



QUECHAN INDIAN TRIBE
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Office of Tribal Administration

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May 11, 2020

Dr. Terry Fulp
Regional Director
Bureau of Reclamation – Lower Colorado Division
P.O. Box 61470
Boulder City, NV 89006-1470

Re.: Quechan Indian Tribe's Comments Re. Scope and Approach
of Reclamation's 7d Review of the 2007 Interim Guidelines

By e-mail

Dear Regional Director Fulp:

On behalf of the Quechan Indian Tribe of the Fort Yuma Indian Reservation (QIT or Tribe), I thank you for this opportunity to comment on the scope and approach the Bureau of Reclamation (Reclamation) intends to employ for its review of the 2007 Interim Guidelines (IGs). Based on the information Reclamation presented at a public webinar on March 24, at the Ten Tribes Partnership on April 8, and at the Inter Tribal Council of Arizona Tribal Leaders Water Policy meeting on April 24, the Tribe is concerned that Reclamation may be focusing too heavily on a conducting technical review of the operational decisions made as part of implementing the IGs at the expense of a more holistic look at the process by which the IGs were negotiated and about the opportunities the IGs failed to seize, especially when it comes to tribal water rights in the Colorado River Basin (Basin). It is important for Reclamation's final review document to acknowledge that the IGs – both in the substance of what was produced and in the process of their development – overlooked tribal needs and interests. Reclamation's Final Environmental Impact Statement and Record of Decision evaluating and adopting the IGs were woefully short on consideration of tribal water rights and other important cultural and economic resources. And tribes were and remain largely excluded from participating in the IGs' Intentionally Created Surplus (ICS) program. Any review document should therefore recognize that the IGs process was marked by a failure to meaningfully consider the rights, resources and needs of Basin tribes, and that it was insufficiently proactive in reaching out to those tribes (including QIT) and in making technical resources available to facilitate meaningful tribal participation in the IGs' substantive development.

The Tribe is pleased that (despite the similar disregard of tribal rights, resources, and needs in the 2012 Basin Study) the role of tribes and tribal water rights in the Basin has received much-needed attention more recently, such as through the preparation of the 2018 Tribal Water Study, which benefitted greatly from the strong leadership and support Reclamation provided. Reclamation also did an excellent job, at least in Arizona, of focusing on communication, outreach, and information sharing with tribes during the negotiations over the Drought Contingency Plan (DCP) in 2018 and 2019. Yet DCP, too, failed to grapple meaningfully with the position of tribes (such as QIT in Arizona) whose water rights are not yet fully developed or with the tension between the inevitable development of those rights and the Basin's need to adapt to a smaller water budget as we all face a drier future. Moreover, despite the significant contributions of the Colorado River Indian Tribes and the Gila River Indian Community, even DCP (and its limited expansion of ICS) represents another missed opportunity to better facilitate the off-reservation use of tribal water rights as a tool to help the Basin address shortages and aridification.

Any review of the IGs, therefore, should include an identification of these sorts of limitations and missed opportunities to appropriately contextualize what the IGs did and did not do. Incorporating this necessary information would not require Reclamation to change the preliminary outline you have developed (as illustrated on slide 16 of the March 24 webinar presentation) for the shape of the review document. Certainly, the reality of the longstanding exclusion of tribes from Basin governance and decision-making is an important part of the "Background" that shaped the IGs and would logically be discussed in that section. Too, the failure to incorporate tribes' needs and interests relates to the "Effectiveness [of the IGs] with respect to adherence to common themes". As Reclamation has articulated them (as illustrated on slide 6 of the March 24 webinar presentation), those common themes include "plan for shortages," "preserve flexibility to deal with further challenges such as climate change and deepening drought," and "continue to have the federal government facilitate...informed decision-making in the Basin." A more creative approach to the utilization of tribal water rights could have played an important part in helping the IGs be more effective in adhering to these themes, and any review document should reflect the failure to explore this path.

Similarly, any evaluation of the "Effectiveness with respect to 2007 Interim Guidelines purposes" should consider how the IGs' failure to address how heavily the Basin relies on the underdevelopment of tribal water rights impaired the effectiveness of the IGs to meet the three purposes Reclamation articulated for them (as illustrated on slide 7 of the March 24 webinar presentation). The effectiveness of the IGs was also compromised because they ignored potential opportunities to enhance tribes' ability to facilitate the orderly off-reservation use of their water rights. More creativity on this front had – and retains – the potential to address the risk of water reductions, to provide greater predictability, and to increase flexibility, all of which are identified purposes of the IGs.

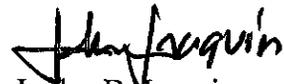
Another topic that Reclamation's review of the IGs should address with respect to both themes and purposes is an identification of lessons learned through activities such as the preparation of the Tribal Water Study and the negotiation of DCP. These lessons include the importance of early and regular communication and coordination with tribes, both on a formal

government-to-government basis as well as through the provision of technical support at a staff level. In addition, while Reclamation may prefer to “facilitate – *but not dictate* – informed decision-making in the Basin” (slide 6 of the March 24 presentation, emphasis in original), Reclamation’s trust obligations to Basin tribes – as well as the significant and senior water rights Basin tribes possess – militate in favor of Reclamation taking a more hands-on role in ensuring that tribes are fully integrated into Basin decision-making processes, including but not limited to those that will develop the operational framework that will replace the IGs after 2026.

This is especially so because any operational framework exists in a world where many tribal communities continue to lack access to basic human needs such as easily accessible potable water. The current COVID-19 crisis once again has thrown into stark relief the acute challenges tribal communities face when it comes to securing access to resources that Basin states and other stakeholders take for granted. The Basin must continue to build on the tentative steps that have been taken to date to embrace a more inclusive and equitable approach to river governance. QIT specifically, and Basin tribes more generally, are invested in being meaningful partners in this process. But Reclamation, and the broader federal family, has a vital role to play in bringing about this necessary transformation.

Thank you for your consideration.

Sincerely,



Jordan D. Voquin
President
Quechan Tribal Council