

## COMMENT LETTER

## RESPONSES

31

*Cultural Resources*

- 231 | According to the next section, the discussion of the Tribes perfected water rights should be done here. There is no such analysis. The analysis should also note how much of their water each Tribe is using, and as part of cumulative effects, when they plan to use all of it.

Thank you for including the lower portions of the river in this discussion. Other sections have not provided this information.

*Indian Trust Assets*

- 232 | Page 3.14-1, 3.14-1  
paragraph 2: The discussion of where perfected water rights should be discussed is confusing. Later in this section, water rights are discussed, but how they relate to perfected water rights, amounts currently developed, under development plans for the near future or are far future uses is not clear. How Tribal water not presently used by the Tribes is accounted for in the state allocations should be discussed in greater detail here. With the considerable amount of new development being envisioned by Bureau of Indian Affairs to fill out Tribal irrigation projects, there is clearly a body of water not being used at this time by the Tribes.
- 233 | Page 3.14-2, 3.14.2.1  
What is the significance of the Northern Ute Tribe to Colorado River water in the project area and effects of this action? Is this included in the Upper Basin schedule of increased depletions?
- 234 | Page 3.14-4, 3.14.2.2  
What is the significance of the Jicarilla Apache Tribe to Colorado River water in the project area and effects of this action? Is this included in the Upper Basin schedule of increased depletions?
- 235 | Page 3.14-5, 3.14.2.3  
What is the significance of the Navajo Tribe to Colorado River water in the project area and effects of this action? Is this included in the Upper Basin schedule of increased depletions?
- 236 | Page 3.14-6, 3.14.2.4  
What is the significance of the Southern Ute Tribe to Colorado River water in the project area and effects of this action? Is this included in the Upper Basin schedule of increased depletions?
- 237 | Page 3.14-6, 3.14.2.5  
What is the significance of the Ute Mountain Ute Tribe to Colorado River water in the project area and effects of this action? Is this included in the Upper Basin schedule of increased depletions?

231: Tribal water rights are trust assets that are covered under the section on Indian Trust Assets, not under the Cultural Resources section.

232: A detailed discussion of Present Perfected Rights is beyond the space limitations available here. We suggest you read the Supreme Court Decision in *Arizona v. California* and supplemental decrees. Additional clarifying text has been modified in Section 3.14 to explain how Tribes water is accounted. As Tribal water is developed, and depletions in the Upper Basin increase, less water will be available for storage in Colorado River reservoirs. The modeling for the FEIS includes the increased use of water under Tribal rights over time in both the baseline and action alternatives. Modeling the increased use of water in the Upper Basin, including the Tribal water, is essential in predicting future reservoir levels.

233: The Northern Ute Tribe, located in the Upper Basin, has the right to deplete 248,943 acre-feet. At the current time, approximately 100,000 acre-feet of this water is yet undeveloped. The Northern Ute's Tribal allocation is included in the Upper Basin schedule of increased depletions, and included in the modeling process as discussed in the response to Comment 57-232.

234: The Jicarilla Apache Tribe, located in the Upper Basin has about 30,000 acre-feet of undeveloped water. The Jicarilla Apache Tribal allocation is included in the Upper Basin schedule of increased depletions, and included in the modeling process as discussed in the response to Comment 57-232.

235: The Navajo Tribe, currently has over 150,000 acre-feet of undeveloped water in the Upper Basin. The Navajo's Tribal allocation is included in the Upper Basin schedule of increased depletions, and included in the modeling process as discussed in the response to Comment 57-232.

236: The Southern Ute Tribe, located in the Upper Basin has about 30,000 acre-feet of undeveloped water. The Southern Ute's Tribal allocation is included in the Upper Basin schedule of increased depletions, and included in the modeling process as discussed in the response to Comment 57-232.

237: The Ute Mountain Ute Tribe, located in the Upper Basin has about 50,000 acre-feet of undeveloped water. The Ute Mountain Ute's Tribal allocation is included in the Upper Basin schedule of increased depletions, and included in the modeling process as discussed in the response to Comment 57-232.

## COMMENT LETTER

## RESPONSES

32

- 238 Page 3.14-7, 3.14.2.6  
paragraph 2: Where are the table located that show Ft. Mohave over using its California allocation? The untitled table does not appear to show that data. Will the 3,022 af of water California is proposing cover the amount of the overdraft only or will it only cover new lands? How much of their right in Arizona do they use? If not using all of it, who is at present getting the water under surplus allocation and how will that loss be made up?
- 239 Page 3.14-8, 3.14.2.7  
The Chemuhuevi do not use much of their water right now. What is their schedule to begin using that water. Who is at present using that water, and how will that loss be made up?
- 240 Page 3.14-9, 3.14.2.8  
How much of their water does the Colorado River Indian Tribes use as of 2000? How much more do they have available for expansion? Who is using that water now, and what will need to be done to replace that use?
- 241 Page 3.14-9, 3.14.2.9  
Does the Quechan Tribe use all of their water in 2000? If not, when are they planning to begin using that water. Who is at present using that water, and how will that loss be made up?
- 242 Page 3.14-9, 3.14.2.8  
How much of their water does the Cocopah Tribe use as of 2000? How much more do they have available for expansion? Who is using that water now, and what will need to be done to replace that use?
- 243 Page 3.14-11, 3.14.3  
The Central Arizona Project is most likely to face an increase risk of shortages over the next 50 years. Indian waters that come from the CAP will be affected. The discussion here presents more details on the details of those risks, but again does not address the consequences to the Tribes of those losses.
- Environmental Justice*
- No comments on this section.
- Transboundary Impacts*
- 244 Page 3.16-3, 3-16.3  
paragraph 4: Please explain the difference between the flood control operations "excess flows" from the 200,000 af of water Mexico is eligible for from flood control releases?
- 245 cont'd below  
Page 3.16-6, 3.16.4.2  
paragraphs 4-5: Please differentiate between native and non-native species in the Cienega. Should the southwestern willow flycatcher be listed as a species that may occur or did likely

238: There is no table in the DEIS that shows the Fort Mojave Indian Reservation is over-using its present perfected federal reserved water right in California. As the table shows in Section 3.14.2.5 of this FEIS, the Tribe's right in California was limited, prior to June 19, 2000, to an annual diversion not to exceed 13,698 acre-feet. The Fort Mojave Indian Reservation's reported diversions in the Article V Decree accounting records for use in California were 21,109 acre-feet in calendar year 1999. As of June 19, 2000, the Fort Mojave Indian Reservation's present perfected federal reserved right was increased to a maximum annual diversion right of 16,720 acre-feet for use in California (see response to Comment 57-19). This additional water right will help cover the amount of the overdraft but the Fort Mojave Indian Reservation may use its 16,720 acre feet of federal reserved right available for use in California on any lands within the reservation boundaries in California. The Fort Mojave Indian Reservation's reported diversions for use in Arizona were 80,252 acre-feet in calendar year 1999. Because the Tribe's water right for lands in Arizona is part of the 2.8 maf apportioned for use in the State of Arizona, any water that is not used by the Tribe first is made available to junior priority holders in Arizona. Any water within this 2.8 maf apportionment that is not used in Arizona may be released by the Secretary under Article II(B)(6) of the Decree as unused apportionment for use in another Lower Division state. Any of this water that is delivered to a California entitlement holder is unused apportionment, not surplus water. There is no loss to make up. If a holder of a Colorado River water entitlement does not use all the water to which it is entitled in any year, that entity does not retain a right to the unused water - it remains Colorado River System water and is available for the Secretary to release for use in another state as unused apportionment or surplus water, under Articles II(B)(6) or II(B)(3), respectively, of the Decree.

239: The Article V Decree accounting records show the Chemehuevi Indian Reservation diverted 664 acre-feet in calendar year 1998 and 265 acre-feet in 1999. The Tribe has proposed to lease some of its water right. Because the Tribe's water right is part of the 4.4 maf apportioned for use in the State of California, any water that is not used by the Tribe first is available to junior priority holders in California in accordance with the priority system established for California by the California Seven-Party Agreement dated August 18, 1931. There is no loss to be made up. See the discussion under Comment 57-238.

240: The most recent Article V Decree accounting records are for calendar year 1999. As of 1999, the Colorado River Indian Tribes reported annual diversions of 599,509 and 5,791 acre-feet of diversions for use in the States of Arizona and California, respectively. These reported uses compare to the tribes' Federal reserved right maximum diversions of 662,402 and 54,746 acre-feet for Arizona and California, respectively. As for disposition if this unused water, see the discussion under Comment 57-238.

241: The Quechan Tribe did not use all the present perfected Federal reserved water rights available for use by the Fort Yuma Indian Reservation in 1999, the most recent year for which Article V Decree accounting records are available. In 1999, the annual diversions reported for the tribe were 31,350 acre-feet. See the discussion under Comment 57-238.

242: The total diversions reported for the Cocopah Indian Reservation were 11,546 acre-feet during calendar year 1999, which exceeded the tribe's annual diversion right of 10,847 acre-feet. See the discussion under Comment 57-238.

243: See response to Comment 56-6.

244: Excess flows to Mexico are defined as flows at the Northerly International Boundary (NIB) in excess of Mexico's scheduled delivery. When flood control releases occur at Lake Mead, Mexico is allowed to schedule up to an additional 200 kaf for delivery for that year. Excess flows under flood control releases are then flows in excess of that increased Mexico scheduled delivery.