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March 2, 2026

Via Email: crbpost2026@usbr.gov

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

Re: San Xavier Allottee Association'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 San Xavier Allottee Association, Inc. (Association) 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

I. BACKGROUND

The San Xavier Allottee Association, Inc. is a non-profit association whose members are allottees of the San Xavier District (District) of the Tohono O'Odham Nation, a federally recognized Tribe (TO Nation), located in southern Arizona, near Tucson. The Association was formed to provide education and assistance to San Xavier District allottees with regard to their land and water rights, including environmental protection, and land and water development. The allottee members of the Association are included in the Southern Arizona Water Rights Settlement Amendments Act of 2004 (SAWRSA)² and the Tohono O'Odham Settlement Agreement (TO Settlement)³ (collectively, the SAWRSA Settlement) which, *inter alia*, settled the federal reserved water rights claims of

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

² See [Arizona Water Settlements Act, P.L. 108-451 \(2004\), Title III, Southern Arizona Water Rights Settlement Amendments Act of 2004, 118 Stat. 3478, 3536 et seq.](#)

³ The Tohono O'Odham Settlement Agreement can be downloaded from the University of New Mexico Digital Repository:
<https://digitalrepository.unm.edu/cgi/viewcontent.cgi?article=1048&context=nawrs>.

the San Xavier District allottees to water within the San Xavier District of the Tohono O'Odham Reservation (Reservation).

The Association is identified specifically in Exhibit 13.1 (Asarco Settlement Agreement) to the TO Settlement⁴ for the purpose of holding and managing the use of the Alvarez Groundwater Settlement Fund (Alvarez Fund) which was established for the benefit of the San Xavier District allottees.⁵ The Alvarez Fund was created to address, among other things, damages for groundwater contamination and groundwater depletion to allotments within the San Xavier District as a result of Asarco's mining operations. While the SAWRSA Settlement provides for the ability of the allottees to use CAP Water held by the TO Nation on their allotted lands through the implementation of the Tohono O'Odham Nation's Water Code,⁶ the Alvarez Fund, enacted through the TO Settlement, is also used to help facilitate the use of that water for the allottees:

“ The [Alvarez] Fund shall be expended by the [San Xavier Allottee Association] Board at its discretion for an ongoing groundwater quality testing program; water supply development and individual or community water treatment systems to provide good quality water for any development that may take place in the future on lands affected by groundwater contamination, including but not limited to, Total Dissolved Solids ('TDS') and sulfate contamination within the San Xavier Reservation and within the Upper Santa Cruz subbasin as defined by ADWR; administration of the Fund by the Allottees Association; compensation payments to allottee landowners based upon a reasonable showing that TDS or sulfate levels in groundwater under their allotments are unsuitable for an existing or imminent use and for other purposes to be determined by the SXAA, including reimbursement to the District for Asarco related Alvarez

⁴ The Asarco Settlement Agreement is Exhibit 13.1 to the TO Settlement Agreement, and was authorized, ratified and confirmed under Section 309(h)(2)(C) of the Southern Arizona Water Rights Settlement Amendments Act of 2004, P.L. 108-451 (Dec. 10, 2004); 118 Stat. 3536, 3557-3558.

⁵ See Article 7.1 of the Asarco Settlement Agreement (“During the Accrual Period and commencing on the Accrual Date, payments for delivery of CAP in lieu water made under this Agreement shall be paid by Asarco into a fund to be called the "Alvarez Groundwater Settlement Fund" (the 'Fund'), which shall be maintained as a segregated account by the San Xavier Allottees Association as provided in paragraph 7.2.”) [emphasis added].

⁶ See SAWRSA, Section 308, 118 Stat. 3550 (requiring the establishment of a Water Code by the TO Nation that includes allottee rights to water).

litigation expenses...” Asarco Settlement Agreement at Article
7.2

Under the SAWRSA Settlement, to provide the full compensation due to the Alvarez Fund, the TO Nation also approved a Water Code provision that provides for the accrual of up to 125,000 acre-feet of long-term storage credits (LTSCs) from the Asarco Groundwater Savings Facility (Asarco GSF)⁷ for the exclusive benefit of the Alvarez Fund.⁸ These LTSCs accrue each year based on Asarco’s use in its mining operations of up to 10,000 AFY of the TO Nation’s CAP Water allocation under the SAWRSA Settlement.

As is well known in Arizona, LTSCs have a market value and can be sold and transferred in accordance with state law. However, the ability to accrue those LTSCs, and hence their value, is dependent upon the availability of CAP Water to the TO Nation for use by Asarco. As such, the Association, and its allottee members, have a vital interest in how the Secretary will implement the Post-2026 Operational Guidelines and Strategies for Lake Powell and Lake Mead because it has the potential to impact the availability of TO Nation CAP Water that can be used by Asarco to create the LTSCs that are due to the Alvarez Fund. In the event that the Secretary of the Interior imposes a shortage or takes any other action that precludes Asarco’s use of TO Nation CAP Water under the SAWRSA Settlement, the full asset value expected to the Alvarez Groundwater Settlement Fund will not be achieved, which, under SAWRSA, was intended to compensate the allottees for the damage to their allotments from Asarco’s mining. Without the accrual of these LTSCs as compensation to the allottees (who, in exchange, waived their substantial water rights and water damage claims in the Settlement), the terms and conditions of the SAWRSA Settlement will not be fulfilled.

⁷ The Asarco GSF is an underground water savings facility permitted by the Arizona Department of Water Resources, GSF No. 72-084101.0000.

⁸ See [Section 4105](#) of the Tohono O’odham Nation’s Water Code (“Marketable Long-Term Storage Credits accrued to the Nation under Article 5 of the Asarco Settlement Agreement dated June 12, 2006, and referred to in the SAWRSA Amendments in § 309(h)(2)(C), shall first be applied by the Nation, at the rate of \$40 per acre foot of Marketable Long-Term Storage Credit, to repay all principal and accrued interest on any loan made by the Nation to Asarco as provided for in Article 4 of the Asarco Settlement Agreement. Upon full repayment of any loan, the Nation shall hold 60% of all Marketable Long-Term Storage Credits thereafter accruing for the benefit of the Nation. The remaining 40% of all such Marketable Long-Term Storage Credits shall be for the benefit of the San Xavier District; provided, however, the first 125,000 Acre-Feet of Marketable Long-Term Storage Credits held by the Nation for the benefit of the San Xavier District shall be allocated to the Alvarez Groundwater Settlement Fund. Marketable Long-Term Storage Credits allocated to the Alvarez Groundwater Settlement Fund shall be held by the Nation with disposition of those credits and any consideration paid therefore to be in accordance with resolutions adopted by the San Xavier District Council and of the Board of the San Xavier Allottees Association.”)[emphasis added].

II. TRUST RESPONSIBILITY OF THE UNITED STATES

The United States has a trust responsibility to Indian Tribes, and also to Indian allottees. *United States v. Mitchell*, 463 U.S. 206, 225 (1983) (The United States holds allotted lands in trust for individual Indians and owes fiduciary duties to protect those trust assets.). In settling a portion of the TO Nation's water rights and the San Xavier District allottees' water rights using CAP Water in the SAWRSA Settlement, the United States, as trustee for the TO Nation and the San Xavier District allottees, sought to secure a water supply that would be sufficient to meet the needs of the Nation and the San Xavier District allottees, both now and into the future.⁹

The productivity of the allotted lands of the San Xavier District is directly tied to the availability of CAP Water to the TO Nation under the SAWRSA Settlement, both for the purpose of supplying CAP Water to those lands, and for the purpose of supplying up to 10,000 AFY of CAP Water to Asarco for the purpose of accruing LTSCs to the Alvarez Fund to compensate the allottees for the damage to the water sources appurtenant to those allotments.

The CAP Water allocated to the TO Nation in the SAWRSA Settlement is a substitute water supply that allowed other non-Tribal settling parties to continue using local water sources that should have otherwise been decreed as federal reserved water rights to the TO Nation and to the allottees under the *Winters* Doctrine.¹⁰ In order to resolve years of water rights litigation and to secure water certainty for the TO Nation and the allottees, the TO Nation, the allottees, and the United States on the TO Nation's and allottees' behalf, agreed to the inclusion of CAP Water in the SAWRSA Settlement.

Fundamentally, the CAP Water allocated to the TO Nation and its administration for the benefit of the allottees is a key to meeting the allottees' needs for water within the San Xavier District, and it is also a revenue source for the Alvarez Fund to fully compensate the allottees under SAWRSA for the damage to their allotment water

⁹ The SAWRSA Settlement is only a partial settlement of the TO Nation's water rights, however, it fully resolved claims for the Nation's Reservation land and allotments within the San Xavier District of the Reservation, among other provisions.

¹⁰ *Winters v. United States*, 207 U.S. 564 (1908) (When the federal government establishes an Indian reservation, it implicitly reserves sufficient water to fulfill the purposes of the reservation.); *see also, United States v. Powers*, 305 U.S. 527, 532 (1939) ("When allotments of land were duly made to individual Indians under the General Allotment Act, the right to use some portion of tribal waters essential for cultivation passed to the owners."); *Colville Confederated Tribes v. Walton*, 647 F.2d 42 (9th Cir. 1981), *cert. denied*, 454 U.S. 1092 (1981) (The Ninth Circuit held that *Winters* reserved water rights attach to allotted lands and pass to the allottee (and, under certain circumstances, to successors), confirming the existence of federally reserved water rights for individual Indian allotments.).

supplies. For both of these uses, the CAP Water included in the SAWRSA Settlement is an Indian Trust Asset which must be carefully considered in the DEIS.

The Secretary of the Interior exercises direct discretionary control over Colorado River reservoir releases, shortage determinations, and system operations that affect the availability and reliability of water necessary to fulfill San Xavier District allottee rights to water and to compensation under the SAWRSA Settlement. As such, Reclamation has a fiduciary obligation to ensure that any preferred alternative (and related mitigation strategies associated with the preferred alternative)¹¹ protects the reliability of the TO Nation CAP Water supplies for the benefit of the San Xavier District allottees consistent with its trust obligations.

III. COMMENTS ON THE POST-2026 DEIS

A. The DEIS Fails to Analyze the Separate and Unique Impacts to Allottee Rights in Disregard of its Trust Responsibility to the Allottees

The DEIS's reliance on tribal consultation to analyze impacts to Tribal CAP Water allocations is insufficient to address the separate and unique impacts to the San Xavier District allottees with regard to the adoption of the Post-2026 Operational Guidelines. Tribal consultation is a government-to-government process with federally recognized Tribes. Allottees, by contrast, are individual trust beneficiaries holding vested property rights. Consultation with tribal governments does not discharge the fiduciary duties owed to individual allottees, nor does it substitute for analysis of allottee-specific impacts. To the extent the Post-2026 operational rules affect reliability of TO Nation CAP Water available to serve the allotments and provide CAP Water to Asarco under the Settlement for the benefit of the Alvarez Fund, those effects constitute impacts to protected property interests of the allottees that must be separately disclosed and evaluated.¹²

NEPA requires identification of affected resources, analysis of direct, indirect, and cumulative impacts, and evaluation of reasonable alternatives. By failing to identify allottee rights as a distinct affected resource, quantify potential impacts to allottee water availability, or explain how Reclamation will fulfill its fiduciary obligations in implementing the selected alternative, the DEIS prevents informed public review and decision-making. The Final EIS must expressly recognize the San Xavier District allottee rights, analyze the impacts of each alternative on those rights, and explain how Interior will ensure that

¹¹ 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).

¹² Because allottee rights are vested property interests, they are constitutionally protected property which may not be impaired by federal action without due process of law. The Fifth Amendment to the U.S. Constitution requires notice and an opportunity to be heard before the government takes action that materially affects protected property interests. See *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950).

Post-2026 Colorado River operations comply with its fiduciary and constitutional obligations to individual allottees.

B. 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 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 Association (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.¹³ 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 Association, the allottees, and the public, to understand how each

¹³ The DEIS fails to provide the underlying information necessary to allow the Tribes, the Association, the allottees, 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].

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, the Association the allottees, and the public have been denied the opportunity to provide any meaningful comment on this likely highly impactful decision point. This both violates NEPA and fails to meet the basic standards for advanced, informed, and meaningful 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).

C. 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,”¹⁴ which includes the Colorado River Compact of 1922.¹⁵ 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 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 TO Nation’s CAP allocation, and hence, the reliability of this water supply and revenue source to the Association and the allottees.

¹⁴ DEIS at ES-6.

¹⁵ 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 the Association, allottees and the public to provide meaningful review and comment on the alternatives in the DEIS, and therefore violates NEPA.

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.¹⁶

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.

D. The DEIS Fails to Analyze Socio-Economic Impacts to CAP Tribes, and Impacts to the Association and San Xavier District Allottees, 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. The DEIS also does not analyze, quantitatively or otherwise, any socio-economic impacts to the San Xavier District allottees for potential losses to the value of the Alvarez Fund due to shortage of available CAP Water to the TO Nation. Yet, this is a fundamental requirement of NEPA. See 42 U.S.C. §4331.

As explained earlier, under SAWRSA, up to 10,000 acre-feet per year of the TO Nation's CAP Water allocation is to be used by Asarco, with the accrual of up to 125,000 AF of LTSCs for the benefit of the Alvarez Fund. This SAWRSA Settlement mechanism is intended to provide critically important revenue to support the needs of the Association and its member allottees and to compensate the allottees for the damages to allottee water sources within the San Xavier District.

Under the various DEIS alternatives, the imposition of deeper shortages to Tribal CAP Water supplies will have a substantial economic impact on the Association and its member allottees if it does not have access to the revenues that would be generated by the LTSCs from Asarco's use of the TO Nation's CAP Water. This will have a "ripple" effect for the allottees, deepening economic challenges and making it harder for the allottees to meet their basic needs for water within the San Xavier District of the Reservation.

Moreover, it is critical to understand that the allottees, and the United States as trustee for the allottees, agreed to settle the federal reserved water rights claims for the allotments by accepting CAP Water as a substitute water supply in the SAWRSA Settlement. The allottees have an expectation and understanding that this important

¹⁶ 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.

source of water would be available into the future to meet the needs of the allotments for water. Yet, the DEIS fails to analyze the long term socio-economic and related impacts of Reclamation's decision-making on the Association, its member allottees, and the Alvarez Fund. This violates NEPA. 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's consideration of the adverse environmental effects" and by "skewing the public's evaluation" of the proposed agency action).

Reclamation, which receives the annual CAP Water orders from the Tribes, including the TO Nation, has the data available to quantitatively analyze the economic and socio-economic impacts to the CAP Tribes and the impacts to the Association and its member allottees, 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.

E. 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 non-Tribal population centers that have relied on CAP Water, these Tribal reservations, including the allotments within the San Xavier District of the TO Reservation, 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 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. Reductions in CAP Water availability under the various alternatives of the DEIS 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 Tribal surface water and groundwater resources which are Indian Trust Assets from further depletion by non-Tribal interests.

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 allottees, and the long-standing rights of the Tribes and allottees to water to sustain themselves, their communities and their economies.

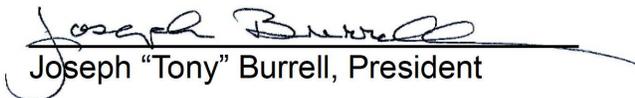
Where Colorado River water deliveries to Tribes are reduced, assistance should be directly provided to Tribes, and in this case, to the Association and its member allottees, to mitigate impacts, including through the replacement of those water supplies through other means, particularly in cases where the reduction to a Colorado River water supply compromises the promises of the SAWRSA Settlement to the Association and allottees. Such a reduction would undermine the commitment of the United States in the SAWRSA Settlement to ensure a long-term and abiding source of water to meet the TO Nation's and the allottees' water needs on the Reservation. As such, any preferred alternative should incorporate mitigation to the Association and its member allottees for reductions in CAP water deliveries to the TO Nation that impact the availability of CAP Water for use by Asarco under the TO Settlement.

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

- Meet with the Association and its member Allottees to discuss the impacts of the DEIS alternatives on the availability of CAP Water to serve allotted lands and to provide CAP Water to Asarco for the benefit of the Alvarez Fund;
- Provide additional 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 (including for the accrual of LTSCs that benefit the Alvarez Fund);
- 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; and
- Incorporate mitigation measures in the Post-2026 guidelines to address Tribal and allottee water and economic losses.

Sincerely,


Joseph "Tony" Burrell, President


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