



CHEMEHUEVI INDIAN TRIBE

MARCH 2, 2026, COMMENTS FROM THE CHEMEHUEVI INDIAN TRIBE ON THE DRAFT ENVIRONMENTAL IMPACT STATEMENT (“DEIS”) RELEASED BY THE U.S. BUREAU OF RECLAMATION ON JANUARY 9, 2026, FOR THE POST-2026 OPERATIONAL GUIDELINES AND STRATEGIES FOR LAKE POWELL AND LAKE MEAD

“We, as Nuwu Chemehuevi, have a very significant relation with water. We believe Creator, Hutsipamowputs/Ocean Woman, is the great spirit in all water. Pahgaip/‘Water Alive’ is the living spirit within us. The living spirit is within all DNA and present in all things that drink and breathe. This connection is a crucial part of our creation stories from the time the ocean waters flowed and created the landscape. All those who have passed live within the spirit of the landscape, water, air, animals, trees and within our hearts—for we believe they are always with us. Our ancestors flow with the river from the source of all creation, the goddess of water, Hutsipamowputs/Ocean Woman. Pah/water, is the spirit of a living way. We must always honor it, respect it, preserve it, and protect it—that it is and so is life.”

- Daniel Leivas, TRIBAL CHAIRMAN OF
THE CHEMEHUEVI INDIAN TRIBE

ROADMAP

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**INTRODUCTION, STATEMENT OF INTEREST,
AND HISTORICAL/LEGAL CONTEXT**

1. Submission and Purpose.

The Chemehuevi Indian Tribe (“Tribe”) respectfully submits these comments on the Bureau of Reclamation’s (“Reclamation”) Draft Environmental Impact Statement for the Post-2026 Operational Guidelines and Strategies for Lake Powell and Lake Mead (“DEIS”). These comments are provided on a government-to-government basis to ensure that the Final EIS (“FEIS”), Record of Decision (“ROD”), and any resulting post-2026 operational guidelines are legally defensible, technically transparent, and fully consistent with the United States’ trust responsibilities and controlling Law of the River authorities, including the Supreme Court’s decrees governing mainstream Colorado River water rights.

The Tribe recognizes the extraordinary hydrologic and operational challenges facing the Colorado River Basin, including long-term aridification and the risk of critically low reservoir conditions. The Tribe supports timely, durable, science-based actions that reduce systemic risk and avoid unmanaged emergency conditions. However, the Tribe cannot support any approach—whether framed as “policy shortages,” “operational flexibility,” “system protection,” or otherwise—that would infringe, impair, reduce, or subordinate the Tribe’s decreed mainstream Colorado River water rights or diminish the Tribe’s ability to protect and sustain its people, resources, and future development.

2. Government-to-Government Status and Trust Responsibilities.

The Tribe is a sovereign Indian nation with inherent governmental authority. The Tribe’s mainstream Colorado River water rights and related interests constitute Indian trust assets and are protected by the United States’ fiduciary obligations. The DEIS acknowledges the federal trust framework and the relevance of Indian trust assets in evaluating effects to tribes. The FEIS and ROD must therefore do more than describe consultation efforts or summarize tribal concerns. They must incorporate enforceable decision constraints and implementation commitments that ensure the selected alternative can be carried out without impairing tribal rights or shifting disproportionate risks onto tribes.

The Tribe requests that Reclamation treat the Supreme Court decree framework and the protection of decreed tribal rights as a hard legal constraint throughout: (A) alternatives screening; (B) modeling assumptions and allocation logic; (C) impact analysis; and (D) the selection and design of the preferred alternative and any mitigation or implementation measures adopted in the ROD.

3. The Tribe’s Interests Affected by the Proposed Federal Action.

The Tribe’s interests implicated by the DEIS are direct, substantial, and ongoing. They include, at minimum, the following interests.

3.1 Protection of Decreed Mainstream Water Rights. The Tribe holds quantified and priority-protected mainstream Colorado River water rights under controlling U.S. Supreme Court decrees. The Tribe’s ability to use and develop

those rights is essential to its governmental services, public health, and economic security. Any alternative that effectively imposes out-of-priority reductions, whether explicitly through allocation rules or implicitly through modeling assumptions, poses unacceptable legal and practical harm.

- 3.2 Water Supply Reliability and Public Health. The Tribe's community depends on reliable water supply for domestic uses, sanitation, fire protection, and essential governmental operations. Operational regimes that increase uncertainty, reduce reliability, or create unbounded "hydrologic shortage" or "dead pool-related reduction" risks threaten public welfare and the Tribe's capacity to govern.
- 3.3 Economic Development and Self-Determination. The Tribe's ability to plan, finance, and implement present and future development depends on the stability and enforceability of its water rights. Policies or assumptions that treat current underuse as a basis to reduce deliverability, constrain future growth, or recharacterize tribal water as "available" for others directly undermine tribal self-determination.
- 3.4 Natural, Cultural, and Traditional Resources. Post-2026 operations can affect river and reservoir conditions that in turn affect fish and wildlife habitat, riparian resources, shoreline access, cultural landscapes, and traditional uses. These interests are intertwined with the Tribe's identity, cultural continuity, and stewardship responsibilities.

4. **The Historical and Legal Context of the Tribe's Comments.**

The Tribe requests that Reclamation and the U.S. Department of the Interior understand and address the Tribe's comments in light of a unique and well-documented history that is frequently omitted from modern discussions of Colorado River operations. This history matters because it explains why the Tribe's decreed rights must be treated as a non-negotiable floor in the FEIS/ROD, and why any post-2026 operating framework that would impose further reductions on the Tribe, whether directly or through pro rata constructs or crisis-year "physical constraint" practices, would compound prior federal actions that already reduced the Tribe's practical access to its river-valley homeland and associated agricultural base.

- 4.1 The Tribe's Historic Reservation Included Fertile Colorado River Valley Lands and a River-Based Community. Long before the construction of Parker Dam, the Tribe's homeland and Reservation included a fertile valley corridor along the Colorado River that supported a river-based community, subsistence, and agriculture. The Tribe's traditional river-valley lands were central to the Tribe's economic life, cultural identity, and ability to sustain itself along the Colorado River.
- 4.2 Parker Dam and Creation of Lake Havasu Displaced the Tribe and Eliminated Fertile Valley Lands. In connection with construction of Parker Dam and creation of the reservoir system, the United States took and inundated substantial portions of the Tribe's river-valley lands. As a result, the Tribe was

displaced from its fertile valley homeland and forced onto substantially less productive lands, including higher-elevation desert mesa areas. The Tribe's position is not simply that this was disruptive; rather, the federal project permanently altered the reservation land base and eliminated a significant portion of the agriculturally productive valley lands that historically supported the Tribe's community and economy.

4.3 In *Arizona v. California*, the U.S. Supreme Court Applied the PIA Standard to Quantify Reserved Rights After the Tribe's Land Base Had Already Been Altered by Federal Action. In *Arizona v. California*, the Supreme Court approved use of the "practicably irrigable acreage" ("PIA") standard to quantify reserved rights for mainstream Colorado River reservations. The Tribe's position is that the PIA quantification, while final and binding as a matter of judicial decree, was applied to the Reservation land base as it existed and was presented to the Court after federal condemnation and inundation of fertile river-valley lands. In practical effect, the Tribe's quantification reflects a reservation land base already diminished by the Parker Dam project, rather than the fertile river-valley homeland that existed before federal action displaced the Tribe and eliminated agriculturally productive lands.

4.4 The Tribe emphasizes this history for a specific and limited purpose: not to re-litigate the decree, but to ensure that the FEIS/ROD acknowledges the Tribe's circumstances and does not adopt any post-2026 operational framework that would further reduce the Tribe's decreed/Present Perfected Rights ("PPR") rights or diminish the Tribe's ability to develop and use those rights.

5. **Implications for the FEIS/ROD: No Agency Authority to Reduce Decreed Rights, and No Further Reductions in Equity or Trust.**

5.1 The Tribe's history informs two (2) core propositions that guide the Tribe's comments:

5.1.1 *Judicially decreed rights are not subject to reduction through an agency FEIS/ROD.* The Tribe's PPR and other decreed mainstream rights are established by U.S. Supreme Court decree. Reclamation may not lawfully adopt or implement post-2026 operating guidelines that function as a de facto re-ordering, subordination, or reduction of the Tribe's decreed/PPR rights, whether through pro rata allocation constructs, accounting mechanisms, emergency operations, or undefined "physical constraint" protocols.

5.1.2 *The Tribe's rights have already borne the consequences of federal project decisions.* Regardless of the legal finality of the decree, the Tribe's water-rights context is not neutral: the Tribe's fertile river-valley lands were condemned/inundated for a federal dam project, the Tribe was displaced, and the reserved-rights quantification later applied by the Court necessarily reflected the Reservation land base in that altered condition. Any further reduction, whether explicit or practical, would

compound a history in which federal actions already reduced the Tribe's access to its original river-valley homeland and its agricultural base.

- 5.2** Accordingly, the Tribe requests that the FEIS/ROD: (A) expressly acknowledge the Tribe's historic and legal context as part of the government-to-government record; and (B) incorporate enforceable commitments and implementation constraints sufficient to ensure that the post-2026 operating regime cannot impose out-of-priority reductions or other impairment of decreed/PPR tribal rights, including during crisis-year operations.
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EXECUTIVE SUMMARY OF THE TRIBE'S COMMENTS

The Chemehuevi Indian Tribe (“Tribe”) submits these comments on the Bureau of Reclamation’s (“Reclamation”) Draft Environmental Impact Statement for the Post-2026 Operational Guidelines and Strategies for Lake Powell and Lake Mead (“DEIS”). The Tribe recognizes the severity of the Colorado River Basin’s long-term aridification and supports durable, science-based, and legally defensible post-2026 operations that reduce the risk of catastrophic system failure. At the same time, the DEIS, as drafted, does not yet provide a legally adequate and “record-proof” framework for protecting the Tribe’s decreed mainstream Colorado River water rights, the United States’ federal trust responsibilities, and the Tribe’s associated resources, development, and governmental interests.

1. The Tribe’s Decreed Rights and the Non-Negotiable Baseline for the FEIS/ROD.

1.1 The Tribe holds decreed mainstream Colorado River water rights under the U.S. Supreme Court’s decrees in *Arizona v. California*, commonly described as Present Perfected Rights (“PPRs”). As described in the Historical and Legal Context section above, the Tribe’s decreed/PPR rights must be treated as a floor in the FEIS/ROD, and any further reduction would compound prior federal actions that displaced the Tribe from its fertile river-valley homeland. The DEIS record recognizes the Tribe’s mainstream right as quantified and priority-protected, including a quantified amount of 11,340 acre-feet per year and a senior priority date of February 2, 1907.¹ The U.S. Supreme Court decrees and related Law of the River authorities establish a priority framework that must function as a hard legal constraint on any post-2026 operating regime affecting Lower Basin deliveries.

1.2 Accordingly, the Tribe’s baseline position is straightforward:

1.2.1 No Final EIS (“FEIS”) or Record of Decision (“ROD”) may impose, assume, or operationalize out-of-priority reductions to the Tribe’s decreed/PPR water right, regardless of label (including “shortage,” “policy shortage,” “operational shortage,” “hydrologic shortage,” “dead pool-related reductions,” “physical constraint,” or similar terminology).

1.2.2 No federal action may treat state-negotiated consensus outcomes as binding on the Tribe’s decreed rights or as a substitute for tribal consent. The NEPA process cannot be used to create a de facto settlement or reordering of tribal rights through modeling assumptions, embedded accounting rules, or implementation discretion.

2. Core DEIS Defect: Pro Rata Shortage Approaches Are Legally and Analytically Defective for Decreed/PPR Tribal Rights.

2.1 The Tribe’s principal concern is that certain alternatives, as described and analyzed, rely on pro rata shortage allocation concepts. These concepts are applied either basin-wide (i.e. across the Lower Basin) or applied among users

¹ For avoidance of doubt, the Decree quantifies the Tribe’s mainstream right in annual terms not to exceed 11,340 acre-feet of diversions. The operative point for this comment is that the right is quantified, senior, and priority-protected and therefore cannot be reduced through post-2026 operating constructs.

within a state following assigned shortage volumes to that state. Pro rata allocation, by design, distributes shortages without regard to priority. For a tribe holding decreed PPRs, any pro rata approach inherently risks out-of-priority reductions and is incompatible with the decree-based priority system unless the FEIS and ROD expressly carve out decreed/PPR tribal rights from pro rata reductions and provide enforceable implementation rules that prevent “workarounds.”

2.2 From a “record-proof” perspective, it is not sufficient for the FEIS to acknowledge tribal concerns in narrative form. The preferred alternative and the ROD must be drafted and structured so that pro rata constructs cannot later be used, explicitly or implicitly, to justify administrative implementation that impairs the Tribe.

3. Modeling Transparency and Diversion/Depletion Clarity Are Required. Assumptions Must Not Convert Legal Rights into Reduced Deliverable Amounts.

3.1 The FEIS must fully disclose, and allow tribal verification of, all tribe-specific model inputs, diversion-to-depletion (consumptive use) conversion factors, and embedded allocation/accounting logic used to evaluate impacts to the Tribe and must confirm that modeling assumptions cannot operate as de facto constraints on the Tribe’s decreed entitlement or future development. *See* Detailed Comments, Section 3.3 and Detailed Comments, Section 6 (Commitments 5–6).

4. The Tribe Supports Stability and Conservation Only Through Priority-Consistent, Trust-Compliant Tools.

4.1 The Tribe supports meaningful system protection actions, including planned reductions necessary to reduce the probability of emergency-driven outcomes. However, any reductions, planned or otherwise, must be administered in a manner consistent with the priority system and federal trust responsibilities. The Tribe also supports developing tools that allow tribes to conserve, store, and (where appropriate) lease or temporarily forbear water, provided those tools are structured so participation is voluntary, time-limited, appropriately valued, and legally non-prejudicial.

4.2 No conservation, banking, or “protection pool” concept may be implemented in a way that: (A) creates a presumption that “unused” tribal water is available for non-tribal allocation; (B) generates adverse inferences about nonuse; or diminishes the Tribe’s ability to develop and fully use its decreed entitlement in the future.

4.3 Conservation mechanisms must protect tribal title/attribution and ensure recoverability under defined terms.

5. The Tribe’s Requested FEIS/ROD Commitments.

Because enforceable federal commitments must be set in the FEIS and ROD, the Tribe requests that Reclamation incorporate the following commitments.

- 5.1 Non-Impairment/No Out-of-Priority Reductions: A clear, operative rule that post-2026 operations will not impose or implement out-of-priority reductions to the Tribe's decreed/PPR right, including through any pro rata construct, accounting mechanism, or implementation discretion.
- 5.2 Alternatives Screening Correction: Removal or revision of any alternative that embeds pro rata shortage distribution in a manner that could be applied to decreed/PPR tribal rights. Alternatively, at minimum, an express and enforceable limitation that any pro rata construct does not apply to the Tribe's decreed right.
- 5.3 Hydrologic Shortage or Dead Pool-Related Reduction Protocol Disclosure: A defined and transparent protocol for physical-constraint conditions, including triggers, allocation order, accounting rules, and safeguards ensuring physical constraints cannot become a backdoor method of out-of-priority impairment.
- 5.4 Modeling Transparency and Tribal Verification: Publication of tribe-specific model inputs, shortage allocation rules, and sensitivity runs and a formal process for tribal review and correction of datasets and conversion factors used to evaluate tribal impacts.
- 5.5 Voluntary, Temporary, Compensated Participation Protections: Codification of minimum guardrails for any tribal conservation/forbearance/banking mechanism, including, at a minimum: voluntary opt-in, time limits, credited attribution to the Tribe, recoverability, non-waiver/non-prejudice provisions, and protection against adverse inferences from nonuse or participation.
- 5.6 Mitigation and Implementation Commitments: If any adopted operations are projected to affect tribal deliveries, development, or associated resources, the ROD must include specific, enforceable mitigation and monitoring commitments consistent with the federal trust responsibility.

6. **Reservation of Rights.**

Nothing in the Tribe's comments, and no element of any post-2026 guidelines, may be construed as a waiver, modification, settlement, or subordination of the Tribe's sovereign authority, decreed rights, or available remedies. The Tribe submits these comments to ensure the FEIS and ROD are legally defensible, technically transparent, and consistent with controlling decrees and the federal trust responsibility, while enabling urgent and necessary system protection actions that do not shift disproportionate risk onto tribes.

DETAILED COMMENTS

SECTION 1: THE TRIBE'S DECREED MAINSTREAM RIGHT AND THE CONTROLLING DECREE FRAMEWORK.

This Section sets out (1) the baseline attributes of the Tribe's decreed mainstream PPR and (2) the governing legal standards that operate as decision constraints on Reclamation's selection and implementation of post-2026 operations. The DEIS-specific analytical deficiencies are addressed in Detailed Comments, Sections 2–5, and the Tribe's requested enforceable FEIS/ROD commitments are consolidated in Detailed Comments, Section 6. To avoid repetition, subsequent sections incorporate these governing standards by reference except where additional detail is necessary.

1.1 The Tribe's Decreed Mainstream Right Is Quantified, Senior, and Legally Protected.

The Tribe holds a decreed, quantified mainstream Colorado River water right under the U.S. Supreme Court's decrees in *Arizona v. California*, commonly described as a PPR. The DEIS record itself acknowledges and identifies the Tribe's mainstream right as a PPR and provides the key attributes of that right. Most importantly, the DEIS acknowledges that the Tribe's PPR is quantified and priority-protected, including recognition of a quantified annual amount and a senior priority date. In other words, the Tribe's right is not a discretionary program benefit or a general "expectation" of delivery. It is a legally enforceable right that the United States must respect and protect in any post-2026 operating regime.

Because the DEIS recognizes the Tribe's right as both quantified and priority-based, the FEIS and ROD must be structured so that no selected alternative (and no implementation guidance, shortage tiers, accounting rules, or "operational flexibility" tools) can operate in practice to reduce, subordinate, or recharacterize the Tribe's decreed entitlement.

1.2 The Supreme Court Decree Framework Is a "Hard Constraint," Not an Aspiration.

The controlling decrees in *Arizona v. California* establish a legal framework for mainstream water that includes: (A) a quantified rights structure, including tribal entitlements recognized as PPRs; (B) a priority system that governs how shortages are administered among classes of rights; and (C) limits on administrative discretion, including the requirement that federal administration of mainstream deliveries be consistent with the decree-based framework.

The DEIS includes a Law of the River discussion that quotes and relies upon these governing authorities. That matters for NEPA purposes. Where the DEIS places controlling decree constraints in the record, Reclamation must ensure the FEIS/ROD evaluates alternatives consistently with those constraints and does not retain for selection any alternative that cannot be implemented without impairing decreed rights.

Accordingly, the Tribe requests that the FEIS and ROD expressly treat the decree framework as a binding decision constraint, and not merely a background principle,

during alternatives screening, effects analysis, and selection of the preferred alternative.

These decree-based protections are not abstract: the DEIS alternatives and modeling choices present specific decision points that, unless constrained in the FEIS/ROD, could produce out-of-priority outcomes or other practical impairment of decreed/PPR tribal rights. Those risk pathways are addressed in Detailed Comments, Sections 2–5, and the Tribe's requested enforceable FEIS/ROD commitments are consolidated in Detailed Comments, Section 6.

SECTION 2: KEY DEIS DECISION POINTS THAT CREATE RISK OF INFRINGEMENT, IMPAIRMENT, OR REDUCTION OF THE TRIBE'S RIGHTS AND RESOURCES.

The DEIS raises decision points that, unless corrected in the FEIS/ROD, create a material risk of infringement, impairment, or reduction of the Tribe's decreed/PPR water right and associated resources. The most significant risks arise from: (1) pro rata shortage frameworks, (2) undefined physical-constraint ("hydrologic shortage" or "dead pool-related reduction") administration, and (3) modeling constructs and "unused tribal water" concepts that could be misconstrued or operationalized to the Tribe's detriment. The FEIS/ROD must convert general principles into enforceable commitments so that implementation cannot drift into out-of-priority reductions or de facto diminishment of the Tribe's rights.

2.1 Pro Rata Shortage Allocation Frameworks Create a Direct Risk of Out-of-Priority Reductions to Decreed/PPR Tribal Rights.

A central decision point embedded in the DEIS alternatives analysis is how shortages are distributed in the Lower Basin. Certain alternatives (and/or variants) are described and analyzed using basin-wide pro rata shortage allocation concepts for Lower Basin users. Pro rata allocation distributes shortages without regard to priority and, as applied to decreed/PPR tribal rights, creates an inherent risk of out-of-priority reductions. This is not merely a policy disagreement. It is a legal and implementation risk that must be cured at the FEIS/ROD stage. Because the Tribe's right is decreed, quantified, and priority-protected, any alternative that distributes shortages on a percentage (pro rata) basis without categorical protection for decreed/PPR tribal rights creates a structural risk of out-of-priority impairment.

The Tribe's concern is heightened because the DEIS record's comparative discussion of alternatives makes clear that pro rata allocation is not a minor detail. It is a defining feature of certain approaches. In addition, the Tribe has reviewed the shortage allocation implications presented to the Tribe (based on DEIS Appendix C shortage allocation logic), which show modeled outcomes under some pro rata constructs resulting in shortages attributed to the Tribe's supply as overall shortage magnitudes increase. Those illustrative outputs reinforce that, absent an express and enforceable carve-out, pro rata alternatives can operate, by design or by implementation drift, to shift shortage burden onto decreed/PPR tribal rights.

Reclamation must not retain for selection any alternative that relies on pro rata distribution in a manner that could be applied to decreed/PPR tribal rights, unless the FEIS/ROD includes an explicit, operative rule that decreed/PPR tribal rights are

excluded from pro rata reductions and that all shortage administration remains priority consistent.

2.2 “Hydrologic Shortage” or “Dead Pool-Related Reduction”/Physical Constraint Conditions Are Not Sufficiently Defined and Could Operate as a Backdoor Impairment Mechanism.

Separate from policy-defined shortage rules, the DEIS acknowledges the potential for physical constraints and critically low reservoir conditions to limit operational flexibility and delivery capability. The Tribe is concerned that the DEIS does not yet provide a sufficiently clear, enforceable framework for how these conditions—often described as “hydrologic shortage,” “dead pool-related reductions,” “physical unavailability,” or “minimum power pool” constraint scenarios—will be handled in a manner that remains consistent with decree protections for tribal rights.

This lack of clarity creates a serious risk. Even if a preferred alternative purports to administer “shortages” or “policy shortages” in a priority-consistent manner, undefined physical-constraint protocols can effectively become the mechanism that determines who receives reduced deliveries in crisis conditions. Without an explicit, disclosed protocol and binding constraints, “hydrologic shortage” or “dead pool-related reductions” can become an ad hoc allocation regime that, intentionally or inadvertently, imposes out-of-priority reductions to the Tribe.

Accordingly, the Tribe requests that the FEIS/ROD: (A) define physical-constraint conditions with specificity, including triggers, operational thresholds, and decision points; (B) disclose the allocation order and accounting rules under those conditions; and (C) adopt enforceable safeguards ensuring physical constraints cannot be used to justify, normalize, or implement out-of-priority reductions to decreed/PPR tribal rights.

2.3 Modeling Assumptions and Embedded Allocation Logic Must Not Convert Legal Rights into Reduced Deliverable Amounts.

The DEIS relies on system modeling and embedded shortage allocation logic to project alternative outcomes. The Tribe’s concern is that modeling constructs and conversion assumptions can become “policy by proxy” if not fully disclosed, corrected where necessary, and bounded by decree-consistent implementation rules.

In particular, the Tribe understands that the DEIS-related shortage allocation implications presented to the Tribe distinguish between the Tribe’s decreed diversion entitlement and an assumed depletion estimate used for modeling. These concepts may be relevant for hydrologic accounting, but they pose a legal and practical risk if they are treated as interchangeable or used to imply a reduced “deliverable” baseline for the Tribe. Any such conversion would be inconsistent with the nature of a decreed/PPR entitlement and would improperly shift the analysis from “what is legally owed” to “what is assumed currently used.”

The Tribe’s requested FEIS/ROD actions to cure this deficiency—including (A) disclosure and tribal verification of datasets and conversion factors, (B) transparency regarding embedded shortage-allocation logic, and (C) sensitivity cases that test priority-based administration and reasonable tribal development scenarios—are set

forth in Detailed Comments, Section 3.3 and consolidated as enforceable requirements in Detailed Comments, Section 6 (Commitments 5–6).

2.4 “Unused Tribal Water,” Banking, and Protection Pool Concepts Require Explicit Non-Waiver and Non-Prejudice Guardrails.

The DEIS discusses tools that may involve storage, conservation, and coordination mechanisms, including concepts that treat some portion of “unused” tribal water as potentially available for system protection purposes. The Tribe supports developing voluntary tools that enhance system stability and allow tribes to conserve, store, and benefit from stewardship of their water. However, these concepts create elevated legal risk if they are not strictly bounded by enforceable protections.

2.4.1 The Tribe’s concerns are twofold:

(A) *Presumption risk*: Framing tribal water as “unused” can be misconstrued, by third parties or in later administrative implementation, as implying that tribal water is “available” for non-tribal allocation or system balancing absent tribal consent.

(B) *Prejudice risk*: Banking/forbearance mechanisms can be improperly used to suggest abandonment, waiver, or subordination, or to constrain future tribal development by normalizing reduced deliveries.

2.4.2 Therefore, any banking, protection pool, forbearance, or conservation mechanism discussed in the FEIS/ROD must include minimum, enforceable guardrails that: (A) require express tribal authorization for any participation; (B) preserve attribution to the Tribe and define recoverability; (C) prohibit adverse inferences from nonuse or from participation; (D) confirm no program structure or accounting rule shall be treated as modifying the Tribe’s decreed rights; and (E) ensure the Tribe retains full ability to develop and use its decreed entitlement without penalty.

2.5 Near-Term “Starting Conditions” and Early-Period Risk Must Be Addressed Explicitly.

The Tribe is particularly concerned that the initial post-2026 operating years may begin under critically low system storage and stressed hydrologic conditions. Although the DEIS evaluates multiple reservoir starting conditions, including a high-storage bounding scenario, aggregation across those starting conditions can understate the Tribe’s early-period risk under conditions that reflect current and reasonably foreseeable storage. Furthermore, there are minimal analyses that isolate and identify the risks posed in the initial years following the post-2026 process if the current drought conditions were to continue or worsen. The FEIS must address, with specificity, how the preferred alternative will operate under low-storage starting conditions and ensure that any early-period operational challenges do not become a justification for ad hoc delivery reductions that impair decreed/PPR tribal rights.

The Tribe requests that the FEIS include: (A) Tribe-specific delivery reliability projections for the early post-2026 years under low-storage conditions; (B) a clear

explanation of how emergency or contingency operations will be administered in a decree-consistent manner; and (C) binding ROD commitments that the Tribe's rights will not be impaired during early-period operations, including during any transition or adaptive-management phases.

SECTION 3: DEIS DEFICIENCIES REQUIRING CORRECTION IN THE FEIS

The FEIS must correct core deficiencies that currently prevent the DEIS from being legally defensible and record-proof with respect to the Tribe's decreed/PPR rights and associated resources. The most urgent corrections are: (1) converting trust and decree principles into binding decision constraints; (2) providing tribe-specific impact disclosure; (3) disclosing and testing modeling/allocation assumptions; (4) defining hydrologic/physical constraint protocols; (5) incorporating enforceable ROD commitments that prevent out-of-priority impairment in both policy and crisis conditions; (6) identifying and specifying mitigation and implementation measures and commitments; and (7) assessing impacts on Tribe-Adjacent Resources.

3.1 Failure to Treat Protection of Decreed/PPR Tribal Rights as a Binding Decision Constraint.

Although the DEIS recognizes that tribes hold protected mainstream rights and discusses Indian trust responsibilities and Indian trust assets, the DEIS does not yet convert those acknowledgments into binding decision constraints that govern: (A) alternatives screening, (B) modeling logic, and (C) implementation commitments. This is a fundamental deficiency because, absent enforceable constraints, a preferred alternative can appear lawful in narrative form while still being implemented through allocation mechanics or accounting assumptions that impose out-of-priority reductions to decreed/PPR tribal rights.

The FEIS and ROD must expressly state (as an operative decision commitment) that no selected alternative may be implemented in a manner that infringes, impairs, reduces, subordinates, or recharacterizes the Tribe's decreed/PPR mainstream right. That commitment must apply to the full suite of post-2026 tools, including but not limited to shortage tiers, allocation formulas, accounting methods, implementation guidance, contingency protocols, and "adaptive management" adjustments.

3.2 Inadequate Tribe-Specific Impact Disclosure and Overreliance on Aggregated or Group-Level Metrics.

The DEIS relies heavily on system-wide and group-level evaluations. While those summaries may be useful for a high-level comparison, they are not sufficient where the federal action risks impairing specific, decreed tribal rights.

3.2.1 A tribe with decreed/PPR rights is entitled to a clear record showing:

- (A) Whether and how deliveries could be reduced under each alternative/variant;
- (B) Under what triggers; and

- (C) Whether any modeled reductions are driven by policy rules (allocation) versus physical constraints (hydrology/operations).

3.2.2 In particular, the DEIS should not treat the Tribe's rights as a subset of a broader category that obscures tribe-specific risk. Where alternatives are meaningfully distinguishable by shortage distribution method (priority-based versus pro rata), the DEIS must present the results in a manner that makes those differences transparent for the Tribe.

3.2.3 The FEIS must include a tribe-specific disclosure package for the Tribe that, at minimum, reports:

- (A) Frequency, magnitude, and duration of any modeled delivery reductions affecting the Tribe under each alternative/variant, expressed in clear annual metrics and (where relevant) monthly/seasonal sensitivity.
- (B) A clear separation of policy-driven reductions from physical-constraint reductions, with explicit identification of which conditions produce each type of reduction. The volumes of both policy-driven shortages and physical constraint reductions to the Tribe for each alternative should be made explicit and comparable to allow a viable comparison between the alternatives.
- (C) Results for the early post-2026 period under low-storage "starting conditions," not just long-run averages.

3.3 Insufficient Disclosure of Modeling Assumptions and Embedded Allocation Logic (Including Diversion/Depletion Conversions).

The FEIS must also confirm that any diversion-to-depletion assumptions used for modeling are analytical constructs only and do not operate to reduce, cap, or recharacterize the Tribe's decreed entitlement or future development.

3.3.1 The DEIS does not provide sufficient transparency regarding:

- (A) The tribe-specific datasets used to represent the Tribe's use and development over time;
- (B) Conversion factors between diversion and depletion/consumptive use that influence modeled impacts; and
- (C) The embedded allocation logic used to translate alternative descriptions into delivery reductions for particular classes of rights.

3.3.2 This deficiency is legally consequential. Modeling assumptions can become de facto policy choices where they determine whether the Tribe is shown as "impacted," whether pro rata constructs are shown as "workable," or whether reductions appear modest because of depletion assumptions that do not reflect the Tribe's legal entitlement or future development pathway.

3.3.3 The FEIS must:

- (A) Disclose Chemehuevi-specific input datasets and growth/development assumptions used in the modeling runs.
- (B) Disclose and explain any diversion-to-depletion (or consumptive-use) conversion factors applied to the Tribe and why those assumptions are appropriate for impact findings.
- (C) Run sensitivity analyses that test (1) priority-based rules versus pro rata rules and (2) reasonable development scenarios up to the Tribe's decreed entitlement, so the Tribe is not penalized for future use.

These disclosure and sensitivity requirements must be memorialized as enforceable FEIS/ROD commitments. *See* Detailed Comments, Section 6 (Commitments 5–6).

3.4 Inadequate Treatment of “Hydrologic Shortage” or “Dead Pool-related Reduction”/Physical Constraint Protocols and Their Legal Consequences.

3.4.1 The DEIS does not sufficiently define how “hydrologic shortage,” “dead pool-related reduction,” physical unavailability, minimum power pool constraints, or other operational limitations will be administered, particularly during extreme low-storage conditions. This is a critical gap because undefined physical-constraint protocols can operate as the practical allocation regime in crisis years, even where a preferred alternative purports to distribute “policy shortages” under a stated method.

3.4.2 Without a defined protocol, the DEIS fails to provide a “hard look” at the real-world circumstances under which decreed/PPR tribal rights could be reduced, and it fails to demonstrate that physical constraints will not become a backdoor mechanism for out-of-priority impairment.

3.4.3 The FEIS and ROD must:

- (A) Define physical-constraint conditions and identify the operational triggers and decision points.
- (B) Disclose the allocation order and accounting rules that govern deliveries when physical constraints limit total available supply.
- (C) Include enforceable safeguards ensuring physical constraints cannot be administered in a manner that effectively imposes out-of-priority reductions to decreed/PPR tribal rights.

3.5 “Unused Tribal Water,” Banking, Protection Pool, and Forbearance Concepts Are Not Adequately Bounded by Enforceable Non-Waiver and Non-Prejudice Protections.

The DEIS discusses tools that could involve the storage or coordinated management of conserved water and, in some contexts, references concepts that treat some portion of tribal water as “unused” and potentially available for system purposes.

3.5.1 Even if the DEIS frames these concepts as analytical or voluntary, the absence of explicit, enforceable protections creates unacceptable risk that later implementation could:

- (A) Treat tribal water as presumptively available absent tribal consent;
- (B) Generate adverse inferences from nonuse; or
- (C) Normalize reduced deliveries in a manner that prejudices future tribal development.

3.5.2 The FEIS/ROD must include minimum guardrails providing that:

- (A) Any banking/forbearance/protection-pool participation involving the Tribe’s water is strictly voluntary and requires express tribal authorization.
- (B) Conserved/forborne water remains attributed to the Tribe, subject to defined crediting and recoverability rules.
- (C) Participation or nonuse cannot be used to support any claim of waiver, abandonment, diminution, or subordination of the Tribe’s decreed rights.
- (D) No program structure or accounting rule may be construed as interpreting or modifying the Tribe’s decreed entitlement.

3.6 Mitigation and Implementation Commitments Are Not Sufficiently Specific, Enforceable, or Tailored to Trust Assets.

3.6.1 Where the DEIS identifies potential risks to Indian trust assets, the appropriate remedy is not simply additional discussion. The FEIS and ROD must include specific, enforceable commitments, including monitoring, reporting, consultation triggers, corrective actions, and (where necessary) mitigation measures to ensure implementation does not impair tribal rights or shift disproportionate risk onto tribes.

3.6.2 General statements of intent, consultation summaries, or adaptive-management aspirations are not adequate substitutes for operational commitments that can be implemented, audited, and enforced.

3.6.3 The ROD must include:

- (A) A clear Non-Impairment Rule that is operative, not aspirational.

- (B) A defined implementation protocol that prevents out-of-priority reductions via shortage allocation, accounting, or physical-constraint procedures.
- (C) A tribe-specific monitoring and reporting framework and consultation triggers tied to measurable operational thresholds.
- (D) Clear commitments regarding correction of tribal modeling inputs and continued government-to-government engagement during implementation.

3.7 Tribe-Adjacent Resources: FEIS Must Substantiate “Minimal Impact” Conclusions and Include Enforceable Monitoring/Adaptive Commitments (Water Quality, Near-Reservation Conditions, and Cultural/Traditional Uses).

Reclamation states generally that impacts below Davis Dam are expected to be “minimal or nonexistent,” and the DEIS indicates that Lake Mohave and Lake Havasu are operated under existing rule curves such that target elevations are not affected by the alternatives.

The Tribe does not object to the use of rule-curve operations where they are maintained and effective. However, these generalized statements are not a substitute for a Tribe-specific, record-supported analysis of the resource endpoints the Tribe relies upon—including water quality conditions relevant to municipal and community uses, nearshore/shoreline access conditions, localized groundwater–surface water interaction zones, riparian conditions, and cultural and traditional use areas.

Accordingly, even assuming monthly end-of-month elevations are maintained within target ranges, the FEIS/ROD must:

- (A) Clearly identify which operational variables could affect Tribe-adjacent resources (including, at minimum, release patterns, short-term stage/flow variability, temperature, salinity/TDS, turbidity/sediment dynamics, nutrient conditions, and other parameters relevant to harmful algal bloom risk and potable/usable supply);
- (B) Evaluate whether and how those variables may change under each alternative/variant in the early post-2026 period and under low-storage “starting conditions”; and
- (C) Include enforceable commitments—developed through government-to-government consultation—for monitoring, reporting, consultation triggers tied to measurable thresholds, and defined corrective actions if conditions deviate in ways that adversely affect the Tribe’s trust resources or traditional uses.

SECTION 4: ALTERNATIVES ANALYSIS AND THE TRIBE’S POSITION

4.1 Purpose and Organizing Principle.

This Section evaluates the DEIS alternatives as they relate to the Tribe's decreed mainstream Colorado River water right and the Tribe's associated trust resources and governmental interests. The Tribe's analysis is grounded in a single organizing principle: an alternative is not legally or practically acceptable if it can be implemented—by design, by accounting, or by emergency or crisis operations—in a manner that results in out-of-priority reductions or other impairment of the Tribe's decreed/PPR right.

Because the DEIS alternatives differ materially in how shortages are distributed and how operational risk is managed, the Tribe's positions are stated in clear categories: (1) alternatives that are incompatible with decreed/PPR protections as drafted; (2) alternatives that are potentially supportable only if the FEIS/ROD adopts enforceable commitments and implementation rules that prevent impairment; and (3) alternatives that, as a matter of structure, are more consistent with decree-based administration but still require specific clarifications and safeguards.

4.2 Evaluation Criteria.

The Tribe evaluates each alternative using the following core criteria, which are consistent with the controlling decree framework and the federal trust responsibility:

- 4.2.1 Shortage distribution method and legal compatibility. Does the alternative distribute Lower Basin shortages based on priority consistent with decreed/PPR rights, or does it apply a pro rata (percentage-based) distribution that operates outside priority?
- 4.2.2 Operational integrity under extreme conditions. Does the alternative define how physical constraints and critically low storage conditions are administered, and does it prevent “hydrologic shortage” or “dead pool-related reduction” conditions from becoming an ad hoc, out-of-priority allocation regime?
- 4.2.3 Accounting and modeling neutrality. Does the alternative avoid converting legal entitlements into reduced “deliverable” amounts through diversion/depletion assumptions, embedded allocation logic, or system-loss accounting?
- 4.2.4 Tribal development protection. Does the alternative protect the Tribe's ability to fully develop and use its decreed entitlement without penalty, adverse inference, or “baseline” assumptions that harden into constraints?
- 4.2.5 Conservation and storage tools are voluntary and non-prejudicial. If the alternative relies on conservation, banking, forbearance, or protection-pool concepts, are those mechanisms strictly voluntary for the Tribe, recoverable, appropriately valued, and expressly non-waiver/non-prejudicial?
- 4.2.6 Enforceable decision and implementation commitments. Does the alternative translate high-level principles into binding FEIS/ROD commitments and clear implementation rules that can be audited and enforced?

4.2.7 Trust resource protection and enforceable monitoring. The alternative must protect the Tribe's trust resources and Tribe-adjacent resource endpoints (including water quality conditions relevant to domestic and community uses, nearshore/shoreline access conditions, riparian and habitat values, cultural and traditional use areas, and any other Indian trust assets potentially affected by reservoir operations) through enforceable FEIS/ROD commitments, not merely narrative assertions.

At a minimum, the FEIS/ROD must:

- (A) Identify the operational variables most likely to affect these endpoints (including, as applicable, release patterns, short-term stage/flow variability, temperature, salinity/TDS, turbidity/sediment dynamics, nutrient conditions, and other parameters relevant to harmful algal bloom risk);
- (B) Establish tribe-specific monitoring locations, parameters, and reporting cadence;
- (C) Define measurable thresholds and government-to-government consultation triggers tied to those thresholds; and
- (D) Commit to defined corrective actions if monitoring shows conditions deviating in ways that adversely affect the Tribe's trust resources or traditional uses.

4.3 Alternative-by-Alternative Discussion and the Tribe's Position.

4.3.1 No Action Alternative. The No Action Alternative is not a long-term solution to basin aridification and structural deficit. From the Tribe's perspective, its central deficiency is not simply that it lacks a "new agreement," but that it increases the probability that system operations will be driven by ad hoc, emergency, and crisis-response measures. Those are the very conditions under which tribal rights and trust resources are most vulnerable to "collateral" impacts and informal implementation drift.

Tribe's position: The Tribe does not support the No Action Alternative as an outcome. If it remains in the FEIS as a baseline, the FEIS must be explicit that the baseline cannot be used to justify implementation practices that impair decreed/PPR tribal rights, including through undefined physical-constraint protocols or informal pro rata "equity" approaches during emergencies.

4.3.2 Basic Coordination Alternative. The Basic Coordination Alternative is, structurally, closer to a decree-compatible framework because it is premised on coordinated operations and shortage tiers that are intended to be administered through existing legal structures. That said, "priority-based" language alone is not sufficient. The Tribe's experience is that rights can be impaired through

implementation details even where the high-level structure appears consistent with priority (e.g., through accounting assumptions, system-loss allocation, or crisis protocols that effectively determine who is curtailed first). Furthermore, this DEIS demonstrates that the Basic Coordination Alternative is not sufficient to protect the system from reaching critical conditions and forcing “hydrologic shortages” or “dead pool-related reductions.” This is particularly concerning if the current drought conditions persist or worsen in the near-term.

Tribe's position: The Tribe views the Basic Coordination Alternative as potentially supportable only if the FEIS/ROD adopts enforceable commitments that:

- (A) Prohibit out-of-priority reductions to decreed/PPR tribal rights in all conditions, including physical-constraint years;
- (B) Clearly states how the efficacy of this alternative will be evaluated, identifies what additional measures will be taken if it is deemed insufficient, and provides assurances of the enforcement of those measures in the absence of further agreements;
- (C) Define the hydrologic/physical constraint protocol in a priority-consistent manner; and
- (D) Ensure that accounting, modeling assumptions, and system-loss treatment cannot reduce the Tribe's practical ability to divert and use its decreed entitlement.

4.3.3 Enhanced Coordination Alternative. The Enhanced Coordination Alternative is materially different because it incorporates pro rata distribution concepts for Lower Basin shortages. Pro rata allocation is structurally incompatible with a decree-based priority framework unless tribes with decreed/PPR rights are categorically excluded (absent express, voluntary tribal participation). In a NEPA record, leaving this ambiguity unresolved is not a harmless analytical choice. It creates a foreseeable pathway to future impairment through “administrative implementation” of percentage-based reductions. The Tribe is also concerned that pro rata constructs, once embedded in a federal EIS and ROD, invite future arguments that pro rata is an acceptable policy baseline, even though it is inconsistent with the Tribe's decreed/PPR protections.

Shortages to Chemehuevi under the Enhanced Coordination Alternative are shown in Figure 1 below. Not only does it show the potential for extreme shortages to be applied under policy-defined shortages, the ambiguity of whether pro rata shortages would occur under dead pool-related conditions as stated in Appendix C of the DEIS is unacceptable.

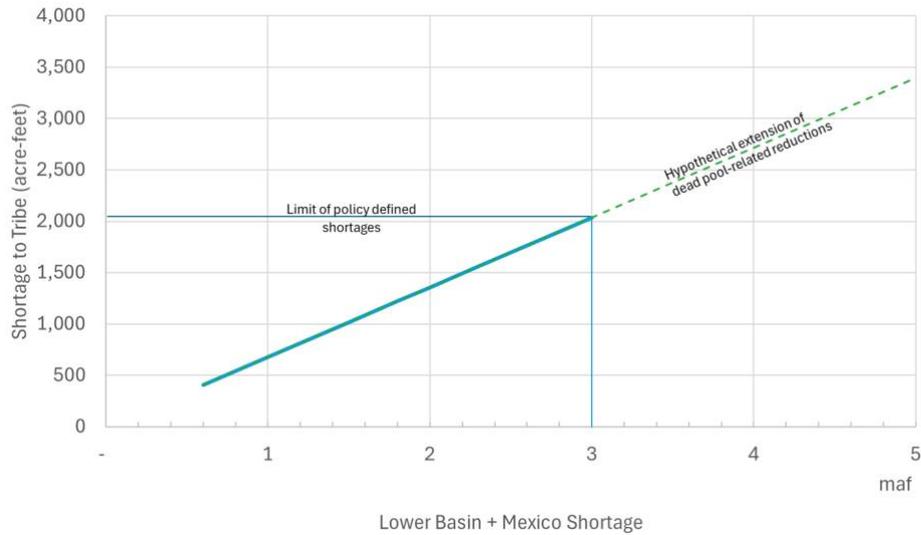


Figure 1. Shortages to the Chemehuevi Indian Tribe under the Enhanced Coordination Alternative (Source: DEIS Table C-38)

Tribe’s position: The Tribe opposes the Enhanced Coordination Alternative as drafted. It cannot be selected unless the FEIS/ROD includes a clear and enforceable rule that decreed/PPR tribal rights are not subject to any pro rata shortage calculation or percentage-based reduction, absent express tribal authorization through Tribe-approved agreement terms that preserve the Tribe’s rights and do not prejudice future development.

4.3.4 Maximum Operational Flexibility Alternative. The Maximum Operational Flexibility Alternative presents a mixed profile. It emphasizes proactive system protection and includes tools intended to stabilize storage. The Tribe recognizes that stronger and earlier system protection may reduce the probability of uncontrolled emergency conditions. However, from a tribal rights standpoint, an alternative that can impose deeper or more frequent shortages (or that is triggered by system-wide indicators) increases the consequences of any ambiguity in the legal and accounting framework. Put differently, the more aggressive the operational tools, the more essential it is that the FEIS/ROD includes enforceable tribal-rights protections.

While the Tribe is generally supportive of mechanisms that encourage conservation, allow water to be stored and utilized at the discretion of the Tribe, and actively manage water between the reservoirs to support environmental conditions and protect infrastructure, the Tribe is also concerned that any conservation reserve or storage mechanism could be implemented in ways that create pressure for tribal participation or treat “unused” tribal water as available for system balancing and not be recoverable. That is not acceptable absent voluntary, compensated, non-prejudicial terms.

Tribe’s position: The Tribe views the Maximum Operational Flexibility Alternative as potentially supportable only if the FEIS/ROD:

- (A) Prohibits out-of-priority reductions to decreed/PPR tribal rights under all conditions;
- (B) Clearly defines and constrains physical-constraint (“hydrologic shortage” or “dead pool-related reduction”) administration; and
- (C) Ensures that any conservation/banking components are strictly voluntary for the Tribe, protect attribution and recoverability, and cannot be used to prejudice future development or imply any limitation on the Tribe’s decreed entitlement.

4.3.5 Supply Driven Alternative. The Supply Driven Alternative, as analyzed, contains two (2) distinct shortage-distribution approaches that must be evaluated separately because they have fundamentally different legal implications for decreed/PPR tribal rights:

- (A) *Lower Basin Priority approach*. A priority-based approach is structurally more consistent with decree-based administration. Even so, the Tribe cannot accept a framework that allows state-negotiated allocation rules, accounting constructs, or “interpretive” implementation guidance to operate in a way that diminishes tribal rights or shifts shortage burdens onto tribes through indirect means.

Tribe’s position: The Tribe views the Supply Driven Alternative with a Lower Basin Priority approach as potentially supportable only if the FEIS/ROD includes enforceable commitments that preserve decree-consistent priority administration for tribal rights, define physical-constraint operations, and prevent accounting or modeling assumptions from reducing the Tribe’s practical ability to divert and use its decreed entitlement.

- (B) *Lower Basin Pro Rata approach*. A pro rata approach is incompatible with decree-based priority protections for decreed/PPR tribal rights unless tribes are categorically excluded absent voluntary participation. The same structural concerns identified for Enhanced Coordination apply here, and the risk is amplified because pro rata approaches can quickly become normalized as a “shared sacrifice” policy even where priority rules control.

Shortages to the Tribe under the Supply Driven Alternative with Lower Basin Pro Rata shortage distribution approach are shown in Figure 2 below. Not only does it show the potential for extreme shortages to be applied under policy-defined shortages, the ambiguity of whether pro rata shortages would occur under dead pool-related conditions as stated in Appendix C of the DEIS is unacceptable.

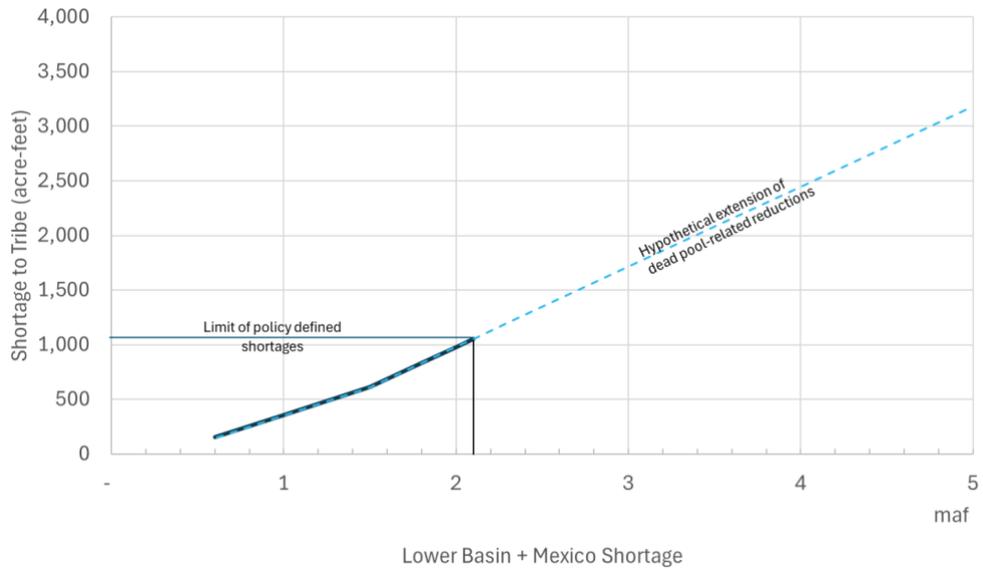


Figure 2. Shortages to the Chemehuevi Indian Tribe under the Supply Driven Alternative with Lower Basin Pro Rata shortage distribution (Source: DEIS Table C-38)

Tribe’s position: The Tribe opposes the Lower Basin Pro Rata approach as analyzed unless the FEIS/ROD adopts an enforceable rule excluding decreed/PPR tribal rights from pro rata reductions absent express tribal authorization that preserves the Tribe’s rights and future development.

4.4 Comparative Conclusions and the Tribe’s Path Forward.

- 4.4.1 Pro rata alternatives are unacceptable absent categorical protections. Any alternative that incorporates pro rata shortage allocation as an implementable framework presents an unacceptable risk of out-of-priority impairment of decreed/PPR tribal rights unless the FEIS/ROD includes an enforceable exclusion for decreed/PPR tribal rights and a voluntary-participation framework controlled by the Tribe.
- 4.4.2 Priority-structured alternatives are not automatically safe and must be made record-proof. Alternatives described as priority-based are only acceptable if the FEIS/ROD resolves the real-world impairment pathways: undefined physical-constraint operations, accounting and modeling assumptions that can function as de facto reallocations, and conservation/banking concepts that could be misconstrued as “available” tribal water.
- 4.4.3 The Tribe’s request is practical and legally necessary. The Tribe is not asking Reclamation to avoid system protection measures. The Tribe is asking the FEIS/ROD to ensure that system protection is achieved through lawful, transparent, enforceable tools that do not shift disproportionate risk onto tribes or impair decreed/PPR rights through pro rata constructs, ad hoc crisis operations, or accounting workarounds.

This alternatives analysis informs the Tribe’s requested modifications and FEIS/ROD

commitments, which are set out in the requested revisions and commitments sections of this comment letter.

SECTION 5: THE TRIBE'S PREFERRED PATH FORWARD

5.1 The Tribe's Preferred Approach.

The Tribe supports timely adoption of post-2026 operations that materially reduce the risk of catastrophic system outcomes. The Tribe also recognizes that durable operations will likely require meaningful, planned reductions in system demands and coordinated reservoir management. The Tribe's support, however, is conditioned on a simple and legally necessary proposition: **system protection must be achieved through a framework that is priority-consistent, trust-compliant, and enforceable in implementation without shifting disproportionate risk onto tribes or impairing decreed/PPR tribal rights through pro rata constructs, accounting workarounds, or undefined crisis protocols.**

Accordingly, the Tribe urges Reclamation to select (or to modify into) a priority-structured alternative that can be implemented in a manner consistent with decree protections, and to incorporate the enforceable protections described below into the FEIS and ROD as binding commitments that also appear in the final post-2026 operational guidelines and any implementing manuals or procedures.

5.2 Selection Criteria the FEIS Must Apply for Legal Implementability.

The Tribe requests that the FEIS expressly apply the following screening criteria when identifying a preferred alternative:

- 5.2.1 Legal implementability without impairment.** The alternative must be implementable without imposing out-of-priority reductions to decreed/PPR tribal rights, both in routine operations and in extreme low-storage conditions.
- 5.2.2 No reliance on pro rata as an implementable shortage mechanism for decreed tribal rights.** If any pro rata concept remains in the analysis, it must be treated as non-implementable as applied to decreed/PPR tribal rights absent express tribal authorization, and the FEIS/ROD must contain an operative limitation that prevents drift into implementation.
- 5.2.3 Defined physical-constraint protocol.** The alternative must define how physical constraints (including critically low storage conditions) will be administered and must prevent "Hydrologic Shortage" or "Dead Pool-related Reduction" conditions from becoming an ad hoc allocation regime that effectively impairs tribal rights.
- 5.2.4 Transparency and tribe-specific results.** The FEIS must disclose tribe-specific outcomes and the assumptions that drive them, including conversions between diversion and depletion and the allocation logic embedded in modeling.

- 5.2.5** Voluntary, non-prejudicial conservation tools. Any conservation, banking, forbearance, or protection-pool tool must be strictly voluntary for the Tribe, legally non-prejudicial, and structured to protect attribution, recoverability, and future development.
-

SECTION 6: SPECIFIC REQUESTED FEIS/ROD REVISIONS AND COMMITMENTS

This Section states the Tribe's specific requested revisions to the FEIS and ROD. These requests are framed as enforceable commitments and decision constraints, not aspirational statements, because the FEIS and ROD will govern the legality and real-world implementation of post-2026 operations. The Tribe requests that Reclamation incorporate the commitments below into: (1) the FEIS narrative and alternatives descriptions; (2) the ROD's decision, mitigation, and monitoring commitments; and (3) the final post-2026 operational guidelines and implementing procedures.

Regardless of which alternative is selected, the commitments below are the minimum modifications necessary to make the FEIS/ROD legally defensible and implementation-ready without impairment. These commitments are decision constraints, not aspirational statements, and must be adopted in enforceable, auditable form in the ROD and carried through into the final post-2026 operating guidelines and implementing procedures.

6.1 Requested FEIS/ROD Commitments (Operative Requirements).

Commitment 1 — Non-Impairment Rule for Decreed/PPR Tribal Rights (Operative)

Requested FEIS/ROD action: Include an express, operative commitment that post-2026 operations shall not infringe, impair, reduce, subordinate, or otherwise diminish the Tribe's decreed mainstream Colorado River water right, including through shortage tiering, allocation formulas, accounting practices, emergency operations, adaptive-management adjustments, or implementation guidance.

Required elements:

- (1) The commitment applies in all conditions (routine operations, low-storage "starting conditions," and extreme physical constraints).
- (2) The commitment is framed as an implementation constraint and appears in the ROD in a manner that is enforceable and auditable.

Commitment 2 — Pro Rata Exclusion and Consent-Based Participation Only

Requested FEIS/ROD action: Decreed/PPR tribal rights shall be excluded from any pro rata shortage allocation or percentage-based reduction, absent express tribal authorization through a Tribe-approved agreement that preserves rights and prevents prejudice.

Purpose: To prevent out-of-priority impairment and ensure that any shared-

reduction approach affecting tribal water is strictly voluntary and cannot be implemented by default or by administrative drift.

Commitment 3 — Define and Constrain Physical-Constraint (“Hydrologic Shortage” or “Dead Pool-Related Reduction”) Administration

Requested FEIS/ROD action: The FEIS must define, and the ROD must adopt, a transparent protocol governing operations under physical constraints and critically low storage conditions that includes, at minimum:

- (1) Clear triggers and operational thresholds for physical-constraint conditions (including how they are measured and when they take effect);
- (2) Decision-making steps and documentation requirements, including government-to-government consultation triggers;
- (3) Allocation order and accounting rules used when physical constraints limit available supply; and
- (4) Enforceable safeguards ensuring physical constraints cannot be used as a backdoor mechanism to impose out-of-priority reductions to decreed/PPR tribal rights.

Purpose: To ensure that extreme operational conditions do not function as an ad hoc shortage allocation regime inconsistent with decree-based priority protections. (See Detailed Comments, Section 3.2.)

Commitment 4 — Tribe-Specific Impact Disclosure and Reporting (Chemehuevi-Specific Outputs)

Requested FEIS action: The FEIS must provide tribe-specific results sufficient to allow meaningful review of impacts to the Tribe’s decreed right and related resources, including:

- (1) For each alternative/variant: the frequency, magnitude, and duration of any modeled delivery reductions affecting the Tribe;
- (2) A clear separation between reductions attributable to policy shortage rules versus reductions resulting from physical constraints;
- (3) Results for the early post-2026 years under low-storage starting conditions; and
- (4) A clear explanation of what data and logic are used to produce any modeled shortage attributed to the Tribe.

Requested ROD action: Commit to ongoing tribe-specific reporting during implementation, including periodic summaries of conditions and any operational decisions that affect (or could affect) delivery reliability at the Tribe’s point of diversion.

Commitment 5 — Modeling Transparency, Tribal Verification, and Sensitivity Cases

Requested FEIS action: The FEIS must disclose and make available for tribal review the tribe-specific modeling assumptions and inputs used in evaluation, including:

- (1) Chemehuevi-specific datasets and development schedules;
- (2) Any diversion-to-depletion or consumptive-use conversion factors applied;
- (3) The shortage allocation logic embedded in modeling rule sets and any linked “shortage allocation model” assumptions; and
- (4) Sensitivity analyses that test outcomes under legally distinct shortage frameworks (priority-based administration versus pro rata concepts) and under reasonable tribal development scenarios up to the Tribe’s decreed entitlement.

Purpose: Modeling assumptions cannot be allowed to function as de facto constraints on legal entitlements.

Commitment 6 — Diversion vs. Depletion Clarification and Non-Prejudice to Future Development

Requested FEIS/ROD action: Include an express clarification that:

- (1) The Tribe’s decreed entitlement is a legal right that is not reduced by assumed depletion estimates used for modeling;
- (2) The Tribe’s current or historic use levels do not limit the Tribe’s ability to develop and fully use its decreed entitlement; and
- (3) The FEIS/ROD and implementation guidance may not treat “underuse” as a basis to diminish deliverability, reallocate water, or justify pro rata reductions.

Purpose: Avoids inadvertent conversion of technical assumptions into functional diminishment.

Commitment 7 — Conservation, Banking, Forbearance, and Protection-Pool Mechanisms: Voluntary, Recoverable, Non-Prejudicial Requested

Requested FEIS/ROD action: Any conservation, banking, forbearance, protection-pool, or similar tool that implicates tribal water must be conditioned on minimum enforceable guardrails:

- (1) Voluntary opt-in only, requiring express tribal authorization;

- (2) Preservation of attribution to the Tribe and defined crediting and recoverability rules;
- (3) Express non-waiver and non-prejudice provisions, including that participation or nonuse cannot support adverse inferences, abandonment arguments, or subordination of the Tribe's decreed right;
- (4) Prohibition against recharacterizing tribal water as system water available for non-tribal allocation absent tribal consent; and
- (5) Protection of the Tribe's ability to fully develop and use its decreed entitlement without penalty.

Commitment 8 — Accounting Neutrality and Protection Against Shifting System Losses onto the Tribe

Requested FEIS/ROD action: The FEIS/ROD must include accounting rules that prevent the Tribe's decreed entitlement from being reduced in practice through:

- (1) Reclassification of structural deficits or system losses;
- (2) Changes to evaporation, conveyance-loss, or transit-loss assumptions that effectively charge losses against the Tribe; or
- (3) Any administrative accounting approach that reduces the Tribe's practical ability to divert and use its decreed entitlement.

Purpose: Rights can be impaired through accounting even when "priority" language is preserved.

Commitment 9 — Implementation Governance: Consultation Triggers, Documentation, and Non-Dilution of Commitments

Requested ROD action: Include implementation governance provisions that ensure the commitments above remain operative:

- (1) Ongoing government-to-government consultation through implementation, with defined triggers (e.g., when any proposed operational change could affect tribal delivery reliability or involve tribal water in conservation mechanisms);
- (2) Documentation requirements for deviations and emergency actions (including rationale and steps taken to avoid tribal impairment); and
- (3) A non-dilution rule stating that implementation guidance, adaptive-management adjustments, or interim procedures may not alter the Non-Impairment Rule or other core commitments without further NEPA review and government-to-government consultation.

6.2 Requested FEIS Editorial and Structural Revisions (Clarity and Legal Defensibility).

In addition to the commitments above, the Tribe requests that the FEIS revise the DEIS text to:

- 6.2.1** Clarify in the alternatives descriptions (not only in appendices) whether any pro rata concept is intended as an implementable policy tool and, if so, include the pro rata exclusion/consent limitation for decreed/PPR tribal rights.
- 6.2.2** Add a tribe-specific impact discussion summarizing the Tribe's outcomes in plain language, including any modeled shortages and their drivers.
- 6.2.3** Ensure consistent definitions of "shortage," "policy shortage," "hydrologic shortage," "dead pool-related reductions," "physical constraints," "diversion," "depletion," and "consumptive use," and apply those definitions consistently across chapters and appendices.
- 6.2.4** Include a consolidated "Tribal Rights and ITA Commitments" subsection in the FEIS that lists the operative commitments adopted in the ROD and explains how the preferred alternative will be implemented consistent with those commitments.

SECTION 7: CONCLUSION AND RESERVATION OF RIGHTS

7.1 Conclusion.

The Tribe submits these comments to ensure the FEIS/ROD and post-2026 operating guidelines protect the Colorado River system without impairing the Tribe's decreed/PPR rights and trust resources. The Tribe recognizes the urgency of stabilizing the Colorado River system under long-term aridification and supports durable system-protection actions that reduce the risk of uncontrolled crisis operations.

At the same time, the Tribe's decreed mainstream Colorado River water right is a protected Indian trust asset and must be treated as a binding constraint on federal decision-making. The FEIS/ROD must not adopt, or leave room to implement, any framework that infringes, impairs, reduces, or subordinates the Tribe's decreed/PPR right. The Tribe's comments identify specific pathways by which impairment can occur even where alternatives appear facially protective, including: pro rata shortage constructs; undefined physical-constraint ("Hydrologic Shortage" or "Dead Pool-related Reduction") administration; and accounting and modeling assumptions that can convert legal entitlements into reduced deliverable amounts or normalize reductions inconsistent with priority.

The Tribe therefore requests that Reclamation:

- (1) Select or modify a preferred alternative that is demonstrably implementable without impairing the Tribe's decreed/PPR right; and

- (2) Incorporate the Tribe's requested FEIS/ROD commitments as enforceable decision constraints and implementation requirements.

These commitments are necessary to ensure that system protection is achieved through lawful, transparent, and durable operations that do not shift disproportionate risk onto tribes or treat tribal water as a default or non-recoverable balancing resource for system stability. The Tribe respectfully requests that Reclamation incorporate these commitments into the FEIS and ROD as enforceable requirements and confirm that alternatives that cannot satisfy these requirements will be removed from further consideration or modified accordingly.

7.2 Reservation of Rights and Non-Waiver.

Nothing in the Tribe's comments is intended, and nothing shall be construed, as:

- (1) A waiver, modification, settlement, or subordination of the Tribe's sovereign authority, decreed water rights, reserved rights, or other legal entitlements;
- (2) A consent to any pro rata reduction, reallocation, or administrative interpretation that would diminish the Tribe's decreed/PPR right;
- (3) An agreement to treat current or historic use levels as a limitation on the Tribe's ability to develop and fully use its decreed entitlement; or
- (4) A limitation on the Tribe's ability to pursue any administrative, judicial, or other remedies available under federal law, tribal law, or other applicable authorities.

The Tribe further reserves the right to supplement these comments if Reclamation issues additional analyses, revised modeling assumptions, changes to alternatives, or other new information in the FEIS process that could affect the Tribe's rights or resources.

7.3 Request for Confirmation in the FEIS/ROD.

The Tribe requests that the FEIS and ROD expressly acknowledge receipt and consideration of these comments and that the FEIS/ROD clearly identify how Reclamation will incorporate the Tribe's requested commitments and revisions. Or, if any requested commitment is not adopted, provide a reasoned explanation for the decision and demonstrate how the preferred alternative will nonetheless be implemented without impairment of the Tribe's decreed/PPR right and associated trust resources.