



December 14, 2020

Secretary David Bernhardt
US Department of the Interior
1849 C Street, N.W.
Washington, DC 20240
(202) 208-3100

RE: Comments on Draft Report-Review of Colorado River Interim Guidelines

Dear Secretary Bernhardt:

As leaders of the undersigned Tribes within the Colorado River Basin, we are providing comments on Reclamation's Draft Report, *Review of the Colorado River Interim Guidelines for Lower Basin Shortages and Coordinated Operations for Lake Powell and Lake Mead (October 2020)*. The comments presented here build on the joint letter sent to you from 17 tribal leaders on June 27, 2020 regarding the scope and approach to the review of the 2007 Interim Guidelines (IG), with specific reference to the Draft Report and changes that we would like to see to that report as it is finalized. Although we have expressed common views in this letter, each of the undersigned Tribes reserves the right to raise individual issues of specific relevance to its own rights and interests affected in separate correspondence.

Tribes hold reserved rights to about 2.9 million acre-feet of Colorado River water, at least 20-25% of its current average annual flow—a percentage that will only increase as climate change continues to diminish overall runoff amounts and reduce lower priority uses. As such, it is imperative that tribes be included in a meaningful way in decision-making for the Colorado River in the years to come. This includes, but is certainly not limited to, participating in the development of the management framework that will replace the 2007 IG.

We were pleased to read in the Draft Report that Reclamation views tribes, along with others, as valuable partners in managing the Colorado River and developing the next management framework. As expressed on page 13 of the Draft Report: “[M]eaningfully engaging and encouraging the participation of tribes, Mexico, and NGOs was crucial to the success of the key operational decisions and studies to come about since the adoption of the Guidelines: the Basin Study, the Pilot Program, multiple Minutes to the 1944 Water Treaty, the Tribal Water Study, and the DCPs. This expanded inclusivity will continue to forge and strengthen partnerships that will be critical as we address the significant challenges ahead.”

We were also pleased to see Reclamation explicitly acknowledge on page 33 that participation of tribes in Intentionally Created Surplus “is beneficial for tribes and the Basin as a whole.” We also appreciate the observation on page 31 that “difficulties were experienced by participating tribes, which could limit their future participation in the ICS program.” As stated on page 33 of the Draft Report, “The experience with forbearance, and specifically with the unanimous consent limitation included in the Forbearance Agreement, prevented broader participation in the ICS program and likely reduced the volume of ICS that could otherwise have been created between 2008 and 2019.” However, more information should be included in the final report. In particular, all of the tribes’ difficulties associated with tribal participation in ICS should be itemized and clarified to assist tribes and others going forward, as noted on page 41.

We were pleased to see the recognition on page 35, of the contributions of tribes to “Other Programs to Create System Conservation Water.” These observations highlight the beneficial role that tribal water rights can play in addressing basin-wide interests. However, analysis of challenges to tribal participation in these conservation programs, beyond ICS, should be included in the final report. As expressed in the June 27, 2020 letter, this information would be valuable to Tribes and other leaders in the basin as they prepare to develop the next management framework.

The June 27, 2020 letter asked Reclamation to refine CRSS to better account for present and future tribal water use to improve an overall understanding of the effect of future tribal water development. We understand that Reclamation is planning a webinar to address CRSS in November 2020. This is a positive step going forward and responds to the tribal leaders request that Reclamation expand the scientific and technical resources available to Tribes to better facilitate our participation in Basin governance processes, including the development of the next management framework.

While all of these acknowledgements emphasize the benefits of tribal participation in operational decisions and programs that have emerged since the adoption of the 2007 IG, the Draft Report stops short of acknowledging that tribal interests never received strong consideration in the 2007 IG, one of the observations made by tribal leaders in the June 27, 2020 letter. The Draft Report simply states on page 10 that: “The stakeholder engagement processes and the analytical methods used during the development of the Guidelines were driven by the participation dynamics and prevailing knowledge in place at that time.” We respectfully request that Reclamation acknowledge in the final report that the lack of tribal engagement in preparing the 2007 IG limited opportunities to enhance flexibility and predictability with respect to overall water use and management in the basin.

As Reclamation prepares to develop a management framework to replace the 2007 IG, it is imperative to lay a foundation for meaningful tribal participation in that process by acknowledging in the final report on the effectiveness of the 2007 IG that tribal interests were not seriously considered in the process that produced the 2007 IG. As an expression of its federal trust responsibility, Reclamation should also acknowledge that the 29 tribes in the basin are sovereign, not mere stakeholders or water users. While the Draft Report

acknowledges on page 13 that “[t]he United States has a trust responsibility to protect federal Indian reserved water rights,” it does not explain what that means here. To meaningfully implement the trust responsibility going forward, Reclamation should acknowledge in the final report the need to sit-down with all 29 tribes in the basin and agree on what would constitute a meaningful government-to-government relationship going forward.

We thank Reclamation for its hard work in developing the Draft Report during these challenging times and look forward to being part of developing measures that will ensure the long-term health of the Colorado River and the people, animals, and economies that rely thereon.

Sincerely,

Manuel Heart, Chairman, Ute Mountain Ute Tribe

Jordan D. Joaquin, Chairman, Fort Yuma Quechan Indian Tribe

Robert Miguel, Chairman, Ak-Chin Indian Community

Austin Nunez, Chairman, San Xavier District, Tohono O’odham Nation

Sierra Pencille, Chairwoman, Chemehuevi Indian Tribe

Christine Sage, Chairman, Southern Ute Indian Tribe

Edward Velarde, President, Jicarilla Apache Nation

Postscript:

All 29 tribes in the basin were invited to participate in this joint letter. Due to the COVID-19 pandemic and other priorities, some tribes have not had an opportunity to adequately consider and take action on the joint letter. The Water & Tribes Initiative will continue to invite all 29 tribes to participate in this joint letter and will submit an amended copy of the letter as appropriate.

Copies to:

Brenda Burman, Commissioner, US Bureau of Reclamation

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