

Appendix M

January 19, 2006, Las Vegas, Nevada Tribal Consultation Meeting Documents

M.1 Request to Initiate Consultation



IN REPLY REFER TO:

United States Department of the Interior

BUREAU OF RECLAMATION
Lower Colorado Regional Office
P.O. Box 61470
Boulder City, NV 89006-1470



BCOO-1000
ENV-6.00

DEC 23 2005

Honorable Charles Wood
Chairman, Chemehuevi Indian Tribe
P.O. Box 1976
Havasas Lake, CA 92363-1976

Subject: Request to Initiate Consultation on the Development of Lower Colorado River Basin
(Lower Basin) Shortage Guidelines and Coordinated Management Strategies

Dear Chairman:

The Secretary of the Department of the Interior has recently directed the Bureau of Reclamation to develop Lower Basin shortage guidelines and coordinated management strategies for Lake Powell and Lake Mead under low reservoir conditions. Reclamation, in accordance with National Environmental Policy Act (NEPA) and Council on Environmental Quality regulations, has begun to prepare an Environmental Impact Statement (EIS) to address the proposed guidelines and strategies. A notice was published in the Federal Register on September 30, 2005, that announced the start of the scoping process and the intent to prepare an EIS (70 Federal Register 57322).

On behalf of the Department, we would like to initiate government-to-government consultation with the Chemehuevi Indian Tribe, in concert with the initiation of our NEPA process for this proposed action, to identify and consider potential impacts to any tribal trust resources as a result of the proposed action.

Mr. Rick Gold, Regional Director, Upper Colorado Region, and I respectfully request an opportunity to consult with you on these planned actions and discuss your interest and involvement in the NEPA process for this proposed action. To that end, we have arranged a meeting at McCarran Airport, Las Vegas, Nevada, Rooms 4 and 5, on January 19, 2006, from 10:00 a.m. to 12:00 noon.

Our staff will call your office during the next few weeks regarding this request. You may call Ms. Nan Yoder at 702-293-8495 or contact her by email at nyoder@lc.usbr.gov to discuss the consultation process or to confirm your availability for the meeting.

Sincerely,


Robert W. Johnson
Regional Director

Identical Letter Sent To:

Continued on next page.

Identical Letter Sent To:

Honorable Sherry Cordova
 Chairwoman, Cocopah Indian Tribe
 West Fourth 15th and Avenue G
 Somerton, AZ 85350

Honorable Nora McDowell
 Chairperson, Fort Mojave Indian Tribe
 500 Merriman Avenue
 Needles, CA 92363

Honorable Mike Jackson, Sr.
 President, Quechan Indian Tribe
 P.O. Box 1899
 Yuma, AZ 85366

Honorable Clement Frost
 Chairman, Southern Ute Indian Tribe
 P.O. Box 737
 Ignacio, CO 81137

Honorable Levi Pesata
 President, Jicarilla Apache Nation
 P.O. Box 507
 Dulce, NM 87528

bc: Mr. Bryan Bowker
 Acting Regional Director
 Bureau of Indian Affairs
 P.O. Box 10
 Phoenix, AZ 85001

LC-1000, LC-1100, BCOO-1000, BCOO-1003, PXAO-1000, NAOO-1100, UC-100,
 UC-105, UC-402, UC-438, UC-700, UC-720

BCOO-1000-Chrono Daily WBR:NYoder:ms:12/21/05:8495
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Honorable Daniel Eddy, Jr.
 Chairman, Colorado River Indian Tribes
 Route 1, Box 23-B
 Parker, AZ 85344-9704

Honorable Joe Shirley, Jr.
 President, Navajo Nation
 P.O. Box 9000
 Window Rock, AZ 86515

Honorable Maxine Natchees
 Business Committee Chairwoman
 Northern Ute Indian Tribe
 P.O. Box 190
 Fort Duchesne, UT 84026

Honorable Selwyn Whiteskunk
 Chairman, Ute Mountain Ute Tribe
 P.O. Box 248
 Towaoc, CO 81334

Appendix M

January 19, 2006, Las Vegas, Nevada Tribal Consultation Meeting Documents

M.2 Sign-In Sheet (1)

Appendix M

January 19, 2006, Las Vegas, Nevada Tribal Consultation Meeting Documents

M.3 Transcript

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PUBLIC MEETING
US DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

Held at McCarran International Airport
5757 Wayne Newton Boulevard
Mezzanine Meeting Rooms 4 and 5
Las Vegas, Nevada

On Thursday, January 19, 2006
10:00 a.m. to 11:35 a.m.

Reported By: Janice David, CCR No. 405

1 LAS VEGAS, NEVADA, JANUARY 19, 2006, 10:00 A.M.

2 * * * * *

3 (Slide presentation by Mr. Fulp.)

4 MS. CONDON: I understand why Powell
5 drops quicker in a drought. Explain why Mead
6 takes longer to recover.

7 MR. FULP: Yes. That's a good question.
8 When the flows get back good, again if I can use
9 that, the way I said that, I apologize for it, but
10 when the flows become better, Powell has to fill
11 sufficiently to get this storage criterion met
12 before it equalizes, it starts sharing the water.
13 So, it has to really recover fairly high before we
14 start sharing the water again.

15 MS. CONDON: So, you're taking more out
16 of Mead?

17 MR. FULP: And Mead still goes down,
18 because you're still consuming water at Mead, yes.

19 MS. CONDON: Okay.

20 MR. FULP: That's a very good question.
21 Thanks. Next slide.

22 (Slide presentation by Mr. Fulp.)

23 MR. ARTHUR: Excuse me. If there is no,
24 if there has been, never been a shortage, how,
25 then, is it determined that your shortage, as we

1 speak of it, is occurring?

2 MR. FULP: I think I understand your
3 question. Since we've never had one, how would we
4 figure out how to have one?

5 We don't know. I mean, with the
6 secretary, we know this: The secretary has the
7 ability by law to declare the shortage. She would
8 look at lots of factors. If she has no
9 guidelines, she would have to look at lots of
10 factors to determine how to do it.

11 Again that's kind of our purpose of
12 putting guidance in place, so that it's as fair as
13 it can be, as reasonable as it can be, and
14 hopefully to balance the impacts in the best way.

15 Did that answer your question? No?

16 MR. ARTHUR: Well, let me keep -- I may
17 come across it.

18 MR. GOLD: Let me try. Without
19 guidelines you could conceivably, in your mind,
20 say, as long as there was water in Lake Mead you
21 could release it. But there would be impacts as
22 Lake Mead was drawn down. So, at some point some
23 might say, we've already got there. We would
24 start to have recreation impacts at Lake Mead. At
25 some point we would start to have impacts on the

1 power plant at Lake Mead. So, you could just say,
2 as long as there's water I will deliver seven and
3 a half million acre feet until there is less than
4 seven and a half million acre feet in Mead and
5 then I don't have a choice.

6 For instance, if there is only five acre
7 feet in Lake Mead, guess what? You're going to
8 deliver no more than five. So, it's that idea
9 about how do you decide that drives our need to
10 say, now we should look at the impacts of various
11 ways to decide how would we declare a shortage.
12 And as Terry put it, when would we declare a
13 shortage and how big a shortage would, would we
14 declare? And those decisions, because they have
15 never been made, are sort of like, gee, we don't
16 know. We know the secretary could, but we don't
17 know how the secretary would.

18 MR. FULP: You bet. Thank you, Rick.
19 Hopefully that -- other questions? That's a good
20 segway into, we wanted to, before we ask for
21 comments formally to be taken here we did want to
22 make sure if you have any other questions up to
23 this point in a more informal manner, please ask
24 us so, I know it's a lot to dump on you probably.

25 MR. ALGOTS: Terry mentioned a few

1 minutes ago, when reduced deliveries are
2 necessary, does Mexico take the same hit as the
3 other states?

4 The question is, Terry had just mentioned
5 a few moments ago about when, when reduced
6 deliveries was necessary, that it would be spread
7 among the lower basin states and Mexico.

8 And my question is, does Mexico share
9 that hit in the same proportion as the other, the
10 United States would?

11 MR. FULP: It does. There is a provision
12 in the treaty that essentially states that, that
13 in, under conditions of extraordinary drought, I
14 believe are the exact terms, that Mexico would
15 share a proportion with the US in terms of
16 shortages.

17 MR. ALGOTS: A shortage criteria would be
18 an extraordinary drought?

19 MR. FULP: We believe so, yes.

20 MR. ALGOTS: Or is that having to settle
21 in court sometime later?

22 MR. FULP: Might be. You don't ever know
23 for sure, but I believe the common thinking is
24 that constitutes an extraordinary drought, yes.

25 MR. ALGOTS: Thank you.

1 MR. FULP: Other questions?

2 MR. HVINDEN: I have a question. Is the
3 priority status going to be figured into the
4 guidelines?

5 MR. FULP: Absolutely. The priority
6 status is the legal framework within which we
7 operate. So, absolutely, barring individuals who
8 want to make their own agreements, I mean, there
9 might be some of that as well, but we would,
10 priority, a priority system.

11 Any other questions?

12 MS. CONDON: Or the, the existing surplus
13 guidelines when, when you have a million acre
14 feet, the 1,100 --

15 MR. FULP: I'm sorry. Those are lake
16 elevations. I didn't explain that very well, did
17 I? Those are just the lake surface elevations.

18 MS. CONDON: So, that really doesn't tell
19 us --

20 MR. FULP: What the delivery is.

21 MS. CONDON: -- what that amount is below
22 that line.

23 MR. FULP: That's right. We can give you
24 some pretty rough estimates. Our estimates, there
25 was a little bit of complication in the way the

1 guidelines were written in terms of how to
2 determine exactly, but in the partial domestic
3 that's roughly about 300,000 additional acre feet
4 is made available.

5 MS. CONDON: Okay.

6 MR. FULP: And in the full domestic it
7 was more in the 600,000 rough estimate. There
8 was, there were formulas in the guidelines on how
9 to compute exactly.

10 MR. GOLD: And I would point out that
11 those guidelines exist. They're something we put
12 in place. So, if you're curious, we can provide
13 them for you.

14 MR. FULP: Right.

15 MS. CONDON: I know -- very aware of
16 that. I just haven't had the chance to look at
17 them. So --

18 MR. FULP: And they are available on our
19 website, and you have that website in your hand.

20 MS. CLANI: So, the secretary will
21 determine the shortage based on the annual
22 operating plan or the information provided?

23 MR. FULP: Could I restate that just a
24 little bit? During the annual operating plan
25 process, so prior to the beginning of the water

1 year we would apply these guidelines, and that
2 would tell us what the condition in the lower
3 basin will be for the coming year.

4 For instance, if it's a lake level type
5 of guideline, it would say, if on January 1st Lake
6 Mead is below this level, this is how much of a
7 shortage will be applied. That, that's kind of an
8 example. And then that annual operating plan, we
9 develop it with a public process of state and
10 submit it to the secretary as a recommendation.
11 And then she has the final authority, of course,
12 but, but generally follows those recommendations.

13 MS. CLANI: Okay.

14 MR. HEART: As you look at this diagram
15 on number, page three, back to 1905 is truly low
16 compared to 2005. The big difference in that
17 water was really short. The natural flows,
18 1955 --

19 MR. FULP: Yes.

20 MR. HEART: -- compared to today, those
21 are our two lowest points. On here we also need
22 to have usage compared to 1955 compared to today,
23 the lower basin versus the upper basin.

24 Do you have some sort of diagram showing
25 the usage comparison?

1 MR. FULP: We do. We didn't bring it
2 today unfortunately. We can make that available
3 to you.

4 MR. HEART: That also impacts what's
5 going on here. You're talking about restrictions,
6 about treaties. You're talking about, the
7 gentleman talks about Mexico and the treaty of
8 Mexico. The treaty of the 10 tribes is, it's
9 going to impact them all, the smaller reservoirs,
10 the upper basin. And impacts they have, is there
11 a priority on tribes themselves and their treaties
12 on usage compared to a City of Las Vegas? Who
13 goes priority, a treaty over a city, city's usage?
14 And I need a little answer to that.

15 I don't know what that comparison is or
16 what the secretary of interior is doing with this.
17 I think tribes need to be a priority. And as you
18 talk about government-to-government consultation,
19 based on the consultation process that we're doing
20 today, tribes need to be in the forefront of this
21 as you start to looking at allocations and
22 cutbacks. We are talking about Mead and Lake
23 Powell but also the ones that are shorter going to
24 the reservations, going to the tribes' needs.
25 We're also a growing population. Sometimes we're

1 always left out of the equation.

2 So, I think we need to bring that up to
3 the forefront to the Interior to tell them that
4 they need to calculate that as a priority for us
5 to, as native tribes. We've lost too much
6 already, and we need to keep what we have. I know
7 Mexico is asking for some. Our population is
8 different from 1955 to now. We're in a big
9 shortage right now. Our treaties need to come to
10 the forefront, also.

11 MR. FULP: Okay. We understand. We
12 appreciate that, those comments. And as we go
13 through the process we need to make sure we set up
14 the proper relationship with you so that, that
15 those comments are continued.

16 MR. HEART: Starting to look at drought
17 mitigation plan, you have to have this
18 accomplished by 2007. 2

19 MR. ARTHUR: In addition to Manuel's
20 question, at what point did, I know we're just
21 making comments to you. You're taking comments
22 today.

23 So, at what point in this discussion do
24 we get answers?

25 MR. FULP: Well, throughout the process

1 we'll take input, and we'll do our best to answer
2 your questions as we go along through that.
3 Certainly the final decision is scheduled for
4 December, 2007 through the process of, via the
5 record of decision, but I think what we would like
6 to do today is to set up something with you, if
7 you wish. And we could meet with you periodically
8 or whatever it is that makes sense to both, tell
9 you where we are in the process but also to
10 continue to get your input. And hopefully as we
11 go through that we can officially answer some of
12 these questions that you have.

13 MS. CONDON: The other question that I
14 have is how the, the tribes and the nations are
15 fitting into your schedule, you know, and how you,
16 how do you see this government consultation
17 meetings going forward?

18 MR. FULP: Good, and I think that's a
19 valid question. And really what we were wanting
20 to do today is really ask you that, how you, what
21 makes most sense to you. We are open to probably
22 any of your suggestions. Really, we could have
23 periodic meetings. We can meet as a group. We
24 can meet individually. Again I think it's really
25 an open question, and we would like your input on

1 that, and we'll make that happen.

2 Certainly again we can just give you
3 periodic updates in whatever way, but we want to
4 make sure if that meets your need, we don't want
5 to just send you volumes of stuff via e-mail which
6 might make no sense, that might not help you.

7 MR. HEART: There was a comment made
8 during the Colorado River water meeting, and I
9 just heard this. I wasn't at the meeting, that a
10 non-tribal member said the Indians pulled the
11 wools over the eyes of BR to get their water. And
12 that's a really negative comment from people that
13 don't understand who we are as native tribes and
14 our treaty rights and our water issues and our
15 allocations that come to us. So, there also needs
16 to be, in this process, an educational process for
17 non-Indians to understand that we have these water
18 rights that are allocated to us by treaties. The
19 government has to fulfill those issues, too, on
20 our part.

21 So, there has also got to be an education
22 part on this part. If somebody comes out with a
23 comment like that at the Colorado users water
24 conference, then they do not know what we are as
25 native Americans and how we came to be today.

1 MR. FULP: I understand. I would agree
2 that's an inappropriate comment. I certainly
3 personally didn't hear it, but we absolutely have,
4 have, know what your rights are. Most, if not
5 all, are present perfected rights, at least in the
6 lower division I'm familiar with. We would be
7 very happy to receive that, any that, or any
8 additional input from you and make that available
9 through this public process to help inform those
10 people, absolutely.

11 MR. EDDIE: I would like to add that I
12 agree with the gentleman here on comments made
13 previously at other meetings along the same lines.
14 Look at the, the water doctrine was done, but
15 nowhere in there is it mentioned about the
16 priority status of Indian water except under the
17 winter doctrine, which I believe was in 1912 or
18 thereabouts. And I have to agree with him along
19 those lines, because right now today in these
20 drought conditions everything is out there. All
21 of a sudden tribal water is probably the only
22 access water that's out there right now.

23 So, I think at least there should be some
24 mention of it somewhere in there, because I've
25 noticed in those documents there is hardly any.

1 And this is what brings the whole questions at
2 these meetings.

3 MR. FULP: There questions or comments?

4 MR. BUMA: Well, I have a, I, I read in
5 the Arizona Republic the other day about the
6 meeting states, and apparently in the meeting they
7 were unable to come to any really agreement as to
8 how to handle these potential shortages. And I
9 assume that in those discussions that sort of
10 criteria will consider such as recreation,
11 agriculture, that sort of thing.

12 Does Reclamation have a preconceived idea
13 of how they're going to wake the leads of various
14 water users before they start to, to look at how
15 they're going to apportion out of shortage,
16 understanding that the law of the river has to
17 rule. I mean, the water rights will be satisfied
18 first, and then down the ways, but it's
19 interesting to me that you hold a separate meeting
20 with the states and then one with the tribes.
21 Maybe there is a reason for that. I'm sure
22 whether it's political or there is some reason for
23 that, I'm just curious as to what came out of the
24 previous meeting, if there is something there that
25 would be useful for us to discuss here.

1 Do you have anything to offer on, along
2 those lines?

3 MR. FULP: Very good points you're making
4 here. Let me maybe, unless Rick, ask Rick to jump
5 in here at any time.

6 I think certainly we do not have a
7 preconceived notion, I mean, that's the point of
8 this process, is to, to take input and to try to
9 figure out what the best course of action is. So,
10 now with that said, certainly the secretary has a
11 unique relationship with the basin states. And
12 just as other parties can request consultations,
13 they request consultations with us. We're very
14 hopeful, I think, still that the states are going
15 to at least come up with something that's on a
16 consensus basis, but we prefer, of course, is that
17 they don't all come in with guns drawn, if I can
18 use that analogy, and, and want to duke it out and
19 fight it out and maybe even go to court about it,
20 because, you know, we don't really want to get
21 tied up in lengthy litigation here and not be able
22 to effectively operate the system. I mean, that's
23 our goal here, is to be able to effectively
24 operate the system when you have these, these poor
25 realm of conditions.

1 Go ahead.

2 MR. GOLD: Let me add, Terry, I agree
3 with everything you just said. The meetings that
4 the states have been holding are, in fact, their
5 meetings. And as Terry mentioned, they have
6 invited us as a resource to say, what if, and
7 we've done all kind of modeling for them. Our
8 process, processes so far, the public processes
9 that we talked about, the scoping and the public
10 meetings that we've had are, in fact, open to
11 everybody. So, we haven't set up a separate
12 process to deal with this task.

13 We're here, I think, because we
14 understand our responsibility relative to the
15 Native American tribes in this basin and our need
16 to sit down with you and deal on a
17 government-to-government basis. So, I think as
18 you see us now move forward and as the schedule
19 pointed out to, to further discussions with you,
20 if you so desire to have a draft EIS, which would
21 be a public document and public hearings, they
22 won't be state hearings. They will be public
23 hearings. They will be everybody invited. So,
24 that's where, from my perspective at least, we,
25 and our responsibility is the broad-based NEPA

1 analysis that gets us into that full public arena
2 with some special consideration paid to the, to
3 the trust efforts, the Native American issues in
4 the basin. That's the way I would get at your
5 question.

6 MR. BUMA: Well, I think that one of the
7 things that, and actually these things always boil
8 down to some sort of political resolution and
9 political input. But to avoid a confrontation
10 between the states and Indian tribes by them
11 coming to some sort of separate agreement and then
12 trying to, you know, arrange an agreement with,
13 with the tribes and then later on a plan, resolve
14 things that way, it seems to me that if a forum
15 could be open where we're all on board at the same
16 time and don't do separate groups, make separate 5
17 agreements, I think that is probably the,
18 something that Reclamation could do that. No one
19 else is in a position to do, since they're the
20 broker.

21 And so, just my personal perspective, I
22 would think from a political standpoint that would
23 be well-advised.

24 MR. GOLD: I guess my reaction is, I
25 think that's our concept as well. That's why we

1 have a public meeting, just to get everybody's
2 ideas in. I think, I think it's really important
3 that the work that the secretary challenge the
4 states to come up with, we would hope they present
5 us an alternative. It won't be the answer that we
6 simply take down and say, okay. States are done.
7 That's the secretary's decision. That's why we
8 have to look at an array of alternatives in our
9 EIS, to look at the breath of the environmental
10 impacts of what those decisions might be, and then
11 the secretary becomes the decision-maker when she
12 signs a record of decision hopefully in December
13 of 2007.

14 So, the, it's unique. I think we're
15 going to do our best to, to stay public and keep
16 everything at our table. That certainly can't
17 control what the states want to do at their table
18 or, quite frankly, what you all might want to do
19 at your table, inviting us or not inviting us, as
20 Terry pointed out. So, I think that's an
21 important idea, and I think it's, it's valuable to
22 recognize, and you've hit on some of the very key
23 issues that things like the law of the river have
24 to prevail. So, there is some backstops and some
25 boundaries within which we're going to have to

1 work to create shortage guidelines and an option
2 for coordinated operational power and reservoir
3 conditions.

4 And that's the other thing I would point
5 out to you, is I know the temptation is to say, we
6 need to solve all the problems of the Colorado
7 River basin. But our task is to identify shortage
8 criteria. And if there is a, try to coordinate
9 the operation of Powell and Mead. Otherwise, it's
10 the old, you can't eat the whole elephant message.
11 You have to have some discrete pieces to deal
12 with.

13 MR. HEART: It's easier said than done.
14 You have seven states here. I don't see anybody
15 at the table from agricultural side. You also
16 have your power plants, hydro power. You have
17 your recreation, recreational use and domestic
18 use. Then you have your tribes and their
19 treaties, and you have two countries, seven
20 states, upper basin, lower basin, all these
21 people. It's going to take a lot to compile all
22 this information. So, you need to have input from
23 all of these, from different areas.

24 And I go back to my first comment, is
25 usage, how much, how many people are using this

1 water? When you find out and identify the numbers
2 of usage and then the tribal allocations to each
3 tribe and possible cities for the different
4 entities, the power, the agriculture, the
5 recreation, and compile all that and then try to
6 look at fluctuations of how much can they really,
7 their bare bottom usage can be. So, it's easier
8 said than done. You need to compile all this data
9 on, how many more meetings are you going to have
10 from now until the end of your draft or your first
11 draft? Do you have any more meetings besides the
12 ones you have on, on here with other states and
13 the different entities that you're talking about?

14 MR. FULP: Yes. Certainly we don't have
15 an exact time line of the meetings laid out, but
16 that's again part of why we're here, to figure out
17 what kind of meeting progression you all prefer.
18 We will have also the general public process
19 meetings as we go along as well. So, as the time
20 line and project gets laid out for its next phase,
21 we'll have set up absolute dates for public
22 meetings to, to share with the general public, but
23 we're also willing to share, you know, along the
24 way with you at whatever frequency you like.

25 So --

1 MR. HEART: As part of this project that
2 the secretary has in mind will there be dollars
3 allocated to certain projects, like increasing a
4 reservoir or decreasing a reservoir? Will there
5 be dollars allocated to reach canals if there
6 needs to be some put in place?

7 I'm just throwing this out as food for
8 thought. Will there be dollars allocated to this
9 project?

10 MR. GOLD: My answer to you is, if you're
11 talking about the process of developing shortage
12 guidelines and is there a way to coordinate the
13 operation of Lakes Powell and Mead, my answer to
14 you is, no. It's not about funding something.
15 It's about how --

16 MR. HEART: There is a give and take to
17 this, Rick. There is a give and take to this. If
18 you're taking, you're going to take water away
19 from people because of a shortage, because of a
20 drought and they have to take less than what
21 they're allocated, there has got to be a give and
22 take. There is communication, cooperation.
23 That's the give and take, and the education, the
24 education analogy, why we use it, why we need it,
25 and what the purpose is. So, these three things

1 come into play. So, there has got to be something
2 down the road that the Interior's got to think
3 about as dollars are always being cut on any kind
4 of water project.

5 MR. GOLD: I understand.

6 MR. FULP: And I think, again I might
7 just add one thing. I don't disagree at all.
8 Again we've got a certain amount we can deal with
9 here. There are other parallel processes that
10 might, in fact, be initiated to build new things
11 or construct things. It's just not, as Rick said,
12 contained inside this process.

13 We would still like to hear the ideas,
14 though, and --

15 MR. HEART: Well, I would like to see
16 some kind of usage, how many people are using this
17 water. 7

18 MR. FULP: We actually have that. We
19 just didn't bring it. We'll be glad to send it to
20 you.

21 MR. HEART: I would like to see
22 allocations for all the tribes, what they're
23 allocated off the upper and lower basin. This is
24 more complex than what you guys were talking
25 about. This is just generic what you guys are

1 bringing right now. I need more information about
2 this from the top to the bottom, and it includes
3 Mexico, because we're dealing with two countries,
4 too, and their treaty rights on water. So, you
5 got to put everything on the table before we can
6 come up with a plan. If you don't, then you just
7 give us a little bit of information, and we're
8 going to be short-falling ourselves, not only the
9 tribe but everybody that's involved with the whole
10 Colorado River basin.

11 MS. CONDON: The evaluation for those
12 tribes' senior rights prior to 1922, that's got to 8
13 come up off the top anyway. It isn't involved in
14 the allocation, and it would be protected, should
15 be I mean.

16 MR. HEART: Should be, but there is
17 always a challenge on that.

18 MS. CONDON: Right. Right. But I would
19 assume that that's something, that's certainly
20 something you'll be hearing.

21 MR. GOLD: That's part of the --

22 MR. FULP: Part of the backstop and
23 boundaries that --

24 MS. CONDON: Right. Right.

25 MR. FULP: Well, again just to follow up

1 here, our purpose here wasn't to withhold
2 information, of course. And you know that, I
3 know, but we didn't want to overwhelm you either.
4 We want to get across what the idea is and then
5 again schedule something more with you if that
6 would help.

7 MR. HEART: I just didn't want to beat
8 around the bush. I want to get right to the
9 point, get to the thing, get things done, because
10 you don't have time. Time is of the essence. If
11 you don't do it, you take this at a slow pace,
12 you'll never reach that deadline. Then you're
13 going to start doing shortcuts. As long as you
14 put it and get it right to the point, then we can
15 probably deal with it.

16 And I speak for the mountain. I don't
17 know if the other tribes feel the same way or even
18 the, the power portion or the agriculture or
19 recreation or the cities or the states. I don't
20 know what they feel.

21 MR. FULP: Right. Well, certainly just
22 for that thought a little bit, we've certainly
23 heard from all those communities through the
24 public part of the process so far. They will
25 still have much more input as well, but when we

1 come out with a scoping report, you'll be able to
2 receive that. We've received lots of comments
3 from the ag interest, the power interest, through
4 that, these two public entities.

5 MS. CONDON: Can you explain this, this,
6 the scoping report, are you going to have
7 identified several different alternatives for your
8 shortage guidelines at that point and what you're
9 then going to analyze?

10 MR. FULP: Unfortunately, we don't think
11 we'll be that far along to have alternatives yet.
12 What we will do is obviously share all the
13 comments that we've received. I know we can draw
14 some conclusions obviously about what we've
15 learned. But given the time frame we have here,
16 we won't have all the alternatives sorted out yet.
17 So, there is still, but that would come shortly
18 afterwards. And we're certainly asking for input
19 now, then, and all through the process. We want
20 to make sure you understand it's not only today
21 you get to input to the process.

22 MS. CONDON: Right. That's why I was
23 trying to figure out exactly how we can work in
24 the process as you move along.

25 MR. FULP: We just didn't come with a lot

1 of preconceived notions of how it should work. We
2 just wanted to open up and say we want it to work
3 and get your input on what's best for, again each
4 of you individually or collectively, however you
5 want to do it.

6 MR. ARTHUR: Your scoping meeting
7 basically, and what this is is basically
8 consultation with the tribes.

9 MR. FULP: Correct.

10 MR. ARTHUR: So, in this process, the
11 exchange of information, how do you propose to
12 handle that, where we're meeting in this room here
13 in Vegas?

14 MR. FULP: Yes.

15 MR. ARTHUR: And obviously you've already
16 had several meetings or throughout the greater
17 states. So, you have some information.

18 MR. FULP: Yes, and so, yeah. Let me try
19 to peel that apart a little bit. So, the scoping
20 report will be made available. You'll get a
21 notice of it. It's, it will be available on a
22 website. That's the easiest way to distribute it
23 these days if that's all right. If it's not, we
24 can send it to you directly, of course. So,
25 that's how the information to date received from

1 the public meetings throughout would be
2 disseminated.

3 And then the thing I want to say, yes,
4 the scoping period for how to do it and what to do
5 as well as for input on that would help us from,
6 the alternatives is over, but we will continue to
7 take input along the way. And our anticipation is
8 we'll have our public meetings along the way. So,
9 I don't want to imply there that, that the public
10 input part is now over, because we've had two
11 public meetings and the time frame is expired.
12 We'll have them as needed as well as you can give
13 us input anytime along the way.

14 For, for you particularly, I mean, if you
15 want to have some particular relationship with us,
16 we're open to that. It can be a meeting set
17 again, periodic meetings. It can be at your call.
18 It can be whatever makes sense to you all. Again
19 we didn't come with preconceived notions of how to
20 do it, because we weren't sure what your input on
21 that would be.

22 MR. ARTHUR: We do have the 10 tribes.

23 MR. FULP: Yes.

24 MR. ARTHUR: And I think somewhere
25 represented here might be, at least for the lower

1 basin, might be, all of the 10 tribes there may be
2 represented in total, but we have our, had a brief
3 discussion on this in reference to how to get
4 informed and how to communicate with the states
5 and yourselves. We're open to it.

6 MR. FULP: Good. Okay. I mean, we just
7 happen to take that organization for this meeting
8 and the 10 tribes. Were invited to the meeting,
9 and we thought that was a nice sized meeting to
10 begin with with you all. And so that's fine with
11 us. If that would make sense, that would work out
12 just fine from our view, absolutely. And, of
13 course, there are other tribes in the basin, and
14 we're consulting with them as well. We just chose
15 this avenue, contact the 10 of you to get a start.

16 MS. CLANI: I just have another quick
17 comment. I recognize, or it's recognized that a
18 lot of public input is going to be asked in this
19 process, but I just wanted to make it known from
20 the Navajo Nation's position, is that, you know,
21 that the government-to-government relationship is ⁹
22 preserved through this entire process, because I
23 know that you've talked extensively about, we
24 really want the public. We see this as public
25 involvement. But we want to make sure that's also

1 recognized that there is this ongoing
2 government-to-government relationship.

3 MR. FULP: Absolutely.

4 MS. CLANI: And that it doesn't get
5 caught up then seen as just another public
6 comment.

7 MR. FULP: Great. I understand. And
8 again if, if we can set up something that helps
9 facilitate that, we're very open to that.

10 MR. BUMA: You've collected quite a bit
11 of information now. Have you done anything, work
12 with that information? I mean, were there any
13 conclusions yet since all the comments you
14 received thus far?

15 MR. FULP: We're certainly working on it.
16 We've received a good number of comments that
17 first scoping period. We pretty much heard what
18 needed to happen, and that was basically do a NEPA
19 process. That was the strong message we got in
20 terms of how, in terms of the last scoping period
21 for alternatives. We're just right still
22 analyzing all of that now. We've certainly heard
23 from, again the agricultural side, the power side.
24 So, we see different views obviously, but we're
25 condensing all of that now.

1 So, we didn't really come prepared today
2 to try to summarize it because, frankly, we're not
3 done summarizing it. But by another month we'll
4 have it, and we'll make it available and would be
5 willing to sit and talk to you about it once it
6 becomes available if you have additional comments
7 or questions about it.

8 Sorry I can't give you a more definitive
9 answer than that.

10 MR. BUMA: You have until, until the end
11 of 2007?

12 MR. FULP: Yes.

13 MR. BUMA: Okay. So, is there any
14 indication relative to that when one might think,
15 if the plan continues the way it is, that you
16 would consider declaring a shortage?

17 MR. FULP: I understand your question.
18 It's certainly depending on where you draw the
19 level in the lake. If that's, that may be the
20 simplest way to think about it. But I can give
21 you some feel for some of the modeling we've done
22 to date that, you know, and again it depends
23 highly on also the hydrology received.

24 If you look at kind of what I'll loosely
25 call the worst case, meaning the drought of the

1 '50s repeated itself again, now we could see
2 shortages again, depending on where you define the
3 level in the next, say, five to seven years. But
4 it's, that's fairly speculative, of course, again
5 because we don't know exactly what level we
6 declare a shortage, and we don't know what the
7 hydrologies are. But that's the kind of bounding
8 modeling gives us. We try to bound the answers as
9 well as, then as we really get down to the
10 alternatives we'll be able to look at the
11 hydrologic risks and then map that into the risk
12 to the resources.

13 Does that help a bit?

14 MR. BUMA: I understand what you're
15 saying, yeah. I just thought maybe, I understand
16 the hydrologic implications. I'm just curious
17 politically how far down the road you were since
18 you established a deadline.

19 MR. FULP: Right.

20 MR. GOLD: We did, Terry, make an annual
21 operating plan determination for one year, '06.

22 MR. FULP: Yes, we did. And that was
23 actually given the conditions we have now. It put
24 us in that, if you can flip to that little, I
25 think it's one up, the little diagram, yeah.

1 Because of where we are now, the declaration this
2 year for the lower division was actually this
3 partial domestic surplus. Now, the states in the
4 lower division have told us to date that they're
5 not planning to take any of that extra water based
6 on the fact that we've just seen one good year out
7 of five straight drought years. And it's prudent
8 water management says, if you don't need it, don't
9 take it.

10 So, right now all three states have
11 agreed to leave it in the system and not take that
12 extra, say, 300,000 acre feet of water, even
13 though that is the declaration you made, because
14 that's what these guidelines tell us to do.

15 MR. ALGOTS: Is that water bank water for
16 those states, or is it something that's retained
17 in the system?

18 MR. FULP: That extra water --

19 MR. ALGOTS: Say, California, besides,
20 could take 300,000 acre feet less than the
21 4.4 million. Is that in a bank for them, or is
22 it, just goes to the system?

23 MR. FULP: In this case I think maybe
24 I've made it not very clear. Because we're up
25 here. It's actually 300,000 in addition to the

1 seven and a half million. And so California share
2 that, which is the bulk of 300,000. They have
3 said, no, we won't take it. So, they would still
4 be at the center of, forefront. It's, this is
5 surplus. So, it's over and above the seven and a
6 half.

7 Now, what we're talking about, what we do
8 when it's less than the seven and a half --

9 MR. ALGOTS: On your second level there,
10 domestic plus, what is it, banking?

11 MR. FULP: This is water that would be
12 allowed to be taken off the system and banked off
13 stream for future domestic use.

14 MR. ALGOTS: Okay.

15 MR. FULP: That's what that piece of
16 banking is. And these guidelines had some
17 regulations, if you can use that term, in terms of
18 how much it could be banked and who gets the bank
19 and that --

20 MR. ALGOTS: Something sufficient as the
21 Arizona water.

22 MR. FULP: Yes. Exactly. That's a
23 great --

24 MR. BUMA: If future domestic use, is it
25 just domestic use or all bank water?

1 MR. FULP: These are domestic uses that
2 were going to be met before non-agricultural. So,
3 it was for domestic use only. Non-agricultural
4 surplus, the way these work is you don't get
5 agricultural surplus until you get to the higher
6 levels. Higher level of Lake Mead, the top two
7 levels provide a surplus to agriculture.

8 MR. ARTHUR: Did I hear you clear that
9 this is in addition to the 7.5?

10 MR. FULP: Yes. That's really what this
11 idea of surplus in the lower division means, yes.

12 MR. ARTHUR: So, coming off of some of
13 his discussion in reference to California,
14 California would be entitled to 4.4. And having
15 been enjoying beyond 4.4 and they being told now
16 come within the 4.4, I mean, how do they fall, or
17 how do they play into the circle surplus?

18 MR. FULP: That's a very good question.
19 Really the way this worked out was, if I could use
20 the term deal. The idea was to give California a
21 soft landing. If, I don't know if you've heard
22 that term, but because their historical use was
23 600 to 800,000 above the 4.4, because Arizona
24 wasn't using their apportionment. That was a
25 legal use. But the issue -- and I think you were

1 alluding to that even before -- was that, that
2 then when it came down and Arizona took their full
3 apportionment, California was overusing. And, of
4 course, they have built cities on, based on that
5 overuse. So, the idea was, was to give them a
6 period of time to get their use down to 4.4, and
7 that period of time is the period that these
8 surplus guidelines are in effect for out to 2016.
9 And this is complicated. So, I don't want to
10 complicate it.

11 So, the idea was again to get them to
12 4.4, give them time to get there. The way they
13 get there is essentially transfer water from their
14 high priority ag to their low priority domestic
15 uses, and then during that period we would make
16 some additional water available to help them get
17 there. That was the idea of the, quote, soft
18 landing. That tied the, what was called the
19 qualification settlement agreement, QSA -- you
20 heard of that many times -- to the surplus. Those
21 were tied together. And California has to meet
22 certain benchmarks reducing their use throughout
23 this 15-year period, or these guidelines get
24 suspended. And if you recall, that's what
25 happened in 2003.

1 Does that answer --

2 MR. BUMA: Just a quick question with
3 regard to material where, where they're not using
4 a lot of material water for domestic use rather
5 than ag, is that, does that raise the priority
6 for, on your chart as far as use goes or not?

7 MR. FULP: Their use is their, their use
8 is their priority for what their use was for. I
9 mean, yes. If they're using it some for domestic,
10 it's their, they still have their priority in the
11 California -- I think that's what you're asking
12 me. That didn't change that.

13 MR. BUMA: Relative to what you have
14 discussed.

15 MR. FULP: Relative to here, can they get
16 domestic here? No. No. They don't, they don't
17 get domestic surplus.

18 MS. CONDON: So, the states have not been
19 able to come up with an alternative, right?
20 You're hopeful that they will come up with an
21 agreement with some sort of proposed alternative
22 for these shortages guidelines, correct?

23 MR. FULP: Correct.

24 MS. CONDON: So, where do they have to
25 fit into this process to the point where you can't

1 really consider their proposal, or how much weight
2 will their proposal have in this process? I
3 guess, are you waiting for them or, you know.

4 MR. FULP: No. I want to say, Rick is,
5 stretching my neck out here. We're definitely not
6 waiting for them. We're moving forward in our
7 process. We've been very clear to them what our
8 time frame is, what our time line is and, and when
9 they need to, to give us input.

10 MR. GOLD: Yeah. The thing that I would
11 add is, our message to them is that they need to
12 provide us this consensus decision, if they have
13 one, by the end of January.

14 MS. CONDON: Okay.

15 MR. GOLD: And we're going to move on.
16 We're going to develop an alternative report, and
17 we are going to draft an environmental impact
18 statement that will have alternatives in it. If
19 they choose not to send us one, then we won't have
20 one from them.

21 MR. BUMA: This January?

22 MR. GOLD: Yes, in a few days.

23 MR. FULP: Way few days.

24 Any other questions or comments?

25 (Slide presentation by Mr. Fulp.)

1 MR. FULP: You can send comments, if you
2 have, to either of the regional directors. You
3 can fax them to, these are all in your handout.
4 You can also e-mail us with any additional
5 comments.

6 I know we've received letters from some
7 of you already at this point. So, at any time you
8 could continue to, to let us know what you're
9 thinking. But I think the other thing I want to
10 really do is make sure that we communicate
11 directly with you. If you want to set up
12 something on a periodic basis or however you want
13 to do it, I would say just, just call us, and
14 we'll, we'll work on setting something up.

15 MR. ALGOTS: We have, I guess, sets, two
16 sets of comments. I was, no point in going over
17 them again, but respective for the -- Indian
18 tribe, yes, water is important. Power is
19 important. But also the river itself is
20 important. And it's pretty vital to our
21 operations there that we actually have a river.
22 And other than that, I guess we're pretty much in
23 the same boat as many others are.

24 But we, we assume that our priorities are
25 intact and that we have, will have the ability to

1 withdraw the water that we need. We would just
2 like to see some water in that river, because we
3 don't get it through a pipeline or CAP or
4 something.

5 We had a little experience with a little
6 water this year. It was pretty, pretty hurtful.
7 And I, I don't criticize the releases of water,
8 all that local water available in California and
9 Arizona. I mean, I'm, in response to Reclamation ¹¹
10 made to reduce the flow of river between Davis and
11 Lake Havasu absolutely made sense. But it did, it
12 did cause us million of dollars worth of damage,
13 about 200,000 direct pump damage and another
14 800,000 in lost opportunities. It is important to
15 us.

16 MR. FULP: Since we're the operators down
17 there, were you fully informed of when it was
18 happening and all that?

19 MR. ALGOTS: We, we were, we absolutely
20 were, and we appreciate that.

21 MR. FULP: Good. We hadn't not done what
22 we should have done but --

23 MR. ALGOTS: No, you did.

24 MR. FULP: Good.

25 MR. ALGOTS: But still the situation was

1 there.

2 MR. FULP: Okay. And I think the last
3 thing, there is a website, and this will be where
4 lots of stuff is posted, like the original set of
5 comments, the comments we got from the original
6 scoping period are all published there. The
7 report will be published there, the scoping
8 report. And we'll, but we'll make sure you know
9 that, too, if you have communication, whether
10 things are posted and that sort of stuff.

11 So, again any other questions or
12 comments? Okay. Please contact us as you think
13 about how you want to proceed with us and, and
14 government-to-government consultations. Contact
15 us directly. We'll, we'll set it up. If it's
16 through the 10 tribes, that's fine. But whatever
17 it is you all think works best, that's what we
18 will want to do. Okay?

19 Any additional last-minute --

20 MR. GOLD: No? Thanks for coming.
21 Thanks for participating with us and, and sharing
22 your views.

23 MR. FULP: Thank you very much.

24 (Meeting concluded at 11:25 a.m.)

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REPORTER'S CERTIFICATE

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STATE OF NEVADA)

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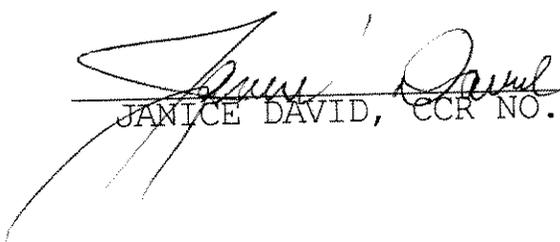
I, Janice David, a duly commissioned Notary Public, Clark County, State of Nevada, do hereby certify:

That I reported the foregoing proceedings on Thursday, January 19, 2006, at the hour of 10:00 a.m.

That I thereafter transcribed my said shorthand notes into typewriting and that the typewritten transcript is a complete, true, and accurate transcription of my said shorthand notes.

I further certify that I am not a relative or employee of the parties involved in said action, nor a person financially interested in said action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in my office in the County of Clark, State of Nevada, this 9th day of February, 2006.



JANICE DAVID, CCR NO. 405