



# COLORADO RIVER INDIAN TRIBES

## *Colorado River Indian Reservation*

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Submitted via email to: [7DReview@usbr.gov](mailto:7DReview@usbr.gov)

Dear Regional Director Fulp:

The Colorado River Indian Tribes welcome the opportunity to submit these comments regarding the scope and approach that Reclamation is using to review the effectiveness of the 2007 Interim Guidelines. The Colorado River Indian Tribes (CRIT) are concerned that if Reclamation limits the 7D Review to the themes, purposes, and operational guidelines in the 2007 Interim Guidelines (Guidelines), the failure to include tribes in the development of the Guidelines will continue. Reclamation needs to also examine the omission of tribal data in the Environmental Impact Statement supporting the Guidelines, and the particular problems tribes have with the Guidelines.

The CRIT support the 7D Review of the effectiveness of the Guidelines that will inform the process to establish the future operations of the Colorado River Basin that we all share. These comments are submitted in response to the Reclamation proposed scope and approach for the 7D Review as presented in the webinars on March 24 and 31, 2020.

### **General Comments:**

Tribal water rights, tribal water use, and tribal interests were not given enough consideration in the preparation of the Guidelines. The comments submitted by tribal governments and tribal representatives on the Draft Environmental Impact Statement (Draft EIS) show that tribes, including CRIT, were concerned about the limited consultation and opportunities of tribal participation during the development of the environmental review documents.

The United States has a trust responsibility to protect our federal Indian reserved water rights and to consult with tribal governments. This did not happen in the development of the Guidelines. To perform this 7D Review based exclusively on the purposes, themes, and operational provisions included in the Record of Decision for the Guidelines is to base the 7D Review on the effectiveness of decisions made without tribal participation and without complete tribal information.

The following examples from the EIS, the Guidelines, and the implementation of the Guidelines highlight these omissions.

### **Final Environmental Impact Statement**

It takes only a quick examination of the discussion of the Affected Environment in Chapter 3 and the discussion of Environmental Consequences in Chapter 4 in the EIS to see examples of the lack of tribal input in the analysis.

#### *Affected Environment, Chapter 3*

Section 3.4 covers water deliveries. Section 3.4.2.1 discusses entitlements in the Lower Basin based on Section 5 contracts, a decreed right, and a Secretarial Reservation. The examples of Secretarial Reservations are “Cibola NWR, for use on BLM lands, and for uses at Hoover Dam and Davis Dam,”<sup>1</sup> but does not include tribal water rights.

Section 3.9 Cultural Resources is organized by reaches of the River. The Colorado River Indian Reservation is in Reach 4 between the Parker Dam and Imperial Dam. This is the homeland for the Mohave people and the Reservation is located on both the California and Arizona side of the River covering most of Reach 4. As with other discussions of cultural resources in the River corridor, there is no mention of the Reservation or the Mohave people or of any other Native people in the River corridor.

The discussion of Indian Trust Assets in Section 3.10 simply lists the water quantities found in the *Arizona v. California* Decree for the Lower Basin tribes. There is no information about the effects of the proposed action on tribal water rights outside of the CAP system.

Section 3.15 discusses Environmental Justice. The areas analyzed for environmental justice effects are categorized by county in the Upper and Lower Basins. The EIS states that environmental justice areas are described in CEQ guidance as areas with minority populations and low-income populations. The identified counties include La Paz County in Arizona and Riverside and San Bernardino counties in California, the location of the CRIT Reservation. La Paz county has one of the highest percentage of Native American population in the Basin. Coconino County, Arizona, is the location of the reservations for the Navajo Nation, the Havasupai Tribe and part of the Hualapai Tribe reservation.

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<sup>1</sup> EIS at page 3-34.

Mohave County, Arizona, is the location of the reservations for the Hualapai Tribe and the Ft. Mohave Tribe. Pima County, Arizona, is the location of the reservations for the Pascua Yaqui Tribe and the Tohono O'odham Nation. Yuma County, Arizona, is home to the Quechan Tribe and the Cocopah Tribe. San Juan County, Utah has a population that is over 50% Native American and includes part of the Navajo Nation and the Ute Mountain Ute Reservations. The only counties listed as having environmental justice concerns that do not include significant Native American populations are Imperial, Los Angeles and Orange counties in California. This unequal way the environmental justice issues affect Native Americans is not acknowledged.

#### *Environmental Consequences, Chapter 4*

Section 4.15 is the detailed discussion of Environmental Justice factors and is completed in a total of three pages. There is no mention of “reservation”, “tribal governments”, or “Native Americans”, and the word “Indian” is only used in the following examples:

1. “Use of biological resources will not affect environmental justice communities, including Indian tribes any differently than the general population.” (§4.15.6) There is no mention that many people on reservations survive on subsistence livelihoods that are dependent on biological resources.
2. “Potential impacts or access to cultural resources do not raise unique environmental justice issues, but consultation with Indian tribes will continue.” (§4.15.7) The 7D Review should document the cultural resources consultation that has continued and the effectiveness of that consultation.
3. “Reclamation is committed to protecting and maintaining Indian Trust Assets.” (§4.15.8) “Indian Trust Assets” are what are held by the United States in trust for the tribes and tribal members. It is the effect on the people in these counties that is an environmental justice issue, not the assets of the federal government.

There is not any mention of the lack of drinking water and sanitation for on-reservation populations in the environmental justice section. The socioeconomic disparities between these identified counties and the rest of the Basin—disparities that are in part based on a lack of access to clean water—are not discussed.

#### **Conservation, System Storage, and Water Deliveries**

Three aspects of the Reclamation programs based on the Guidelines are discussed in more depth in this section of our comments: Intentionally Created Surplus (ICS), the program for conservation and storage of water in Lake Mead; the Pilot System Conservation Program (PSCP), a related program for compensated conservation for system water storage in Lake Mead; and the analysis of available water supplies for delivery that does not account for unused tribal water rights.

*Tribal Creation of ICS*

ICS is the signature program for conservation in the Lower Basin, permitting water users to store water in Lake Mead for use at a future time. This program includes tribes as eligible participants, but it has been difficult for tribes to access.

During the Lower Basin DCP discussions, the ICS Exhibit proposed by the Colorado River Indian Tribes was not approved according to the processes outlined in the 2007 Interim Guidelines and the implementing agreements. Coachella Valley Water District refused to sign the Forbearance Agreement for ICS created by any tribe if the water to be stored in Lake Mead is based on a federal reserved water right. The objections were completely unrelated to the requirements for ICS creation and based on legal positions taken by Coachella in litigation with the Agua Caliente Band of Cahuilla Indians.

The CRIT ICS Exhibit had to be included in the package of DCP documents approved by Congress to become effective. We do not agree that Congressional action should have been necessary. We do not know the full impact of the Congressional action on any amendments to our Exhibit that we may want to make in the future or on the ability of any other tribe to create ICS.

The 7D review should note these difficulties.

*Pilot System Conservation Program*

CRIT participated in the PSCP signing three different System Conservation Implementation Agreements with Reclamation. We successfully negotiated agreements with Reclamation that provide for payment upon verification of the volume of water conserved and left significant volumes of water in Lake Mead over the past three years.

It is our understanding that some tribes in the basin who attempted to participate in this program were asked by Reclamation to waive their sovereign immunity from suit in order to participate. As our contracts demonstrate, this does not have to be a requirement for participation.

The 7D Review should include a review of the contract requirements for tribes to participate in conservation programs.

*Tribal Water Available for Delivery*

Water deliveries are discussed in Section 3.4 of the EIS and are part of the basis for the operational guidelines. The Guidelines do not discuss the difference between the amount of CRIT's full rights to divert or consumptively use its Decreed Allocation and the amount of water currently being consumptively used. This failure to account for all tribes' full water rights affects the accuracy of the mechanisms in place to fulfill one of the three purposes of the Guidelines: to provide "a greater degree of predictability with respect to the amount of annual water deliveries," and the planning for shortages. This was not addressed

five years later in the 2012 Basin Study, but the information is now available in the Tribal Water Study and should be part of the 7D Review.

### Conclusion

Your evaluation of the effectiveness of the Guidelines should include not only the evaluation of actions taken, but also an evaluation of the tribal water use and the affected tribal environment that was omitted. The continuing impact of these omissions is directly related to the effectiveness of the Guidelines and is limiting tribal participation in the ICS and Pilot System Conservation Programs, and casts doubt on the accuracy of the modeling of water availability for delivery to other basin water users.

Thank you for consideration of these comments. The Colorado River Indian Tribes look forward to working with Reclamation, the Basin States, and all stakeholders to develop the next steps for the Basin.

Sincerely,  


Dennis Patch  
Chairman

Xc: Tribal Council  
Rebecca Loudbear, Attorney General