

COMMENT LETTER

RESPONSES

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In addition, the proposed action may adversely affect Hualapai TCPs or sacred sites on federal lands in violation of Section 110 of the NHPA and Executive Order 13007 of May 24, 1996, "Indian Sacred Sites." The proposed action also may hinder access to and ceremonial use of Hualapai sacred sites on Federal lands in violation of Executive Order 13007.

Section 110 of the NHPA requires, among other things, that federal agencies preserve historic properties owned or controlled by them and provide a process for identifying and evaluating historic properties in consultation with Indian tribes. See 16 U.S.C. § 470h-2(a). Executive Order 13007 requires that:

In managing Federal lands, each executive branch agency with statutory or administrative responsibility for the management of Federal lands shall, to the extent practicable, permitted by law, and not clearly inconsistent with essential agency functions, (1) accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners and (2) avoid adversely affecting the physical integrity of such sacred sites.

E.O. 13007, § 1(a), 61 Fed. Reg. 26771 (May 29, 1996).

Executive Order 13007 further requires federal agencies with land management authority – including the DOI – to promptly implement procedures for carrying out the above requirement, including "procedures to ensure reasonable notice is provided of proposed actions . . . that may restrict future access to or ceremonial use of, or adversely affect the physical integrity of, sacred sites." Id. § 2(a). Such procedures must comply with the Presidential Memorandum of April 29, 1994 on "Government-to-Government Relations with Native American Tribal Governments." Id.

The proposed surplus criteria may affect access to or ceremonial use of, or adversely affect, Hualapai TCPs on sacred sites on federal lands, including lands within Lake Mead National Recreation Area or Grand Canyon National Park. In order to identify TCPs and sacred sites and determine whether such effects would occur, DOI must consult with the Hualapai Tribe and THPO.

To date, DOI has failed to conduct the consultation and evaluation required by NHPA §§ 106 and 110 and Executive Order 13007. DOI has also failed to analyze the impacts of the proposed action on Hualapai TCPs and cultural sites in violation of NEPA. DOI must comply with these duties prior to adopting surplus criteria.

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The DOI is in Violation of Its Trust Duty by Failing to Consult with the Hualapai Tribe Regarding the Proposed Action, its Impacts and Appropriate Mitigation.

In addition to the consultation duty under NHPA §§ 106 and 110, DOI has a trust duty to consult with the Hualapai Tribe regarding the proposed action, its impacts and appropriate

7: The operation of the Colorado River and the development of interim surplus criteria are complex and highly technical in nature. A considerable effort was made to balance the needs of all members of the public and write the DEIS in language that could be understood by both a technical and non-technical audience. The writers of the DEIS acknowledge the difficulty of accomplishing this task. For the FEIS, the writers of the document have made a further effort to use plain language whenever possible. Chapter 5 has been modified to more fully describe the process to consult with Tribes. Several meetings regarding interim surplus criteria were held in which the Hualapai Tribe was invited.

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mitigation, as discussed above on pages 4-6. DOI has failed to meet this duty to date, despite prompting by the Tribe.

The Hualapai Tribe has implored the DOI to work with the Tribe to quantify and protect its water rights numerous times over the years. In the past year, we have repeatedly requested consultation on several matters that are likely to have significant adverse impacts on the Hualapai Tribe's water rights. These matters include the proposed settlement in CAWCD v. United States, the reallocation of Central Arizona Project water supplies, and the proposed surplus criteria. For example, in April of this year we asked Deputy Secretary David Hayes to convene a consultation meeting with the Hualapai Tribe, the Havasupai Tribe and the Navajo Nation to discuss issues of mutual concern to these tribes. See letter from Louise Benson, Chairwoman, Hualapai Tribe, to David Hayes, Deputy Secretary of the Interior, April 7, 2000 (attached). In December 1999, we requested a meeting with Secretary Babbitt, Assistant Secretary Kevin Gover, and Solicitor John Leshy to discuss the Hualapai Tribe's Colorado River issues. This request was in response to the Secretary's public statement that the federal government should actively engage Indians in discussions regarding Colorado River water issues. See letter from Louise Benson, Chairperson, Hualapai Tribe, to Hon. Bruce Babbitt, Secretary of Interior, December 27, 1999 (attached). When we called the Secretary's office to arrange a meeting shortly after we sent this letter, we were informed that he did not have time to meet with us.

The DEIS may mislead decision makers to believe that DOI has consulted with the Hualapai Tribe on the Interim surplus criteria. The DEIS offers numerous broad assurances that the appropriate consultations with tribes have occurred. In Section 3.14, "Indian Trust Assets," the DEIS asserts that "Reclamation has entered into government-to-government consultations with potentially affected tribes to identify and address concerns for Indian trust assets." DEIS at 3.141. The DEIS further asserts that these "potentially affected tribes" include tribes in the Ten Tribes Partnership, tribes served by the Central Arizona Project ("CAP"), and unnamed "other interested tribes within the Lower Colorado Region." *Id.* Similarly, under the section headed "Environmental Justice," the DEIS asserts that "Reclamation has involved potentially affected tribes and the Bureau of Indian Affairs to identify and address tribal concerns. . . . This includes tribes with reservations along the Colorado River, as well as tribes with Colorado River water rights in the Basin States." *Id.* at 3.15-1 to 3.15-2. This section cites Section 3.14 and Chapter 5 of the DEIS. Chapter 5, entitled "Consultation and Coordination," simply asserts that "[s]ince May 1999, Reclamation has had numerous meetings with the various tribes who have an interest in the implementation of ISC." *Id.* at 5-4.

The Hualapai Tribe is plainly a "tribe with a reservation along the Colorado River," a "tribe with Colorado River water rights in the Basin States," and a "tribe with an interest in the implementation of the ISC." Yet DOI has not "involved" us in the process of developing the criteria and evaluating their impacts, much less formally consulted us as required by its legal obligations.