

# TRIBES

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## COMMENT LETTER

## RESPONSES



September 8, 2000

Via Facsimile 702/293-8042  
and First Class U.S. Mail

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1a

Regional Director  
c/o Jayne Harkins, BC00-4600  
Lower Colorado Regional Office  
Bureau of Reclamation  
P.O.Box 61470  
Boulder City NV 89006-1470**RE:** Colorado River Interim Surplus Criteria Draft Environmental  
Impact Statement

Dear Ms. Harkins:

Thank-you for the briefing on the Colorado River Interim Surplus Criteria Draft Environmental Impact Statement on August 30, 2000, at the Morongo Indian Reservation. Unfortunately, this meeting was scheduled much too late in the planning and development process to have allowed the Tribe the meaningful opportunity to evaluate the impacts of this plan and to have had our concerns addressed in the draft report. For this reason, it is our position that the Bureau of Reclamation has failed in its duty to act responsibly to protect and maintain Indian Trust Assets in potentially impacted areas of this project plan. The Agua Caliente's off-Reservation interests and concerns have not and yet must be taken into account because of the project's potential to directly, indirectly, and cumulatively affect water quality and quantity on the Reservation. The Bureau of Reclamation has failed to demonstrate that it has taken every precaution and measure to insure the protection of the Agua Caliente Indian Reservation from adverse affects of this project in a shared and adjudicated aquifer system. Furthermore, the Bureau of Reclamation has shamefully neglected to enter into to serious government-to-government consultations with all potentially affected Tribes in the Coachella Valley. The Bureau is in direct violation of official Federal Policy pursuant to the following authorities:

1. Executive Order No. 13084: consultation and Coordination with Indian Tribal Governments (May 14, 1998); and

SEP 11 2000

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4600

1: Metropolitan Water District of Southern California (MWD) and the Coachella Valley Water District (CVWD) have and are currently storing portions of their basic and surplus apportionments of Colorado River water for intrastate purposes but the U.S. has jurisdiction over reserved Tribal water. Intrastate storage (e.g. groundwater storage) activities/facilities are not within Reclamation's jurisdiction, and thus does not permit nor follow the water for environmental compliance purposes once delivered to a water user's point of diversion. The federal government does not have jurisdiction over groundwater aquifers, recharge sites or other off-stream storage sites within the states. Ongoing or new groundwater storage projects would be regulated by state and local regulations and compliance requirements under CEQA, California Water Control Board, and the California Department of Health Services. The Coachella Valley Water District's water management plan and the related state permitting process are probably where the Tribes will find the best available information. Reclamation has the authority to deliver water only to the diversion point along the mainstem Colorado River.

1a: Reclamation respectfully believes that appropriate consultation with Indian Tribal Governments occurred with respect to the development of Interim Surplus Criteria. A full listing of the consultations during the development of the Interim Surplus Criteria is found in Section 5.4.

## COMMENT LETTER

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## 1a cont'd

2. The President's Memorandum on Government-to-Government Relations with Native American Tribal Governments, 59 Fed. Reg. 22,951 (April 29, 1994)

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In view of the above critical issues, and the Tribe's inherent sovereign authority and interest in managing its water resources on the Reservation, we have evaluated the proposed alternatives and Draft Environmental Impact Statement as, "insufficient and seriously flawed." We strongly urge the Bureau's consideration of effects to Tribal Trust Lands in the Coachella Valley Watershed particularly in regards to groundwater banking.

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In the future, we expect to be kept fully apprised through formal consultation of the progress and redraft of this report and to receive three (3) copies of the Final Environmental Impact Statement. The Tribe is not simply a stakeholder or member of the public, but a sovereign owed a duty of trust and is entitled to full participation in the consultation process.

We appreciate your cooperation and look forward to hearing from you.

Very truly yours,

Richard M. Milanovich  
Chairman, Tribal Council  
**AGUA CALIENTE BAND  
OF CAHUILLA INDIANS**

C: Tom Davis, Planning Director  
Michael Kellner, Natural Resource Manager

2: Reclamation respectfully disagrees and does not believe that the DEIS is flawed. Further, see response to Comment 48-1, and 48-1a.

3: Comment noted. The mailing list has been changed to reflect the need of three copies.