



Fort Mojave Indian Tribe

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Bureau of Reclamation
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Re: Fort Mojave Indian Tribe's Comments to the BOR's "Public Review and Notice to Solicit Comments regarding the Draft Environmental Impact Statement of Post-2026 Operational Guidelines and Strategies for Lake Powell and Lake Mead"

To Whom It May Concern:

The Fort Mojave Indian Tribe (the "Tribe"), or Pipa Aha Macav people, submits these comments on the Draft Environmental Impact Statement ("Draft EIS") for Post-2026 Operational Guidelines and Strategies for Lake Powell and Lake Mead prepared by the United States Bureau of Reclamation (the "Reclamation"). The Fort Mojave Indian Tribe is a federally recognized Indian tribe whose reservation lies along the mainstream of the Colorado River in Arizona, California, and Nevada. The Tribe holds quantified, senior mainstream water rights recognized by the Supreme Court in *Arizona v. California*, 373 U.S. 546 (1963), subsequent decrees, to which those rights constitute Indian Trust Assets held in trust by the United States. The Tribe relies upon the Colorado River for agricultural production, community infrastructure, economic stability, and long-term sustainability of its members, and it stands as the cornerstone of our culture and lives as Mojave People.

The Tribe acknowledges the scope of the Draft EIS, including Volume I (Purpose and Need; Description of Alternatives), Volume II modeling appendices (including Appendices B, I, L, and N), and Volume III Technical Appendices (including TA-4, TA-11, TA-16, and TA-18). The Draft EIS reflects substantial modeling effort and complex hydrologic analysis. Several components of the analysis still require further clarification before the Tribe can independently and meaningfully assess the comparative implications of the proposed alternatives. In order to achieve informed community participation, transparency around tribal delivery reliability, priority protection, dead pool exposure, and modeling assumptions affecting tribal entitlements is crucial.

At this stage, the Tribe does not endorse any particular alternative analyzed in the Draft EIS. The Tribe instead seeks additional information, modeling transparency, and technical engagement sufficient to ensure we are fully informed before the Secretary exercises post-2026 operational

discretion. The Selected Alternative is expected to govern reservoir operations for decades, thus requires a clear analysis and full understanding of tribal trust assets and must therefore precede issuance of a Record of Decision. The Tribe requests clarification and enhanced engagement consistent with the federal trust responsibility, to ensure any foreseeable impacts on the life-sustaining resources of the Pipa Aha Macav people are adequately accounted for.

I. The Legal Framework Governing the Water Rights of the Fort Mojave Indian Tribe is Well-Established through Case Law and the Draft EIS Should Clearly Articulate the Federal Government's Fiduciary Duties.

The Colorado River Basin's operational framework exists within a well-established legal structure that includes the Winters doctrine, the Supreme Court's decree in *Arizona v. California*, and the federal government's fiduciary trust responsibility toward federally recognized tribes. Under *Winters v. United States*, 207 U.S. 564 (1908), tribal reserved water rights arise by operation of federal law at the time of reservation establishment and are not dependent upon state allocation systems or subsequent administrative frameworks. These rights carry priority dates and cannot be subordinated through policy balancing or administrative preference. The federal government's obligation extends beyond procedural consultation and requires substantive protection of tribal trust assets.

In *Arizona v. California*, 373 U.S. 546 (1963), the Supreme Court quantified mainstream tribal entitlements and confirmed their senior status relative to other Lower Basin uses. Those decreed rights include Present Perfected Rights ("PPRs"), which are not subject to discretionary modification by administrative agencies. The Tribe's entitlement is not a flexible allocation that may be adjusted to stabilize the system; it is a binding legal right and an Indian Trust Asset. Any operational framework adopted for post-2026 reservoir management must operate within these legal constraints.

Technical Appendix 18 acknowledges tribal water rights and identifies Indian Trust Assets as part of the affected environment. *See* Draft EIS, Vol. III, TA-18. The Draft EIS references trust obligations, however, does not fully articulate how each alternative ensures preservation of senior mainstream tribal rights under extreme hydrologic conditions. The Final EIS should explicitly describe how each alternative maintains priority protections and how the Secretary's discretion is bound by trust responsibilities. Without such clarification, the administrative record risks ambiguity regarding how tribal rights shall be safeguarded during prolonged shortages or delivery instability. The Tribe emphasizes the Final EIS must do more than acknowledge tribal water rights, it must clearly demonstrate how each alternative preserves them. Clarity at this stage protects both tribal rights and the integrity of the federal decision-making process.

II. Comment re: Delivery Reliability and Performance Transparency

Technical Appendix 18 evaluates tribal delivery performance using a Decision Making Under Deep Uncertainty ("DMDU") framework that measures robustness across modeled hydrologic futures. *See* TA-18. These robustness metrics identify the percentage of modeled futures in which deliveries meet specified thresholds relative to normal entitlement levels. While informative at a

general level, these aggregate performance indicators do not provide sufficient detail for the Tribe to independently assess their specific exposure under each alternative. Tribe-specific outputs are necessary for meaningful comparison.

For the Tribe, as a senior mainstream PPR holder, the relevant inquiry is not merely how “tribal groups” perform in aggregate, but how its quantified entitlement performs across modeling traces. The Tribe respectfully requests that the Final EIS provide, for each alternative, the percentage of modeled futures in which receives 100 percent of its entitlement, at least 90 percent of its entitlement, and less than 75 percent of its entitlement. The Final EIS should also identify the frequency and duration of consecutive low-delivery years under each alternative. These metrics are essential to understanding reliability under extended drought conditions.

The Draft EIS should clearly differentiate performance outcomes for mainstream PPR tribal entitlements versus other junior entitlements. *See* TA-18. The distinction between these categories is legally significant, as priority administration and delivery mechanics may differ materially. Aggregated reporting obscures these differences and may mask vulnerabilities unique to particular entitlement categories. Greater transparency would allow tribes to evaluate whether any alternative shifts delivery risk among tribal groups.

The Reclamation should also provide sufficient technical outputs or modeling summaries to allow tribes to independently review delivery performance assumptions. Transparency in CRSS modeling inputs and outputs is particularly important given the complexity of DMDU scenario analysis. *See* Draft EIS, Vol. II, Appendix B (CRSS Modeling Framework). Continued access to meaningful technical information ensures that government-to-government consultation is informed rather than routine. Such engagement aligns with both NEPA principles and the federal trust responsibility.

III. Comment re: Dead Pool Risk and System-Level Delivery Failure

Technical Appendix 18 identifies modeled scenarios in which reservoir elevations approach or reach levels associated with delivery constraints. *See* TA-18, Table TA-18-6. These modeled outcomes highlight the importance of operational strategies that minimize the probability of system-level delivery interruption. System reliability is a shared basin interest. Clear explanations must be explain how alternatives address risks, for the benefit all entitlement holders.

Dead pool scenarios represent conditions in which physical delivery becomes constrained by reservoir elevation. Senior mainstream tribal entitlements, like other mainstream entitlements, depend upon operational frameworks that preserve system functionality. The Tribe seeks clarification regarding how each alternative incorporates safeguards designed to reduce the probability of such outcomes. Explanation of these structural protections will enhance transparency. The Final EIS would benefit from identifying whether certain alternatives materially reduce the modeled probability of delivery interruption relative to others. Comparative explanation, rather than simple presentation of modeling outputs, will support informed evaluation. Access to this information will allow the Tribe to assess operational resilience under severe hydrologic conditions.

The Tribe also requests access to sufficient modeling detail to independently evaluate how dead pool exposure varies across hydrologic traces and demand assumptions. *See* Appendix B; Appendix I. This request is intended to facilitate informed understanding rather than to challenge modeling methodology.

IV. Comment re: Modeling Assumptions, Demand Growth, and Treatment of Undeveloped Tribal Rights

The Draft EIS relies on demand projections and depletion schedules that influence long-term modeling outcomes. *See* Appendix L; Appendix N. These assumptions shape reservoir trajectories and shortage frequency across hydrologic futures. Appendix I demonstrates that relatively modest demand adjustments can materially alter modeled outcomes. *See* Appendix I.

Technical Appendix 18 notes that delivery modeling incorporates quantified tribal entitlements. *See* TA-18. The Tribe requests clarification regarding how potential increases in tribal utilization over time are reflected within modeling assumptions. Tribal development often occurs incrementally as infrastructure and financing become available. Transparent treatment of such growth assumptions will support informed evaluation. The Tribe does not assert that modeling must predict full build-out under all scenarios. Rather, clarification is requested regarding how future tribal development is treated relative to projected state growth. Transparent comparison of these assumptions will enhance fairness and understanding across basin governments.

Further, the provision of modeling outputs reflecting alternative tribal utilization scenarios would further enhance transparency. Access to such information will assist the Tribe to independently assess long-term exposure and planning implications, consistent with collaborative basin governance and informed participation. Enhanced technical clarity benefits all sovereigns.

V. Comment re: Priority-Based Allocation Versus Pro-Rata Distribution

Technical Appendix 4 evaluates shortage allocation outcomes under both priority-based methodologies and alternative distribution approaches, including pro-rata frameworks. *See* Draft EIS, Vol. III, TA-4. The modeling reflects that delivery outcomes can vary depending upon the allocation structure applied at higher shortage volumes. These variations underscore the importance of clearly understanding how allocation mechanics interact with existing decreed entitlements. Transparent explanation of these mechanics will assist all basin participants in evaluating long-term reliability.

Since the tribe holds senior mainstream PRRs recognized under *Arizona v. California*, preservation of consistency with existing decrees is therefore central to the Tribe's review. While the Tribe does not take a position at this time regarding the comparative merits of allocation approaches, clarity is requested regarding how any alternative distribution method would operate in relation to decreed mainstream entitlements and established priority structures.

If pro-rata allocation mechanisms are considered under any alternative, the Final EIS must describe how such an approach would function alongside existing legal frameworks governing mainstream deliveries. This request is not intended to oppose innovation or coordinated system management. Rather, it seeks assurance that allocation methodologies are transparent and consistent with binding decrees. Clear articulation of this relationship will strengthen the durability and defensibility of the Selected Alternative. Side-by-side comparative summaries showing how senior mainstream entitlements perform under different allocation methodologies would further enhance clarity and allow both tribal governments and states to evaluate operational implications without presupposing outcomes.

VI. Comment re: Agricultural Impacts, Trust Lands, and Cumulative Effects

Technical Appendix 18 quantifies estimated acres of tribal agricultural land left fallow under various shortage conditions and alternatives. *See* TA-18, Table TA-18-6. For Arizona tribal agriculture, estimated fallowing reaches significant acreage under certain modeled maximum shortage conditions, particularly under the “Comparative Baseline” and “No Action” alternatives. These figures represent potential impacts to tribal trust lands and economic stability rather than abstract modeling outputs. Agricultural lands form a foundational component of the Tribe’s economic base.

Annual fallowing estimates are presented in the Draft EIS, yet cumulative impacts across decades of repeated shortage cycles are not fully evaluated. Repeated fallowing over multi-year periods can produce compounding economic effects, soil degradation, and long-term operational instability. A cumulative assessment across the modeling horizon would provide a more realistic evaluation of long-term tribal economic exposure. The Tribe requests that such analysis be incorporated into the Final EIS.

Integration of agricultural impacts with broader socioeconomic analysis also warrants enhancement. Technical Appendix 16 evaluates regional economic effects of reduced water deliveries. *See* TA-16. Tribal agricultural impacts are not consistently disaggregated from county-level economic data. Evaluation that reflects the unique status of trust lands and tribal economic structures would improve clarity and ensure that tribal impacts are not obscured within broader regional summaries.

Agricultural lands constitute Indian Trust Assets, and reductions affecting those lands implicate fiduciary obligations beyond volumetric allocation. The Final EIS should clearly describe how agricultural fallowing data informed alternative comparison and whether any alternative structurally reduces cumulative agricultural impacts to tribal lands. Clear cumulative impact summaries will strengthen tribal understanding prior to issuance of a Record of Decision.

VII. Comment re: Cultural Resources, Reservoir Fluctuation, and Shoreline Exposure

Technical Appendix 11 evaluates preservation risk to cultural resources associated with reservoir elevation fluctuations and shoreline exposure. *See* Draft EIS, Vol. III, TA-11. The analysis identifies how varying operational alternatives influence frequency and magnitude of shoreline

exposure bands. Rapid fluctuations and repeated wetting and drying cycles increase erosion risk to archaeological and culturally significant sites. These impacts are particularly relevant for tribes with significant cultural ties to the shoreline areas.

TA-11 provides robustness metrics and preservation risk analyses, yet the Draft EIS does not clearly explain how these findings influenced comparison among alternatives. *See* TA-11. If certain alternatives materially reduce shoreline exposure frequency or stabilize reservoir bands relative to others, that distinction should be clearly articulated. Cultural preservation is not a secondary environmental consideration; it is central to our Mojave heritage and identity.

Clarification is requested regarding how shoreline preservation risk was weighted in alternative evaluation and whether operational frameworks that reduce fluctuation frequency are favored. Continued government-to-government consultation prior to implementation of operational changes affecting culturally sensitive areas is essential. Meaningful engagement regarding shoreline exposure aligns with NEPA's consultation principles and the federal trust responsibility. Provision of mapping and modeling outputs identifying how specific shoreline elevation bands correspond to preservation risk metrics would enhance tribal understanding. Tribes must be able to evaluate potential impacts to culturally significant areas with precision. Enhanced technical transparency will ensure that cultural resource analysis remains grounded in tribal place-based knowledge rather than abstract modeling.

VIII. Comment re: Fort Mojave Indian Tribes Cross-Jurisdictional Implications

Our reservation spans Arizona, California, and Nevada, operational decisions affecting mainstream deliveries therefore produce cross-jurisdictional implications unique to our tri-state location. The Draft EIS does not fully evaluate how any alternative allocation framework may interact with differing state administrative structures. Recognition of this complexity is necessary for complete analysis for the Fort Mojave Indian Tribe.

The Tribe's entitlement supports agricultural and community uses across three states, and allocation methodologies or shortage triggers may produce varied downstream administrative effects. Evaluation of whether any alternative disproportionately complicates administration for tri-state tribes would enhance transparency. Clear articulation of cross-jurisdictional impacts will allow tribal leadership in the Lower Basin to better understand operational consequences. Tribal water rights cannot be inconsistently administered due to state boundary effects. Enhanced transparency in this area will support informed tribal evaluation prior to final decision-making.

IX. Comment re: Consultation Standards and Process Expectations

NEPA requires informed decision-making and meaningful public engagement, and the federal trust responsibility imposes additional duties when tribal trust assets are implicated. Consultation must involve substantive exchange and meaningful opportunity to evaluate consequences. Post-2026 reservoir operations will define risk allocation across the Colorado River system for decades. Adoption of the Selected Alternative will establish an operational framework that shapes future discretion and may receive judicial deference. The current stage of analysis is therefore critically

important. Tribes must have a meaningful opportunity to understand and evaluate how each alternative affects their trust assets before that discretion is fixed.

Transparency regarding how tribal input is incorporated into final decision-making will strengthen the process. The Final EIS should describe how tribal comments are evaluated and how modifications to alternatives are informed by tribal concerns. Where recommendations are not adopted, the record should explain the reasoning. Clear explanations reinforce tribal-federal relationships. Consultation efforts should also reflect diversity among tribal circumstances. Lower Basin mainstream tribes, Upper Basin tribes, and CAP priority tribes. Aggregated tribal summaries do not adequately capture these distinctions. Tribe-specific engagement where modeling results vary meaningfully across entitlement categories is therefore warranted.

X. Comment re: Structural Risk Allocation and Long-Term Governance Implications

The Draft EIS recognizes that the Basin's system faces long-term supply-demand imbalance. *See* Vol. I, Ch. 1. Addressing that imbalance requires durable and coordinated operational frameworks capable of adapting to hydrologic uncertainty. The Tribe recognizes that sustainable basin management is a shared responsibility among federal, tribal, and state governments. Operational frameworks inevitably influence how hydrologic risk is distributed among entitlement holders.

For senior mainstream tribal entitlement holders such as the Tribe, clarity regarding how risk allocation aligns with existing decrees is important for informed evaluation. The Tribe does not suggest that any single user category should bear disproportionate burden. Rather, the Tribe seeks confirmation that structural solutions remain grounded in established legal frameworks and trust responsibilities.

Long-term governance decisions should reflect transparency in how reliability, shortage frequency, and system failure risk are allocated. The Final EIS would benefit from clearly explaining how each alternative balances system stabilization objectives with preservation of decreed entitlements. The Tribe emphasizes that effective solutions will require continued cooperation across all sovereigns. Nothing in these comments should be construed as opposition to coordinated conservation, system efficiency, or adaptive management strategies. The Tribe's focus remains on ensuring that tribal trust assets are clearly accounted for within the chosen operational structure. Alignment between legal frameworks and hydrologic realities serves all interests.

XI. Closing

The Tribe appreciates Reclamation's efforts to evaluate complex hydrologic futures and develop post-2026 operational alternatives for the Basin, as the Draft EIS provides a substantial technical foundation for continued dialogue. However, additional clarity, transparency, and technical engagement remain necessary before a Selected Alternative is adopted. At this time, the Tribe does not endorse any specific alternative and requests additional tribal specific delivery reliability metrics, clear preservation of priority-based protections, explanation of dead pool safeguards, analysis of modeling asymmetries regarding all

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tribal water rights, and provision of sufficient technical information to enable independent tribal evaluation.

The Tribe recognizes that durable post-2026 operations will require continued cooperation among federal, state, and tribal governments facing unprecedented hydrologic variability. The Tribe's comments are offered in the spirit of transparency, legal consistency, and shared long-term system stability. Nothing in these comments should be interpreted as opposition to coordinated Basin management efforts. Rather, the Tribe seeks clear articulation of how existing legal frameworks and trust responsibilities are incorporated into the Selected Alternative. Transparent alignment between hydrologic management and established entitlements strengthens Basin-wide resilience.

For the Pipa Aha Macav, the "*People by the River*," the Colorado River is not merely a source of water, but the foundation of our identity, history, and homeland. The River sustains the Tribe's agricultural lands, community life, and economic stability, and it remains inseparable from Pipa Aha Macav culture and traditions. Protection of the River and the Tribe's decreed water rights is therefore not only a matter of resource management, but of preserving the lifeways and future of the Pipa Aha Macav. The Tribe respectfully requests that the Final EIS reflect this significance and ensure that post-2026 operations safeguard the River upon which the Tribe has depended since time immemorial.

The Secretary's post-2026 operational decision is expected to shape the Colorado River Basin's governance for decades and to influence risk allocation across hydrologic futures. Clear demonstration within the administrative record that tribal rights and trust assets are preserved under each alternative is essential. Transparency and full tribal understanding must precede the issuance of a Record of Decision. The Tribe reserves all rights and anticipates providing additional comments following issuance of the Final EIS.

Respectfully submitted,

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