



COLORADO RIVER INDIAN TRIBES

Colorado River Indian Reservation

26600 MOHAVE ROAD
PARKER, ARIZONA 85344
TELEPHONE (928) 669-9211
FAX (928) 669-1216

Via Email Only

March 22, 2024

Ms. Kathleen Callister
Adaptive Management and Water Quality Division Manager
Bureau of Reclamation
Attn: LTEMP Project Manager
125 South State Street, Suite 800
Salt Lake City, UT 84138
Email: LTEMPSEIS@usbr.gov

RE: Comments of the Colorado River Indian Tribes on the Draft Supplemental Environmental Impact Statement for the Glen Canyon Dam Long-Term Experimental and Management Plan

Dear Ms. Callister:

The Colorado River Indian Tribes (“CRIT” or “the Tribes”) appreciates the opportunity to provide comments on the Draft Supplemental Environmental Impact Statement (“Draft SEIS”) for the Glen Canyon Dam Long-Term Experimental and Management Plan (“LTEMP”). While CRIT values the Bureau of Reclamation’s (“Bureau”) efforts to mitigate the effects from small mouth bass, after carefully reviewing the Draft SEIS, we have concerns regarding the agency’s analysis of tribal and cultural resources.

As a preliminary matter, the Colorado River Indian Tribes are a federally recognized Indian tribe comprised of over 4,600 members belonging to the Mohave, Chemehuevi, Hopi and Navajo Tribes. The almost 300,000-acre Colorado River Indian Reservation sits astride the Colorado River between Blythe, California and Parker, Arizona. The ancestral homelands of the Tribes’ members, however, extend far beyond the Reservation boundaries. Significant portions of public and private lands in California, Arizona, and Nevada were occupied by the ancestors of the Tribes’ members since time immemorial. These landscapes remain imbued with substantial cultural, spiritual, and religious significance for the Tribes’ current members and future generations. For this reason, we have a strong interest in ensuring that potential cultural resource

and other environmental impacts associated with the LTEMP are adequately considered and mitigated.

In particular, the Tribes are concerned about the impacts to petroglyphs, intaglios, pictographs, sleeping circles, trails, manos and metates, and other cultural resources that may result from the project. Accordingly, CRIT asks that the impacts to these cultural resources and sites be thoroughly analyzed and mitigated to the extent feasible. Further, CRIT asks that it be consulted in the development of the Final SEIS given the significant spiritual and cultural value that the Colorado River holds for the Tribes.

1. The Draft SEIS Fails to Adequately Discuss CRIT's Interests in the Proposed Action.

Under NEPA, agencies must consider, to the extent practicable, whether there is or will be an impact on the natural or physical environment that significantly and adversely affects Native American tribes. Specifically, the Bureau must consider whether significant environmental effects may have an adverse impact on Native American tribes that appreciably exceeds those on the general population. *See, e.g.*, EPA's 1998 Environmental Justice Guidance; Executive Order 12898. In addition to considering impacts to tribes, agencies must consult with interested tribes under the NHPA, as noted in the Draft SEIS. Draft SEIS 3-164.

The Draft SEIS discusses the impact of the LTEMP on the following tribes: the Havasupai Tribe, Hopi Tribe, Hualapai Tribe, Navajo Nation, Pueblo of Zuni, and Southern Paiute Consortium. Draft SEIS at 3-174. Although CRIT is mentioned in passing in the Tribal Resources section (Draft SEIS at 3-177), the Draft SEIS fails to adequately describe the significance of the river and its cultural resources to CRIT.

As mentioned above, CRIT's reservation is located along the Colorado River and the ancestral homelands of its members extend over much larger sections of the river, including sections within the scope of the SEIS. Because the river holds significant spiritual and cultural value to the Tribes, CRIT has an interest in the river and any projects that may affect it. We are concerned that any impacts associated with the LTEMP may affect the river as a whole, which will impact CRIT tribal members. Accordingly, CRIT must be consulted on the development of the project, and the potential impacts to CRIT should be adequately discussed in the Final SEIS.

2. The Draft SEIS Fails to Adequately Analyze the Impacts on Cultural and Tribal Resources.

The purpose of NEPA is to inform the public and agency decisionmakers of a project's potential environmental impact before those decisionmakers act. By requiring an EIS to provide a complete picture in advance, the drafters of NEPA expected that decisionmakers would make better decisions. *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989) (NEPA "ensures that the agency, in reaching its decision, will have available, and will carefully consider, detailed information concerning significant environmental impacts"). The Bureau has an obligation pursuant to NEPA to conduct its analysis "objectively and in good faith, not as an exercise in form over substance, not as a subterfuge designed to rationalize a decision already made . . . [and] not just to file detailed impact studies which will fill governmental archives."

Metcalf v. Daley, 214 F.3d 1135, 1142 (9th Cir. 2000); see also *Earth Island Institute v. U.S. Forest Service*, 351 F.3d 1291, 1300 (9th Cir. 2003) (“NEPA requires that federal agencies “consider every significant aspect of the environmental impact of a proposed action . . . [and] inform the public that [they have] indeed considered environmental concerns in [their] decision-making process[es].”) (citations omitted). In doing so, to the Bureau must take a “hard look” at impacts resulting from a proposed action. *Tri-Valley CAREs v. U.S. Dep’t of Energy*, 671 F.3d 1113 (9th Cir.2012) (concluding that the Department took a hard look with respect to various NEPA impacts); *Cold Mountain v. Garber*, 375 F.3d 884 (9th Cir.2004) (holding that the U.S. Forest Service took the “hard look” NEPA requires in issuing a finding of no significant impact and a special use permit with regard to a bison capture facility).

The Draft SEIS discusses the various types and characteristics of tribal and cultural resources, such as petroglyphs, present in the project area, (Draft SEIS at 3-168 to 3-170), but then fails to analyze the impacts that higher flows will have on those resources. The Draft SEIS states, without further explanation, that there will be no additional impacts to tribal and cultural resources under the flow spike alternatives (i.e. the Cool Mix with Flow Spike Alternative and Cold Shock with Flow Spike Alternative) as compared to the no action alternative, which would maintain the same operations as are currently in place and were described in the 2016 FEIS. Draft SEIS at 3-172 and 3-179. However, the 2016 FEIS focused on the impacts of high flows on terraces and provided no petroglyph-specific analysis. 2016 FEIS Appendix H at 8-12. Given this gap in the analysis, there is no basis for the Draft SEIS to conclude that there will be no additional impacts to petroglyphs from high water levels. The Draft SEIS must include a description of which tribal and cultural resource sites will be impacted by higher flows and the significance of those additional impacts.

Further, the Draft SEIS acknowledges that, under the non-bypass alternative, new tribal and cultural resource sites would be exposed and there would likely be impacts to those sites from wave action, wet/dry effects, and increased visitation. Draft SEIS at 3-172 and 3-180. Despite acknowledging that the non-bypass alternative will degrade newly exposed sites, the Draft SEIS fails to analyze the significance or extent of that degradation. 40 C.F.R. §§ 1502.16(a). This analysis was not performed in the 2016 FEIS either because such low water levels were outside of its scope. Accordingly, the Draft SEIS should include the necessary analysis to determine the additional impacts on newly exposed tribal and cultural resource sites.

3. The Draft SEIS Fails to Adequately Describe the Mitigation Measures that Will Be Used to Protect Cultural and Tribal Resources.

Beyond merely disclosing potential environmental impacts, NEPA requires agencies to develop tactics to address them. Specifically, an environmental impact statement (“EIS”) must “[i]nclude appropriate mitigation measures” and discuss the “[m]eans to mitigate adverse environmental impacts.” 40 C.F.R. §§ 1502.14(e), 1502.16(a). The statute “require[s] that an EIS discuss mitigation measures, with ‘sufficient detail to ensure that environmental consequences have been fairly evaluated.’ An essential component of a reasonably complete mitigation discussion is an assessment of whether the proposed mitigation measures can be effective.” *South Fork Band Council of W. Shoshone of Nevada v. U.S. Dep’t of Interior*, 588 F.3d 718, 727 (9th Cir. 2009) (quoting *Robertson*, 490 U.S. 332 at 352).

As described above, the Draft SEIS fails to adequately analyze the additional impacts to newly exposed tribal and cultural resource sites. Nonetheless, the Draft SEIS claims that any “adverse effects to cultural resources [from the non-bypass alternative] would be resolved under the LTEMP PA.” Draft SEIS at 3-172 and 3-179. It is unclear how the Draft SEIS can state that all additional impacts will be mitigated by the PA, given that there is no analysis on the extent and severity of those impacts.

Moreover, the PA only lays out procedures for monitoring the impacts of the project, and states that mitigation measures “will be developed.” 2017 LTEMP PA at 7. Although monitoring newly exposed sites will certainly be a helpful and necessary first step, it does not provide any protection to cultural resource sites. Further, any mitigation measures that were developed for the 2016 FEIS were not based on the current project, and the Draft SEIS does not assess their effectiveness under the currently proposed alternatives. Thus, the Draft SEIS fails to provide sufficient detail on mitigation measures, as required by NEPA. Accordingly, the Draft SEIS should disclose specific mitigation measures that may be used to reduce impacts, such as erosion to tribal and cultural resource sites, under the current alternatives. After revising the Draft SEIS, the Bureau should recirculate it for public review and comment.

4. The Draft SEIS Engages in “Piecemealing” by Failing to Analyze the Project in Conjunction with the Broader Plan for River Operations.

In determining the scope of an EIS, NEPA requires agencies to consider connected actions. Connected actions are those that are “interdependent parts of a larger action.” 40 C.F.R. §§ 1501.9(e). Accordingly, NEPA does not permit agencies to “piecemeal” larger projects into smaller parts and analyze each of the pieces independently. *Native Ecosystems Council v. Dombeck*, 304 F.3d 886, 897 (9th Cir. 2002); *see also* 40 C.F.R. §§ 1501.9(e). Rather, agencies must analyze the impacts of the larger project as a whole “in the same impact statement.” *Id.*

The Draft SEIS looks solely at discrete changes in the flow regime. However, these changes in the flow regime are a single part of a much broader project to develop ongoing guidelines for the operation of the river as a water delivery system. By considering the change in the flow regime as a stand-alone project, as opposed to considering it as a component of the overarching plan for the river, the Draft SEIS impermissibly breaks the project down into smaller parts. Rather than piecemealing the project, the Draft SEIS should consider the impacts of the LTEMP together with the impacts of general river operation.

Thank you for your consideration. To understand how these comments were taken into account in your decision-making, we ask for a written response prior to a final decision. Please copy the Tribes' Attorney General Rebecca A. Loudbear, at rloudbear@critdoj.com and THPO Director Bryan Etsitty, at betsitty@crit-nsn.gov, on all correspondence to the Tribes.

Respectfully,

COLORADO RIVER INDIAN TRIBES



Amelia Flores
Chairwoman

Cc: Tribal Council of the Colorado River Indian Tribes
Bryan Etsitty, THPO Director, Colorado River Indian Tribes
Rebecca A. Loudbear, Attorney General, Colorado River Indian Tribes