

PASCUA YAQUI TRIBE

OFFICE OF THE CHAIRMAN



March 2, 2026

Via Email: crbpost2026@usbr.gov

Bureau of Reclamation
Attn: BCOO-1000
P.O. Box 61470
Boulder City, NV 89006

Re: *Pascua Yaqui Tribe's Comments to the Bureau of Reclamation's Draft Environmental Impact Statement - Post-2026 Operational Guidelines and Strategies for Lake Powell and Lake Mead (91 Fed. Reg. 2131, Jan. 16, 2026)*

Dear Project Manager:

The Pascua Yaqui Tribe (Tribe) submits its comments to the Bureau of Reclamation's Draft Environmental Impact Statement on the Post-2026 Operational Guidelines and Strategies for Lake Powell and Lake Mead (DEIS), which has a public comment period ending March 2, 2026.¹

Notwithstanding the foregoing, the Tribe has a government-to-government Tribal consultation scheduled with the Bureau of Reclamation that is taking place after the deadline for public comment. As such, the Tribe reserves the right to supplement its comments and provide input as a result of its government-to-government consultation and for any other developments related to the decision-making process (including the identification of any mitigation strategies) for the Post-2026 Operational Guidelines and Strategies for Lake Powell and Lake Mead.

I. TRIBAL BACKGROUND

The Pascua Yaqui Tribe is a federally-recognized Tribe located in southern Arizona near Tucson. The Pascua Yaqui Reservation has no developed surface water supply and no independent groundwater production wells.² As such, the Tribe has lived under conditions of water uncertainty for decades and these conditions have only been exacerbated by prolonged drought, impacts of climate change, and the failure of the United States, as trustee for the Tribe, to secure a reliable and long-term water supply for the Pascua Yaqui Reservation.

The Tribe has a Central Arizona Project (CAP) contract with the Secretary of the Interior dated December 11, 1980 (CAP Contract) for 500 acre-feet per year (AFY) of Indian Priority CAP Water. Since 2011, the Tribe has used its full CAP allocation each year to supply critically needed water to the Pascua Yaqui Reservation. Even though the Tribe's CAP allocation is already

¹ See [91 Fed. Reg. 2131](#), Notice of Availability of Environmental Impact Statement (Jan. 16, 2026).

² The Tribe currently receives a limited potable water supply to the Reservation from the City of Tucson under an intergovernmental agreement for water service. This limited water service is not sufficient to provide enough water to the Reservation to serve as a permanent tribal homeland.

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woefully inadequate to meet the existing and future water demands of the Reservation, any reduction in this 500 AF CAP allocation due to shortage will further exacerbate the lack of a permanent and reliable water supply for the Reservation.

Pursuant to Article 9 of the Tribe's CAP Contract, when the Tribe's water rights are finally determined (either through adjudication or settlement), the Tribe's CAP Water is to be credited against those water rights under terms and conditions agreed upon by the Tribe and the Secretary of the Interior. As the Tribe is currently in the process of negotiating a federal Indian water rights settlement,³ the reliability of the Tribe's CAP Water supply is also a critical component to achieving a fair and equitable settlement of its water rights for the Pascua Yaqui Reservation.

Additionally, the Tribe holds firm electric service contracts with the Western Area Power Authority (WAPA) to supply the Reservation with low-cost wholesale hydroelectric power through benefit-crediting. During the re-contracting process for power generated by the Salt Lake City Area Integrated Projects (SLCA-IP) in 2004, and by the Boulder Canyon Project in 2017, the Tribe secured allocations of hydroelectric power generated by these projects.⁴ The economic value of this low-cost hydropower is essential to Reservation energy affordability and economic stability.

The Bureau of Reclamation's adoption of the Post-2026 Operational Guidelines and Strategies for Lake Powell and Lake Mead is of critical importance to our Tribe, and to the State of Arizona as a whole, because it will govern the management of the Colorado River system at a time of unprecedented hydrologic stress and long-term aridification. Arizona is uniquely vulnerable under the Law of the River framework due to its junior priority for a significant portion of the CAP Water supplies, which serve municipal, Tribal, agricultural, and industrial users across the state. The development of a preferred alternative will directly affect water reliability for millions of Arizonans, the viability of Arizona agriculture, compliance with and the ability to achieve Tribal water rights settlements, hydropower generation, and the stability of Lake Mead elevations that underpin the state's economy. Given Arizona's substantial conservation investments and demonstrated reductions under the 2007 Interim Guidelines and subsequent Drought Contingency Plan, it is imperative that the Final EIS and ROD adopt a durable, equitable, and legally defensible operating framework that balances basin-wide obligations while recognizing Arizona's, and our Tribe's, disproportionate exposure to shortage, and the United States trust responsibility to affected Tribes throughout the Basin.

II. TRUST RESPONSIBILITY OF THE UNITED STATES

The United States has a trust responsibility to Indian Tribes and the broad scope of this trust responsibility is outlined by numerous existing laws and policies.⁵ Although the DEIS

³ The United States appointed a Federal Indian Water Rights Negotiation Team for the Tribe on May 13, 2024.

⁴ See Post-2004 Resource Pool – Salt Lake City Area Integrated Projects, Notice of Adjustment of Final Allocations, 67 Fed. Reg. 49019 (Jul. 29, 2002); see also, Boulder Canyon Project – Post-2017 Resource Pool, Notice of Final Power Allocation, 79 Fed. Reg. 75544 (Dec. 18, 2014).

⁵ See Secretary of the Interior's Order 3175 (November 8, 1993) (requiring all agencies, bureaus, and offices within the Department of the Interior to identify potential impacts of Departmental

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distinguishes CAP water allocated to Tribes without finalized water rights settlements from “Indian Trust Assets,”⁶ the United States’ trust responsibility and obligation to secure and protect water supplies necessary to sustain Reservation lands is not, and cannot be, extinguished merely because water is delivered pursuant to contract rather than through an Indian water rights settlement. CAP Water is a critical water supply for our Tribe’s Reservation and it directly supports Tribal sovereignty, public health, and our economic survival. Reclamation therefore has a fiduciary obligation to ensure that any preferred alternative (and related mitigation strategies associated with this alternative)⁷ considered in the DEIS protects the Tribe’s CAP Water supplies consistent with its trust obligations.

III. COMMENTS ON THE POST-2026 DEIS

A. The DEIS Fails to Provide or Properly Analyze a Legally Adequate Range of Alternatives as Required by NEPA

At its core, the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. §§4321-4347) requires that Reclamation publish a “detailed statement” reviewing the environmental impacts of the proposed action, here, the crucially important Post-2026 Operational Guidelines and Strategies for Lake Powell and Lake Mead. This “action forcing” requirement ensures both that the agency considers the project’s environmental consequences before deciding to approve it, while also making the agency publicly accountable for environmental harms it decides to accept. *Seven County Infrastructure Coalition, et. al. v. Eagle County, et al.*, 605 U.S. 168, 197 (2025) (*Sotomayor, J., concurring*); see also *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349-350 (1989). Thus, the agency must, among other things, disclose in the DEIS and consider the “reasonably foreseeable environmental effects of the proposed agency action”; “any reasonably foreseeable adverse environmental effects which cannot be avoided should the

activities upon Indian Trust resources and mandating meaningful consultation with Tribes where activities directly or indirectly affect such resources); Presidential Memorandum of April 29, 1994 titled “Government-to- Government Relations with Native American Tribal Governments” (also requiring proper consultation with Indian tribes to the greatest extent practicable prior to taking any actions that affect such tribes); Executive Order 13175 (November 6, 2000) (requiring all agencies, bureaus, and offices within the Federal Government to establish regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have Tribal implications); Memorandum for the Heads of Executive Departments and Agencies on Government-to-Government Relationship with Tribal Governments (September 23, 2004); Memorandum for the Heads of Executive Departments and Agencies on Tribal Consultation (November 5, 2009) (supplementing Executive Order No. 13175); see also Presidential Memo titled Tribal Consultation and Strengthening Nation-to-Nation Relationships Memorandum for the Heads of Executive Departments and Agencies (January 26, 2021); Uniform Standards for Tribal Consultation, Memorandum for the Heads of Executive Departments and Agencies (November 30, 2022).

⁶ DEIS at Table TA 18-3 CAP Water Entitlements (“*Indicates that the entitlement is not an ITA”).

⁷ NEPA requires that an EIS fully analyze mitigation measures as part of the NEPA process—not in some future decision shielded from public review. *Great Basin Res. Watch v. BLM*, 844 F.3d 1095, 1107 (9th Cir. 2016).

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proposal be implemented”; and critically, “a reasonable range of alternatives to the proposed agency action...”. 42 U.S.C. §4332(C)(ii)-(iii).

The DEIS, however, does not present cogently explained alternatives that can be reasonably understood and analyzed by the Tribe (or the public). For instance, in its description of the alternatives in Chapter 2, the DEIS states for the Basic Coordination Alternative: “[i]f this alternative were selected in the ROD, Reclamation would identify the conditions under which further action would be required, including adjustment of operations and prompt action to seek additional authorities, if needed.” DEIS at 2-11 to 2-12 [emphasis added]. But identifying the conditions that would trigger further action is itself a necessary part of the NEPA analysis that must be described and disclosed for public review, otherwise, the public has no meaningful way to review and comment upon the impact of the proposed alternative.⁸ See, e.g., 42 U.S.C. §4332(C)(iii) (requiring the lead agency under NEPA to develop a “reasonable range of alternatives”); *Id.* at § 4332(F) (agency must “study, develop, and describe technically and economically feasible alternatives”).

By failing to provide this information, the DEIS withholds the very information necessary for the Tribe (and the public) to understand how each alternative would operate and what its environmental consequences would be. This fails to meet the most basic requirement of NEPA, which mandates that agencies “rigorously explore and objectively evaluate all reasonable alternatives” and provide sufficient detail so that the public may evaluate their comparative merits. *Methow Valley Citizens Council*, 490 U.S. at 349.

Another example of the DEIS jumping forward in analyzing alternatives without providing actual information about the alternative is evident where the DEIS discusses how it will address storage and delivery of conserved system and non-system water within the alternatives:

“While delivery of some existing stored water remains available after 2026 pursuant to existing agreements, Reclamation will establish guidelines for administration of a new storage mechanism as part of this public NEPA process. The guidelines will set forth Reclamation requirements for verification of the conservation action and water accounting procedures.” DEIS at 2-5 [emphasis added].

Again, the DEIS fails to present information about what these actual storage guidelines might be, simply observing that the guidelines will be developed. Without a presentation of the proposed guidelines in the DEIS, the Tribes and the public have been denied the opportunity to provide any meaningful comment on this likely highly impactful decision point. This both violates

⁸ The DEIS fails to provide the underlying information necessary to allow Tribes and the public to meaningfully comment at multiple points. See, e.g., DEIS at 2-16 (“If Lake Powell’s physical elevation is projected to go below 3,525 feet, CRSP Upper Initial Units would increase their releases within their RODs to increase elevations at Lake Powell contingent on hydrologic conditions. Reclamation would identify triggers for when additional Upper Basin actions would be required to protect critical infrastructure.”) [emphasis added].

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NEPA and fails to meet the basic standards for advanced, informed, and meaningful Tribal consultation. See footnote 5, *supra*.

Additionally, the DEIS represents that parts of the alternatives presented could be assembled together to form an entirely different alternative that could be adopted by Reclamation in a Final EIS and ROD. See DEIS at ES-8 (“Should a consensus emerge following the publication of this Draft EIS, Reclamation anticipates that such an agreement will incorporate elements or variations of these Draft EIS alternatives and will be fully analyzed in the Final EIS.”). If Reclamation plans to later assemble a totally different hybrid preferred alternative not analyzed in the DEIS for adoption in a Final EIS and ROD, this too violates NEPA. Indeed, it is well documented that NEPA requires that Reclamation, as the acting agency, take a “hard look” at the environmental consequences of its proposed actions, including direct, indirect, and cumulative impacts to all potentially affected resources. *Idaho Sporting Cong. v. Rittenhouse*, 305 F.3d 957, 973 (9th Cir. 2002); 42 U.S.C. §4332(2)(C). This includes Reclamation’s obligation to ensure that it carefully considers information about significant environmental impacts, and that it “guarantees relevant information is available to the public.” *N. Plains Res. Council, Inc. v. Surface Transp. Bd.*, 668 F.3d 1067, 1072 (9th Cir. 2011) [emphasis added].

In short, Reclamation may not simply defer the substance of its decision or assemble a materially different alternative after public review without violating NEPA’s core purpose of informed decision-making and meaningful public participation. See *Muckleshoot Indian Tribe v. U.S. Forest Service*, 177 F.3d 800, 813 (9th Cir. 1999). And, as noted above, these failures also fall short of basic standards for advanced, informed, and meaningful Tribal consultation. See footnote 5, *supra*.

B. The DEIS Fails to Demonstrate Compliance with the Law of the River

The DEIS fails to provide information to the public regarding how Reclamation intends to comply with the Law of the River. For instance, the DEIS asserts that the Department “intends to adopt and implement the guidelines in a manner consistent with the Law of the River,”⁹ which includes the Colorado River Compact of 1922.¹⁰ Yet, the DEIS goes on to recite that:

Article II(2) of the LROC states the “objective shall be to maintain a minimum release of water from Lake Powell of 8.23 [maf].” Reclamation recognizes that entities in the Basin have different legal positions regarding how this LROC statement incorporates other Law of the River elements to determine annual releases. Reclamation also recognizes that variation in releases of water

⁹ DEIS at ES-6.

¹⁰ The DEIS also states that “[t]he full extent of Reclamation’s operational authority has not been tested to date—either operationally or through legislative or judicial review” which seems to indicate that Reclamation has not taken any position on how it views the Law of the River applying to its operational authority. See DEIS at ES-8. This makes it impossible for Tribes and the public to provide meaningful review and comment on the alternatives in the DEIS, and therefore violates NEPA.

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above and below the minimum objective release of 8.23 maf can, in appropriate circumstances, be adopted.

DEIS at Table ES-1, Footnote 1 [emphasis added].

While the DEIS ambiguously “recognizes” various positions, it does not actually explain what the position of Reclamation is with respect to the Law of the River and how it will be applied to each alternative.

Fundamentally, for the Lower Basin, the DEIS does not acknowledge the mandatory requirement for the Upper Basin to deliver at least 82.5 million acre-feet of Colorado River water to the Lower Basin in any 10-year period under the Colorado River Compact. The alternatives wrongly assume that the Upper Basin does not have a duty to comply with this delivery obligation which would impose disproportionate and inequitable reductions on the Lower Basin states, including Arizona, which implicates the reliability of the Tribe’s CAP allocation.

Additionally, the alternatives do not consider the possibility for more substantial releases from the Upper Initial Units (UIUs) of the Colorado River Storage Project reservoirs of the Upper Basin to satisfy the delivery requirements of the Colorado River Compact.¹¹

Without Reclamation adequately explaining its position regarding how it would comply with the Law of the River, and its analysis of the alternatives throughout the DEIS that do not appear to include ways in which Reclamation could exercise its authorities to require Upper Basin compliance with the Colorado River Compact and Law of the River, the DEIS has improperly excluded a reasonable range of alternatives in violation of NEPA.

C. The DEIS Fails to Analyze Socio-Economic Impacts to CAP Tribes for On-Reservation CAP Water Use and Off-Reservation Leasing and Water Storage

The DEIS provides several tables to show potential amounts of reductions to CAP Water supplies that would be delivered to CAP Tribes under the alternatives but does not quantitatively analyze the actual socio-economic impacts to the CAP Tribes as a result of these reductions. Yet, this is a fundamental requirement of NEPA. See 42 U.S.C. §4331.

For the Pascua Yaqui Tribe, its CAP Water is used on the Reservation, where CAP Water is diverted directly from the CAP canal to irrigate the Sewailo Golf Course. The Sewailo Golf Course is a world class golf course that provides an important amenity to the Tribe’s associated economic enterprises, including Casino del Sol, Casino of the Sun, and the Tribe’s hotels. The golf course serves as a major economic driver for the Tribe. It brings a host of visitors to the Reservation, who in turn stay at the Tribe’s hotels and visit the casinos and nearby Tribal marketplace, providing critically needed economic development revenues that fund governmental and social services for Tribal members.

¹¹ Section 602(a) of the Colorado River Basin Project Act requires that federal infrastructure be operated to ensure Compact deliveries to the Lower Basin. This includes the UIUs.

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Additionally, through an intergovernmental agreement with Tucson, the Tribe is entitled to store its CAP Water in Tucson's underground storage facilities for future recovery as a potable water supply for the Reservation. Therefore, any reduction of CAP Water for the Tribe will both deprive the Tribe of its primary source of water for not only the Sewailo Golf Course, while also limiting key water sources the Tribe can store with Tucson for future wheeling to the Reservation as a potable water supply. Reductions in the Tribe's CAP Water will result in a substantial economic loss to the Tribe, which in turn will damage the ability of the Tribe to provide governmental and social services for its Tribal members. None of these socio-economic impacts were analyzed in the DEIS. An EIS that relies on misleading economic information or fails to include all relevant costs in its economic analysis cannot fulfill NEPA's purpose of providing decisionmakers and the public a valid foundation on which to judge proposed projects. *See NRDC v. U.S. Forest Serv.*, 421 F.3d 797, 811 (9th Cir. 2005) (inaccurate economic information may defeat the purpose of an EIS by "impairing the agency' consideration of the adverse environmental effects" and by "skewing the public's evaluation" of the proposed agency action).

For other CAP Tribes with water rights settlements, leasing CAP Water allocations and storing CAP Water has provided important economic revenue that is used to support Tribal government operations and on-Reservation water management programs. Under the various DEIS alternatives, the imposition of deeper shortages to Indian Priority CAP Water supplies will have a substantial economic impact on those Tribes. Further, when the Tribal CAP Water supplies are needed for full build out of the Reservations, development on the Reservations will again be stalled unless substitute water supplies are located.

Reclamation, which is a signatory to all Tribal CAP leases and receives the annual CAP Water orders from the Tribes, has the data available to quantitatively analyze the economic and socio-economic impacts to the CAP Tribes based on reductions in water supply for each of the alternatives, yet the DEIS fails to provide any information on this concern other than to acknowledge that there will be economic impacts on a broad scale for Arizona and the CAP Tribes. This is insufficient under the "hard look" requirements of NEPA and must be corrected.

D. The DEIS Fails to Analyze Impacts to Tribes Related to Increased Use of Alternative Water Sources in Arizona

In Arizona, the introduction and use of CAP Water was intended to reduce reliance on pumping groundwater, which is a scarce resource in most parts of the state. Prior to the CAP Project, excessive pumping of groundwater had severely depleted the groundwater supplies and caused subsidence on and near several Tribal reservations. CAP Water was viewed as a means to not only provide Tribes with an alternative water supply for the reservations, but also to provide a renewable water supply for non-Tribal use that would help to avoid detrimental groundwater depletion. However, with the potential deep shortages contained in the DEIS alternatives, the threat that non-Tribal water users in Arizona will once again turn to groundwater is very real, and indeed, we have seen this reality already in areas like Pinal County, Arizona, where farmers have returned to pumping groundwater as an alternative source of supply.

For Tribes with reservations near population centers that have relied on CAP Water, these Tribal reservations are now, once again, threatened with impacts from groundwater depletion, including, but not limited to, declining water tables, reductions in baseflow to local rivers and streams, spring and seep depletion, aquifer storage loss from compaction, altered groundwater

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flow direction, riparian and wetland habitat loss and degradation, water quality degradation, land subsidence, earth fissures, infrastructure damage, and increased pumping costs. The DEIS fails to acknowledge or evaluate these direct impacts from increased groundwater depletion. This violates NEPA.

In addition, with steep reductions in CAP Water, non-Tribal water users will also turn back to and place increased pressure on local surface water sources within Arizona, including those water sources which the Tribes have relied on since time immemorial. Many of these surface waters are included in Tribal water rights settlements, and for those Tribes without settlements or quantification through an adjudication (including the Tribe), those surface water rights are still the prior perfected water rights of those Tribes.¹² Reductions in CAP Water availability under the various alternatives will contribute to additional conflicts among the various users, including with Tribes, and will require the United States, as a federal trustee, to engage in actions to protect these Tribal surface water resources and Indian Trust Assets from further depletion by non-Tribal interests.

E. The DEIS Fails to Analyze Economic Impact on Reductions in Power Supplies to the Tribal WAPA Firm Electric Power Contracts

Although the DEIS acknowledges that Tribes hold firm electric service contracts with WAPA,¹³ the DEIS completely fails to discuss or analyze the impacts of the various alternatives on the potential reductions in delivery of wholesale hydroelectric power to Tribes from the Salt Lake City Area Integrated Projects (SLCA-IP) and the Boulder Canyon Project. This also violates NEPA, for many of the same reasons discussed above.

The economic benefit of the WAPA contracts help the Tribe offset higher electric costs on the Reservation through benefit-crediting, but the reliability of these contracts is now also threatened by low reservoir levels and how Reclamation ultimately intends to manage operations and the distribution of water within the Colorado River System. Yet, the DEIS fails to analyze these impacts to the Tribes, including the socio-economic impacts that the Tribe will experience from the reduction in this low-cost hydroelectric power to meet Reservation power demands.

¹² The Tribe's water rights, though not yet quantified, are the present and perfected vested property rights of the Tribe and the United States as its trustee. See *In Re the General Adjudication of All Rights to Use the Gila River System and Source*, 201 Ariz. 307, 35 P.3d 68 (2001) (referring to *Winters v. United States*, 207 U.S. 564, 565-567 (1908)).

¹³ DEIS at Technical Appendix (TA) 15,p.15-2 ("WAPA bundles and markets power to a variety of entities including: small and medium-sized municipalities that operate publicly owned utilities; irrigation cooperatives and water conservation districts; rural electrical associations; generation and transmission co-operatives; federal facilities; universities; state agencies; and tribes (Reclamation 2016a) that, in total, serve approximately 40 million people across the following states: Nebraska, Wyoming, Utah, Nevada, Colorado, Arizona, and New Mexico.") [emphasis added].

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IV. CONCLUSION

While the DEIS explains how it has applied a modeling methodology to the alternatives to show relative shortage reductions under various management scenarios, the DEIS provides very little background information explaining the actual details of the alternatives themselves and any mitigation strategies to be imposed, and further fails to provide adequate analysis of the impacts that would result from selection of any alternative.

Regardless, however, the drought in the Colorado River Basin and the inability to provide enough water to meet all the demands of the Basin is becoming more dire each year. The federal government must necessarily be involved in crafting solutions, and those solutions must include the recognition of United States' trust responsibility to Tribes, and the long-standing rights of the Tribes to water to sustain their communities and economies.

Where Colorado River water deliveries to Tribes are reduced, assistance should be directly provided to Tribes to mitigate impacts, including through the replacement of those water supplies through other means, particularly in cases where the reduction to a Colorado River water supply threatens Tribal public health, will result in damage to a Tribal economy, or would impair or impede the ability of a Tribe to reach a water rights settlement, thereby limiting Tribes to a state of water uncertainty, perhaps in perpetuity. As such, any preferred alternative should incorporate mitigation for reductions in water deliveries to Tribes as a component. At minimum, the preferred alternative should include long-term programs, defined funding pathways, and monitoring mechanisms to address impacts to Tribal economies, resources and ecosystems.

As it develops the preferred alternative and the Final EIS, the Tribe requests that Reclamation:

- Provide additional Tribal comment and consultation opportunities regarding the development and adoption of a preferred alternative;
- Clarify its legal interpretation of the Law of the River and Compact compliance under each alternative;
- Include the exercise of all available authority to ensure Colorado River Compact deliveries to the Lower Basin under the Law of the River;
- Provide quantitative socio-economic analysis of Tribal CAP Water reductions that takes into account economic losses due to reduced on-Reservation water deliveries and economic losses due to the lack of available CAP water to lease or store;
- Analyze the impacts specific to the Arizona Tribes from the increased use of groundwater and surface water supplies when CAP Water deliveries are reduced to Arizona non-Tribal users;
- Analyze hydropower impacts specific to Tribal WAPA contracts, including the associated economic impacts; and
- Incorporate mitigation measures in the Post-2026 guidelines to address Tribal water and economic losses.

The Tribe requests that Reclamation continue to engage in government-to-government consultation regarding the development of the Post-2026 operational guidelines and consult again with the Tribe prior to selecting a preferred alternative, and adopting the Final EIS and ROD.

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Yours Truly,

PASCUA YAQUI TRIBE

A handwritten signature in black ink, appearing to read "Julien Hernandez".

Julien Hernandez, Chairman

cc: Oscar (OJ) Flores, Attorney General, Oscar.J.Flores@pascuayaqui-nsn.gov
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