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Scott J. Cameron  
Acting Commissioner  
U.S. Bureau of Reclamation  
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**VIA E-MAIL ONLY**

*Re: The Cocopah Indian Tribe's Comments on the Bureau of Reclamation's "Draft Environmental Impact Statement – Post-2026 Operational Guidelines and Strategies for Lake Powell and Lake Mead"*

Dear Commissioner Cameron:

The Cocopah Indian Tribe, a federally recognized Indian tribe (the "Cocopah" or "Tribe"), submits this comment on the Draft Environmental Impact Statement ("DEIS") for *Post-2026 Operational Guidelines and Strategies for Lake Powell and Lake Mead* (91 Fed. Reg. 213) (January 16, 2026). The Cocopah joins in the comments submitted by the Colorado River Indian Tribes and the Chemehuevi Indian Tribe and shares the concerns raised in those comments.

**I. INTRODUCTION**

The Cocopah people, known as the Kwapa, have lived along the lower Colorado River and its delta since time immemorial. Our identity, culture, and survival are inseparable from the River. For the Cocopah, the Colorado River is a living relative, not a mere water supply.

We recognize the considerable efforts that the United States, the Bureau of Reclamation ("Reclamation"), the Bureau of Indian Affairs, and the numerous other federal, state, and conservation partners have devoted to confronting the current crisis in the Colorado River Basin. Indeed, for over two decades, the Colorado River Basin has faced record drought and significantly worsening hydrological conditions, a crisis borne by Basin States, Basin Tribes, and myriad municipal, agricultural, environmental, and hydropower stakeholders. And with the 2007 Interim Guidelines set to expire, we face yet another moment of reckoning: adopting Post-2026 Operational Guidelines and Strategies for Lake Powell and Lake Mead ("Post-2026 Guidelines"). We acknowledge and value the deliberate outreach to Basin Tribes that has occurred to date.

At the same time, the United States' trust responsibility to the Cocopah requires more than consultation and consensus among stakeholders—it requires that the federal government and its agencies protect tribal water rights and Indian Trust Assets ("ITAs") as a first-order



obligation, not as one interest among many. See *Seminole Nation v. United States*, 316 U.S. 286, 297 (1942) (“[The United States] has charged itself with moral obligations of the highest responsibility and trust” to Indian tribes.). ITAs include, among other things, tribal rights to Colorado River water and related on- and off-Reservation resources that the federal government holds in trust for tribes, and the United States has a corresponding fiduciary duty to protect and manage these assets for the benefit of Basin tribes. The Post-2026 Guidelines cannot lose sight of this fundamental principle.

Several of the alternatives discussed in the DEIS, along with Reclamation’s level of analysis regarding the alternatives’ impact on key tribal, environmental, ecological, and cultural resources, therefore, raise serious questions and concerns. As more fully set forth below, the Tribe opposes any alternative that threatens the Cocopah’s water rights, including its Present Perfected Rights (“PPRs”), ignores the Law of the River and the United States’ trust obligations to the Tribe, or impairs the Tribe’s ability to fully use and develop its water rights.

## II. OUR RELATIONSHIP TO THE RIVER AND OUR WATER RIGHTS

For the Cocopah, the Colorado River remains critical to our people’s past and our future. Our tribal ancestors cultivated crops in the fertile floodplain of the lower Colorado River, fished, hunted, and gathered in its riverbeds, and relied upon the River’s water and the many resources it supports for food, housing materials, travel, and ceremonial purposes.

Today, our Tribe continues to utilize Colorado River water for a variety of needs, including potable water, farming and agricultural uses, Indian gaming, recreation, habitat restoration, ceremonial purposes, and business development opportunities. For example, the Tribe’s ongoing wetlands restoration project on Cocopah’s North and West Reservation, funded in part through federal grants, will help restore and transform hundreds of acres of land currently choked by invasive plants into a healthy native habitat for birds, wildlife, and culturally important plants. The ongoing success and continuation of these efforts, in reliance on our federally recognized rights to River water, are inextricably tied to our Tribe’s economic and cultural survival. As we reconnect our youth and elders with the River, rebuild traditional ecological knowledge, and build a resilient tribal economy, on-going and secure access to Colorado River water remains essential. Any Post-2026 Guidelines that reduce our water deliveries or restrict the Tribe’s ability to use, or expand use, of our rights would directly harm not only the Tribe’s economic future, but also our cultural and spiritual relationship with the River.

The Cocopah holds PPRs that are among some of the most senior water rights in the Lower Basin. As reflected in and administered under the Consolidated Decree in *Arizona v. California*, 547 U.S. 150 (2006), the Cocopah possess entitlements to 8,821 acre-feet per year (“AFY”) of Priority 1 water (1,140 AFY under U.S. PPR No. 8 with a priority date of 1915, and 7,681 AFY with a priority date of September 27, 1917), and 2,026 AFY of Priority 4 water, with a priority date of June 24, 1974. In addition to the water rights reflected in the Consolidated Decree, in 1985 Congress placed approximately 3,600 additional acres of land into trust for the Tribe, giving rise to a reserved water right claim under the *Winters* Doctrine estimated at 22,928 AFY with a priority date of April 15, 1985. Public Law 99-23 (99 Stat. 47); See *Winters v. United States*, 207 U.S. 564 (1908). The Tribe’s 22,928 AFY entitlement remains unresolved, yet this



fact does not diminish the United States' legal obligations to safeguard the Cocopah's rights to this water.

The DEIS itself recognizes that PPRs are a distinct and senior class of rights. (DEIS Ch. 1 at 1-18.) In describing the Law of the River, Reclamation rightly explains that when mainstream Colorado River water is insufficient to satisfy all consumptive uses in the Lower Basin states, "PPRs will be satisfied first, in the order of their priority, without regard to state lines." *Id.* Chapter 3 further notes that federal reserved water rights, including PPRs, have been decreed for several tribes, including the Cocopah, and that PPRs "are satisfied first in order of priority." (DEIS Ch. 3 at 3-45.) This framework reflects long-standing federal law: during periods of shortage, the Secretary of the Interior must first meet the needs of those water users with PPRs before junior users and must do so consistent with the federal government's trust obligations to Indian tribes.

Despite holding these water rights, the Tribe currently uses only a portion of its decreed supply because of long-standing infrastructure limitations that impede delivery of Colorado River water across all three of Cocopah's reservations. The Cocopah's underuse is a symptom of historic federal underinvestment, not any waiver of the Tribe's rights. For its part, the DEIS appropriately notes the need to "provide new or enhanced opportunities for Basin Tribes to benefit from their water rights." (DEIS Ch. 1 at 1-7.) However, that purpose can only be fulfilled if the Cocopah's decreed and reserved rights are fully protected from shortages, caps, or other curtailment efforts.

### **III. CONCERNS WITH RECLAMATION'S PROPOSED ALTERNATIVES & ANALYSIS**

Prior to turning to our specific concerns with Reclamation's proposed alternatives and analysis, the Tribe must first note a more fundamental defect in the DEIS: it does not identify a preferred alternative. (DEIS Ch. 2 at 2-3.) While federal regulations only require Reclamation to identify a preferred alternative in a draft EIS if one, in fact, exists, they still mandate an analysis of alternatives that "sharply define[s] the issues for the decision maker and the public and provide[s] a clear basis for choice among options." 40 C.F.R. § 1502.14(d). As detailed in the subsections below, the DEIS does not meet that standard. Instead, Reclamation seeks to invoke political consensus among Basin entities at the cost of a clear, articulated vision for how the Secretary intends to manage the Colorado River in light of the federal government's trust obligations to Basin Tribes, including the Cocopah. In doing so, the DEIS fails to provide a meaningful, Tribe-focused analysis of how the Secretary will protect the Cocopah's water rights and ITAs under any of the proposed alternatives.

#### **A. Reclamation Has No Authority To Depart From The Priority System.**

The Tribe opposes any alternative in the DEIS (or any combination of alternatives that may be otherwise be distilled in the Final EIS) that distributes water shortages on a pro rata basis or departs from the priority system. Any such approach would not only violate decades of established federal law governing the Colorado River but unquestionably place the United States in breach of its trust responsibility to the Cocopah.



## Cocopah Indian Tribe

Both the Enhanced Coordination Alternative and the Lower Basin Pro Rata variant of the Supply Driven Alternative, as described and modeled in the DEIS, proposes pro rata shortages in the Lower Basin. The DEIS explains that under the Enhanced Coordination Alternative, reductions would be implemented “on a proportional basis (i.e., as the same percentage cut from each user’s entitlement) across all Lower Basin water users, including Mexico,” and that these pro rata shortages would occur “outside the priority system.” (DEIS Ch. 2, at 2-18.) The DEIS does not clearly state whether tribal PPRs—including the Cocopah’s PPRs—are exempt from these pro rata cuts or are included within “all” Lower Basin users. This ambiguity is unacceptable to the Cocopah whose rights are expressly recognized and protected in the Consolidated Decree.

The Consolidated Decree is clear: even under shortage conditions PPRs must be satisfied first “in the order of their priority dates without regard to state lines,” including the direction to “first provide for the satisfaction in full of all rights of the . . . Cocopah Indian Reservation . . .”. (DEIS Appendix C at C-12 (quoting the Consolidated Decree); see *also* DEIS Ch. 1 at 1-18; Ch. 3 at 3-45.) Subjecting Cocopah’s PPRs to uniform percentage reductions would, in effect, nullify their senior status and conflict with the Law of the River, the Consolidated Decree, and the United States’ federal trust responsibility to the Tribe.

Under the National Environmental Policy Act (“NEPA”), an EIS is required to include a “reasonable” range of alternatives. 42 U.S.C. § 4332(C)(iii). There is nothing “reasonable” about alternatives which patently conflict with the law, and which Reclamation has no authority to implement. Reclamation acknowledges that a departure from the priority system would require “modifications to certain laws, contracts, agreements, and other authorities that are part of the Colorado River legal and contractual framework referred to as Law of the River.” (DEIS, Appendix C, at C-2-3.) And Reclamation correctly states that pro rata shortage distributions “diverge from provisions in the Consolidated Decree and other applicable Federal law” and acknowledges that “[s]uch proposals may ultimately not be implementable.” (*Id.* at C-3.) Having admitted that pro rata models are inconsistent with existing law, Reclamation cannot lawfully treat them as acceptable options for managing Cocopah’s water rights.

The Tribe fears these pro rata proposals signal a willingness from the United States to balance tribal rights against junior non-tribal uses in a manner inconsistent with longstanding federal trust principles. The Tribe echoes the sentiments from the 20 Colorado River Basin Tribes Letter to Reclamation, dated May 16, 2024, in which the Indian tribes there emphasized that we “cannot benefit from [our] Tribal Water Rights if the Post-2026 Guidelines jeopardize Tribal Water Rights through curtailment.” The Cocopah aligns with these principles and opposes any alternative, modeling assumption, or implementation scheme that includes out-of-priority shortages to tribal PPRs or places constraints upon our quantified or reserved rights.

Additionally, the Tribe cannot support any “tribal shortages” that constrain the Tribe’s growth into our quantified, reserved, or unsettled water rights. For its part, the DEIS models the Supply Driven Alternative using both priority-based and pro rata shortage allocation approaches, “with and without tribal shortages included.” The fact that some scenarios explicitly include “tribal shortages” is deeply concerning. Indeed, under several DEIS alternatives, the Cocopah’s Priority 4 water right is effectively eliminated, and under the pro rata-based options the Tribe’s PPRs could face multi-thousand AFY reductions. Reclamation’s



modeling choice sends the wrong signal: rather than planning for Cocopah to fully develop its decreed and *Winters*-based rights, Reclamation has normalized scenarios in which tribal rights are curtailed to preserve uses by junior non-tribal users.

Moreover, any Post-2026 Guidelines that impose uncompensated, non-priority-based cuts to the Cocopah's water rights would raise serious issues under the Fifth Amendment's Takings Clause. The Tribe's decreed and reserved water rights are vested property interests, held in trust by the United States for the benefit of the Cocopah. Should Reclamation depart from the Law of the River and the longstanding precedents that implement it, the Cocopah would be prepared to vigorously defend its water rights to the fullest extent of the law.

Put simply, the Tribe cannot support any alternative that subjects Cocopah's PPRs to pro rata shortages or otherwise treats them as equivalent to junior entitlements, and Reclamation must remove such modeling from the range of implementable Post-2026 Guidelines in the Final EIS and Record of Decision.

**B. Reclamation Must Fully Analyze The Impacts On Cocopah's Water Rights.**

NEPA requires that Reclamation include a "detailed statement" of impacts, with data and analysis proportional to the significance of the effects, yet the DEIS discusses Cocopah water rights and ITAs at a high level and omits the Tribe-specific detail required by the statute and regulations. NEPA § 102(2)(C); 40 C.F.R. §§ 1502.15, 1502.16. Although the DEIS acknowledges that Basin Tribes depend on the Colorado River for cultural, spiritual, ecological, and economic purposes, it does not provide the kind of concrete, Cocopah-specific analysis needed to understand how each alternative would affect our water rights, our ITAs, and our ability to use and develop them in practice.

While DEIS Technical Appendices 13 (Tribal Resources) and 18 (Indian Trust Assets) describe the United States' federal trust responsibility in broad terms and acknowledge ongoing consultation, these sections largely rely on a qualitative discussion and aggregated modeling of "tribal priority groups," rather than disclosing how each alternative would affect the Cocopah's quantified water rights and/or unresolved claims. For example, TA-18 evaluates "tribal priority groups" using basin-wide delivery percentages, but does not show, for Cocopah specifically, how often we would experience shortages, how deep those shortages would be, or how they would interact with our current and planned on-Reservation uses. This aggregated approach is inconsistent with NEPA's requirement to analyze significant impacts in proportion to their importance and obscures the real-world consequences for the Cocopah.

Reclamation's modeling purposely omits Cocopah's 22,928 AFY *Winters*-based reserved water right, even though this unresolved right is recognized in federal studies and held by the federal government in trust for the Tribe. Excluding this entitlement from the DEIS modeling understates both our current and future water needs and is inconsistent with the United States' obligation to protect all of Cocopah's water rights, both quantified and unquantified. The Final EIS must move beyond the generalized, Basin-wide narrative of the DEIS and provide a Cocopah-specific assessment of the preferred alternative's impact on the Tribe's water rights and ITAs.



Furthermore, the DEIS fails to provide a meaningful analysis of critical environmental impacts of the proposed alternatives below Imperial Dam, including but not limited to, impacts upon fish and wildlife, ecological habitats, and water and air quality, which all directly affect the Cocopah's current and future on-River ecological restoration projects and our cultural and spiritual relationship to the River. While various technical appendices address these resources at a Basin scale, they do not identify or evaluate how changes in river flows, reservoir elevations, and water quality conditions under each alternative will affect Cocopah restoration sites, culturally important species, or on-Reservation air and water quality.

The Tribe is equally concerned that the DEIS does not clearly describe what guidelines will govern dead pool scenarios, which the DEIS acknowledges are likely to occur in many futures and in many of the alternatives analyzed. (DEIS Figure TA 18-3 at 18-16.) By failing to address this foreseeable potential reality, the DEIS leaves the Cocopah in the dark about how Reclamation intends to proceed should the Basin face one of its worst-case scenarios. The Final EIS must therefore define, with specificity, how dead pool reductions will be administered and must make explicit that such conditions will not be implemented in a manner that imposes out-of-priority shortages on Cocopah's water rights.

To comply with NEPA and the government's federal trust responsibility, the Final EIS should (1) analyze **all** of Cocopah's quantified and reserved water rights in its modeling; (2) present Tribe-specific results, showing projected shortages and delivery reliability to each Cocopah entitlement under the preferred alternative; (3) analyze, for Cocopah lands and projects, the expected effects on the environment below Imperial Dam, including, without limitation, fish and wildlife, ecological habitats, and water and air quality; (4) provide specific guidelines that will govern dead pool scenarios; and (5) identify concrete avoidance and mitigation measures tailored to protecting Cocopah water rights and ITAs. Reclamation should, at a minimum, correct its modeling to include Cocopah's 22,928 AFY reserved water right and analyze how the preferred alternative will affect that right alongside our decreed water rights.

**C. Reclamation Cannot Assume Tribal Stagnation While Planning For Other Users' Growth.**

The DEIS and its modeling assume continued growth in the Upper Basin and among major metropolitan water users while effectively holding tribal development flat, treating tribal underuse of decreed and reserved rights as a permanent condition rather than a symptom of historic underinvestment. (See DEIS, Appendix B, Modeling Assumptions; Appendix H, Sensitivity Analysis.) That framing is not acceptable. The Cocopah, like municipal and commercial users in the Upper and Lower Basins, expect our communities, economies, and cultural restoration work to grow, and Reclamation must plan for a future in which all sovereign Tribal nations fully use and benefit from their water rights, including their PPRs and *Winters*-based claims. Any Post-2026 Guidelines that protect anticipated growth among non-tribal users while assuming that Basin Tribes will not, or should not, fully develop their water rights would be inconsistent with the United States' fiduciary duties as our trustee. To this end, the Tribe requests that Reclamation revisit its modeling assumptions.



**D. Any Conservation, Storage, Forbearance Or Banking Tools Must Be Voluntary, Non-Prejudicial And Available To The Tribe.**

The Tribe supports the development of water conservation, storage, and banking mechanisms—including Intentionally Created Surplus, protection pools, forbearance, or the like—that genuinely enhance system reliability and create new opportunities for Basin Tribes to benefit from their water rights. However, any such mechanisms must be strictly voluntary for the Tribe, time-limited, fairly compensated, and explicitly non-prejudicial. To the extent the Final EIS includes these concepts, the Tribe expects such conserved, stored, banked, or forborne water to remain attributed to the Tribe (subject to clearly defined recovery terms) and participation (or non-participation) may not be used to support any claim of waiver, abandonment, diminution, or subordination of the Tribe’s decreed or *Winters*-based water rights.

**IV. CONCLUSION**

The Tribe’s water rights are the legal expression of a much older reality: our people are, and have always been, inextricably bound to the Colorado River. The DEIS acknowledges that past approaches to Colorado River management have been “insufficient to address the range of interests, needs, and fundamental rights of the Basin Tribes” and proposes to “provide new or enhanced opportunities for Basin Tribes to benefit from their water rights.” **That commitment must be more than aspirational.** Accordingly, the Tribe renounces any plan, alternative, or implementation strategy that threatens Cocopah’s water rights, including but not limited to its PPRs, or diminishes the Tribe’s ability to fully use and develop its water rights.

The Final EIS and Record of Decision must (1) unequivocally protect the Cocopah’s Colorado River water from pro rata or any other out-of-priority cuts; (2) reject alternatives that model “tribal shortages” inconsistent with the Consolidated Decree and Law of the River; (3) provide a robust analysis of the impacts to all of Cocopah’s water rights (including the Tribe’s reserved 22,928 AFY *Winters* entitlement) and ITAs, including specific, enforceable measures to avoid, minimize, and mitigate harm to the Colorado River and the Tribe; (4) define dead pool and emergency protocols consistent with the Consolidated Decree; (5) ensure conservation, storage, forbearance, and banking tools are voluntary and non-prejudicial; and (6) commit to a structured, ongoing government-to-government process through which the Cocopah can participate directly in the development, implementation, and monitoring of Post-2026 Guidelines. Without these protections, the Post-2026 Guidelines cannot credibly claim to “provide new or enhanced opportunities for Basin Tribes to benefit from their water rights” or to address the “fundamental rights of the Basin Tribes,” nor can they be squared with the United States’ fiduciary duties as trustee to the Cocopah.

Nothing in this letter should be interpreted as a waiver, modification, or limitation of the Tribe’s rights, claims, or defenses under any applicable law. The Tribe’s decision not to address a particular aspect of the DEIS does not constitute agreement with, or concession on, any legal or factual issue, and shall not be cited as such in any forum or during any proceeding. The Tribe expressly reserves all rights to supplement, amend, or provide further comments to Reclamation.



Cocopah Indian Tribe

We greatly appreciate the opportunity to comment on the DEIS and request continued government-to-government consultation as the Basin States, Basin Tribes, and numerous stakeholders work towards completing the Post-2026 Guidelines.

Respectfully Submitted,

COCOPAH INDIAN TRIBE

A handwritten signature in black ink, appearing to read 'Sherry Cordova', written over the printed name.

Sherry Cordova  
Chairwoman