post-2026 future. We look forward to Reclamation’s continued fulfillment of that commitment.

We also appreciate Reclamation making available technical information and tools to facilitate our ability to engage effectively in this process. The Integrated Technical Education Workgroup is an extremely valuable and constructive forum, and we look forward to the release of the shortage allocation tool this fall that Reclamation has informed us is under development. These efforts – and your leadership – will remain vital throughout the development of the post-2026 EIS and the implementation of the next management framework to ensure that good words and positive first steps toward genuine tribal inclusion remain matched with action.

Another important process improvement from the 2007 Interim Guidelines (2007 IGs) that must be incorporated in the post-2026 EIS and ROD relates to consultation. In Section 7.B of the ROD adopting the 2007 IGs, Reclamation specifically committed to consulting with the Basin states in the event circumstances arose that were not squarely addressed in the 2007 IGs themselves. While such consultation is certainly appropriate, the failure to extend these consultation requirements to include Basin tribes was yet another example of the ways tribes have been cut out of Basin governance since the adoption of the Colorado River compact (and before).¹ This error must not be repeated in the ROD that emerges at the end of the post-2026 EIS process. Instead, any such ROD should specifically require Reclamation to consult with Basin tribes in parity with the Basin states.

This sort of genuinely inclusive consultation is particularly important because it is almost inevitable that adaptation will be necessary. As a society and a species, humans have created climatic conditions that constrain our ability to predict future hydrology with reasonable certainty. Thus, while the next management framework needs to be robust enough to address a range of potential future (and poorer) water supply conditions, it must also build in process steps to allow ample room for adaptive management if and when hydrologic conditions or other circumstances arise that were not fully contemplated in the post-2026 EIS and ROD. Meaningful consultation with Basin tribes – along with Basin states and other stakeholders – must be a component of that effort.

¹ We note, and appreciate, that Reclamation took steps to consult with Basin tribes in connection with the 7.D review process required under the 2007 IGs despite Section 7.D requiring only consultation with the Basin States. The formal inclusion of tribal consultation requirements in the next management framework is an appropriate progression from this more *ad hoc* effort.

Our changing climatic conditions and the experience of the past two decades also illustrate why the purpose and need of the post-2026 EIS must be more broadly formulated than that of the 2007 IGs. The hydrology confronting the Basin has become less predictable and less stable than previously considered, and a management framework that focuses primarily on the coordinated allocation of water between Lake Mead and Lake Powell has already proven insufficient to avoid seemingly constant crisis management. Going forward, the Basin must do a better job by building a management framework that can provide predictability in shortage allocations as well as adaptive pathways that allow for better planning by entitlement holders and contractors. This requires making management decisions by looking at whole system conditions rather than only at the elevations of Lake Mead and Lake Powell at specific moments in time. It also puts a premium on modeling any proposed alternative to assess its performance under a wide range of conditions, including hydrologies that are materially poorer and more dynamic than those seen in prior periods of record.

The next management framework must also acknowledge that the Colorado River system and individual water users have benefitted from over a century of free use of un- and under-developed tribal water rights. As a matter of basic equity and justice—and in recognition of the trust obligation the United States owes each Basin tribe—a necessary component of all future management frameworks must therefore be the protection of tribal trust resources, including but not limited to tribal water rights. Any future management framework must therefore abjure the possibility of involuntary, out-of-priority cuts imposed on the water rights that our Tribe, and all Basin tribes, need to ensure that our reservations can be true homelands for our people.²

The next management framework also needs to look beyond simply managing water deliveries and reservoir storage to include environmental and cultural needs. It is of the utmost importance to the Tribe and our members that the Colorado continues to flow as a living river. This commitment must extend to the reaches of the River below Imperial Dam – which includes the portion of the River flowing through our Reservation – that were excluded from the environmental analysis in the EIS for the 2007 IGs and again in this spring’s now-withdrawn (but apparently soon to be reissued in modified form) draft Supplemental EIS (DSEIS). It is vital that we preserve and enhance the habitat and species and the cultural connections between and among tribes, other communities, and the River. The potential effects on these critical resources of various proposed alternatives must therefore be carefully analyzed in any post-2026 EIS, and at a granular and localized manner free from the overgeneralizations that compromised the

² As we have repeatedly explained to Reclamation, including in my letter to you of June 9, 2023, the Secretary lacks the legal authority to impose out-of-priority cuts to our water rights and to those of the other tribes whose rights were decreed in *Arizona v. California*, 547 U.S. 150 (2006). I am deeply disappointed not yet to have received any response from you – or from anyone else in the Department of the Interior – to the specific request I made to you personally nearly three months ago, when you and your team met with our Tribal Council on May 24, 2023, and that I reiterated in my June 9 letter. Reclamation has neither acknowledged the accuracy of our legal analysis on this issue nor provided us with any identification or analysis of the legal authority Interior may believe it has to impose such cuts. It is therefore also profoundly troubling that all indications we have are that Reclamation intends to continue to sidestep this issue when it issues a revised DSEIS this fall, discarding Alternative 2 as considered-but-rejected because it is outperformed by the Lower Basin States consensus alternative – not because it is an alternative that Reclamation lacks the legal authority to implement due to its failure to exclude the *Arizona v. California* tribes from out-of-priority cuts.

quality of the environmental analysis in the DSEIS.³ This also means that water used for environmental benefits in the Lower Basin should not be treated as evaporative or transmission losses, to the extent that responsibility for any such losses is allocated in the next management framework.

To be able to integrate these multiple priorities into a durable management framework, the river system's overall structural deficit must be confronted. Whether it is through coordinated reservoir management, physical infrastructure modifications, transparent and predictable mechanisms for curtailing existing non-Indian water uses, investment in historically underserved communities including through innovative financing, or some combination of these (and potentially other) tools, the Basin needs to arrive at a more realistic alignment between water supply and demand. Reductions in water use will therefore be necessary. The post-2026 EIS should analyze not just the scope of potential cuts but also potential mitigation strategies – including those that might require authorities Reclamation does not currently possess – so the need for supplemental NEPA processes can be minimized and so Basin stakeholders can work at the congressional level to ensure that this process is fully integrated with the other parallel processes that must move in tandem (such as negotiations between the United States and Mexico and Multi-Species Conservation Plan reconsultation) to craft a resilient and sustainable future for the Basin.

The more voluntary conservation efforts can be incentivized and facilitated as part of this effort, the less disruptive and painful the Basin's adaptation to a drier and hydrologically more uncertain future may be. To this end, programs that incentivize reservoir storage, such as the 2007 IGs Intentionally Created Surplus (ICS) mechanism, should be extended – but with lower barriers to tribal participation. In addition, consideration should be given to managing created system conservation water in a manner more akin to ICS, where it can remain in Lake Mead – and thus protects its elevation – for multiple years. For example, the federal ICS account created under the 2007 IGs could be reinvigorated. The current mechanism of rolling system conservation water into the overall water budget after its year of creation minimizes the conservation – and reservoir protection – benefits that might otherwise be realized.


Because of the inescapable need for reductions in overall Colorado River water use, a clear mechanism for expanding the use of compensated forbearance agreements for currently un- and under-developed tribal water rights is a tool that should be included as part of any preferred alternative selected for the post-2026 EIS. Our Tribe's forbearance agreement with the Metropolitan Water District (MWD) has allowed both the Tribe and MWD to benefit from the additional water rights the Tribe secured in the 2005 Settlement Agreement among the Tribe, MWD, the Coachella Valley Water District, and the United States without increasing the net consumptive demand on the river system. Currently, other tribes are largely forced to develop new consumptive uses of water before they can benefit from their water rights or utilize them in creative ways off their reservations, an incentive system that perversely pits necessary tribal economic and social development against the Basin's need to decrease overall water use. It

³ We articulated many of our specific concerns with the DSEIS's deficient analytic approach – which extended beyond environmental impacts to infect considerations such as the economic and tribal trust resources analysis as well – in my letter to you of June 9, 2023, which we incorporate by reference here.

would perpetuate fundamental historical injustices to persist with a system that creates meaningful political disincentives to broader support for tribal development. And it is of course unconscionable that in 2023 there are tribes in the Basin who still lack the resources to provide clean and sanitary water for their members. Compensated forbearance agreements can generate needed revenue to support important tribal governmental programs, while reducing a significant source of upward pressure on consumptive demands, and better align incentives and interests among tribes and other Basin water users. This is an opportunity that should not be squandered.

Thank you for your consideration of these comments. We look forward to remaining actively engaged with the United States, our fellow Tribes, the Basin States, and other key stakeholders in order to find a durable and sustainable path forward for the River upon which we all rely.

Sincerely,

A handwritten signature in black ink, appearing to read "Jordan D. Joaquin".

Jordan D. Joaquin
President, Quechan Indian Tribe

Cc: Michael Brain, Acting Assistant Secretary for Water and Science
David Palumbo, Deputy Commission, Bureau of Reclamation
Carly Jerla, Senior Water Resources Program Manager



Comments on the Bureau of Reclamation's
Notice of Intent to Prepare an Environmental Impact Statement and
Notice to Solicit Comments and Hold Public Scoping Meetings on the
Development of Post-2026 Operational Guidelines and Strategies for
Lake Powell and Lake Mead (June 16, 2023)

Submitted by

The San Luis Rey Indian Water Authority

August 14, 2023

Submitted by Email to: crbpost2026@usbr.gov

These comments on the Bureau of Reclamation's June 16, 2023, *Notice of Intent to Prepare an Environmental Impact Statement and Notice to Solicit Comments and Hold Public Scoping Meetings on the Development of Post-2026 Operational Guidelines and Strategies for Lake Powell and Lake Mead* are submitted on behalf of five federally recognized Indian tribes: the La Jolla Band of Luiseno Indians, the Rincon Band of Luiseno Indians, the San Pasqual Band of Mission Indians, the Pauma Band of Luiseno Mission Indians, and the Pala Band of Mission Indians ("Bands") through the San Luis Rey Indian Water Authority ("SLRIWA"), a permanent intertribal Indian entity under Federal law with which the United States has a trust relationship.

The San Luis Rey Indian Water Rights Settlement Act

The San Luis Rey Indian Water Rights Settlement Act of 1988 (Public Law No. 100-675, 102 Stat. 4000), as amended ("the Act"), directs and mandates the Secretary of the Interior ("Secretary") to permanently furnish annually 16,000 acre-feet of water to the Bands, the City of Escondido and Vista Irrigation District ("the San Luis Rey Settlement Parties") to resolve a dispute over San Luis Rey River water that began more than a century ago. As recognized in the Act, the Secretary has a permanent trust responsibility to the Bands to furnish the water necessary for the Settlement, known as the "Supplemental Water."

In 2000, Congress enacted the "Packard Amendment," and directed that Colorado River water conserved by lining the All-American Canal and its Coachella Branch ("Canal Lining Projects") would be the source of the 16,000 acre-feet per year needed for the San Luis Rey Settlement. Pub. L. 106-377, App. B, § 211 (October 27, 2000) 114 Stat. 1441A 70. The Packard Amendment adds subsection 106(f) to the Act, which states:

Notwithstanding any other provision of law, in order to fulfill the trust responsibility to the Bands, the Secretary, acting through the Commissioner of Reclamation, shall permanently furnish annually the following:

(1) WATER.—16,000 acre-feet of the water conserved by the [Canal Lining Projects] for the benefit of the [San Luis Rey Settlement Implementing Parties] [...]

The Secretary and the Assistant Attorney General executed the San Luis Rey Indian Water Rights Settlement Agreement on December 22, 2014, and January 30, 2015, respectively. Section 4.1 of the Settlement Agreement provides that: "As authorized and directed in the Settlement Act, the United States agrees to deliver 16,000 acre-feet per year of Supplemental Water to the [the San Luis Rey Settlement Parties]."

On December 16, 2016, Congress approved and ratified the Settlement Agreement among the San Luis Rey Settlement Parties and the United States. See San Luis Rey Settlement Agreement Implementation Act of 2016, WIIN Act of 2016, PL 114-322, § 3605; S.612 — 114th Congress (2015-2016). The Settlement Agreement was also approved by the United States District Court for the Southern District of California¹ and the Federal Energy Regulatory Commission.

¹ See *Rincon Band of Mission Indians, et al. v. Escondido Mutual Water Company, et al.*, U.S. Dist. Ct., S.D. Cal. No. 69-217-S; *Rincon Band of Mission Indians, et al., v. Vista Irrigation District*, U.S. Dist. Ct., S.D. Cal. No 72-276-S;

The 16,000 acre-feet of conserved Colorado River water provided to the San Luis Rey Settlement Parties pursuant to an Act of Congress and signed Settlement Agreement with the United States cannot be reduced or altered through the current administrative process. This important Settlement benefit is outside the scope of any post-2026 operational guidelines and strategies for Lake Mead and Lake Powell.

Respectfully submitted,



Bo Mazzetti, Board President
San Luis Rey Indian Water Authority



SOUTHERN UTE INDIAN TRIBE

August 8, 2023

Camille Calimlim Touton
Commissioner, Bureau of Reclamation
Via email: crbpost2026@usbr.gov

Re: Southern Ute Indian Tribe's written comments for the "*Notice of Intent To Prepare an Environmental Impact Statement and Notice to Solicit Comments*"

Dear Commissioner Touton:

The Southern Ute Indian Tribe ("Tribe") submits these comments in response to the Federal Register Notice, 88 FR 39455, published on June 16, 2023, titled "*Notice of Intent To Prepare an Environmental Impact Statement and Notice to Solicit Comments and Hold Public Scoping Meetings on the Development of Post-2026 Operational Guidelines and Strategies for Lake Powell and Lake Mead*" ("Notice of Intent"). The Bureau of Reclamation ("Reclamation") requested input on the scope of specific operational guidelines, strategies, and any other issues that should be considered.

In the Notice of Intent, Reclamation acknowledges the ongoing drought period from 2000 through 2023 as the second driest period in more than a century and one of the driest periods in the last 1,200 years. Because of this long-term drought, Colorado River reservoir levels were declining, which threatened water supplies across the Southwestern United States and Mexico. In 2022, attention focused on the Colorado River Basin due to the record low elevations in Lake Powell and Lake Mead. The Tribe recognizes that the Department of Interior and Reclamation took many actions in response to those low elevations, in order to protect access to water, hydropower, the infrastructure and much more. During the last several years, everyone learned that the 2007 Guidelines for Lower Basin Shortages and Coordinated Operations for Lake Powell and Lake Mead ("2007 Interim Guidelines") were unable to address the severe drought and low reservoir conditions. Reclamation must learn from this experience and ensure that the Post-2026 Guidelines will be able to deal with these same or more severe conditions in the future.

INTRODUCTION

The Ute people have lived in Colorado and the surrounding areas for time immemorial. Today, we have a tribal population of approximately 1,500, with a majority living on or near the Southern Ute Indian Reservation ("Reservation"). The Reservation, located in Southwestern Colorado, is a small portion of our original homeland. All of our Reservation lands lie within the San Juan River Basin in the Upper Colorado River Basin. The Tribe has a water settlement,

enacted through the Colorado Ute Indian Water Rights Settlement Act of 1988, 102 Stat. 2973, and amended in the Colorado Ute Indian Water Rights Settlement Act Amendments of 2000, Pub. L. No. 106-554, 114 Stat. 2763. The Tribe holds a wide variety of surface, storage, and groundwater that are state-based and federally reserved rights with various priority dates, amounts and beneficial uses. The Tribe has settled water rights to more than 128,000 acre-feet of water in the Colorado River Basin ("Basin").

The Tribe has felt the effects of this ongoing drought through shorter irrigation seasons, less water for the plants and animals on the Reservation, and more severe fire seasons. We had good snowpack this past winter, so this year has been better than previous years. However, we cannot let one good year of snow wipe out the memory of the low elevations in reservoirs, and all other negative effects. We must work towards addressing climate change and address the fact that the amount of Colorado River water being consumed is more than is being provided by Mother Nature.

SCOPE OF SPECIFIC OPERATIONAL GUIDELINES

Reclamation acknowledged that several actions have been taken, since 2021, to protect critical infrastructure in response to declining reservoir elevations and the severe drought conditions from 2020 to 2022. Each of those actions were a band-aid because the 2007 Interim Guidelines were unable to address the severe drought conditions. In addition, there is an overuse of water. The amount of water being used is more than the amount of water produced each year by Mother Nature. The Post-2026 Guidelines need to address the deficiencies of the 2007 Interim Guidelines and the overuse of water, while allowing for development of water by tribes in the Basin. One way to address a reduction in water use is to include an accounting for evaporation and system losses in the Lower Basin. This is a natural occurrence, and it should be accounted for. Another way to address the overuse of water is to limit water use to the actual hydrology that is provided instead of using creative accounting and exhausting the reservoir storage. The Upper Basin has to live with the hydrology, and the Lower Basin should also have to do so. Reclamation must include measures in the Post-2026 Guidelines that will protect the water levels and infrastructure of Lake Powell and Lake Mead. Last, measures must be included in the Post-2026 Guidelines that will protect the river itself, the fish, wildlife, and the plants that depend on the river.

ISSUES FOR RECLAMATION TO CONSIDER DURING THE POST-2026 PROCESS

I. FEDERAL TRUST RESPONSIBILITY

The Bureau of Reclamation's trust responsibility to tribes, including the Southern Ute Indian Tribe, requires Reclamation to ensure that tribes are included in the development of the Post-2026 operational guidelines for Lakes Powell and Mead. The Tribe urges Reclamation to take the lead in bringing tribes to the table during negotiations between the state and federal teams, so the tribes can respond to the suggested rules, policies, guidelines, and regulations in real time and so tribes are able to protect their interests. The 2022 Drought Response Operations Plan is a good example of collaboration and inclusion of tribes in Colorado River Basin discussions. That Plan authorized the inclusion of the Six (6) Upper Basin Tribes, including the

Southern Ute Indian Tribe, in any working group established by the Drought Response Operating Agreement Parties to assist with drafting, developing, implementing, analyzing proposals, or monitoring any Drought Response Operation. This example allows tribes meaningful participation in the discussions while they are ongoing and to provide any input during those discussions, not after the discussions have concluded. In addition, as trustee to the Tribe, Reclamation has an obligation to ensure that the Post-2026 Colorado River Reservoir Operational Strategies for Lake Powell and Lake Mead do not have a detrimental impact on Southern Ute's water rights or the future development of its water rights. Southern Ute urges Reclamation to ensure that the Post-2026 Guidelines are implemented in a manner consistent with Southern Ute's water rights and Reclamation's trust obligation to Southern Ute. Last, the United States must commit to engaging in formal consultation with the Tribe if the Tribe is going to be affected by actions taken to protect Lakes Powell and Mead in the development of the Post-2026 Guidelines. When initiating the NEPA process, the Tribe asks Reclamation to remember its trust responsibility to honor the Tribe's sovereignty, water settlement, and Federal Indian Reserved water rights.

II. TRIBAL INCLUSION

Tribes have historically been left out of the conversations on the management of the Colorado River system, including Lake Powell and Lake Mead. The Tribal Water Study found that the ten (10) member tribes of the Colorado River Ten Tribes Partnership (of which the Southern Ute Indian Tribe is a member) hold rights to approximately 2.8 million acre-feet of water per year from the Colorado River and its tributaries. This is a significant amount of water. When the water rights of the additional twenty Colorado River Basin Tribes are added to that amount, it is clear that a large portion of the Colorado River Basin water rights are held by tribes. However, tribes are not merely water users or members of the public; tribes are sovereign nations. As a sovereign in the Basin, the Tribe does not want to be updated on the negotiations between the States and the Federal team *after* decisions are made; the Tribe wants to be at the table *during* discussions *and* negotiations. The Tribe must be involved in discussions in order to protect our water rights and share its expertise while crafting a solution to this long-term challenge we all face. It is time to create a structure that involves tribes in the negotiating and decision-making for actions in the Colorado River Basin. The Tribe thanks Reclamation for its recent efforts in providing information to the tribes through the Tribal Information Exchange. The Tribe also looks forward to learning more about the "Federal-Tribes-States Group" and hearing how this will assist the tribes in becoming more involved in the Colorado River Basin discussions. We would like to see this group become more than another avenue for sharing information.

III. RECOGNIZE THE ROLE OF QUANTIFIED TRIBAL WATER THAT IS CURRENTLY UNDEVELOPED AND BEING USED BY DOWNSTREAM WATER USERS

As mentioned in the Introduction, the Tribe has a water settlement in place. Tribes negotiate water settlements to provide enough water for a permanent homeland. This includes water for future use, which means that many tribes may not be using their full quantity of water rights. The Tribe has not fully developed its water. However, the Tribe does have the right to develop its water in the future and we intend to do so. We need our water for the same reasons that non-tribal communities need it for, such as maintaining our clean drinking water supply, increasing access to clean drinking water for tribal members, and supporting our economic development for future prosperity. We should have flexibility to use our water in the way that works best for our tribe. While we are deciding on the best way to develop our water, that undeveloped quantity of water is flowing downstream.

The United States, the Seven Basin States and downstream water users have not accounted for the tribal water that is currently undeveloped and is flowing downstream. A reliance has been built upon our water. We would like the U.S. to commit to developing a system that recognizes the value of the Basin Tribes' water contributions through its undeveloped water. We also request that the U.S. develop a plan to compensate Basin Tribes to forbear future water development for a certain number of years. This would provide Tribes that choose to participate in such a program with much needed funds for water infrastructure. Such a program would also allow the U.S. to ensure that tribal water flowing downstream could benefit the system during this ongoing drought.

IV. NO DEVELOPMENT CAPS

There have been suggestions from various entities or academia that the Colorado River Basin should be closed to new uses or that development caps should be imposed on the Upper Basin. Because tribes have not had the opportunity to fully develop their settled or adjudicated water rights, the Tribe strongly disagrees with these suggestions. This is a direct attack on tribal sovereignty. There are many tribes that need to provide clean piped drinking water to their tribal members; to develop agriculture to provide food for their tribal members; to develop their economies to provide jobs to their tribal members; and to use for many other purposes. Until tribes can benefit from their fully developed water resources in a manner that is equal to the rest of the Basin communities, the United States should not consider any suggestions for development caps or closure on new water uses for tribes within the Basin.

V. PARALLEL PROCESSES

The Post-2026 Operating Guidelines are only one step of many to address the impact of drought and climate change on the Colorado River system. The Tribe recommends that Reclamation and other U.S. agencies work on parallel efforts throughout the Colorado River Basin to assist in managing the waters in the Basin including:

1. Assist the Tribe with funding or technical assistance to provide access to clean drinking water for its tribal members that do not have plumbing to access that clean drinking water.
2. Fund new opportunities for tribes to participate in water conservation programs.
3. Fund the San Juan River Recovery Implementation Program to maintain and enhance the federal Endangered Species Act (ESA) recovery, which would assist the Tribe in

maintaining its ESA compliance for its water settlement in Colorado, as well as the other tribal, states, and federal project participants.

CONCLUSION

The Post-2026 Operating Guidelines should not only deal with management of Lake Mead and Lake Powell but should also consider the integrity and health of the Colorado River and its tributaries. Many tribes generally look 100 years into the future when making plans for their tribal members so that they account for future generations. The Post-2026 Operating Guidelines must account for future generations as well. The Post-2026 Guidelines must provide water security for the people in the Colorado River Basin; it should be flexible enough to address continuing drought and climate change; and it should allow for a variety of responses so that all sovereigns and water users are not managing a new crisis every few months. The NEPA process should be a comprehensive process used to identify all possible impacts to the Colorado River as a whole, which would include impacts to human uses, wildlife, fish, plants, social, and cultural uses.

Sincerely,



Melvin J. Baker

Chairman, Southern Ute Indian Tribe

TOHONO O'ODHAM NATION OFFICE OF THE CHAIRMAN AND VICE CHAIRWOMAN

Verlon M. Jose
CHAIRMAN



Carla L. Johnson
VICE CHAIRWOMAN

August 11, 2023

The Hon. Camille Touton
Commissioner
Bureau of Reclamation
1849 C Street NW
Washington DC 20240-0001

Via email to crbpost2026@usbr.gov

Re: Tohono O'odham Nation's Comments on Development of Post-2026 Operational Guidelines and Strategies for Lake Powell and Lake Mead

Dear Commissioner Touton:

This letter conveys the comments of the Tohono O'odham Nation (Nation) on the Bureau of Reclamation's Notice of Intent to Prepare an Environmental Impact Statement and Notice to Solicit Comments and Hold Public Scoping Meetings on the Development of Post-2026 Operational Guidelines and Strategies for Lake Powell and Lake Mead (88 Fed. Reg. 39455). The Nation appreciates the monumental task that Reclamation faces in constructing new operational guidelines. As Reclamation's Notice of Intent (NOI) notes, unprecedented drought and low runoff conditions necessitate significant actions to improve system stability and resiliency. Any such actions must, however, take into account the significant senior water rights, both quantified and unquantified, that the Nation and other Tribes in the Colorado River Basin possess, as well as the fact that more than a century of non-Indian development, aided by Reclamation's endeavors, have curtailed and compromised the full use of these rights. The Post-2026 process provides Reclamation with the opportunity to correct these historic errors in Colorado River management.

Accordingly, in developing new Post-2026 Guidelines, Reclamation must: (1) prioritize the tribal trust responsibility; (2) adequately analyze the impact of any proposed alternatives on both the Nation's existing water settlement and federal reserved rights; and (3) take measures to protect these assets. In practice, the 2007 Interim Guidelines fell short of these goals by crafting and modeling reductions to Central Arizona Project (CAP) deliveries without adequately addressing Reclamation's responsibility to ensure that the Nation will continue to receive its full water delivery entitlement in the event of shortages, as required by the Nation's settlement. In addition, the 2007 Interim

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Guidelines did not take into account the potential for shortages to lead to groundwater overdrafts near the Nation’s reservations, thus significantly impacting the Nation’s as-yet unquantified federal reserved water rights. While the 2007 Interim Guidelines purported to examine impacts to tribal interests through what it referred to as “Indian Trust Assets” and by treating Tribes as “environmental justice populations” separate from other minority or low-income populations, these methodologies relied on faulty or overly narrow assumptions, and thus failed to take the full scope of impacts on tribal interests into account.

It is incumbent on Reclamation to ensure that any new Post-2026 Guidelines protect the delivery of the Nation’s SAWRSA entitlement, or ensure that the Nation is adequately compensated for any delivery shortfalls. Moreover, Reclamation must appropriately analyze the impacts of any alternatives on the Nation’s federal reserved rights and Indian Trust Assets (as identified through appropriate investigation). Finally, prior to issuing any draft Environmental Impact Statement, Reclamation also must engage in government-to-government consultation with the Nation concerning these comments, other comments that it receives.

BACKGROUND

In order to appreciate the impact that the Post-2026 Guidelines will have on the Nation and its water rights, it is important to understand the historical context for the Nation’s use, and the non-Indian impacts on, these rights. The Nation has one of the largest reservations in the United States, with over 35,000 members and multiple reservation land bases, mainly in southern Arizona, totaling nearly three million acres of land. Climate change and drought have exacerbated the damage caused by centuries of federal mismanagement of tribal water rights, and the failure by the federal government to protect against non-Indian damage to these rights.

The Nation’s members (the Tohono O’odham) and their ancestors have cultivated this land since time immemorial, growing all manner of crops to support their way of life. Writing in the mid-19th century, a former Superintendent of Indian Affairs for the Arizona Territory noted:

The [Tohono O’odham] inhabit that triangular space of arid land bounded by the Santa Cruz, Gila and Colorado rivers, and the Mexican boundary line.” “. . .and here they have lived and planted and watched their flocks and herds ever since. . .” “They raise wheat, corn, barley, beans, peas, melons, and pumpkins, and are experts in the manufacture of pottery and willow-ware. In harvest time they spread all over the country as reapers and gleaners, returning with their wages of grain for winter.” “They have horses, cattle, sheep, poultry, and a great number of dogs.” “As these Indians were found in possession of the soil, they cultivate and have maintained themselves there continuously ever since, it would seem equitable

that their rights should be recognized by the Government of the United States.”¹

A later visitor noted that “where floods occurred, the water spread out in a thin sheet over the valley” in the Tohono O’odham homelands, “doing no damage.”² These same reports noted that “[a]s late as 1873 the valley was covered with grass.”³ In the late 19th century, a U.S. Indian Agent described the Nation’s San Xavier Reservation as:

[N]aturally more valuable than any other piece of land I have seen in the [Arizona Territory], because the water of the Santa Cruz River rises to the surface and flows almost 2 miles before leaving the Indian land. Here is also fully a thousand acres of the finest grazing land and more than seven thousand acres of the largest mesquite timber in the territory.⁴

Throughout the late 19th and into the 20th centuries, encouraged by the federal government, the Tohono O’odham improved and expanded their existing cultivation at San Xavier and developed thousands of additional acres of farmland in the northern portion of the Main Reservation in the Sif Oidak District.⁵

During the same period, however, non-Indian settlement and water use drastically undermined the Nation’s use of its water rights. This damage was further exacerbated by decades of inaction and mismanagement by the federal government, and by the encouragement of off-reservation irrigation through Reclamation loans and low cost preference-rate federal power, representing a comprehensive and profound failure on the part of the Nation’s trustee to protect its water rights. East of the Nation’s Main and San Xavier Reservations, mining, irrigation, and the growth of the nearby City of Tucson created “a serious imbalance between existing supply and demand,” resulting in “significant, long term declines in local groundwater levels.”⁶ By 1975, “the surface flow of the Santa Cruz River...disappeared. Except for a few small Mesquite, the forest of trees...vanished; and due to the lack of water all farming, except for...800 acres [was] destroyed.”⁷

¹ *Water Rights of Ak Chin Indian Reservation, Ft. McDowell Indian Reservation, Gila River Indian Reservation, Papago Indian Reservation, and Salt River Pima-Maricopa Indian Reservation: Hearings Before the Senate Committee on Interior and Insular Affairs*, 94th Cong. 416 (1975) (1975 Senate Hearing) (testimony of Tohono O’odham Nation (formerly Papago) Chairman Cecil B. Antone, quoting 1863 Report of Charles D. Poston, Superintendent of Indian Affairs, Arizona Territory).

² Clotts, H.V. 1915. *Report on Nomadic Papago Surveys*, at 59 (U.S. Department of Interior).

³ *Id.*

⁴ 1975 Senate Hearing at 417.

⁵ 1975 Senate Hearing at 418-423.

⁶ S. Rep. 97-568 at 38 (1982).

⁷ 1975 Senate Hearing 421-422.

The damage to the Nation's reservation and water supply ultimately led the Nation and the United States on the Nation's behalf to file suit against major water users.⁸ Meanwhile, similar actions by non-Indians along the northern boundary of the Nation's Main Reservation depleted the water table within the Sif Oidak District "to a point where many of the existing wells went dry and irrigation had to be abandoned."⁹

The Nation settled a portion of the substantial water rights claims concerning the eastern portion of its reservation lands through the Southern Arizona Water Rights Settlement Act, Pub. L. 97-293 (1982) (SAWRSA), as amended by the Arizona Water Settlements Act, Pub. L. 108-451 (2004) (AWSA). Under SAWRSA, the Nation gave up its significant claims concerning damages to groundwater and surface water in the Tucson Active Management Area. In exchange for releasing these claims, the United States promised that the Nation would receive reliable, affordable, and long-term access to CAP water. The federal government promised to safeguard the delivery of this entitlement through two separate mechanisms. First, the Secretary must deliver the Nation's entitlement from the CAP "or an equivalent quantity of water from any appropriate source" notwithstanding any declaration of shortage or "other occurrence affecting water delivery caused by an act or omission" of the federal government and its agents.¹⁰ In the event that the Secretary is unable to meet this obligation, she must compensate the Nation for this failure.¹¹ Second, the Secretary must, pursuant to Section 105 of AWSA, firm 28,200 acre-feet per year of the Nation's Non-Indian Agricultural priority water such that this water is delivered "during water shortages in the same manner as water with a municipal and industrial delivery priority in the Central Arizona Project system is delivered during water shortages." Congress vested Interior with the responsibility to manage and fund delivery of the Nation's CAP entitlement, and authorized substantial federal funding to pay for these deliveries. However, Interior has historically failed to seek adequate appropriations to fund this settlement, threatening access to the Nation's CAP water.¹²

SAWRSA settled the Nation's water rights claims to a little over 100,000 acres – less than 1/20th of its reservation lands. The Nation is currently in negotiations with the United States and others to settle the remainder of the Nation's water rights. As discussed below, both the Nation's water settlement entitlement and unquantified water rights were implicated by, but not adequately addressed in, the 2007 Interim Guidelines, and must be taken into account in any new Environmental Impact Statement in preparation for new Post-2026 Guidelines.

⁸ S. Rep. 97-568 at 40.

⁹ 1975 Senate Hearing at 423.

¹⁰ SAWRSA Sections 305(a)(2) and (b)(1) (as amended). These protections are reflected in both the Nation's SAWRSA settlement agreement, at Section 5.1.3, and CAP contract, at Section 6.5.3.

¹¹ *Id.* at Section 305(d).

¹² Interior recently sought and obtained transfers of funding from the Indian Water Rights Settlement Completion Fund to assist with SAWRSA deliveries. Unfortunately, significant additional funding is necessary in order to address the chronic undercapitalization that has stymied the full implementation of SAWRSA.

THE NATION'S COMMENTS ON THE DEVELOPMENT OF POST-2026 GUIDELINES

I. Reclamation must prioritize the Nation and other Tribes' interests in preparing and issuing new Guidelines, or otherwise risk breaching the federal trust responsibility.

As confirmed by federal court decisions, as well as Reclamation's own internal guidance, the federal government's trust responsibility extends to the protection of tribal water rights, irrespective of other competing claims to water.¹³ The overarching lens through which the 2007 FEIS viewed impacts to the Nation and other federally recognized Indian Tribes was through what it referred to as "Indian Trust Assets," (ITAs) namely, "assets held in trust by the federal government for federally recognized Indian tribes or individual Indians,"¹⁴ and as "environmental justice populations."¹⁵ According to Reclamation's NEPA Handbook:

Reclamation is committed to carrying out its activities in a manner that avoids adverse impacts to ITAs, when possible, and mitigates or compensates for such impacts when it cannot avoid the impacts. All impacts to trust assets, even those considered nonsignificant, must be discussed in the trust analyses in NEPA documents and appropriate compensation or mitigation implemented.¹⁶

Indian Trust Assets analyzed for the purposes of the Final Environmental Impact Statement for the 2007 Interim Guidelines (2007 FEIS) included "federal reserved Indian rights to Colorado River water including rights established pursuant to *Arizona v. California*, Colorado River water Tribal delivery contracts where such contracts are part of a congressional approved water rights settlement; and Indian reservations."¹⁷ As the NEPA Handbook acknowledges, *all impacts to trust assets*, even those that Reclamation may consider "nonsignificant," *must be discussed* in any EIS, and "appropriate compensation and mitigation implemented."

In addition to examining impacts to trust assets, Reclamation must prioritize the protection of these assets. Courts have repeatedly held and affirmed the priority that federally reserved water rights have over competing water rights.¹⁸ While Congress may sometimes require the federal

¹³ See, e.g., *Pyramid Lake Paiute Tribe v. Morton*, 354 F.Supp. 252, 256–257 (D.D.C. 1972); "Indian Policy of the Bureau of Reclamation," Reclamation Manual Policy NIA P10 (rev. September 24, 2020) at Sec. 6(F).

¹⁴ Final Environmental Impact Statement for the 2007 Interim Guidelines at 3-87

¹⁵ *Id.* at 3-141

¹⁶ Bureau of Reclamation NEPA Handbook at 3-29 (Feb. 2012).

¹⁷ FEIS at 3-87.

¹⁸ See, e.g., *Colville Confederated Tribes v. Walton*, 752 F.2d 397, 400 (9th Cir. 1985) ("Where reserved rights are properly implied, they arise without regard to equities that may favor competing water users."); *Baley v. United States*, 134 Fed. Cl. 619, 668-680 (2017), *aff'd*, 942 F.3d at 1341 (Fed. Cir. 2019) (holding Klamath irrigators' water rights are subordinate to Hoopa, Yurok, and Klamath Tribes' federal reserved water rights); *Klamath Water Users Protective Ass'n*

government to “carry water on at least two shoulders” in representing both tribes and nontribal interests,¹⁹ “the government remains under a firm obligation to represent [a Tribe’s] interests forcefully despite its other representative obligations,” and its failure in this regard may constitute a breach of its trust obligation.²⁰

Unfortunately, the 2007 FEIS employed flawed methodology to catalogue ITAs and to analyze potential impacts resulting from the alternatives on Tribes, appropriate “compensation or mitigation,” and environmental justice impacts. First, while the Nation’s SAWRSA settlement is included as an ITA, the 2007 FEIS did not account for or address Reclamation’s responsibilities to ensure the full delivery of the Nation’s entitlement in times of shortage, or compensation to the Nation in the event that such deliveries are not carried out. Second, while ITAs include “Indian reservations,” the 2007 FEIS did not appear to assess the impact of the action alternatives on unquantified *Winters* rights²¹ on Indian reservations that are not immediately adjacent to the Colorado River. This cramped interpretation of Indian Trust Assets ultimately led to an incomplete analysis concerning the impacts of each alternative on the Nation and its water rights.

As Reclamation has correctly noted, the Nation and other Tribes were left out of the decision-making process for crafting the 2007 Guidelines. It is incumbent on Reclamation, in fulfillment of its trust responsibility to Tribes, to prioritize tribal interests as develops new draft Guidelines, and to appropriately analyze the full panoply of these interests. Such a responsibility is particularly important given Reclamation’s stated intent to develop “more robust measures to protect reservoir levels.”²² Such measures must not be implemented at the expense of Indian Trust Assets.

A. Any new EIS must adequately address impacts to the Nation’s water rights settlement

The 2007 FEIS explicitly included the Nation’s SAWRSA settlement as an ITA.²³ As noted above, through the Nation’s SAWRSA settlement, as amended, the Nation obtained a substantial CAP entitlement in return for releasing claims concerning damages to its federal reserved rights. These rights were confirmed through the 2004 Arizona Water Settlements Act, well before the 2007 Interim Guidelines were developed. And yet the Interim Guidelines and 2007 FEIS did not take into account how the Secretary’s obligation under SAWRSA to deliver this water notwithstanding a

v. Patterson, 204 F.3d 1206, 1214 (9th Cir. 1999) (Reclamation “has a responsibility to divert the water and resources needed to fulfill the [Hoopa Valley] Tribes’ rights, rights that take precedence over any alleged rights of the Irrigators”).

¹⁹ *Nevada v. United States*, 463 U.S. 110, 128 (1983).

²⁰ *White Mountain Apache Tribe v. Hodel*, 784 F. 2d 921, 925 (9th Cir. 1986).

²¹ *Winters v. United States*, 207 U.S. 564 (1908).

²² Bureau of Reclamation, Review of the Colorado River Interim Guidelines for Lower Basin Shortages and Coordinated Operations for Lake Powell and Lake Mead (December 2020) at 44.

²³ 2007 FEIS at 3-90.

declaration of shortage would be impacted by the Guidelines, nor how the Secretary would provide compensation in the event that she is unable to fulfil this obligation.

Moreover, the 2007 FEIS did not provide any analysis or discussion of the impact of potential shortages on its firming obligation under AWSA, a fundamental obligation that underpins SAWRSA, and one that Reclamation must carry out for 100 years from the effective date of AWSA (i.e., through the year 2107). Reclamation repeatedly has acknowledged that firming requires the Secretary to identify and secure significant resources and alternative water supplies. Unfortunately, throughout the Interim Guidelines period, rather than taking a proactive approach to secure these resources in non-shortage years, Reclamation largely ceded control to non-Indian interests, thus exacerbating the impact, during shortage years, of shortages on the Nation.

A key example is Reclamation’s dispute with the Central Arizona Water Conservation District (CAWCD) over Central Arizona Project Excess Water.²⁴ Reclamation’s 2007 Stipulation with CAWCD over CAP repayment provides Reclamation with a priority right to purchase Excess Water, which Reclamation may then subsequently store for Indian firming – a right that Reclamation describes as a “critical resource for meeting the federal firming obligation.”²⁵ In violation of the stipulation, CAWCD instead diverted Excess Water for non-Indian programs, resulting in a loss to Reclamation’s firming program of tens of thousands of acre-feet.²⁶ But apart from a series of strongly-worded emails and letters and comments submitted to the Arizona State Auditor, it is unclear whether Reclamation has taken formal action to recover these lost resources.

In addition, the 2007 FEIS also did not adequately address impacts to all of the Nation’s water entitlements. While acknowledging the existence of the 8,000 acre-feet of Indian priority water contracted for delivery to the Sif Oidak District, the 2007 FEIS inexplicably claimed that “As this water is not presently part of a water rights settlement, it is not considered an ITA.” But this high priority water was set aside precisely in anticipation that it may be included in a water rights settlement, and has gone unused in part due to the federal government’s ongoing failure to construct on-reservation irrigation infrastructure necessary for the Nation to take delivery.

In its NOI, Reclamation suggests that the new Guidelines will take a “holistic approach to Colorado River management.” In order to truly fulfil this ideal, and to satisfy its trust responsibility to protect SAWRSA as an Indian Trust Asset, Reclamation must prioritize the protection of the Nation’s SAWRSA entitlement and the firming resources that supply it, and must undertake the investigation and analysis necessary to ensure that any potential shortage strategy or reservoir protections do not negatively impact this entitlement and these resources.

²⁴ Excess Water is CAP water in excess of water used, resold, or exchanged under long-term CAP contracts and subcontracts.

²⁵ Bureau of Reclamation Comments, Special Audit on Central Arizona Water Conservation District, Arizona Office of the Auditor General (November 2017) at 1.

²⁶ *Id.*

B. Any new EIS must adequately address the Nation's unquantified Winters rights.

As noted above, the ITAs analyzed in the 2007 FEIS included “federal reserved Indian rights to Colorado River water including rights established pursuant to *Arizona v. California*, Colorado River water Tribal delivery contracts where such contracts are part of a congressional approved water rights settlement; and Indian reservations.” The 2007 FEIS did not specifically explain the extent to which unquantified *Winters* rights are included (or not included) within these categories, but later concluded, in a sweeping fashion, that “no vested water right of any kind, quantified or unquantified, including federally reserved Indian rights to Colorado River water, rights pursuant to the Consolidated Decree or Congressionally-approved water right settlements utilizing CAP water, will be altered as a result of any of the alternatives under consideration.”²⁷ Such an unsupported conclusion is especially problematic for Tribes like the Nation, which has significant unsettled (and unquantified) federal reserved rights.

As noted above, prior to the construction of the CAP, off-reservation groundwater pumping by non-Indians severely damaged the Nation's reservation, water rights, and its ability to make use of them. The United States affirmatively recognized the harm caused by these injuries, and (again, as noted above) in some cases filed suit to stop them. At the same time, the federal government pointed to the construction of the CAP as a means to alleviate these harms, testifying before Congress that “Project delivery of Colorado River water will help relieve present overpumping of the declining ground water reserve in Maricopa, Pinal, and Pima Counties, Arizona.”²⁸ Further CAP reductions will no doubt lead to increased groundwater drawdowns near the Nation's reservations, which would in turn have a significant negative impact on the Nation's federal reserved rights. Indeed, as has been widely reported, Arizona farmers have anticipated this outcome and are either returning to groundwater pumping or preparing to do so, in some cases with federal financial support to drill additional wells.²⁹

2007 FEIS and Guidelines failed to address this possibility not only in delineating the scope of ITAs, but also analyzing the environmental consequences of agricultural impacts by assuming, incorrectly, that CAP reductions would lead to fallowing, rather than increased reliance on groundwater. The 2007 FEIS agricultural modeling framework examined the impact of various allocation alternatives on agriculture in Arizona, and noted that “[k]ey to this impact analysis is the

²⁷ 2007 FEIS, Vol. IV, IT-5.

²⁸ 1975 Senate Hearing at 521 (testimony of Jack O. Horton, Assistant Secretary for Land and Water Resources, Department of the Interior).

²⁹ See, e.g., “Cutbacks in water for central AZ farmers expected,” Arizona Capitol Times (April 26, 2021) (<https://protect-eu.mimecast.com/s/wFe9CYvpzFLQDpGzH9eE8G?domain=azcapitoltimes.com>) (“[CAP Colorado River Program Manager Chuck] Cullom said agricultural users have been working for many years to develop their groundwater capacities in preparation for reductions.”); “First mandatory cutbacks of CAP water now likely in 2022, Arizona Daily Star (May 23, 2022) (https://tucson.com/news/local/first-mandatory-cutback-of-cap-water-now-likely-in-2022/article_9f7aec9a-9e50-11eb-babd-df8247d1bfd6.html) (“The farmers are also supposed to get enough state and federal money to drill wells to pump another 70,000 acre- feet of groundwater, although most of the federal money needed still hasn't come in.”).

assumption that the most conservative way to estimate impacts is to assume that, if a shortage occurs, farmers would react by fallowing irrigated lands.”³⁰ While Reclamation acknowledged that “there are other sources of water that may be used by farmers in order to offset shortages,” such as “by pumping additional groundwater,” it nevertheless concluded that, because it was “difficult to project exactly how individual farmers, irrigation districts, or each of the Lower Division states may mitigate potential, future agricultural impacts from shortages,” it would choose instead to assume “that other sources of water would not be available.”³¹

Reclamation now has the opportunity to correct these errors in developing the Post-2026 Guidelines and in analyzing their potential impact on both Indian and non-Indian agriculture, and it is incumbent on Reclamation to do so.

II. Government-to-government consultation with the Nation

As confirmed by a host of authorities, the federal government is required to conduct meaningful government-to-government consultation with federally recognized Indian Tribes in conjunction with (and prior to) the implementation of plans with tribal implications.³² As Interior’s Departmental Manual makes clear, “Bureaus and offices must consult tribes . . . whenever a DOI plan or action with tribal implications arises,” and must “incorporate tribal views in their decision making processes.”³³ The Post-2026 process unquestionably has tribal implications within the meaning of the federal government’s consultation requirements.

The Nation applauds Reclamation’s decision to involve Tribes in the development of the Post-2026 Guidelines, and its engagement with the Nation to date, and looks forward to individual government-to-government consultation going forward.

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

Sincerely,



Verlon Jose
Chairman

³⁰ 2007 FEIS at 4-301.

³¹ *Id.*

³² See, e.g., Executive Order 13175, *Consultation and Coordination with Indian Tribal Governments* (Nov. 9, 2000); Presidential Memorandum, *Tribal Consultation and Strengthening Nation to-Nation Relationships* (Jan. 26, 2021).

³³ 512 DM 5 at 5.4(A).



UTE INDIAN TRIBE

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Phone (435) 722-5141 • Fax (435) 722-5072

October 10, 2023

Via Email and U.S. Certified Mail

The Honorable M. Camille Calimlim Touton
Commissioner

U.S. Bureau of Reclamation

1849 C Street, NW

Washington, D.C. 20240

mtouton@usbr.gov

crbpost2026@usbr.gov

Re: Ute Indian Tribe Comments on Reclamation's Post-2026 EIS Scope

Dear Commissioner Touton:

On behalf of the Ute Indian Tribe, I write to continue to express our Tribe's significant concerns with the Department of Interior's (Department) failure to actively account for, protect, and plan for the full use of our quantified Indian reserved water rights (Indian water rights) in the Upper Basin of the Colorado River. Department staff are well-aware of our position and articulation of our Indian water rights, a portion of which was adjudicated in 1923.

We have submitted numerous comments to Reclamation over the last 5 years in response to the continued, unbridled development of water in the Uinta Basin by Reclamation in partnership with the State of Utah. This partnership has resulted in the significant loss of water in the Uinta Basin as it is transferred out of the Colorado River Basin and developed to serve the needs of the Wasatch Front in Utah. Uinta Basin is the location for a large portion of our Indian water rights on the Uintah & Ouray Reservation. We have continuously requested that Reclamation provide an accounting of these waters and proof that our Tribal water remains in the rivers and streams for our development and use on the Reservation (or for other mutually agreeable uses). To date, Reclamation has not been responsive to any of our articulated concerns and requests.

We have the largest volume of unresolved Indian water rights in the Upper Basin. It is no secret that our undeveloped Indian water rights are going downstream and used to support the storage of water in Lake Powell, providing valuable assistance to the Upper Division States in satisfying their obligations to the Lower Division States under the 1922 Colorado River Compact. We have never been compensated for this valuable use of our Indian water rights—which has been involuntary. Reclamation and the State have never discussed nor negotiated with us on the use of our Indian water rights. Rather, both the Federal government and the State have successfully delayed the settlement and full recognition of our Indian water rights because of the significant benefit that has inured to the sole benefit of your governments to the detriment of our ability to develop and use our full Indian water rights.

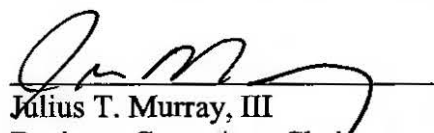
Under your leadership, Reclamation has opened up lines of communication to inform tribes about the current Post-2026 Colorado River review process. This is a significant achievement. But you must not stop here. A “water grab” is going on now, much like the “land grab” in the 1800s under which Indian tribes suffered deeply from the enormous loss of our ancestral lands. Do not let our Reservations dry up until they are uninhabitable under your Administration’s watch.

Although process is important, “consultation” with us is an insufficient process for addressing our concerns for the future development and use of our Indian water rights. We call upon Reclamation to recognize its obligations as the trustee of our Indian water rights with the duty to *explicitly* address the impacts of the alternatives for the Post-2026 operation and management of the Colorado River on our “trust assets.” This must not be a passive role under the current process. Reclamation needs to *initiate* discussions and negotiations (i.e., take the lead) on how our Tribal water rights will be accounted for (as separate from the “System” water under negotiations), can be developed, and used. We may have opportunities to partner in solutions to the current drought situation.

We support and approve of the Shared Comments submitted to Reclamation from the Upper Basin Dialogue on August 15, 2023.

Please contact the Tribal Secretary Reannin McLean (reannint@utetribe.com) to schedule a meeting in response to our articulated issues.

On Behalf of the Ute Indian Tribe Business Committee:



Julius T. Murray, III
Business Committee Chairman

xc: Wayne Pullan, Regional Director, Interior Region 7: Upper Colorado Basin,
Bureau of Reclamation, wpullan@usbr.gov
Ernest Rheame, Native American Affairs Program Manager for the Upper Colorado Basin
Region, Bureau of Reclamation, erheame@usbr.gov

Ute Mountain Ute Tribe

Office of the Chairman

*Mr. Manuel Heart
P.O. Box JJ
Towaoc, CO 81334*

August 15, 2023

Via Electronic Mail to crbpost2026@usbr

Bureau of Reclamation
Attn: Post-2026 (Mail Stop 84-55000)
P.O. Box 25007
Denver, CO 80225

Re: Ute Mountain Ute Tribe's Comments to the Notice of Intent to Prepare an Environmental Impact Statement and Notice to Solicit Comments and Hold Public Scoping Meetings on the Development of Post- 2026 Operational Guidelines and Strategies for Lake Powell and Lake Mead

Reclamation:

Thank you for the opportunity to address the Development of the Post- 2026 Operational Guidelines and Strategies for Lake Powell and Lake Mead on behalf of the Ute Mountain Ute Tribe (UMUT).

The Ute Mountain Ute Tribe would first like to thank the Bureau of Reclamation for supporting and making a step toward the inclusion of the 30 tribes on the Colorado River in the decision making process of the Post- 2026 operations of Lake Mead and Lake Powell. Exactly what that will look like will be determined after this August 15th deadline and, although it is a step in the right direction, the UMUT needs the federal government to uphold its trust responsibility in preserving and protecting tribes' federal reserved water rights and use in perpetuity.

Many ideas and solutions will come out of this process, but it should not divide the users on the Colorado River. Truth in the matter is that we are all humans and we all need water. Climate change is real, it is here. As tribes finally come into the picture, other Colorado River users need to know that these reservation boundaries weren't our original homelands. As tribes, we didn't decide where we should live, the Federal government decided that for us. For many centuries before we lived as nomadic people; following the river, following the food. Traditional,

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cultural indigenous knowledge is very valuable and should be incorporated into all aspects of the Post- 2026 Operational guidelines and strategies for Mead and Powell.

True equity is important in this conversation about the Post- 2026 Operations of Mead and Powell. Tribes to this day still live in the most impoverished conditions without adequate drinking water. Our White Mesa community in Utah only has a groundwater source that has been contaminated by uranium for many years and there is no surface water source to the community. We all are not on a level playing field because tribes do not have the political power. Large cities with the most per capita use need to reduce their consumption and practice good stewardship of the land. Conservation programs need to be better managed in the Lower Basin. As it stands now, the Lower Basin is realizing money from water, when in a portion of that water is unused, undeveloped tribal water from the Upper Basin.

Post- 2026 Operations and Guidelines should only be focused on Lake Mead and Lake Powell but in parallel States, Reclamation, and Tribes should be working on issues related to the Colorado River. Ute Mountain Ute Tribe is participating in the Upper Basin Dialogue (Upper Basin Tribes and Conservation groups) comment letter to Post-2026 Operations and Guidelines, but there are two comments where the UMUT disagrees. First, the UMUT does not believe that the Upper Basin reservoirs should be considered for use in Basin management systems. Second, the UMUT does not believe that reductions in the consumptive use in the Upper Basin should be included in the scope of Post-2026 Guidelines and Operations.

A broader range of alternative scenarios need to be made for the Post- 2026 Operations and Guidelines of Mead and Powell. The Colorado River users can't be in the same predicament we are currently in, going from crisis to crisis. The time to address the issues with Mead and Powell is now. The Demand Management/ System Conservation Pilot Program is a great idea in theory, but it does not work. It does not amount to enough water to be successful. The whole purpose of Mead and Powell is to have those reservoirs store water for years ahead; not continuing to drain the bank and hoping for another good year the next year.

Mechanism for Tribes to Consume Water Not Included in the Hydrology Forecast

The Post- 2026 guidelines are intended to address future operations of the reservoirs, so they need to include the consumption of Tribal water rights that are not currently being consumed or scheduled to be consumed. The Ute Mountain Ute Tribe has settled their water rights in Colorado and are vigorously planning to put that water to use. The UCRC Depletion Schedule includes the full use of those water rights, as determined in the 2018 Tribal Water Study. It is our understanding that those demands will be represented in the Post-2026 guideline analysis. However, the Ute Mountain Ute Tribe is currently pursuing water right settlements in New Mexico and Utah and is actively having discussions with potential lessees of its water and funding sources that could help install the infrastructure necessary to put that water to use. It would help if there was a mechanism that can be developed to allow the Tribe to consume additional water, yet not interfere with the river operations envisioned in the Post- 2026 guidelines as the water rights are settled and put to beneficial use. If this mechanism is not implemented, then the UMUT will face numerous obstacles to consumption of their water that they would not otherwise face.

Compensation for Unused Water

As stated above, Tribes like the Ute Mountain Ute Tribe are actively pursuing development of their unused water rights and such Tribe will continue to do so because water is important to their way of life and for economic development. Unfortunately, although progress is being made to identify the quantities of water that will be included in the yet unsettled New Mexico and Utah water rights claims, much of the Tribe's quantified rights remain *unusable* because the Tribe has been unable to negotiate its Repayment Contract with the Bureau of Reclamation for Lake Nighthorse water. More than 16,000 AF of depletions that are part of the Tribe's Federal Settlement bypass the Lake every year. The Tribe's frustrations in not being able to finalize a Repayment Contract is heightened not only by the fact that it has near-future uses for the water, but by the fact that the 16,000 AF is being used somewhere downstream and the Tribe is neither compensated for the water nor aware of the beneficiary.

Although no Tribe would willingly delay development of its water when the development serves its people, in order to ensure such development will not occur in the short term and potentially disrupt river operations and planning and to ensure a good faith acknowledgement of the contribution unused Tribal water is making to the Colorado River system, Tribes must be compensated for unused water and compensated to refrain from developing their water. The amount of compensation must include losses associated with ceasing development, such as costs of lost opportunities and prospective interested parties.

Compensation for Used Water

As with the discussion above, some Tribes, like the Ute Mountain Ute Tribe, are actively consuming large quantities of water that could be useful for managing reservoir levels. If these Tribes were to forego use, then the Tribes would lose important revenues derived from utilizing the water and the community's health is at risk.

In order to capture large quantities of water that could improve river and reservoir operations, Tribes who are willing to participate should be allowed to have their water by-pass their systems, unconsumed, and receive compensation for any economic loss that could have been experienced from utilizing the water, costs of restarting the water systems once the water is again being consumed, and lost opportunities that could have occurred during the period of abatement.

Current Modeling of Future Operations

In the CRSS modeling tool, Upper Basin demands can be changed and shortened by hydrology, yet Lower Basin demands are set and shortened by policy driven by allocations. Accordingly, Lower Basin demands need to be also based on hydrology and overall basin watershed yield, and not policy or reservoir levels alone. Evaporation and transit losses need to be accounted for in the Lower Basin modeling and more specifically, counted as Lower Basin use. The UMUT commends the inclusion of potential impacts of warm driven declining streamflow is much need, as a way to include climate change into modeling.

Tracking Tribal Water in the River System

Similar to above, in order to ensure that there is a clear understanding of the contribution quantified Tribal water makes to the Colorado River System, it is important to recognize as accurately as possible the source of Tribal water, its uses and depletions, the amounts that return to the system or are unconsumed, and the ultimate point of consumption and use of the water. This knowledge will help all water users and managers to best manage Tribal water and to understand the various ramifications of its use, non-use, and availability.

Energy Development

In order to mitigate the impacts of reduced power production or the loss of power, Reclamation must shore up and develop alternative sources of power and ensure that power projects using water continue to receive the water they need, regardless of reservoir operations. Many projects use water in order to produce power but do not have the dependence on water levels for pressure, such as the types of solar and pump back storage projects being planned at the Ute Mountain Ute Tribe. The Bureau must assess the water needs for these projects, including projects yet to be developed but with a realistic possibility of implementation, and ensure that water management does not jeopardize or reduce the effective operations of the projects.

Calculate Losses Due to Evaporation, Seepage, and System Losses

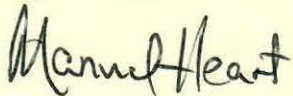
It is important that the true quantities of water used in the Lower Basin compared to the amounts delivered is fully understood so that we can have a comprehensive understanding of conservation in the Lower Basin, including mechanisms for reducing system losses where the losses are greatest. The Post- 2026 guidelines must account for and consider these losses when managing the Colorado River system to be effective and efficient.

Incorporate Other Consistent Responses

The Ute Mountain Ute Tribe incorporates into this response all responses from other entities that are not inconsistent with this response.

Thank you for your time. If you have any questions, please contact Peter Ortego, General Counsel, at portego@utemountain.org.

Respectfully,



Manuel Heart
Chairman



YAVAPAI-APACHE NATION

Executive Office

Chairwoman Tanya Lewis

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August 14, 2023

Via Email: crbpost2026@usbr.gov

U.S. Bureau of Reclamation
Attn: Post-2026 (Mail Stop 84-55000)
P.O. Box 25007
Denver, Colorado 80225

Re: Yavapai-Apache Nation's Comments to the Notice of Intent to Prepare a Supplemental Environmental Impact Statement and Notice to Solicit Comments and Hold Public Scoping Meetings on the Development of Post-2026 Operational Strategies for Lake Powell and Lake Mead, 88 Fed. R. 39455 (June 16, 2023)

Dear Project Manager:

By this letter, the Yavapai-Apache Nation ("Nation") submits its comments to the Notice of Intent to Prepare a Supplemental Environmental Impact Statement and Notice to Solicit Comments and Hold Public Scoping Meetings on the Development of Post-2026 Operational Strategies for Lake Powell and Lake Mead, 88 Fed. R. 39455 (June 16, 2023) ("NOI").

The Yavapai-Apache Nation is located in central Arizona and holds a CAP Contract with the Secretary of the Interior dated December 11, 1980 for 1,200 acre-feet of Indian priority Central Arizona Project ("CAP") water. The Nation is also one of several Tribes in Arizona whose water rights have yet to be quantified in Arizona's General Stream Adjudication, although the Nation is actively engaged in settlement negotiations at this time.

The management of the Colorado River system and the availability of water from this system directly impacts the Nation's ability to plan for its own water future and to negotiate a full and fair settlement of its water rights claims in the Basin. As competition for this most precious resource is elevated, the potential for Tribes being the ones who are disadvantaged also increases. The past 150 years of water management in the West gave little consideration to the lives of our Tribal people and essentially destroyed entire Tribal economies when water was diverted for non-Indian use. Now, with drought and climate change, our Tribal communities are again feeling the pressures of resource scarcity and we are concerned that we will, once again, experience new threats to our water supplies, including our CAP water entitlements.

Accordingly, the Bureau of Reclamation's consideration of Post-2026 operational strategies must take into consideration the United States' trust responsibility to Tribes and seek to implement management solutions on the

Colorado River that will protect deliveries of Colorado River water supplies to the Tribes, including the Yavapai-Apache Nation. Our request is also consistent with the Biden Administration's commitment to Tribes.

And where Colorado River water deliveries to Tribes may be reduced, assistance should be directly provided to Tribes to replace those water supplies through other means, particularly in cases where the reduction to a Colorado River water supply threatens Tribal public health, will result in damage to a Tribal economy, or would impair or impede the ability of a Tribe to reach a water rights settlement.

The Nation welcomes the opportunity to continue to engage in consultation with Reclamation as you work to formulate a management system for the Colorado River Basin that is cognizant of the needs of the Tribes which is informed by the context of history.

Please include me, our Attorney General, Mr. Scott Canty, and our Water Counsel, Ms. Robyn Interpreter, on all future communications related to this matter. Thank you.

Yours Truly,

YAVAPAI-APACHE NATION



Tanya Lewis, Chairwoman