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March 2, 2026

Honorable Andrea Travnicek
Assistant Secretary for Water and Science
Department of the Interior
1849 C Street NW
Washington, DC 20240

Honorable Scott Cameron
Acting Commissioner
US Bureau of Reclamation
1849 C Street NW
Washington, DC 20240

Reclamation P26 Program
Attn: BCOO1000
P.O. Box 61470
Boulder City, NV 89006

Re.: Fort Yuma Quechan Indian Tribe Comments on Draft P26 EIS

By email (to crbpost2026@usbr.gov)

Dear Assistant Secretary Travnicek and Acting Commissioner Cameron:

The Fort Yuma Quechan Indian Tribe (“Tribe”) appreciates this opportunity to comment on the U.S. Bureau of Reclamation’s (“Reclamation”) Draft Environmental Impact Statement (“DEIS”) for Post-2026 Operational Guidelines and Strategies for Lake Powell and Lake Mead (“P26 Operations”). We acknowledge the time and attention Reclamation has put into preparing the DEIS and to engaging directly with the Tribe through both formal channels – including government-to-government (“G2G”) consultations – and frequent, less-formal legal/technical discussions among Reclamation staff, Interior solicitors, and the Tribe’s staff and legal counsel. We value the commitment Deputy Commissioner David Palumbo made to us during a February 18, 2026 G2G consultation in our Tribal Council chambers, that Reclamation and DOI would

continue to remain in close communication with us as you develop a preferred alternative for P26 Operations and move toward the publication sometime this summer of a Final Environmental Impact Statement (“FEIS”), as required by the National Environmental Policy Act, 42 U.S.C. §4321 *et seq.* (“NEPA”).¹ We look forward to that ongoing dialogue as we collectively work toward what the Tribe has long identified as our paramount objective for P26 Operations: a durable, sustainable management framework that protects and preserves the Colorado River as a *living* river and one that continues to support the material, cultural, and spiritual needs of our Tribe, the other 29 tribes in the Colorado River Basin, and the 40 million people who depend on it.

We now turn to the DEIS. As a threshold matter, we appreciate the work Reclamation and the Department of the Interior (“DOI”) have done with us since the release of your Colorado River Near Term Operations Draft Supplemental Environmental Impact Statement (“DSEIS”) in April 2023 to characterize the Tribe’s water rights more appropriately in your NEPA compliance documents. In DEIS Appendix N, DOI has appropriately assessed our water use,² and accounted in its projections for the additional 7,000 acre-feet of water we will have access to starting in 2035 under the terms of our 2005 settlement agreement with the United States, the State of California, the Metropolitan Water District of Southern California (“MWD”), and the Coachella Valley Water District. As we also explained to Reclamation in our letter of June 9, 2023,³ the DSEIS inappropriately minimized the presentation of the effects of potential water cuts on the Tribe by categorizing the use of our water on the Indian Unit of the Yuma Project Reservation Division (“YPRD”) as falling in a generalized “agricultural” bucket, rather than a Tribe-specific one. Happily, that error has not been repeated in the DEIS. Unfortunately, the DEIS contains more significant errors, as will be addressed below.

I. DOI Cannot Adopt an Alternative that Would Violate the US Supreme Court’s Injunction in *Arizona v. California*

As you have acknowledged to us, DOI lacks the legal authority to impose involuntary, out of priority water cuts on the Tribe – or on any of the other four tribes whose rights were decreed by the United States Supreme Court in *Arizona v. California*, 549 U.S. 150 (2006). The Supreme Court’s command could not be more explicit. “The United States, its officers, attorneys, agents and employees be and they are hereby severally enjoined...[f]rom releasing water controlled by the United States for irrigation and domestic use in the States of Arizona, California and Nevada, except as follows:

¹ We specifically conveyed to Deputy Commissioner Palumbo during that G2G that we accept the offer of additional G2G consultation as Reclamation moves to craft a preferred alternative. To the extent a more formal request for such G2G consultation might be deemed necessary, please consider this that request.

² We continue to have some unanswered questions about the source and application of the coefficient DOI utilized to assess our consumptive rather than diverted volume of water use on the portions of our Reservation located within the State of California but outside the Indian Unit of the Yuma Project Reservation Division. But we have had constructive dialogue to date with Reclamation staff on this issue and trust that will continue so we see no need to dive deeply into that issue here.

³ A copy of this letter is attached hereto as Exhibit 1.

If insufficient mainstream water is available for release, as determined by the Secretary of the Interior, to satisfy annual consumptive use of 7,500,000 acre-feet in the aforesaid three States, then the Secretary of the Interior, *after providing for satisfaction of present perfected rights in the order of their priority dates* without regard to state lines and after consultation with the parties to major delivery contracts and such representatives as the respective States may designate, may apportion the amount remaining available for consumptive use in such manner as is consistent with the Boulder Canyon Project Act as interpreted by the opinion of this Court herein, and with other applicable federal statutes....”

Arizona v. California, 547 U.S. at 154-156 (2006) (emphasis added).⁴ The Tribe holds present perfected rights (“PPRs”) as that term is deployed in the Consolidated Decree.⁵ Yet the DEIS persists in including two alternatives – Enhanced Coordination and Supply Driven with Pro Rata Distribution – that would directly flout the Supreme Court’s injunction by purporting to apply involuntary Lower Basin cuts among water users on a pro rata rather than priority basis.⁶ This is unacceptable.

⁴ See also *id.* at 167 (“In the event of a determination of insufficient mainstream water to satisfy present perfected rights pursuant to Article II(B)(3) of this decree, the Secretary of the Interior shall, *before providing for the satisfaction of any of the other present perfected rights except for those listed herein as “MISCELLANEOUS PRESENT PERFECTED RIGHTS”*...in the order of their priority dates without regard to state lines, first provide for the satisfaction in full of all rights of the Chemehuevi Indian Reservation, Cocopah Indian Reservation, Fort Yuma Indian Reservation, Colorado River Indian Reservation, and the Fort Mojave Indian Reservation.”)(emphasis added, capitalization in original).

⁵ A “perfected right” is “a water right acquired in accordance with state law, which right has been exercised by the actual diversion of a specific quantity of water that has been applied to a defined area of land or to definite municipal or industrial works, and in addition *shall include water rights created by the reservation of mainstream water for the use of federal establishments under federal law* whether or not the water has been applied to beneficial use[.]” *Arizona v. California*, 547 U.S. at 154 (emphasis added). “Present perfected rights” are “perfected rights [as defined in the Consolidated Decree] existing as of June 25, 1929, the effective date of the Boulder Canyon Project Act[.]” *Id.* The Tribe’s rights in both Arizona and California, which are for the use of a federal establishment (as that term is used in the Consolidated Decree), each have a priority date of January 9, 1884, *id.* at 169, 174, which is self-evidently earlier than the effective date of the Boulder Canyon Project Act.

⁶ Indeed, Appendix C of the DEIS explicitly states that “PPRs are not recognized in [the pro rata] Alternative Distribution Model as a basin-wide first priority without regard to state lines, and PPRs are included in the distribution of shortages.” DEIS at C-148 (identical language at C-172). This is fundamentally disqualifying of that model and of any alternative based on it. Chapter 3 of the DEIS also contains at least two factual errors when it comes to the discussion of the PPRs of the five tribes that were decreed in *Arizona v. California*. At 3-56, the DSEIS asserts that “[f]or tribal users, priority-based alternatives impose larger shortage impacts than pro rata when comparing the same total shortage volume....” That may be true for CAP tribes, but it is patently false as to *Arizona v. California* ones. And at 3-197, the DSEIS describes the five *Arizona v. California* tribes as having “discretely quantified entitlements totaling approximately 503,000 afy.” That number dramatically understates these tribes’ actual entitlements quantified by the Supreme Court as reflected in the 2006 Consolidated Decree, which is north of 950,000 acre-feet per year.

These alternatives also fail to satisfy DOI's self-described purpose and need for your proposed action, as neither of these alternatives would allow us to "remain able to benefit from [our] water rights" or "provide new and enhanced opportunities" to do so. *See* DEIS Chapter 1-3 (Purpose and Need) at 1-6 and 1-7. As DOI moves to develop a preferred alternative and publish the FEIS, both the Enhanced Coordination and Supply Driven with Pro Rata Distribution alternatives should be rejected as beyond the scope of DOI's legal authority and inconsistent with the purpose and need of this proposed action. Any preferred alternative must instead remain within DOI's legal authority and respect the seniority of our water rights and the Supreme Court's injunction.⁷

We are also perplexed by the omission from the DEIS of important qualifying language that was included in both the 2007 Interim Guidelines ("IGs") and the 2024 Colorado River Near Term Operations Final Supplemental Environmental Impact Statement ("FSEIS"), specifically the following:

[N]o vested water right of any kind, quantified or unquantified, including federally reserved Indian rights to Colorado River water, rights pursuant to the Consolidated Decree or Congressionally-approved water right settlements utilizing CAP water, will be altered as a result of any of the alternatives under consideration.

DOI must acknowledge the same limitations on its authority in a preferred alternative and associated FEIS.

DOI respecting the limits of its authority, however, in no way needs to preclude the deployment of creative solutions to address the challenges the Colorado River unquestionably faces. As we have demonstrated repeatedly, including through our System Conservation Implementation Agreement with Reclamation and MWD, the Tribe is willing and able to participate in voluntary conservation efforts to help stabilize the river system. We are also taking independent steps to engage in creative partnerships to fund and implement important tribal priorities, including upgrading on-Reservation water delivery infrastructure, carrying out restoration projects to bring back native species and increase our members' access to vital traditional cultural materials such as willow and mesquite, and utilizing techniques such as seasonal fallowing agreements to manage our water supply and generate additional conservation opportunities. We therefore strongly encourage DOI to incorporate into a preferred alternative a robust suite of flexible tools such as conservation reserves, savings pools, and mechanisms for exchanges between and among water users as well as for managing conserved water in Lakes

⁷ We also note that the DEIS acknowledges that priority distribution better facilitates the United States' ability to comply with its water quality obligations to Mexico under the 1944 Treaty. *See* DEIS at M-26.

Mead and Powell. Several promising elements are scattered across various of the alternatives analyzed in the DEIS, and we would like to see DOI consolidate and creatively enhance them into a robust core element of the preferred alternative. These sorts of tools are essential for promoting system reliability and would facilitate proactive, system-stabilizing management to forestall the kind of crisis conditions that force far less palatable choices.

As we have discussed with you, the Tribe also remains extremely interested in working with Reclamation on the siting and construction of a reregulating reservoir on Reservation land at Paradise Cove. Such a facility would provide important water management benefits to Colorado River water users in the United States by providing an important tool for ensuring that Mexico receives the water it is entitled to under the 1944 Treaty while simultaneously maximizing the volumes of water available to Colorado River water users in the United States. DOI's preferred alternative should specifically account for improved management flexibilities to be gained from this project, as well as from other infrastructure and conservation opportunities across the Basin. This must include, as we anticipate you will hear from other commenters at greater length, analyzing engineering solutions to protect critical infrastructure, such as Glen Canyon Dam, to avoid locking up water supplies that could otherwise be available to provide human and ecosystem benefits.

II. The DEIS' Methodology for Evaluating Socioeconomic Impacts To the Tribe is Inadequate

The DEIS' analysis of socioeconomic impacts utilizes essentially the same framework for evaluating the effects of the various alternatives on agriculture as employed for the IGs and the FSEIS. DEIS at TA 16-34. Yet, as we have repeatedly explained to you, including in our comments on the DSEIS in connection with that process and most recently at our G2G of February 18, 2026, this approach ignores the unique impacts of potential decreases in water availability to the agriculture that occurs on our Reservation. As the Tribe does not have a tribal farming corporation, we generate minimal *direct* economic benefit from on-Reservation farming activities. Yet both the Tribe and – crucially – many of our members receive significant and vitally important revenue from our agricultural *land leasing* program. These leases are particularly sought after because they bring with them the right to use a portion of the Tribe's PPRs. Were that water to become less reliable, we would anticipate seeing pressure from our lessees to renegotiate their lease rates to reflect the diminished profitability of their agricultural enterprises, as well as future downward pressure on agricultural lease rates overall. Such a situation would directly impact many of our members' literal ability to put food on the table for their families and would also diminish revenue coming directly to the Tribe to support critical governmental programs and functions. But the DEIS analysis does not include consideration of these impacts to tribal governmental budgets, either from direct loss of lease revenue (for tribally owned land) or for potential needs for greater spending for direct membership benefits to backstop lost allottee lease revenues

These impacts are simply not captured by acreage-based agricultural production metrics or regional modeling tied primarily to irrigated crop reductions. In addition, the consolidation of socioeconomic impacts across broad geographic areas, rather than disaggregating results to focus on individual tribes (and other discrete communities), obscures meaningful differences in exposure, vulnerability, and adaptive capacity. Without clearer Tribe-specific analysis, it is difficult to assess how alternative operating frameworks may differentially affect us (and other tribes).

Nor does the DEIS analyze possible inflection points that multiply the potential adverse effects that are identified in the analysis. The Tribe, and the value of our land leases, benefits heavily from the vertically integrated and highly productive nature of the greater Yuma area agricultural economy, including the Bard Unit of the YPRD, the other units of the Yuma Project, and other irrigation districts. In a scenario in which water to our region was significantly reduced, even with the Tribe's water deliveries kept whole, the regional economic impacts would inevitably damage the Tribe as well, especially since many of our agricultural land lessees also farm land within the Bard Unit of the YPRD and elsewhere in the Yuma valley. Further, as we again anticipate you will hear at greater length from other commenters, there are national implications to dramatic changes being imposed on the agricultural economy of southeastern California and southwestern Arizona (both communities to which the Tribe is connected) that are wholly unaddressed in the DEIS. Moreover, the segregation of the impacts analysis by state and by tribal/non-tribal communities further masks the impacts to the Tribe because of our specific location straddling the Arizona-California border. More granular and specific socioeconomic analysis is necessary as DOI develops a preferred alternative and publishes the FEIS.

We are also troubled by two specific statements included in the DEIS' socioeconomic discussion. Specifically, at DEIS 3-179, DOI writes:

Long-term and deep Colorado River water shortages could result in further impacts on the economic contributions to entitlement holders that have unused water entitlement above their current consumptive use. During long-term shortages, these irrigation entitlement holders with current consumptive use that is less than their entitlement could experience further impacts on economic contributions through the loss of future opportunities to expand their water consumption, through future developments or leasing water to other end users.

Additionally, at TA 16-50, tribal entitlement holders are specifically singled out as being disproportionately affected by this risk. Yet as the Supreme Court recognized in its first opinion in *Arizona v. California*, the Tribe's rights – like those of the other four tribes whose rights were decreed in that case – are “intended to satisfy the *future*, as well as the present, needs of the Indian Reservations....” 373 U.S. 546, 600 (1963). In the FEIS, DOI must make clear that these vital

Indian Trust Assets (as the DEIS correctly recognizes in Chapter 3.18 and TA 18 that our water rights are), are not subject to diminishment or forfeiture irrespective of any “long-term shortages”.

III. The DEIS Contains Insufficient Analysis of Ecosystems of Concern to the Tribe that Will Be Affected by Operational Decisions

The Tribe appreciates the DEIS’ recognition of our deep and longstanding cultural and spiritual connection to the River, particularly as reflected in the (fully accurate) statement that the Tribe is a “steward[] of the Colorado River...which [is] a vital part of the living and spiritual world. Caring for the river and the canyons is [our] responsibility.” DEIS Chapter 3 at 3-143. The DEIS also correctly recognizes that “[t]ribal resources can include archaeological resources, archaeological structures, topographic features, habitats, plants, wildlife, and minerals that Indigenous peoples, tribal nations, or other groups consider essential for the preservation of traditional culture and traditional values.” *Id.*; *see also* TA 13 at 13-13, 13-16. Unfortunately, the DEIS does not meaningfully analyze how the operations contemplated by the various alternatives affect fish, riparian vegetation, wildlife, and other natural resources of material, cultural, and spiritual importance to us. Nor does it even fully identify them. *See* TA 13 at §13.1.2. The fish of the River and the land-based wildlife who depend on it and the habitat it provides, as well as vegetation including tree species such as mesquite, cottonwood, and willow, have been and remain vital to the Tribe’s material and cultural subsistence. The Tribe has also invested heavily in ecosystem restoration work on and around our Reservation, including but not limited to the Yuma East Wetlands, which is a key component of Reclamation’s Lower Colorado River Multispecies Conservation Program (“MSCP”) and of great significance to the Tribe. All these vital ecosystem elements stand to be affected by Reclamation’s river system operations, and a more robust analysis of the potential impacts on these interrelated ecosystem components within the geographies that include but transcend our Reservation is necessary in conjunction with the development of a preferred alternative and the publication of the FEIS.⁸

In the DEIS, by contrast, the analysis in Chapter 3 and its underlying technical appendices (TA 6 for salinity, TA 7 for air quality,⁹ TA 8 for fish, TA 9 for habitat and vegetation, TA 10 for

⁸ These comments are intended to be specifically responsive to the observation in DEIS Chapter 3 that “Reclamation is in ongoing consultation with tribes to identify specific locations and resources that are important to each tribe.” DEIS at 3-144; *see also* TA 13 at 13-11 (“Information regarding specific tribal resources and potential impacts on those resources will be provided by the tribes during consultation”). Of course, we have also discussed these ecosystem interests and concerns with you repeatedly over the last several years, in both formal G2G consultations and informally across multiple meetings, including most recently at the G2G consultation conducted on February 18, 2026.

⁹ A specific flaw of the DEIS’ Air Quality analysis is the failure to seriously consider Yuma County, Arizona, and the total exclusion of Imperial County, California, from the study area. *See* DEIS at 3-78 and TA 7. This choice fails to consider direct potential effects to the Tribe and the greater Reservation community. This error must be corrected in the FEIS. The DEIS’ failure to consider impacts to the Salton Sea, which would almost inevitably include air quality concerns that pose public health challenges (including to our members as residents of a downwind community), is another omission that must be corrected in the FEIS.

terrestrial wildlife, and TA 11 for cultural resources) is presented at a high level and does not consistently provide spatially explicit, alternative-specific evaluation of downstream riverine and riparian conditions, especially in the River reach between Imperial Dam and the Southern International Boundary between the United States and Mexico (“SIB”), which is of greatest concern to us given its proximity to our Reservation and its location amidst our traditional territory. Rather, the DEIS’ vegetation and wildlife analyses are largely structured around reservoir elevations and release variability. Technical Appendix 11, for example, frames effects in terms of how dam operations influence lake elevations and downstream flows that may affect cultural resources and categorizes sites and risk by elevation ranges relative to Lake Powell and Lake Mead pool levels. While elevation-based exposure modeling may be appropriate for analyzing certain preservation risks along the River corridor, there is no specific analysis of potential effects in the Imperial-SIB reach.

As an example of these analytic failures, we observe that the DEIS entirely excludes potential impacts to fish in the Imperial-SIB reach. *See* TA 8 at 8-31. Yet since time immemorial Quechan people have taken fish from the river. The failure to analyze potential fish effects (whether a given fish species is listed under the Endangered Species Act, 16 U.S.C. § 1531, *et seq.*, or not) is a failing in the biological analysis of that TA, as well as a decision that has cumulative effects on the adequacy (or, more accurately, lack thereof) of the analysis of the effects to the Tribe addressed in TA 13 (Tribal resources).¹⁰ The same is true of the DEIS’ failure to analyze the habitat impacts of potential dead pool shortages, which – especially if protracted – would have catastrophic impacts on vegetation and wildlife throughout the lower River, including the Imperial-SIB reach.

Even when the DEIS nods in passing to an evaluation of effects in the Imperial-SIB reach, such as in Technical Appendix 11 at 11-49, the lack of granularity is a fundamental flaw in the analysis. As another example, take the statement “[b]elow Davis Dam, little to no impacts regardless of flow category are expected as the dams below Lake Mohave are operated under guidelines that maintain lake elevations or target water deliveries, as well as having several stretches of channelized banks[,]” TA 11 at 11-53. (This same statement is presented verbatim in TA 13 at 13-13, and its substance is incorporated into Chapter 3 at 3-41.) This is an implausible conclusion where river flows will look much different from Davis Dam to Imperial Dam (with knock on effects for the Imperial-SIB reach) depending on whether a priority or pro rata distribution is being assumed. While, as discussed above, pro rata distribution is both beyond the DOI’s authority and something that should be wholly excluded from any preferred alternative, that fact does not excuse the shortcomings of the DEIS’ analysis.

¹⁰ For purposes of these comments, we do not need to address whether the Tribe’s historical reliance on fishing in the River makes these fish – or the River itself (as distinct from the Tribe’s water rights, which are indisputably trust assets, and appropriately identified as such in TA 18) – trust resources as well. Though we note that there is also no consideration of the effects of the alternatives on fish in the Imperial-SIB reach in TA 18 (Indian Trust Assets) either.

Nor is it plausible for the DEIS to invoke data limitations for the paucity of analysis along the lower reaches of the River. *See* DEIS Chapter 3 at 3-198 (“there are no long-term vegetation monitoring datasets available for...Hoover Dam to the SIB that would support quantitative habitat modeling”). Biological Assessments (“BAs”) prepared by Reclamation for the LCR MSCP in 2005, 2022, and 2024, each included more comprehensive and targeted analysis of the relationship between flow and river elevation. These BAs applied shortage allocation models to water releases from Hoover Dam and appropriately routed those flows through the lower River using cross-sections at more than 30 points to identify changes in river stage on a finer scale. The BAs then used River stage projections to define impacts to groundwater, as well as marsh and woody riparian habitats. Without projections of river stage and related impacts on groundwater and vegetation, the DEIS does not provide adequate information about impacts on terrestrial species habitats and the species themselves. These impact projections are particularly important because there has already been an “overall decrease in marsh between Davis Dam and Morelos Dam from 2000 to 2024[.]” TA-9 at 9-6. Including more robust impacts analysis in the FEIS is particularly important because the DEIS projects (based on variability of releases below Hoover Dam) that most habitat losses will occur in the first decade of new guidelines implementation. Mitigation of habitat loss should thus be implemented as soon as possible. A more robust analysis in the FEIS of habitat change under the various alternatives would thus have the additional benefit of facilitating a more rapid and effective mitigation response.¹¹

The DEIS also largely ignores the potential effects on the ecosystems of importance to the Tribe in the Imperial-SIB reach due to salinity changes under various hydrologic and management scenarios. On the United States side of the US-Mexico border, consideration of salinity largely ends at Imperial Dam, and primarily uses the reach more immediately below Hoover Dam to stand in for the entire lower River. *See* DEIS Chapter 3 at 3-68; TA 6 at 6-21 (“Since the salinity below Parker Dam and at Imperial Dam correlates closely with the simulated salinity concentrations below Hoover Dam, a vulnerability analysis was completed for salinity below Hoover Dam to represent all three sites....”). There is some additional salinity analysis of what is dubbed “the International Border Region” in Appendix M. Yet it can readily be inferred from a comparison of Appendix M and Technical Appendix 6 that it is inaccurate to conclude that “the annual flow-weighted salinity concentrations below Parker Dam and at Imperial Dam are correlated with those below Hoover Dam,” as the DEIS purports to do in Technical Appendix 6 at 6-21.¹² Rather, salinity at Imperial Dam increases under pro rata distribution alternatives. That increased salinity then potentially impacts both water deliveries to the Tribe through the All-American Canal (with

¹¹ As we anticipate you will hear in greater detail from other commenters, the absence of any substantive discussion of mitigation measures in the DEIS is an independent NEPA failing that must be corrected in the development, analysis, and inclusion in the FEIS of a preferred alternative.

¹² A similar error infects Technical Appendices 8, 9, and 10 regarding the inappropriate use of effects closer to Hoover Dam as a proxy for the entire lower River.

potential, but also unanalyzed, impacts to agricultural productivity and water demands) and direct diversions from the River as it flows through the Reservation. These river diversions are also an important source of supply for the Yuma East Wetlands. Appendix M Figure M-8 clearly shows that pro rata distributions perform worse for salinity at Imperial, but the specific effects of these elevated salinity levels are not analyzed. Instead, the DEIS asserts (without explanation or justification) that Trust Resources/Environmental effects below Imperial are functionally the same as they are below Hoover.¹³ This problem would be at least partially addressed by the necessary abandonment of any further consideration of pro rata distribution of cuts. But DOI also needs to take a more careful look at potential environmental effects caused by changes in salinity concentrations below Imperial Dam on the US side of the border when it analyzes whatever emerges as the preferred alternative.

IV. The DEIS Fails to Explain How the Successful/Undesirable Performance Benchmarks Were Established which Compromises the Adequacy of the Analysis

The DEIS, particularly in many of its tables and figures, repeatedly discusses and depicts many modeled outcomes across various analytic categories as being successful or unsuccessful at avoiding undesirable outcomes. Yet nowhere in the DEIS is there a clear articulation of how DOI identified these various performance benchmarks or what sorts of considerations informed them. It is thus impossible for us to fully understand – and thus assess – the various compromises and trade-offs embedded into some of these performance assertions (successful or not). For example, it appears to us that protecting minimum power pool at Lake Powell has become an important Reclamation objective and one against which the success of various operations is weighed. This is problematic. The Tribe certainly supports the generation of hydropower, and benefits from our own contractual arrangements with the Western Area Power Authority. We thus have no interest in seeing power production needlessly curtailed. We find ourselves again compelled, however, to point you to *Arizona v. California*, where the Supreme Court specifically enjoined the United States from operating its dams in a manner that prioritizes power generation ahead of the satisfaction of PPRs for irrigation and domestic uses. 547 U.S. at 154-55. Reclamation must therefore exclude from a preferred alternative any operational strategies that protect power generation at Lake Powell the expense of releases of water for the satisfaction of PPRs in the Lower Basin, including ours.

We also note that none of the performance benchmarks assess the alternatives in relation to several important factors that must govern River operations. We expect that you will receive for

¹³ A similar error recurs specifically in Technical Appendix 9, where the DEIS asserts that the difference in the robustness of Marsh Riparian Vegetation between the priority and pro rata distribution variants of the Supply Driven alternative “differ primarily because of how the two shortage-distribution approaches interact with the modeled assumptions governing the storage and delivery of conserved water....” TA 9 at 9-28. This again ignores the differences between the volumes of water coming to and then below Imperial Dam as between priority and pro rata distributions, which therefore again erases potential impacts to habitat that are especially important to the Tribe.

more pointed and detailed comments regarding this issue. But we would be remiss if we also failed to point out that this necessarily includes compliance with the 1922 Colorado River Compact, including the Upper Basin's delivery obligations thereunder, and the utilization of units of the Colorado River Storage Project for infrastructure protection as well as Compact compliance purposes. Indeed, there is a remarkable and problematic lack of *any* discussion or analysis of Compact compliance issues in the DEIS. Our rights and interests are directly affected by these questions, and they must be explicitly addressed in the FEIS.

V. DOI Needs to Reassess Its Assumptions About Low Initial Starting Conditions at Lake Powell

In Appendix G, the DEIS states that “despite deterioration in system conditions since the DEIS initial conditions were finalized, the DEIS initial conditions continue to span the range of plausible end-of-2026 system states represented in the most recent CRMMS-ESP projections.” DEIS at G-2. This no longer appears to be an accurate statement in light of Reclamation's most recent 24-month study results for Lake Powell, which project a significant chance for Powell to begin water year 2027 below elevation 3511', which is what the DEIS identifies as the low initial starting condition for Lake Powell at the end of 2026. *Id.* at G-1 (Table G-1). The fact that there has been such a rapid deterioration in real-world hydrology also raises questions about the adequacy of the DEIS' underlying assumptions about possible future hydrologic conditions that the Basin could face and of the DEIS' analysis of potential effects if extraordinarily dry conditions (as compared to the historical record) persist, especially for extended periods of time.¹⁴

VI. DOI Must Faithfully Respect and Implement its Trust Obligations to Basin Tribes

As we have conveyed to you repeatedly, both in direct dialogue and through joint letters with other tribes, the United States has a trust obligation to us and to the other 29 tribes in the Colorado River Basin to ensure the protection of our trust assets, including but not limited to our water rights and the economic, cultural, and spiritual benefits we derive from them. DOI – especially but not exclusively in its development and adoption of a preferred alternative – must take action to actively protect tribal water rights. This includes abiding by binding legal precedent, of which the Supreme Court's decree and injunction in *Arizona v. California* is a critical component. It also includes maximizing the opportunities for tribes to participate in the sorts of flexible conservation and transactional mechanisms that will be necessary to stabilize the River in the face of the hydrologic challenges we collectively face.

There is no path to a successful, durable, and sustainable management framework for the River that does not incorporate meaningful tribal participation and inclusion. The Basin has made

¹⁴ Some of Reclamation's environmental effects analysis in Technical Appendices 8, 9, and 10, for example, project more severe near-term outcomes than what would occur in the out years of the modeled period, apparently on the theory of some sort of reversion to the historical mean in the longer term. This does not seem a particularly supportable assumption, and more careful attention to outyear effects should be paid in the analysis of a preferred alternative in the FEIS.

important strides in that direction since the adoption of the 2007 IGs.¹⁵ But much ground is left to be covered. As part of the development of a preferred alternative, the publication of the FEIS, and the adoption of the Record of Decision implementing that action, DOI must ensure that tribes are treated at least in parity with Basin states when it comes to any reconsultation triggers or other adaptive management decision points, while recognizing that such mechanisms must operate in tandem with, and not supplant, appropriate and meaningful G2G consultation.

VII. Reservation of Rights

By providing these comments, the Tribe does not waive any rights, including any claims or defenses, we may have or that may accrue under any applicable law, whether federal, state, or tribal, including administrative rules, regulations, or guidelines. Any failure on our part to address specific aspects of the DEIS shall not be construed as an endorsement or an admission with respect to any factual or legal issue for the purposes of any future judicial, administrative, or other proceeding. Moreover, the Tribe reserves the right to provide further comments and to remain actively engaged with DOI and Reclamation subsequent phases of the NEPA process progress.¹⁶

VIII. Conclusion

Thank you for your attention to these comments. We continue to value our partnership with DOI and Reclamation, which we view as vital for protecting and preserving the Colorado River upon which the Quechan people have relied since time immemorial. We look forward to your continued engagement with us, including through meaningful G2G consultation and the opportunity for informed and substantive comment, as you develop a preferred alternative and move toward the publication of the FEIS and the adoption of your record of decision.

As we have indicated to you previously, we continue to believe that a consensus agreement supported by the Basin States (or at least some subset of them) and Tribes remains the optimal path for crafting a durable and sustainable post-2026 management framework. A consensus path is the only one that seems capable of avoiding zero-sum legal disputes and allowing for the maximum deployment of creativity and flexibility among Basin stakeholders to address the extraordinary challenges we collectively face. We therefore strongly encourage you to both exercise forceful leadership and be open to all manner of creative thinking in hopes of allowing us to come to such an agreement. Failing that, we also encourage you to look at shorter term bridge steps that allow existing conservation tools in the Lower Basin to be extended while we collectively take additional time to craft a viable path forward for the Basin. Thank you for your continued efforts.

¹⁵ We underscore our particular appreciation for our partners in the State of California and among its Colorado River water users, who have provided tremendous leadership in demonstrating what genuine tribal inclusion can look like and accomplish.

¹⁶ Indeed, as discussed above, we expect DOI and Reclamation to abide by your commitment to engage with us proactively and substantively as you develop a preferred alternative and prepare the FEIS.

FYQIT Comments re.
P26 DEIS

Sincerely,

A handwritten signature in black ink, appearing to read 'Jonathan E. Koteen', written in a cursive style.

Jonathan E. Koteen
President Fort Yuma Quechan Indian Tribe

Cc: Mr. David Palumbo, Acting Commissioner, US Bureau of Reclamation
Ms. Genevieve Johnson, Reclamation Lower Colorado River Regional Director

EXHIBIT 1



QUECHAN INDIAN TRIBE
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June 9, 2023

Ms. Camille Calimlim Touton
Commissioner of Reclamation
U.S. Bureau of Reclamation
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Re.: Fort Yuma Quechan Indian Tribe DSEIS Comments and Requests

By e-mail

Dear Commissioner Touton:

On behalf of the Fort Yuma Quechan Indian Tribe (Tribe), I want to thank you and your team for meeting with us in Winterhaven on May 24. As we explained to you then, the Tribe highly values the strong partnerships it has forged with key Colorado River Basin stakeholders, and that certainly includes the Bureau of Reclamation under your leadership. At our meeting, Deputy Commissioner Palumbo asked if we would be willing to share both our big picture and more granular comments regarding the now-withdrawn Draft Supplemental Environmental Impact Statement (DSEIS). We are also now in receipt of the May 24 letter from Regional Directors Gould and Pullan “encourage[ing] comments from Tribes regarding [their] perspectives on what should be contained within the revised draft SEIS including what individual Tribes want as a preferred alternative, whether that includes components of the existing alternatives, the new alternative proposal by the Lower Division States, or other elements.” We write now in response to both requests.

As a threshold matter, the Tribe strongly urges the Department to abandon any further consideration of Alternative 2 from the now-withdrawn DSEIS, at least without modifying that Alternative’s pro rata shortage approach to make clear that such out-of-priority cuts will not be imposed on the Tribe – or on the other Lower Basin tribes whose water rights were decreed by the United States Supreme Court in *Arizona v. California*, 549 U.S. 150 (2006). As we discussed with you at our recent meeting, and as we and other *Arizona v. California* tribes have previously conveyed, we do not believe the Secretary of the Interior (Secretary) has the legal authority to impose such out-of-priority cuts to our water rights as we are not Section 5 contractors and the

Secretary is prohibited from delivering water out of conformance with the terms of the Supreme Court's 2006 consolidated decree.

The Consolidated Decree provides that "The United States, its officers, attorneys, agents and employees be and they are hereby severally enjoined...[f]rom releasing water controlled by the United States for irrigation and domestic use in the States of Arizona, California and Nevada, except as follows:

...If insufficient mainstream water is available for release, as determined by the Secretary of the Interior, to satisfy annual consumptive use of 7,500,000 acre-feet in the aforesaid three States, then the Secretary of the Interior, *after providing for satisfaction of present perfected rights in the order of their priority dates* without regard to state lines and after consultation with the parties to major delivery contracts and such representatives as the respective States may designate, may apportion the amount remaining available for consumptive use in such manner as is consistent with the Boulder Canyon Project Act as interpreted by the opinion of this Court herein, and with other applicable federal statutes...."

Arizona v. California, 547 U.S. at 154-156 (2006) (emphasis added). The Tribe holds a present perfected right as that term is deployed in the Consolidated Decree.¹ Any attempt by the Secretary to impose an out-of-priority cut on the Tribe would thus directly contravene the Supreme Court's command.

The Tribe does not believe there is a reasonable alternate construction of the language of the Supreme Court's decree and therefore requests the Secretary provide us with formal written concurrence in her understanding of this limit on her authority. In the alternative, we reiterate the request we made of you at our May 24 meeting to provide us, in writing, with your identification and analysis of the legal authority that you believe empowers the Secretary to impose such out-of-priority cuts on the Tribe, the other *Arizona v. California* tribes with present perfected rights, and other present perfected right holders, as was contemplated in Alternative 2 of the now-withdrawn DSEIS. We also specifically reiterate the request we made at our May 24 meeting that you provide us with a copy of the 1964 Determination issued by then-Secretary Udall, which is referenced on page 2-15 (pdf page 49) of the now-withdrawn DSEIS but which we have been unable to locate an actual copy of to date.

Even if the next draft SEIS abandons Alternative 2, however, there are other aspects of the prior analysis that require significant improvements if we are to come out the other side of this

¹ A "perfected right" is "a water right acquired in accordance with state law, which right has been exercised by the actual diversion of a specific quantity of water that has been applied to a defined area of land or to definite municipal or industrial works, and in addition *shall include water rights created by the reservation of mainstream water for the use of federal establishments under federal law whether or not the water has been applied to beneficial use[.]*" *Arizona v. California*, 547 U.S. at 154 (emphasis added). "Present perfected rights" are "perfected rights [as defined in the Consolidated Decree] existing as of June 25, 1929, the effective date of the Boulder Canyon Project Act[.]" *Id.* The Tribe's rights in both Arizona and California each have a priority date of January 9, 1884, *id.* at 169, 174, which is self-evidently earlier than the effective date of the Boulder Canyon Project Act.

process with a NEPA document robust enough to survive legal challenge. As we noted for you during our May 24 meeting, the now-withdrawn DSEIS made several choices about how it presented the Tribe's current water use that rendered it particularly difficult for us to be able to analyze the potential impacts to us of the two alternatives presented.² For example, DSEIS table 3-22 (on page 3-89/pdf page 161) is far too general for the Tribe to be able to assess potential impacts to our Arizona water use under Alternative 2. The same problem exists with DSEIS table 3-24 (on page 3-91/pdf page 163) for California. This problem also inheres with the way the Tribe's uses are and are not specifically identified in Appendix D, such as in tables D-22, D-23 and D-24 (at pages D-60 to D-66/Appendix D pdf pages 66-72). In the now-withdrawn DSEIS, those tables purported to present "Tribal" uses separately from "irrigation" or "domestic." But, as we discussed at our May 24 meeting, a significant portion of the Tribe's water use in California is in fact subsumed in the "irrigation" columns of tables D-22 and D-24. This appears to be due to your choice to attribute none of the Yuma Project Reservation Division uses specifically to the "Tribal" columns. In doing so, you inappropriately minimized the presentation of the effects of potential cuts to the Tribe in tables D-23 and D-24.

The Tribe is also concerned that the now-withdrawn DSEIS' analysis of agricultural impacts is done at an extremely high level of generality – making it difficult for us to assess localized impacts – and does not consider the knock-on effects the analyzed economic impacts may have on our (and other tribes') ability to fund important governmental programs and other priorities. See DSEIS at 3-294 to -311 (pdf pages 366-383). That DSEIS also wholly ignored the unique impacts of potential decreases in water availability to the agriculture that occurs on our Reservation. As we explained at the May 24 meeting, the Tribe does not have a tribal farming corporation and generates minimal *direct* economic benefit from on-Reservation farming activities. Both the Tribe and – crucially – many of our members receive significant and vitally important revenue from our agricultural *land leasing* program. These leases are particularly sought after because they bring with them the right to use a portion of the Tribe's present perfected water rights. Were that water to become less reliable due to out-of-priority cuts (as Alternative 2 of course contemplated), we would anticipate seeing immediate requests from our lessees to renegotiate their lease rates to reflect the diminished profitability of their agricultural enterprises, as well as future downward pressure on agricultural lease rates overall. The growers' economic losses may be contemplated in the now-withdrawn DSEIS' analysis of the impacts of Alternative 2. But the Tribe's, and especially the potentially devastating impacts on our members, are not.

The cultural resources analysis contained in the now-withdrawn DSEIS is also fundamentally inadequate when it comes to assessing the impacts on the Tribe's cultural resources. This failure largely arises from the DSEIS' decision to rely on the inadequate impact area assessed in the original 2007 Interim Guidelines EIS (IG EIS). That is, DSEIS page 3-145 (pdf page 217) recites that the 2007 IGs EIS looked at cultural resources from Powell to Imperial Dam, which is

² As a practical matter, of course, the Tribe's rights were not impacted by Alternative 1, so these failings were less immediately problematic as to that Alternative. And, as noted above, the Secretary lacks the authority to impose cuts on us under an Alternative 2-like approach, so the quality of the impacts analysis specific to that Alternative is also ultimately beside the point to us. But we remain interested in ensuring that Reclamation has – and reflects in its NEPA documents – an accurate understanding of our water rights and how we use them so that we are indeed able to assess the accuracy of Reclamation's analysis going forward.

how the DSEIS addressed the cultural resources as well. Yet the Tribe's Reservation and significant areas of its traditional territory lie below Imperial Dam. Thus, under the approach taken in the now-withdrawn DSEIS, any potential impacts to tribal cultural resources from operational decisions that may reduce the amount of water flowing in the Colorado River below Imperial Dam would be completely ignored. Moreover, the entire cultural resources analysis is done with an inordinately high level of generality. Indeed, the shortcomings of the entire cultural resources analysis section of the now-withdrawn DSEIS are encapsulated by the language on page 3-152 (pdf page 224), where it blithely states that impacts to cultural resources downstream of Lake Mead will be the same under both Alternatives 1 and 2. That seems extremely implausible where, if Reclamation were to make pro rata rather than priority cuts, there would be less water moving down the river channel to Yuma and the Northern International Boundary. Alternative 2 was therefore highly likely to be worse and more impactful than Alternative 1 for protecting cultural resources further down the river. The equation of the impacts of the two Alternatives does not constitute adequate NEPA analysis.

The analysis of potential effects to "resources of concern to Native Americans" is, if anything, even more deficient. The high level of generality is exemplified by the predominant focus on potential impacts to resources within the Grand Canyon. DSEIS 3-152 to -153 (pdf pages 224-225). While that is unquestionably an important site, it is far from the only site of concern along the River. This section also purports to conclude that the impacts would be the same under either Alternative 1 or Alternative 2, which is flawed for the same reason identified above. The problem of collapsing distinctions between Alternative effects repeats itself again in the "flow changes affecting vegetation" section, *see* DSEIS 3-189 (pdf page 261), and in the "effects to special status species" section. *See, e.g.,* DSEIS 3-213 (pdf page 285).

The "Indian Trust Assets" analysis is also over-generalized and shoddy. *See* DSEIS 3-342 to 3-346 (pdf pages 414-418). There is also *no* meaningful analysis in the "effects on tribal water rights" section. DSEIS 3-344 (pdf page 416), which also lacks any meaningful discussion of potential effects on tribal cultural and biological resources along with absolutely no site-specific discussion (which also infects the analysis of the cultural resources portion as noted above). *See* DSEIS at 3-345 (pdf page 417). Rather, Reclamation only analyzes tribes in relation to portions of the reservations in each state, which makes it very difficult to identify (let alone analyze or assess) the potential cumulative effects for tribes, like ours, with reservation land in multiple states. The letter we, the Colorado River Indian Tribes, the Chemehuevi Tribe, and the Cocopah Tribe sent you on February 15, 2023 (which is included at the end of Appendix B of the now-withdrawn DSEIS (at pdf pages 69-70)), specifically asked Reclamation to assess our rights without regard to state lines. That did not happen, which is a problem that constrains the utility for us of any of the information detailed in Appendix D.

There are also terminological issues in the now-withdrawn DSEIS. For example, Appendix D Table D-17 (at D-49 (pdf page 55)), ostensibly illustrates the assumed fill order under Alternative 1, but it is not clear to us what it means to fill a "Consumptive Use Equivalent" as opposed to counting a diversion volume for purposes of assessing when and how shortages might get triggered. Table D-21 (at D-57 (pdf page 63)) references percentage cuts to "adjusted consumptive use" which is not a clearly defined term. It is therefore not at all clear to us how water

orders for diverted volumes might be administered to achieve the desired cuts to "actual consumptive use."

While the foregoing may not reflect the full suite of comments we would have provided had the DSEIS not been withdrawn and the May 30 comment deadline been vacated, they certainly illustrate many of our major concerns with the DSEIS. Therefore, we will turn now to the Regional Directors' question of "what should be contained within the revised draft SEIS[?]" In response, we offer the following.

First, as discussed above, we believe that Alternative 2 should fall out of the draft entirely with no further consideration, at least unless and until Reclamation revises that Alternative to clearly exclude from out-of-priority cuts our (and other tribes') present perfected rights.

Second, we would like to see significantly more robust analysis of the potential effects of any contemplated alternative on important tribal resources. Many of the shortcomings of the now-withdrawn DSEIS on these fronts are, of course, identified above. We are open to working with your team to ensure that you have sufficient information to improve the quality of analysis regarding our resources in the next DEIS.³

Third, we recognize the hard work of the Lower Division States in devising the three-state consensus alternative that played a significant role in the withdrawal of the prior DSEIS ahead of the previously set May 30 comment deadline. We particularly appreciate the way the State of California has actively included us in its intrastate process, and we believe that proposal is appropriately protective of our rights and interests. Indeed, as we also discussed at our May 24 meeting, we look forward to entering into a LC System Conservation 1a contract with Reclamation and the Metropolitan Water District soon⁴ to contribute a portion of the Tribe's water to the success of that proposal. With all of that in mind, we therefore encourage Reclamation to coordinate with the Lower Basin states and tribes to ensure that this proposal can be fleshed out sufficiently for SEIS analysis purposes, and then to include it as the preferred alternative in the new draft SEIS.

We continue to value our partnership with Reclamation, which we view as vital for protecting and preserving the Colorado River upon which the Quechan people have relied since time immemorial. We look forward to your responses to our requests and comments in the near future. Thank you in advance for your consideration.

³ We observe that with a revised or eliminated Alternative 2, many if not all the adverse impacts on the Tribe would be eliminated, potentially simplifying the burden of your analysis. We would, of course, welcome that outcome. Even so, we would like to work with you to ensure that our water use is presented clearly and accurately if Reclamation intends to continue to break out water use into the categories of "Irrigation," "Domestic Use," and "Tribal," as it did in some of the tables in Appendix D in the now-withdrawn DSEIS.

⁴ We also reiterate our request from the May 24 meeting for Reclamation to prioritize the drafting and execution of this contract and the other contracts necessary to generate the conservation identified in the three-state proposal.

Sincerely,

A handwritten signature in black ink that reads "Jordan D. Joaquin". The signature is written in a cursive style with a large initial 'J'.

Jordan D. Joaquin
President, Quechan Indian Tribe

Cc: David Palumbo, Deputy Commission, Bureau of Reclamation
Jaci Gould, Regional Director, Lower Colorado River Region, Bureau of Reclamation