



COLORADO RIVER INDIAN TRIBES

Colorado River Indian Reservation

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February 25, 2026

Honorable Scott Cameron
Acting Commissioner
Bureau of Reclamation
Attn: BCOO-1000
P.O. Box 61470
Boulder City, NV 89006

Via email: crbpost2026@usbr.gov

Subject: Comments from the Colorado River Indian Tribes on the Draft Environmental Impact Statement on Post-2026 Operational Guidelines and Strategies for Lake Powell and Lake Mead.

Dear Ms. Jerla:

The Colorado River Indian Tribes (CRIT), a federally recognized Tribal Nation, submit these comments on the Draft Environmental Impact Statement (DEIS) released by the Bureau of Reclamation (Reclamation) on January 9, 2026 for the Post-2026 Operational Guidelines and Strategies for Lake Powell and Lake Mead. CRIT appreciates the opportunity to provide these comments and the engagement of the Reclamation team on our issues from Acting Commissioner Cameron, who has been to CRIT and met with Tribal leadership on several occasions, through the staff in Boulder City, who have met with our attorneys and consultants throughout the comment period and over the course of the past year. We are also appreciative of Reclamation's assistance regarding funding for both a study of the necessary upgrades to bring the Colorado River Indian Irrigation Project (CRIIP) up to 21st-century standards and for design of a re-regulating reservoir to help address the inefficiencies of the CRIIP. We are also appreciative of Reclamation's assistance in addressing the potential use of water in our Intentionally Created Surplus (ICS) account.

The DEIS is voluminous and reflects significant effort from the Reclamation team. Nonetheless, CRIT has serious concerns with portions of the DEIS, which we expressed in our Government-to-Government consultation on February 18th. We are highlighting

several key issues upfront to ensure that the Department understands the significance of our concerns in key areas of the document that are detrimental to CRIT. We respectfully request Reclamation respond to these concerns in addition to addressing our specific technical comments in the attachment.

Top Level Concerns:

- 1) Reclamation must eliminate from the DEIS alternatives that would distribute water shortages pro-rata in violation of the *Arizona v. California* Decree, the *Winters Doctrine*, the doctrine of prior appropriation, the United States’ trust obligation to CRIT, the 5th Amendment, and the National Environmental Policy Act (NEPA).** As explained in the attached comments, NEPA requires a “reasonable” range of alternatives. Alternatives that are patently illegal are not “reasonable.” Pro rata distribution of water shortages, where all water users share in shortages equally without regard to priority date, would violate the injunctive mandate of the Decree in *Arizona v California*, which directs the Secretary to follow strict priority in administering shortages. It is also disappointing and extremely troubling that our trustee would include pro-rata alternatives in this DEIS without consultation or approval, continuing the problematic policies that began under the previous Administration.¹ We have informed Reclamation of our concerns on numerous occasions, including how pro-rata shortages devalue CRIT’s water supplies, calling into question the ability to utilize the CRIT Water Resiliency Act of 2023.²

Assertions by Reclamation staff that NEPA allows for analyzing alternatives that are not authorized misses the point—Reclamation is not proposing a construction project that needs a congressional authorization. Instead, Reclamation is considering action that would violate a Supreme Court injunction and there is nothing “reasonable” about ignoring injunctive orders from the

¹ Pro- rata sharing of shortages was initially proposed by the previous Administration in the Near Term Colorado River Operations EIS and also included in the Alternatives Report released by Reclamation in January of 2025. By letter dated March 5th from Tribal Council to Acting Commissioner Palumbo, CRIT continued to object to the inclusion of pro-rata alternatives and the decision by former Commissioner Touton not to include in the Alternatives Report agreed upon language between CRIT and Reclamation regarding the illegality of pro-rata shortages. See attached Exhibit 1 (March 5, 2025 letter to Acting Commissioner Palumbo).

² Many of these issues were raised in CRIT’s November 7, 2024 to the Reclamation Commissioner Camille Touton (November 2024 Letter, attached Exhibit 2) and earlier attached correspondence. The November 2024 Letter attaches CRIT’s October 26, 2022 letter to Reclamation and DOI (October 2022 Letter), April 12, 2024 letter to Reclamation, and June 28, 2024 to DOI, all of which are also incorporated by reference.

Supreme Court.³ Moreover, it is deeply troubling that Reclamation has proposed these illegal alternatives in its last two NEPA documents. Reclamation is clearly seeking to desensitize CRIT and the public to the notion that tribal resources can be reallocated to junior users and to make this fabrication part of the ongoing narrative surrounding management of the Colorado River. This sentiment harkens back to dark chapters in our nation's history when assimilation and termination were tools used to take resources from Tribal Nations and provide these resources to others. Footnotes in the DEIS about the need for additional authority do not cure this fundamental defect. These illegal alternatives must be eliminated. Moreover, and on this point we want to be clear, any attempt to implement pro-rata sharing of shortages among water users will be met with swift and severe resistance by CRIT, including a potential motion before the Supreme Court for enforcement of the Decree.

- 2) Pro-Rata Alternatives and the analysis in the DEIS are inconsistent with the Purpose and Need Statement and therefore must be eliminated.** In addition to the legal infirmities of pro-rata expressed above, these alternatives are also inconsistent with the Purpose and Need statement. The purported scope of this action is for Reclamation, using its delegated authority from the Secretary, to analyze river operations. The Purpose and Need statement reflects this limited scope, noting that this proposed action is for coordination of operations for Colorado River reservoirs and to provide a greater degree of predictability with respect to water availability in the future. DEIS, 1-6, 7. Notwithstanding this limited scope, Reclamation is stepping outside of this role by analyzing potential changes in tribal water rights through its inclusion of pro-rata shortages in its alternatives and the inclusion of data and analyses in Appendix C that highlight CRIT's unused water that is available for potential future use by junior contractors. This is completely inconsistent with Reclamation's stated purpose for this DEIS being to "[p]rovide new or enhanced opportunities for Basin Tribes to benefit from their water rights" and to "[p]rovide flexibility to build resilience and accommodate future needs and growth." DEIS, 1-6, 7. Pro-rata distribution of shortages accomplishes neither of these goals. Under the Department's

³ Moreover, any proposal to redistribute CRIT's water to non-Indian, junior water rights holders, without CRIT's consent, would be an obvious breach of the United States' trust obligation to CRIT. *Fort Mojave Indian Tribe v. United States* (1991) 23 Cl.Ct. 417, 426 ("Where a trust relationship exists, '[t]he trustee has a duty to protect the trust property against damage or destruction. He is obligated to the beneficiary to do all acts necessary for the preservation of the trust res which would be performed by a reasonably prudent man employing his own like property for purposes similar to those of the trust.'" [citing G. Bogert, *The Law of Trusts and Trustees* § 582 (2d ed. revised 1980) and *Restatement (Second) of Trusts*, § 176 (1959)]).

published NEPA guidance, “[t]o be ‘reasonable,’ proposed alternatives must respond to the P[urpose] & N[eed] [statement].”⁴

The DEIS reflects no such connection between Purpose and Need and the pro-rata alternatives. Reclamation addressed this very point in 2007 and again in 2024 in its Final Supplemental Environmental Impact Statement for the Near-term Colorado River Operations (March 2024) (SEIS) by clearly stating that tribal water rights are established by law. Reclamation declined to expand the scope of that document to alter these vested water rights:

Water rights for individual Tribes are established by law. The determination of water allocations to individual entities is beyond the scope of this SEIS. As with the 2007 Interim Guidelines, “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 (Reclamation 2007).” SEIS, 3-336.

Reclamation’s failure to provide the same assertion in this current draft compels us to conclude that there is no longer the same commitment not to alter vested tribal rights. If this is indeed an oversight, Reclamation must include a definitive statement that this NEPA process is not about reallocation of rights, tribal or otherwise, and that it will honor CRIT’s water rights.

- 3) The DEIS should more fully analyze what savings regarding water use may be achieved through proposed conservation actions.** Simply put, before Reclamation starts analyzing pro-rata sharing of shortages, Reclamation should also evaluate meaningful and achievable goals through water conservation. We understand that conservation is generally within the purview of state and local governments and water districts. However, if the purpose of the DEIS is to evaluate all the possible ways water resources can be put to their highest and most efficient uses, then in our view, water conservation should also be a part of the discussion. To be clear, great strides have been made in the recent past by major municipalities to stretch water resources further, but the efficacy of conservation actions from all water users should be evaluated before water resources from senior water rights holders like CRIT are discussed.

⁴ Available at: <https://www.doi.gov/nepa/tools-employees/streamlining-tools/tip6>.

- 4) **The DEIS fails to express that each Tribal Nation is unique and instead incorrectly groups CRIT with Central Arizona Project (CAP) Tribes in assessing the impacts of pro-rata reductions, the result of which incorrectly downplays the impacts of pro-rata reductions on CRIT.** The DEIS socioeconomic analysis aggregates present perfected right (PPR) tribes with CAP tribes, presenting incorrect impacts on CRIT. CAP Tribes do not have PPR rights. Including CRIT with Tribes that have different water rights downplays the impacts of pro-rata reductions. CRIT has the senior-most tribal rights in the entire lower basin and this must be acknowledged in the DEIS. This error must be corrected immediately. In addition, being in a rural area, CRIT provides critical services to community members that are necessary to establish a homeland for our people, including health care, education, housing, water and sewer, utility service, roads and public works, cultural programs, and government operations. For example, our Head Start program and local public schools are currently experiencing a decrease in enrollment, which results in reduced federal, state and local funding for these essential educational institutions. Typically, CRIT would attempt to make up for these shortfalls by providing additional funding for Head Start and supporting other educational opportunities for our children (tutoring, special needs assistance, etc.). If Reclamation pursues a pro rata alternative and CRIT's revenues from farming, leasing, and other water-dependent businesses are reduced, that will affect CRIT's ability to provide additional educational support. Any reduction in funding available for education would obviously have disparate impacts on our Native children, thereby negatively affecting our reservation lands serving as a permanent homeland. In addition, CRIT provides safe drinking water to its members from its Colorado River water. Any cuts that would impact this basic government service would obviously have severe socioeconomic impacts on the community. In short, the DEIS must acknowledge there will be impacts to CRIT from a pro-rata allocation of shortages that are unique to CRIT.
- 5) **The DEIS must include a discussion of the Secretary's failure to maintain the CRIIP and acknowledge that CRIT intends to fully utilize its water rights.** It is disingenuous for Reclamation to provide data and analysis that CRIT is not "consumptively using" its entire water allotment without also acknowledging the primary driver for CRIT's inability to fully utilize its decreed apportionment is the inaction of the Secretary, acting through the Bureau of Indian Affairs (BIA). The CRIIP, which is CRIT's primary means of accessing its water rights in Arizona, has been chronically underfunded for generations and this lack of funding has made the project extremely inefficient. The end result is an inability for CRIT to fully access and consume its decreed water resources. If the DEIS is going to highlight that CRIT is not consumptively using all of its water for irrigation, it must also explain that this is due to BIA's failure to provide funding. The state of disrepair and improper functioning of the CRIIP is

something that Acting Commissioner Cameron and the Reclamation team witnessed first-hand during their trip to CRIT on August 26th, 2025. Moreover, through the 43 CFR Part 417 process for annual water orders, CRIT has consistently sought the maximum amount of its allocation, establishing its intent to fully utilize its apportionment. CRIT has also informed BIA of its plans to develop additional lands.⁵ If the DEIS is including data showing that CRIT is not using its full apportionment, it must also explain that the Secretary is not funding our irrigation project. The DEIS must also be clear that CRIT has plans for the development of additional lands, so that juniors are on notice there will be limited water available for their future use.

- 6) **The DEIS must acknowledge that, under CRIT law, the River is a living being that is an inalienable part of CRIT culture, religion, and spirituality and is part of what makes the Colorado River Indian Reservation a permanent homeland for CRIT members.** Last fall, Tribal Council enacted a resolution finding that the “Colorado River is a living being whose health and welfare is directly linked to the well-being of the Colorado River Indian Tribes and its members” and “the Colorado River has always been and will always be a person under tribal law and will be entitled to the protections under tribal law befitting this status.” Tribal Council Resolution 375-25 (November 6, 2025), attached Exhibit 4. This resolution is an explicit expression of the time immemorial relationship of the Tribe and its members to the Colorado River and its ecosystem. A River that is alive, with its surrounding ecosystem and active floodplain, is part of making the Colorado River Indian Reservation our permanent homeland, as a living River is necessary to provide for all of the physical and non-physical needs of our members. The DEIS must acknowledge this expression of tribal law and that, even when our water is unused on our lands, there are still important benefits under our laws to leaving our water in the stream. As the Supreme Court stated unequivocally in *Arizona v. California*, water necessary to meet the “needs” of the reservation has been reserved for CRIT’s use.

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...* (emphasis added). *Arizona v California*, 373 U.S. 546, 598-600 (1963).

The mandate of the Supreme Court is clear: the Secretary must protect CRIT’s needs, both now and in the future. These needs not only include the physical

⁵ See attached Exhibit 3 (memorandum from BIA Regional Director Jessie Durham to Reclamation Regional Director, dated December 12, 2025).

environment but also the spiritual, cultural, and religious needs of our members. There are very real long-term and ongoing impacts to our culture, health, and welfare from allowing juniors to take our water supplies that are not consumed in our irrigation process from the River into central Arizona and the coastal plain. Reclamation must acknowledge these impacts.

- 7) **The DEIS fails to reflect that the Secretary must adhere to the foundational legal principles for the management of the Lower Colorado River and protection of Tribal rights as expressed by the Supreme Court in *Arizona v. California*.** CRIT recognizes the profound drought in the Colorado River Basin and the risks of an even drier future. We also understand that Reclamation is under immense pressure from junior users who are facing real and significant shortages to find a soft landing in these unprecedented times on the Colorado River. Nevertheless, Reclamation must adhere to the foundational legal principles for management of the lower Colorado River and protection of Tribal rights as expressed by the Supreme Court in *Arizona v California*, 373 U.S. 546, 598-600 (1963):

It is impossible to believe that, when Congress created the great Colorado River Indian Reservation ...they were unaware that most of the lands were of the desert kind -- hot, scorching sands -- and that water from the river would be essential to the life of the Indian people and to the animals they hunted and the crops they raised....

* * * * *

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...* (emphasis added). *Arizona v California*, 373 U.S. 546, 598-600 (1963).

As noted above, the Secretary must protect all of CRIT's needs for Colorado River water, as it is essential to the physical and non-physical well-being of our members, both now and in the future. Reclamation must follow this mandate.

We understand that, in large measure, the DEIS and the Post-2026 Negotiations are about addressing the needs of junior users. We do not object to helping the economies and way of life of the region as many of our tribal members reside in the southwest. But providing assistance to junior users must occur within the historical context of our continued and ongoing use of the Colorado River, which has met our spiritual, physical, economic, and cultural needs since the beginning of time. Even under western notions of water law, our rights predate

the Reclamation Act of 1902 by 37 years, Arizona statehood by 47 years, the Colorado River Compact by 57 years, and the Central Arizona Project by 103 years. Therefore, addressing the needs of junior users cannot come at the expense of our water rights, the health of our River and its ecosystem, our future uses of water under either western notions of water law or under CRIT law, and it can never occur to the detriment of our sovereignty, self-determination, and the health and well-being of our members.

- 8) Despite being approximately 1,600 pages, the DEIS fails to provide the Secretary’s vision for the future of the Colorado River.** After 1,600 pages of background information, alternatives, data and graphs, it is still unknown what the Secretary stands for in this basin. The decision not to select a preferred alternative does not excuse this lack of a fundamental understanding as to how the watermaster of the Lower Colorado River sees the future. The DEIS provides no discussion or explanation as to how the Secretary will protect tribal rights, seek to expand tribal uses in the basin, adequately compensate tribes when our water is used by others, and protect our sacred places, including the River itself—things which can be done without selecting a draft preferred alternative. While many of these items are included in various alternatives, the DEIS fails to provide any information on how the Secretary will manage the system into the future, mindful of these responsibilities. All we know is that the Secretary seems to be deferring to the states—who do not have a trust responsibility to protect tribal trust assets like water rights. The Secretary cannot defer these obligations to the states. The failure to provide a vision is a serious deficiency in the DEIS.
- 9) CRIT and other Tribal Nations must be directly engaged in the Basin-States Negotiations.** CRIT is the largest water rights holder in Arizona, holding rights to roughly 23% of Arizona’s apportionment and is the second-largest water rights holder in the entire Lower Basin, with rights to 9.5% of the Lower Basin apportionment. CRIT also holds the most senior tribal rights in the Lower Basin. Nonetheless, we are not involved in the negotiations for the Post-2026 Guidelines and have limited ability to influence matters that affect our water rights. The position that CRIT and other Tribal Nations need not be involved because they are not signatories of the Compact or the 2007 Guidelines guarantees the continued exclusion of CRIT into the future as subsequent administrations will continue to hide behind this fundamentally flawed reasoning. Article VII of the 1922 Compact states: “Nothing in this compact shall be construed as affecting the obligations of the United States of America to Indian tribes,” yet the DEIS is full of examples of how this next interpretation of the Compact will indeed affect Tribal Nations and the obligations of the United States to protect our assets. Simply put, there can be no durable solutions when CRIT and Tribal Nations are frozen out of the process.

Items for Inclusion in the Preferred Alternative:

With no preferred alternative identified in the DEIS, CRIT provides the following items we believe must be included in any preferred alternative in a Final EIS. These items include:

- Protect CRIT's priority water rights by complying with the Consolidated Decree;
- Recognize that CRIT and all Tribal Nations in the basin are entitled to full use of their water;
- Protect the River as a living ecosystem by establishing clear thresholds to protect its native fish and wildlife and habitat;
- Protect the River as a living entity under CRIT law so that the cultural, spiritual, and religious practices that have been connected to the River since the beginning of time will stay connected to the River, unbroken, through the end of time;
- Address storage mechanisms and forbearance agreements that compensate CRIT and other Tribal Nations based on unused water, not reductions in calculated consumptive use, and allow increased opportunities for storage for our own future use and others;
- Ensure that the rules for off-reservation use of tribal rights are consistent throughout the basin; and
- Require widespread conservation before assessing water needs and determining shortages.

We are in regular communication with Tribal Nations throughout the basin, including the Ten Tribes Partnership and the Five Tribes Coalition. While we are each independent and unique sovereigns, the items for inclusion in the preferred alternative are consistent with the concerns of both of these organizations.

Our attached comments provides additional CRIT history, and detail CRIT's concerns under NEPA, the National Historic Preservation Act (NHPA), the Endangered Species Act (ESA), and the Clean Water Act (CWA). CRIT has often expressed its desire to be part of the solution in the management of the Colorado River moving forward, but we can only do so if the existing laws and obligations in place to protect our rights are followed. To this end, we appreciate the commitments made in our Government-to-Government consultation on February 18th for Reclamation to consult with CRIT regarding the development of the preferred alternative and on the contents of the Final EIS, including the opportunity to comment prior to execution of a Record of Decision.

This next period of time for Colorado River operations can and should be a celebration of our rights and our relationship with the River that goes back to time immemorial. It should usher in a period of cooperation and collaboration where the great River we all share is protected and Tribal Nations are equal partners in determining what it can provide for us, while its bounty is shared by all, not just a few. Where bedrock principles of law are followed and there is creativity and commitment on honoring obligations to Tribal Nations while we address the needs of municipalities and the economy of the basin. The last 100 years of Colorado River management has done precisely the opposite and, not surprisingly, has placed us all at this critical juncture. Clearly, the old ways, including the exclusion of Tribal Nations from direct participation in the talks that will determine the near-term future of the basin, are not working. CRIT and other Tribal Nations have protected and nurtured the Colorado River for millennia and we are the ones that have been disproportionately bearing the brunt of these failed policies. It is time to set them aside and lean in to a new future, where Tribal Nations like CRIT and others are working side-by-side with the state and federal governments, acknowledging the River is alive, seeking in unison how to protect the personhood of this great resource and using the creativity of our shared wisdom to meet the needs of all who depend on it, while also understanding its limitations so it will always be there for the needs of future generations. We stand ready, as we always have, and always will, to be partners in finding the solution that can only come with inclusion of CRIT and other Tribal Nations in the process.

Sincerely,

COLORADO RIVER INDIAN TRIBES



Amelia Flores
Chairwoman

Cc: Tribal Council
Honorable Andrea Travnicek, Assistant Secretary for Water and Science
Honorable David Palumbo, Principal Deputy Commissioner
Ms. Genevieve Johnson, Regional Director, Lower Colorado River Basin
Ms. Carly Jerla, Senior Water Resources Program Manager, Colorado River Basin

ATTACHMENT A

Colorado River Indian Tribes Technical Comments on Draft Environmental Impact Statement Post-2026 Operational Guidelines and Strategies for Lake Powell and Lake Mead

Colorado River Indian Tribes (CRIT or the Tribes) submits these technical comments on the Draft Environmental Impact Statement (DEIS) released by the Bureau of Reclamation (Reclamation) on January 9, 2026 for the Post-2026 Operational Guidelines and Strategies for Lake Powell and Lake Mead (Project).

The DEIS must be revised to comply with the requirements of the National Environmental Policy Act, 42 U.S.C. § 4321 et seq. (NEPA), and the new version provided to the public for review and comment. A revised EIS must:

- identify the action Reclamation is proposing to adopt, including the draft proposed Guidelines;
- eliminate the Pro Rata Alternatives, which Reclamation has no authority to implement, and replace them with alternatives designed to protect the River ecosystem and encourage water conservation and storage;
- correct the flawed consumptive use modeling;
- assess dead pool scenarios;
- correct the numerous flaws in the DEIS analysis set forth below; and
- identify mitigation measures for all impact areas.

Any reduction in our water will have profound impacts on our Tribal members, Tribal farms and businesses and the local economy. The DEIS barely hints at these impacts. Moreover, the changes to the River resulting from the Project will harm our cultural resources and the River itself, whose health and welfare is directly linked to the well-being of the Colorado River Indian Tribes. The EIS must discuss ways to avoid or mitigate to reduce these harms.

These comments also address Reclamation's obligations under the National Historic Preservation Act (NHPA), the Endangered Species Act (ESA), and Clean Water Act (CWA).

CRIT is ready to work with other Tribal Nations and Reclamation to adopt Guidelines that comply with the Decree, the Winters Doctrine, and the doctrine of prior appropriation, and fulfill the federal government's trust obligations to our people.¹

I. Legal and historical framework.

A. The Tribes' relationship to the Colorado River

CRIT is a federally recognized Indian tribe comprised of over 4,600 members belonging to the Mohave, Chemehuevi, Hopi and Navajo Tribes. The approximately 300,000-acre Colorado River Indian Reservation (CRIR) sits astride the Colorado River between Blythe, California and Parker, Arizona. The ancestral homelands of the Tribes' members, however, extend far beyond the Reservation boundaries. Significant portions of public and private lands in California, Arizona, and Nevada were occupied by the ancestors of the Tribes' members since time immemorial and current Tribe members maintain a strong spiritual connection to these areas. These landscapes remain imbued with substantial spiritual, cultural, and religious significance for the Tribes' current members and future generations. For this reason, we have a strong interest in ensuring that potential cultural resource and other environmental impacts associated with the Project are adequately considered and mitigated.

Our Mohave and Chemehuevi ancestors' homeland was in the desert along the Colorado River. The traditional name of the Mohave people is Aha Makav, meaning People of the River. Matavilya's son, Mastamho, gave the people (Mohave) the River and everything along the River. For the Mohave people, water does not only sustain life, it is sacred. Our ancestors lived in tandem with the River's seasonal flows, the River's physical being, its cultural significance, its spiritual connection to our people, and the ways it provides sustenance. This traditional knowledge has been passed from generation to generation, from our ancestors down to our membership today.

In the 1940s, Hopi and Navajo people relocated to the reservation bringing their own cultural and religious connections to the River as they learned to farm on our desert reservation. All of our tribal members, no matter their ancestry, continually maintain and strengthen their connections to the River and its waters, as we have done since time immemorial.

From the game that we hunted in the past to the crops we grow today that feed us, the River sustains the ecosystem around us and all life forms, big and small, to survive in this desert climate. The River stabilized our food economy in our past and it empowers us

¹ CRIT has been working with other Tribal Nations through the Ten Tribes Partnership and Five Tribes Coalition.

to pursue economic sovereignty today. Stewardship of the Colorado River is vital for CRIT and all users in the basin.

Recognizing the importance of the River as a living being central to the spiritual and cultural wellbeing of the Tribes and their members, the CRIT Tribal Council, on November 6, 2025, adopted Resolution No. 375-25 proclaiming the personhood status of the River and granting it protection under tribal law. *See Exhibit 4, attached.* CRIT seeks to ensure the health and wellbeing of the living River in all decisions involving our water resources.

While CRIT has an obligation to protect the River, we also depend on the River for our own health and wellbeing. The Colorado River is the only source of water for the CRIR and, as such, is the principal economic driver for the tribal government. Farm leasing, farm commodities, business leases, and the Blue Water Casino are all dependent on water from or in the Colorado River. It is also a source of our drinking water.

Our ability to access the bulk of our water is through the Bureau of Indian Affairs' (BIA) Colorado River Indian Irrigation Project (CRIIP), which is constantly subject to deferred maintenance and in desperate need of extensive repairs. As a result of this deferred maintenance, we are unable to fully utilize our water entitlement.

B. CRIT's priority water rights

The water rights for CRIT allow the Tribes to divert water from the mainstream and date to the establishment of the reservation from Mohave homelands in 1865. The purpose of these reserved water rights is to support the development of an ancestral homeland for CRIT's members on the Colorado River Indian Reservation. *Arizona v California*, 373 U.S. 546, 598-600 (1963). To support this homeland, the River provides CRIT with many things: a cultural and religious foundation; food and drinking water (especially crucial in the Mohave Desert); medicinal plants and animals; and economic opportunities (including commercial agriculture, tourism, residential leasing, etc.). CRIT's government operations, municipal and industrial uses, housing, `Amat Kuhwely Farms, farm commodities and leasing, business leases, CRIT Sand and Rock, and the Blue Water Resort and Casino are all dependent on water from or in the Colorado River. CRIT has relied on the River to survive in the desert since time immemorial, and we have used our water rights to secure all of these elements of a homeland since 1865.

CRIT's vested water rights were recognized by the United States Supreme Court in *Arizona v. California*, 373 U.S. 546 (1963), and adjudicated and quantified 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.

CRIT's rights were affirmed in the 2006 Consolidated decree, which increased the volume of water available for CRIT to use. *Arizona v. California*, 547 U.S. 150,158 (2006). In total, the Supreme Court determined that CRIT is entitled to “(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.” Consolidated Decree, Art. II(D)(iv).

CRIT's water rights are present perfected rights (PPRs) and are the most senior Tribal Rights in the Lower Basin—the last to face any shortage under the Consolidated Decree.

If insufficient mainstream water is available for release, as determined by the Secretary of the Interior, to satisfy annual consumptive use of 7,500,000 acre-feet in the aforesaid three States, then the Secretary of the Interior, **after providing for satisfaction of present perfected rights in the order of their priority dates without regard to state lines...**may apportion the amount remaining available for consumptive use....

2006 Consolidated Decree, Art. II(B)(3), 547 U.S. at 155-6 (emphasis supplied). Moreover, under the express language of the Decree, “The United States, its officers, attorneys, agents and employees be and they are hereby severally enjoined . . . (B) From releasing water controlled by the United States for irrigation and domestic use in the States of Arizona, California, and Nevada, except as follows....” *Id.* at 154-55. Therefore, the Secretary has no discretion in operating the works on the lower Colorado River except as expressly provided in the Decree.

CRIT's water rights predate the development of civil works on the River. To provide an historical perspective, the reservation was established 37 years before the Reclamation Act of 1902, 47 years before Arizona became a state, 57 years before the Colorado River Compact, and 103 years before Congress authorized the construction of the Central Arizona Project. CRIT's water rights predate the 1922 Compact, predate the original Decree, and are not based on storage in Lake Mead or contractual water rights to storage behind Hoover Dam as authorized in the Boulder Canyon Project Act.² They are senior diversion rights and, as such, are not subject to reduction due to demands of junior water users, shortage, evaporation, or delivery losses.

Any involuntary reallocation of water from CRIT would violate the Supreme Court injunction and the plain language of the Consolidated Decree, breach the United

² See CRIT's November 7, 2024 Letter to Reclamation Commissioner Camille Touton (November 2024 Letter, attached as Exhibit 2) at 4; attached October 26, 2022 letter to Reclamation and Department of Interior (DOI) at 2-6.

States' trust obligation to CRIT, and take CRIT's property in violation of the 5th Amendment. It would also harm CRIT's members and the communities that rely on this water. Reclamation has not and cannot identify any legal authority that would allow it to take CRIT's water involuntarily.

Protection of CRIT's water rights is also necessary to allow CRIT to market and conserve water to help address system shortages. The Colorado River Indian Tribes Water Resiliency Act of 2022, 117 Pub. L. 343 (CRIT Act) authorizes CRIT to market water for off-reservation uses, such as leases to municipalities and for system conservation. Investment by lessees or transferees to obtain water from CRIT requires certainty that the priority system will be upheld. Thus, the River priority system must be upheld to allow CRIT to meet obligations under multi-year leases and conservation agreements, as well as our on-reservation needs.

C. The Bureau of Indian Affairs Irrigation Project

The Mohave and Chemehuevi people of the Colorado River Indian Reservation have irrigated and farmed with the water of the Colorado River since time immemorial. In 1867, 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. CRIT's members 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.

The Colorado River Indian Irrigation Project (CRIIP), which provides River water to the Reservation, is a federally owned project operated exclusively by the BIA. Due to inefficiencies in the CRIIP, a substantial portion of what is diverted by CRIT returns back to the River. This means that, in practice, CRIT has not received the full benefit of the allocated water it diverts, and we have been unable to fully place our lands in production. Instead, a substantial portion of CRIT's water has flowed to junior water rights holders through contracts with the Secretary without any compensation to CRIT.

The BIA management of the CRIIP has resulted in hundreds of millions of dollars in deferred maintenance. Our experts estimate the amount of maintenance backlog to be in the hundreds of millions.³ In addition, the amount of funds collected by BIA to operate and maintain the CRIIP has historically been inadequate to cover basic operation and maintenance (O&M) costs. While BIA received some additional funding for the CRIIP from Congress in 2025, that additional funding is far below what is needed to address deferred maintenance. The Department provided significant funding to junior users

³ Reclamation has provided financial assistance to CRIT to determine the exact amount of costs necessary to bring the CRIIP up to 21st century standards.

throughout the basin from the bipartisan Infrastructure Law and the Inflation Reduction Act. The Department provided no funding from these sources for the CRIIP.

D. United States' trust obligations to CRIT

The United States has a solemn trust responsibility to CRIT arising from the federal-tribal relationship established through statutes, executive orders, and case law. This trust obligation requires the United States to protect tribal resources, including the Tribes' water rights, and to manage those resources for the benefit of the Tribes with the highest fiduciary standards.

As the Supreme Court has repeatedly affirmed, the federal government must act as a fiduciary toward Indian tribes, and this duty demands that federal agencies consider tribal interests with particular care when making decisions that could affect tribal resources. *See, e.g., Seminole Nation v. United States*, 316 U.S. 286, 296-97 (1942) (establishing that the United States has “charged itself with moral obligations of the highest responsibility and trust” toward Indian tribes; the government’s conduct in dealing with Indians is subject to “the most exacting fiduciary standards”); *United States v. Mitchell*, 463 U.S. 206, 225 (1983) (citing “undisputed existence of a general trust relationship between the United States and the Indian people”); *Haaland v. Brackeen*, 599 U.S. 255, 275 (2023) (“the Federal Government has “charged itself with moral obligations of the highest responsibility and trust” toward Indian tribes”).

The Bureau of Reclamation, as an agency of the United States, is bound by this trust responsibility in all its actions relating to Colorado River water management. *See Pyramid Lake Paiute Tribe of Indians v. U.S. Dep’t of Navy*, 898 F.2d 1410, 1420 (9th Cir. 1990) (Secretary of Navy has a fiduciary duty to preserve and protect the Pyramid Lake fishery); *Parravano v. Babbitt*, 70 F.3d 539, 546 (9th Cir. 1995) (assessing Commerce Secretary’s compliance with trust responsibility and noting that “trust responsibility extends not just to the Interior Department, but attaches to the federal government as a whole”); *Nance v. E.P.A.*, 645 F.2d 701, 711 (9th Cir. 1981) (assessing whether EPA fulfilled the United States’ trust obligation to the Crow Tribe and noting “any Federal government action is subject to the United States’ fiduciary responsibilities toward the Indian tribes”).

The Tribes’ water rights on the Colorado River are federally reserved rights held in trust by the United States for the benefit of the Tribes and are not subject to administrative reallocation. *Winters v. United States*, 207 U.S. 564 (1908) (when Congress creates an Indian reservation, water rights are implicitly reserved in sufficient quantity to fulfill the purpose of the reservation); *Fort Mojave Indian Tribe v. United States* (1991) 23 Cl. Ct. 417, 425 (United States “concedes that the statute and executive orders that created the [Fort Mojave and Colorado River Indian] Tribes’ respective reservations had the effect of creating a trust arrangement pursuant to which the government held title to plaintiffs’ water rights”). These rights were reserved when the

Colorado River Indian Reservation was established to provide the Tribes with a permanent homeland and the means for economic self-sufficiency. The trust responsibility requires Reclamation to act as more than a neutral water master—it must serve as an active guardian of the Tribes’ water resources, ensuring that any proposed changes to water delivery systems protect rather than diminish tribal water supplies. Any action that would result in reduced water availability to the Tribes without adequate compensation would constitute a breach of this fundamental trust obligation.

This trust responsibility demands that the Bureau prioritize the protection of tribal water rights. The Tribes’ water is not available for reallocation to serve other water users’ convenience, and any proposal that treats tribal water as a resource to be managed for the broader benefit of non-tribal entities fundamentally misunderstands the United States’ legal and moral obligations to the Colorado River Indian Tribes.

Yet that is precisely what Reclamation proposes in the DEIS. Reclamation is considering new guidelines that would require legal changes to take water from the Tribes and hand it over to non-Indian junior water rights holders. *See* DEIS, 2-16, fn. 18 (“Additional agreements and other legal authorities would be needed to implement any pro rata operations that are inconsistent with the Decree.”); *infra*, Section III.C.2. CRIT will challenge any illegal abdication of the United States’ trust responsibility and violation of the *Arizona v. California* Consolidated Decree.

Reclamation must eliminate all statements in the DEIS suggesting it will seek any change to the law that would take water from CRIT and give it to non-Indian, junior water rights holders or would take action that necessitates such a change.

E. Tribal input

The Tribes have actively participated in the Post-2026 Guidelines process. CRIT’s November 2024 Letter to Reclamation Commissioner Camille Touton (Exhibit 2) laid out the components of CRIT’s Proposal Alternative to ensure that any new Guidelines:

- 1) follow the Consolidated Decree and protect CRIT’s priority water rights, which includes ensuring that CRIT entitlements are not reduced due to evaporation and evapotranspiration losses;
- 2) comply with the CRIT Act, which prohibits Reclamation from capping CRIT diversions as a condition of participating in agreements to reduce consumptive use;
- 3) remove barriers that limit full CRIT participation in the process by developing a long-term sustainable funding stream for Tribal Nations, allowing use of forbearance agreements, removing barriers to Tribal participation in ICS programs, and providing for direct Tribal participation in the Federal and Basin States planning process.

Many of these issues were not addressed in the DEIS. For example, the DEIS does not address funding streams for Tribal Nations, the CRIT Act, or Tribal participation in the Post-2026 negotiations. We will not repeat our arguments here, but reiterate our requests on these issues as set forth in CRIT’s November 2024 Letter.

II. Reclamation has failed to conduct adequate government-to-government consultation with CRIT pursuant to the NHPA.

Federal law recognizes that CRIT is a sovereign government distinct from the United States and the states of Arizona and California. As a result, the federal government and its agencies and bureaus (here Reclamation) must engage in government-to-government consultation with the Tribes when their actions have the potential to impact the Tribes, our government, tribal land, cultural resources, or the wellbeing of our members. This consultation must occur before the momentum toward any particular outcome becomes too great.

Consultation involves more than holding listening and learning sessions with Tribal Council. Instead, there must be an ongoing, dynamic relationship between Reclamation and the Tribes that is built upon the Reclamation’s concerted effort to understand the Tribes’ history, culture, and government and to make meaningful efforts to accommodate Tribal requests. 36 C.F.R. § 800.16(f) (defining “consultation” as “the process of seeking, discussing, and considering the views of other participants, and, where feasible, seeking agreement with them.”); Bureau of Reclamation, “Working with Indian Tribal Governments, Consultation, Cultural Awareness, and Protocol Guidelines,” July 2020 at 9 (“Consultation is built upon government-to-government exchange of information and promotes enhanced communication that emphasizes trust, respect, and shared responsibility.”); White House “Memorandum on Uniform Standards for Tribal Consultation” (November 22, 2022), Sec. 2 (consultation is “a two-way, Nation-to-Nation exchange of information and dialogue between official representatives of the United States and of Tribal Nations regarding Federal policies that have Tribal implications.”).

This fundamental consultation right is reiterated in the National Historic Preservation Act (NHPA). In particular, Section 106 of the NHPA requires Reclamation to make a reasonable and good faith effort to identify historic properties—including historic, cultural, and tribal resources important to Tribes—that could be affected by the Project, determine whether such resources are eligible for listing on the National Register, assess the effects of the Project on these resources, and avoid or mitigate any adverse effects. *Muckleshoot Indian Tribe v. U.S. Forest Serv.*, 177 F.3d 800, 805 (9th Cir. 1999) (citing 36 C.F.R. § 800 et seq.). Reclamation must also engage in government-to-government consultation with CRIT, a tribe that is affiliated with the affected cultural resources and sites. 54 U.S.C. § 306108 (“Section 106”); 36 C.F.R. Part 800; *Te-Moak Tribe v. U.S. Dep’t of Interior*, 608 F.3d 592, 609 (9th Cir. 2010); 54 U.S.C. § 302701(b)(1) (consultation required to “ensure that all types of historic properties and all public interest in such properties are given due consideration”). According to Executive

Order 3317, such consultation must identify and involve Tribal representatives in a meaningful way early in the planning process; and communication must be open and transparent. Reclamation has an entire manual on working and consulting with Indian Tribal governments.⁴

With respect to the Post-2026 Colorado River Operational Guidelines (Project), Reclamation has met with the Tribal Council several times to discuss the Project generally, but has failed to fulfill its NHPA-specific obligations. For example, despite the potential for the Project to impact historic and cultural resources and Traditional Cultural Places that are eligible for listing on the National Register of Historic Places (NRHP), Reclamation never contacted CRIT's Tribal Historic Preservation Office (THPO) to initiate Section 106 consultation. *See* 36 C.F.R. § 800.2(c)(2)(i) (agency shall consult with the THPO in lieu of the SHPO regarding undertakings occurring on or affecting historic properties on tribal lands). There was no notice to the THPO 30 days in advance of consultation with a list of topics to be discussed, timelines, and potential outcomes. *See* BOR, "Working with Indian Tribal Governments" at 11.

Instead, the DEIS simply states at a general level that consultation with Indian Tribes is ongoing. More is required to comply with Section 106 of the NHPA and Reclamation's own consultation policies. CRIT has adopted a policy on consultation, which is attached hereto as Exhibit 5, and requests that Reclamation acknowledge this policy and comply with it going forward.

The Section 106 regulations also provide a procedure for federal agencies to solicit feedback from Tribes following a determination that a project either will or will not affect historic properties. *See* 36 C.F.R. § 800.4(d) (agency must provide THPO with a 30-day review period after determination of effect). And if an adverse effect is found, the agency must consult *further* to resolve the adverse effect. 36 C.F.R. § 800.6. All of this consultation remains to be done, and Reclamation cannot adopt any new Guidelines until it is completed.

III. The DEIS fails to comply with NEPA.

A. Purpose of NEPA

The purpose of NEPA is to inform the public and agency decisionmakers of a project's potential environmental impact before those decisionmakers act. By requiring an EIS to provide a complete picture in advance, the drafters of NEPA expected that decisionmakers would make better decisions. *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989) (NEPA "ensures that the agency, in reaching its

⁴ See

https://www.usbr.gov/native/policies/pdf_consultation/BOR_WorkingWithIndianTribalGov-ProtocolGuidelines_July2020_Final508.pdf.

decision, will have available, and will carefully consider, detailed information concerning significant environmental impacts”). NEPA requires federal agencies to take a “hard look” at the environmental consequences of their decisions. *Prutehi Litekyan: Save Ritidian v. United States Department of Airforce*, 128 F.4th 1089, 1100 (9th Cir. 2025); *see also Earth Island Institute v. U.S. Forest Service*, 351 F.3d 1291, 1300 (9th Cir. 2003) *abrogated on other grounds*, *Winter v. Natural Resources Defense Council, Inc.* (2008) 555 U.S. 7 (“NEPA requires that a federal agency ‘consider every significant aspect of the environmental impact of a proposed action . . . [and] inform the public that it has indeed considered environmental concerns in its decision-making process.’”) (citation omitted).

Public engagement “plays a crucial role in realizing NEPA’s policy goals.” *Prutehi*, 128 F.4th 1089 at 1101. Public notice and public participation are “‘at the heart of the NEPA review process,’ reflecting ‘the paramount Congressional desire to internalize opposing viewpoints into the decisionmaking process to ensure that an agency is cognizant of all the environmental trade-offs that are implicit in a decision’ before it makes that decision.” *Id.* at 1101-02 (citation omitted). The analysis of environmental trade-offs must be publicly available so that stakeholders and the general public can fulfill their role to play in the decisionmaking process. *Oregon Natural Desert Association v. Rose*, 921 F.3d 1185, 1192 (9th Cir. 2019); *see also Blue Mountains Biodiversity Project v. Blackwood*, 161 F.3d 1208, 1216 (9th Cir. 1998), cert. denied, 527 U.S. 1003 (1999) (NEPA emphasizes “‘coherent and comprehensive up-front environmental analysis’”) (citation omitted).

Here, the DEIS fails to serve NEPA’s goals because of its incomplete project description, lack of reasonable alternatives, complete lack of mitigation, and flawed analysis on a range of impact areas. These flaws must be corrected in the final EIS or in a new revised draft EIS recirculated for public review.

B. Overarching problems with the DEIS analysis

1. Failure to identify a clear proposed action

To comply with NEPA, an EIS must include a meaningful and detailed project description. *Sierra Club v. Babbitt*, 69 F.Supp.2d 1202, 1217-18 (E.D. Cal. 1999) (agency violated NEPA where EA relied on “generalities and contains few details of what would actually be done on the Project, thus making it impossible to relate project elements to project impacts”). Here, the proposed federal action is not clearly identified. Although the DEIS purports to review the environmental consequences of new Post-2026 shortage guidelines, Reclamation does not provide the guidelines, even in draft form. Thus, the public cannot comment on their terms and conditions. *California ex rel. Lockyer v. U.S. Forest Service*, 465 F.Supp.2d 917, 924 (N.D. Cal. 2006) (proposed federal regulations must be “sufficiently discernible and concrete so as to provide guidelines and standards” to allow meaningful NEPA review).

Moreover, rather than identifying the proposed action, even in general terms, the DEIS instead presents an array of alternatives and suggests that a different “consensus” alternative may be “fully analyzed in the Final EIS.” DEIS, 2-2. An EIS is supposed to analyze the impacts of a “the proposed agency action” and a “reasonable range of alternatives to the proposed agency action.” 42 U.S.C. § 4332(C); DOI Handbook Section 2.3(a)(3). Because the DEIS does not do this, there is no clear project against which the pros and cons of “alternatives” can be weighed, which hinders public comment.

The DEIS thus fails as an informational document. A Reclamation decision that relies on its flawed and incomplete analysis would be arbitrary and capricious under NEPA and the Administrative Procedures Act (APA). *See* 5 U.S.C. § 706.

At the February 18, 2026 government-to-government consultation, Reclamation committed to consulting with CRIT in developing the preferred alternative. CRIT appreciates that commitment. But we emphasize that consultation must occur early enough in the process to give CRIT a real voice. In addition, Reclamation must provide a formal comment period on any supplemental or final EIS that identifies Reclamation’s preferred alternative.

2. Failure to propose agency action under dead pool scenarios

The DEIS fails to describe what Reclamation will do during dead pool scenarios. This failure is particularly glaring because the stated purpose of the Post-2026 Guidelines is to address water distribution in the event of future shortages, and the DEIS states that dead pool-related constraints are likely to occur in between 9 and 70 percent of futures analyzed, and between 9 and 38 percent for the action alternatives. *See* DEIS, Figure TA 18-3 at TA 18-16. But the DEIS explicitly fails to address how water will be allocated when faced with potential dead pool-related constraints:

In general, Reclamation anticipates acting to minimize dead pool-related reductions. The methods for doing so and the methods for allocating water under a dead pool-related release are unknown and too speculative to be included in this Draft EIS.

DEIS, TA 18-12 .

Dead pool scenarios are reasonably foreseeable outcomes of all the proposed alternatives. “An effect is considered reasonably foreseeable if it is ‘sufficiently likely to occur that a person of ordinary prudence would take it into account in reaching a decision.’” *Center for Biological Diversity v. U.S. Forest Service*, 444 F.Supp.3d 832, 851 (S.D. Ohio 2020) (citation omitted). Reclamation has acknowledged that avoiding dead pools, and deciding how to release water if it cannot, will be critical issues in future droughts. Thus, dead pool scenarios are not worst case scenarios, but a real and substantial threat. The DEIS cannot simply ignore this looming problem. Rather, NEPA

requires analysis even in the face of some uncertainty. *See Klamath-Siskiyou Wildlands Center v. National Oceanic and Atmospheric Administration*, 99 F.Supp.3d 1033, 1063 (N.D. Cal. 2015) (speculation is implicit in NEPA and agencies cannot “shirk their responsibilities under NEPA by labeling any and all discussion of future environmental effects as crystal ball inquiry”) (citation omitted).

By ignoring dead pool scenarios, the DEIS presents an incomplete picture of future impacts, making it impossible for CRIT and other users to understand how or whether Reclamation’s decision-making could impact the Tribes’ resources in the most dire futures. Reclamation is proposing the Project to address management of the River and its resources “under a broad range of potential future hydrologic conditions.” DEIS, 1-6. The actions Reclamation takes to avoid or respond to dead pool scenarios will have significant environmental consequences that it must consider as part of this NEPA process. Failure to do so results in improper segmentation of the environmental analysis under NEPA. *See, e.g., Hammond v. Norton*, 370 F.Supp.2d 226, 245 (D.D.C. 2005); *Delaware Riverkeeper Network v. F.E.R.C.*, 753 F.3d 1304, 1319 (D.C. Cir. 2014) (segmentation of project components violates NEPA).

Because CRIT’s water rights predate the construction of Hoover and Glen Canyon Dams, as long as there is water in the River, CRIT’s rights, with the exception of the 1856 right for Yuma Associates and Winterhaven, will be the most senior and in priority. The dead pool analysis must reflect this.

3. Flawed treatment of CRIT’s consumptive use.

The DEIS repeatedly states that its analysis of impacts to water rights is based on water users’ entitlements, not their actual use. *See, e.g.,* DEIS, C-6. Nonetheless, in various places the DEIS also includes information about CRIT’s purported “consumptive use” of its water. *See, e.g.,* DEIS, Table H-2 at H-6; Table C-4 (CRIT’s consumptive use equivalent listed as 377,420 acre-feet); DEIS, C-15, 118-119; DEIS, Table N-2a at N-5 & Table 3a at N-9.

This consumptive use analysis is flawed and misleading and must be corrected.

a. The DEIS’s treatment of consumptive use distorts its analysis.

The DEIS recognizes CRIT’s legal entitlement to water and status as a PPR:

- **Arizona:** 662,402 af
- **California:** 56,846 af
- **TOTAL:** 719,248 af

DEIS, TA 18-4-6; Table TA 18-2. The DEIS also states repeatedly that modeling assumes each entitlement holder will use its entire entitlement. *See, e.g.*, DEIS, C-6.

Despite this statement, the DEIS includes extensive modeling and analysis based on water users’ “consumptive use,” which it defines as diversions “minus any measured and unmeasured return flows.” DEIS, Glossary-4 (emphasis added).⁵ The DEIS calculates CRIT’s “consumptive use equivalent” at only 377,420 acre-feet—just 52% of CRIT’s full entitlement:

Location	Diversion Entitlement	Depletion Equivalent
CRIT AZ	662,402 AF	344,449 AF
CRIT CA	56,846 AF	32,971 AF
TOTAL	719,248 AF	377,420 AF

Source DEIS, Table H-2 at H-6; *accord* Table C-4 (CRIT’s consumptive use equivalent listed as 377,420 acre-feet); DEIS, C-15, 118-119; DEIS, Table N-2a at N-5 & Table 3a at N-9). The DEIS also states that water lost due to leakage “may be considered return flow if it percolates to an aquifer and is available for reuse.” DEIS, Glossary-4. In contrast, the DEIS assumes that non-tribal PPRs in Arizona are “fully consumptive.” DEIS, C-15.

The consumptive use analysis distorts the DEIS’s analysis in at least three ways.

First, the DEIS states that shortages are “measured in terms of consumptive use.” DEIS, C-7. If the models assume CRIT will not use its full entitlement, modeling results showing “0” future shortages to PPRs like CRIT (e.g., Table C-2 at C-9) do not provide adequate assurance that our water will not be shorted. For example, the DEIS erroneously lists 377,420 af as the amount necessary to “fulfill” CRIT’s total “entitlement.”⁶ This is incorrect. Reclamation must provide 719,248 af to fulfill our total entitlement. Likewise,

⁵ DEIS modeling uses “Historical Decree Accounting data” to estimate average consumptive use (CU) to diversion ratios for modeling purposes in the Colorado River Simulation System (CRSS). DEIS, C-6; Table C-4 at C-15, fn.

⁶ Table C-4 states that “the Cumulative Consumptive Use Equivalent column is included as a reference for the estimated amount of water that would need to be available to PPRs to fulfill a given entitlement on this table.” DEIS, C-15. The Cumulative CU for the seven highest prior rights holders as 377,919 af, all of which is CRIT water except for 499 af from Yuma Associates. *Id.*

estimates of water shortages that assume CRIT water will be returned to the River and available to junior users are incorrect.

Reclamation's modeling should reflect CRIT using all of our water rights. We have been clear with Reclamation that CRIT intends to use all of its water rights. Despite the structural barriers CRIT faces to use of all of our water rights on our homeland, we are making progress. For example, CRIT is expanding agricultural operations on its California land through our farming company `Amat Kuhwely. Increased agricultural production will use more water. *See* Exhibit 3, Memorandum from BIA to Reclamation, December 12, 2025 (documenting consultation between Reclamation, BIA, and CRIT pursuant to 43 C.F.R. Part 417, and approved water order for 2026.)

Because the basic assumptions of the DEIS modeling are erroneous, the environmental analysis based on the model is also incorrect. For example, the analysis suggesting that junior water rights holders will likely receive CRIT's return flow in the event of a shortage is misleading, since CRIT is seeking to expand its agricultural operations, which will reduce that return flow. As a consequence, the DEIS is incomplete without alerting junior users to CRIT's future use.

Second, the analysis of storage credits and unused water calculations uses an incorrect baseline. The DEIS assumes storage credit and compensation would be based on "tribal conserved consumptive use storage credits" and that "unused water is calculated as the difference between the depletion equivalent of each of the tribe's entitlement and the assumed depletion schedule for the current year." *See* DEIS, B-30-31. Storage should be based on total *diversion* reductions, not the lower consumptive use figures.

Third, the DEIS inexplicably suggests that historical use limitations may affect future use, stating that irrigation holders "with current consumptive use that is less than their entitlement could experience further impacts...through the loss of future opportunities to expand their water consumption." DEIS, 3-179. Technical Appendix 16 recognizes this disproportionately affects tribal entitlement holders. DEIS, TA 16-49-50. The EIS must make clear that holders of Tribal rights, like CRIT, cannot lose future opportunities to expand their water consumption based on historical inefficiencies that decrease consumptive use.

b. The consumptive use modeling fails to acknowledge the primary reason for CRIT's current consumptive use ratio: BIA's failure to maintain CRIT's irrigation system.

The primary reason CRIT has not consumptively used all of our allocated water in the past is the United States' failure to maintain CRIT's irrigation system, which causes water to return to the River through leaking pipes and infrastructure failures rather than reaching CRIT's agricultural land. Any discussion of CRIT's historic inability to

consumptively use all of our water must explain that this is due to BIA's failure to provide necessary funding. CRIT identified this breach of trust in its lawsuit against the United States a decade ago, which the parties settled in 2016. Reclamation cannot use the breach of its fiduciary duty to maintain CRIT's irrigation system to support an analysis that benefits junior water rights holders.

Any current inefficiencies do not impact the CRIT's water *entitlement* or our right to divert, lease or transfer our rights at its discretion.

c. Required corrections in the DEIS analysis

Reclamation cannot make decisions based on models that assume that CRIT will not use our full entitlement or that CRIT will not have increased efficiency in the future. To fix these errors, Reclamation must:

1. Model potential shortages based on potential reductions in diversions, not consumption;
2. Base storage credits and compensation on reductions in water diversion, not consumption;
3. Recognize that future consumptive use will continue to increase as we improve our infrastructure; and
4. Make clear that PPR holders like CRIT cannot lose future opportunities to expand water consumption based on historical inefficiencies.

4. Failure to identify mitigation

NEPA "require[s] that an EIS discuss mitigation measures, with 'sufficient detail to ensure that environmental consequences have been fairly evaluated.' An essential component of a reasonably complete mitigation discussion is an assessment of whether the proposed mitigation measures can be effective." *South Fork Band Council of W. Shoshone of Nevada v. U.S. Dep't of Interior*, 588 F.3d 718, 727 (9th Cir. 2009) (quoting *Robertson*, 490 U.S. 332 at 352). The DOI NEPA Handbook acknowledges that "NEPA requires bureaus to consider reasonable mitigation measures." DOI NEPA Handbook, Section 1.3(e).

Mitigation is also required under other applicable federal laws such as NHPA, ESA and the CWA. *See, e.g.*, 36 C.F.R. § 800.8 (Section 106 consultation must include consideration of "alternatives and proposed measures that might avoid, minimize or mitigate any adverse effects of the undertaking on historic properties and describe them in the ... DEIS"); 16 U.S.C. § 1536(b)(3)(A) (biological opinion under ESA requires consideration of "reasonable and prudent alternatives" to avoid take of protected species).

The DEIS presents *alternatives*, but these focus on water management options. They were not selected to reduce environmental impacts. Moreover, mitigation must be designed to be implemented to reduce environmental harm once an alternative is selected. *See* DOI NEPA Handbook, Section 6.1(m) (“*Mitigation* means measures that avoid, minimize, or compensate for effects caused by a proposed action or alternatives as described in an environmental document or record of decision and that have a nexus to those effects.”); Reclamation Manual ENV P07.3 (“Reclamation’s policy is to implement appropriate environmental mitigation to ensure mitigation commitments and actions are managed effectively.”).

Mitigation is particularly important for a project as complex as this one where the EIS does not present a single alternative as environmentally superior, but finds that different alternatives have different environmental trade-offs. *See, e.g.*, DEIS, 3-73-74 (recognizing vulnerability trade-offs regarding water quality); 3-139 (for recreation, “each alternative presents a unique set of trade-offs”); 3-182 (for socioeconomics, “the alternatives demonstrate a trade-off between shortage distributions across irrigation entitlement holders, flexibility in the maximum allowable shortage implementation, and the ability to support stable agricultural production and social well-being”).

The courts have held that perfunctory descriptions or mere listing of mitigating measures is inconsistent with NEPA’s mandate. *See Neighbors of Cuddy Mountain v. U.S. Forest Service*, 137 F.3d 1372, 1380 (9th Cir. 1998). Here, the DEIS contains no mitigation at all. This deprives the public and CRIT of the opportunity to review and determine whether the environmental impacts of any of the proposed alternatives, or any future developed alternative, can be reduced and violates NEPA’s hard look requirement.

C. The DEIS alternatives must be revised.

NEPA requires that every EIS include a “reasonable range of alternatives to the proposed agency action.” 42 U.S.C. § 4332(C)(iii). Thus, “every EIS must rigorously explore and objectively evaluate all reasonable alternatives to that action. *Oregon Natural Desert Association v. Raby*, 780 F.Supp.3d 1085, 1102 (D. Or. 2025) (cleaned up). This alternatives analysis is the “heart” of the EIS. *Id.* “Without substantive, comparative environmental impact information regarding other possible courses of action, the ability of an EIS to inform agency deliberation and facilitate public involvement would be greatly degraded.” *WildEarth Guardians v. United States Bureau of Land Management*, 870 F.3d 1222, 1227 (10th Cir. 2017) (citation omitted).

Among the key purposes of the Project are to “accommodate future needs and growth that are supported by Colorado River water supplies” and to:

Provide new or enhanced opportunities for Basin Tribes to benefit from their water rights.

DEIS, 1-7. The DEIS proposes various operational elements to address the “purpose and need” for the action:

Identification of circumstances under which the Secretary would allocate, reduce, or increase the annual amount of water available for consumptive use from Lake Mead to the Lower Division states (Arizona, California, and Nevada) at, below, or above 7.5 million acre-feet (maf), **pursuant to the Supreme Court Decree in Arizona v. California**, 376 U.S. 340 (1964) (Final Decree entered in 2006).

DEIS, 1-4 (emphasis added).

By law, CRIT has the highest priority water rights. Alternatives that unilaterally reduce deliveries to CRIT do not serve the Project’s “purpose and need” to allow us to benefit from our water rights, do not comply with the Consolidated Decree, and are not reasonable or legally feasible.

Rather than presenting alternatives that cannot be legally implemented, the DEIS must present a reasonable range of alternatives that would achieve Reclamation goals, reduce environmental harm, and comply with the Consolidated Decree.⁷

1. Reclamation options must comply with established water law.

The DEIS recognizes that Reclamation’s options for water distribution are constrained by law: the “Consolidated Decree determined and quantified mainstream Colorado River water rights for five tribes,” including CRIT, which has an entitlement to 719,248 acre feet. TA 81-4-6; Table TA 18-2. CRIT’s rights are among the highest priority in the lower Basin:

PPRs are the highest priority Lower Basin mainstream Colorado River water entitlements that were perfected before June 25, 1929. The Consolidated Decree also lists federal reserved water rights for five Indian reservations. **PPRs are satisfied first in order of priority in years when less than 7.5 maf of water is available** from the Colorado River for consumptive use in the Lower Division States, **before other entitlements are fulfilled.**

DEIS, TA 4-3 (emphasis added); *accord* TA 18-2; C-12-15 (CRIT priority highest with exception of small allocation for Yuma Associates).

⁷ In reviewing the 2007 Colorado River Interim Guidelines, for example, both CRIT and Reclamation agreed that there would be “no impact on the ability of the Tribes to divert its full entitlement of Colorado River . . . water under the Guidelines.” 2007 Final EIS, Volume IV, Comments Submitted by Indian Tribes, IT-23, 25.

This priority order is to be implemented even under—*especially* under—shortage conditions:

Under a Shortage Condition, the Consolidated Decree stipulates **that all PPRs must be satisfied first in order of their priority dates before the remaining available water can be allocated** consistent with the BCPA and other applicable federal statutes.

DEIS, TA 4-5 (emphasis added); *see also* DEIS, 1-27 (stating that the Consolidated Decree requires Reclamation to “first provide for the satisfaction of the PPRs in the order of their priorities without regard to state lines”); *accord* DEIS, C-12 (quoting language of Decree).

2. The DEIS presents alternatives that Reclamation lacks any legal authority to implement.

Despite acknowledging CRIT’s priority rights under the Consolidated Decree, the DEIS presents alternatives that violate the Decree’s legal principles and fail to meet Reclamation’s stated “purpose and need.”

The DEIS considers six alternatives, which are based on a Priority, Pro Rata, Lower Basin Priority, or Lower Basin Pro Rata approaches to shortage distributions:

- No Action Alternative (Priority)
- Basic Coordination Alternative (Priority)
- Enhanced Coordination Alternative (Pro Rata)
- Maximum Operational Flexibility Alternative (LB Priority)
- Supply Driven (LB Priority)
- Supply Driven (LB Pro Rata)

DEIS, ES-8, 23; 2-38-42. The two Pro Rata Alternatives—Enhanced Coordination and Supply Drive (LB Pro Rata)—are infeasible as a matter of law. Moreover, even the priority-based approaches could potentially short CRIT’s water rights in violation of established law.

a. The Pro Rata Alternatives violate established law and should be eliminated.

The Pro Rata Alternatives directly violate the Supreme Court’s injunctive order in *Arizona v. California* and as well as decades of water law. These alternatives reallocate

the water supplies of senior water rights holders with present perfected rights, like CRIT, to junior users with no compensation. *See* DEIS, 3-193, TA 18-15 (admitting that pro rata methods would redistribute water from senior to junior entitlement holders).

Under the Pro Rata approaches, CRIT’s water deliveries could be dramatically, and illegally, curtailed. CRIT would face significant shortages (more than 20%) in most futures, with shortages of nearly 80 percent in severe droughts. *See* DEIS, TA 17-24; Figure TA 18-2 at TA 18-14

Reclamation admits that the DEIS’s alternatives, and the underlying models, violate the Consolidated Decree. It recognizes that “[a]dditional agreements and other legal authorities would be needed to implement any pro rata operations that are inconsistent with the Decree.” DEIS, 2-16 fn. 18; *see also* DEIS, C-3 (admitting that “[c]ertain Shortage Allocation Model and Alternative Distribution Model assumptions analyze distributions of water in ways that **diverge from provisions in the Consolidated Decree** and other applicable Federal law” and that these proposals “may ultimately **not be implementable**” (emphasis added)). But no agreements modifying the Consolidated Decree exist, and CRIT will not support such agreements.

The Pro-Rata Alternatives are also contrary to the Colorado River Indian Tribes Water Resiliency Act of 2022. The CRIT Act authorizes CRIT to market its water for off-reservation uses. Potential water lessees would have little incentive to pay CRIT for its water if Reclamation seeks to take CRIT’s water for junior user involuntarily and without compensation. Thus, these alternatives would also directly conflict with Congress’s intent in adopting the CRIT Act.

Thus, there is no legal authority under which the Pro Rata Alternatives could be legally implemented.

b. The Priority-based alternatives also fail to protect CRIT’s water rights.

Even the Priority and LB Priority Alternatives fail to ensure CRIT water delivery is consistent with our entitlement.

First, much of the DEIS’s modeling and assumptions are based on CRIT’s “consumptive use” rather than its diversion entitlement. To the extent shortage calculations rely on the DEIS’s consumptive use calculations, they are flawed for the reasons stated above in Section III.B.3.

Second, the performance criteria used in the DEIS obscure under what circumstances the Priority-based Alternatives would deprive CRIT of our vested water rights and use of this water for agricultural, conservation agreements or other uses. The DEIS defines its “preferred minimum performance criteria” as a situation where at least

80 percent of the normal water delivery is delivered in 90 percent of the years of a modeled future.” DEIS, TA 18-16. In other words, the analysis merely indicates when PPRs would receive most of their water most of the time. But as one of the highest priority water rights holders, the CRIT’s is the second to last water user on the river to be shorted. The DEIS’s approach obscures the extent to which alternatives could short CRIT’s water and violate our rights.

Third, the DEIS’s treatment of dead pool-constrained releases fails to recognize CRIT’s priority rights. Figure TA 18-3 shows that even where performance criteria is met for PPRs 100 percent of the time (which does not mean PPRs get 100 percent of their water entitlement), there will be “dead pool constrained releases” for 9 to 70 percent of futures. DEIS, TA 18-16. CRIT and other PPRs are not guaranteed water in dead pool situations:

Importantly, it would be a mistake to conclude that all alternatives that meet the preferred minimum performance criteria . . . in 100 percent of modeled futures perform equally in terms of water deliveries to the PPR priority group. This is because the alternatives have different frequencies of modeled futures in which there is a dead pool–related release. . . . Less frequent dead pool–related reductions are better in terms of water deliveries because it means that there are more consistent water deliveries, all else equal.

DEIS, TA 18-17.

Under the Consolidated Decree, PPRs like CRIT must be satisfied first in order of their priority dates *before the remaining available water can be allocated*. To comply with the Consolidated Decree, lower priority rights must be reduced as necessary to avoid dead pool situations and ensure delivery of PPR water.

c. Alternatives that cannot be legally implemented must be excluded from the EIS.

An EIS must include a discussion of a “reasonable alternatives, that, in the bureau’s expert judgment, are . . . **within the bureau’s legal authority to implement.**” DOI NEPA Handbook. Section 2.3(a)(3) (emphasis added); *see also* Section 6.1(t) (“*Reasonable alternatives* means a reasonable range of alternatives that are technically and economically feasible, meet the purpose and need for the proposed action, [and] are within the jurisdiction of the bureau . . .”).

Alternatives that violate the Consolidated Decree and take CRIT’s water are not within Reclamation’s authority to implement. They are therefore infeasible and cannot form the basis of reviewing a reasonable range of alternatives. Under the Department’s published NEPA guidance, “[t]o be ‘reasonable,’ proposed alternatives must respond to

the P[urpose] &N[eed] [statement].”⁸ See also *Natural Resources Defense Council, Inc. v. Evans*, 279 F.Supp.2d 1129, 1164 (N.D. Cal. 2003) (alternatives analysis inadequate where one alternative was “*per se* illegal” and therefore “a phantom option”); *Citizens Action Coalition of Indiana, Inc. v. Federal Energy Regulatory Commission*, 125 F.4th 229, 239 (D.C. Cir. 2025) (alternative is reasonable if it “will bring about the ends of the federal action” and is “in the agency’s power”) (citation omitted).

Reclamation’s Final Supplemental Environmental Impact Statement for the Near-term Colorado River Operations (March 2024) (SEIS) expressly recognized that tribal water rights were established by law and declined to consider any alternative that would alter these vested water rights:

Water rights for individual Tribes are established by law. The determination of water allocations to individual entities is beyond the scope of this SEIS. As with the 2007 Interim Guidelines, “**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**” (Reclamation 2007).

SEIS, 3-336. Reclamation must take the same approach here.

3. The DEIS must include an alternative that protects the River and its resources.

The DEIS does not include any alternative designed to protect the River ecosystem. Nor does it include environmental mitigation. As a result, the DEIS does not serve one of its primary functions—to find ways to reduce the Project’s impacts on the River and its resources.

Including such an alternative is critical for CRIT given the Tribes’ cultural, religious, spiritual, and physical connection to the River. As noted above, under Tribal law, the River has the status of a person, and the Tribe has committed to protect the River’s health and wellbeing. To that end, from CRIT’s perspective, water that flows back to the River after being diverted by CRIT is not “unused” water; instead, it is essential for sustaining the River itself. At least one alternative discussed in the EIS must similarly treat the River as an ecosystem to be protected rather than an irrigation ditch.

Reclamation rejected calls for an “Ecosystem Alternative” that would prioritize the health of the River and its “wildlife, vegetation, habitats, tributary ecosystems, and

⁸ <https://www.doi.gov/nepa/tools-employees/streamlining-tools/tip6>

wetlands.” DEIS, 2-36. But its rationale for doing so—that it would require “cuts to water allocations” (*id.*)—is arbitrary and capricious given that all the alternatives requires cuts to some users in some circumstances.

Rather than focusing on reducing environmental harm, the alternatives focus on various water management strategies. None of the proposed alternatives are designed around maintaining critical environmental thresholds—such as reservoir elevations, water temperatures, HFE releases, and habitat protection. Instead, impacts on the River and the life it supports are treated as a by-product of various management strategies.

One of NEPA’s primary goals it to allow decision-makers to explore ways to “prevent or eliminate damage to the environment.” 42 U.S.C. § 4321 (Congressional declaration of NEPA’s purpose). By failing to include an alternative that does this, the DEIS fails to present a reasonable range of alternatives.

4. The DEIS must expand its treatment of conservation, storage compensation mechanisms and forbearance agreements.

The DEIS recognizes that water management strategies, water efficiency and demand-side management can significantly reduce the demand for water. *See* DEIS, TA 17-4-5. It also recognizes that water conservation could be critical “if there is not enough water in Lake Mead to fully meet downstream demands and/or if Hoover Dam infrastructure constraints result in releases below the demand volume.” DEIS, TA 16059. Yet the DEIS states that Upper Basin conservation is outside the scope of the EIS (DEIS, 1-9) and does not consider alternatives or mitigation that focus on incentivizing users to increase efficiency and reduce demand in the Upper or Lower Basins. No solution to future drought is complete without a thorough examination of these options.

The DEIS recognizes that new storage mechanisms would “allow tribes to save water as insurance against potential future changes in water demand or supply” and “create an additional path for tribes to lease or transfer water from/to other Lower Basin water users.” DEIS, TA 18-28. Yet, only the Enhanced Coordination alternative—which relies on pro rata distribution—includes a storage compensation mechanism.⁹ DEIS, 2-22 (describing Lake Mead Protection Pool acquired through “potentially compensated Lower Basin tribal water (conserved consumptive use and unused)”).

There is no reason why a storage compensation mechanism cannot be combined with other, priority-based distribution approaches. Indeed, the DEIS states that Reclamation intends “to allow for their implementation within any operational framework that includes a storage and delivery mechanism.” DEIS, 2-23. Thus, the EIS

⁹ *See* DEIS, 3-199 (“The Enhanced Coordination Alternative is unique in that it explicitly allows for compensating tribes for water used to contribute to a federally managed conservation pool in Lake Mead.”); *accord* DEIS, TA 18-28.

should include an alternative that combines a storage compensation mechanism with priority shortage distribution.

The EIS should also include a detailed discussion of forbearance agreements, which the DEIS expressly declines to consider. *See* DEIS, H-2. The Post-2026 Operational Guidelines should include accounting methodologies necessary to fund and track tribal forbearance throughout the Basin, which could maintain water in the system for use by others. *See* CRIT’s November 2024 Letter at 10-11.

5. CRIT proposal

Any alternative in the Final EIS that purports to represent a “consensus” negotiated by stakeholders¹⁰ must include CRIT. We are a sovereign nation with a responsibility to the future of our people. Discussions about water resources that will fundamentally affect our future must not be closed-off from our direct participation.

CRIT supports consideration of an alternative that complies with existing water law *and* protects the River’s natural ecosystems. Any ultimate solution must:

- Protect CRIT’s priority water rights by complying with the Consolidated Decree;
- Recognize that the Tribes are entitled to full use of their water;
- Protect the River as a living ecosystem by establishing clear thresholds to protect its native fish and wildlife and habitat;
- Protect the River as a living entity under CRIT law so that the cultural, spiritual, and religious practices that have been connected to the River since the beginning of time will stay connected to the River, unbroken, through the end of time;
- Address storage mechanisms and forbearance agreements that compensate CRIT based on reduced diversions, not calculated consumptive use, and allow increased opportunities for storage for our own future use or for use of the River
- Ensure that the rules for off-reservation use of tribal rights are consistent throughout the basin; and

¹⁰ *See* DEIS, 2-2 (“Should a consensus emerge following the publication of this Draft EIS, Reclamation anticipates that such an agreement will incorporate elements or variations of these Draft EIS alternatives and will be fully analyzed in the Final EIS.”).

- Require widespread conservation before assessing water needs and determining shortages.

The Tribes request that Reclamation prepare and circulate for public review a supplemental EIS that includes a proposed alternative with these components and that eliminates the alternatives that Reclamation cannot legally implement.

D. Impact Analysis

1. Indian Trust Assets (including Water Deliveries)

We appreciate Reclamation’s recognition of its legal duty to protect Indian Trust assets (ITAs). The DEIS acknowledges that the United States “has a trust responsibility to tribes” and that ITAs held in trust by the United States may include “land; rights or entitlements; natural resources; monies (for example, trust funds); mineral rights; hunting, fishing, trapping, and gathering rights; and others.” DEIS, 3-194. The DEIS also recognizes that “the 30 Basin Tribes depend on the Colorado River and its tributaries for a variety of purposes, including cultural and spiritual activities, wildlife, instream flows, recreation, and other purposes.” DEIS, 3-195. It further recognizes that “the presence or absence of ITAs should be addressed explicitly in all NEPA documents.” DEIS, 3-194

Water, of course, is a core trust asset. Despite recognizing its trust duties, however, Reclamation proposes alternatives that directly harm “Lower Basin tribal entitlements by altering the shortage distribution methodologies.” DEIS, TA 18-12. The DEIS indicates that CRIT’s PPR water rights could be shorted during dead pool scenarios and under the Pro Rata Alternatives. *See supra*, Section III.C.2.

We reiterate that Reclamation has no authority to implement operational guidelines that violate the vested water rights of CRIT and other PPRs. Reclamation must remove these alternatives from consideration. *Supra*, Section III.C.1&2.

Even assuming these illegal alternatives could be analyzed, the DEIS fails as an informational document. The DEIS contains almost no information about how these shortages would impact CRIT. Unlike many water users, CRIT and our members cannot relocate or farm elsewhere. And if we are forced to fallow land, we cannot easily replace this industry with another. River water is essential for every element of our lives: our government, our sustenance, our spirituality, our economy. Simply put, without our water, we have no homeland.

CRIT relies on the River for drinking water, agriculture, recreation, and business, as the DEIS recognizes. *See, e.g.*, DEIS, 3-143 (“water for drinking and agriculture” is an important tribal resource). But the DEIS contains no discussion at all of how water shortages could impact CRIT drinking water, or, as discussed in Section III.D.3, CRIT’s river-dependent businesses and recreation. While it purports to analyze “potential

changes in irrigated acreage” and present the “amount of tribal agricultural land (in acres) estimated to be fallowed” (DEIS, TA18-8), these estimates are broken down only by state. DEIS, Table TA 18-5 at TA18-29-30. This makes it impossible for CRIT, or any other user, to determine the actual impact of shortages on our farmers.

Loss of water for crops, drinking water and business uses will of course impact CRIT population and land use. Yet, CRIT is not even mentioned in the DEIS chapters on “Socioeconomics” or “Population and Land Use” or the related technical appendices.

The DEIS’s “analysis” of other ITAs suffers from a similar lack of detail. The discussion of vegetation, fish and wildlife, and recreation merely states these are addressed in other sections. With regard to income from ITAs, the DEIS simply states impacts will “vary.” DEIS, TA18-31.

The United States has a duty to protect CRIT’s water, our livelihood and the River itself. Proposals that short CRIT’s water would cause irreparable harm that must be fully analyzed in the EIS. *See Oregon Natural Desert Association*, 921 F.3d at 1191 (“We have warned that ‘general statements about “possible” effects and “some risk” do not constitute a “hard look” absent a justification” for why an agency could not supply more ‘definitive information.’”) (citation omitted).

2. Tribal and Cultural Resources

The DEIS has separate sections for cultural resources (defined as the physical manifestations of the activities of past or present cultures, including archaeological sites, historic-era buildings and structures, objects, trails, landforms, and other places of traditional, cultural, or religious importance) and Tribal Resources (undefined, but including traditional cultural properties (TCPs), sacred sites, and cultural landscapes). We address the flaws in both analyses here.

First, according to the DEIS itself, Reclamation has not established the “area of potential effect” (APE) for cultural and tribal resources—a fundamental failure that invalidates the entire cultural resources analysis. Because Reclamation is using the NEPA process to satisfy its legal obligations under the NHPA, it is required to determine the APE as the “geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties” or resources. 36 C.F.R. §§ 800.4(a), 800.16(d). Identifying the APE provides a foundation for identifying historic properties—including historic and cultural resources and landscapes, traditional cultural places and traditional cultural properties—and analyzing the Project’s impacts on those resources. *See National Park Service, U.S. Department of the Interior, National Register Bulletin 38 (2024 Update), “Identifying Evaluating, and Documenting Traditional Cultural Places.”*

Moreover, utilizing the APE established for NEPA analysis—the River itself plus 0.5 miles on either side—is inappropriate. To CRIT, impacts to the River cannot be viewed in isolation. The River relates to the mountains nearby. Any selected APE must take that into account, along with potential impacts to the Tribe’s cultural and spiritual practices in the Topock Gorge area north of Lake Havasu.

Second, Reclamation has not begun NHPA consultation with CRIT’s THPO—much less concluded it—to determine the resources at risk of harm due to this Project. *See supra* Section II; DEIS, 3-145 (“adverse impacts on TCPs would be addressed though the project’s programmatic agreement developed in compliance with Section 106 of the NHPA or through ongoing consultation with affected tribes”).

Because Reclamation has not even begun the consultation process, the DEIS fails to provide the “hard look” at impacts to cultural and tribal resources that NEPA requires. *See, e.g., Hualapai Indian Tribe v. Haaland*, 755 F.Supp.3d 1165, 1195 (D. Ariz. 2024).

The DEIS also notes that Reclamation intends to develop a “programmatic agreement” (PA) for the treatment of these resources. But no draft has been presented to the Tribes for review, nor does the DEIS outline any key protections or mitigations that will be included in a future PA. CRIT therefore has no idea what mitigation is being proposed for these yet-to-be-identified impacts. These two sections must be revised to allow public comment on a proposed draft PA.

While CRIT will continue to participate in any ongoing government-to-government consultation, it is Reclamation’s responsibility to prepare the analysis required by NEPA and the NHPA. Typically, this is accomplished by preparing surveys of the affected area and associated literature. That does not appear to have been done here. Instead, the summary “assumption” is that the “Tribes will provide information regarding specific tribal resources and potential impacts on those resources during consultation.” (DEIS, 3-145) This assumption appears to sidestep Reclamation’s obligations.

Nonetheless, to ensure that the DEIS contains as much protection as possible for these resources, CRIT provides the following information. To maintain the confidentiality of these resources, CRIT is not providing information about their precise locations. CRIT is willing to submit more information to Reclamation about locations in a confidential setting to facilitate the development of protection measures.

a. Tribal Resources

The importance of the Colorado River to CRIT cannot be understated. CRIT’s Mohave members have lived along and with the River since time immemorial, and, in 2025, CRIT adopted a resolution bestowing personhood status on the River. See Exhibit 4.

This resolution provides that the River “has always been the life-sustaining cultural, spiritual, and economic focal point of the members of the Colorado River Indian Tribes,” and the Tribes “have relied upon the Colorado River for our cultural practices, to grow food and crops and support the fish and animals we depended upon, and to sustain the trees, plants, and other utilitarian resources central to our culture and traditions.” Further, “the Colorado River is a living being carrying and sustaining life as it flows through the reservation and our ancestral lands. . . . [T]he spiritual and cultural well-being of the Colorado River Indian Tribes and of our tribal members from the beginning of time and through the end of time, is directly linked to the health and well-being of the Colorado River and its resources.” Mohaves learned this from their religious ideas, passed on from generation to generation in the form of stories about the River.

i. Tribal Cultural Landscape

The River itself is a traditional cultural property and cultural landscape eligible for listing on the National Register of Historic Places. *See* National Register Bulletin 38 (2024 Update) (a “culturally significant natural landscape may be classified as a site” eligible for the National Register). Both CRIT’s tribal cultural knowledge and archaeological studies of the Mohave relationship to the River provide abundant evidence to support a cultural landscape eligibility determination.

For example, a recent ethnography conducted for the Easley Solar Project describes the strong cultural connection between CRIT’s ancestors and the River landscape. “When the earliest Euro-American explorers encountered them, the Chemehuevi were living on along the Colorado River conducting floodplain agriculture, a practice they adopted from the Mojave (AECOM 2013).”¹¹ “Mojave territory included both riverine and inland areas. . . . This main area of Mojave occupation extended on both sides of the lower Colorado River. . . .” Easley Ethnography, p. 18.

The Mohave relied on the River for vital water in a desert environment, centering their habitation and agricultural practices around its presence. “Silt deposited by river overflows fertilized the fields. . . .” Easley Ethnography, p. 18. “Fish was the most important protein source for the Mohave, with dip nets, drag nets, traps, and large basketlike scoops used to catch fish out of the river (Kroeber 1925; Steward 1957).” *Id.* These archaeological findings echo and support CRIT’s understanding of our history and relationship to the River, as set out in our River personhood resolution. The DEIS’s failure to recognize the interconnected relationship between Mohave culture and the River landscape violates NEPA and fails to consider the full extent of the Project’s impact. The DEIS must be revised to recognize and address this impact.

¹¹ Non-Confidential Ethnographic Literature Review for the Easley Solar Project, Riverside County, California (Easley Ethnography), p. 14

ii. Tribal Historic and Cultural Resources

In addition to being a tribal cultural landscape, the River contains within and around it other cultural resources that are eligible for listing on the National Register. For example, there are pre-contact fish traps made of boulders in the River that were constructed by CRIT's Mohave ancestors. These traps are exposed whenever the River's elevation drops below a certain point. Without protection, these Fish Traps could be vandalized or misused by non-Native people recreating on the River. In addition, there are clay deposits used by the Mohave people since time immemorial for making pottery. There are also numerous utilitarian sites that have been submerged as a result of dams and other development along the River. All of these resources are used by our members in spiritual and ceremonial practices. In the past, the federal government has not been diligent in protecting such sites. Protection must start now by having the DEIS address and mitigate or avoid impacts to these resources.

Trails leading to the River are also important resources for CRIT. Since time immemorial, the Mohave and Chemehuevi people used those trails to access the River and other communities. Any alternative that would impact these trails, either by inundating them or exposing them, would have a significant impact on tribal resources.

As the DEIS recognizes, the natural environment in and around the River is also sacred to CRIT and other tribes:

The Colorado River, its canyons, and the associated ecosystems figure prominently in the cultural traditions of many tribal communities. For these tribes, the river and canyons are living entities consisting of sacred spaces, the homes of their ancestors, the residence of the spirits of their dead, and the source of culturally important resources. Many tribes see themselves as stewards of the Colorado River and its canyons, which are a vital part of the living and spiritual world. Caring for the river and the canyons is their responsibility. Tribal resources can include archaeological resources, archaeological structures, topographic features, habitats, plants, wildlife, and minerals that Indigenous peoples, tribal nations, or other groups consider essential for the preservation of traditional culture and traditional values. Tribal interests also include values and resources reflected in other sections in this Draft EIS, including water for drinking and agriculture, recreational resources, and many other socioeconomic and environmental aspects that overlap other sections.

DEIS, 3-143.

Many of the traditional Mohave stories involve and celebrate the River. In Mohave culture, the people are given the responsibility of taking care of all living things. For CRIT, the fish, birds, and other wildlife that live in or rely on the River are sacred. The River is the bloodline for everything. Birds come to it for water, as do deer, coyotes,

mountain lion, bobcat, and other animals. To this day, the Mohave sing bird songs and dance bird dances. Fish from the River—specifically razorback, bass, carp, and bony tail chub—not only provided sustenance but were also used as medicine.

Our creator Matavilya gave the Mohave people plants to use as medicine. Our ancestors understood how to use these plants. This is how we survived here since time immemorial.

The Mohave also used the natural rise and fall of the River to grow crops along the River bed when the River was low. These crops included corn and beans, among others. The rich soil caused by thousands of years of alluvial deposits made for fertile ground.

In addition, numerous events important to the Mohave culture are also associated with the River.

The DEIS acknowledges that changing river and lake levels can inundate existing tribal resources and expose new resources, and that fluctuating water levels in themselves may damage tribal resources. *See, e.g.*, DEIS, 3-145-47, 149-50. However, the analysis is so generic that readers are left in the dark as to what resources may be impacted. The DEIS does not include any analysis of the alternatives' impacts to the Fish Traps, clay deposits, or trails. It does not acknowledge that any further threats to the already threatened and endangered humpback chub, pikeminnow and razorback sucker and bonytail chub also hurt our people.

It appears the ultimate Project selected by Reclamation will not involve any ground-disturbing activity. If that changes, it is critical to note that CRIT's members view any and all pre-contact resources as the possessions of their ancestors that make up the Tribe's ancestral footprint and carry tremendous spiritual importance. It is of the utmost importance not to disturb these resources. If they cannot be avoided, the Tribes typically seek to rebury the unearthened resources nearby in a location that is unlikely to be disturbed again. Indeed, the Tribes have worked with other federal agencies—most notably, the Bureau of Land Management—to facilitate reburial in a way that complies with relevant federal laws, and their internal memoranda may be instructive to Reclamation. *See California BLM Internal Policy Memorandum, CA-2023-002 (Sept. 29, 2023)*. With respect to this Project, that means Reclamation must select an alternative that disturbs or exposes as few tribal resources as possible. Then, where avoidance is absolutely infeasible, the PA for this Project must include provisions authorizing reburial of disturbed or exposed resources on federal land as close to the location of provenance as feasible, selected in consultation with the Tribes and protected from future disturbance.

According to the DEIS, the primary impacts to cultural and tribal resources result from the changing flows in the River. Some alternatives provide a steadier flow, while others would result in more variation. Given these potential impacts, the DEIS must include detailed mitigation outlining consultation and coordination when water level

changes potentially impact tribal resources. Critically, CRIT must be provided with notice and opportunities for consultation regarding all key discovery and decision points. The mitigation must ensure:

- Criteria for establishing when tribal resources are impacted and what resources are covered;
- Advance notice to, and consultation with, CRIT for water changes impacting tribal resources;
- Reduction of impacts to known or discovered pre-contact cultural resources through avoidance or protection;

The River and its surroundings have been changed significantly since pre-contact times, through the development of dams, massive water diversions for users hundreds of miles from the River's banks, and, more recently, utility-scale solar developments. These changes have severely impacted the River itself, the health of its fish and other aquatic species, native wildlife, and pre-contact tribal sites and resources. The creation of Parker Dam and the associated reservoir inundated known sites and resources. The razorback, bass, carp, and bony tail chub, once a staple for the Mohave people, are now almost gone. The resources that remain are all the more precious. This DEIS must be revised to consider the specific impacts to these resources caused by the specific alternative selected by Reclamation and a PA must be circulated with the revised DEIS addressing measures to mitigate or avoid those impacts.

Once the Section 106 process is underway, our THPO can expand and provide more information on these issues. One of our concerns and requests is that an erosion control plan and wildlife habitat plan be developed to address impacts on the River from changing flows. We would welcome an opportunity for staff-to-staff meetings before the official consultation starts.

3. Socioeconomics

The health, safety, and culture of the Colorado River Indian Reservation tribal community is directly dependent upon the Tribe's diversion and use of its water right. More than 4,600 tribal members live on the CRIR, and the Tribes play an outsized role in the economy of La Paz County, a role which is largely dependent on their use of their water rights. Moreover, unlike many other Colorado River water users, CRIT's socioeconomic reliance on the River is the direct result of the promise made to the Tribes when the CRIR was established: that CRIT have sufficient water to support the establishment of a homeland.

Despite this distinct aspect of CRIT's reliance on the River, the Socioeconomic Impact analysis understates potential impacts to the CRIT community, omitting

information and grouping CRIT together with other water users with different backgrounds and rights. There is a direct connection from CRIT's water diversion to use for irrigation on tribal farmland, sales of farm products, and contribution of net revenue to fund tribal government services supporting the health and well-being of tribal members on the Reservation. This relationship between water rights, community health, education, safety, tradition and culture has no comparison among other municipal or regional government agencies in the state of Arizona. The DEIS fails to capture the Tribe's role as an economic engine for the region and the importance of water to the provision of critical government services, including drinking water, education, etc.

a. The DEIS aggregates PPR tribes with Arizona CAP tribes, presenting an incorrect analysis of impacts on CRIT.

Technical Appendix TA18 provides baseline details on agriculture by county (TA 16.1.2 Baseline Economic Conditions). The data reflect a large acreage and high market value of agricultural production in Central Arizona Project (CAP) counties compared to western Arizona, including La Paz County where CRIT is located. *See* DEIS, Table TA-16 at 16-11. However, Tribes in CAP counties have lower priority water than CRIT, which has first priority PPR.

The impact analysis results aggregate all Arizona tribes (CAP and PPR). *See* DEIS, Figure TA 16-1 at 16-42; Figure TA 16-2 at 16-45. The alternatives have very different economic impacts on CAP tribes compared to CRIT, a PPR tribe, and because of their acreage and relative market size, the results are skewed towards CAP tribes. In particular, Figure TA 16-2 shows the *smallest* economic impact on "Arizona Tribal Agriculture" from the "Enhanced Coordination Alternative" and *largest* economic impact from the "Basic Coordination Alternative." In fact, the impact to CRIT is largest from both the "Enhanced Coordination Alternative" and the "Supply Driven (Pro Rata) Alternative," and smallest impact from the "Basic Coordination Alternative."

The DEIS aggregation leads to the following statement in Chapter 3 "Summary Comparison of Alternatives" to conclude:

However, for Arizona tribal entitlement holders, lower impacts on economic and social conditions due to reductions in agricultural production would occur under alternatives with pro rata shortage distribution methods, and higher impacts occur under the alternatives with priority shortage distribution methods, compared with other action alternatives.

DEIS, 3-182.

The conclusion is wrong with respect to the economic impacts on CRIT because CRIT is a PPR tribe. The importance of priority distribution to tribes is demonstrated in Figure TA 18-2, which shows no impact to PPR tribes when priority is recognized. DEIS,

TA 18-4. It is critical that the DEIS present its socioeconomic impact analysis with CAP tribes separate from CRIT and other PPR tribes.

b. The DEIS omits important data about the value of CRIT agriculture.

The DEIS omits important data about the value of CRIT agriculture. Table TA 16-2 shows employment in Arizona counties, and Table TA 16-5 shows the Market Value of Agricultural Production in Arizona Analysis Area. Both tables display many cells with “(D)” for La Paz County, where the CRIR is located, indicating “data was too sensitive to disclose.” Although the designation is common with small data sets from these sources, a reader of the DEIS is left with the impression that water and farming is of little significance to the county.

Reclamation should instead use the approach it adopted in a recent Environmental Assessment (EA) for a nearby project. That EA used National Agricultural Statistics Service data (the same source used in this DEIS) to present the “Total Economic Output for the Top Five Industries in La Paz County.” The most important industry in the county is “Other Crop Farming,” which includes alfalfa and other hay production. Nearly all of this economic value is derived from CRIT’s 70,000-acre irrigation project, which is served by CRIT’s PPR water rights. In other words, the Tribe’s and much of the entire county’s economic base is a direct result of the Tribe’s full use of its water rights. In the data year of the tables (2022), CRIT’s value of production was \$160 million. Agriculture is the very foundation of CRIT’s economy, and the River and its use is at the core of tribal life and identity.

c. The DEIS fails to acknowledge impacts to CRIT agricultural production, recreation, and tourism under the Pro Rata Alternatives or any water shortages.

The DEIS fails to acknowledge how any shortage of CRIT’s water would impact its members and community. The Tribes own and operate `Amat Kuhwely Farms, one of the largest alfalfa-growing farms in the country, under a diversified cropping pattern. The creation of the Farms, and CRIT’s substantial investment in its operation, was based on its certainty of water supply. The fallowing of land at `Amat Kuhwely Farms would mean a loss of revenue and profit. The loss of that certainty would financially devastate the Farms and CRIT as well, causing great harm to tribal members.

While the DEIS does not address CRIT’s land in particular, the DEIS model understates the impacts resulting from fallowing in general. For example, the DEIS states that the Enhanced Coordination (Pro-Rata) Alternative could result in fallowing 19,953 acres of land and estimates that the economic impact is \$26.8 million under a 1,500 kaf shortage, or approximately \$1,343 per acres. The approach used in the DEIS to measure economic impacts to agriculture assumes fallowing of the least profitable crops. For

CRIT lands, it is presumably wheat or cotton that is “fallowed” in the model, though the documentation does not make that clear. However, those crops are only farmed in rotation with more profitable alfalfa or specialty crops. Systemic changes to water supply—such as those proposed in the Pro-Rata Alternatives—would require entire rotations to be fallowed. As a result, economic impacts would be much higher. For example, the Tribe’s `Amat Kuhwely Farms (at nearly 30,000 acres) utilizes a rotation of alfalfa (4 years), cotton (1 year), and wheat (1 year). Reduced water supply could mean fallowing all these crops at an average of about \$2,323 per acre, or more than 70 percent greater than the DEIS model suggests.¹²

In addition, `Amat Kuhwely would incur additional expenses in managing the fallowed land through annual control of weeds, pests, and wind erosion; payment of BIA irrigation assessment; and land preparation for a return to farming. Repairing and reestablishing the irrigation ditches and infrastructure to return to use after years of continuous disuse would require additional investments.

The agriculture-related losses to CRIT would be compounded by losses in revenue from recreation and tourism. CRIT is also highly invested in recreation and tourism. A significant draw to the region and its Blue Water Resort is the Colorado River and lake-based recreation above Parker Dam, which includes boating and water sports, swimming and shore-side recreation, and lake fishing. The resort has a large marina that caters to lake tourism. River access to the Colorado River below Parker Dam is also an important draw for recreationists seeking camping and water recreation on the River. This tourist business also contributes to the economy of the Tribe and the region.

The recreation economic analysis in Technical Appendix 16 is essentially silent on the impacts of the alternatives to lake recreation above Parker Dam, or to river recreation below Parker Dam. It addresses whitewater rafting and angling, and provides a qualitative discussion of impacts to Lake Mead, but ignores the impacts of the alternatives on recreation and tourism elsewhere in the Lower Basin, including in the vicinity of the Reservation.

d. The Pro Rata Alternatives would directly affect CRIT’s ability to provide government services relied upon by tribal members.

CRIT relies upon net revenue (profit) from the sale of agricultural products from `Amat Kuhwely Farms and agricultural land leases for a significant portion of its governmental operating budget. The tribal government provides critical services to community members that are necessary to establish a homeland for our people, including

¹² Derived from CRIT. 2022. “Prices and Yields for Year 2022 Reclamation Part 417 Report.” Submitted to US Bureau of Reclamation, 25 October 2022, p. 5.

health care, education, housing, water and sewer, utility service, roads and public works, cultural programs, and government operations.

For example, our Head Start program and local public schools are currently experiencing a decrease in enrollment, which results in reduced federal, state and local funding for these essential educational institutions. Typically, CRIT would attempt to make up for these shortfalls by providing additional funding for Head Start and supporting other educational opportunities for our children (tutoring, special needs assistance, etc.). If Reclamation pursues a pro rata alternative and CRIT's revenues from farming, leasing, and other water-dependent businesses are reduced, that will affect CRIT's ability to provide additional educational support. Any reduction in funding available for education would obviously have disparate impacts on our Native children.

In addition, CRIT provides safe drinking water to its members from its Colorado River water. Any cuts that would impact this basic government service would obviously have severe socioeconomic impacts on the community.

In other words, for CRIT, there is a direct relationship between diversion of water for crop production and the provision of basic government services. The DEIS must be revised to consider and mitigate these impacts.

e. The DEIS fails to acknowledge the negative impacts on the regional economy from any shortage of CRIT water.

In La Paz County, Arizona, agriculture is the largest industry sector at 12 percent of total county output,¹³ and agriculture supported by CRIT water constitutes a substantial portion of that production. Many other business sectors are directly dependent upon farm product sales, including fertilizer and input suppliers, truckers and haulers, repair and maintenance shops, fuel distributors and stations, banks and loan institutions, insurance companies, and others. Virtually all other sectors are also indirectly affected, including restaurants, retail stores, and service providers, since they rely upon household and business spending.

For example, a recent Reclamation study of the impact of reducing hay production, which is the largest industry sector in La Paz County, representing about 12 percent of all economic sales and output, found that every \$100 decrease in hay sales resulted in a \$33 dollar decrease in other sectors.

Actions that devastate the local farm-based economy would also have led to losses to recreation and tourism visitation, and the commerce that this provides to the Tribe and

¹³ Bureau of Reclamation, Final Environmental Assessment, GSC Farm – Queen Creek Water Transfer Project, Arizona Interior Region 8: Lower Colorado Basin, July 2022, p. 31.

to the region. The regional economy could see a decrease in economic output in virtually all sectors of the economy. This includes tax revenue providing services to all the region's communities.

The DEIS must be revised to fully and accurately analyze the regional economic impacts that would result from any water shortages to CRIT and other local water uses.

4. Biological Resources (Aquatic Species, Vegetation, Terrestrial Wildlife)

CRIT and other tribes have depended on the River for food and medicine since time immemorial. But management of the River over the past century has fundamentally changed its flow and driven much of its wildlife to extinction. *See, e.g.*, DEIS, 8-16; TA 08, Att. 1-8-1. Of the 35 native fish species in the Colorado, only seven remain and four of these—the humpback chub, razorback sucker, Colorado pikeminnow, and bonytail chub—are listed as endangered or threatened under the ESA. DEIS, 3-89. Numerous birds and other wildlife—including the southwestern willow flycatcher, yellow-billed cuckoo, Yuma Ridgway's rail, Mojave desert tortoise, northern Mexican gartersnake—are threatened, endangered, or proposed for listing by the U.S. Fish and Wildlife Service (USFWS). Many more are special status species and species of concern protected under state law.

The DEIS recognizes that the different alternatives will cause serious harm to the River and its resources. Yet it fails address compliance with the Lower Colorado River Multi-Species Conservation Plan (LCR MSCP) or necessary amendments to it, fails to provide meaningful analysis of the loss of wetlands and other habitats and their wildlife, fails to fully address how changes in flow will impact the River, and proposes no mitigation to protect the River ecosystems.

a. The DEIS fails to address compliance with the Lower Colorado River Multi-Species Conservation Plan and improperly segments ESA compliance from the NEPA process.

The LCR MSCP, as amended, and related Biological Opinions, provide ESA coverage for use and management of the lower Colorado River. The LCR MSCP is intended to “avoid, minimize, and fully mitigate the incidental take of the covered species” from covered actions. DEIS, 1-29. But while the DEIS references the LCR MSCP and related Biological Opinions (BOs), it does not address their requirements in any detail. It is thus impossible for CRIT or other members of the public to evaluate the

extent to which the different alternatives would comply with these existing plans and policies.¹⁴

Moreover, Reclamation unlawfully defers reconsideration of the LCR MSCP and BOs until *after* the ROD is issued. DEIS, 1-29 (LCR MSCP “is being revisited in a separate process that will be finalized following the signing of the Post-2026 ROD”); TA 10-9 (“Species specific impacts will be addressed in future Section 7 ESA BOs.”).

Reclamation cannot segment adoption of a revised LCR MSCP and BO from the Post-2026 Guidelines approval process. Both approval processes are subject to NEPA and should therefore proceed “concurrently.” *San Luis & Delta-Mendota Water Authority v. Jewell*, 747 F.3d 581, 645-48 (9th Cir. 2014) (NEPA and ESA process should proceed “concurrently”); *Westlands Water Dist. v. U.S. Dept. of Interior, Bureau of Reclamation*, 850 F.Supp. 1388, 1422 (E.D. Cal. 1994) (finding a “biological opinion is part of a systematic and connected set of agency decisions which result in the commitment of substantial federal resources for a statutory program” allocating water and is “NEPA major federal action”).

The ESA analysis must be undertaken now so that it informs Reclamation’s choice. Reclamation is a party to the LCR MSCP and its actions on the River directly impact protected species and habitat. As part of the ESA consultation process, the USFWS is required to suggest “reasonable and prudent alternatives” that can be taken by Reclamation in implementing its proposed action. 16 U.S.C. § 1536(b)(3)(A). This process must be completed *before* agency action, not *after* critical decisions impacting the River have been made. *See WildEarth Guardians v. Bucknall*, 756 F.Supp.3d 1017, 1036 (D. Mont. 2024) (post-decisional “no-jeopardy” finding by USFWS cannot remedy the deficiencies of NEPA analysis; NEPA requires all relevant decision be consider *before* project approval).¹⁵

b. The DEIS omits meaningful analysis and mitigation for wetlands, habitat loss and wildlife impacts.

Reclamation management of the River directly impacts wetlands through water allocation and restoration projects. Wetlands are protected under the Clean Water Act, 33

¹⁴ In conversations with CRIT, Reclamation staff indicated that the LCR MSCP covers shortages of up to 3 million af. If this is correct, the EIS should be revised to say so.

¹⁵ *See also Natural Resources Defense Council v. Houston*, 146 F.3d 1118, 1129 (9th Cir. 1998) (ESA compliance required before water contracts with Reclamation executed, not after to avoid “post-hoc assessments of a done deal”); *Conner v. Burford*, 848 F.2d 1441, 1455, 1458 (9th Cir. 1988) (incremental consultation process does not satisfy ESA or NEPA; rather a “comprehensive biological opinion” must “be completed before initiation of the agency action” and “coextensive with the agency action”).

U.S.C. 1251, et seq. (CWA), which requires that wetlands be protected, restored and enhanced to ensure no net loss. Reclamation policy also requires the protection wetlands and mitigation of impacts. Reclamation Manual LND P03 (“Reclamation will, when practicable and appropriate, mitigate for existing wetland functions and values adversely affected by its activities. . .”). Mitigation may include wetland restoration, creation, improvement, mitigation banking, and preservation. *Id.*

Yet, the DEIS does not ensure protection or mitigation of wetlands. Its discussion of wetlands is limited to vague acknowledgements that wetlands will be impacted. *See, e.g.* DEIS, 3-92 (reservoir management alternatives will alter “the extent and connectivity of lake, wetland, and riverine inflow areas.”). The Technical Appendix on “Vegetation” does not mention wetlands even once. For unclear reasons, it uses the term “marshes” exclusively. But, by law, a marsh is a wetland and is subject to the same protections. *See* 33 C.F.R. § 328.3(c)(1) & 40 C.F.R. § 120.2(c)(1) (“Wetlands generally include swamps, marshes, bogs, and similar areas.”). Most, if not all, of the wetlands and marshes impacted by the Project are connected to the Colorado River and thus constitute waters of the United States that are subject to the CWA.

According to the DEIS, the Project area includes approximately 4,327 acres of marsh. DEIS, TA 9-2. But the DEIS does not given the public any sense of the scope, scale or location of wetland loss that could result from the Project. It is impossible to determine, for example, how many total acres of wetlands could be lost under the Maximum Operational Flexibility Alternative versus any of the other alternatives. While TA 9-9 provides some estimates of relative marsh acreage under different alternatives for the Glen Canyon Dam to Lake Mead stretch, it does not clearly identify possible acreage loss for a lay reader. And no acreage estimates, even rough approximations, are provided for other portions of the River (Lake Powell, Lake Mead and the River below Hoover Dam). As a result, the DEIS gives the public no sense of the true impacts on wetlands or the amount of mitigation that would necessary to compensate for projected losses.

Actions that reduce wetlands not only eliminate important habitat, they also cause a loss of wetland plants whose root systems hold the soil along the banks in place. A change in flow that results in wetland loss can therefore decrease the flood buffer capacity of the area and increase flood risk.

The DEIS’s treatment of other vegetative habitats—and related impacts to wildlife—suffers from the same lack of specificity. The analysis of impacts on woody riparian habitat contains no acreage estimates, making meaningful comparison to baseline conditions impossible. Instead, the DEIS contains only vague summary descriptions of alternatives’ relative performance compared to historic conditions. *See* DEIS, ES-41. And because the wildlife impact analysis largely tiers off the habitat analysis, these impacts are equally hard to discern. For example, the DEIS fails to map critical habitats within the Project area as determined by the USFWS—leaving the public with no way to assess how

the Project will impact them. The DEIS also lacks a clear analysis of how the different alternatives will harm or help the endangered fish species like the bonytail chub, razorback sucker, and the Colorado pikeminnow. These fish carry deep environmental and cultural significance to CRIT and are highly sensitive to changes in river flow and water levels.

An EIS is intended to provide information to the public and should be presented in a manner that is clear and understandable. *See California ex rel. Lockyer v. U.S. Forest Service*, 465 F.Supp.2d 917, 922 (N.D. Cal. 2006) (EIS must be “organized and written so as to be readily understandable by governmental decisionmakers and by interested non-professional laypersons”) (citation omitted). The DEIS here fails that test and violates NEPA.

c. The DEIS fails to explain how changes in flow impact the River and its resources.

River flow is identified as important, yet not meaningfully addressed. The DEIS recognizes that flow levels are critical to its fish and wildlife. DEIS, 3-89 (“River flow variations . . . significantly influence aquatic habitats within the channel, shorelines, backwaters, and tributary mouths.”), 3-91 (changes in flow “can alter available habitat and affect species’ numbers” as well as affecting “backwaters and riverine habitats that support native fish”). The DEIS states that the Project will impact River flow which, in turn, affects aquatic life:

There will be modifications in quantity, timing, temperature, and quality of water released from Glen Canyon Dam and Hoover Dam through the Lower Colorado River. Fish habitats, distributions, and abundances are likely influenced by changes in flows, with reduced flows and variations in dam releases potentially altering available habitat and population numbers.

DEIS, TA 8-34. Yet, the DEIS contains almost no information on minimum flows necessary to protect the River environment or its living resources or the extent to which changes in stream flows among the alternatives will impact them.

A coalition of conservation groups proposed a critical minimum flow of 5,000 cubic feet per second (cfs) below Glen Canyon Dam, with a preferred flow of 6,000 cfs, in order to ensure the integrity of natural resources.¹⁶ Only one alternative—the

¹⁶ *See* Conservation Groups’ Cooperative Conservation Alternative to Commissioner Touton, Bureau of Reclamation, March 29, 2024 (March 2024 Conservation Group Letter), at p. 8.

Maximum Operational Flexibility Alternative—adopted this critical flow.¹⁷ This suggests that this Alternative should be most successful at assuring minimum flows. But the opposite is true. According to the DEIS, only 57% of futures under the Maximum Operational Flexibility Alternative would ensure daytime flows of 5,000 cfs, which is the *worst* of any of the alternatives (the Enhanced Coordination Alternative is the highest, at 98%). *See* DEIS, Table ES-8 at ES-49.

Moreover, consequences of meeting (or failing to meet) a 5,000 cfs flow minimum—or any other flow threshold—are ignored.¹⁸ Below Glen Canyon Dam, the DEIS acknowledges the importance of water flow,¹⁹ but provides little additional information. Below Hoover Dam, the DEIS merely states:

River flows under each alternative are reported under TA 3, Hydrologic Resources, and referenced as appropriate within this issue analysis as a baseline for flow conditions that may impact water quality and quantity as it relates to native fish, trout species, and smallmouth bass.

8-49. While TA 3 summarizes expected flow data, nowhere does the EIS give a full analysis of how changes in flow impact native fish or biological resources.

The information that is provided appears contradictory. In discussing fisheries impacts below Hoover Dam, for example, the DEIS states that “all alternatives are expected to result in similar habitat and population dynamics as experienced during the historical period,” suggesting that flows will be relatively unchanged. DEIS, 8-85; *see also* DEIS, 8-80 (“all alternative futures should meet the historical range of flows observed from 2008–2024, during more than 92 percent of the months under all modeled futures.”)

Elsewhere, however, the DEIS states that all of the action alternatives would fall well *below* the historic (2008-2024) range of annual Hoover Dam releases, which are 8.515 maf to 9.615 maf (DEIS, 3-27):

The action alternatives would not perform as well, with the median annual volume for the Basic Coordination Alternative in the Average Flow

¹⁷ *See* DEIS, 2-28 (“The minimum monthly release would be based on 5,000 cubic feet per second (cfs) unless it is reduced by Glen Canyon Dam infrastructure constraints below physical elevation 3,490 feet.”).

¹⁸ The DEIS discusses flow with regard to whitewater boating, noting that maintaining flows above 5,000 cfs reduces “severe navigational hazards” (*see* DEIS, 3-158-59), but does not designate minimum flows as an environmental stewardship target.

¹⁹ DEIS, 3-92 (“The survival and abundance of [] native species are closely linked to flow regimes and habitat availability”).

Category around **8.1 maf**, followed by the Maximum Operational Flexibility Alternative at **7.8 maf**, the Supply Driven Alternative (LB Priority approach) also at **7.8 maf**, the Supply Driven Alternative (LB Pro Rata approach) at **7.7 maf**, and the Enhanced Coordination Alternative at **7.7 maf**.

DEIS, 3-130; *id.* (concluding that these “[r]eductions in annual flow volumes could impact archaeological sites where the result is lower water levels along the river”). Likewise, the DEIS’s discussion of vegetation habitat notes that “annual flow volume below Hoover Dam **may decrease under all alternatives** in average and dry hydrologic conditions” and that most futures fail to meet performance criteria for habitat protection. *See* Figure TA 9-16 at TA 9-28. This is due to projected decreases in annual flow under future average and dry conditions. In short, the EIS gives conflicting information on whether flow below Hoover Dam will be “similar” or significantly lower than historic conditions.

Overall, the DEIS lacks clear information on how changes in waterflow and water levels will lead to long-term negative impacts to the ecosystem and fish and wildlife health, which will harm communities like CRIT that are directly connected to the River. Water flow below critical minimums can lead to algal blooms, die-offs of aquatic species, and harm to waterfowl and big game hunting. It will also change vegetation composition along the River, resulting in a loss of plants with deep cultural significance to CRIT. The DEIS must squarely address these issues.

d. The DEIS contains no mitigation.

CRIT is also concerned about the absence of any mitigation measures in the DEIS to reduce impacts to biological resources. Many of the River’s fish and wildlife have already been eliminated or pushed to the brink of extinction by historic changes. Future droughts will endanger them further.

The DEIS recognizes that each of the alternatives discussed will cause harm to the River and its wildlife habitat. It also concludes that no one alternative is environmentally superior; rather, the alternatives have different trade-offs. *See, e.g.*, DEIS 8-85 (“each alternative presents tradeoffs between supporting native endangered species, controlling nonnative fishes, and maintaining recreational sportfish habitats”); TA 9-31 (different alternatives may be better for maintaining habitat in some River stretches but worse in others). Each of the alternatives has different impacts on aquatic and terrestrial habitat and wildlife, impacts that also depend on flow conditions.

Despite this, the DEIS contains *no* mitigation to reduce impacts on fish and wildlife or their habitat. Although the DEIS suggests that all alternatives would “need to meet the applicable ecosystem-based requirements under applicable law” (DEIS, 2-37), it does not identify what these “requirements” are or propose them as mitigation.

Any planning of new Guidelines must go hand in hand with developing alternative-specific mitigation. Potential mitigation should include:

1. Establishing thresholds to preserve critical habitat for native threatened species;
2. Funding and building selective fish passages structures that benefit native fish populations;
3. Funding and adopting management programs to reduce and control the spread of non-native fish populations, like smallmouth bass, that compete with native fish;
4. Increased monitoring and eDNA analysis of native and competitor fish;
5. Expanding manual translocation, stocking and augmentation programs for native, threatened and endangered fish;
6. Establishing high flow regimes to improve nearshore habitats for native fish;
7. Protecting and enhancing native fish spawning areas;
8. Expansion of habitat conservation areas and creation of new habitat for cottonwood-willow, honey mesquite, marsh, backwater and other important habitat types;
9. Expanded habitat creation for protected species like the Yuma Ridgway's Rail, Northern Mexican Gartersnake, Razorback Sucker and Bonytail Chub; and
10. Priority water allocation to maintain established habitat areas.

The EIS must be revised to include specific, enforceable mitigation that reduces the identified impacts of each alternative on biological resources. *See South Fork Band Council*, 588 F.3d at 727 (NEPA requires an assessment of potential mitigation and an evaluation of its efficacy). These measures must be adopted as part of the ROD. *See Reclamation Manual*, ENV P07.5.H (ROD “defines the action to be taken and those environmental mitigation actions Reclamation is committed to perform as well as any necessary monitoring of those mitigation actions.”),

5. Recreation

As noted above (*supra*, Section III.D.3), the DEIS ignores recreational uses below Parker Dam, including recreational uses of the River along the CRIR by the Tribes and Tribe businesses. The analysis should be updated to address impacts on these uses.

6. Air Quality

The DEIS fails to take a hard look at how fallowing vast acres of farmland would impact local communities. The Air Quality analysis purports to address the question: “*How would changing flow characteristics affect . . . fallowed agricultural lands, and fugitive dust?*” DEIS, 3-79.

But the answer is a brief statement of the obvious: “changing flow characteristics can affect the fallowing of agricultural lands, especially in regions that rely on consistent irrigation.” DEIS, 3-83. While fallowed lands are discussed in the Socioeconomics section (DEIS, 3-174), this section does not address increased dust and resulting air quality impacts. And the only specific area addressed in Technical Appendix 7 is Clark County Nevada, which is identified as “the only county in the analysis area that has been designated as serious nonattainment for the 2015 eight-hour O₃ standard and a maintenance area for CO and PM₁₀ (EPA2025b)” and as exceeding the NAAQS for O₃ and PM₁₀. DEIS, TA 7-42.

The Project could result in tens, or even hundreds of thousands of acres of fallowed land. *See* DEIS, ES-51; Figure TA 16-1 at TA 16-42. CRIT alone has approximately 70,000 acres in active agricultural production through its farm and leases. Forced fallowing of agriculture on this scale could cause harmful levels of dust even in areas that are not currently out of attainment, and could harm communities near these areas, even if the impacts are not County-wide. The DEIS must address these impacts. *See Colorado Environmental Coalition v. Salazar*, 875 F.Supp.2d 1233, 1257 (D. Colo. 2012) (“The mere fact that the area has not exceeded [air pollutant] limits in the past is of no significance when the purpose of the EIS is to attempt to predict what environmental effects are likely to occur in the future. . . .”).

IV. The public must have a chance to review and comment on the next NEPA document.

Reclamation has suggested that the final EIS may include a new proposed alternative with elements of the various draft alternatives. CRIT requests that any new alternative be prepared as part of a supplement draft EIS and circulated for public review and comment.

NEPA was adopted to “guarantee relevant information is available to the public.” *National Wildlife Federation v. National Marine Fisheries Service*, 886 F.3d 803, 813 (9th Cir. 2018) (citation omitted). A federal agency has “a duty under NEPA to inform the public about its proposed action *at the outset of the NEPA process.*” *WildEarth Guardians v. United States Department of Agriculture Animal and Plant Health Inspection Service Wildlife Services*, 135 F.4th 717, 730 (9th Cir. 2025) (emphasis added). Environmental review that “leav[es] the public guessing” about the scope of a project undercuts this purpose and deprives the public “of the ability to evaluate the impacts of the agency’s proposed actions.” *Id.*; *see also Northern Plains Resource Council, Inc. v. Surface Transp. Bd.*, 668 F.3d 1067, 1085 (9th Cir. 2011) (where “data is not available during the

EIS process and is not available to the public for comment,” an EIS “cannot serve its larger informational role, and the public is deprived of their opportunity to play a role in the decision-making process”).

Here, the impacts analysis for various alternatives is extremely complex, and it would not be possible for the public to determine what the impacts of a new alternative would be without further analysis. This is true even if the new alternative is just a different combination of previously analyzed elements (*e.g.*, total shortages, reservoir heights, Upper Basin conservation strategies, storage options, distribution approaches).

Take, for example, the DEIS’s analysis of the impacts on aquatic species under the different alternatives. These impacts are set forth in a complex matrix that evaluates impacts for each alternative based on “levels of performance” for multiple indicators (habitat inundation, fish barriers, water temperature, smallmouth bass spread, water releases, etc.). DEIS, Figure TA 8-31 at 8-84. This matrix is an attempt to capture impacts—based on multiple robustness heat maps—addressing an even wider range of issues, from nonnative fish predation and competition to riverine habitat loss and inundation to fish barriers. If the final EIS proposes a new alternative with a different combination of elements, there is no way to extrapolate from this complex matrix how the new alternative will function. The Final EIS must provide updated impacts analysis of the new alternative and sufficient time for the public to review and comment on it. *See New Mexico ex rel. Richardson v. Bureau of Land Management*, 565 F.3d 683, 707 (10th Cir. 2009) (supplemental EIS required where new alternative would change the environmental consequences in a manner that cannot “easily be predicted from the existing analysis”); *Oregon Natural Desert Association*, 921 F.3d at 1192 (late information provided “*after* the public comment period closed” precludes public input and “impedes NEPA’s goal of giving the public a role to play in the decisionmaking process”).

Therefore, CRIT requests that Reclamation prepare and circulate for public review a new draft supplemental EIS that corrects the deficiencies in the DEIS.

During the government-to-government consultation on February 18, 2026, Reclamation committed to consulting with CRIT—not simply announcing its chosen alternative in the final EIS. CRIT holds Reclamation to that commitment: consultation must happen while the preferred alternative is being shaped, not after the decision is already made. CRIT requests a minimum 45-day comment period on the final EIS. Anything less will not allow meaningful review on a document this important.

List of Exhibits

- Exhibit 1: March 5, 2025 letter from Amelia Flores, CRIT Chairwoman, to Acting Commissioner David Palumbo, Bureau of Reclamation.
- Exhibit 2: November 7, 2024 Letter from Amelia Flores, CRIT Chairwoman, to Commissioner Camille Touton, Bureau of Reclamation, attaching CRIT's October 26, 2022 letter to Reclamation and Department of Interior (DOI), April 12, 2024 letter to Reclamation, and June 28, 2024 letter to DOI.
- Exhibit 3: December 12, 2025 Memorandum from Jessie Durham, Regional Director Bureau of Indian Affairs, to Regional Director, Bureau of Reclamation, Lower Colorado Region, and 2026 Calendar Year Water Order
- Exhibit 4: Resolution No 375-25, Tribal Council, Colorado River Indian Tribes, November 6, 2025
- Exhibit 5: Government-to-Government Consultation Policy, Colorado River Indian Tribes Tribal Council, adopted May 12, 2017

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EXHIBIT 1



COLORADO RIVER INDIAN TRIBES

Colorado River Indian Reservation

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March 5, 2025

Mr. David Palumbo
Acting Commissioner, Bureau of Reclamation
1849 C Street NW
Washington, DC 20240

Via Email at: dpalumbo@usbr.gov

Subject: Comments from the Colorado River Indian Tribes (CRIT) on the Bureau of Reclamation's Alternatives Report, Post-2026 Operational Guidelines and Strategies for Lake Powell and Lake Mead, January 2025, and Response to correspondence from the Gila River Indian Community to Reclamation, dated February 26, 2025, regarding Modeling Refinements to the Basin Hybrid Alternative.

Dear Acting Commissioner Palumbo:

Thank you for visiting with the CRIT Tribal Council December 19th of last year. It was extremely helpful to meet with you in Parker, Arizona, and discuss the many issues that affect our water resources at CRIT. We also look forward to your returning to Parker for a follow-up meeting later this month, on March 19th.

1. Below are our comments on the Alternatives Report released by Reclamation in January of this year. While the report does not expressly request comments, we are providing these to ensure that our position on some of these key issues is understood by the incoming Administration and stakeholders throughout the Colorado River Basin. Notwithstanding our disagreement on certain key issues, we wish to acknowledge that you and your team have consistently been courteous, professional, and responsive to our inquiries and we are appreciative of your efforts to find common ground between our two sovereigns.

1. **On page 46 of the Alternatives Report is language entitled Special Considerations Regarding Use of Pro Rata Shortage Distributions in Alternatives.** As you recall, Reclamation and SOL leadership met with the Tribes in Dec 2024 in Las Vegas to discuss, among other matters, concerns raised by CRIT and other Tribes regarding Reclamation's lack of authority to deviate from existing law. Subsequently staff captured the public commitments made to the Tribes for inclusion in the Alternatives Report. This is the language that we developed in conjunction with you and your team. As we discussed in our December 19th meeting, this language is meant to address some of our concerns regarding Reclamation's lack of authority to implement pro-rata reductions in our water supply as part of the Post-2026 Process. Unfortunately, the agreed upon language regarding Reclamation's lack of authority was unilaterally changed by political leadership from Reclamation and the Solicitor's Office without any meaningful advance notice. It is deeply disappointing that the outgoing legal and political leadership in the Department unilaterally decided to make these changes at the 11th hour with little to no advance notice, effectively foreclosing any effort by CRIT to seek changes, much less understand the purpose for such changes. While not substantive, the way these changes were made continues the long string of broken promises made by Commissioner Touton to our Council. We acknowledge these changes were not developed by you or your team and we appreciate your notifying us to these changes. As noted above, we appreciate the staff-level working relationship between our governments. Nonetheless, this is outrageous conduct by the outgoing Commissioner and Solicitor, and we want this breach of an agreement between our two governments placed in the Administrative Record.
2. **CRIT continues to oppose any alternatives that include an analysis of pro-rata reductions.** Two of the four action alternatives brought forward for analysis by Reclamation include pro-rata reductions in water supply regardless of priority date. As we have said on numerous occasions, these action alternatives are illegal and in violation of the injunction in the Decree in *Arizona v. California*, violate the *Winters* Doctrine, violate NEPA, and would constitute an illegal taking in violation of the 5th Amendment to the Constitution. On this point we continue to be clear: CRIT will oppose and litigate any all means any attempt by Reclamation to implement any alternative Post-2026 Guidelines that would involuntarily reduce our water rights.
3. **CRIT's proposed Alternative was not specifically mentioned in the Alternatives Report.** In the Alternatives Report, Reclamation references that it received proposed alternatives from the Upper Division States, the Lower Division States, the Gila River Indian Community, and environmental organizations, but CRIT was not listed. CRIT provided a proposed alternative by email on November 12th (a copy of our alternative is hereby attached). While we acknowledge that the Federal Authorities Alternative does include a discussion of existing law, it also includes a discussion on the potential for changing the Decree, which we oppose absent a savings clause for our priority date and

volumes of water decreed to us (see comment 4 below) and is not a part of our proposed alternative.

4. **Any changes to existing authority must also protect CRIT's senior water rights.** The Alternatives Report discusses the need to protect the integrity of the infrastructure on the river. We wish to be clear, as the holder of the most senior present perfected right on the river, any changes in the law must also protect the seniority of CRIT's rights. Any legislative proposal that seeks to change Reclamation's authority to operate infrastructure on the river that does not include a savings clause to protect CRIT's senior right would represent an unconstitutional taking and will be opposed by CRIT.

5. **When analyzing potential impacts of Post-2026 Alternatives on CRIT water rights resources, Reclamation must also disclose that lack of funding by the Bureau of Indian Affairs is prohibiting CRIT from fully using our water resources.** Any analysis of impacts to CRIT from the Post-2026 process must also acknowledge the chronic underfunding by BIA for the Colorado River Irrigation Project. As you are aware, the irrigation project is owned by the BIA and their refusal to properly fund it is limiting our ability to place more lands in production and more fully utilize our water resources. The maintenance backlog is roughly \$300 million, and it is this backlog that drives the 52% efficiency rate of the project. This places CRIT in the position of having our trustee squeeze us from two different directions- on one hand we have Reclamation threatening to reallocate our water resources that we are not fully using and on the other hand, BIA refusing to invest in our project, which limits our ability to more fully use our water resources. If the Post-2026 process is going to reflect that CRIT is not fully utilizing its water resources, then it must also properly reflect the reasons why.

6. **We acknowledge Reclamation's clarification regarding the accounting of unused tribal water.** As expressed in earlier comments, we remain concerned about how the accounting of unused tribal water could be used to support an involuntary reduction of our rights. But we do acknowledge that Reclamation has stated that the purpose of this accounting is to inform conversation about protective measures, including compensation and credit for unused water. This clarification is helpful.

2. We are in possession of correspondence from the Gila River Indian Community (Community) to Reclamation dated February 26, 2025, seeking additional refinements to Reclamation's analysis regarding pro-rata reduction in the Basin Hybrid Alternative. As a process matter, we appreciate the Community's efforts to seek a consensus approach in the development of Post-2026 Guidelines. We disagree, however, with the Community regarding those aspects of its proposal to maintain an analysis of pro-rata reduction for all water users in the lower basin, regardless of priority date. As noted in comment 2 above, CRIT will continue to oppose administratively, and will defend in litigation, the primacy of the Decree regarding the senior nature of our water rights and

the manner of allocating shortages in the absence of a voluntary solution. With respect that each Tribal Nation in the Colorado River Basin must advocate for the protection of its own water rights, we will oppose any advocacy that comes at the expense of CRIT. As we have said repeatedly, there is nothing "reasonable" under NEPA about a range of alternatives that violates the injunction in the Decree, is a prohibited taking under the Constitution, undermines the *Winters* Doctrine, and violates the Secretary's trust obligation to protect the resources of *all* the Tribal Nations in the basin. We again request that you cease analyzing any such alternative that includes the involuntary reduction of our senior water rights.

3. While not part of the Post-2026 process, we also want to acknowledge your efforts in the ongoing work regarding design of a multi-purpose re-regulation reservoir at CRIT to capture our spills. This is an extremely important project that will help improve our irrigation efficiency while also providing fish and wildlife benefits. We look forward to being updated by Reclamation on this issue in April of this year and ask that you expedite the design process to the extent practical, as every day we go without this reservoir, we are losing water that could be used elsewhere on our reservation.

Thank you for your consideration of our comments. Again, we appreciate your direct outreach to Council and your desire to build a better relationship with us. We look forward to seeing you in Parker later this month.

For the Colorado River Indian Tribes



Amelia Flores
Chairwoman

cc: Tribal Council

EXHIBIT 2



COLORADO RIVER INDIAN TRIBES

Colorado River Indian Reservation

26600 MOHAVE ROAD
PARKER, ARIZONA 85344
TELEPHONE (928) 669-9211
FAX (928) 669-1216

November 7, 2024

The Honorable Camille Touton
Commissioner
Bureau of Reclamation
Department of the Interior
1849 C Street NW
Washington, DC 20240

Subject: **Proposed Alternative from the Colorado River Indian Tribes for Inclusion in the Post-2026 NEPA Process.**

Dear Commissioner Touton:

This letter includes a proposed alternative recommended by the Colorado River Indian Tribes (CRIT) for inclusion in the Post-2026 National Environmental Policy Act (NEPA) process. These are unprecedented times with the severe and extended drought in the Colorado River Basin. It is during these difficult times that we must adhere to the foundational legal principles for management of the lower Colorado River as established by the Boulder Canyon Project Act; the United States Supreme Court in *Arizona v California*, 373 U.S. 546 (1963); the 2006 Consolidated Decree for *Arizona v California*, 547 U.S. 150; and the Colorado River Indian Tribes Water Resiliency Act (CRIT Act), P.L. 117-343. The CRIT proposals described in this letter are based on these foundational legal principles and acknowledge the need for consensus-based arrangements to share water supplies on a voluntary basis—as the CRIT have done in California as part of the California Quantitative Settlement Agreement, during the Pilot System Conservation Program, and the Drought Contingency Plan. The CRIT will continue to work with others to be part of the long-term solution in sustaining the Colorado River and evaluate opportunities to authorize the off-reservation use of our water. But let us be clear, as part of the long-term solution or otherwise, the CRIT will do what is necessary to protect our water rights.

We understand that the current Post-2026 NEPA Process is different from other recent NEPA processes undertaken by Reclamation. However, there remain unresolved issues from the recent Reclamation NEPA analysis in the Final Supplemental Environmental Impact Statement (SEIS) for Near-term Colorado

River Operations. Resolution of these concerns—concerns that have been raised numerous times by this Council—will benefit all Colorado River Basin stakeholders by providing clarity and stability that comes from observing long-standing and accepted legal frameworks.

Without consultation with or input from the CRIT, Reclamation developed and analyzed an alternative in the draft SEIS to unilaterally reallocate senior tribal water rights, including from the most senior lower basin rights of the CRIT, for the benefit of junior users, without identifying any legal authority for this proposed action alternative. As expressed in our comments on the draft SEIS, such reallocation of water from the CRIT to junior priority users violates the injunctive order of the Supreme Court provided in the Consolidated Decree, results in uncompensated takings in violation of the 5th Amendment to the Constitution and is contrary to our tribal sovereignty and tribal rights that you have a trust responsibility to protect.

Despite the opposition by the CRIT and others to Alternative 2 as contained in the draft SEIS, Reclamation brought this alternative forward for evaluation in the final SEIS, again without identifying any legal authority for the action proposed.

Reclamation did not choose Alternative 2 as its preferred alternative for near-term action under the SEIS but at the same time Reclamation also failed to acknowledge its legal infirmities. **We therefore wish to reiterate this point: the CRIT will use all resources at our disposal to stop any efforts by Reclamation, the Basin States, or other Basin interests, to develop and analyze alternatives and/or proposals, in any process, including but not limited to the Post-2026 Process, that re-allocates the CRIT's water without CRIT's consent. Such an alternative/proposal is in violation of the injunction of the Supreme Court in *Arizona v. California*, violate rights afforded to the CRIT under the Constitution, and an abrogation of the Secretary's trust responsibility to the CRIT.**

We also note that Reclamation has failed to respond to our numerous requests to address the related issue of its lack of authority to assess system losses against the CRIT consumptive use. Over 24 months ago, the CRIT informed Reclamation in a letter from our Attorney General, dated October 26, 2022, that it lacks authority to assess system losses against the CRIT. The CRIT have repeatedly followed-up during in-person meetings with you and your staff, and through additional correspondence—including two additional letters on April 12, 2024, and June 28, 2024—asking by what authority Reclamation can assess losses to CRIT. It continues to be deeply troubling that these letters remain unanswered (copies are attached hereto). Two years of questions and requests for answers, over 743 days and counting,

have left us with a cloud of uncertainty over our water use plans, effectively harming our members and the surrounding communities that provide economic and social support to our farming operations.

While we appreciate the recent efforts of Reclamation's regional staff to address some of our operational issues at Headgate Rock Dam and in working with us on potential improvements to capture system spills, it does not erase the pall that is cast upon our water rights by Reclamation continuing to evaluate potential scenarios that would take our water while simultaneously not respond to our repeated requests to address the legal authority to undertake such actions. It is with these concerns we are requesting the evaluation of our proposal and principles, which can be viewed as an independent proposal or incorporated with other action alternatives. We also note these principles are not new to Reclamation as they been raised by the CRIT both formally and informally on multiple occasions, including federal-tribal-state consultations and other public forums.

Background

A. The CRIT's Relationship to the Colorado River

The Colorado River is part of us and flows through each of us. It identifies and unifies our membership and sustains our way of life. We have a sacred obligation to care for the River and to ensure that future generations of our people maintain their own religious, spiritual, cultural, and environmental relationship with the River.

Our Chemehuevi and Mohave ancestors' homeland was in the desert along the Colorado River. Our ancestors lived in tandem with the River's seasonal flows, the River's physical being, its cultural significance, its spiritual connection to our people, and the ways it provides sustenance. This traditional knowledge has been passed from generation to generation, from our ancestors down to our membership today. In the 1940s, Hopi and Navajo people relocated to the reservation bringing their own cultural and religious connections to the River as they learned to farm on our desert reservation. All of our tribal members, no matter their ancestry, continually maintain and strengthen their connections to the River, and its waters, as we have done since time immemorial.

From the game that we hunted in the past to the crops we grow today that feed us, the River sustains the ecosystem around us and all life forms, big and small to survive in this desert climate. The River stabilized our food economy in our past and it empowers us to pursue economic sovereignty today. Stewardship of the Colorado River is vital for the CRIT and all users in the basin.

The Colorado River is the only source of water for the CRIT reservation and, as such, is the principal economic driver for the tribal government. Farm leasing, farm commodities, business leases, and the Blue Water Casino are all dependent on water from or in the Colorado River. Our ability to access the bulk of our water is through the Bureau of Indian Affairs' (BIA) Colorado River Indian Irrigation Project (Project), which is constantly subject to deferred maintenance and in desperate need of extensive repairs. The Project operates at roughly a 54% efficiency, which continually declines with more and more deferred maintenance each year.

B. CRIT's Water Rights

The Supreme Court confirmed an allocation for the CRIT in *Arizona v California* for the right to divert waters of the Colorado River from the mainstream for use on reservation lands in both Arizona and California. These rights predate the development of civil works on the River and are not based on storage. To provide an historical perspective, the reservation was established 37 years before the Reclamation act of 1902, 47 years before Arizona became a state, 57 years before the Colorado River Compact, and 103 years before Congress authorized the construction of the Central Arizona Project. The CRIT do not have a contract with Reclamation for delivery from storage and the Supreme Court confirmed that the CRIT allocation is not subject to shortage or delivery losses. CRIT's water rights are present perfected rights (PPRs), and the most senior in the Lower Basin, and therefore, under the Decree, are the last water rights to be shorted.

If insufficient mainstream water is available for release, as determined by the Secretary of the Interior, to satisfy annual consumptive use of 7,500,000 acre-feet in the aforesaid three States, then the Secretary of the Interior, after providing for satisfaction of present perfected rights in the order of their priority dates without regard to state lines...may apportion the amount remaining available for consumptive use.... (2006 Consolidated Decree, 547 U.S. at 156)

Despite this language, the SEIS included an alternative that would have reallocated the water supplies of senior water rights holders with present perfected rights, like CRIT, to junior users in violation of the Decree. The SEIS and some commenters used terms such as "equitable distribution of shortages" to justify this proposal. Regardless of how labeled, any involuntary and uncompensated reallocation of water from the CRIT's senior rights would be in violation of the Supreme Court injunction limiting the Secretary's actions, contrary to the plain language of the Consolidated Decree, and a taking of property

in violation of the 5th Amendment. There is nothing equitable about taking our allocation to benefit junior users.

Principal 1: Reclamation must fix its broken systems for administering Colorado River conservation programs; the current systems disadvantage the CRIT.

A. Colorado River accounting methods penalize the CRIT for not fully using its water.

Reclamation currently relies on what we understand to be a “baseline approach” in administering participation by the CRIT and other tribal nations in conservation programs like Intentionally Created Surplus (ICS) and the System Conservation Pilot Program (SCPP), where a user like CRIT limits its diversion to an amount less than its full allocation. This baseline approach, however, fundamentally treats CRIT differently than other users who do not have to calculate return flows to determine overall water use.

Due to CRIT’s location on the river, determining return flows are an integral component of calculating CRIT’s overall water use. For the CRIT, consumptive use is diversions minus return flows. Conversely, for most other water users that are not on the river, the amount that is delivered is considered to be their consumptive use, without regard to any return flows. This distinction is important because junior users are the beneficiaries of the CRIT’s unused water. To protect these junior users, under the DCP, CRIT had to agree to a diversion cap, even though that amount is less than our overall Decreed right. Reclamation included the following language in the proposed system conservation agreements with the CRIT:

The Agricultural Baseline Diversion is Contractor’s highest annual diversion of Colorado River water for calendar years ____ through ____ as reported in the annual Colorado River Accounting and Water Use Report – Arizona, California, and Nevada (Water Accounting Report), which occurred in ____; provided, the Agricultural Baseline Diversion may be adjusted if a shortage is declared by the Secretary which impacts the volume of water available to Contractor in calendar year 2023.

This places a cap on the annual diversion based upon past diversions as reported in the Annual Accounting and Water Use Report published by Reclamation, not based on the CRIT allocation as identified in the Consolidated Decree.

Moving forward, this practice has been addressed through section 11(c) of the CRIT Act, which prohibits Reclamation from reducing or otherwise limiting the CRIT's ability to use the remaining portion of its decreed allocation.

(c) RESERVATION OF RIGHTS.—The lease, exchange, storage, or conservation of a portion of the consumptive use shall not reduce or limit the right of the CRIT to use the remaining portion of the decreed allocation on the Reservation.

Consequently, Reclamation may not place a cap on CRIT's diversion as part of an agreement for system conservation of any kind and this accounting method should not be carried forward into the Post-2026 operational guidelines.

While this baseline approach is not limited to CRIT alone, its application at CRIT is exacerbated by the lack of efficiency in the Colorado River Indian Irrigation Project because almost half of what is diverted by CRIT *returns back to the river*. This limits our ability to fully place our lands in production, thereby limiting our "baseline" diversion amounts. The lack of efficiency, as well as current water accounting practices, unfairly burdens the CRIT in our efforts to create conservation water. For example, the CRIT committed to conserving 50,000 acre-feet of consumptive use during the Drought Contingency Plan, requiring a diversion reduction of double that amount- 100,000 acre-feet- in addition to capping our baseline diversion. These actions translated into 18,000+ acres of prime farmland fallowed in a manner contrary to standard conservation practices.

B. Federal failures to properly manage and maintain the Colorado River Indian Irrigation Project limit CRIT's ability to participate in conservation programs.

The irrigation Project on our reservation is a federally owned project operated exclusively by the BIA. It is not a trust asset for the CRIT. But the failure of the Secretary, acting through the Bureau of Indian Affairs to adequately fund the project is placed on our communities and our economy. Our experts estimate the amount of maintenance backlog to be approximately \$300 million. In addition, the appropriated funds allocated by BIA to the project is inadequate to cover operations & maintenance (O&M) costs. Furthermore, the O&M user charges, with CRIT being its largest user, have left our growers questioning how funds are used as there are minimal system improvements performed annually.

Consequently, we have expended significant time and limited tribal resources to meet program requirements from the Reclamation Water SMART program and other sources, including private sources, to improve the efficiency of this federal asset, as the historical record has shown the BIA is

unwilling to make the necessary investments in the irrigation project. Reclamation staff know the effort and time required to try to improve operations of the Project from working with us on the Science and Technology grant as well as the Diversion Management Plan (a Plan which is currently in use but was never approved by the BIA) and through our recent discussions about the potential development of reregulating reservoirs to capture operational spills.

The federal BIA management of the Project has created hundreds of millions of dollars in deferred maintenance. To date, the Department has provided significant funding to junior users throughout the basin from the billions of dollars Congress appropriated for conservation and efficiency improvements in the Bipartisan Infrastructure Law and the Inflation Reduction Act. No funding from these sources, however, has been provided for the irrigation project.

Principal 3: Reclamation must acknowledge the injunctive mandate in the Decree prohibits it from unilaterally reducing CRIT's water without compensation or consent.

The CRIT's ability to market and conserve water to help address system shortages depends on preserving its legal priorities. The CRIT Act authorizes the CRIT to market water for off-reservation uses, such as leases to municipalities and for system conservation. Investment by lessees or transferees to obtain water from the CRIT requires certainty that the priority system will be upheld. If Reclamation cuts the CRIT water allocation, as they set forth previously in the SEIS, the CRIT allocation is treated the same as a 4th priority water right and will not be available as a shortage supply to help junior users. The River priority system and injunctions in the Decree *must* be maintained and observed in order to maintain sufficient consumptive use on our reservation to meet obligations to potential multi-year water lessees, to meet multi-year system conservation agreements, and to meet our on-reservation needs.

In addition, the farm commodity prices for multi-year contracts are influenced by the security of the supply of water. The CRIT commodity prices, and our farm lease rates, depend on multi-year security in our water supply being maintained by following the Law of the River.

Components of the CRIT Proposed Alternative

1) Follow the Decree.

A. The Supreme Court's injunction against the Secretary mandates that during times of shortage, Present Perfected Rights holders, such as the CRIT, are to be satisfied first.

As a threshold matter, the Secretary, acting through Reclamation, is bound by the provisions of the Decree with regard to operations in the Colorado River below Hoover Dam. Article II(B)(3) of the Decree establishes operational standards when there is insufficient water available to satisfy the annual consumptive use of 7,500,000 acre-feet in Arizona, California, and Nevada.

(3) If insufficient mainstream water is available for release, as determined by the Secretary of the Interior, to satisfy annual consumptive use of 7,500,000 acre-feet in the aforesaid three States, then the Secretary of the Interior, after providing for satisfaction of present perfected rights in the order of their priority dates without regard to state lines and after consultation with the parties to major delivery contracts and such representatives as the respective States may designate, may apportion the amount remaining available for consumptive use in such manner as is consistent with the Boulder Canyon Project Act as interpreted by the opinion of this Court herein, and with other applicable federal statutes, but in no event shall more than 4,400,000 acre-feet be apportioned for use in California including all present perfected rights;

Simply put, the Secretary's authority to operate the physical works authorized by Congress on the Colorado River starts with the plain language of the Decree. Any action proposed by the Secretary involving the operations at Hoover Dam must relate back to the Decree unless there is a comprehensive agreement by all relevant parties whose rights are acknowledged by the Supreme Court in the Decree. Stated differently, there can be no involuntary reduction of tribal rights acknowledged by the Supreme Court in the Decree except as provided in the Decree itself.

B. The Decree does not allow for reduction in water supplies for CRIT due to Evaporation and Evapotranspiration losses.

The CRIT's water rights confirmed by the Supreme Court in the Decree are both a diversion right and a consumptive use right. As stated in the Decree, 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 main-stream 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, with priority dates of March 3, 1865, for lands reserved by the Act of March 3, 1865 (13 Stat. 541, 559); November 22, 1873, for lands reserved by the Executive Order of said date; November 16, 1874, for lands reserved by the Executive Order of said date, except as later modified; May 15, 1876, for lands reserved by the Executive Order of said date; November 22, 1915, for lands reserved by the Executive Order of said date;

The water rights for CRIT predate the 1922 Compact and predate the original Decree. They are *diversion* rights and, as such, are not subject to reduction due to evaporative losses in the storage of water or for losses in the transportation of that water. The authorization for Reclamation to reduce water rights for system losses is addressed in most Boulder Canyon Project Act Section 4 and Section 5 contracts. The CRIT do not have such a contract, and their right remains an unaltered PPR for diversion from the mainstream.

2) Follow the Colorado River Indian Tribes Water Resiliency Act of 2022.

The Colorado River Indian Tribes Resiliency Act of 2022 states in Section 11 that CRIT may divert its full decreed allocation. Any agreement for off-Reservation water use by lease, exchange, or agreement for storage or conservation as those terms are defined in the CRIT Act must conform with the requirements of the Act including Section 11(c) which states:

The lease, exchange, storage, or conservation of a portion of the consumptive use **shall not reduce or limit the right of the CRIT to use the remaining portion of the decreed allocation on the Reservation** (emphasis added).

Reclamation staff have asserted that, because Arizona does not have an agreement among its water users regarding limits on the ability to fully utilize our allocation, similar to the Quantification Settlement Agreement (QSA) in California, the CRIT will need the agreement of all water users in Arizona to change its diversion amounts from an historical level that is lower than the full allocation. Such a requirement violates section 11(c) of the CRIT Act, which prohibits Reclamation from placing a cap on our diversions as a result of participation in any agreement to reduce consumptive use. Consequently, the Post-2026 Guidelines cannot include “caps” or the use of “baseline” limits on the CRIT full allocation. The refusal of Reclamation to remove the limitations on the CRIT full utilization of its allocation in the proposed system conservation agreements presented have deprived the River system from the benefits of

additional water from the CRIT, and denied the CRIT the funding for such proposed system conservation. This is extremely disappointing as the CRIT has repeatedly expressed its desire to be a part of the solution to the current drought. Reclamation's failure to follow the law has—after exceeding 150,000 acre-feet of system conservation from reduced consumptive use under the Drought Contingency Plan—prevented any of our further participation.

3) Remove Barriers that Limit Full Tribal Participation in the Process.

A. Developing a long-term sustainable funding stream for Tribal Nations.

There is a compelling need to invest in Tribal Nations in a manner that recognizes each is unique in its cultural and physical connection to the Colorado River, as well as in the development and use of its water resources. Unfortunately, the funds eligible to be distributed to Tribal Nations from the Inflation Reduction Act (IRA) and Bipartisan Infrastructure Law (BIL) are limited in scope and do not include overarching authority to address tribal needs. What is needed is an authorization flexible enough to address individual tribal needs with sufficient funding to make a difference and help us thrive economically.

Similar to the IRA and BIL, this will need congressional authorization. But we also understand there is general agreement for the need of additional authority to implement a Post-2026 plan. Thus, as part of the Post-2026 discussion, we should also be discussing the many different ways this could be accomplished. One example would be to place a nominal surcharge on every acre-foot of tribal water consumed by non-tribal entities in the Basin and directing those proceeds into a special account in the Treasury to be expended according to a plan developed jointly with Tribal Nations. Similar benefits can be achieved by also directing revenues from leasing on public lands into a special fund similar to Public Law 111-11, the Reclamation Water Rights Settlement Fund.

These funds could be used to provide compensation on forbearance agreements and to provide funding for infrastructure for water use to facilitate tribal marketing. According to a published report from Utah State University, the Colorado River supports \$1.4 trillion in annual economic activity and 16 million jobs across the Western United States. The CRIT and most other tribal nations, because of actions taken by the United States, continue to be frozen out of such economic activity. A dedicated fund to address tribal needs would be a strong first step toward equality.

B. Allow use of forbearance agreements.

One way to address the inequity of the current system that requires reductions in consumptive use to participate in conservation programs is through forbearance agreements. Water users in California and in Nevada currently benefit from tribal forbearance agreements. The CRIT propose that the Post-2026 Operational Guidelines include accounting methodologies necessary to account for funding and tracking tribal forbearance throughout the Basin. Once a tribal fund is developed as discussed in Section 1(B)(2) above, tribal forbearance can maintain water in the system for use by others. Tribal water rights are generally senior on the Colorado River. **The inability of the CRIT and other tribes to fully develop or use their water rights is usually because of a lack of infrastructure, meaning that water to which these tribes are entitled flows to a junior water user, free of charge, because the tribe cannot consumptively use its water. This leaves Reclamation with little incentive to fund on-reservation water infrastructure and the Basin States with little incentive to support changes to the accounting methodology.** Authorizing forbearance agreements will provide equity within the Basin between those who historically accessed financial support from Reclamation for water infrastructure improvements, and the tribes who could not access those financial mechanisms.

C. Remove Barriers to Tribal Participation in Intentionally Created Surplus.

It is our understanding that the current mechanism of ICS will be replaced with a new program that may be called “assigned water.” The CRIT and the Gila River Indian Community (GRIC) are the only two tribes who have ICS Exhibits and have created an ICS account. This was a difficult process because the ICS Forbearance Agreement among the major water users in the lower basin permitted each of them to exercise a veto over new Exhibits. This is what happened to both the CRIT and the GRIC for reasons unrelated to the creation or accounting for ICS. GRIC overcame the veto with a statement about the nature of their settlement water; CRIT was unable to do so, not having a water settlement.

The veto was overcome by having the CRIT ICS Exhibit S attached to the agreements for the Drought Contingency Plan that were part of the Drought Contingency Plan approved by Congress—not the path outlined in the 2007 Interim Guidelines.

The Post-2026 Guidelines program for storing water in Lake Mead, to be delivered at a later date, must take into account the nature of all of the tribal water rights and provide that tribes have equality of access to this mechanism. Carry-over storage of water for delivery at a later time is a valuable tool during periods of drought that should not be denied to the CRIT.

D. Provide for Direct Tribal Participation in the Federal and Basin States Process.

The inequity of the current system is exacerbated by the reality that the CRIT and other Tribes are not directly involved in the negotiations for the Post-2026 Process. Instead, we have been relegated to meetings at which Reclamation and the Basin States provide reports about the status of the negotiations. The reasons for exclusion are many but reality is simple—if there were a true desire to include tribes in the negotiations, Reclamation would find a way and together we could work on a path forward together.

For example, the Reclamation Reform Act requires water contracts to be negotiated in public with opportunity for public comment during certain identified periods during negotiation sessions. Why is that not the case with the current negotiations? It is time to broaden the participation and the ideas under consideration. This is just one example of the many different ways Tribal Nations could easily be incorporated into the discussion.

The application of precedent is a big part of the administration of the Colorado River. And history has shown us that if Tribal Nations were not directly involved in the previous processes, like the Compact, the Interim Guidelines and DCP, we will be excluded from direct participation in the subsequent process—which is exactly what is happening right now. We are sovereign nations with a responsibility to the future of our peoples. Discussions about water resources that will fundamentally affect our future should not be closed-off from our direct participation.

Reservation of Rights

By providing these legal principles and alternative proposal, the CRIT does not waive any rights, claims, or defenses we may have under law against the United States or any other individual, organization, or government. This letter is provided solely in furtherance of the National Environment Policy Act and other processes required by applicable law. We further reserve the right to provide additional comments and engage with Reclamation as it proceeds with subsequent phases of this and other processes for the Post-2026 Operations of the Colorado River under applicable law and policy.

Conclusion

Our components for an additional alternative to be evaluated are simple and straightforward and are borne from a desire to both ensure that our trustee will follow the law and fulfill its duty to protect our trust resources, as well as reiterate the CRIT's desire to be a part of the overall solution. These components rely on following the Law of the River, including the injunctions in the Decree and the CRIT Act, and for there to be full agreement among all affected interests if there will be alternative

arrangements. If there are any questions, comments, or need for follow-up please contact our Attorney General Rebecca Loudbear at Rebecca.Loudbear@crit-nsn.gov.

Sincerely,

COLORADO RIVER INDIAN TRIBES



Amelia Flores
Chairwoman

Cc: The Honorable Katie Hobbs
The Honorable Mark Kelly
The Honorable Ruben Gallego
The Honorable Alex Padilla
The Honorable Adam Schiff
The Honorable Paul Gosar
The Honorable Raul Grijalva
The Honorable Tom Buschatzke
The Honorable J.B. Hamby
The Honorable John Entsminger

1846097.1



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



COLORADO RIVER INDIAN TRIBES

Colorado River Indian Reservation

26600 MOHAVE ROAD
PARKER, ARIZONA 85344
TELEPHONE (928) 669-9211
FAX (928) 669-1216

April 12, 2024

The Honorable Camille Touton
Commissioner of Reclamation
1849 C Street NW
Washington, DC 20240

Subject: Lower Colorado River Mainstream Evaporation and Riparian Evapotranspiration Losses Report (Dec 2023) and Outstanding Request for Confirmation there is no Authority for Involuntary Reduction of Senior Present Perfected Rights Acknowledged by Supreme Court in *Arizona v. California*.

Dear Commissioner Touton:

On October 26, 2022, in response to public statements by Reclamation that it was undertaking an analysis of evaporation and evapotranspiration (E&E) losses in the lower Colorado River, CRIT Attorney General Rebecca Loudbear forwarded to the Department an analysis of why, pursuant to the injunction issued by the Supreme Court in *Arizona v California*, Reclamation cannot reduce the amount of Colorado River water delivered to CRIT under its Present Perfected Right (PPR) to account for E&E losses. Since that time, Reclamation has finalized its report, yet there has been no response to Attorney General Loudbear's letter. I am therefore asking you to provide a formal response to Attorney General Loudbear's correspondence of October 26th, 2022 (attached hereto).

I understand and appreciate that, as Commissioner, you must undertake certain actions and studies in order to fully appreciate the suite of potential options for resolving the current crisis on the Colorado River. In that light, we did not oppose Reclamation when it announced development of the Lower Colorado River Mainstream Evaporation and Riparian Evapotranspiration Losses Report (Report) roughly two years ago. Instead, we informed you of our views regarding the inapplicability of reducing CRIT's water supply to account for system losses and requested your confirmation on our legal position.

While we appreciate the factual nature of the Report and Reclamation's position that "this report does make recommendations on how to account for system losses in the lower Colorado River mainstream," the simple reality is that the report implies that CRIT's water

rights could be reduced to address system losses by including the section of the river where CRIT's reservation is located in the analysis. Any such implication directly conflicts with the injunction issued by the Supreme Court, as Attorney General Loudbear's letter makes clear.

This is not the only forum in which our request that the department confirm the nature of our senior water rights is still outstanding. In the Near-Term Colorado River Operations draft and final EIS, Reclamation developed Alternative 2, which would unilaterally reallocate water supplies among water users without regard to priority date. CRIT commented through the NEPA process that Alternative 2 is in violation of the Supreme Court's permanent injunction in the decree regarding the recognition of PPRs during shortages and would be an illegal taking in violation of the 5th Amendment. CRIT also requested that Reclamation address its lack of authority for this alternative in the final EIS.

Reclamation should clarify for this and all future actions on the Colorado River that it does not have the legal authority to take actions such as those embodied in alternative 2 because doing so would be in violation of the clear injunctive language of the Supreme Court in the Decree. *December 11, 2023 Comment Letter to Genevieve Johnson.*

Reclamation did not address our comment letter in its responses. Instead, Reclamation stated that Alternative 2 would not be taken forward for additional analysis given that the preferred alternative achieves a similar outcome on a voluntary basis. While we are pleased Alternative 2 was not taken forward, our comment letter and the question of Reclamation's authority to contemplate reallocation of water supplies away from CRIT remains unanswered.

We believe the failure to address both the senior nature of CRIT's water rights and the injunctive nature of the decree creates unnecessary confusion about what is, and is not, in the realm of possibility as we all work towards a post-2026 agreement for operating the Colorado River. Continuing to leave open this question is at odds with the Department's public statements about seeking inclusion of tribal nations in the process. Failing to acknowledge that the Supreme Court has prohibited the Department from reallocating water away from CRIT (and other PPRs) has also led to seriously flawed environmental analyses, in violation of NEPA. *See Nat. Res. Def. Council, Inc. v. Evans, 279 F. Supp. 2d 1129, 1164 (N.D. Cal. 2003)* (finding alternatives analysis inadequate where one alternative was "per se illegal" and therefore "a phantom option"). We therefore reiterate our request that Reclamation acknowledge it does not have the authority to involuntarily reallocate our water supplies and for you to cease any potential modeling exercises to the contrary.

We understand the seemingly endless number of issues facing all of us in the Colorado River Basin and I do appreciate your time and efforts in assisting CRIT. Nonetheless, raising questions about whether our senior PPR water rights can be reduced through either system losses or by involuntary reallocation and then ignoring CRIT's legal objections to this approach

for 18 months is troubling and unnecessarily dampens the otherwise strong relationship between our two sovereign nations.

I look forward to the department's response.

Sincerely,

COLORADO RIVER INDIAN TRIBES



Amelia Flores
Chairwoman

cc: Tribal Council
Honorable Katie Hobbs
Tom Buschatzke
J.B. Hamby
John Entsminger



COLORADO RIVER INDIAN TRIBES

Colorado River Indian Reservation

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June 28, 2024

The Honorable Deb Haaland
Secretary
Department of the Interior
1849 C Street NW
Washington, DC 20240

Subject: Bureau of Reclamation's Post 2026 Process for Colorado River Operations

Dear Secretary Haaland:

Thank you for meeting with me on Saturday, May 18th while you were at the Salton Sea. As we discussed, the Bureau of Reclamation (Reclamation) is undertaking a technical analysis evaluating the involuntary reduction of water supplies for all water users in the lower Colorado River without regard to priority date. As you may recall from your trip to CRIT last month for signing documents required under the Colorado River Indian Tribes Water Resiliency Act of 2022, CRIT's water rights have a priority date as early as 1865 and are among the most senior on the lower Colorado River. Therefore, when Reclamation is modelling reductions for all water users regardless of priority date, they are evaluating the involuntary reduction of our water rights. Our tribal economy is based on agriculture and taking away our water will harm our members economically and limit the services our tribal government can provide for their well-being.

CRIT's water rights were confirmed by the Supreme Court in the decree from *Arizona v. California*, 547 U.S. 150 (2006). The analysis Reclamation is undertaking contemplates operational scenarios that violate the decree. Specifically, the decree enjoins Reclamation from operating federal facilities on the lower Colorado River, except as provided in the decree itself. And the decree specifies how to operate these federal facilities when there is a shortage by directing the United States to meet senior rights first. By evaluating scenarios that do not reflect the plain language of the Supreme Court, Reclamation is in violation of the decree. For additional information and detail, I am attaching copies of our most recent correspondence to the Department in this matter. We have yet to receive a reply.

Our tribal rights are for all time. They are the realization of a sacred bond between our two nations of what is necessary to maintain our homelands and provide for future generations.

Taking our water is the same as taking our lands, for without water, our lands cannot provide for our future.

While we understand undertaking a technical analysis does not constitute final agency action, that Reclamation is even contemplating such an operation violates this bond and creates a troubling precedent that tribal rights are potentially at risk of involuntary reduction for the benefit of junior users anytime there are shortages.

We understand the Colorado River is facing unprecedented challenges. But we also believe there are tools, such as our recently enacted legislation, where tribal nations can be part of the solution. Such an outcome is far preferable to what Reclamation is evaluating.

I am thankful for your commitment to review this matter and I look forward to your reply.

Sincerely,

COLORADO RIVER INDIAN TRIBES



Amelia Flores
Chairwoman

cc: Tribal Council

EXHIBIT 3



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS

Western Regional Office
2600 North Central Avenue
4th Floor Mailroom
Phoenix, Arizona 85004

IN REPLY REFER TO:
Office of Irrigation and Utility Services

Memorandum

To: Regional Director, Bureau of Reclamation, Lower Colorado Region

From: Regional Director  Digitally signed by JESSIE DURHAM
Date: 2025.12.12 07:11:53 -07'00'

Subject: Amended 2026 Colorado River Water Order for the Quechan Indian Tribe

On December 4, 2025, an e-mail was sent from Holly Roberson (legal counsel, Colorado River Indian Tribes [CRIT]) to Mr. Jonathan Cody (Irrigation Engineer, Office of Irrigation and Utility Services, Bureau of Indian Affairs [BIA]). This e-mail is attached, along with a revised water order table. The e-mail requests that CRIT's 2026 California Colorado River Water order be increased and that the revised water order table be used in lieu of the water order table previously submitted by CRIT. The revised water order is consistent with the increased water use anticipated by CRIT in California, as discussed during the virtual 43 CFR Part 417 consultation meeting held on November 21, 2025.

I acknowledge the request to modify the previously approved CRIT Colorado River water order. In accordance with the request, I have revised the 2026 water order of CRIT as shown in Table 2. Except for minor rounding differences, the revised water order matches that submitted by CRIT.

Please direct any questions to Mr. Jonathan Cody, Irrigation Engineer at (480) 235-3848.

Attachments:

cc: Honorable Amelia Flores, President, Chairwoman, Colorado River Indian Tribes
Chief, Boulder Canyon Operations Office, LCRO, BOR
Dillon Esquerra, CRIT Water Resources Director
Superintendent, Colorado River Agency

EXHIBIT 4

RESOLUTION
COLORADO RIVER TRIBAL COUNCIL

A Resolution to Proclaim Personhood Status for the Colorado River and to Direct the Attorney General and Legal and Technical Staff to Develop Proposed Amendments to the CRIT Water Code and Other Related Actions.

Be it resolved by the Tribal Council of the Colorado River Indian Tribes of the Colorado River Indian Reservation, in *special* meeting assembled on November 6, 2025.

WHEREAS, the Colorado River Indian Tribes (hereinafter "CRIT" or "Tribes") is a federally recognized Indian Tribe, duly organized with a tribal governing body known as the Tribal Council according to the provisions contained in the Indian Reorganization Act of June 18, 1934; and

WHEREAS, Article VI, Section 1(r) of the Constitution of the Colorado River Indian Tribes authorizes the Tribal Council to preserve and encourage the arts, crafts, culture, and traditions of the Colorado River Indian Tribes; and

WHEREAS, since time immemorial the Tribes occupied these lands and had a deep and continuous connection to, and relationship with, the Colorado River and its tributaries; and

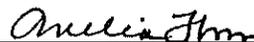
WHEREAS, Tribal Council has consulted with tribal membership, including interviews, outreach through social media, and discussion at events for tribal members and acknowledges that it's in the interest of the tribal members to foster and protect the relationship they have with the Colorado River; and

WHEREAS, the establishment of the Colorado River Indian Reservation in 1865 for the "Indians of the Colorado River and its tributaries" acknowledged and preserved this connection when these lands were set aside and preserved for the original occupants, the Aha Mahkav, and later the Chemehuevi, Hopi, and Navajo; and

The foregoing resolution was on November 6, 2025 duly approved by a vote of 7 for, 0 against and 0 abstaining, by the Tribal Council of the Colorado River Indian Tribes, pursuant to authority vested in it by Sections 1.r., Article VI of the Constitution and By laws of the Tribes, ratified by the Tribes on March 1, 1975 and approved by the Secretary of the Interior on May 29, 1975, pursuant to Section 16 of the Act of June 18, 1934, (46 Stat. 984). This resolution is effective as of the date of its adoption.

COLORADO RIVER TRIBAL COUNCIL

By



Chairwoman


Secretary

RESOLUTION NO. R- 375-25
NOVEMBER 6, 2025
PAGE 2

WHEREAS, water is life and the Colorado River has always been the life-sustaining cultural, spiritual, and economic focal point of the members of the Tribes; and

WHEREAS, we have relied upon the Colorado River for our cultural practices, to grow food and crops and support the fish and animals we depend on, and to sustain the trees, plants, and other resources central to our culture and traditions; and

WHEREAS, the United States government first authorized an irrigation system in 1867 and ultimately the Colorado River Indian Irrigation Project with the first irrigation system built by the Bureau of Indian Affairs, which has become a critical centerpiece of CRIT's economy; and

WHEREAS, the United States Supreme Court on March 8, 1964 issued its decree in *Arizona v. California* establishing our present perfected federal Indian reserved water rights from the Colorado River mainstream in Arizona and California with March 3, 1865 as our oldest water right priority date; and

WHEREAS, the United States Supreme Court on March 27, 2006 issued its final consolidated decree in *Arizona v. California* which established the final quantity of the Tribes' water rights as 719,248 acre feet per year, with 662,402 acre feet of water in Arizona and 56,846 acre feet of water in California; and

WHEREAS, the Colorado River is a living being carrying and sustaining life as it flows through the reservation and our ancestral lands; and

WHEREAS, the spiritual and cultural well-being of the Tribes and of our tribal members from the beginning of time and through the end of time, is directly linked to the health and well-being of the Colorado River and its resources; and

WHEREAS, application of personhood status under tribal law will ensure that the health and wellbeing of our living River will always be a part of every decision made by this and future Tribal Councils of CRIT ; and

WHEREAS, there is no greater expression of sovereignty than protecting, stewarding, and securing for future generations what our Ancestors handed down to us, and that personhood status is a reflection of our values and responsibilities as a people and our spiritual, cultural, and religious connection to the Colorado River from the beginning of time through the end of time.

NOW, THEREFORE, BE IT RESOLVED by the Tribal Council of the Colorado River Indian Tribes to hereby proclaim that the Colorado River is a living being whose health and welfare is directly linked to the well-being of the Colorado River Indian Tribes and its members; and

BE IT FURTHER RESOLVED by the Tribal Council of the Colorado River Indian Tribes that the Colorado River has always been and will always be a person under tribal

law and will be entitled to the protections under tribal law befitting this status;
and

BE IT FURTHER RESOLVED by the Tribal Council of the Colorado River Indian Tribes that the Attorney General and attorneys and staff working under the supervision of the Attorney General are directed to develop and recommend to Council for review and approval, as appropriate, provisions to be included in the tribal code, including but not limited to, the Water Code and potential designations as a traditional cultural property, cultural resource, and cultural landscape, to reflect the personhood status of the Colorado River and obtain the protections to which the Colorado River is entitled under tribal law and any other applicable law; and

BE IT FURTHER AND FINALLY RESOLVED that the Tribal Council Chairwoman and Secretary, or their designated representatives, are hereby authorized and directed to execute any and all documents necessary to implement this Resolution.

EXHIBIT 5

Government-to-Government Consultation Policy of the Colorado River Indian Tribes

The federally recognized Colorado River Indian Tribes (CRIT or the Tribes) have over 4,000 active members from four distinct tribes – the Mohave, Chemehuevi, Hopi, and Navajo. The Tribes' reservation, which encompasses nearly 300,000 acres, straddles the Colorado River in both Arizona and California. The Tribes' ancestral homelands, however, extend far beyond the current reservation boundaries, into what is now public and private land in Arizona, California, and Nevada. As a result, the Tribes' cultural resources, including sacred sites, trails, and artifacts, are found beyond the reservation boundaries as well. The Tribes are deeply committed to the ongoing protection of such resources located both on- and off-reservation.

Federal law recognizes that CRIT is a sovereign government distinct from the United States. As a result of this status, the United States must engage in government-to-government consultation with the Tribes when actions or decisions of the United States have the potential to impact the Tribes, its government, tribal land, or cultural resources. This consultation must occur before the momentum toward any particular outcome becomes too great. The purpose of this government-to-government consultation must be to obtain CRIT's free, prior, and informed consent for such actions.¹ Desired outcomes include an ongoing, mutually beneficial relationship between federal agencies and the CRIT Tribal Council, deference to tribal sovereignty, and informed decision-making by both the United States and the Tribes. Federal agency staff and decision-makers must view consultation as more than listening and learning sessions with Tribal Council. Instead, there must be an ongoing, dynamic relationship between federal agencies and the Tribes that is built upon the agencies' concerted effort to understand the Tribes' history, culture, and government.

The Tribes have developed this policy paper to guide future government-to-government consultation with the United States and its administrative agencies.² This paper outlines CRIT's consultation rights and the specific characteristics that comprise minimally adequate consultation under federal law. This paper also offers additional suggestions to ensure that consultation is effective and mutually respectful.³ If federal agencies do not follow this policy, CRIT does not consider the communications from the agencies to meet the consultation requirements of tribal or federal law. Acknowledgement of this policy is required before an agency schedules a government-to-government meeting with Tribal Council. CRIT is committed to seeking recourse

¹ United Nations Declaration of the Rights of Indigenous Peoples, Articles 19 and 32; *see also* 36 C.F.R. § 800.1(f) (defining "consultation" as "the process of seeking, discussing, and considering the views of other participants, and where feasible, seeking agreement with them."); BLM Manual Handbook H-8120-1 at I-2 (consultation includes "[t]reating tribal information as a necessary factor in defining the range of acceptable public-land management options.").

² 36 C.F.R. § 800.4(c)(2)(ii)(C); 43 C.F.R. § 10.5(d)(3); Improving Tribal Consultation and Tribal Involvement in Federal Infrastructure Decisions (January 2017) ("Improving Tribal Consultation"), Key Principle 8.

³ Required actions are distinguished from recommended actions by use of the words "must" and "shall" versus "should."

through all available political, legal, and media channels if this request is denied or if the agency fails to comply with this policy.

Why A Formal Process is Needed

Federal agencies (including the Department of the Interior, Bureau of Land Management, and Bureau of Indian Affairs) have consistently failed to engage in adequate government-to-government consultation with CRIT and other tribes. The United States recently recognized this troubled history in suggesting needed modifications to the consultation process.⁴ In CRIT's experience, agencies have asked for substantive tribal comments on project and policy documents after those projects and policies have already been approved or implemented. Agency staff and decision-makers have attended meetings with Tribal Council without adequate information or authority to meaningfully respond to the Tribes' concerns. Agencies have repeatedly refused to provide responses to CRIT's comments, including any explanation for why CRIT's requests cannot be accommodated. These failures have resulted in direct harm to CRIT, its members, and cultural resources of great importance to the Tribes.

As one example, BLM authorized construction of the nearly 2,000-acre Genesis Solar Energy Project on land once occupied by the ancestors of CRIT's Mohave members. The project involved significant grading along the shoreline of Ford Dry Lake, resulting in the removal of over 3,000 cultural resources over the vehement objections of the Tribes. These artifacts are now stored at the San Bernardino County Museum with no access for CRIT members. In accordance with cultural, spiritual, and religious practices, CRIT has repeatedly asked BLM to permit reburial of the Genesis artifacts, as well as any other artifacts that are inadvertently disturbed within the ancestral homeland. Yet, BLM has refused to engage in government-to-government consultation on this critical topic. Letters have been left unanswered, harmful agency policies have been issued without advance notice or consultation, and BLM officials have been unprepared to discuss their position when in-person meetings have occurred. These consultation failures have resulted in severe and ongoing harm to CRIT and its members.

Basis of Consultation Right

The fundamental principle underlying CRIT's right to meaningful consultation with the United States is the Indian trust doctrine. Pursuant to this doctrine, the United States has a fiduciary duty over tribal lands and resources as Indian trust assets.⁵ As part of this duty, the United States has an obligation to consult with CRIT about federal actions that have the potential to impact these assets or other attributes of tribal sovereignty. For CRIT, tribal sovereignty includes an obligation to protect tribal and cultural resources that are located in the ancestral homelands of CRIT members.

⁴ Improving Tribal Consultation, at 1-5.

⁵ *Seminole Nation v. United States*, 316 U.S. 286, 296-97 (1942); *Pit River Tribe v. U.S. Forest Service*, 469 F.3d 768, 788 (9th Cir. 2006); *Navajo Tribe of Indians v. United States*, 364 F.2d 320, 322 (Ct. Cl. 1966).

This fundamental consultation right is engendered in federal statutes,⁶ executive orders,⁷ and agency policies.⁸ These laws help implement and explain the consultation right that stems from the Indian trust doctrine, but do not diminish it.⁹ Where appropriate, CRIT relies on these laws to support its definition of adequate consultation.

Characteristics of Adequate Consultation

Tribal Sovereignty. Government-to-government consultation must respect tribal sovereignty.¹⁰ The federal government shall not treat consultation as a “box to be checked,” but as a meaningful dialogue intended to result in consensus between the United States and the Tribes.

Addressing Tribal Concerns. The federal government shall timely seek and review CRIT’s written and oral comments and provide comprehensive responses to Tribal concerns and requests.¹¹ Responses to written comments should generally be provided before any in-person government-to-government consultation. Prior to reaching its final decision, a federal agency must explain how that decision addresses CRIT’s concerns.¹² Where an agency is unable to fully address CRIT’s concerns, the agency shall clearly explain its reasoning based on the legal, practical, or policy constraints on its decision-making.¹³ If CRIT has articulated its concerns in writing, this explanation should be in writing as well.

Involved Parties. Government-to-government consultation requires an in-person meeting between CRIT Tribal Council and the agency decision-maker with ultimate authority for a proposed project or action.¹⁴ This decision-maker must be prepared with sufficient details about the proposed project or action, the Tribes’ history, culture and government, and the Tribes’

⁶ See, e.g., National Historic Preservation Act (NHPA), 54 U.S.C. §§ 302701(e), 302706(b); 36 C.F.R. § 800.5(a); Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. §§ 3002(b)-(c), 3003(b), 3004(b), 3005(a)(3); 43 C.F.R. § 10.5; Archaeological Resources Protection Act (ARPA), 43 C.F.R. §§ 7.7(b)(4), 7.16(b)(2)-(3).

⁷ Executive Orders 12875, 13007, 13175; September 23, 2004 “Memorandum on Government-to-Government Relationship with Tribal Governments”; November 9, 2009 “Memorandum for the Heads of Executive Departments and Agencies.”

⁸ Secretarial Order 3317 § (b); Department of the Interior Policy on Consultation with Indian Tribes; BLM Manual 8210: Tribal Consultation under Cultural Resource Authorities; Bureau of Indian Affairs Government-to-Government Consultation Policy (BIA Consultation Policy) at V.1-3.

⁹ 36 C.F.R. § 800.4(c)(2)(ii)(B); Executive Order 13175, § 2.

¹⁰ 36 C.F.R. § 800.4(c)(2)(ii)(B); BLM Manual 8120 at .08(A) (“The special legal status of tribal governments requires that official relations with BLM . . . shall be conducted on a government-to-government basis.”).

¹¹ Executive Order 13175, §§ 5(b)(2)(B), 5(c)(2); Improving Tribal Consultation, Key Principle 6.

¹² BLM Manual 8120, Glossary of Terms (“consultation” defined to include “documenting the manner in which the [tribal] input affected the specific management decision(s) at issue.”); BLM Manual Handbook H-8120-1 at I-1; Improving Tribal Consultation, Key Principle 6.

¹³ BLM Manual 8120 at .06(E) (“Field Office Managers and staff . . . shall document all consultation efforts.”); Improving Tribal Consultation, Key Principle 6.

¹⁴ See, e.g., 36 C.F.R. § 800.2(a); BIA Consultation Policy at VI.A(4); BLM Manual 8210 at .06(A).

anticipated or specific concerns with respect to the proposed project or action.¹⁵ This decision-maker should also have formal training regarding tribal sovereignty, the Indian trust doctrine, and other aspects of federal Indian law. The agency should use its staff to communicate project information to CRIT and its staff and to prepare the agency decision-maker for the government-to-government consultation. For example, prior to meeting with CRIT Tribal Council, it is the Tribes' expectation that agency staff will have provided baseline information about the project and its potential impacts to Tribal staff, such as survey results and ethnographic reports. However, CRIT does not recognize staff-to-staff discussions or communications as fulfilling the federal government's consultation responsibility.¹⁶

In addition, communications between CRIT and project applicants or proponents (where such applicants or proponents are not federal entities) are not government-to-government consultation. Such communications, however, can help to convey information and reduce conflict. Unless requested by CRIT, federal agencies shall not interfere with such communications. Finally, meetings held with representatives from multiple tribes do not constitute consultation with CRIT unless CRIT expressly agrees that consultation format.¹⁷

Timing. Government-to-government consultation must occur as early as practicable, so that tribal concerns can be taken into account before the momentum toward a particular project or action is too great.¹⁸ Federal agencies should provide basic information about a project or action and its potential impacts to CRIT as soon as the agency begins initial planning for a project or action or a private entity approaches the agency to submit an application.¹⁹ Federal agencies should keep CRIT apprised of the decision-making timeline so that the Tribes can participate at appropriate junctures. Federal agencies shall continue to consult with Tribes until they make a decision on the proposed project or action, and if requested by the Tribes or required by law, until construction or implementation of the project or action is complete.

¹⁵ See also *Pueblo of Sandia v. United States*, 50 F.3d 856, 860, 862 (10th Cir. 1995) (Section 106 "mandates an informed consultation."); BLM Manual 8120 at .06(C) ("Field Office Managers shall recognize that traditional tribal practices and beliefs are an important, living part of our Nation's heritage, and shall develop the capability to address their potential disruption . . ."); BLM Manual Handbook H-8120-1 at I-2 ("BLM's representative must be authorized to speak for the BLM and must be adequately knowledgeable about the matter at hand."); Improving Tribal Consultation, Key Principle 5.

¹⁶ *Quechan Tribe of the Fort Yuma Indian Reservation v. U.S. Dep't of Interior*, 755 F. Supp. 2d 1104, 1118-19 (S.D. Cal. 2010).

¹⁷ *Id.*

¹⁸ 16 U.S.C. §§ 470a(d)(6), 470f (requiring consideration of historic resource impacts "*prior to the approval of . . . the undertaking*") (emphasis added); 36 C.F.R. §§ 800.1(c), 800.4(c)(2)(ii)(A); Executive Order 13175, §§ 5(b)(2)(A), 5(c)(1); Secretarial Order 3317, U.S. Dept. of the Interior, § 4(a); Dep't of the Interior Tribal Consultation Policy at 7-8; BIA Consultation Policy at VI.A; BLM Manual 8120 at .02(B) (consultation must "[e]nsure that tribal issues and concerns are given legally adequate consideration *during* decision-making") (emphasis added); BLM Handbook Manual H-8120-1 at V-5 (" . . . the BLM manager should initiate appropriate consultation with potentially affected Native Americans, as soon as possible after the general outlines of the land use plan or the proposed land use decision can be described.").

¹⁹ Improving Tribal Consultation, Key Principle 3.

Scope of Consultation. Federal agencies must be willing to engage in consultation on any potential impacts of a proposed project or action to CRIT, its members, its land, or its cultural resources.²⁰ Consultation shall not be limited to potential impacts to properties eligible for listing on the National Register of Historic Places²¹ or equivalent state registers, or protected by the Native American Graves Protection and Repatriation Act. If federal approval is needed for only a portion of a proposed project or action, the agency shall nevertheless consult on potential impacts from the whole of the project or action. Federal agencies should not expect CRIT to provide information about impacts to cultural resources in scientific terms and should weigh the Tribe's cultural, spiritual, historical, and anthropological input with the respect and deference that it is due.²²

Confidentiality. Information obtained via government-to-government consultation shall be kept confidential, except to the extent that CRIT provides information in a public forum (such as via a letter submitted during a comment period or comments made at a hearing) and to the extent such information must be revealed pursuant to federal or other applicable law.²³ If a federal agency determines that confidential information obtained from CRIT must be revealed, the agency shall inform CRIT prior to the release and make all reasonable attempts to limit its scope. Federal agencies shall acknowledge that confidential information is not limited to the location of sites eligible for listing on the National Register of Historic Places²⁴ or protected by the Native American Graves Protection and Repatriation Act, but includes any information about sensitive resources, culture, or religious beliefs, obtained through consultation.

Resources. Federal agencies must recognize that government-to-government consultation consumes scarce tribal resources. Agencies should minimize costs to CRIT by conducting government-to-government consultation meetings in Parker, Arizona²⁵; providing clear and succinct information about proposed projects or actions and their potential impacts; and ensuring that agency staff document CRIT's interests and concerns. CRIT should not be required to repeatedly provide the same information to an agency because of agency staff turnover. Agencies should explore funding sources to remunerate the Tribes for participating in consultation.

Key Requirements

To aid in implementation of this policy, agency officials shall ensure their government-to-government consultation efforts comport with this summary of key requirements:

- Initiate consultation as early as practicable.
- Timely seek and review CRIT's written and oral comments.

²⁰ Executive Order 13175, § 1(a).

²¹ 36 C.F.R. § 800.4(c)(2)(ii).

²² See, e.g., BLM Manual Handbook B-8120-1 at II-5.

²³ See 36 C.F.R. §§ 800.4(a)(4), 800.11(c); see also BLM Manual 8120 at .06(G).

²⁴ 36 C.F.R. § 800.4(c)(2)(ii)(A); see also BLM Manual Handbook H-8120-1 at V-1.

²⁵ Improving Tribal Consultation, Key Principle 4.

- Provide comprehensive responses to Tribal concerns and requests in the same format as such concerns and requests were provided to the agency.
- Explain agency decisions based on legal, practical, and policy constraints on decision-making.
- Involve agency decision-makers with ultimate authority in in-person consultation meetings.
- Sufficiently prepare for in-person consultation meetings with Tribal Council to be able to respond to and address the Tribes' concerns.
- Do not claim that communication with CRIT staff, between CRIT and project applicants, or in the presence of multiple tribes is government-to-government consultation.
- Consult on any potential impacts of a proposed project or action on CRIT, its members, its land, or its cultural resources.
- Keep information obtained via government-to-government consultation confidential.