

## COMMENT LETTER

## RESPONSES

cont'd

16 to 3.14-22. Section 3.14 provides the brief description of how the proposed action could impact the Ten Tribes Partnership tribes' water rights (quoted above at page 7), but fails to include a comparable analysis of impacts on their water rights. *Id.* at 3.14-2. However, this section says nothing at all about the Hualapai Tribe's water rights.

We cannot fathom why DOI would ignore our water rights when it is well aware of them. The fact that the Hualapai Tribe's mainstream Colorado River water rights have not been adjudicated does not change their status as ITAs and does not excuse DOI from analyzing the impacts on those water rights. *See* page 4 above. Indeed, the DEIS at least discusses the Navajo Nation's unadjudicated mainstream Colorado River water rights, albeit without a meaningful analysis of the proposed action's impacts on those rights. DEIS at 3.14-5.

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The DEIS also fails to disclose the proposed action's disproportionate impacts on the Hualapai Tribe in the "Environmental Justice" section of the document. The Hualapai Tribe clearly is a "minority" and "low-income" population within the meaning of Executive Order 12898 on Environmental Justice. The proposed action would have a disproportionate impact on the Hualapai Tribe (and similarly situated tribes, including the Navajo Nation and Havasupai Tribe) by treating their unquantified Colorado River water rights as "surplus" water and making that water available for the benefit of predominately non-minority water users.

Under the trust duty and policies and regulations discussed above, the DEIS must explicitly address the proposed action's impacts on the Hualapai Tribe's water rights and explain how the proposed action will be consistent with DOI's responsibility to protect these water rights. In addition, the DOI must ensure that the Hualapai Tribe's water rights are protected and the proposed action's impacts on those rights are avoided or sufficiently mitigated. We have repeatedly urged the DOI to quantify the Hualapai Tribe's water rights prior to or concurrent with actions -- including the establishment of surplus criteria -- that will significantly impact our ability to utilize our water rights.

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Although we have asked DOI to quantify our water rights prior to or concurrent with adopting surplus criteria to ensure that our rights are protected, we understand that DOI nonetheless intends to issue the criteria by the end of this year. If DOI adheres to that schedule, then we demand that DOI immediately commence quantification of our water rights and complete quantification early in the implementation of the interim surplus criteria and prior to the first five year review of the interim surplus criteria. To do otherwise would irreparably diminish the Tribe's ability to utilize its water rights and would exacerbate DOI's past failures to protect the Tribe's water rights.

**The DOI Violates NEPA and the Trust Duty by Failing to Analyze the Proposed Action's Socioeconomic Impacts on the Hualapai Tribe.**

3: Unquantified Colorado River water rights cannot be analyzed and as such does not constitute an environmental justice issue for this EIS.

4: See response to Comment 49-1.

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The DEIS also fails to analyze the proposed action's significant socioeconomic impacts on the Hualapai Tribe. These impacts stem from the diminishment of the Tribe's future ability to develop its water rights and from the anticipated unavailability of the Pearce Ferry boat take out due to the reduction in Lake Mead water levels. Because these impacts fall disproportionately on the Hualapai Tribe, they are environmental justice impacts as well as socioeconomic impacts.

The Hualapai Tribe's only hope for economic development, including tourism, rests in its ability to access sufficient water resources to sustain development. By increasing the Lower Basin States' dependence on unquantified mainstream Indian water rights and resistance to quantification of those rights, the proposed action will create formidable political and financial obstacles to the Tribe's access to sufficient water resources. Without a sustainable water supply for economic development, the Tribe cannot attain economic self-sufficiency. The DEIS completely ignores these significant impacts.

The proposed action will also severely compromise Tribal revenues and job creation from river running. The Hualapai River Runners is the river-running operation of Grand Canyon Resort Corporation ("GCRC"), a Tribal corporation wholly owned by the Hualapai Tribe. Hualapai River Runners conducts guided white water river trips commencing at Diamond Creek, and float trips commencing at Quartermaster Canyon. All boats on these trips take out at Pearce Ferry. A portion of the payment for each trip is for a trespass fee imposed by Hualapai Tribal ordinance. The Tribe is entitled to receive from GCRC the trespass fees and a portion of the total revenues from the Hualapai River Runners' operations. The Tribe also levies sales tax on each trip sold by the Hualapai River Runners. In the past, the funds that the Tribe receives from the Hualapai River Runners operations have comprised a significant portion of the Tribal general fund budget, and the Tribe anticipates that these funds will also be an important Tribal revenue source in the future. The general fund budget supports social programs on the Reservation, including youth education and substance abuse rehabilitation programs. The jobs provided by Hualapai Rivers Runners are one of the few employment opportunities on the Reservation and are an important factor in fighting Reservation unemployment and poverty.

The DEIS fails to evaluate these significant impacts. Instead, the DEIS merely states that "[t]his concession [the Diamond Creek to Pearce Ferry river trips] may be affected if trips encounter changes in availability of the Pearce Ferry take out." DEIS at 3.9-34. There is no doubt that Hualapai River Runners would be significantly adversely impacted by the proposed action. As acknowledged in the DEIS, "[a]t pool elevations of 1170 feet msl, the Pearce Ferry take out is inaccessible and boaters must paddle an additional 16 miles to South Cove to take out." *Id.* The DEIS predicts that all alternatives except the Flood Control Alternative would reduce pool elevations below 1170 feet msl and the Flood Control Alternative would result in an elevation of 1171 feet msl. *Id.* Table 2-1 at 2-17. In fact, Pearce Ferry take out is likely to be inaccessible at higher pool elevations: a recourse manager for Lake Mead National Recreation Area advised the Hualapai Tribe this week that Pearce Ferry will be inaccessible

5: Sections 3.9.2.2.3 and 3.9.2.3.2 of the FEIS have been expanded to include additional detail with regard to the importance of Pearce Ferry to the Hualapai, based on the Tribes comments on the DEIS. Note that although baseline conditions and the interim surplus criteria alternatives under consideration would result in increased probabilities for lower Lake Mead surface elevations over time, the primary influence on Lake Mead elevation reductions results from increases in Uper Basin depletions.