

TOHONO O'ODHAM NATION OFFICE OF THE CHAIRMAN AND VICE CHAIRWOMAN

Verlon M. Jose
CHAIRMAN



Carla L. Johnson
VICE CHAIRWOMAN

March 2, 2026

The Hon. Doug Burgum
Secretary of the Interior
U.S. Department of the Interior
Washington, D.C. 20240

Through:

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

Via email to crbpost2026@usbr.gov

Re: Tohono O'odham Nation's Comments on Draft Environmental Impact Statement, Post-2026 Operational Guidelines and Strategies for Lake Powell and Lake Mead

Dear Secretary Burgum:

This letter conveys the comments of the Tohono O'odham Nation ("Nation") on the Bureau of Reclamation's Draft Environmental Impact Statement, Post-2026 Operational Guidelines and Strategies for Lake Powell and Lake Mead¹ ("DEIS" or "Draft EIS").

The Nation appreciates the difficult task that Reclamation currently faces in preparing its Post-2026 guidelines. Unfortunately, the DEIS, as currently drafted, contains fundamental deficiencies that directly threaten the Nation's water rights settlement – a settlement that represents decades of negotiation and congressional action to secure a reliable water supply for a significant portion of the Nation and its members. These deficiencies also threaten the Nation's unquantified water rights for more than two million acres of the Nation's remaining Reservation lands, as well as the federal government's trust responsibility to the Nation, rooted in its unique legal and fiduciary relationship with Indian Tribes, that requires the Secretary to protect tribal water resources when taking actions that affect them.

¹ EIS No. 20250184, 91 Fed. Reg. 2131 (Jan. 16, 2026).

First, the DEIS unlawfully excludes from its alternatives analysis the release of stored water for Compact compliance – despite the Secretary’s clear authority and affirmative obligation to utilize these releases. This critical omission artificially constrains supply available for Lower Basin deliveries, including the Nation’s hard-won settlement entitlement, and renders the entire alternatives analysis inadequate under NEPA.

Second, the DEIS fails to meet its own stated purpose and need. While the DEIS acknowledges augmentation of Colorado River water as a critical need, it inexplicably proposes no augmentation mechanism in any alternative. Conservation pool mechanisms that could provide a substantial benefit to Tribes exist only in alternatives that Reclamation claims cannot currently be implemented without future agreements or significant changes in law. The DEIS provides no operational framework for integrating unquantified tribal water rights, despite expressly identifying this as a core purpose of the analysis.

Third, the DEIS fails to adequately analyze critical elements over which the Secretary exercises clear regulatory and trust authority. The DEIS does not meaningfully address the Secretary’s statutory obligation to firm a significant portion of the Nation’s entitlement, and instead models shortages as if this obligation did not exist. The Protection Pool mechanism in the Enhanced Coordination Alternative – while a significant step in the right direction – excludes quantified but unused Central Arizona Project (CAP) tribal water, including the Nation’s 8,000 acre-foot Sif Oidak District entitlement that has sat idle for decades due to federal delays. And the DEIS’s Indian Trust Assets analysis is incomplete: it ignores off-reservation water uses that Congress explicitly authorized in the Nation’s settlement, arbitrarily limits its study area for tribal and cultural resources, and fails entirely to address federal reserved rights to groundwater—despite the high likelihood that CAP shortages will drive increased groundwater pumping that will further damage the Nation’s rights.

These deficiencies must be rectified in the Final EIS. At the same time, the Department should continue to honor its commitment to meaningful government-to-government consultation with the Nation before finalizing the EIS. Assistant Secretary for Water and Science Andrea Travnicek, Acting Commissioner Cameron, Deputy Commissioner Palumbo, Program Manager Jerla, and other Reclamation officials should be commended for engaging to date with the Nation in this process, and should continue to treat the Nation and other Tribes as sovereign partners, and not entities whose concerns are addressed only after critical decisions have been made.

BACKGROUND ON THE TOHONO O’ODHAM NATION AND ITS WATER RIGHTS

The Tohono O’odham Nation is a federally recognized Indian Tribe with over 37,000 members. It has one of the largest reservations in the United States, consisting of multiple reservation land bases in southern and central Arizona totaling nearly three million acres of land.

The Nation’s members (the Tohono O’odham) and their ancestors have cultivated this land since time immemorial, growing all manner of crops to support their way of life. Writing in the mid-19th century, a former Superintendent of Indian Affairs for the Arizona Territory noted:

The [Tohono O’odham] inhabit that triangular space of arid land bounded by the Santa Cruz, Gila and Colorado rivers, and the Mexican boundary line.” “. . .and here they have lived and planted and watched their flocks and herds ever since. . .” “They raise wheat, corn, barley, beans, peas, melons, and pumpkins, and are experts in the manufacture of pottery and willow-ware. In harvest time they spread all over the country as reapers and gleaners, returning with their wages of grain for winter.” “They have horses, cattle, sheep, poultry, and a great number of dogs.” “As these Indians were found in possession of the soil, they cultivate and have maintained themselves there continuously ever since, it would seem equitable that their rights should be recognized by the Government of the United States.”²

A later visitor noted that “where floods occurred, the water spread out in a thin sheet over the valley” in the Tohono O’odham homelands, “doing no damage.”³ These same reports noted that “[a]s late as 1873 the valley was covered with grass.”⁴ In the late 19th century, a U.S. Indian Agent described the Nation’s San Xavier Reservation as:

[N]aturally more valuable than any other piece of land I have seen in the [Arizona Territory], because the water of the Santa Cruz River rises to the surface and flows almost 2 miles before leaving the Indian land. Here is also fully a thousand acres of the finest grazing land

² *Water Rights of Ak Chin Indian Reservation, Ft. McDowell Indian Reservation, Gila River Indian Reservation, Papago Indian Reservation, and Salt River Pima-Maricopa Indian Reservation: Hearings Before the S. Comm. on Interior and Insular Affairs*, 94th Cong. 416 (1975) (“1975 Senate Hearing”) (testimony of Cecil B. Antone, Chairman, Tohono O’odham Nation (formerly Papago), quoting 1863 Report of Charles D. Poston, Superintendent of Indian Affairs, Arizona Territory).

³ Clotts, H.V. 1915. *History of the Papago Indians and History of Irrigation, Papago Indian Reservations, Arizona*, at 59 (U.S. Department of Interior).

⁴ *Id.*

and more than seven thousand acres of the largest mesquite timber in the territory.⁵

Throughout the late 19th and into the 20th centuries, encouraged by the federal government, the Tohono O’odham improved and expanded their existing cultivation at San Xavier and developed thousands of additional acres of farmland in the northern portion of the Nation’s Main Reservation in the Sif Oidak District.⁶

During the same period, however, non-Indian settlement and water use drastically undermined the Nation’s use of its water rights. This damage was further exacerbated by decades of inaction and mismanagement by the federal government, and by the encouragement of off-reservation irrigation through Reclamation loans and low cost preference-rate federal power, representing a comprehensive and profound failure on the part of the Nation’s trustee to protect its water rights. East of the Nation’s Main and San Xavier Reservations, mining, irrigation, and the growth of the nearby City of Tucson created “a serious imbalance between existing supply and demand,” resulting in “significant, long term declines in local groundwater levels.”⁷ By 1975, “the surface flow of the Santa Cruz River...disappeared. Except for a few small Mesquite, the forest of trees...vanished; and due to the lack of water all farming, except for...800 acres [was] destroyed.”⁸ The damage to the Nation’s reservation and water supply ultimately led the Nation and the United States on the Nation’s behalf to file suit against major water users.⁹ Meanwhile, similar actions by non-Indians along the northern boundary of the Nation’s Main Reservation depleted the water table within the Sif Oidak District “to a point where many of the existing wells went dry and irrigation had to be abandoned.”¹⁰

The Nation settled a portion of its substantial water rights claims concerning the eastern portion of its reservation lands through the Southern Arizona Water Rights Settlement Act, Pub. L. 97-293 (1982) (“SAWRSA”), as amended by the Arizona Water Settlements Act, Pub. L. 108-451 (2004) (“AWSA”). Under SAWRSA, the Nation gave up its significant claims concerning damages to groundwater and surface water in the Tucson Active Management Area. In exchange for releasing these claims, the United States promised that the Nation would receive reliable, affordable, and

⁵ 1975 Senate Hearing at 417 (testimony of Cecil B. Antone, Chairman, Tohono O’odham Nation (formerly Papago), quoting 1892 Report of John W. Stewart, Superintendent, Pima Agency).

⁶ 1975 Senate Hearing at 418-423.

⁷ S. Rep. 97-568, at 38 (1982).

⁸ 1975 Senate Hearing at 421-422.

⁹ S. Rep. 97-568 at 40.

¹⁰ 1975 Senate Hearing at 423.

long-term access to 66,000 acre-feet of CAP water, available for use either on- or off-reservation within CAP’s service area.¹¹ The federal government promised to safeguard the delivery of this entitlement through two separate mechanisms.

First, the Secretary must deliver the Nation’s entitlement from the CAP “or an equivalent quantity of water from any appropriate source” notwithstanding any declaration of shortage or “other occurrence affecting water delivery caused by an act or omission” of the federal government and its agents.¹² In its Committee Report on the legislation that became AWSA, the Senate Energy and Natural Resources Committee reinforced the absoluteness of this obligation in stark terms: “The declaration of a water shortage on the Colorado River or other identified causes, does not excuse the delivery of CAP water or an equivalent quantity of water to meet the delivery obligations of 66,000 acre-feet of water annually.”¹³ Second, the Secretary must, pursuant to Section 105 of AWSA, firm 28,200 acre-feet per year of the Nation’s Non-Indian Agricultural priority water such that this water is delivered “during water shortages in the same manner as water with a municipal and industrial delivery priority in the Central Arizona Project system is delivered during water shortages.” Congress vested Interior with the responsibility to manage and fund delivery of the Nation’s CAP entitlement, and authorized substantial federal funding to pay for these deliveries.¹⁴ However, Interior has historically failed to seek adequate appropriations to fund this settlement, threatening access to the Nation’s CAP water.¹⁵

SAWRSA settled the Nation’s water rights claims to a little over 100,000 acres – less than 1/20th of its reservation lands. The Nation currently is in negotiations with the United States and others to settle the remainder of the Nation’s water rights claims. In the meantime, a separate 8,000 acre-foot Indian priority CAP entitlement set aside for the Nation, but subject to on-reservation delivery restrictions,¹⁶ has gone unused and undeveloped for more than 40 years due to the federal

¹¹ SAWRSA § 309(b).

¹² SAWRSA §§ 305(a)(2) and (b)(1) (as amended). These protections are reflected in both the Nation’s SAWRSA settlement agreement (Tohono O’odham Settlement Agreement (May 5, 2006), at § 5.1.3); and Amended CAP contract (Contract No. PAPAGO121180A, as amended (May 5, 2006), included as Exhibit 5.2 to Tohono O’odham Settlement Agreement) at § 6.5.3, (“Nation’s CAP Contract”). The Tohono O’odham Settlement Agreement and all exhibits are available at <https://infoshare.azwater.gov/docushare/dsweb/View/Collection-19483>.

¹³ S. Rep. 108-260 at 83 (2004).

¹⁴ *See, e.g.*, AWSA § 107(a) and SAWRSA at § 310.

¹⁵ Interior recently sought and obtained transfers of funding from the Indian Water Rights Settlement Completion Fund to assist with SAWRSA deliveries. Unfortunately, significant additional funding is necessary in order to address the chronic undercapitalization that has stymied the full implementation of SAWRSA.

¹⁶ Office of the Secretary, Central Arizona Project, Ariz., Allocation of Project Water to Indian Tribes, 45 Fed. Reg. 81265, 81272 (Dec. 10, 1980); Nation’s CAP Contract at §§ 6.4, 6.4.12, 6.4.14, and 6.4.16.

government’s ongoing failure to construct the on-reservation infrastructure necessary for delivery, largely due to the government’s delay in cleaning up on-reservation World War II era ordnance that litters the irrigation development site.¹⁷

THE NATION’S COMMENTS ON THE DRAFT EIS

I. The DEIS Omits Supplies Necessary to Offset Shortages in Furtherance of the Secretary’s Obligation to Deliver the Nation’s Full SAWRSA Entitlement

As the Central Arizona Project notes in its comments (“CAP Comments”), the DEIS contains a fundamental legal deficiency: none of its alternatives contemplate or analyze the release of stored water from the Colorado River Storage Project (“CRSP”) Upper Initial Units or Lake Powell for the purpose of ensuring compliance with the 1922 Colorado River Compact at Lee Ferry and, by extension, adequate Lower Basin water deliveries.¹⁸ As CAP indicates, this “is a fundamental error, and any operating guidelines that are adopted based on the DEIS will necessarily violate the Compact and other authorities that are premised upon compliance with the Compact.”¹⁹ The Secretary’s arbitrary withholding of this water, in part, directly threatens his separate statutory, contractual, and trust obligations to the Nation to deliver the Nation’s full SAWRSA entitlement “notwithstanding any declaration by the Secretary of a water shortage on the Colorado River.” The DEIS’s erroneous interpretation of Section 602(a) of the Colorado River Basin Project Act (“CRBPA”) creates a framework in which the Secretary imposes deep shortages on CAP – the primary delivery mechanism for the Nation’s settlement water – while simultaneously leaving stored water in federal reservoirs that could and should be released to satisfy Compact obligations and, in turn, the Secretary’s statutory, settlement, and trust obligations to the Nation.

Indeed, Reclamation acknowledges that it “retains the authority to operate outside [the CRSP] RODs if necessary,”²⁰ but then inexplicably refuses to analyze Upper Initial Unit releases to satisfy Lower Basin deliveries under any of the alternatives. At the same time, Reclamation includes a pro rata distribution mechanism in several alternatives, despite claiming that this distribution

¹⁷ Information concerning this site (Williams Field Bomb Test Range #8, Formerly Used Defense Site (FUDS) ID # J09AZ1133) is available at the Department of Defense Native American Lands Environmental Mitigation Program (NALEMP) Native American Management System for Environmental Impacts (NAMSEI) system at <https://www.denix.osd.mil/na/nalemp/> and <https://www.namsei.com/>.

¹⁸ CAP Comments at 9-13.

¹⁹ CAP Comments at 13.

²⁰ DEIS at 3-2 n.2.

would be inconsistent with the Consolidated Decree in *Arizona v. California*.²¹ Such “internally inconsistent” decision-making is arbitrary and capricious.²²

The foregoing errors are not mere abstractions. They have concrete, devastating consequences for the Nation’s water supply and directly implicate the Secretary’s statutory trust obligation. Other than those that adopt a pro rata based allocation model that Reclamation claims is illegal, the alternatives under consideration by Reclamation effectively would eliminate the Nation’s 28,200 acre-foot NIA Priority SAWRSA entitlement, and drastically reduce or eliminate the Nation’s 37,800 acre-foot Indian Priority SAWRSA entitlement under all but the rosiest of modeling scenarios.²³ The Maximum Operational Flexibility and Supply Driven (priority based) alternatives seek in part to backstop Indian Priority shortages by effectively replacing the water that is *legally available for delivery to the Lower Basin* through the Upper Initial Units with supplies that are created through hypothetical future agreements that Reclamation fails to identify or describe.²⁴ But even these alternatives result in the elimination or near elimination of this water under most scenarios.²⁵

The DEIS thus effectively creates the conditions for shortages while retaining millions of acre-feet of stored water in federal reservoirs that could be released under existing statutory authority. The DEIS imposes deep shortages on CAP – potentially reducing CAP deliveries to as little as 237,000 acre-feet under the Basic Coordination Alternative – which would eliminate the Nation’s NIA Priority water entirely and severely cut Indian Priority water, all while failing to release stored water from the CRSP Upper Initial Units and Lake Powell for Compact compliance, even

²¹ DEIS at 2-16 n.18. Under certain scenarios, the pro rata distribution formula renders “the existing intra-CAP priority system inoperable...” See, e.g., *id.* at C-125 to C-126. Reclamation indicates that this does not “represent a legal position or proposal,” *id.* at C-126, but it unquestionably is a scenario that would require the Nation’s consent (which consent Reclamation has not sought), particularly given the fact that the shortage sharing approach is integrated into the Nation’s settlement agreement and other critical agreements as part of the Arizona Water Settlements Act. DEIS at Attachment C-1.

²² See *ANR Storage Co. v. Fed. Energy Regulatory Comm’n*, 904 F.3d 1020, 1028 (D.C. Cir. 2018); see also, *Bauer v. DeVos*, 325 F. Supp. 3d 74, 109 (D.D.C. 2018) (noting that “an unacknowledged and unexplained inconsistency is the hallmark of arbitrary and capricious decision-making”). The arbitrary nature of Reclamation’s alternatives selection process is underscored by the fact that the DEIS is not at all shy about rejecting alternatives that Reclamation appears to disfavor. See DEIS at 2-37 (rejecting the One Dam Alternative on the basis that it “would be inconsistent with federal law,” without further explanation).

²³ See, e.g., DEIS at Tables C-16, C-21, C-26, C-38, and C-43.

²⁴ The Enhanced Coordination Alternative further supplements these supplies by shifting from priority to pro rata distribution, even though it claims that such a shift could violate the Law of the River. DEIS at C-3.

²⁵ See, e.g., DEIS at TA 4-42 (Figure TA 4-10).

though such releases would increase Lee Ferry flows and downstream deliveries to the Lower Basin, thereby reducing the severity of CAP shortages.

This framework is irreconcilable with the Secretary’s obligation under his water delivery contract with the Nation, which promises that the Secretary will adhere to the 1922 Compact in delivering the Nation’s water.²⁶ It is also irreconcilable with the Secretary’s obligation under Section 305(a)(2) of SAWRSA to deliver the Nation’s settlement water “notwithstanding any declaration by the Secretary of a water shortage on the Colorado River.” The “notwithstanding” language means precisely what it says: the Secretary cannot excuse non-delivery based on a shortage that the Secretary’s own operational decisions have created or perpetuated. The shortages contemplated in the DEIS are, in significant part, a product of Reclamation’s choice not to release stored water from federal reservoirs for Compact compliance – a choice the DEIS does not justify and that contradicts the statutory priorities of Section 602(a).

Moreover, the Secretary’s fallback obligation under Section 305(b)(1)(A) of SAWRSA – to acquire and deliver water from “any appropriate source” if CAP deliveries are unavailable – logically encompasses the release of stored water from federal reservoirs that the Secretary controls. Stored water in the Upper Initial Units is indisputably a source under the Secretary’s jurisdiction.²⁷ As noted above, this water is not only an “appropriate” source, but a source that CRSPA and CRBPA collectively *require* be available for delivery.

Yet the DEIS’s impact analysis for tribal water deliveries expressly declines to analyze the Secretary’s obligation to acquire alternative water sources when CAP supply is insufficient, stating that “the Shortage Allocation Model does not analyze any applicable Secretarial obligations to deliver certain contractors or subcontractors other sources of water in any given year, which might have the effect of offsetting or negating the numerical impacts shown to specific Indian Priority pool allocations,” and that Reclamation “declines to speculate about the acquisition of alternative sources of water. . .”²⁸ Instead, the DEIS presents only the “worst-case impacts” of a regional loss of supply.²⁹ These impacts are only presented in terms of volumes that the Secretary has allocated,

²⁶ Nation’s CAP Contract at § 6.3.3.

²⁷ Colorado River Storage Project Act, Pub. L. No. 84-485, 70 Stat. 105, 110-11 (1956) (codified at 43 U.S.C. 620m) (providing that the Secretary, “in the operation and maintenance of all facilities, authorized by Federal law and under the jurisdiction and supervision of the Secretary of the Interior, in the basin of the Colorado River,” to “comply with the applicable provisions of the [Law of the River] in the storage and release of water from reservoirs in the Colorado River Basin.”); *see also* Colorado River Basin Project Act, Pub. L. No. 90-537, 82 Stat. 885, 899 (1968) (codified at 43 U.S.C. § 1551(c)).

²⁸ DEIS at C-39.

²⁹ *Id.*

contracted for, and actively administers, without accounting for how the Secretary plans to carry out his responsibility to mitigate those impacts to the Nation. This in turn masks disproportionate harms to the Nation that SAWRSA was enacted to prevent.

Such a head-in-the-sand approach is particularly galling given that Congress explicitly vested the Secretary with a non-discretionary obligation to identify alternative sources of water to deliver the Nation’s full entitlement notwithstanding any declaration of shortage, and given that the very alternative water sources that could satisfy the Secretary’s obligation – releases from the CRSP Upper Initial Units and Lake Powell for Compact compliance – are sources that Reclamation has affirmatively chosen not to analyze.

This is fatal for National Environmental Policy Act purposes, because the “existence of a viable but unexamined alternative renders an environmental impact statement inadequate.”³⁰ This in turn renders the DEIS arbitrary and capricious.³¹

II. The DEIS Fails to Meet its Stated Purpose and Need

An EIS contains a purpose and need for the proposed action “based on the bureau’s statutory authority. . .”³² The purpose and need statement is an essential component of NEPA, as it shapes the scope of the entire review: “The stated goal of a project necessarily dictates the range of ‘reasonable’ alternatives. . .”³³ As the Department puts it, “. . .action alternatives are not ‘reasonable’ if they do not respond to the purpose and need for the action.”³⁴

³⁰ *Idaho Conservation League v. Mumma*, 956 F.2d 1508, 1519 (9th Cir. 1992) (quoting *Citizens for a Better Henderson v. Hodel*, 768 F.2d 1051, 1057 (9th Cir. 1985)).

³¹ As discussed below in Section II(A), this failure is compounded by the fact that the DEIS identifies “future efficiency improvements and opportunities for augmentation” as a need to be addressed through the DEIS, DEIS at 1-6, but then fails to identify any such supplies.

³² 516 DM 1 (“DOI NEPA Handbook” or “Handbook”) at § 2.2. The Department’s NEPA implementing regulations, from which the Handbook derives, were finalized on February 24, 2026, 91 Fed. Reg. 8738, and are currently the subject of litigation. *Center for Biological Diversity v. U.S. Dep’t of the Interior*, No. 3:25-cv-10793 (N.D. Cal. Dec 18, 2025). The Department revised its Handbook on February 23, 2026. All citations are to the revised version. The Nation does not concede that the Handbook, the Department’s Interim Final Rule, or the Final Rule comply with NEPA.

³³ *City of Carmel-By-The-Sea v. U.S. Dep’t of Transp.*, 123 F.3d 1142, 1155 (9th Cir. 1997) (citing *Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190, 192 (D.C. Cir. 1991)); accord *W. Watersheds Project v. Bernhardt*, 543 F. Supp. 3d 958, 981 (D. Idaho 2021).

³⁴ DOI NEPA Handbook, app. 1 at § 4(1); see also *Ilio’ulaokalani Coal. v. Rumsfeld*, 464 F.3d 1083, 1100 (9th Cir. 2006) (rejecting selected alternative where agency’s supplemental EIS “d[id] not support its own purpose and need

In recognition of its responsibilities to Tribes and tribal water rights, the DEIS articulates critical needs to be met through the proposed action (the adoption of new guidelines for Post-2026 operations), including a “need for guidelines that provide flexibility and predictability for Basin Tribes to remain able to benefit from their water rights and have opportunities to participate in voluntary conservation programs” and a need for “future efficiency improvements and opportunities for augmentation.” DEIS at 1-6. Consistent with these essential needs, the DEIS identifies the purposes of the new guidelines in part to:

- Provide additional mechanisms for the conservation, storage, and delivery of water supplies in Colorado River reservoirs
- Provide new or enhanced opportunities for Basin Tribes to benefit from their water rights
- Provide flexibility to build resilience and accommodate future needs and growth that are supported by Colorado River water supplies, including the integration of unquantified tribal water rights once they are resolved, and delivery of water supplies in Colorado River reservoirs

Unfortunately, the alternatives identified in the DEIS fail to meet these purpose and need elements either outright, or because the elements are situated within discrete alternatives such that they cannot reasonably be implemented.

A. The DEIS lacks any augmentation mechanism

As noted above, the DEIS fails to consider the release of water from the Upper Initial Units for Compact deliveries to the Lower Basin. This supply-side failure is compounded by the fact that the Secretary has not identified any additional supplies for augmentation in any alternative, despite the recognition in the DEIS’s purpose and need statement that “[t]he guidelines should also support and integrate future efficiency improvements *and opportunities for augmentation.*”

The DEIS nowhere defines augmentation (or conservation, for that matter) but thankfully the CRBPA does: augmentation “means to *increase the supply* of the Colorado River or its tributaries by the introduction of water into the Colorado River system, *which is in addition to the natural supply of the system.*”³⁵ No alternative in the DEIS identifies, proposes, or analyzes any augmentation of Colorado River water supplies. Instead, the alternatives focus on the distribution

statement”). Indeed, the DEIS explicitly eliminated alternatives from consideration altogether precisely because they did “not fully meet the purpose and need of the Post-2026 action.” DEIS at 2-36 (describing Boating Alternative).

³⁵ CRBPA § 606(g) (emphasis added).

of *existing* – and diminishing – supplies through various shortage-sharing mechanisms, conservation pools, and coordinated reservoir operations. While the Enhanced Coordination, Maximum Flexibility, and Supply Driven alternatives incorporate conservation storage mechanisms of varying sizes – ranging from 2 MAF to 8 MAF in Lake Powell and Lake Mead – these mechanisms are designed to redistribute water supplies, rather than to secure new supplies. In describing the “Storage and Delivery of Conserved System and Non-System Water” operational element, the DEIS suggests that “[c]onservation mechanisms that offer water users flexibility to conserve and/or augment water supplies can increase stability of the reservoirs,” but offers nothing more. But even this passing statement merely conflates conservation with augmentation, despite the fact that the Purpose and Need statement articulates these concepts as independent, standalone needs that the proposed action *must* address.

This omission is directly relevant to the Secretary’s obligations to the Nation under SAWRSA. As Reclamation and all stakeholders in this process recognize, augmentation takes considerable time – alternative sources of water must be identified and secured, infrastructure must in some cases be designed, built, tested, and deployed, and any resulting non-Project water (if wheeled through CAP, for example) must satisfy significant water quality and other requirements under Reclamation’s System Use Agreement with the Central Arizona Water Conservation District (“CAWCD”)³⁶ and other arrangements. Congress’s directive to the Secretary in SAWRSA to “*identify, acquire and deliver* an equivalent quantity of water from, any appropriate source” to satisfy deliveries notwithstanding shortage is thus particularly relevant. It cannot mean an obligation to *react* when CAP water is unavailable; rather, the Secretary must *proactively* “identify” and “acquire” alternative sources *in advance* so that they are available to “deliver” when needed. The DEIS is the precise vehicle through which the Secretary should be fulfilling this obligation – it is the Secretary’s comprehensive, multi-decade operational planning document for the Colorado River. If augmentation sources are not identified and analyzed, they will not be available when shortages occur and the Secretary’s delivery obligation to the Nation is triggered.

At a more fundamental level, the Secretary cannot simultaneously acknowledge the need for augmentation in the purpose and need statement and then adopt operational guidelines that provide no augmentation whatsoever. This failure, layered on top of the failure to release stored water from the Upper Initial Units for Compact compliance, demonstrates a comprehensive abdication of the Secretary’s responsibility to ensure that the Nation’s settlement entitlement is protected across the full range of hydrologic conditions the DEIS purports to address. For this reason, the failure to

³⁶ Agreement No 17-XX-30-W0622 (Feb 2, 2017) at § 7, available at [cap-system-use-agreement-with-united-states-executed-02-02-2017.pdf](#) (“System Use Agreement”).

consider additional supplies from the Upper Initial Units for Compact deliveries also fails to meet Reclamation’s purpose and need statement.³⁷

B. Critical conservation programs are constrained within alternatives that Reclamation acknowledges cannot currently be implemented.

The DEIS’s acknowledgment of the need for Tribes to “benefit from their water rights and have opportunities to participate in voluntary conservation programs” and declared purpose to “[p]rovide additional mechanisms for the conservation, storage, and delivery of water supplies in Colorado River reservoirs” and “[p]rovide new or enhanced opportunities for Basin Tribes to benefit from their water rights” is a welcome and laudable statement of policy and intent. Reclamation introduces conservation pool mechanisms in three different alternatives –Enhanced Coordination, Maximum Flexibility, and Supply Driven – that could in theory further this Purpose and Need component. While these mechanisms (and particularly the Protection Pool mechanism in the Enhanced Coordination Alternative) show significant promise,³⁸ they are only implementable either through changes in law or through future agreements among Basin water users that have yet to materialize.³⁹

As it stands, the only alternative that Reclamation claims is implementable “without agreements among Basin water users regarding distributions of lower Colorado River mainstream shortages, storage and delivery of conserved water from system reservoirs, or other voluntary agreements” is the Basic Coordination Alternative. Reclamation stops short of explicitly stating that this alternative does not meet the purpose and need, claiming instead that it “*may* not provide adequate protection of critical infrastructure or the system and *may* be viable only in the short term given current reservoir conditions,” while promising to “identify the conditions under which further action would be required.”⁴⁰ But it tacitly acknowledges this failure by admitting that in this alternative “[t]here would be no new mechanisms to conserve and store water in Lake Powell or Lake Mead since agreements among Basin water users would be required.”⁴¹ Similarly, Intentionally

³⁷ *Ilio’ulaokalani Coal. v. Rumsfeld*, 464 F.3d 1083, 1097 (9th Cir. 2006) (an agency “must consider all reasonable alternatives within the purpose and need it has defined.”).

³⁸ Shortcomings and recommendations for improvement in these alternatives are discussed below in Section III(B).

³⁹ The DEIS frankly acknowledges this. *See e.g.*, DEIS at H-2 (noting that the appendix “does not address a number of issues that may be related to implementation of any alternative, including but not limited to baseline depletion or consumptive use calculations, forbearance agreements, legal authorities, calculations related to diversion or depletion equivalents, and other operational and accounting details such as verification, water orders, and interaction with shortage distribution scheme(s)”).

⁴⁰ DEIS at 2-11 to 2-12 (emphasis added).

⁴¹ DEIS at 2-15.

Created Surplus would be delivered only under existing agreements, and would revert to system water after expiration.⁴² This would also mean that there would be “no water storage mechanisms that would affect Lower Basin tribes or the quantities of water available to them.”⁴³

It is critical that the Protection Pool, possibly alongside other conservation pool mechanisms,⁴⁴ be carefully integrated into any selected alternative – not only because such measures are necessary in order to fulfil the purpose and need of the Post-2026 Operational Guidelines, but because, properly implemented and in combination with supplies from the Upper Initial Units and other augmentation mechanisms, they are the best-identified tools in the DEIS that both comply with the Law of the River and the Nation’s SAWRSA settlement.

C. Rather than providing flexibility for the integration of unquantified tribal waters rights once resolved, the DEIS sidesteps, ignores, or endangers unquantified tribal water rights

Like the inclusion of conservation measures to support tribal water rights generally, the inclusion in the Purpose And Need of flexible tools for the integration of unquantified tribal water rights is vitally important to fulfil the federal trust responsibility and the federal government’s settlement policy objectives.⁴⁵ The DEIS acknowledges that many of the Tribes in the Colorado River have unresolved or unquantified water rights (the Nation among them). Yet none of the Operational Elements listed in Section 2.2 establishes a framework for how unquantified rights would be integrated once resolved, the conservation mechanisms in the Enhanced Coordination alternative analyze contributions from only quantified tribal entitlements,⁴⁶ and the shortage distribution methodologies do not address how newly quantified rights would be accommodated within existing allocations.

At best, the DEIS identifies *some* subset of tribal unquantified rights for modeling purposes⁴⁷ without explaining how such measures “build resilience and accommodate future needs and growth” through the “integration of unquantified tribal water rights once they are resolved,” and without explaining why these rights are modeled while other unquantified rights are omitted.

⁴² DEIS at B-19.

⁴³ DEIS at 3-199.

⁴⁴ Unfortunately, given fact that the various pool mechanisms are spread across multiple alternatives with varying baseline assumptions, it is impossible to analyze them in combination with other alternative mechanisms.

⁴⁵ Criteria and Procedures for the Participation of the Federal Government in Negotiations for the Settlement of Indian Water Rights Claims, 55 Fed. Reg. 9223 (Mar. 12, 1990).

⁴⁶ See DEIS at B-30 through B-31 and H-2.

⁴⁷ See, e.g., H-7 (Navajo-Hopi Indian water rights settlement figures).

These omissions represent a fundamental failure to meet the DEIS’s explicitly stated purpose. The DEIS proposes guidelines for approximately 20 years, during which additional tribal water rights may be quantified, but provides no operational framework for their integration.⁴⁸

III. The DEIS Fails to Adequately Analyze Critical Elements in the Alternatives

The DOI NEPA Handbook requires that an EIS discuss the “present condition and any reasonably foreseeable trends of the affected resources within the identified geographic scope and timeframe of the analysis.”⁴⁹ In *Seven County Infrastructure Coalition v. Eagle County, Colorado*, the Supreme Court narrowed the range of certain indirect environmental effects that agencies are required to consider concerning projects “over which they do not exercise regulatory authority.”⁵⁰ As Watermaster on the Lower Colorado River and as the Nation’s trustee, however, the Secretary, through the Department and its bureaus (including Reclamation) exercises *pervasive authority* both over the management and distribution of Colorado River water in the Lower Basin and in protecting the Nation’s settled and unsettled water rights. Accordingly, Reclamation must still take a “hard look” at the potential environmental consequences of the guidelines that it proposes to adopt concerning projects over which it exercises regulatory authority, including their direct and indirect effects.⁵¹

The DEIS fails sufficiently to consider several critical elements of federal programs, contracts, and resources over which the Department and Reclamation exercise significant regulatory and trust authority. Reclamation should rectify these errors in the Final EIS.

⁴⁸ On top of this, as discussed below in Section III(C)(3), Reclamation’s failure to quantitatively analyze potential groundwater impacts in Arizona in particular in the face of imposed CAP shortages threatens to undermine the protection of federal reserved rights, including the Nation’s.

⁴⁹ Handbook app. 1, § (4)(2).

⁵⁰ 605 U.S. 168, 188 (2025). Courts also retain the authority to “confirm that the agency has addressed environmental consequences and feasible alternatives as to the relevant project.” *Id.* at 169.

⁵¹ See *League of Wilderness Defs.-Blue Mountains Biodiversity Project v. U.S. Forest Serv.*, 689 F.3d 1060, 1075 (9th Cir. 2012) (“Taking a ‘hard look’ includes considering all foreseeable direct and indirect impacts. Furthermore, a ‘hard look’ should involve a discussion of adverse impacts that does not improperly minimize negative side effects.”), quoting *N. Alaska Env’tl. Ctr. v. Kempthorne*, 457 F.3d 969, 975 (9th Cir.2006) (cleaned up); *cf. Seven Cnty, supra* n. 50.

A. The DEIS fails to adequately analyze the Secretary’s firming obligation

Firming is an important element for several Arizona water settlements,⁵² and is *critical* for the Nation’s SAWRSA settlement; the Secretary must firm *the entirety* of the Nation’s 28,200 acre-foot NIA Priority entitlement to Municipal and Industrial Priority for 100 years from the effective date of AWSA (i.e., through the year 2107).⁵³ The Secretary’s firming obligation under SAWRSA is greater than its firming obligation in all other Arizona tribal water settlements *combined*.⁵⁴ Reclamation repeatedly has acknowledged that its firming obligation to the Nation requires the Secretary to identify and secure significant resources and alternative water supplies. Unfortunately, throughout the Interim Guidelines period, rather than taking a proactive approach to secure these resources in non-shortage years, Reclamation largely ceded control to non-Indian interests, thus exacerbating the impact, during shortage years, of shortages on the Nation.⁵⁵

Reclamation largely avoids addressing this obligation directly in the DEIS. For its part, the Enhanced Coordination alternative affords firming the highest priority for delivery.⁵⁶ Reclamation should be commended for correctly prioritizing this statutorily and contractually mandated obligation, and should ensure that this priority is enshrined in the selected alternative. Firming also is modeled in the Continuing Current Strategies alternative in order to distribute Extraordinary Conservation Intentionally Created Surplus (EC-ICS), but delivery of this firming resource is not explained beyond indicating that a total of 160,708 acre-feet is “modeled to be delivered for federal tribal firming obligations,” with zero to 10,000 acre-feet of this amount modeled for delivery in given year, depending on pool elevations at Lake Mead.⁵⁷

However, the DEIS does not endeavor to apply or explain allocation of firming supplies to the Nation or any other firming beneficiary in the Enhanced Coordination, Continuing Current Strategies, or any other alternative; instead, shortages to the Nation’s 28,200 NIA Priority

⁵² AWSA § 105(b); White Mountain Apache Tribe Water Rights Quantification, Pub. L. No. 111-291, 124 Stat. 3064 (2010) (as amended, Pub. L. No. 117-342 § 305(b), 136 Stat. 6182 (2023)); Hualapai Indian Tribe Water Rights Settlement Act of 2022, Pub. L. No. 117-349 § 13, 136 Stat. 6225 (2023).

⁵³ AWSA § 105(b)(1)(A).

⁵⁴ *Id.* at § 105(b) (identifying Secretarial and State of Arizona firming obligations); *see also* Arizona Department of Water Resources, Tribal Firming Program, available at <https://waterbank.az.gov/objectives/tribal-firming-program>.

⁵⁵ *Feds say CAP district illegally favoring development over tribes*, Arizona Daily Star, December 22, 2020, available at https://tucson.com/news/local/feds-say-cap-district-illegally-favoring-development-over-tribes/article_0d53b51e-804f-5ad9-8fbc-0bd7142f7c64.html.

⁵⁶ DEIS at B-30.

⁵⁷ DEIS at B-9 and Table B-4.

entitlement are modeled in Appendix C as if the firming obligation did not exist.⁵⁸ While Appendix B takes a step in the right direction by assuming delivery of storage credits from the Protection Pool for firming, it purports to do so for modeling purposes only, and does not explain its modeling or distribution allocation methodology further (or how it fits within the Enhanced Coordination Alternative’s pro rata shortage distribution model) other than to note that “[a]ctual firming deliveries may vary from the modeling approximations contained in [Appendix B], and Reclamation retains discretion to include legally-required tribal deliveries in this priority mechanism.”⁵⁹

Such an omission elides critically important barriers to the fulfilment of the Secretary’s firming obligation during the 20-year proposed action period:

- *Limitations on additional supplies:* as noted above, while the DEIS recognizes a need for augmentation, it does not discuss or identify any augmentation mechanism. The need for such supplies is obvious: the Continuing Current Strategies model notes that a maximum of 10,000 acre-feet of EC-ICS would be available in a given year (apparently) for all tribal firming beneficiaries combined, even though this amount is less than half of the Nation’s firming obligation standing alone.
- *Funding and acquisition limitations:* while the DEIS notes that “[s]torage credits can be delivered for objectives such as tribal firming obligations . . .” the DEIS omits budget and market feasibility for the acquisition of such supplies over the proposed action period, despite increasing drought conditions, which already have contributed to an over 10% year-over-year increase in storage credit costs in Arizona.⁶⁰
- *Physical recovery limitations:* the DEIS assumes “no physical limitations on access to the distributed volume,” but this assumption belies Reclamation’s own challenges in recovering stored supplies for delivery of wet water at a Municipal and Industrial Priority, as AWSA provides.⁶¹

Because the DEIS does not analyze firming performance or limits against each alternative’s shortage regime, this precludes a decision-relevant evaluation of firming as the primary mechanism

⁵⁸ See e.g. DEIS at C-77, Table C-21.

⁵⁹ DEIS at B-32 to B-33 and n. 18.

⁶⁰ See Agenda Packet, Central Arizona Project CAGR and Underground Storage Committee at 9 (September 18, 2025), available at <https://capaz.portal.civicclerk.com/event/468/files/agenda/9254>.

⁶¹ For example, while Reclamation and CAWCD’s System Use Agreement (at § 8) contemplates firming, this agreement has yet to be fully implemented for this purpose.

for Arizona tribal water settlement reliability. Moreover, because the DEIS fails to address whether and how firming can offset cuts to CAP deliveries under any of the alternatives, the alternatives comparison understates potential impacts to Tribes like the Nation that rely on CAP deliveries to fulfil their settlement entitlements. And as noted above, while Reclamation claims that it is modeling “worst-case impacts,” these impacts are provided without any additional context.

B. The Enhanced Coordination Alternative Protection Pool lacks necessary specificity and does not account for quantified but unused CAP water

The Enhanced Coordination Alternative provides multiple different mechanisms for storing and crediting water in the Protection Pool.⁶² Two of these mechanisms contemplate potentially compensated Lower Basin tribal water – conserved consumptive use and unused tribal water.⁶³ As noted above, the Nation supports the Protection Pool concept in principle, and urges that it be developed and implemented in conjunction with additional conservation mechanisms and supplies. However, greater detail and revisions are needed in order to clarify and confirm that the Nation’s existing quantified entitlements are properly accounted for and made eligible for whatever pool mechanism or mechanisms are developed in the selected alternative.

The DEIS apparently treats the conserved consumptive use and unused tribal water mechanisms as binary when it comes to Tribes with CAP water entitlements: voluntary mainstream and consumptively used CAP tribal water are eligible for the conserved consumptive use mechanism, while only mainstream water is eligible for the unused tribal water mechanism.⁶⁴ Reclamation does not explain why Tribes with CAP water entitlements are excluded from the unused tribal water mechanism, nor does it provide a breakdown of CAP tribal water contributions by Tribe for the purposes of the conserved consumptive use mechanism; instead “the CAP tribes can create up to 100,000 acre-feet per year of tribal conserved consumptive use,” a figure that apparently represents a single collective diversion.⁶⁵

⁶² DEIS at B-29.

⁶³ DEIS at 2-22.

⁶⁴ See DEIS at B-30 through B-31 and H-2.

⁶⁵ DEIS at B-31. At a broader level, while Reclamation indicates that the Protection Pool elements are intended “to allow for their implementation within any operational framework that includes a storage and delivery mechanism (including frameworks where conservation is excluded from all release and shortage determination),” DES at 2-23, the modeling methodology that Reclamation employs to arrive at the 100 kaf tribal CAP water amount appears to be based entirely on a pro rata shortage distribution. *Id.* at B-31. Because this distribution lacks individualized contribution volumes or any other context, the feasibility of this statement impossible to verify or evaluate, particularly in the context of a priority-based system.

The binary nature of these mechanisms fails to account for entitlements like the Nation’s 8,000 acre-foot Sif Oidak District entitlement. As noted above, due to the federal government’s decades-long delay in cleaning up on-reservation World War II-era ordnance and in constructing irrigation infrastructure necessary for delivery, coupled with on-reservation use restrictions that were a product of Secretarial discretion, the Nation has never been able to put this water to consumptive use.⁶⁶ What is worse, because CAP tribal entitlements are inexplicably foreclosed from contributing water to the unused tribal water mechanism, this water apparently will be left out of both mechanisms altogether.

This inequitable result can and must be rectified, and the Secretary retains the discretion to resolve this inequity, whether through an advance determination that can be modeled and implemented through a conservation pool mechanism in the selected alternative, or through a determination as part of the Final EIS. Fundamentally, the federal government should not design a system that disadvantages tribal water due to its own failures.

In his original proposed allocation of this water to the Nation for the Sif Oidak District, Acting Secretary Frizzell noted that:

[I]n making an allocation of this kind, there are no hard and fast rules which can be referred to. It is a process of evolving equitable and reasonable guidelines for determining how the supply of project water should be allocated between the Indian and non-Indian agricultural interest, and some discretion is available to the Secretary of the Interior.⁶⁷

Such equitable considerations clearly favor a determination that ensures that the Nation can make use of this water or be compensated for it through the Protection Pool mechanism or its successor. If this comprehensive process is a not a proper vehicle to right this wrong, it begs the question – what process and when?

⁶⁶ The Nation repeatedly has urged the Department’s attention to this matter prior to, in parallel with, and throughout the Post-2026 process. *See, e.g.*, Tohono O’odham Nation – Comments on Revised Draft Supplemental Environmental Impact Statement (Dec. 8, 2023) at 8 n. 32, *available at* https://www.usbr.gov/ColoradoRiverBasin/documents/NearTermColoradoRiverOperations/PublicComments/Tribes/410_Tohono%20O%E2%80%99odham%20Nation_508.pdf, *and* Tohono O’odham Nation – Comments on Development of Post-2026 Operational Guidelines and Strategies (Aug. 11, 2023) at 7, *available at* https://www.usbr.gov/ColoradoRiverBasin/documents/post2026/scoping/Tribal_Submissions_508.pdf.

⁶⁷ Office of the Secretary, Central Arizona Project, Ariz., Allocation of Project Water for Indian Irrigation Use, 41 Fed. Reg. 45889, 45886 (Oct. 12, 1976).

C. The Indian Trust Assets analysis is incomplete

As confirmed by federal court decisions, as well as Reclamation’s own internal guidance, the federal government’s trust responsibility extends to the protection of tribal water rights, irrespective of other competing claims to water.⁶⁸ The overarching lens through which Reclamation views impacts to the Nation and other federally recognized Indian Tribes is what is referred to in its Indian Policy as “Indian Trust Assets” (ITAs), namely, “legal interests in assets held in trust by the federal government for the benefit of Native American [T]ribes or individual Native Americans.”⁶⁹ Under this Indian Policy, “Reclamation will carry out its activities in a manner that protects Indian trust assets and avoids adverse impacts when possible. When Reclamation cannot avoid such adverse impacts, it will provide appropriate mitigation or compensation.”⁷⁰

Technical Appendix (“TA”) 18 analyzes a limited set of ITAs for the purposes of the DEIS, and (to Reclamation’s credit) invites the incorporation of additional ITAs as part of its analysis through tribal input.⁷¹ Curiously, Reclamation’s Indian Policy is referenced nowhere in the DEIS, and TA 18 makes no mention of mitigation or compensation for adverse impacts to ITAs. Instead, TA 18 relies on an earlier Reclamation policy to assert that actions that “affect the value, use, or enjoyment of ITAs should be discussed in an ITA assessment.”⁷² Even under TA 18’s narrow trust responsibility analysis, the DEIS still unfortunately falls short.

1. The DEIS’s approach to evaluating economic and environmental impacts to the Nation’s ITAs in TA 18 is too narrow

Most notably, the DEIS entirely ignores key federal “actions that affect the value, use, or enjoyment of ITAs” by focusing almost exclusively on on-reservation agriculture, and on voluntary compensated conservation through the Enhanced Coordination alternative, Maximum Flexibility, and Supply Driven alternatives.⁷³

⁶⁸ See, e.g., *Pyramid Lake Paiute Tribe v. Morton*, 354 F.Supp. 252, 256–257 (D.D.C. 1972); “Indian Policy of the Bureau of Reclamation,” Reclamation Manual Policy NIA P10 (rev. September 24, 2020) at Sec. 6(F) (“Indian Policy”); see also 303 DM 2, Principles for Managing Indian Trust Assets.

⁶⁹ DEIS at 3-194.

⁷⁰ Indian Policy at Sec. 5(D).

⁷¹ DEIS at TA 18-8; see also DEIS at 3-195 (noting that “. . . income derived from ITAs may be considered further in an appendix of the Final EIS, depending on tribal input”).

⁷² DEIS at TA 18-8.

⁷³ See e.g. DEIS at TA 18-27 through TA 18-28.

To be sure, the Nation’s on-reservation farming activities are vital and integral components of the Nation’s sovereignty and way of life; further, as noted above, the Nation fully supports the inclusion of conservation mechanisms in the guidelines. But limiting the ITA analysis to these elements ignores the carefully crafted off-reservation storage and exchange arrangements that are hardwired into the Nation’s and other Arizona Tribes’ water rights settlements. As the above background indicates, SAWRSA was passed in part to compensate the Nation for decades-worth of damage to its on-reservation agriculture that (in part) stymied the full on-reservation use of its water rights.

Accordingly, an essential part of the compensation for the Nation releasing its claims in the Tucson Active Management Area is the right to make use of its SAWRSA entitlement water both on-reservation and anywhere within the CAP Maricopa, Pima, and Pinal County service area.⁷⁴ Congress intentionally provided that these uses be extremely broad: the Nation “may, for a term of not to exceed 100 years, assign, exchange, lease, provide an option to lease, or otherwise temporarily dispose of to the users, Central Arizona Project water to which the Nation is entitled” under SAWRSA, as well as “storage credits acquired” through underground storage and recovery projects that the Nation establishes.⁷⁵ Consistent with this congressional authorization, and with Reclamation’s support and (where required) approval as the Nation’s trustee,⁷⁶ the Nation has for more than a decade contracted for the use of a portion of its SAWRSA entitlement at storage and savings facilities under Arizona law.⁷⁷ In addition, the Nation has conserved water in Lake Mead under Reclamation programs.⁷⁸

The DEIS appears to simultaneously acknowledge and improperly discount shortage impacts to these off-reservation uses by claiming that “impacts on specific income-generating activities [derived from ITAs] depend on a complex array of legal, contractual, and environmental factors,” and that “[b]ecause income derived from ITAs varies for each tribe, the effects of changes in water levels and deliveries due to the alternatives will also vary by tribe.”⁷⁹ It concludes that “higher quantities of delivered water means more ability to fulfill existing [water] lease agreements and/or enter into new agreements,” and that “[f]rom this perspective, the conclusions of the water

⁷⁴ SAWRSA § 309(b)(2). The statute also authorizes this use to expand if CAP’s service area expands. § 303(14)(B).

⁷⁵ SAWRSA §§ 309(c)(1) and (308(e)).

⁷⁶ SAWRSA provides that the “assignment, exchange, lease, option, or temporary disposal” of the uses described in § 309(c)(1) are subject, *inter alia*, to the “approval by the United States as the Nation’s Trustee.” § 309(c)(4)(D).

⁷⁷ SAWRSA §§ 309(a) and 309(c).

⁷⁸ *See, e.g.*, Bureau of Reclamation, Pilot System Conservation Program (Pilot Program), available at <https://www.usbr.gov/lc/region/programs/PilotSysConsProg/pilotsystem.html>.

⁷⁹ DEIS at TA 18-31.

deliveries analysis [in TA 18.2.5] generally apply to water leases.”⁸⁰ Reclamation posits that “new mechanisms for conserving and storing water generally provide additional options for water transactions with other water users.”⁸¹

These conclusions err in several key respects. First, Reclamation reduces Congress’s intentionally broad authorization for off-reservation water use in SAWRSA to a single inaccurate term (“water lease”) that does not apply to any of the Nation’s current uses of its entitlement. With Reclamation’s consistent past support, the Nation uses its water both for “underground storage” under SAWRSA Section 309(a), and (with Reclamation’s approval) for arrangements that Reclamation deems “exchanges” under SAWRSA Section 309(c).

These arrangements (which are legally distinct from leases)⁸² help preserve on- and off-reservation groundwater resources, restoring areas historically damaged by groundwater overuse; these arrangements also generate Long-Term Storage Credits under state law that help provide valuable revenue for the Nation.⁸³ Toward this end, pursuant to its settlement agreement with Asarco Incorporated, the Nation also delivers a portion of its water in part to offset groundwater use that historically damaged the Nation’s San Xavier Reservation.⁸⁴ This storage also supports the Nation, the San Xavier District, and the San Xavier Allottees Association by generating Long-Term Storage Credits that can be marketed under state law.⁸⁵

Second, Reclamation’s claim that “the conclusions of the water deliveries analysis generally apply to water leases” compounds the above SAWRSA use mischaracterization error by simply positing that more delivered water is equivalent to fulfilment of existing leasing (or more leasing). But this obscures greater and broader negative impacts, including greater strain on the aquifers both on and off the Reservation, as well as costs associated with water deliveries.⁸⁶

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² Leases under SAWRSA are subject to separate requirements. *See* §§ 309(g)(2)(B) and 309(g)(6).

⁸³ *See* Ariz. Rev. Stat. § 45-852.01 (2025) and n .61, *supra*.

⁸⁴ Exhibit 13.1 to Tohono O’odham Nation Settlement Agreement (Asarco Settlement Agreement) at Art. 2.

⁸⁵ *See* Ariz. Rev. Stat. § 45-841.01.

⁸⁶ Under AWSA and SAWRSA, the federal government pays for on- and off-reservation storage and exchange deliveries. *See* AWSA § 107(a) and SAWRSA § 310(b). Moreover, by obscuring the costs associated with water deliveries, the DEIS sidesteps the chronic undercapitalization facing the Nation’s SAWRSA settlement, despite the federal government’s acknowledged commitment to pay the delivery costs associated with the Nation’s water through the SAWRSA Cooperative Fund and other sources. *See*, e.g., n. 14 and 15, *supra*.

Finally, while conservation and storage mechanisms that Reclamation has identified show great promise, and while they may provide “additional options for water transactions with other water users,” the DEIS lacks the specificity necessary to determine that these options will be sufficient to mitigate or compensate for harms that reduced deliveries will impose on the Nation and its storage and savings facility partners. Consistent with its invitation for tribal input, Reclamation should further analyze these arrangements and the economic and environmental benefits derived therefrom in the FEIS.

2. The DEIS incorrectly limits the scope of the Affected Environment analysis in Chapter 3 and TA 11 and TA 13

TA 18 “acknowledges that the 30 Basin Tribes depend on the Colorado River and its tributaries for a variety of purposes, including cultural and spiritual activities, wildlife, instream flows, recreation, and other purposes” and points the reader to TA 13 (Tribal Resources) and TA 11 (Cultural Resources) for that analysis. It further notes that “[i]n general, those analyses apply to tribal and cultural resources that qualify as ITAs” and that “[o]ther changes in the use or enjoyment of tribal land and resources are discussed in TA 13, Tribal Resources.”⁸⁷ But unlike TA 18, which analyzes an Affected Environment study area that extends to include trust lands in the Basin and to water entitlements delivered through CAP, TA 11 and TA 13 explicitly limit the scope of the study area only to “the Colorado River channel from bank to bank except from Glen Canyon Dam to Lake Mead, where it stretches from canyon rim to canyon rim, as well as a 0.5-mile buffer on either side of the riverbank or canyon rim.”⁸⁸ Reclamation does not explain this inconsistency; indeed, it appears elsewhere to incorrectly suggest that the study areas in TA 18, TA 11 and TA 13 are the same.⁸⁹

As a consequence, the DEIS fails to account for tribal and cultural resources served by the Nation’s SAWRSA water. At the Nation’s request, Reclamation annually schedules SAWRSA water for riparian and cultural use on the Nation’s reservation. A key use of this water is to serve the Wa:k Hikdan Project, which uses SAWRSA water delivered through CAP to restore a portion of the Santa Cruz River that had previously been damaged by off-reservation overuse.⁹⁰ Now more than two decades in operation, the Wa:k Hikdan Project delivers CAP water for riparian restoration on the

⁸⁷ DEIS at TA 18-8 and TA 18-28; *see also* DEIS 3-195.

⁸⁸ *Compare* DEIS at TA 18-1 *through* 18-55 *with* TA 11-1 and TA 13-1.

⁸⁹ *See* DEIS at 3-143 (noting that “the study area for tribal resources is identical to that discussed in TA 11, Cultural Resources, and TA 18, Indian Trust Assets”).

⁹⁰ *See, e.g.*, <https://knowyourwaternews.com/wak-hikdan-bringing-life-back-to-the-santa-cruz-river/>. Wa:k means “where the water goes in” and is the O’odham name for the San Xavier community. Hikdan means “cutting the earth’s surface.”

Nation’s San Xavier District near Martinez Hill. Before this restoration, only a handful of trees survived the devastation of the Santa Cruz. Now, the Wa:k Hikdan Project supports six hundred trees, four hundred shrubs, and returning wildlife, including native hawks and small mammals that have helped to preserve the Nation’s cultural and spiritual connection to this vitally important part of its land. Members also benefit from the cooling effects of the restoration.

Moreover, as noted in the CAP Comments, CAP flow reductions caused by substantially reduced allocations contemplated in the DEIS may result in significant degradation in water quality, public health, and system reliability.⁹¹ Such impacts potentially threaten the Nation’s cultural and riparian uses (the Wa:k Hikdan Project being one example), agricultural uses, and off-reservation storage and savings facility uses. The DEIS does not appear to address such impacts at all. Instead, the entirety of TA 6 (Water Quality) is devoted to on-River water quality, while Appendix M (International Border Region of the Colorado) only discusses water quality concerning CAP reductions in relation to salinity levels downstream from Lake Havasu.⁹²

Reclamation must revise its study area for TA 11 and TA 13 to resolve this discrepancy and to appropriately address and mitigate impact to the Nation’s water resources. Such a revision would not only ensure internal consistency (which NEPA requires),⁹³ but would ensure compliance with the trust responsibility and Reclamation’s Indian Policy, which provides that Reclamation “will seek to work with tribes to avoid adversely affecting cultural resources identified by tribes as important, and to determine appropriate mitigation measures when such effects cannot be avoided.”⁹⁴

3. The DEIS must recognize federal reserved rights to groundwater as an ITA

The DEIS is alarmingly silent when it comes to federal reserved rights to groundwater, whether quantified or unquantified. While TA 18 recognizes trust lands and water entitlements as ITAs, footnote 5 notes that “Tribes may have other sources of water, including groundwater and other surface water, which are not part of this analysis.”⁹⁵ Groundwater is addressed in TA 3 as a *hydrologic resource*, but even then only along the limited stretch of Colorado River channel noted above.⁹⁶ This omission is especially concerning for the Nation. SAWRSA explicitly recognizes the

⁹¹ Black & Veatch, CAP Environmental Flow Assessment: Hydrobiological Impact Evaluation (Feb. 2026), included as Exhibit 12 to CAP Comments.

⁹² DEIS at M-25 to M-26.

⁹³ See n. 22, *supra* (discussing relevant cases).

⁹⁴ Indian Policy at Sec. 5(K).

⁹⁵ DEIS at TA 18-4 n.5.

⁹⁶ DEIS at TA 3-98.

United States’ trust responsibility for the Nation’s groundwater that is the subject of that settlement,⁹⁷ and the Nation’s remaining unquantified *Winters* rights remain at significant risk.⁹⁸

As noted above, prior to the construction of the CAP, off-reservation groundwater pumping by non-Indians severely damaged the Nation’s reservation, water rights, and its ability to make use of them. The United States affirmatively recognized the harm caused by these injuries, and (again, as noted above) in some cases filed suit to stop them. At the same time, the federal government pointed to the construction of the CAP as a means to alleviate these harms, testifying before Congress that “Project delivery of Colorado River water will help relieve present overpumping of the declining ground water reserve in Maricopa, Pinal, and Pima Counties, Arizona.”⁹⁹ There is little doubt that the shortages to CAP contemplated under the DEIS will lead to increased groundwater drawdowns near the Nation’s reservations, which will in turn have a significant negative impact on the Nation’s federal reserved rights. Indeed, as has been widely reported, Arizona farmers have anticipated this outcome and are either returning to groundwater pumping or preparing to do so, in some cases with federal financial support to drill additional wells.¹⁰⁰

The Revised DSEIS fails to address this possibility not only in delineating the scope of ITAs, but also in its analysis of the environmental consequences of agricultural impacts in Section 3.16.2 and TA 16 (Socioeconomics). Like the 2007 Final EIS and the 2024 Final SEIS, the DEIS assumes

⁹⁷ See, e.g., Tohono O’odham Nation Settlement Agreement, § 4.1 (providing, *inter alia*, that certain groundwater underlying the San Xavier and Schuck Toak Districts in the Nation “shall be held in trust by the United States on behalf of the Nation and the Allottees”); *In re Gen. Adjudication of All Rights to Use Water In the Gila River Sys. and Source*, Contested Case No. WI-208, at ¶3 (Ariz. Super. Ct., Maricopa Cty. July 9, 2007), available at <https://www.superiorcourt.maricopa.gov/SuperiorCourt/GeneralStreamAdjudication/docs/tohono-oodham-sp-JudgmentandDecree070907.pdf> (confirming same); AWSA §§ 303(53), 312(d).

⁹⁸ The DEIS does not treat the Nation’s 8,000 acre-foot Sif Oidak District entitlement as an ITA. DEIS TA 18-7, Table TA 18-3. But as discussed above, this water has gone unused in part due to the federal government’s ongoing failure to address the federal government’s encumbrance of the Nation’s land with World War II ordnance, as well as the failure to construct on-reservation irrigation infrastructure necessary for the Nation to take delivery. Reclamation must appropriately examine this entitlement as an ITA, including Reclamation’s responsibility to ensure that it is appropriately delivered to the Nation during the Post 2026 Guidelines period.

⁹⁹ 1975 Senate Hearing at 526 (testimony of Jack O. Horton, Assistant Secretary for Land and Water Resources, Department of the Interior).

¹⁰⁰ See, e.g., “Cutbacks in water for central AZ farmers expected,” Arizona Capitol Times (April 26, 2021) (<https://protect-eu.mimecast.com/s/vFe9CYvpzFLQDpGzH9eE8G?domain=azcapitoltimes.com>) (“[CAP Colorado River Program Manager Chuck] Cullom said agricultural users have been working for many years to develop their groundwater capacities in preparation for reductions.”); “First mandatory cutbacks of CAP water now likely in 2022, Arizona Daily Star (May 23, 2022) (https://tucson.com/news/local/first-mandatory-cutback-of-cap-water-now-likely-in-2022/article_9f7aec9a-9e50-11eb-babd-df8247d1bfd6.html) (“The farmers are also supposed to get enough state and federal money to drill wells to pump another 70,000 acre- feet of groundwater, although most of the federal money needed still hasn’t come in.”).

that CAP reductions will lead to fallowing.¹⁰¹ The DEIS repeats the mistakes from the 2007 Final EIS, again basing its quantitative fallowing assumption on the notion that because it will be “difficult to project” how farmers would respond to shortages, farmers would fallow their crops instead of using alternative sources of water like groundwater.¹⁰²

Rather than examine possible groundwater impacts quantitatively, Reclamation discusses these impacts qualitatively. Thus, in glancing fashion, the DEIS notes that “in the event of long-term shortages, if the sustained demand for groundwater results in a reduction in supply from the aquifers, there would likely be increased impacts on economic and social conditions,” lead to increased pumping costs, and would “affect tribal and non-tribal entitlement holders in California, Nevada, and Arizona, as well as farmers and tribes who rely solely on groundwater for irrigation and domestic needs.”¹⁰³

These statements understate the overdrafts that federal officials previously acknowledged before Congress, as well as the current reality on the ground, which augurs toward a return to this untenable history. They also are insufficient for NEPA purposes, even in the post-*Seven County* world. NEPA requires a “useful analysis of the cumulative impacts of past, present, and future projects”¹⁰⁴ over which the Department has regulatory authority. This authority clearly extends to CAP deliveries, federal funding for groundwater development, and (most critically here) the federal government’s trust responsibility for the Nation and its surface water, groundwater, and water entitlements. Accordingly, Reclamation’s consideration of cumulative impacts here requires “some quantified or detailed information; ... [g]eneral statements about ‘possible’ effects and ‘some risk’ do not constitute a ‘hard look’ absent a justification regarding why more definitive information could not be provided.”¹⁰⁵

Qualitative analysis may in some cases be used where quantitative data is not available, for example, where a factor “is probably not susceptible to easy measurement.”¹⁰⁶ But Reclamation does not claim that groundwater data is not available or that it is not susceptible to easy measurement. Indeed, a myriad of studies (several published during the current shortage era) have

¹⁰¹ DEIS at 3-176 and TA 16 at 16-34 through TA 16-36.

¹⁰² DEIS at TA 16-36.

¹⁰³ DEIS 3-179; *see also* TA 16-51.

¹⁰⁴ *Kern v. U.S. Bureau of Land Mgmt.*, 284 F.3d 1062, 1075 (9th Cir. 2002).

¹⁰⁵ *Id.*

¹⁰⁶ *Klamath-Siskiyou Wildlands Ctr. v. Bureau of Land Mgmt.*, 387 F.3d 989, 994 n. 1 (9th Cir. 2004).

shown that in the Colorado River Basin, “[a]s surface water becomes less dependable, the demand for groundwater is projected to rise significantly.”¹⁰⁷

Reclamation must correct these errors and their potential impacts in the Final EIS.

IV. Reclamation Must Continue to Engage in Government-to-Government Consultation with the Nation Prior to Finalizing the EIS

As confirmed by a host of authorities, the federal government is required to conduct meaningful government-to-government consultation with federally recognized Indian Tribes in conjunction with (and prior to) the implementation of plans with tribal implications.¹⁰⁸ The Post-2026 process unquestionably has tribal implications within the meaning of the federal government’s consultation requirements. As Interior’s Departmental Manual makes clear, “Bureaus and offices must consult tribes . . . whenever a DOI plan or action with tribal implications arises.”¹⁰⁹ Reclamation must “be open and candid with Tribal governments during consultations and incorporate Tribal views and knowledge in their decision-making processes.”¹¹⁰

The Nation applauds Reclamation’s decision to involve Tribes in the development of the Post-2026 Guidelines, and appreciates its engagement with the Nation to date. During their recent government-to-government consultation meeting with the Nation, federal officials confirmed that the Department will continue to engage in consultation following the public comment period prior to the finalization of its EIS. Given the complexity of the DEIS, the lack of any current preferred alternative, and the inarguably significant impact that any of the alternatives under consideration will have on the Nation and its water rights, it is critical that this consultation occur in conjunction with any significant changes to the EIS contemplated by Reclamation based comments received during the public comment period or otherwise, including any new or revised alternatives. Following completion of the consultation period (but again, prior to the finalization of the EIS) Reclamation must prepare and transmit to the Nation a record of consultation, including a summary of input

¹⁰⁷ Abdelmohsen, K., Famiglietti, J. S., Ao, Y. Z., Mohajer, B., & Chandanpurkar, H. A., Declining freshwater availability in the Colorado River basin threatens sustainability of its critical groundwater supplies, *Geophysical Research Letters*, 52, e2025GL115593 (2025), available at <https://doi.org/10.1029/2025GL115593>, citing Liu, P. W., Famiglietti, J. S., Purdy, A. J., Adams, K. H., McEvoy, A. L., Reager, J. T., *et al.*, Groundwater depletion in California’s Central Valley accelerates during megadrought, *Nature Communications* 2022, 13(1), 1–11 (2022), available at <https://doi.org/10.1038/s41467-022-35582-x>; McCabe, G. J., & Wolock, D. M., Warming may create substantial water supply shortages in the Colorado River basin. *Geophysical Research Letters*, 34(22) (2007), available at <https://doi.org/10.1029/2007GL031764>; Tillman, F. D., Gangopadhyay, S., & Pruitt, T., Recent and projected precipitation and temperature changes in the Grand Canyon area with implications for groundwater resources. *Scientific Reports*, 10(1), 19740 (2020), available at <https://doi.org/10.1038/s41598-020-76743-6>.

¹⁰⁸ See, e.g., Exec. Order No. 13175, *Consultation and Coordination with Indian Tribal Governments* (Nov. 9, 2000).

¹⁰⁹ 512 DM 5.4(A).

¹¹⁰ *Id.* at 5.4(E).

received from Tribes, how that input was addressed, and Reclamation's reasoning in any instance in which the Nation's or other Tribes suggestions were not incorporated.¹¹¹

The Nation looks forward to individual government-to-government consultation going forward.

Thank you for your consideration of the Nation's comments.

Sincerely,



Verlon M. Jose

Chairman

¹¹¹ 516 DM 5.5(D).