

AK-CHIN INDIAN COMMUNITY

Community Government

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March 2, 2026

Bureau of Reclamation
Attn: BC00-1000
P.O. Box 61470
Boulder City, NV 89006

Via email: crbpost2026@usbr.gov

Re: Ak-Chin Indian Community's comments on the Draft Environmental Impact Statement on Post-2026 Operational Guidelines and Strategies for Lake Powell and Lake Mead (DEIS)

This letter conveys the Ak-Chin Indian Community's comments on the Draft Environmental Impact Statement on the Post-2026 Operational Guidelines and Strategies for Lake Powell and Lake Mead (DEIS). The Ak-Chin Indian Community (Community or Ak-Chin) supports Interior's efforts to address ongoing and worsening hydrology in the Colorado River Basin and recognizes that the severity of the problem calls for the consideration of a broad range of solutions. In selecting a preferred alternative, however, the Community's Congressionally confirmed water settlement—and the protections it secures for the Community—should not be disregarded. Likewise, the preferred alternative should reflect Interior's full federal authority consistent with the 1922 Compact and the Laws of the River, to ensure that the Upper Basin fulfills its delivery obligations to the Lower Basin.

I. The Community's Settlement Act

A. Background leading to Ak-Chin's water settlement.

The Ak-Chin people have farmed the area of our current Reservation since time immemorial. Our very name is an O'odham word that translates to "mouth of the wash," a reference to our people's traditional, floodwater-based agricultural practices. Immediately after the establishment of the Ak-Chin Reservation in 1912, and in response to concerns about non-Indian development in the area, the United States filed notices of appropriation of approximately 60,000 acre-feet (AF) of water per year (AFY) from the Santa Cruz River and an additional 10,000 AFY from the Vekol Wash on behalf of the Community for "irrigation and domestic use." Unfortunately, the United States never constructed the facilities necessary for Ak-Chin to make use of this water, and it was gradually lost due to wrongful diversion and pumping by non-Indian users. Making matters worse, the United States severely restricted Ak-Chin's ability to farm its Reservation. As a result of these circumstances, the Ak-Chin people lived in abject poverty for decades.

During the 1960s, the Community established Ak-Chin Farms and reclaimed authority over agricultural operations on its lands. Under the Community's careful management, Ak-Chin Farms grew from a profit of \$21,000 in 1964 to more than \$1 million in 1976. As reflected in the testimony accompanying Ak-Chin's water settlement legislation, Ak-Chin Farms placed the Community on a road from poverty to prosperity, allowing the Community to "build many modern homes for its members and improve their quality of life."¹

Over time, intense off-Reservation pumping by non-Indian farmers around the Ak-Chin Reservation reversed the local hydraulic gradient causing groundwater that once flowed under the Reservation to flow away from it into a cone of depression. The drop in groundwater levels under the Reservation increased the cost of groundwater production, caused wells to run dry, forced Ak-Chin to abandon previously farmed acreage on the Reservation, and caused extensive land subsidence. There was insufficient "economically recoverable ground water beneath the reservation to sustain a farming operation." Act of July 28, 1978, Pub. L. 95-328, 92 Stat. 409 (1978 Settlement Act), § 1(b)(4).

In response, the United States prepared to sue the local farmers pumping groundwater for past damages and to force them to cease pumping groundwater. The United States intended to seek a quantification of the Community's federal reserved water rights based on the *Winters* doctrine. In lieu of disruptive litigation, Ak-Chin and the United States successfully negotiated the first congressionally approved settlement of tribal water rights.

In the 1978 Settlement Act, the United States expressly recognized that it had breached its trust obligations to Ak-Chin and caused permanent impairment of the Community's ability to viably access native groundwater from its Reservation. Congress directed the Secretary of the Interior to investigate the construction of a well field on nearby federal lands and conveyance facilities necessary to meet the Community's annual water needs on an emergency basis, until a permanent water source could be identified to ensure that the Community received 85,000 AFY. *Id.* §§ 1(b)(5) & 2. Congress further mandated that the Community's permanent water supply of 85,000 AFY be in place within 25 years—*i.e.*, by 2003. *Id.* § 3. The 1978 Settlement Act was quite clear in its intent to provide Ak-Chin "a permanent supply of water in a fixed amount" as a replacement for the mined groundwater that the Community would otherwise have accessed. *Id.* § 1(b)(5); *see also* May 13, 1980 Memorandum from John Leshy, Associate Solicitor for Energy and Resources to Secretary Watt (Regarding Ak-Chin's water settlement, "the intent is to restore the Indians to the position they would have been in had the water underlying their reservation not been depleted by non-Indians.")

B. The 1984 Settlement Act and the 1985 Settlement Contract between the United States and the Community is intended to provide the Community with a "permanent supply."

After Congress passed Ak-Chin's 1978 Settlement Act, upon further investigation, the Secretary determined that the contemplated well field was not feasible. Based on that conclusion, the United States reopened discussions with Ak-Chin, and those discussions culminated in the 1984 Ak-Chin Settlement Act (P.L. 98-530, 98 Stat. 2698) (1984 Settlement Act). Key terms of the 1984 Settlement Act are also reflected in the Community's 1985 "Contract between the United

¹ Proceedings and Debates of the First Session of the 95th Congress, dated May 18, 1977 to May 24, 1977.

States and the Ak-Chin Indian Community to Provide Permanent Water and Settle Interim Water Rights” (1985 Settlement Contract). The 1984 Settlement Act provides, *inter alia*, that Ak-Chin would receive, no later than January 1, 1988, “a *permanent* water supply from the main project works of the Central Arizona Project ... of not less than seventy-five thousand acre-feet of surface water suitable for agricultural use except as otherwise provided under subsections (b) and (c)” delivered to the Ak-Chin Reservation each year. 1984 Settlement Act, § 2(a) (emphasis added). Subsection (b) provided that the Community would receive up to 10,000 additional AF of water “[i]n any year in which sufficient surface water is available.” *Id.*, § 2(b).²

Section 2(f) identifies the two sources of water supply, totaling 108,300 AFY, that are available to the Secretary to fulfill the United States’ obligations to the Community. First, “a permanent supply” of 50,000 AFY of water previously authorized for diversion to and beneficial consumptive use on lands of the Yuma Mesa Division of the Gila Project. *Id.*, §2(f). This “Yuma Mesa water” is Priority 3 CAP water. *See id.* Second, Ak-Chin may access an allocation of 58,300 AFY of CAP Indian Priority water “as is necessary to fulfill the Secretary’s delivery obligations.” *Id.*, § 2(f). In other words, the entire 58,300 AF of CAP Indian Priority water is available to the Community. The 1984 Settlement Act also expanded permissible uses of Ak-Chin’s CAP Settlement Water—its only reliable water source—to meet all of the Community’s homeland needs, including agricultural, domestic, and municipal uses. § 2(j).

Subsection (c) provides that “[i]n time of shortage, if the aggregate supply of water referred to in subsection (f) is not sufficient to deliver seventy-five thousand acre-feet, the Secretary may deliver a lesser quantity, *but in no event less than seventy-two thousand acre-feet.*” *Id.*, § 2(c) (emphasis added). *Id.*³ In no event—specifically including even in time of shortage—does the 1984 Settlement Act allow the United States to deliver less than 72,000 AFY of surface water to the Ak-Chin Reservation. It is imperative that Reclamation keep this obligation at the forefront when evaluating alternatives for the future management of Colorado River water. This responsibility arises under federal statute and must be fulfilled by the United States.

C. The Community relies upon CAP water, its only reliable source of supply.

The Community has substantial water needs and requires its entire CAP water entitlement. Our settlement water supports our members and workers as well as our economy—just as Congress intended. Today, the Community is the largest employer in Pinal County, employing over 1,300 people, and is a substantial contributor to the local economy. Ak-Chin has more than 1,100 members and is growing. Faced with an increasing commercial water demand and a diminishing groundwater supply, in 2012, Ak-Chin constructed a surface water treatment plant (SWTP) to treat

² This statutory provision is not addressed in the DEIS and thus the availability of this water is not discussed further herein. Ak-Chin reserves its right to contest the United States’ recent determinations that such water is no longer available to the Community.

³ The 1984 Settlement Act defines a shortage as “a calendar year for which the Secretary determines that a shortage exists pursuant to section 301(b) of the Colorado River Basin Project Act of September 30, 1968 “43 USC 1501” (Public Law 90–537), such that there is not sufficient Central Arizona Project water in that year to supply up to a limit of three hundred nine thousand eight hundred and twenty-eight acre-feet of water for Indian uses, and up to a limit of five hundred ten thousand acre-feet of water for non-Indian municipal and industrial uses.” *Id.*, § 2(c).

its CAP Settlement Water to meet its domestic, municipal and commercial needs. Ak-Chin designed its SWTP to treat CAP water, which is consistent in quality, requires minimal treatment, and meets ADEQ water source standards.

The Community uses most of its water entitlement at Ak-Chin Farms, where it grows cotton, wheat, pecans, alfalfa, sorghum, barley, and salt sensitive crops such as potatoes, peppers, and corn. Ak-Chin Farms is tribally owned and operated. It is our largest non-gaming revenue source, funding Community programs for elder assistance, Community member housing, and education. Ak-Chin Farms has 80 employees, who are primarily Community members. We cultivate over 16,000 acres of farmland with almost 75% of the Ak-Chin Reservation farmed.

Since Ak-Chin's settlement, we have ensured that no water is wasted at the Farm. Ak-Chin and Reclamation work collaboratively to ensure that Ak-Chin Farms' infrastructure remains efficient. Through a jointly developed water conservation plan, Ak-Chin began transitioning from flood irrigation to sprinkler irrigation as early as the 1980s. By investing its own resources, Ak-Chin has successfully converted approximately two-thirds of its farmland to sprinkler irrigation, significantly enhancing water conservation and operational efficiency.

The local economy has grown increasingly dependent on the Community's water resources. The Community leases up to 6,300 AFY of its settlement water to off-Reservation communities, including Anthem, north of Phoenix, which rely on Ak-Chin's high-priority, high-quality CAP water supply. In addition, local dairies depend on the Community's alfalfa for feed, while the Community's potato crops supply major companies such as Frito-Lay and In-N-Out Burger.

Until very recently, Ak-Chin received 85,000 AF of water each year pursuant to § 2(b) of the 1984 Settlement Act. Based on the ongoing drought conditions, the United States already has reduced the Community's water supply by 10,000 AFY. Moreover, Ak-Chin does not store significant amounts of water or allow it to go unordered. As a result, any curtailment of deliveries to Ak-Chin would have a direct adverse impact on Ak-Chin Farms, the economic engine that powered the Community's rise to economic prosperity and that employs many Community members.

Importantly, CAP water is the only reliable source of water available to the Community. Due to historical over pumping of groundwater that precipitated the Community's water settlement, the groundwater under the Reservation is poor quality, requiring extensive and expensive treatment prior to domestic use. The groundwater also is insufficient in quantity to meet the domestic, commercial, and agricultural needs of the Community, a fact of which the United States was keenly aware when it devised Ak-Chin's settlement. *See* May 13, 1980 Memorandum from John Leshy, Associate Solicitor for Energy and Resources to Secretary Watt ("The reservation's water supplies are nearing depletion . . . and without water . . . the maintenance of the reservation as a permanent tribal homeland will be difficult or impossible.") For this reason, the United States sought a permanent supply for the Community. Indeed, unlike any other tribal water settlement, the word "permanent" appears 12 times in Ak-Chin's 1984 Settlement Act.

D. The Community's Water cannot be reduced below 72,000 AFY.

The DEIS includes alternatives and components of alternatives that purport to reduce the Community's water below 72,000 AFY. A reduction of the Community's settlement water below this amount would violate the United States' statutory and contractual obligations to the Community.

Such statutory obligations cannot be lightly disregarded. They cannot, for example, be subjugated to the Secretary's generally broad authority over the allocation and management of Colorado River waters. Nor can they be modified by contract, although the key terms of the 1984 Settlement Act are also reflected in the Community's 1985 Settlement Contract with the Secretary. Additional terms in that contract, including a damages provision for failure to meet the Secretary's water delivery obligations and a *force majeure* provision provided a limited excuse for non-performance, do not invalidate the Secretary's statutory obligation to deliver not less than 72,000 AFY of surface water to Ak-Chin even in times of shortage. Moreover, the 1985 Settlement Contract's *force majeure* clause is plainly inapplicable to such foreseeable events as drought and resultant shortages that are expressly provided for in the 1984 Settlement Act and the 1985 Settlement Contract. *See, e.g., VEREIT Real Est., LP v. Fitness Int'l, LLC*, 529 P.3d 83, 87 (Ariz. Ct. App. 2023) ("Force majeure clauses . . . are designed to excuse parties from performance of a contract when an unforeseeable event beyond their control has frustrated the parties' contractual purpose, made it impossible for one or both of the parties to perform or made it impracticable to do so."); *see also* October 30, 1990 letter from Reclamation to Delia Antone ("In time of shortage, the Secretary may deliver a lesser quantity but in no event less than 72,000 acre-feet. Nothing in Public Law 98-530 or the Contract relieves the Secretary of the obligation to deliver these annual quantities except force majeure.")

The 1984 Act's assurance that Ak-Chin will not receive less than 72,000 AFY of surface water even in times of shortage makes perfect sense, and indeed is necessary, in light of the historic facts giving rise to the Ak-Chin water rights settlement. Congress did not settle Ak-Chin's water rights claim and provide for the delivery of surface water from the far-distant Central Arizona Project because it was convenient or merely because the Community preferred surface water. It did so because it had allowed the groundwater underlying the Ak-Chin Reservation to be mined to the point that groundwater quantity and quality rendered the Community's continued reliance on groundwater unfeasible and because continued groundwater pumping would likely contribute to further land subsidence. Ak-Chin, unlike some users of Colorado River water and as a direct result of the United States' prior breach of its trust obligations, simply lacks the option to revert to large-scale groundwater pumping to meet its water needs. In fact, the Community's 1985 Settlement Contract with the United States restricts the Community's ability to develop groundwater. *See* 1985 Settlement Contract, ¶ 8 ("the Community agrees to limit its use of ground water within the exterior boundaries of the reservation"). Hence the congressionally recognized need to provide the Community with "a *permanent* water supply *in a fixed amount*" that the Community could rely on to meet its needs in perpetuity, just as it would have relied on groundwater absent its trustee's misconduct. 1978 Act, § 1(b)(5).

E. The Community's water cannot be reduced for delivery losses.

Several of the alternatives incorporate the distribution of shortages “submitted by the Lower Divisions States” of 1.5 million AF, with Arizona allocated 760,000 AF. The Lower Basin States’ proposal derived from the desire to account for the “Structural Deficit below Lake Powell” caused by a failure to account for delivery losses. Should this component of an alternative be applied in Arizona, the resulting shortage accounting for the “Structural Deficit” cannot be applied to the Community’s water entitlement.

The 1978 Settlement Act, like the subsequent 1984 Settlement Act and federal delivery contracts with the Community, was quite specific regarding the United States’ obligation “to meet the Community’s needs for a permanent supply of water *in a fixed amount.*” 1978 Act, §1(b)(5) (emphasis added). Accordingly, rather than allocating a certain amount of Colorado River water to Ak-Chin, in the 1984 Settlement Act, Congress allocated “[s]uch Central Arizona Project water . . . as is necessary to fulfill the Secretary’s water obligations” to the Community. 1984 Settlement Act, § 2(f)(2). That obligation, as stated by Congress, is to “delivery 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 *not less than seventy-five thousand* acre-feet of surface water suitable for agricultural use” subject to certain conditions. *Id.* § 2(a) (emphasis added). Plainly, the United States’ obligation is not to allocate or divert 75,000 AF of surface water to the Community and then deliver that amount less transit losses, but rather to deliver the full fixed amount to the Ak-Chin Reservation and to allocate such water as is necessary to ensure that obligation is met. The United States has operated for many years with the understanding that Ak-Chin’s settlement water cannot be reduced by system delivery losses, and the United States must continue to comply with the 1984 Settlement Act and 1985 Contract.

F. The Community's water cannot be reduced based upon pro rata reductions.

Several of the DEIS alternatives contemplate reductions of the Community’s water on a pro rata basis, as opposed to applying reductions based upon priority. As explained above, in devising the Community’s settlement, Congress acquired 50,000 AFY of high priority (CAP P3 priority) “Yuma Mesa water” and allocated 58,000 AFY of CAP Indian Priority water, more than is needed to fulfill Ak-Chin’s entitlement, to ensure the Community has a “permanent” source of water. Congress purposefully provided high priority water to the Community to put it in the same position it would have been had the United States not breached its trust responsibility to the Community by allowing its groundwater to be mined by non-Indians. Simply put, reducing the Community’s water based on a pro rata reduction would be a direct violation of the Community’s 1984 Settlement Act and of the trust responsibility the United States owes to the Community.

G. The United States owes trust responsibilities to the Community.

The DEIS fails to meaningfully address the United States’ trust responsibility to tribes in the Colorado River Basin—particularly those, like the Community, whose congressionally

approved settlements depend on CAP water, and whose water, based on Reclamation’s modeling, stand to be reduced under certain DEIS alternatives.

The Supreme Court has long recognized the “distinctive obligation of trust incumbent upon the Government in its dealings with [Indian tribes].” *See United States v. Mitchell (Mitchell II)*, 463 U.S. 206, 225 (1983). The United States has an obligation to protect the Community’s water—not only because the United States acts as trustee, but because Congress expressly required it to do so. Ak-Chin’s 1984 Settlement Act mandates the United States deliver a permanent water supply of Colorado River water to the Community. *See* § 2(c); *see also Shoshone-Bannock Tribes of Fort Hall Rsrv. v. U.S. Dep’t of the Interior*, 153 F.4th 748, 765 (9th Cir. 2025) (“[T]he United States’ trust responsibility to Tribes requires the preservation of Tribal rights unless Congress’s contrary intent is clear and unambiguous.”). And where federal agencies violate statutory provisions protecting tribal interests, they breach their fiduciary duties as well. *See Pit River Tribe v. U.S. Forest Serv.*, 469 F.3d 768, 788 (9th Cir. 2006) (“Because we conclude that the agencies violated both NEPA and NHPA during the leasing and approval process, it follows that the agencies violated their minimum fiduciary duty to the Pit River Tribe when they violated the statutes.”). Ak-Chin’s 1984 Settlement Act requires the United States to pay damages to the Community for any violations of its delivery obligations thus clearly giving rise to “money mandating duties” owed to the Community. *See generally Mitchell II*, 462 U.S. 206 (1983).

Moreover, as a tribal trustee, Interior should finally formalize roles for tribes in decision-making on the Colorado River. For too long, tribes in the Colorado River Basin have been left on the side-lines and outside of decision-making processes. Just a few years ago, in fact, Ak-Chin’s request to participate in Arizona’s Reconsultation Committee on the 2026 Guidelines was denied. Although Ak-Chin’s exclusion from stakeholder discussions was eventually addressed, it reflects a long-standing pattern within the Colorado Basin of insufficient tribal inclusion in key decision-making processes. Moving forward, the United States should engage in meaningful consultation with tribes and establish formal mechanisms that ensure Basin Tribes have a defined and lasting role in the future management of the Colorado River.

H. The United States failed to consider the cultural significance of farming to Ak-Chin.

NEPA requires a “hard look” at environmental consequences of agency actions, including “aesthetic, historic, cultural, economic, social, or health” effects. 42 U.S.C. § 4332(2)(C); *see Oglala Sioux Tribe v. U.S. Nuclear Regulatory Comm’n*, 896 F.3d 520, 530 (D.C. Cir. 2018). In *Oglala Sioux Tribe*, the court on appeal accepted the Board’s finding that the EIS’s “inadequate discussion of potential impacts to [the Tribe’s] cultural, historical, or religious sites” was a “significant deficiency.” *Id.* at 531 (emphasis in original).

This DEIS is similarly deficient because it fails to consider the likelihood of harmful impacts to the Community’s farming practices and the cultural significance thereof. As set forth in the legislative history of the Community’s Settlement Acts, the Ak-Chin people have farmed the area of their present-day reservation since time immemorial. The ancestral home of the Ak-Chin is a village along the Santa Cruz River. Ak-Chin members relied upon the Santa Cruz River, Vekol Wash, and the Santa Rosa Wash to grow subsistence crops such as melons, beans, corn, squash, and pumpkins. The very name “Ak-Chin” is derived from an O’odham word meaning

“mouth of the wash,” a reference to the Community’s traditional farming of lands whose fertility was renewed annually by silt deposits carried down through the Vekol Wash. In addition to relying on subsistence for centuries, the Community more recently turned to commercial farming. The 1962 establishment of Ak-Chin Farms allowed the Community to take control of farming on its lands, and Ak-Chin’s careful, respectful management of its commercial farming enterprise lifted the Community out of poverty, allowing it to build modern homes and improve the quality of life for Community members. It is no exaggeration to say that farming is a fundamental aspect of Ak-Chin’s historic and modern cultural identity, and unlawful water delivery reductions that undermine the Community’s ability to farm its lands would cause far more than economic harm.

The DEIS does not discuss the probable harmful effects of the alternatives to Ak-Chin’s agricultural endeavors, nor does it include any reference to the Community’s history and reliance on farming as a culturally significant practice. The DEIS has therefore failed to fulfill the requirements set out in NEPA.

I. The DEIS fails to consider the economic impact on the Community and cities who rely upon CAP water to meet their municipal needs.

DEIS provides no assessment of the impact to Ak-Chin or other municipalities of reducing or eliminating access to municipal water supplies. As explained above, Ak-Chin has no viable alternative to CAP water as the sole reliable supply for serving Community members and sustaining its commercial enterprises. Its SWTP is designed to treat CAP water, not groundwater, and it is economically infeasible for the Community to design and construct facilities to treat groundwater to meet the Community’s municipal needs. The DEIS should consider operational constraints facing the Community and other municipalities and the economic consequences associated with any alternatives causing the Community’s CAP water to be reduced.

J. The DEIS fails to consider mitigation measures.

Similarly, the DEIS does not meet NEPA’s requirement for discussion of mitigation measures. In *Robertson v. Methow Valley Citizens Council*, the Supreme Court explained that “one important ingredient of an EIS is the discussion of steps that can be taken to mitigate adverse environmental consequences.” 490 U.S. 332, 351 (1989). A discussion of mitigation must include “at least some evaluation of effectiveness,” and “mere lists of mitigation measures are insufficient.” *Protect Our Communities Foundation v. Jewell*, 825 F.3d 571, 582 (2016). While the DEIS explores the potential effects on water allocations under various models, it fails to consider harmful impacts to the Community. In other words, the DEIS explains how and when the Community’s water will be cut but includes no consideration of how these cuts are likely to affect the Community’s agriculture, economy, natural resources, and a host of other areas. And because the DEIS fails to consider these harmful effects, it has likewise failed to include any discussion of how these effects may be mitigated.

II. **Compliance with the Laws of the River**

We understand that in recent years Reclamation has maintained a neutral position with respect to the 1922 Compact’s delivery obligations. Given the severity of current hydrologic

conditions—and the fact that the DEIS alternatives are not sufficiently robust with respect to CAP Indian priority water—the United States must clearly articulate how federal projects, including the CAP, will be operated going forward. That explanation must account for the Upper Basin States’ delivery obligations to the Lower Basin and ensure that those obligations are fully reflected in future operational decisions. It also is incumbent on Reclamation and Interior to exercise their federal authority to bring water from the Upper Basin to the Lower Basin to achieve a sustainable water supply. This authority includes Reclamation’s authority to access water stored in the Upper Initial Units reservoirs to fulfill the Upper Basin’s delivery obligation at Lee Ferry.

A. The DEIS should reflect the Upper Basin’s Delivery Obligation to the Lower Basin.

The United States’ alternatives in the DEIS should reflect the Upper Basin’s delivery obligation to the Lower Basin. Article III(d) of the Compact requires the Upper Basin to ensure a minimum delivery of 75 million acre-feet over a rolling 10-year period at Lee Ferry (plus the delivery obligation to Mexico), a position reflected in longstanding federal practice and critical to the stability and predictability of water supplies for Lower Basin users. None of the DEIS alternatives, however, meaningfully analyze the Compact’s delivery obligations, including Article III(d)’s delivery requirement. NEPA requires an EIS to consider reasonably foreseeable effects and actions.⁴ Given the current hydrology, it is reasonably foreseeable that flows at Lee Ferry will drop below the delivery obligation under the Compact, and thus the Lower Basin States will call for Compact deliveries and curtailment in the Upper Basin. The DEIS alternatives ignore this inevitability and fail to analyze delivery deficits as reasonably foreseeable effects of the proposed federal action.

The Community believes this omission renders the DEIS inadequate under NEPA and increases the likelihood that any operating guidelines adopted as the result of this process will lead the Colorado River Basin into a Compact violation and potential litigation. The final EIS should ensure that the post-2026 operating guidelines are consistent with the Compact’s legal framework and explicitly model alternatives that account for the Upper Basin’s delivery obligation.

B. The DEIS should include access to the Upper Initial Units to fulfill the delivery obligation.

The DEIS also should include alternatives that provide for access to water stored in the Upper Initial Units reservoirs to fulfill the delivery obligation at Lee Ferry, because these reservoirs were authorized and constructed as part of the Upper Colorado River Basin Storage Project Act to enable the Upper Basin to meet its Compact responsibilities, even during periods of drought or shortage. Including such alternatives helps ensure Compact compliance and the avoidance of a potential Compact Call.

Congress enacted the Colorado River Storage Project Act (CRSPA) in 1956 to authorize the Upper Basin States to develop water resources “by providing long-term regulatory storage of water to meet the entitlements of the Lower Colorado Basin.”⁵ Reclamation’s website reinforces

⁴ See NEPA § 102(2)(C)(i),(ii), 42 U.S.C. § 4332(2)(C)(i),(ii).

⁵ U.S. Dep’t of the Interior, Bureau of Reclamation, Upper Colo. Basin Region, *Colorado River Storage Project Fact Sheet* (Jan. 2022), <https://www.usbr.gov/uc/water/crsp/>.

that storage in the Upper Initial Units is to ensure the Upper Basin States meet their delivery obligations. *See Colorado River Storage Project* (“The Colorado River Storage Project (CRSP) provides for the comprehensive development of the Upper Colorado River Basin. The project furnishes the long-time regulatory storage needed to permit States in the upper basin to meet their flow obligation at Lees Ferry, Arizona, as defined in the Colorado River Compact, and still utilize their apportioned water.”).⁶

CRSPA authorized the Secretary to “regulat[e] the flow of the Colorado River” and “mak[e] it possible for the States of the Upper Basin to utilize, consistently with the provisions of the Colorado River Compact, the apportionments made to and among them in the Colorado River Compact and the Upper Colorado River Basin Compact,” among other purposes.⁷ Congress also directed the Secretary, “in the operation and maintenance of all facilities, authorized by Federal law and under the jurisdiction and supervision of the Secretary of the Interior, in the basin of the Colorado River,” to “comply with the applicable provisions of the [Law of the River] in the storage and release of water from reservoirs in the Colorado River Basin.”⁸

Although the DEIS contemplates releases from the Upper Initial Units to protect Lake Powell infrastructure, CRSPA authorized the Upper Initial Units to ensure sufficient flows at Lee Ferry, not solely to ensure sufficient water levels for power, recreation, or aesthetic purposes. The DEIS’s failure to model or require releases from the Upper Initial Units for Compact compliance conflicts with the CRSPA and congressional intent.⁹ To satisfy the Secretary’s duty to operate federal projects in accordance with the Compact and federal law, the final EIS and operating criteria must include guidelines to release stored water from the Upper Initial Units into Lake Powell for delivery at Lee Ferry.

C. The United States should protect the CAP from reductions that interfere with its ability to deliver water.

The CAP is a 336-mile-long water conveyance system critical to the delivery of Colorado River water to Central Arizona, including the Community. The federally owned CAP infrastructure was not intended to withstand extended periods of low water levels or dry ups within the system. Rather, Reclamation designed and constructed the CAP infrastructure with the assumption that water would be present continually. Without CAP infrastructure, the United States is unable to fulfill its statutory obligations to Ak-Chin.

⁶ Bureau of Reclamation, *Colorado River Storage Project* (last updated Feb. 2, 2024), <https://www.usbr.gov/projects/index.php?id=440>.

⁷ Colorado River Storage Act, Pub. L. No. 84-485, 70 Stat. 105, 106 (1956) (codified as amended at 43 U.S.C. § 620).

⁸ *See* 70 Stat. 105, 110-11 (codified at 43 U.S.C. § 620m). A similar provision is contained in Section 601(c) of the CRBPA. Colorado River Basin Project Act, Pub. L. No. 90-537, 82 Stat. 885, 899 (1968) (codified at 43 U.S.C. § 1551(c)).

⁹ *See* Engineering Advisory Committee Memorandum, July 7, 1948, 8-9 (“[h]oldover reservoirs must be constructed in the Upper Colorado River Basin to impound water in years of high runoff and to release such stored water in critical periods of low runoff, such as 1931-40, to help meet the Upper Basin obligation at Lee Ferry”).

The DEIS evaluates five alternatives, and in four of the five scenarios, the bulk of the shortage falls on Arizona and CAP. Under the Basic Coordination Alternative, Reclamation proposes reducing CAP deliveries to 236,900 AF. These water supply scenarios would devastate CAP and the communities it serves, including Ak-Chin, yet the DEIS fails to adequately explain or analyze these impacts. If CAP's infrastructure is compromised by DEIS-induced shortages, the Secretary may be unable to deliver even the minimum required volume of 72,000 AFY to the Community. The practical ability to deliver Ak-Chin's water depends on CAP's operational viability, which the DEIS alternatives fail to analyze.

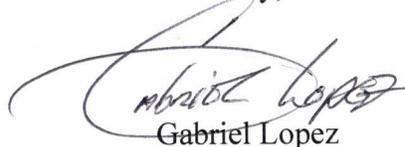
Reductions in CAP flow also threaten Ak-Chin and other CAP-dependent users' water quality. CAP currently operates as a fast-moving, low trophic system that supports stable biological communities and reliable water quality. If flows drop below 700,000 AF, the risk of harmful algal blooms, insect breeding, nuisance or invasive species, and environmental impairment increases dramatically. At 300,000 acre-feet, CAP faces a heightened risk of compounding impacts that would affect water quality, public health, and system reliability. These risks are particularly acute for communities like Ak-Chin, whose water treatment infrastructure is designed specifically for CAP water. The DEIS alternatives do not analyze these foreseeable water quality impacts nor analyze the significant, long-term adverse impacts these flow reductions will have on the water supply infrastructure of the CAP and the drinking water treatment plants that rely on CAP supplies. Implementing the DEIS alternatives will result in direct physical damage to the CAP system and indirect impacts caused by imposition of an extended dry-up or extreme shortages in CAP water supplies. These are reasonably foreseeable impacts, and NEPA requires an EIS to disclose the impacts of a proposed action, including potential unavoidable adverse effects on infrastructure.

D. Reclamation must identify additional legal authority required for the preferred alternative.

Lastly, to the extent the chosen preferred alternative requires additional legal authority, Reclamation should describe in detail what additional legal authority is required and explain why the legal authority is needed to implement the preferred alternative.

The Community values the opportunity to meet in person with representatives from Interior and Reclamation to engage in meaningful government-to-government consultation regarding the DEIS alternatives. Given the significant impact that the alternatives presented to date would have on Arizona water users, including the Community, we strongly urge Reclamation and Interior to share the preferred alternative at the earliest possible opportunity. As a sovereign government, the Community must be afforded adequate time to carefully evaluate the preferred alternative, engage in thorough government-to-government consultation, provide informed and meaningful feedback, and take steps to responsibly plan and provide for the Community's long-term future.

Sincerely,



Gabriel Lopez
Chairman, Ak-Chin Indian Community