California Regional Water Quality Control Board
Colorado River Basin Region

Winston H. Hickox
Secretary for Environmental Protection

Internet Address: http://www.swrcb.ca.gov/-rwqcb7
73-720 Fred Waring Drive, Suite 100, Palm Desert, California 92260
Phone (760) 346-7491 - FAX (760) 341-6820

Gray Davis
Governor

September 25, 2000

Attn: Jayne Harkins Regional Director, Lower Colorado Region Bureau of Reclamation P.O. Box 61470 Boulder City, NV 89006-1470

RE: "COLORADO RIVER INTERIM SURPLUS CRITERIA DRAFT ENVIRONMENTAL IMPACT STATEMENT"

On July 31, 2000, the California Regional Water Quality Control Board - Colorado River Basin (Region 7) received a document entitled "Colorado River Interim Surplus Criteria Draft Environmental Impact Statement" (EIS), dated July 2000, State Clearing House Number 2000074010. The Department of Interior, Bureau of Reclamation (Bureau) developed and submitted the EIS, which presents a proposed federal action to adopt interim surplus water criteria for the Lower Colorado River Basin. Surplus water conditions are defined in the EIS as the presence of conditions within the Colorado River reservoirs that would allow the Bureau to supply the Lower Basin States (Arizona, California, and Nevada) with a quantity of water in excess of the "Law of the River" annual apportionment (2.8 million acre feet (maf), 4.4 maf, and 0.3 maf, respectively, totaling 7.5 maf). The EIS presents five alternative interim surplus water criteria for Colorado River Basin reservoirs and an environmental analysis of each alternative. The five alternatives, which are being considered for adoption by the federal government, are: (1) No Action, (2) Flood Control, (3) Six States, (4) California, and (5) Shortage Protection. The adopted criteria will be incorporated into the "Criteria for Coordinated Long-Range Operation of the Colorado River Reservoirs Pursuant to the Colorado River Basin Project Act of September 30, 1968" (Long-Range Operating Criteria (LROC)), will be used in the development of the "Annual Operating Plan" (AOP), and will be in effect through the year 2015. The predicted benefits of the proposed action are to assist the Secretary of the Department of Interior (Secretary) with decisions regarding apportionment of water within the Lower Basin States, provide an increased level of predictability of surplus conditions and quantity of available water on an annual basis, and assist with efforts to reduce California's diversion of Colorado River water to 4.4 million acre feet per year. A preferred alternative is to be selected in the future.

Region 7 appreciates the opportunity to provide comments on this proposed action and congratulates the Bureau on their efforts analyzing the environmental impacts of the five alternatives. However, the EIS inadequately addresses the affected area and water quality impacts. There are several issues that need to be considered which may assist with the comparative analyses of the proposed alternatives and the criteria selection process.

1 The proposed affected area, as defined in the EIS, is the "Colorado River corridor as defined by the 100-year flood plain and reservoir maximum water surface elevations". Such a limited area addresses only a fraction of the region that may be impacted by the proposed action and is dependent on diversions of Colorado River water for various purposes. Such an approach precludes a thorough and comprehensive assessment of the proposed alternatives. **The proposed affected** area should be expanded to include the entire region within the Lower Division States that are dependent on the Colorado River as a water supply.

California Environmental Protection Agency

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1: Off-river effects of storage and use of surplus water have been or are being addressed in existing or ongoing NEPA and/or CEQA/CESA compliance documents as appropriate. These activities are authorized by state actions, and include the Quantification Settlement Agreement PEIR, Secretarial Implementation Agreement EA, IID/SDCWA Transfer EIS/EIR, and the San Diego County HCP. The federal government does not have jurisdiciton over groundwater aquifers, recharge sites or other off-stream storage sites within the states.

Jayne Harkins

-2

September 25, 2000

2 Regarding potential water quality impacts, the Bureau assess two issues in the EIS: salinity of the Colorado River water and the water quality and contaminant concentrations in the vicinity of the Southern Nevada Water Authority intake locations on Saddle Island in Lake Mead. Once the affected area is expanded, as recommended above, additional potential water quality issues also will need to be addressed. Particular issues of concern within this Regional Board boundaries are water quality impacts of groundwater and surface waters that can be caused by a reduction of freshwater flows into the Region. The main water quality problems in this Region's surface waters (e.g., Salton Sea) are primarily associated with nonpoint source pollution (e.g., agricultural return flows). The severity of these problems, like salt concentrations in the Salton Sea and selenium concentrations in the Sea's tributaries, can be exacerbated by any reduction of freshwater inflows into the Region. Conversely, the problems can be somewhat mitigated by an increase of freshwater flows into the Sea. The EIS should address these two issues.

3 In the EIS the Bureau establishes a baseline condition, using a spill avoidance strategy referred to as 75R, at a "value for which 75 percent of the historic natural flow at Lee's Ferry is less than this **value (18.1 maf)."** The baseline condition is used in the EIS for modeling and comparative analyses of the alternatives, and is proposed by the Bureau since it closely resembles surplus criteria presently used by the Secretary. Such a strategy considers one hydrologic condition, however as illustrated in the EIS Figure 3.3-1 the annual Colorado River flows are highly variable, ranging from an approximate minimum of 5 maf to an approximate maximum of 24 maf. Establishing additional baseline conditions at extreme conditions, drought and excessively wet years, will provide a broader perspective of potential climatic scenarios and hydrologic conditions, and may assist in the criteria selection process.

4 Within the EIS there are several graphs comparing alternatives for the period from 2000 through 2050. Such graphs provide useful information. However, the 50-year timeframe requires the application of a large vertical scale, which precludes a comparative analysis of the alternatives, such as Figure 3.3-7. The Bureau should consider the benefits of two graphs one for the period 2000 through 2015 and one for the period from 2015 through 2050, and the application of a vertical scale that enables the comparison of the alternatives. As presented, due to the applied scale, there appears to be an insignificant difference between the alternatives on several issues, which may not be realistic. Additionally, the Bureau should consider the benefits of revising the vertical scale of the "Comparison of Colorado River Flow" graphs in Attachment L of the EIS.

If additional input is required I may be reached via email at grifb@rb7.swrcb.ca.gov or by phone at (760) 674-8142.

BEATRICE GRIFFEY
Associate Engineering Geologist

BG: kt

File: CR GC

California Environmental Protection Agency

Recycled Paper

2: Return flows into the Salton Sea are the subject of the Salton Sea Restoration Project EIR/EIS and specific conservation activities proposed by the Imperial Irrigation District related to the transfer of conserved water to San Diego and reduced return flows to the Salton Sea are being addressed in the forthcoming EIR/EIS. Reduction of freshwater tributary inflows into the Salton Sea is not affected by or within the scope of the federal action addressed in this EIS. Water quality of tributary inflows/return flows is regulated by the Board, California Department of Heath Services, and EPA.

3: The baseline spill avoidance strategy referred to in the comment utilizes a unique flow, for which associated effects are used to determine surplus conditions. A full range of historical flows were used to evaluate the baseline. See response to Comment No. 31-8 for a discussion of flows used for evaluation in the FEIS.

4: It is useful to depict the results for the total 50 year period of analysis on a single figure to present a complete picture of what happens during the interim surplus criteria and the ensuing 35 year period. In some instances, different presentations for the two noted periods were included when such information was thought to be appropriate. Additionally, the vertical scale is varied, where needed, to focus on the results being presented.

STATE OF COLORADO

OFFICE OF THE EXECUTIVE DIRECTOR
Department of Natural Resources
1313 Sherman Street, Room 718
Denver, Colorado 80203
Phone: (303) 866-3311
TDD: (303) 866-3543
Fax: (303) 866-2115

September 11, 2000

ACC20/000
4600

DEPARTMENT OF NATURAL RESOURCES

Bill Owens
Governor

Greg E. Walcher
Executive Director

Ms. Jayne Harkins
Attention BCOO-4600
U.S. Bureau of Reclamation
P.O. Box 61470
Boulder City, Nevada 89006-1470

Dear Ms. Harkins:

On behalf of the State of Colorado, I am writing to comment on the Bureau of Reclamation's July 2000, "Colorado River Interim Surplus Criteria Draft Environmental Impact Statement" (DEIS). The Colorado Department of Natural Resources includes the Colorado Water Conservation Board, the agency charged with promoting the protection, conservation and development of Colorado's water resources in order to secure the greatest utilization of those resources for the benefit of present and future generations. It is our mission to ensure that Colorado's water is protected for use of future generations, and that its compact obligations are enforced under the Law of the River.

1 Colorado supports the effort to develop workable interim surplus criteria for the lower Colorado River that will assist California in reducing its use of Colorado River water to its allotted 4.4 million acre-feet ("maf"). The complexity of the operations of the lower Colorado River, and the Law of the River, always make clear and concise descriptions of the background and a proposed action a challenge. In general, the DEIS fairly describes the purpose and need for the criteria and the affected environment, and analyzes an appropriate range of alternatives. It would be more clear if that section of the document specifically referred to the 4.4 Plan as the primary reason for the discussion of interim surplus criteria. In addition, there are a few significant areas in the discussions where the Law of the River and river operations have not been accurately stated:

- 2 **Use of the 75R strategy to describe the no action alternative** -- The 70R Strategy, not the 75R, has been the Colorado River reservoir operating strategy since the mid 1980's with only one exception. While the 75R strategy has been reviewed on occasion as part of the annual operating plan development, it has never been the standard and should not have been used to describe the no action alternative.
- 3 **Section 1.4.2 Glen Canyon Dam Operations** -- The discussion of Glen Canyon operations is not precisely accurate. The Colorado River Compact requires that the Upper Division States not deplete the flow at Lee Ferry below an aggregate of 75 maf for any period of 10 consecutive years (plus ½ of the Mexican Treaty delivery deficiency, if any). The 8.23 maf per year minimum objective release identified in the Long Rang Operating Criteria should not be confused with compact requirements, and this section and any others should be revised to accurately reflect what the compact requires.
- 4 cont'd below **Section 3.16.6 Preliminary Summary of Effects to Special-Status Species and Habitat in Mexico** -- We strongly disagree with the inclusion of this information, as it is beyond the scope of NEPA and ESA consultation requirements. The allocation and delivery of Colorado River

Board of Land Commissioners • Division of Minerals & Geology/Geological Survey
Oil & Gas Conservation Commission • Colorado State Parks • Soil Conservation Board
Water Conservation Board • Division of Water Resources • Division of Wildlife

1: See response to Comment 11-9.

2: The 70R strategy is used for the baseline in this FEIS. See response to Comment 57-11 for additional information.

3: Glen Canyon Dam is operated according to the LROC as discussed in Section 1.4.2. Section 1.3.3 discusses the LROC and the process for review and modification of the LROC. This EIS does not address disparities between the LROC and the Colorado River Compact. Concerns over the relationship between the Colorado River Compact and the LROC should be addressed through the LROC review process.

4: See response to Comments 22-4 and 22-10.

COMMENT LETTER

4 cont'd water to Mexico is established and controlled by international treaty. As the DEIS acknowledges, Reclamation has absolutely no control over what happens with water deliveries and to these species outside the borders of the United States. It is therefore beyond the scope of Reclamation's authority, confusing, and unnecessary to attempt to evaluate any possible effects of water deliveries to Mexico on these species. Reclamation has not included such information in other Environmental Impact Statements of comparable impact and it is inappropriate to do so here.

5 While we feel it is necessary to point out the more significant inaccuracies, they do not affect the analysis or conclusions of the DEIS, which fairly portrays the potential impacts of the possible actions. Likewise, there are a number of other statements expressed in the DEIS concerning the Law of the River with which Colorado disagrees or does not fully concur. Again, because these differences do not significantly impact the results of this DEIS, we do not see any merit in identifying them all, commenting on them or debating them in the DEIS process. Still, Colorado wants it clearly understood that its concurrence with the DEIS and its analyses does not indicate concurrence with all statements concerning the Law of the River in the DEIS. We strongly encourage Reclamation to include in the final EIS the usual disclaimer it uses to address the differences that exist with respect to the Law of the River.

6 Regarding the selection of a preferred alternative, Colorado supports the Interim Surplus Criteria developed by the seven Colorado River Basin States and noticed in the Federal Register on August 8, 2000 as supplemental information to the DEIS. These criteria are a modification of the six-state proposal described in the DEIS. The seven-state proposal is preferable to the six-state proposal set out in the DEIS because it provides the water supplies sought with an acceptable level of risk to reservoir storage. In addition, the seven-state criteria were developed using a 70R Strategy, which we believe is a more appropriate representation of the Colorado River reservoir operating strategy for the past fifteen years. The seven-state criteria were also developed using the Upper Colorado River Basin depletion schedule adopted by the Upper Colorado River Commission in December 1999, which is more up-to-date than the depletion schedule used in the DEIS. While these differences resulted in modifications and improvements to the six-state proposal discussed in the DEIS, the operation and impacts of the seven-state criteria are still within the range of alternatives and impacts analyzed in the DEIS.

Colorado worked extensively on the development of the DEIS supplemental information and is convinced that the seven-state proposal is the best alternative. We oppose the selection of any interim surplus criteria alternative that departs significantly from the seven-state proposal. Thank you for considering our comments on this very important matter.

Sincerely,

Greg E. Walcher,
Executive Director

cc:
Colorado Water Conservation Board Members
Upper Colorado River Commission Members
Colorado River Advisory Committee Members
Colorado Wildlife Commission Members

RESPONSES

5: Comment noted.

6: The preferred alternative in this FEIS is derived from the Seven States proposal. Reclamation did not structure the preferred alternative precisely as described in that draft proposal, but made some changes for consistency with the purpose and need of the proposed action, Reclamation policy and operational procedures.

COMMENT LETTER

RESPONSES

NEW MEXICO INTERSTATE STREAM COMMISSION

COMMISSION MEMBERS
RICHARD P. CHENEY, Chairman, Farmington
HAL E. ENGLE, Vice-Chairman, Rociada
THOMAS C. TURNEY, PE., Secretary, Santa Fe
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HAROLD HOUGHTALING, Jr., Lake Arthur
NARENDRA N. GUNAJI, Las Cruces

BATAAN MEMORIAL BUILDING, ROOM 101
STATE CAPITOL
POST OFFICE BOX 25102
SANTA FE, NEW MEXICO 87504-5102

(505)827-6160
FAX:(505)827-6188

SEP 11 2000

September 8, 2000

BC00 1000
4600

VIA TELEFAX AND FIRST-CLASS MAIL

Jayne Harkins
Bureau of Reclamation, BC00-4600
Post Office Box 61470
Boulder City, Nevada 89006-1470

Dear Ms. Harkins:

This letter is to provide comments of this office on the Draft Environmental Impact Statement (DEIS) issued by the Bureau of Reclamation on the proposed adoption of specific criteria under which surplus water conditions may be determined in the Lower Colorado River during the next 15 years. These comments include the information provided Reclamation from the Seven Colorado River Basin States included in the Federal Register/Vol. 65, No. 153, August 8, 2000.

1 Page 1-11 DEIS. Paragraph 1.3.2.2 states, that the Colorado River Compact apportioned to each basin, (Upper and Lower Basins), the exclusive beneficial consumptive use of 7.5 million acre-feet (maf) of water a year. No mention is made of the apportionment of an additional 1.0 maf to the Lower Basin as provided in Article III(b) of the Compact. The final EIS should include the Article III(b) apportionment.

1: Paragraph 1.3.2.2 has been revised to include language describing the Lower Basin's right to increase its consumptive use by 1 maf.

2 Page 1-11, Paragraph 1.3.2.2.1. The paragraph states that the Upper Colorado Basin Compact divided the Upper Basin's 7.5 maf apportionment between the signatory states and lists the amount to Arizona and the percentage to each of the Upper Division States, which is not an accurate statement. The Upper Basin Compact apportioned among the four Upper Division States those percentages listed in Paragraph 1.3.2.2.1 of the total quantity of consumptive use apportioned to and available for use each year by the upper basin under the Colorado River Compact and remaining after deduction of the use, not to exceed 50,000 acre-feet per annum, made in Arizona.

2: Per your comment, paragraph 1.3.2.2.1 has been modified.

3 Page 1-12, Paragraph 1.3.2.2.2. The paragraph lists apportionments to the Lower Division states totaling 7.5 maf, but does not mention that the listed apportionment, as confirmed by the U.S. Supreme Court Decree in Arizona v. California, is for only the mainstream water available for release by the United States. The final EIS should explain carefully the apportionment.

3: Per your comment, the first sentence in the first paragraph of paragraph 1.3.2.2.2 has been modified.

COMMENT LETTER

RESPONSES

Ms. Jayne Harkins
September 8, 2000
Page 2

4 This office recommends that the Interim Surplus Guidelines-Working Draft provided to the Bureau of Reclamation by the Seven Colorado River Basin states be adopted by the Bureau of Reclamation as specific criteria for determining surplus, normal and shortage conditions for a 15 year interim period ending in 2016 and for determination of 602(a) storage in Lake Powell during the interim period.

We appreciate the opportunity to provide comment on the DEIS.

Sincerely,

Thomas C. Turney, P.E.
Secretary

Philip B. Mutz
Upper Colorado River Commissioner

TCT:PBM:rav

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4: The preferred alternative in this FEIS is the Basin States Alternative which was derived from the draft Seven States Proposal. Reclamation was unable to structure the preferred alternative precisely as described in that draft proposal, but made some changes for consistency with the purpose and need of the proposed action, Reclamation policy and operational procedures.

KENNY C. GUINN, *Governor*
RICHARD W. BUNKER, *Chairman*
JAY D. BINGHAM, *Vice Chairman*
GEORGE M. CAAN, *Director*

STATE OF NEVADA

SHERI BUCK, *Commissioner*
LAMOND R. MILLS, *Commissioner*
BRYAN NIX, *Commissioner*
ROLAND D. WESTERGARD, *Commissioner*
MYRNA WILLIAMS, *Commissioner*

COLORADO RIVER COMMISSION
OF NEVADA

SEP 11 2000

BC001600

September 8, 2000

Mr. Robert W. Johnson
Regional Director
Attn: Jayne Harkins (LC-4600)
Lower Colorado Region
U.S. Bureau of Reclamation
P.O. Box 61470
Boulder City, NV 89006-1470

Re: Draft Environmental Impact Statement, Colorado River Interim Surplus Criteria

Dear Mr. Johnson:

The Colorado River Commission of Nevada, in its capacity as the Nevada state agency entrusted with the State of Nevada's interest in the Colorado River under the Colorado River Compact of 1922, has reviewed the Draft Environmental Impact Statement, Colorado River Interim Surplus Criteria, July 2000 (DES 00-25), the four alternatives discussed therein, and the supplementary material proposing a Seven Colorado River Basin States Alternative published on August 8, 2000 at 65 Federal Register 48531-48538. We endorse the comprehensive analysis contained within the Draft EIS, but recommend that the Seven Colorado River Basin States Alternative be adopted as the preferred alternative.

1

The Seven Basin States Alternative represents a solution to water management within the Lower Colorado River basin derived from the cooperative efforts of water users within the affected States, working collaboratively with the Bureau of Reclamation. It is the result of significant commitments on the part of Californians to diminish California reliance on the Colorado River and the forbearance of other Colorado River states to permit California to reach its more limited consumption objectives within a reasonable period. It contains quantitative means by which to determine whether surpluses exist, reducing subjectivity to some extent, but maintains the current process utilized annually in development of the Annual Operating Plan. We recognize that any interim surplus criteria may have some impact on power resources. We are ready to work with the BOR to minimize and mitigate potential impacts on power generation should they occur.

555 E. Washington Avenue, Suite 3100, Las Vegas, Nevada 89101-1048
Phone: (702) 486-2670
Fax: (702) 486-2695
TDD (702) 486-2698
http://www.state.nv.us/colorado_river/

1: The preferred alternative in this FEIS is derived form the Seven States proposal. Reclamation did not structure the preferred alternative precisely as described in that draft proposal, but made some changes for consistency with the purpose and need of the proposed action, Reclamation policy and operational procedures.

COMMENT LETTER

RESPONSES

Mr. Robert W. Johnson
U.S. Bureau of Reclamation

September 8, 2000
Page 2

cont'd

We recommend that the Seven Basin States Alternative be incorporated within the Final Environmental Impact Statement as the preferred alternative and that its details be analyzed pursuant to the same comparative analytical method exercised in the Draft Impact Statement with respect to the four alternatives presented therein.

Sincerely,

George M. Caan
Executive Director

Distribution
Colorado River Basin States Representatives (see attached list)

JJD:bh

COMMENT LETTER

RESPONSES

MS PATRICIA MULROY
GENERAL MANAGER
SOUTHERN NEVADA WATER AUTHORITY
1001 S VALLEY VIEW BLVD
LAS VEGAS NV 89153

MS RITA PEARSON MAGUIRE
DIRECTOR
ARIZONA DEPT OF WATER RESOURCES
500 NORTH THIRD STREET
PHOENIX AZ 85004-3903

MR D LARRY ANDERSON
DIRECTOR
UTAH DIVISION OF WATER RESOURCES
PO BOX 146201
SALT LAKE CITY UT 84114-6201

MR THOMAS C TURNEY
STATE ENGINEER
STATE OF NEW MEXICO
BATTAN MEMORIAL BUILDING ROOM 101
PO BOX 25102
SANTA FE NM 87504

JAMES S LOCHHEAD
BROWNSTEIN HYATT FARBER & STRICKLAND
PO BOX 357
GLENWOOD SPRINGS CO 81602

MR GERALD ZIMMERMAN
EXECUTIVE DIRECTOR
COLORADO RIVER BOARD OF CALIFORNIA
770 FAIRMONT AVENUE SUITE 100
GLENDALE CA 91203

MR DENNIS UNDERWOOD
METROPOLITAN WATER DISTRICT OF SO CA
PO BOX 54153
LOS ANGELES CA 90054

MR WAYNE COOK
EXECUTIVE DIRECTOR
UPPER COLORADO RIVER COMMISSION
355 SOUTH 4TH EAST STREET
SALT LAKE CITY UT 84111

TOM DAVIDSON
WYOMING ATTORNEY GENERAL'S OFFICE
123 CAPITOL BUILDING
CHEYENNE WY 82002

MR GREG E WALCHER
EXECUTIVE DIRECTOR
COLORADO DEPT OF NATURAL RESOURCES
1313 SHERMAN STREET ROOM 718
DENVER CO 80203

COMMENT LETTER RESPONSES

STATE OF NEVADA

COLORADO RIVER COMMISSION
OF NEVADA

SEP 11 2000

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September 8, 2000

Mr. Robert W. Johnson
Regional Director
Attn: Jayne Harkins (LC-4600)
Lower Colorado Region
Bureau of Reclamation
P.O. Box 61470
Boulder City, NV 89006-1470

Re: Draft Environmental Impact Statement, Colorado River Interim Surplus Criteria

Dear Mr. Johnson:

The Colorado River Commission of Nevada has received two comment letters in its capacity as designee of the Nevada Department of Administration's environmental document review Clearinghouse (Nevada SAI # E2001-005). Those two comment letters, from the Nevada Department of Transportation and the State Historic Preservation Officer, are attached.

Sincerely,

James H. Davenport
Chief, Water Division

Attachments

cc: Heather Elliott, Nevada State Clearinghouse

JHD:bh

555 E. Washington Avenue, Suite 3100, Las Vegas, Nevada 89101-1048
Phone: (702) 486-2670
Fax: (702) 486-2695
TDD (702) 486-2698
http://www.state.nv.us/colorado_river/

COMMENT LETTER

RESPONSES

INTER OFFICE MEMO

To: James Davenport, Colorado River Commission
From: Rebecca Lynn Palmer, Archaeologist
Subject: Colorado River Interim Surplus Criteria DEIS
Nevada SAI #E2001-005
Date: August 30, 2000

RECEIVED
SEP 5 2000
COLORADO RIVER COMMISSION

The Nevada State Historic Preservation Office (SHPO) has reviewed the subject document and has the following comments:

1 1. The SHPO concurs with the Bureau of Reclamation's determination that the "No action and each of the action alternatives could result in changes in the surface elevation of Lake Powell and Lake Mead and changes in release patterns and flow of the Colorado River below Hoover Dam." The SHPO also agrees that " These changes could result in changes in erosional and /or depositional processes that could affect historic properties, were such properties present" (3.13.4) As a result, the SHPO does not agree with the Bureau of Reclamation's determination that this undertaking has no potential to affect historic properties (3.13.2). By the agency's own definition, this undertaking does have the potential to affect historic properties. The probability that significant historic properties would or would not be present in the area of potential effect is not germane to this determination.

2 2. By making a determination that this undertaking does not have the potential to affect historic properties, regardless of the agency's own assertion to the contrary, the Bureau of Reclamation has precluded this agency, the public, affected Indian Tribes, and local governments from commenting on the effect of this undertaking.

3 3. The Bureau of Reclamation has emphasized the significance of archaeological and architectural resources to the exclusion of resources that could be of religious or cultural significance but contain no archaeological or architectural materials. The SHPO recommends that this document take the potential for Traditional Cultural Properties into consideration before preparing a final EIS.

4 4. The SHPO recommends that the Bureau of Reclamation obtain Advisory Council comment on the effect of this undertaking.

1: Thank you for your comments and for bringing to our attention your concerns regarding Reclamation's ongoing operation of the Colorado River. Per your request, the matter of effects to historic properties resulting from the development of Interim Surplus Criteria (ISC) has been forwarded to the Advisory Council on Historic Preservation (Council). However, because development and implementation of ISC falls within the range of ongoing operations, and because the reservoirs will continue to be operated within historic operational parameters under the baseline conditions and action alternatives, Reclamation believes that the issues you raise are better addressed under Section 110, rather than Section 106, of the National Historic Preservation Act. Reclamation is aware of its responsibilities under Section 110 for managing historic properties on lands under its jurisdiction and will commit to consulting with you, the Council, tribes, and other interested parties within that framework.

2: Your office, the public, affected Indian tribes and local governments were provided an opportunity to identify concerns for the effects of the proposal for interim surplus criteria as part of scoping and individual meetings with interested publics and the Ten Tribes, CAP Tribes, and Colorado River Tribes. Distribution of the DEIS and public hearings were another means of providing opportunity to comment on our assessment of the effects of this undertaking on cultural resources. Reclamation is also consulting with potentially affected tribes on a government-to-government basis to understand and address their concerns. Reclamation will stand by its determination of effect of this action on historic properties and will refer our disagreement to the Advisory Council for further comment and consultation.

3: Resources of religious or cultural significance are Traditional Cultural Properties included in our definition of historic properties in Chapter 3.13.1.

4: Reclamation has referred the SHPO and Reclamation's disagreement to the Council for comment and further consultation.

COMMENT LETTER RESPONSES

STATE OF NEVADA
DEPARTMENT OF TRANSPORTATION
1263 S. Stewart Street
Carson City, Nevada 89712

KENNY C. GUINN
Governor

August 3, 2000

TOM STEPHENS, P.E., *Director*

In Reply Refer to:

RECEIVED
AUG 10 2000
COLORADO RIVER COMMISSION

JAMES DAVENPORT
555 E WASHINGTON AVE
STE 3100
LAS VEGAS NV 89101

PSD 7.01

Dear Mr. Davenport:

The Nevada Department of Transportation has reviewed the project titled: DEIS for the Colorado River Interim Surplus Criteria, SAI# E 2001-005.

5 Based on the information submitted there are no conflicts with Nevada Department of Transportation projects, plans or policies.

Thank you for the opportunity to review this project.

Sincerely,

Thomas J. Fronapfel

Thomas J. Fronapfel, P.E.
Assistant Director-Planning

TJF:TM:nc

cc: Heather Elliott, Nevada State Clearinghouse

5: Comment noted.

COMMENT LETTER

RESPONSES

State of New Mexico
ENVIRONMENT DEPARTMENT
Office of the Secretary
Harold Runnels Building
1190 St. Francis Drive, P.O. Box 26110
Santa Fe, New Mexico 87502-6110
Telephone (505) 827-2855
Fax: (505) 827-2836

GARY E. JOHNSON
GOVERNOR

PETER MAGGIORE
SECRETARY

AU 21 00

PAUL R. RITZMA
DEPUTY SECRETARY

BC00/000
BC00 4600

August 16, 2000

Regional Director
Lower Colorado Region
Attn.: Jayne Harkins (LC-4600)
Bureau of Reclamation
P.O. Box 61470
Boulder City
Nevada 89006-1470

Dear Ms. Harkins:

RE: DRAFT ENVIRONMENTAL IMPACT STATEMENT FOR THE COLORADO RIVER INTERIM SURPLUS CRITERIA

This transmits New Mexico Environment Department (NMED) comments concerning the above-referenced Draft Environmental Impact Statement (DEIS).

The DEIS describes alternatives for managing water stored in Lakes Mead and Powell. The alternatives are criteria for determining whether a surplus of water is stored in either of the reservoirs. Identification of a surplus may trigger a release, and the timing and nature of releases may influence surface water resources including aquatic life downstream of Glen Canyon Dam.

1 The NMED concurs with the Bureau of Reclamation that it is appropriate that, because operation of upper basin reservoirs (upstream of Lake Powell) is independent of Lake Powell, the "northern [upstream] limit of the potentially affected area under consideration in this DEIS is the upper reaches of Lake Powell" (DEIS, p. 3.2-1). The affected area is therefore beyond the jurisdiction of the NMED.

1: Comment noted.

We appreciate the opportunity to comment on this document. Please let us know if you have any questions on the above.

Sincerely,

Peter Maggiore

PETER MAGGIORE
SECRETARY

NMED File No. 1382ER

State of Utah
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF WATER RESOURCES

Michael O. Leavitt
Governor
Kathleen Clarke
Executive Director
D. Larry Anderson
Division Director

1594 West North Temple, Suite 310
PO Box 146201
Salt Lake City, UT 84114-6201
801-538-7230
801-538-7279 (Fax)

SEP 11

BCOO/BCOO
4600

September 6, 2000

Ms. Jayne Harkins
Attention BCOO-4600
P.O. Box 61470
Boulder City, Nevada 89006-1470

Ms. ~~Harkins~~ Jayne:

Thank you for the opportunity to comment on the Draft Environmental Impact Statement (DEIS) and supplemental information on the "*Colorado River Interim Surplus Criteria*". This important issue is of vital concern to Utah and all of the Colorado River Basin States.

1 While Utah recognizes the Lower Colorado River Basin's (in particular California's) demand for water exceeds their Compact apportionment, we have long been concerned that little was being done in California to manage its demand for Colorado River water. It is with hope that we see the development of Interim Surplus Criteria as a way to provide California and the Lower Basin an opportunity to put in place demand management constraints that will allow the Lower Basin to live within its compact apportionment, while providing California with a higher degree of certainty of keeping the Metropolitan Water District aqueduct full for the next 15 years. All of the Basin States and the Department of Interior (DOI) are to be congratulated for their earnest efforts in cooperating on this issue and attempting to develop an acceptable solution.

As in many issues dealing with the Colorado River, technical answers are far easier to obtain than acceptable solutions. In dealing with interstate and federal/state issues on the Colorado River, political compromise and consensus is, along with technical knowledge, the only way to obtain a workable solution. With this in mind, I would like to address a disconcerting premise in the No Action/Baseline alternative of the DEIS.

2 The DEIS states "*In order to follow the Council on Environmental Quality (CEQ) guidelines calling for No Action alternative for use as a "baseline" against which to compare project alternatives, the Bureau of Reclamation selected a specific operating strategy that represents possible future operating conditions in the absence of interim surplus criteria . . .*" (Paragraph 3 of page S4 of the DEIS). The No Action/Baseline strategy wrongly selected by the Department of Interior was 75R. Without getting into the technical merits of a 75R versus a more conservative 70R strategy, I would point out that prior to the start of the Interim Surplus Criteria process, the 70R strategy was the political compromise accepted by the Seven Colorado River Basin States as part of the Annual Operating Plan (AOP) development process. For the DOI to

Providing customer service for Water Resources planning, development and conservation.

1: Comment noted.

2: The 70R strategy is used for the baseline in this FEIS.

Ms. Jayne Harkins
September 6, 2000
Page 2

cont'd choose any other baseline than 70R is unacceptable and raises questions of trust and hidden agendas. We understand this baseline was an error and will be corrected in the final document. Utah requests the No Action/Baseline alternative be rewritten using a 70R strategy to reflect the historic process that has been use by the Department of Interior and the Seven Colorado River Basin States in developing the Annual Operating Plan each year.

3 In the spirit of cooperation and consensus, the Seven Basin States have recently developed and presented the "Seven Basin States Interim Surplus Guidelines" (Guidelines), as requested by the Secretary of Interior in his keynote address at the December 1999 Colorado River Water Users Workshop in Las Vegas. The Secretary indicated he would use the states Guidelines to administer the Lower Colorado River Basin water supply during the next 15 years if the states could develop a consensus position. The Guidelines have been painstakingly developed and are the result of much effort and compromise of all the parties. The Guidelines have been published in the Federal Register (August 8, 2000, page 48531). These Guidelines include: 1) protection of Upper Colorado River Basin Water Users, 2) protection of water levels in Lake Powell, 3) and enforceability of California's commitment to manage demand to 4.4 million acre-feet per year of Colorado River Water. These three items are critical for Utah's and the other basin states support of the new Interim Surplus Criteria.

Utah feels the Guidelines fit within the range of the alternatives evaluated as part of the DEIS. It is Utah's full expectation the Guidelines will be adopted by the Secretary of Interior in his Record of Decision. Given how hard it is to craft a compromise and develop support for these issues on the Colorado River, the "Seven Basin States Interim Surplus Guidelines" must not be ignored; and the Secretary of Interior needs to fulfill his promise to implement the Guidelines developed by the states as the preferred alternative in the Final EIS.

Thank you,

D. Larry Anderson

D. Larry Anderson, P.E.
Director

cc: Governor Michael O. Leavitt
Upper Colorado River Commission
Seven Basin States

3: The preferred alternative in this FEIS is the Basin States Alternative which was derived from the draft Seven States Proposal. Reclamation was unable to structure the preferred alternative precisely as described in that draft proposal, but made some changes for consistency with the purpose and need of the proposed action, Reclamation policy and operational procedures. Reclamation's detailed description of the Basin States Alternative is in Attachment I.

JIM GERINGER
GOVERNOR

State Of Wyoming
Office of Federal Land Policy

ART REESE
DIRECTOR

SEP 13 2000

September 8, 2000

BC001000
4600

Mr. Robert Johnson, Regional Director
Lower Colorado Region
c/o Ms. Jayne Harkins, BC00-4600
Lower Colorado Regional Office
Bureau of Reclamation
P.O. Box 61470
Boulder City, Nevada 89006-1470

Dear Mr. Johnson:

On behalf of the State of Wyoming, this Office has reviewed the Draft Environmenal Impact Statement for the Colorado River Interim Surplus Criteria. We also provided the information to all affected State agencies for their review, in accordance with State Clearinghouse procedures. Under separate cover I believe you received a letter from the Wyoming State Engineer's Office. I have enclosed a copy of that letter for your convenience.

State agency comments are specific to their respective agency missions. While the State defers to their respective technical expertise in developing a unified State position, the responsibility to ultimately articulate the official state policies and positions lies with the Governor or the Office of Federal Land Policy. However, having said that, in this particular case, we defer to the very able technical expertise of the State Engineer's Office. They have been active in the process since its inception and will continue to be involved.

This Office will require two copies of future information and documents regarding this project for continued distribution and review.

The State of Wyoming appreciates the opportunity to comment.

Sincerely,

Julie L. Hamilton

Julie L. Hamilton
Assistant Director

Enclosure (1)

Herschler Building 1W ◆ 122 W. 25th Street ◆ Cheyenne, Wyoming 82002-0060
Phone (307) 777-7331 ◆ Fax (307) 777-3524

State Engineer's Office

HERSCHLER BUILDING, 4-E CHEYENNE, WYOMING 82002
(307) 777-7354 FAX (307) 777-5451
seoleg@state.wy.us

JIM GERINGER
GOVERNOR

RICHARD G. STOCKDALE
ACTING STATE ENGINEER

August 28, 2000

Mr. Robert Johnson
Regional Director, Lower Colorado Region
c/o Ms. Jayne Harkins, BC00-4600
Lower Colorado Regional Office
Bureau of Reclamation
P.O. Box 61470
Boulder City, Nevada 89006-1470

Re: Transmittal of Comments on the Colorado River Interim Surplus Criteria Draft Environmental Impact Statement, DES 00-25, filed July 7, 2000

Dear Mr. Johnson:

The Wyoming State Engineer's Office has reviewed the subject draft Environmental Impact Statement (DEIS) and supplemental information provided by the Bureau of Reclamation. As you are aware, the State Engineer's Office is quite supportive of the development of interim surplus criteria and has been an active participant in the deliberations and dialogue concerning this important matter. These comments are specific to this agency's statutory mission which includes the preservation of Wyoming's water allocations to safeguard the State's current and future water supplies. In that regard, our comments, along with those of other agencies who review and comment on the subject document, are meant to assist in defining the official State position. Accordingly, the following comments defer to and are subordinate to the official State Position which will be forthcoming by the close of the public comment period.

In our letter of June 30, 1999, this office responded to the May 18 and May 29, 1999 Federal Register notices advising of Reclamation's consideration of development of interim operating criteria. In that letter, we noted our support for the development of both surplus and shortage criteria and we noted our prior recommendation to the Secretary that the development of surplus and shortage criteria for the interim period be incorporated into the ongoing and well established AOP development process. Our letter expressed concerns about the scope, commitment of resources, usefulness and time schedule associated with preparation of a National Environmental Policy Act (NEPA) document for Reclamation's development effort. The subject DEIS does not contain a preferred alternative and has been delayed far beyond the original schedule publicized during the scoping meetings (that schedule specified "agency/public review and comment – January through March 2000"). The DEIS unfortunately does not address

Surface Water (307) 777-7354 | Ground Water (307) 777-6163 | Interstate Streams (307) 777-6150 | Board of Control (307) 777-6178

Wyoming State Engineer's Comments on the Colo. River Interim Surplus Criteria Draft EIS
August 28, 2000
Page 2

shortage criteria with the exception that shortage "triggers" are embodied in certain of the surplus alternatives. Clear and concise explanations, beyond generalized statements, of the impacts and the relative differences on affected resources of the alternative analyzed are difficult to find in the DEIS.

While we feel that the document has a number of shortcomings that result from the wide-sweeping approach taken, the impact of the various alternatives and no preferred alternative being set forth, we are hopeful that the supplementary information published in the Federal Register on August 8th will be most helpful in crystallizing a preferred alternative and moving this important effort forward. The Wyoming State Engineer's Office continues to be supportive of implementing interim surplus operating criteria and urge Reclamation to expeditiously prepare the Final EIS and issue its record of decision as soon as practical.

The Wyoming State Engineer's Office offers the following specific comments on this draft environmental impact statement.

1 Page S-3, 3rd, 4th and 11th lines of "The California Colorado River Water Use Plan" - references to the California Colorado River Water Use Plan as the "California 4.4 Plan" or the "4.4 Plan" should be to the "California Colorado River Water Use Plan which was formerly known as the California 4.4 Plan."

2 Page S-6, Heading S.2.6, 6th line - The word "may" needs to be changed to "will" in this line. The sentence which begins on the previous line therefore would read: "The continuation of the interim surplus criteria through 2015 will be contingent upon satisfactory progress.

3 cont'd Page S-8, S.3.4, 2nd paragraph - This paragraph states: "Mexico would receive its Treaty apportionment of Colorado River water under baseline conditions and all alternatives. The average probability of Mexico receiving its surplus entitlement of 200,000 af during any given year of the interim surplus criteria period is highest under the Flood Control Alternative (approximately 37 percent). The lowest average probability occurs under the shortage protection alternative (approximately 30 percent). The average probabilities of surplus deliveries to Mexico during any given year of the interim surplus criteria period under the baseline conditions and the Six States and California alternatives are 34, 32 and 30 percent, respectively." We note that these summary statements regarding the availability of surplus water for Mexico (the additional 200,000 af when there exists a surplus of waters of the Colorado River in excess of the amount necessary to satisfy uses in the United States) appear to be inconsistent with the statement found near the end of Section 1.1.4 on page 1-4 which reads: "This proposed action is not intended to identify conditions when Mexico may schedule this additional 0.2 maf (emphasis supplied). Reclamation is currently engaged in discussions with Mexico through the IBWC on the effects of this action."

Further, these summary statements relating the probability of occurrence of surplus water for Mexico seem to imply that the DEIS and its underlying hydrological simulation studies have

1: References to California's draft Colorado River Water Use Plan (CA Plan) have been corrected to distinguish it from their previous draft "4.4 Plan" where appropriate in the FEIS.

2: The Secretary's decision to continue interim surplus criteria within the 15-year interim period would be based on a number of factors which may include satisfactory progress towards meeting the goals of California's Colorado River Water Use Plan. Please refer to the response to Comment 33-3.

3: See response to Comment No. 11-13, regarding additional water deliveries to Mexico. This FEIS does not identify conditions for such deliveries.

Wyoming State Engineer's Comments on the Colo. River Interim Surplus Criteria Draft EIS
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Page 3

3 cont'd

prejudged that there would be Colorado River surplus waters in excess of the amount necessary to satisfy uses in the United States. The intent of the interim surplus operating criteria was set forth in the May 18, 1999 Federal Register notice (64 FR 27008 et seq.) as being:

> "Summary: The Department of the Interior, Bureau of Reclamation ("Reclamation") is considering development of specific criteria that will identify those circumstances under which the Secretary of the Interior ("Secretary") may make Colorado River water available for delivery to the States of Arizona, California and Nevada (Lower Division States or Lower Basin) in excess of the 7,500,000 acre-foot Lower Basin apportionment."

In the "Supplementary Information" section on page 27009, the Notice stated:

> "In recent years, demand for Colorado River water in Arizona, California, and Nevada has exceeded the Lower Basin's 7,500,000 acre- foot basic apportionment. As a result, criteria for determining the availability of surplus has become a matter of increased importance. Under these circumstances, the Secretary believes that it may be prudent to develop specific criteria that will guide the Secretary's annual decision regarding the quantity of Colorado River water available for delivery to the Lower Basin States.

The "Summary" section of the May 28, 1999 *Federal Register* notice regarding the public meetings on the development of Surplus Criteria for Management of the Colorado River contained the same wording cited above. We suggest, based on the above, that Reclamation should recognize the intent expressed in the *Federal Register* statements and the wording found on page 1-4 and therefore revise by excluding the discussion of the additional water deliveries to Mexico in the Final Environmental Impact Statement for this proposed action.

4

Page 1-11, 3rd paragraph, 1st line - "Section VII" should be changed to "Article VII" in order to be consistent with the wording in the remainder of this section and with the wording of the Colorado River Compact.

4: The suggested edit was included in the FEIS.

5 cont'd below

Page 1-12, Section 1.3.2.2.2, middle of the paragraph - Herein a sentence is found which reads: "The apportionments to the Lower Basin were established by the BCPA and confirmed by the Decree." This statement is technically incorrect. Milton N. Nathanson, in *Updating the Hoover Dam Documents*, (United States Department of the Interior, Bureau of Reclamation, United States Government Printing Office, Denver, Colorado, 1978) wrote on pages 8 and 9 of this book prepared by Reclamation that:

> "Section 4(a) of the Boulder Canyon Project Act authorized the Lower Basin States of Arizona, California and Nevada to enter into an agreement providing that of the 7.5 maf/yr annually apportioned to the Lower Basin by Article III(a) of the Compact there shall be apportioned to Nevada, 300,000 acre-feet annually …

5: Comment noted.

COMMENT LETTER

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Wyoming State Engineer's Comments on the Colo. River Interim Surplus Criteria Draft EIS
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The three State apportionment was never agreed upon by the Lower Division States despite negotiations in 1929 and 1930. However, the Supreme Court Opinion of June 3, 1963, in *Arizona v. California* (373 U.S. 546) concluded that Congress had made such an apportionment by authorizing the Secretary to accomplish this division. This was done by the Secretary's contracts for the delivery of water in the Lower Basin States and by providing (Section 5) that no person could have the use of Colorado River water without a contract with the Secretary for permanent service."

6 Page 1-14, Section 1.3.3, 3rd line - The text states that the LROC "address the operation of the Colorado River reservoirs ..." Reference to the second sentence of the LROC (Attachment A) will clarify that "They are to control the coordinated long-range operation of the storage reservoirs in the Colorado River Basin ..." Accordingly, the word "address" should be changed to "control" or "govern."

7 Page 1-15, second line - Similar to the comment offered immediately above, the word "addressed" is inappropriately used in discussing the LROC provisions regarding equalization of storage between Lakes Powell and Mead. The LROC use the word "shall" and hence the word "addressed" should be changed to "prescribed" or "mandated."

8 Page 1-16, Section 1.3.5, first line - We suggest inserting the word "federal" after "numerous" and before "reservoirs" in order to clarify this sentence. The aggregate storage capacity of all reservoirs in the Colorado River system would be much greater than this sentence indicates.

9 Page 1-20, Section 1.3.6, last sentence - Please clarify the sentence which reads: "Reclamation has the responsibility to maintain the floodway." What does "maintain" mean in the context of this sentence and this section of the DEIS?

10 Page 1-21, Section 1.4.1 - We suggest that references herein to the California 4.4 Plan or the 4.4 Plan make clear that the California Colorado River Water Use Plan was formerly referred to as the 4.4 Plan and due to the inaccuracy of this term it is no longer used.

11 cont'd below Page 1-22, Section 1.4.1, 2nd full paragraph, 6th line - The choice of the word "may" in the sentence stating: "Therefore, regardless of which alternative is ultimately selected, failure of California to carry out the 4.4. Plan (sic) <u>may</u> result in termination or suspended application of the 15-year interim surplus criteria and reversion to the current system of surplus determinations that are made through the AOP process (emphasis supplied)." The word "may" must be changed to "will." In the following sentence, which reads: "Therefore, the Secretary <u>may</u> condition the continuation of interim surplus criteria for the entire period through 2015 on a showing of satisfactory progress in implementing the 4.4 Plan (sic) (emphasis supplied)." In this sentence, the word "may" must be changed to "will." A fundamental tenet of the willingness of Wyoming and other Colorado River Basin states to concur with the interim surplus operating criteria is enforcement of timely implementation of the California Colorado River Water Use Plan. This

6: The suggested edit was included in the FEIS.

7: The word "addressed" was changed to "included", since the requirement is included in the LROC.

8: Comment noted. The wording was not modified in the FEIS.

9: The Secretary of the Interior and Reclamation has the responsibility to conduct reviews of the floodway mapping at 5-year intervals, annually inspect the floodway to determine if any encroachment is occurring, and perform other activities. The activities for Reclamation and other federal entities as recommended to Congress are reported in the "Final Report of the Secretary of the Interior to the Congress of the United States on the Colorado River Floodway Protection Act", dated October 1992.

10: Comment noted. The term 4.4 Plan is no longer used to refer to California's current plan.

11: Comment noted. The term 4.4 Plan is no longer used to refer to California's current plan.

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11 cont'd wording, repeated in this document several places, without clarification is troubling and is inconsistent with Secretary Babbitt's pronouncements, negotiations among the seven Colorado River Basin States and understandings reached between the Department of Interior and the seven Colorado River Basin States over a period of numerous years.

12 Page 2-1, Section 2.2.1.1 - The description that is found in this section of the spill avoidance or "R" strategy provides a well-worded and concise description of the strategy.

13 Page 2-3, Section 2.2.3, 1st paragraph, 5th line - We suggest that the word "under" that appears after "criteria" be changed to "within."

14 Page 2-5, Section 2.3, 2nd paragraph - This paragraph states: "As noted above, the 75R operating strategy is not presented as an alternative for adoption. If an interim surplus criteria alternative is not implemented, it is presumed that the Secretary would determine surplus conditions using the same dynamic considerations currently used in the Secretary's annual determination (in the AOP), as discussed previously." While this is certainly the easiest and cleanest assumption that could be made for purposes of this DEIS, it does not seem to this office that this scenario is very likely. This assumption, as embodied in the above cited statement, ignores the fact that the Colorado River Management Work Group has discussed and has initiated several faltering attempts to develop more specific surplus and shortage operating criteria during the course of its work and discussions. The need for more specific criteria has been on the table for a number of years at this point in time. We would suggest that this wording be revised to indicate the difficulty in speculating what would be developed as the more specific criteria to be used for making surplus determinations and therefore, on that basis, it is presumed that the Secretary would determine surplus conditions using the same dynamic considerations currently used.

15 Page 2-9, Section 2.3.3.2, 1st paragraph - As acknowledged later in the text (page 2-10) the Six States alternative proposed that Tier 1 would be established by the "70R Line," NOT the "75R Line" as stated in the text in the 3rd line from the bottom of the page.

16 Page 2-10, Section 2.3.3.2.1, 3rd line - Same comment as immediately above, i.e., the Six States Alternative Tier 1 was based on the "70R line," NOT the "75R line" as stated here in the text.

17 Page 2-10, Section 2.3.3.2.1, 2nd paragraph - The text correctly states in the first sentence of this paragraph that: "It should be noted that the original Six State Plan uses the 70R strategy as the Tier 1 trigger" The second sentence states: "However, for modeling consistency with the baseline, the 75R strategy was used in this analysis for the Six States Alternative Tier 1 trigger." We request clarification about why it is necessary to have "modeling consistency" with the baseline. What does "modeling consistency" mean as used in this sentence. Certainly other questions could be asked about consistency regarding what was done with the other alternatives. The 70R and 75R strategies have an assumed annual runoff that varies by 800,000 acre-feet.

12: Comment noted.

13: The change was made.

14: Comment noted.

15: See response to Comment 37-8.

16: See response to Comment 37-8.

17: Comment noted. See response to Comment 37-8.

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18 Page 3.3-3, Section 3.3.1.2, 1st line - We suggest that the words "and pumping from Lake Mead" be added after "annual releases" and before "of at least 7.5 maf" in this first sentence of this paragraph. Without this clarification, the sentence is technically incorrect.

19 Page 4-3, Section 4.4, 1st full paragraph, 7th line - As commented on above, we object to the use of the word "may" and feel that it must be changed to "will" in the sentence beginning in the 5th line of this paragraph. The seven state negotiations over the past several years have been based on the principle that if the State of California fails to meet its water conservation and management goals throughout the stipulated term of implementation of the criteria, the Secretary will terminate the interim surplus criteria and operations will revert to the present manner of determining whether a surplus water supply condition exists.

20 Page 5-1, Section 5.2, 1st paragraph - Change the word "on" to "in" in front of "Colorado River operations."

21 Page REF-22, middle of the page - There is a problem with a missing line space between the citation for "Sogge, et al." and "Thwaites." There is an extra line space that should be removed between "Unitt" and "USBR."

22 Page LOP-3 - Is it Barbara "Ralston" or Barbara "Raulston" in the middle of this page?

23 Attachment A cover page - the use of the word "guidelines" in the 3rd line of the paragraph on this cover page inappropriately understates the import and effect of the LROC. We would suggest a wording revision that eliminates use of this word.

24 Attachment A, page 2, last line "releases" should be "released."

25 Attachment I, Detailed Modeling Documentation - We are disappointed to note that documentation of the modeling was deferred to the FEIS and that the reader is merely referred to Section 3.3.3.3 by the text on the cover-page of this Attachment. We presume that there will be sufficient opportunities to learn more about the details at the August 15, 2000 modeling meeting that is being held in Las Vegas, Nevada. Perhaps Reclamation will hear from interested reviewers and the Basin States at that meeting the sorts of descriptive information that will be most useful to include in Attachment I when it is prepared for the FEIS.

26 Attachment P, entitled "Public Scoping Process," page 1, next to last paragraph - The first sentence of this paragraph states: "Two notices were published in the Federal Register regarding the proposed reallocation of Colorado River water." We believe that the choice of the words "proposed reallocation of Colorado River water" is both unfortunate and inaccurate. The adoption of more specific surplus criteria that will be applied during the interim period to make surplus determinations is not properly characterized, in our view, as a reallocation of Colorado River water. We request that this wording be changed to more specifically state the effect of the proposed action.

18: The first sentence of the first paragraph in Section 3.3.1.2 has been changed to read as follows - Hoover Dam is managed to provide at least 7.5 maf annually for consumptive use by the Lower Division states plus the United States' obligation to Mexico.

19: The Secretary's decision to continue interim surplus criteria within the 15-year interim period would be based on a number of factors which may include satisfactory progress towards meeting the goals of the California Colorado River Water Use Plan. See Attachment I.

20: Comment noted.

21: Comment noted. Change made in FEIS.

22: Correction has been made. "Raulston" is the correct spelling.

23: Comment noted. The change has been made.

24: The change was made.

25: Attachment I was prepared following the publication of the DEIS. Copies of Attachment I were made available to the public at the technical presentation on August 15, 2000, at all the public hearings, and as requested by mail. The Detailed Modeling Documentation is Attachment J to the FEIS.

26: The sentence has been corrected with wording that better matches the Federal Register Notice: "development of surplus criteria for management of the Colorado River."

COMMENT LETTER

RESPONSES

Wyoming State Engineer's Comments on the Colo. River Interim Surplus Criteria Draft EIS
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Page 7

27 Attachment P, page 2, Table 1 - The reference to "Las Vegas, CA" in the second column should be to "Las Vegas, NV."

28 Attachment P, pages 5-10, which encompass "Table 2" - this representation of the comments that were received during the scoping meetings and in response to the request for comments is exceedingly weak in our evaluation. The great lack of detail and extreme generalization associated with this format for describing and characterizing the comments that were received during the scoping process makes the presentation of this information of very little value. This section also fails to describe how the comments were used in any manner in the preparation of the DEIS, which is disappointing to our agency, who participated in one of the public meetings and provided a comment letter.

Thank you for the opportunity to submit these comments on the Colorado River Interim Surplus Criteria Draft Environmental Impact Statement. Should you have any questions, please don't hesitate to contact me at (307) 777-6151 or via e-mail at jshiel@state.wy.us. We look forward to expeditious preparation of the final environmental impact statement and the execution of the record of decision that will allow the implementation of interim surplus criteria for making surplus water determinations in the Secretary's Colorado River Annual Operating Plan during the interim period.

With best regards,

/s/

John W. Shields
Interstate Streams Engineer

cc: Seven Colorado River Basin States Representatives
Wayne Cook, Upper Colorado River Commission

27: This change has been made in the document.

28: Table 2 is intended as a summary of the comments received. The specialists working on this EIS were provided with complete sets of the comment letters and with transcripts of the scoping meetings.

TRIBES

AGUA CALIENTE BAND OF CAHUILLA INDIANS

SIX HUNDRED
EAST TAHQUITZ CANYON WAY
PALM SPRINGS
CALIFORNIA
92262
TELEPHONE
(760) 325-3400
FAX
(760) 325-0593

SEP 11 2000

BC00/BC
4600

September 8, 2000

Via Facsimile 702/293-8042
and First Class U.S. Mail

Regional Director
c/o Jayne Harkins, BC00-4600
Lower Colorado Regional Office
Bureau of Reclamation
P.O.Box 61470
Boulder City NV 89006-1470

RE: Colorado River Interim Surplus Criteria Draft Environmental Impact Statement

Dear Ms. Harkins:

Thank-you for the briefing on the Colorado River Interim Surplus Criteria Draft Environmental Impact Statement on August 30, 2000, at the Morongo Indian Reservation. Unfortunately, this meeting was scheduled much too late in the planning and development process to have allowed the Tribe the meaningful opportunity to evaluate the impacts of this plan and to have had our concerns addressed in the draft report. For this reason, it is our position that the Bureau of Reclamation has failed in its duty to act responsibly to protect and maintain Indian Trust Assets in potentially impacted areas of this project plan. The Agua Caliente's off-Reservation interests and concerns have not and yet must be taken into account because of the project's potential to directly, indirectly, and cumulatively affect water quality and quantity on the Reservation. The Bureau of Reclamation has failed to demonstrate that it has taken every precaution and measure to insure the protection of the Agua Caliente Indian Reservation from adverse affects of this project in a shared and unadjudicated aquifer system. Furthermore, the Bureau of Reclamation has shamefully neglected to enter into to serious government-to-government consultations with all potentially affected Tribes in the Coachella Valley. The Bureau is in direct violation of official Federal Policy pursuant to the following authorities: 1

1a

1. Executive Order No. 13084: consultation and Coordination with Indian Tribal Governments (May 14, 1998); and

1: Metropolitan Water District of Southern California (MWD) and the Coachella Valley Water District (CVWD) have and are currently storing portions of their basic and surplus apportionments of Colorado River water for intrastate purposes but the U.S. has jurisdiction over reserved Tribal water. Intrastate storage (e.g. groundwater storage) activities/facilities are not within Reclamation's jurisdiction, and thus does not permit nor follow the water for environmental compliance purposes once delivered to a water user's point of diversion. The federal government does not have jurisdiction over groundwater aquifers, recharge sites or other off-stream storage sites within the states. Ongoing or new groundwater storage projects would be regulated by state and local regulations and compliance requirements under CEQA, California Water Control Board, and the California Department of Health Services. The Coachella Valley Water District's water management plan and the related state permitting process are probably where the Tribes will find the best available information. Reclamation has the authority to deliver water only to the diversion point along the mainstem Colorado River.

1a: Reclamation respectfully believes that appropriate consultation with Indian Tribal Governments occurred with respect to the development of Interim Surplus Criteria. A full listing of the consultations during the development of the Interim Surplus Criteria is found in Section 5.4.

COMMENT LETTER

RESPONSES

1a cont'd

2. The President's Memorandum on Government-to-Government Relations with Native American Tribal Governments, 59 Fed. Reg. 22,951 (April 29, 1994)

2 In view of the above critical issues, and the Tribe's inherent sovereign authority and interest in managing its water resources on the Reservation, we have evaluated the proposed alternatives and Draft Environmental Impact Statement as, "insufficient and seriously flawed." We strongly urge the Bureau's consideration of effects to Tribal Trust Lands in the Coachella Valley Watershed particularly in regards to groundwater banking.

3 In the future, we expect to be kept fully appraised through formal consultation of the progress and redraft of this report and to receive three (3) copies of the Final Environmental Impact Statement. The Tribe is not simply a stakeholder or member of the public, but a sovereign owed a duty of trust and is entitled to full participation in the consultation process.

We appreciate your cooperation and look forward to hearing from you.

Very truly yours,

Richard M. Milanovich
Chairman, Tribal Council
AGUA CALIENTE BAND OF CAHUILLA INDIANS

C: Tom Davis, Planning Director
Michael Kellner, Natural Resource Manager

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2: Reclamation respectfully disagrees and does not believe that the DEIS is flawed. Further, see response to Comment 48-1, and 48-1a.

3: Comment noted. The mailing list has been changed to reflect the need of three copies.

COMMENT LETTER | RESPONSES

The Great Spirit created Man and Woman in his own image. In doing so, both were created as equals. Both depending on each other in order to survive. Great respect was shown for each other; in doing so, happiness and contentment was achieved then, as it should be now.

The connecting of the Hair makes them one person; for happiness or contentment cannot be achieved without each other.

The Canyons are represented by the purples in the middle ground, where the people were created. These canyons are Sacred, and should be so treated at all times.

The Reservation is pictured to represent the land that is ours, treat it well.

GREAT SEAL OF HUALAPAI TRIBE 1883 PEACH SPRINGS, ARIZONA

The Reservation is our heritage and the heritage of our children yet unborn. Be good to our land and it will continue to be good to us.

The Sun is the symbol of life, without it nothing is possible - plants don't grow - there will be no life - nothing. The Sun also represents the dawn of the Hualapai people. Through hard work, determination and education, everything is possible and we are assured bigger and brighter days ahead.

The Tracks in the middle represent the coyote and other animals which were here before us.

The Green around the symbol are pine trees, representing our name Hualapai - PEOPLE OF THE TALL PINES -

HUALAPAI NATION
OFFICE OF THE CHAIRWOMAN
P.O. Box 179 • Peach Springs, Arizona 86434 • (520) 769-2216

Louise Benson
Chairwoman

Carrie Imus
Vice Chairwoman

September 8, 2000

VIA FACSIMILE No. (702) 293-8042

BC00/ECR

Regional Director
Lower Colorado Region
c/o Jayne Harkins
BC00-4600
Bureau of Reclamation
PO Box 61470
Boulder City, NV 89006-1470

Re: Colorado River Interim Surplus Criteria Draft Environmental Impact Statement ("DEIS")

Dear Ms. Harkins:

On behalf of the Hualapai Tribe, I submit for the record the enclosed comments on the Colorado River Interim Surplus Criteria DEIS. As explained in the comments, the Hualapai Tribe has serious concerns about the impacts of the proposed criteria on the Tribe's ability to utilize its Colorado River water rights, on its economic development, and on its cultural resources.

Because the impacts of the proposed criteria on the Hualapai Tribe would be significant and because the Bureau of Reclamation ("Reclamation") and the Department of Interior ("DOI") have a trust duty that requires consultation with the Hualapai Tribe and protection of our water rights and other resources, we urge Reclamation and DOI to:

1. **Immediately commence quantification of our Colorado River water rights and complete quantification early in the implementation of the interim surplus criteria and prior to the first five year review of the interim surplus criteria;**

2. **Revise the DEIS to include analysis of the impacts on the Hualapai Tribe's water rights;**

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3. **Revise the DEIS to include analysis of the socioeconomic impacts on the Hualapai Tribe;**

4. **Comply with the National Historic Preservation Act § 106 process for taking into account the proposed action's impacts on cultural resources of concern to the Hualapai Tribe;**

5. **Protect the integrity of and access to Hualapai sacred sites on federal lands;**

6. **Mitigate significant Hualapai socioeconomic, environmental justice and cultural resource impacts;**

7. **Rewrite the DEIS in plain language;**

8. **Recirculate the DEIS for public comment after making the revisions requested above; and**

9. **Complete all of the foregoing through government-to-government consultation with the Hualapai Tribe.**

Please share these comments with Deputy Secretary David Hayes, Debbie Saint, and other appropriate persons at BOR and DOI to ensure that we are promptly contacted to schedule an initial consultation meeting in September 2000.

Sincerely,

Louise Benson

Louise Benson
Chairperson

cc (w/encl.): Deputy Secretary of Interior David Hayes
Debbie Saint, Bureau of Reclamation
Felicia Marcus, Regional Administrator, U.S. EPA Region 9
Clay Bravo, Director, Hualapai Department of Natural Resources
Annette Morgan, Program Manager, Hualapai Department of Natural Resources
Monza Honga, Director, Hualapai Department of Cultural Resources
Cameron Daines, President, Grand Canyon Resort Corporation
Susan G. Jordan, Nordhaus, Haltom, Taylor, Taradash & Bladh, LLP

The Great Spirit created Man and Woman in his own image. In doing so, both were created as equals. Both depending on each other in order to survive. Great respect was shown for each other, in doing so, happiness and contentment was achieved then, as it should be now.

The connecting of the Hair makes them one person; for happiness or contentment cannot be achieved without each other.

The Canyons are represented by the purples in the middle ground, where the people were created. These canyons are Sacred, and should be so treated at all times.

The Reservation is pictured to represent the land that is ours, treat it well.

The Reservation is our heritage and the heritage of our children yet unborn. Be good to our land and it will continue to be good to us.

The Sun is the symbol of life, without it nothing is possible - plants don't grow - there will be no life - nothing. The Sun also represents the dawn of the Hualapai people. Through hard work, determination and education, everything is possible and we are assured bigger and brighter days ahead.

The Tracks in the middle represent the coyote and other animals which were here before us.

The Green around the symbol are pine trees, representing our name Hualapai - PEOPLE OF THE TALL PINES

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COMMENTS OF THE HUALAPAI TRIBE ON THE COLORADO RIVER INTERIM SURPLUS CRITERIA DRAFT ENVIRONMENTAL IMPACT STATEMENT ("DEIS")

September 8, 2000

Introduction

The Hualapai Tribe has serious concerns about the impacts of the proposed interim surplus criteria on the Tribe's ability to utilize its water rights, on its economic development, and on its natural and cultural resources. The DEIS ignores these impacts, in violation of the trust duty, the requirement under the National Environmental Policy Act ("NEPA"), 42 U.S.C. §§ 4321, et seq., to consider the significant impacts of the proposed action, the cultural resources protection requirements of the National Historic Preservation Act ("NHPA"), 16 U.S.C. §§ 470, et seq., and the requirements of various Executive Orders concerning Native American Tribes and environmental justice populations.

In proposing the interim surplus criteria, the Department of the Interior ("DOI")[1] has not only failed to consider these impacts but also has failed to meet its trust duty to protect the Hualapai Tribe's trust resources. As the DOI is well aware, the Hualapai Tribe has unadjudicated aboriginal and federal reserved water rights in the Colorado River. These water rights are Indian Trust Assets entitled to protection by the DOI. The Hualapai Tribe has repeatedly requested consultation with the DOI on the quantification and protection of our water rights, to no avail.

In the past year, we have joined the Navajo Nation and the Havasupai Tribe in requesting a joint meeting with the DOI regarding water right issues of mutual concern to the

[1] As stated in the DEIS, the Secretary of the Interior is "acting through the U.S. Bureau of Reclamation (Reclamation)" in proposing the interim surplus criteria. DEIS at 1-1. The National Park Service ("NPS"), which like Reclamation is within the DOI, is a cooperating agency for the DEIS. Id. at 1-4. All references to DOI in these comments include the DOI, Reclamation and NPS.

tribes, including the proposed interim surplus criteria. Once again, we ask the DOI to honor its trust duty to protect our water rights by promptly quantifying our water rights in consultation with us. We understand that DOI intends to adopt interim surplus criteria by the end of this year, despite our objection to adoption of criteria prior to quantification of our water rights. Therefore, we demand that DOI immediately commence quantification of our water rights and complete quantification early in the implementation of the interim surplus criteria and prior to the first five year review of the interim surplus criteria. We also urge the DOI to take various other steps to address the violations of the trust duty, NEPA, NHPA and the Executive Orders discussed in these comments. These requests are summarized in the final section of these comments.

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Overview of the Hualapai Tribe and the Hualapai Reservation.

The Hualapai Tribe is a federally recognized Indian Tribe. **The Hualapai once inhabited seven million acres in and around the Grand Canyon and the Colorado River.** The Hualapai Indian Reservation was established in 1883 on a portion of the Tribe's ancestral lands. The main land base of the Reservation, located in northwestern Arizona, encompasses approximately one million acres of land and extends for 108 Colorado River miles, from about River Mile 165 to about River Mile 273.

The Colorado River is central to Hualapai history, culture, sustenance and survival. The Hualapai traditionally cultivated along the Colorado River banks, in the side canyons and on the plateau. Hualapais also crossed the Colorado River at strategic locations in order to trade and visist with their relatives, the Pai Pais. Traditional ceremonial sites on the Colorado River have continued in use to the present day. **The Hualapai have engaged in ranching over vast areas of the Reservation since the early part of the 20th Century. The Hualapai, who are known as "the People of the Tall Pines," traditionally harvested timber. Timber harvesting is a significant component of the Reservation economic base today.**

The Hualapai Tribe's current economic development efforts focus on tourism. **The Tribe has designated about 9,000 acres in the northwest corner of the Reservation with unsurpassed views of the Grand Canyon and the Colorado River for tourism development. This area, known as Grand Canyon West, receives nearly 100,000 daytime visitors annually. In addition, Hualapai River Runners guides dozens of tourists on white water and float trips every day of the rafting season. These business ventures provide an important source of Tribal government revenues and Reservation employment.**

The Hualapai Tribe has an enrolled membership of about 2,200 persons. Approximately 1,800 persons reside on the Hualapai Reservation, including about 1,000 enrolled tribal members. Poverty and unemployment are epidemic on the Reservation. Over 56% of Indian residents were below the poverty level in the 1990 Census, and over 80% were below the U.S. Department of Housing and Urban Development's Very Low Income Standard in 1991. The Reservation unemployment rate is quite high: 56% according to 1995 BIA Labor Force data and up to 70% seasonally according to the Hualapai Tribe's most recent data.

The Hualapai Tribe Has Aboriginal and Federal Reserved Water Rights in the Colorado River.

There can be no question that the Hualapai Tribe has aboriginal water rights in the Colorado River. These rights arise from the Tribe's habitation and cultivation of the lands, and associated water uses, in and around the Grand Canyon since time immemorial. In addition to these aboriginal rights, the Hualapai Tribe possesses federal reserved water rights in accordance with the establishment of the Hualapai Reservation.

The Hualapai Tribe's water rights have not been quantified because the United States has failed to pursue quantification, notwithstanding the repeated requests of the Tribe and the federal government's trust duty to protect those rights. In the Arizona v. California adjudication, the United States purported to represent the Tribe yet failed to pursue quantification of the Tribe's water rights. Tribal water rights above Lake Mead – including the rights of the Hualapai Tribe, the Navajo Nation and the Havasupai Tribe – were not quantified in Arizona v. California. See 376 U.S. 340, 353 (1964). While the decree in that case did not quantify these tribal rights, it also did not affect any Indian aboriginal or federal reserved water rights above Lake Mead. See id.

The fact that the Hualapai Tribe's federal reserved water rights are not quantified and are not presently fully used by the Tribe does not change their status as federal reserved water rights. Indian federal reserved water rights need not have identified, immediate uses to justify a duty of protection by the United States government. See Winters v. United States, 207 U.S. 564 (1908). Pursuant to the "Winters Doctrine," Indian federal reserved water rights are property rights which are intended to meet the present and future needs of Indian tribes and which vest no later than the establishment of the reservation, regardless of whether those rights have been adjudicated or otherwise formally permitted. See Arizona v. California, 373 U.S. 546, 598-600 (1963). In addition, Indian federal reserved water rights do not depend upon beneficial use for their initial or continued existence. See, e.g., Cappaert v. United States, 426 U.S. 128, 143-145 (1976).

The DOI has a Trust Duty to the Hualapai Tribe to Protect the Tribe's Indian Trust Assets, and must Explicitly Address the Proposed Action's Impacts on the Tribe's Trust Assets and Fully Mitigate or Avoid Those Impacts.

The federal government in its dealings with Indian Tribes is charged with "moral obligations of the highest responsibility and trust" and should be "judged by the most exacting fiduciary standard." Seminole Nation v. United States, 316 U.S. 286, 296 (1942). The DOI has adopted policies and procedures to ensure that its actions comply with the trust responsibility. DOI policy requires DOI to protect trust resources and conduct government-to-government consultation with tribes:

> It is the policy of the Department of Interior to recognize and fulfill its legal obligations to identify, protect, and conserve the trust resources of federally recognized Indian tribes and tribal members, and to consult with tribes on a government-to-government basis whenever plans or actions affect tribal trust resources, trust assets, or tribal health and safety.

512 DM 2.2 (Dec. 1995). See also Secretarial Order 3215, April 28, 2000.

Reclamation's own Indian Trust Asset Policy states that the "trust responsibility requires that all Federal agencies, including Reclamation, take all actions reasonably necessary to protect trust assets." See Bureau of Reclamation, Indian Trust Asset Policy (Aug. 31, 1994)

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in Protection of Indian Trust Resources (compilation on file with the DOI) ("Reclamation Indian Trust Asset Policy").[2]

The Indian Trust Assets ("ITAs") entitled to protection under the trust responsibility include water rights. 512 DM 2.2 (Dec. 1995). Thus, DOI has a trust responsibility to take all actions reasonably necessary to protect the Hualapai Tribe's water rights.

To help avoid or mitigate ITA impacts, DOI has adopted procedures requiring ITA impacts to be analyzed during the NEPA process for proposed actions. DOI procedures require that "[a]ny effect [on Indian trust resources] must be explicitly addressed in the planning/decision documents, including, but not limited to . . . Environmental Impact Statements. . . ." 512 DM 2.4(A) (emphasis added). Such documents "shall . . . [e]xplain how the decision will be consistent with the DOI's trust responsibility." Id.

Reclamation's procedures similarly require the assessment of impacts on ITAs from "[a]ctions that could impact the value, use or enjoyment of the ITA." Bureau of Reclamation, Indian Trust Asset Policy and NEPA Implementing Procedures: Questions and Answers About the Policy and Procedures (hereinafter "ITA Q&A"), Section IV-4 at 9 (Aug. 31, 1994) in Protection of Indian Trust Resources. "Such actions could include interference with the exercise of a reserved water right." Id. "[A]ll impacts, both positive or negative, should be analyzed and discussed." Id. Unavoidable impacts should be fully mitigated:

> The first strategy should be to avoid causing significant adverse impacts. When this is not possible, an attempt should be made to minimize such impacts. If adverse impacts do occur, the next step is to identify mitigation or compensation measures to offset adverse impacts so that there is no net loss to the Indian beneficial owners of the asset.

ITA Q&A, Section V-1 at 13.

While DOI has implemented its ITA policies through NEPA for administrative convenience, DOI's legal duties with respect to ITAs are not limited to NEPA's procedural requirements. NEPA requires, as a procedural matter, that an environmental impact statement "shall provide full and fair discussion of significant environmental impacts and shall inform decisionmakers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment." 40 C.F.R. § 1502.1. By contrast, the trust duty is a substantive obligation to protect trust resources, not merely an obligation to make an informed decision.

[2] In February 1996, Secretary of the Interior Babbitt and Assistant Secretary Deer transmitted to Interior employees a compilation of the policies and procedures adopted by the bureaus and offices of the DOI relating to trust protection practices. This compilation is referred to herein as "Protection of Indian Trust Resources."

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1 In addition to NEPA and trust duty, DOI must comply with various applicable Executive Orders and Presidential Memoranda, including: Executive Order 13084 of May 14, 1998, "Consultation and Coordination with Indian Tribal Governments" 63 Fed. Reg. 27655 (May 19, 1998); Memorandum of April 29, 1994, "Government-to-Government Relations With Native American Tribal Governments," 59 Fed. Reg. 22951 (May 4, 1994); and Executive Order 12898 of February 11, 1994, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 59 Fed. Reg. 7629 (February 16, 1994).

Executive Order 13084 provides in pertinent part:

> In formulating policies significantly or uniquely affecting Indian tribal governments, agencies shall be guided, to the extent permitted by law, by principles of respect for Indian tribal self-government and sovereignty, for tribal treaty and other rights, and for responsibilities that arise from the unique legal relationship between the Federal Government and Indian tribal governments.

E.O. 13084, § 2, 63 Fed. Reg. 27655.

President Clinton's Memorandum of April 29, 1994 requires federal agencies to ensure that they operate within a government-to-government relationship with federally recognized tribes, consult with tribal governments to the greatest extent permitted by law prior to taking actions that affect them, and:

> assess the impact of Federal Government plans, projects, programs, and activities on tribal trust resources and assure that tribal government rights and concerns are considered during the development of such plans, projects, programs and activities.

Memorandum of April 29, 1994, §§ (a), (b) and (c), 59 Fed. Reg. 22951.

Executive Order 12898 requires in pertinent part that:

> [t]o the greatest extent practicable and permitted by law, and consistent with the principles set forth in the report on the National Performance Review, each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs on minority populations and low-income populations.

E.O. 12898 § 1-101, 59 Fed. Reg. 7629.

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1: Reclamation respectfully believes that appropriate consultation with Indian Tribal Governments occurred with respect to the development of interim surplus criteria. A full listing of the consultations during the development of the interim surplus criteria is found in Section 5.4.

The Proposed Interim Surplus Criteria Would Have Significant Adverse Impacts on the Hualapai Tribe's Colorado River Water Rights.

The Supreme Court held in Arizona v. California that the water uses on each reservation within a Basin state must be accounted for out of the water allocated to that state. See 376 U.S. at 343. This means that the Hualapai Tribe's mainstream water rights are included in Arizona's 2.8 million acre-feet apportionment. Adoption of the surplus criteria will increase the Lower Basin States' reliance on the use of unquantified water rights, and thereby increase their incentive to oppose the quantification of unquantified Indian water rights in the Lower Basin. As a result, the Tribe's ability to access these waters for beneficial uses in the future will be jeopardized.

1a

The DEIS acknowledges that the proposed action will diminish the ability of the tribes in the Ten Tribes Partnership to utilize their undeveloped Colorado River water rights in precisely this manner. The DEIS states:

> The Ten Tribes have a significant amount of undeveloped water rights. The availability of surplus water on the Colorado River is primarily a direct result of unused existing entitlements, including those of the tribes. The interim surplus criteria could make other entitlement holders develop a reliance on surplus water, provide a disincentive for those entitlement holders to support future development, and have the practical effect of diminishing the tribes' ability to utilize their entitlements.

DEIS at 3.14-2.

The DEIS should acknowledge that the proposed action will also diminish the Hualapai Tribe's ability to utilize its entitlements for the same reasons. The inability to beneficially use its vast Colorado River water rights is unquestionably a significant impact on the Hualapai Tribe and its trust resources. Strangely, the DEIS is silent on the Hualapai Tribe's water rights, as discussed in the following section.

The DOI Violates NEPA and the Trust Duty by Ignoring the Proposed Action's Impacts on the Hualapai Tribe's Water Rights.

The DEIS fails to analyze – or even mention – the proposed action's impacts on the Hualapai Tribe's water rights. This omission is a violation of NEPA, the trust duty and Executive Order 12898.

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In Section 3.14, "Indian Trust Assets," the DEIS purports to analyze the proposed action's impacts on ITAs. In this section, the DEIS discusses the water rights of each of the tribes in the Ten Tribes Partnership and the tribes served by the CAP. Id. at 3.14-1 to 3.14-22. Section 3.14 includes a detailed analysis of impacts on the CAP tribes' water rights. Id. at 3.14-

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1a: The interim surplus criteria will not alter the quantity of priority of Tribal entitlements. In fact, as noted by the description of the Tribes' water rights above, the Tribes have the highest priority water rights on the Colorado River. Surplus determinations have been made by the Secretary since 1996, and surplus water supplies have been utilized by valid Colorado River contractors under the Secretary's annual surplus determinations since that date. Adoption of ISC will not make any additional surplus water available as compared with current conditions, but rather will provide more objective criteria for surplus determinations and will quantify the amounts of surplus water to be made available on an annual basis. Reclamation does not believe that identifying the limited amounts of surplus water will provide any additional disincentives for Tribal water development. Interim surplus criteria are also intended to complement efforts by California to reduce its over reliance on surplus water. The selection of any of the alternatives of this proposed action does not preclude any entitlement holder from using its water rights.

cont'd 16 to 3.14-22. Section 3.14 provides the brief description of how the proposed action could impact the Ten Tribes Partnership tribes' water rights (quoted above at page 7), but fails to include a comparable analysis of impacts on their water rights. Id. at 3.14-2. However, this section says nothing at all about the Hualapai Tribe's water rights.

We cannot fathom why DOI would ignore our water rights when it is well aware of them. The fact that the Hualapai Tribe's mainstream Colorado River water rights have not been adjudicated does not change their status as ITAs and does not excuse DOI from analyzing the impacts on those water rights. See page 4 above. Indeed, the DEIS at least discusses the Navajo Nation's unadjudicated mainstream Colorado River water rights, albeit without a meaningful analysis of the proposed action's impacts on those rights. DEIS at 3.14-5.

3 The DEIS also fails to disclose the proposed action's disproportionate impacts on the Hualapai Tribe in the "Environmental Justice" section of the document. The Hualapai Tribe clearly is a "minority" and "low-income" population within the meaning of Executive Order 12898 on Environmental Justice. The proposed action would have a disproportionate impact on the Hualapai Tribe (and similarly situated tribes, including the Navajo Nation and Havasupai Tribe) by treating their unquantified Colorado River water rights as "surplus" water and making that water available for the benefit of predominately non-minority water users.

Under the trust duty and policies and regulations discussed above, the DEIS must explicitly address the proposed action's impacts on the Hualapai Tribe's water rights and explain how the proposed action will be consistent with DOI's responsibility to protect these water rights. In addition, the DOI must ensure that the Hualapai Tribe's water rights are protected and the proposed action's impacts on those rights are avoided or sufficiently mitigated. We have repeatedly urged the DOI to quantify the Hualapai Tribe's water rights prior to or concurrent with actions -- including the establishment of surplus criteria -- that will significantly impact our ability to utilize our water rights.

4 Although we have asked DOI to quantify our water rights prior to or concurrent with adopting surplus criteria to ensure that our rights are protected, we understand that DOI nonetheless intends to issue the criteria by the end of this year. If DOI adheres to that schedule, then we demand that DOI immediately commence quantification of our water rights and complete quantification early in the implementation of the interim surplus criteria and prior to the first five year review of the interim surplus criteria. To do otherwise would irreparably diminish the Tribe's ability to utilize its water rights and would exacerbate DOI's past failures to protect the Tribe's water rights.

The DOI Violates NEPA and the Trust Duty by Failing to Analyze the Proposed Action's Socioeconomic Impacts on the Hualapai Tribe.

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3: Unquantified Colorado River water rights cannot be analyzed and as such does not constitute an environmental justice issue for this EIS.

4: See response to Comment 49-1.

The DEIS also fails to analyze the proposed action's significant socioeconomic impacts on the Hualapai Tribe. These impacts stem from the diminishment of the Tribe's future ability to develop its water rights and from the anticipated unavailability of the Pearce Ferry boat take out due to the reduction in Lake Mead water levels. Because these impacts fall disproportionately on the Hualapai Tribe, they are environmental justice impacts as well as socioeconomic impacts.

The Hualapai Tribe's only hope for economic development, including tourism, rests in its ability to access sufficient water resources to sustain development. By increasing the Lower Basin States' dependence on unquantified mainstream Indian water rights and resistance to quantification of those rights, the proposed action will create formidable political and financial obstacles to the Tribe's access to sufficient water resources. Without a sustainable water supply for economic development, the Tribe cannot attain economic self-sufficiency. The DEIS completely ignores these significant impacts.

5 The proposed action will also severely compromise Tribal revenues and job creation from river running. The Hualapai River Runners is the river-running operation of Grand Canyon Resort Corporation ("GCRC"), a Tribal corporation wholly owned by the Hualapai Tribe. Hualapai River Runners conducts guided white water river trips commencing at Diamond Creek, and float trips commencing at Quartermaster Canyon. All boats on these trips take out at Pearce Ferry. A portion of the payment for each trip is for a trespass fee imposed by Hualapai Tribal ordinance. The Tribe is entitled to receive from GCRC the trespass fees and a portion of the total revenues from the Hualapai River Runners' operations. The Tribe also levies sales tax on each trip sold by the Hualapai River Runners. In the past, the funds that the Tribe receives from the Hualapai River Runners operations have comprised a significant portion of the Tribal general fund budget, and the Tribe anticipates that these funds will also be an important Tribal revenue source in the future. The general fund budget supports social programs on the Reservation, including youth education and substance abuse rehabilitation programs. The jobs provided by Hualapai Rivers Runners are one of the few employment opportunities on the Reservation and are an important factor in fighting Reservation unemployment and poverty.

The DEIS fails to evaluate these significant impacts. Instead, the DEIS merely states that "[t]his concession [the Diamond Creek to Pearce Ferry river trips] may be affected if trips encounter changes in availability of the Pearce Ferry take out." DEIS at 3.9-34. There is no doubt that Hualapai River Runners would be significantly adversely impacted by the proposed action. As acknowledged in the DEIS, "[a]t pool elevations of 1170 feet msl, the Pearce Ferry take out is inaccessible and boaters must paddle an additional 16 miles to South Cove to take out." Id. The DEIS predicts that all alternatives except the Flood Control Alternative would reduce pool elevations below 1170 feet msl and the Flood Control Alternative would result in an elevation of 1171 feet msl. Id. Table 2-1 at 2-17. In fact, Pearce Ferry take out is likely to be inaccessible at higher pool elevations: a recourse manager for Lake Mead National Recreation Area advised the Hualapai Tribe this week that Pearce Ferry will be inaccessible

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5: Sections 3.9.2.2.3 and 3.9.2.3.2 of the FEIS have been expanded to include additional detail with regard to the importance of Pearce Ferry to the Hualapai, based on the Tribes comments on the DEIS. Note that although baseline conditions and the interim surplus criteria alternatives under consideration would result in increased probabilities for lower Lake Mead surface elevations over time, the primary influence on Lake Mead elevation reductions results from increases in Uper Basin depletions.

COMMENT LETTER RESPONSES

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at 1183 msl because of sedimentation. Consequently, Hualapai River Runners trips would be forced to take out at South Cove under all alternatives. This impact is unacceptable.

Taking out at South Cove would cost the Hualapai River Runners in fuel, time, safety, and labor costs, and will likely cost the Hualapai River Runners in lost business. A South Cove takeout would delay the takeout time by one to two hours, exhausting the river guides and preventing the Hualapai River Runners from meeting the timetables for the package tours through which a substantial portion of these trips are sold. If the Hualapai River Runners cannot meet these schedules, their business partners may cease booking blocks of trips with the Hualapai River Runners. The Hualapai Tribe would be harmed by lost sales tax, trespass fee payments and percentage of revenue entitlements, and by increased unemployment on the Reservation.

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The DOI Violates NEPA, the Trust Duty, the NHPA, and Executive Order 13007 by Failing to Evaluate Cultural Resource Impacts, Protect Cultural Resources, and Consult with the Hualapai Tribe and Tribal Historic Preservation Officer.

The DOI has completely overlooked its duties to avoid adverse effects to Hualapai traditional cultural properties ("TCPs") on Hualapai Tribal lands and to preserve and provide Hualapai access to Hualapai TCPs and sacred sites on federal lands. The DOI has also failed to undertake the required consultation with the Hualapai Tribe and Tribal Historic Preservation Officer ("THPO") regarding these TCPs and sacred sites.

Section 106 of the NHPA, 16 U.S.C. § 470f, requires federal agencies to take into account the effects of their "undertakings" (actions) on historic properties and to afford the Advisory Council on Historic Preservation an opportunity to comment. Congress amended the NHPA in 1992 to require consultation with Indian Tribes, to allow THPOs to assume the consultation and concurrence role afforded State Historic Preservation Officers ("SHPOs") for undertakings on tribal lands, and to clarify that properties of traditional religious and cultural importance to an Indian Tribe are eligible for inclusion on the National Register of Historic Places ("NRHP") (i.e., that they can be historic properties). See 16 U.S.C. §§ 470a(d)(2), 470a(d)(6)(A), and 470a(d)(6)(B). The Hualapai THPO assumed the role of the SHPO for Hualapai Tribal lands by agreement with the National Park Service in 1996.

The DEIS states that "Reclamation has determined development and implementation of interim surplus criteria meets the definition of an undertaking, but an undertaking that is without potential to effect historic properties." DEIS at 5-3. Hence, the DEIS concludes, "Reclamation has fulfilled its responsibilities to take into account the effects of the development and implementation of interim surplus criteria on historic properties." Id.

This conclusion is based on an erroneous assumption that "there is virtually no chance cultural resources retaining qualities that would qualify them for consideration as historic properties potentially eligible for inclusion on the NRHP exist within the [area of potential

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6: Thank you for your comments and for bringing to our attention your concerns regarding Reclamation's on-going operation of the Upper and Lower Colorado River. Per a request from the Nevada State Historic Preservation Officer (SHPO), the matter of effects to historic properties that might result from development of Interim Surplus Criteria (ISC) has been forwarded to the Advisory Council on Historic Preservation (Council). Development and implementation of ISC falls within the range of on-going operations, and the reservoirs and the River will continue to be operated within historic operational parameters under both baseline conditions and action alternatives. Because of this, Reclamation believes many of the issues you raise with regard to historic properties are better addressed under Section 110, rather than Section 106 of the National Historic Preservation Act. Reclamation is aware of its responsibilities under Section 110 for managing historic properties on lands under its jurisdiction and will commit to consulting with the Hualapai and other tribes within that framework. In accordance with the direction provided by EO 13007, Reclamation is also committed to working with the Hualapai and other tribes with ties to the Lower Colorado River to accommodate access to and use of sacred sites, and to the extent practicable, not adversely affect the physical integrity of sacred sites which have been identified by the tribes as being located on lands under its jurisdiction. If the Hualapai or other tribes have information concerning sacred sites that are being impacted by on-going reservoir and river operations, Reclamation urges the tribes to bring these situations to the attention of the appropriate Reclamation office.

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effect] of the present undertaking" because these cultural resources "have been repeatedly inundated, exposed, and re-inundated" since Hoover Dam and Glen Canyon Dam were constructed. Id. at 3.13-5. In other words, DOI is assuming that water and weathering have rendered all otherwise eligible properties ineligible for the NRHP.

Such an assumption is not valid for "properties of traditional religious and cultural importance to an Indian Tribe" eligible for the NRHP under 16 U.S.C. §470a(d)(6)(A). The DEIS is apparently invoking the requirement under the criteria of NRHP eligibility that the property have "integrity of location, design, setting, materials, workmanship, feeling, and association." See 36 C.F.R. § 60.4. However, as explained in National Register Bulletin 38, "Guidelines for Evaluating and Documenting Traditional Cultural Properties":

> A property may retain its traditional cultural significance even though it has been substantially modified. . . . [T]he integrity of a possible traditional cultural property must be considered with reference to the views of traditional practitioners; if its integrity has not been lost in their eyes, it probably has sufficient integrity to justify further evaluation.

National Park Service, National Register Bulletin 38, "Guidelines for Evaluating and Documenting Traditional Cultural Properties" at 10.

Moreover, a "structure" need not remain in order for a TCP to be a historic property eligible for the NRHP:

> Construction by human beings is a necessary attribute of buildings and structures, but districts, sites and objects do not have to be the products of, or contain, the work of human beings in order to be classified as properties. . . . A natural object such as a tree or a rock outcrop may be an eligible object if it is associated with a significant tradition or use.

Id. at 9.

Clearly, DOI cannot assume without consultation with the Hualapai Tribe and THPO that the proposed undertaking "is without the potential to effect" Hualapai TCPs. By these comments, the Hualapai Tribe and THPO place the DOI on notice that they believe Hualapai TCPs and sacred sites both on and off Hualapai tribal lands may be adversely affected by the proposed undertaking. DOI must consult with the Hualapai Tribe and THPO in compliance with NHPA § 106 and the Advisory Council's regulations at 36 C.F.R. Part 800. DOI also must fulfill its trust duty to the Hualapai Tribe to protect Hualapai TCPs located on Tribal lands as trust resources. To the extent consistent with the need to keep Hualapai TCP information confidential to protect the sites from vandalism and ensure that ceremonial use is not hindered, DOI also must disclose impacts on these sites in the DEIS.

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In addition, the proposed action may adversely affect Hualapai TCPs or sacred sites on federal lands in violation of Section 110 of the NHPA and Executive Order 13007 of May 24, 1996, "Indian Sacred Sites." The proposed action also may hinder access to and ceremonial use of Hualapai sacred sites on Federal lands in violation of Executive Order 13007.

Section 110 of the NHPA requires, among other things, that federal agencies preserve historic properties owned or controlled by them and provide a process for identifying and evaluating historic properties in consultation with Indian tribes. See 16 U.S.C. § 470h-2(a). Executive Order 13007 requires that:

> In managing Federal lands, each executive branch agency with statutory or administrative responsibility for the management of Federal lands shall, to the extent practicable, permitted by law, and not clearly inconsistent with essential agency functions, (1) accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners and (2) avoid adversely affecting the physical integrity of such sacred sites.

E.O. 13007, § 1(a), 61 Fed. Reg. 26771 (May 29, 1996).

Executive Order 13007 further requires federal agencies with land management authority – including the DOI – to promptly implement procedures for carrying out the above requirement, including "procedures to ensure reasonable notice is provided of proposed actions . . . that may restrict future access to or ceremonial use of, or adversely affect the physical integrity of, sacred sites." Id. § 2(a). Such procedures must comply with the Presidential Memorandum of April 29, 1994 on "Government-to-Government Relations with Native American Tribal Governments." Id.

The proposed surplus criteria may affect access to or ceremonial use of, or adversely affect, Hualapai TCPs on sacred sites on federal lands, including lands within Lake Mead National Recreation Area or Grand Canyon National Park. In order to identify TCPs and sacred sites and determine whether such effects would occur, DOI must consult with the Hualapai Tribe and THPO.

To date, DOI has failed to conduct the consultation and evaluation required by NHPA §§ 106 and 110 and Executive Order 13007. DOI has also failed to analyze the impacts of the proposed action on Hualapai TCPs and cultural sites in violation of NEPA. DOI must comply with these duties prior to adopting surplus criteria.

7 **The DOI is in Violation of Its Trust Duty by Failing to Consult with the Hualapai Tribe Regarding the Proposed Action, its Impacts and Appropriate Mitigation.**

In addition to the consultation duty under NHPA §§ 106 and 110, DOI has a trust duty to consult with the Hualapai Tribe regarding the proposed action, its impacts and appropriate

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7: The operation of the Colorado River and the development of interim surplus criteria are complex and highly technical in nature. A considerable effort was made to balance the needs of all members of the public and write the DEIS in language that could be understood by both a technical and non-technical audience. The writers of the DEIS acknowledge the difficulty of accomplishing this task. For the FEIS, the writers of the document have made a further effort to use plain language whenever possible. Chapter 5 has been modified to more fully describe the process to consult with Tribes. Several meetings regarding interim surplus criteria were held in which the Hualapai Tribe was invited.

mitigation, as discussed above on pages 4-6. DOI has failed to meet this duty to date, despite prompting by the Tribe.

The Hualapai Tribe has implored the DOI to work with the Tribe to quantify and protect its water rights numerous times over the years. In the past year, we have repeatedly requested consultation on several matters that are likely to have significant adverse impacts on the Hualapai Tribe's water rights. These matters include the proposed settlement in CAWCD v. United States, the reallocation of Central Arizona Project water supplies, and the proposed surplus criteria. For example, in April of this year we asked Deputy Secretary David Hayes to convene a consultation meeting with the Hualapai Tribe, the Havasupai Tribe and the Navajo Nation to discuss issues of mutual concern to these tribes. See letter from Louise Benson, Chairwoman, Hualapai Tribe, to David Hayes, Deputy Secretary of the Interior, April 7, 2000 (attached). In December 1999, we requested a meeting with Secretary Babbitt, Assistant Secretary Kevin Gover, and Solicitor John Leshy to discuss the Hualapai Tribe's Colorado River issues. This request was in response to the Secretary's public statement that the federal government should actively engage Indians in discussions regarding Colorado River water issues. See letter from Louise Benson, Chairperson, Hualapai Tribe, to Hon. Bruce Babbitt, Secretary of Interior, December 27, 1999 (attached). When we called the Secretary's office to arrange a meeting shortly after we sent this letter, we were informed that he did not have time to meet with us.

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The DEIS may mislead decision makers to believe that DOI has consulted with the Hualapai Tribe on the Interim surplus criteria. The DEIS offers numerous broad assurances that the appropriate consultations with tribes have occurred. In Section 3.14, "Indian Trust Assets," the DEIS asserts that "Reclamation has entered into government-to-government consultations with potentially affected tribes to identify and address concerns for Indian trust assets." DEIS at 3.141. The DEIS further asserts that these "potentially affected tribes" include tribes in the Ten Tribes Partnership, tribes served by the Central Arizona Project ("CAP"), and unnamed "other interested tribes within the Lower Colorado Region." Id. Similarly, under the section headed "Environmental Justice," the DEIS asserts that "Reclamation has involved potentially affected tribes and the Bureau of Indian Affairs to identify and address tribal concerns. . . . This includes tribes with reservations along the Colorado River, as well as tribes with Colorado River water rights in the Basin States." Id. at 3.15-1 to 3.15-2. This section cites Section 3.14 and Chapter 5 of the DEIS. Chapter 5, entitled "Consultation and Coordination," simply asserts that "[s]ince May 1999, Reclamation has had numerous meetings with the various tribes who have an interest in the implementation of ISC." Id. at 5-4.

The Hualapai Tribe is plainly a "tribe with a reservation along the Colorado River," a "tribe with Colorado River water rights in the Basin States," and a "tribe with an interest in the implementation of the ISC." Yet DOI has not "involved" us in the process of developing the criteria and evaluating their impacts, much less formally consulted us as required by its legal obligations.

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DOI has Failed to Make the DEIS a "Clear and Concise Statement" that is "Understandable" to the Public, in Violation of NEPA and Executive Order 12898.

As stated in the NEPA regulations of the Council on Environmental Quality ("CEQ"), "NEPA procedures must ensure that environmental information is available to public officials and citizens before decisions are made and before actions are taken." See 40 C.F.R. § 1500.1(b). To "make the NEPA process more useful to decisionmakers and the public," CEQ regulations specify that "Environmental impact statements shall be concise, clear, and to the point, and shall be supported by evidence that agencies have made the necessary environmental analyses." See id. §§ 1500.2(b) and 1502.1. CEQ regulations further require that "[e]nvironmental impact statements shall be written in plain language and may use appropriate graphics so that decisionmakers and the public can readily understand them." See id. § 1502.8.

8 Similarly, Executive Order 12898 requires that "[e]ach Federal agency shall work to ensure that public documents . . . relating to human health or the environment are concise, understandable, and readily accessible to the public." Executive Order 12898, § 5-5(c), 59 Fed. Reg. 7629 (emphasis added). As explained in President Clinton's Memorandum on Environmental Justice accompanying Executive Order 12898, one of the purposes of that order is "to provide minority communities and low-income communities access to public information on, and an opportunity for public participation in, matters relating to human health or the environment." Memorandum on Environmental Justice, February 11, 1994, Pub. Papers of the President, 1994 Book I at 241.

The DEIS for the proposed interim surplus criteria fails to meet these standards for plain language, understandability, and low-income and minority community access. The hydrology modeling discussion, in particular, is so technical as to be incomprehensible to anyone lacking advanced education in hydrology. The graphs used to illustrate the text only make the concepts more difficult to understand. Yet understanding the hydrology modeling discussion is essential to understanding the environmental impacts of the proposed action because virtually all of the impact analysis is based on the hydrology model output. This defect in the DEIS has hindered the Hualapai Tribe's ability to understand, review and comment on the DEIS.

For example, the Tribe has concerns about the impacts of Lake Mead water elevations on the water quality, aquatic resources, cultural resources and shorelines and shoreline vegetation, as well as the potential for further inundation of the Tribe' lands. However, the Tribe cannot independently assess these impacts and develop comments on them because the hydrology modeling discussion is so incomprehensible.

Accordingly, the DEIS should be rewritten in plain language and recirculated for public comment.

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8: The DEIS and FEIS are technical documents and as such, contain substantial technical information. Reclamation has made every effort possible to provide extensive, understandable explanations of the technical analysis in the DEIS and FEIS. Further, during the public comment period, Reclamation conducted technical meetings and public hearings to receive questions and provide explanation on the technical aspects of the studies conducted and information presented in the DEIS. The dates and times of these meetings were published in letters mailed to interested parties, local newspapers and in the Federal Register. Furthermore, Reclamation also accommodated various agencies and other entities by meeting with them, at their request, to provide explanation on the technical aspects of the studies conducted and information presented in the DEIS. As such, Reclamation is of the opinion that it has made every effort possible to meet or exceed the standards for plain language, understandability, and low-income and minority community access. Chapter 5 of the FEIS entitled "Consultation and Coordination" includes Reclamation's public involvement process and coordination. See also response to Comment 49-7.

Conclusion and Request for Compliance, Consultation, and Quantification of the Hualapai Tribe's Colorado River Water Rights.

For the reasons discussed above, DOI is in violation of its trust duty to the Hualapai Tribe, its NEPA obligation to disclose the proposed action's significant impacts on the Hualapai Tribe and its trust resources, its NHPA §§ 106 and 110 duties with regard to Hualapai TCPs, its obligations under Executive Orders 12898, 13007, and 13084, and its associated consultation and mitigation duties. To bring DOI into compliance with these duties, the Hualapai Tribe urges DOI to:

1. **Immediately commence quantification of our Colorado River water rights and complete quantification early in the implementation of the interim surplus criteria and prior to the first five year review of the interim surplus criteria;**

2. **Revise the DEIS to include analysis of the impacts on the Hualapai Tribe's water rights;**

3. **Revise the DEIS to include analysis of the socioeconomic impacts on the Hualapai Tribe;**

4. **Comply with the NHPA § 106 process for taking into account the proposed action's impacts on cultural resources of concern to the Hualapai Tribe;**

5. **Protect the integrity of and access to Hualapai sacred sites on federal lands;**

6. **Mitigate significant Hualapai socioeconomic, environmental justice and cultural resource impacts;**

7. **Rewrite the DEIS in plain language;**

8. **Recirculate the DEIS for public comment after making the revisions requested above; and**

9. **Complete all of the foregoing through government-to-government consultation with the Hualapai Tribe.**

So that we may expeditiously begin the required consultation, we urge DOI to contact immediately Hualapai Chairperson Louise Benson, Director of Natural Resources Clay Bravo, and Tribal Historic Preservation Officer Monza Honga to schedule a meeting in September 2000 with Deputy Secretary Hayes and Ms. Debbie Saint of Reclamation's Lower Colorado Regional Office.

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COMMENT LETTER | RESPONSES

[illegible]

The connecting of the [illegible] makes these one person [illegible] for happiness or contentment cannot be achieved without each other

The Canyons are represented by the peoples [illegible] the middle ground, where the people were created. These canyons are Sacred, and should be so treated at all times.

The Reservation is pictured to represent the land that [illegible] well

[illegible]

The [illegible] is the symbol of life, [illegible] nothing is possible [illegible] plants don't grow [illegible] will be no life [illegible]. The Star also represents the dawn of the Hualapai people. Through hard work, determination and education, everything is possible and we are assured bigger and brighter days ahead.

The Tracks in the middle represent the coyote and other animals which were here before us

The Green around the symbol are pine trees, representing our name Hualapai – PEOPLE OF THE TALL PINES -

GREAT SEAL OF HUALAPAI TRIBE
PEACH SPRINGS, ARIZONA
1883

HUALAPAI NATION
OFFICE OF THE CHAIRMAN

Louise Benson
Chairman

P.O. Box 179 • Peach Springs, Arizona 86434 • (520) 769-2216

Aaron Mapatis
Vice Chairman

The Honorable Bruce Babbitt
United States Department of the Interior
Office of the Secretary
1849 C. St. N.W.
Washington, D.C. 20240

December 27, 1999

Mr. Secretary:

At the Colorado River Water User's Association Meeting in Las Vegas, Nevada on December 17th, you addressed the audience stating there are two priorities in the next millennium: the Environment and Indians. You also stated that the Federal Government should actively engage Indians in discussions regarding Colorado River Water Issues.

In light of your speech, the Hualapai Tribe respectfully requests to have a meeting with yourself, Assistant Secretary, Mr. Kevin Gover, and Department of Interior Solicitor, Mr. John Leshy, to discuss the Colorado River issues of our Tribe.

The Tribe remembers the promise you made in 1994, during the California Condor release at Vermillion Cliffs, to visit the Reservation. We will be contacting your office after the New Year to set a meeting date. If there are any questions, please contact myself or Clay Bravo, Director of Natural Resources at 520-769-2255.

Sincerely,
HUALAPAI TRIBAL COUNCIL

Louise Benson

Louise Benson,
Chairperson

This document is an attachment ot the Hualapai Nation's Septermber 8, 2000 comment letter. All relevant comments are addressed above in response to the September 8, 2000 letter.

COMMENT LETTER | RESPONSES

HUALAPAI NATION
OFFICE OF THE CHAIRMAN

Chairman P.O. Box 179 • Peach Springs, Arizona 86434 • (520) 769-2216 Vice Chairman

April 7, 2000

Mr. David Hayes
Deputy Secretary of the Interior - MS 7229
1849 C Street NW
Washington, DC 20240

RE: Proposed Stipulated Settlement - *CAWCD v. U.S.*

Dear Mr. Hayes:

Although the Hualapai Tribe of Arizona has myriad concerns regarding its reserved rights claims to the waters of the Colorado River mainstream, these comments are submitted in the context of the proposed stipulation intended to accomplish the settlement of the above referenced case. It is our hope that you will consider an early meeting with the Hualapai Tribe, together with the Havasupai Tribe and Navajo Nation, to discuss issues of mutual concern to these tribes. To that end, the Hualapai Tribe assures you that it is in unity with the concerns expressed by the Navajo Nation in its letter to you dated April 4, 2000.

The Tribe, likewise, expresses the concerns set forth in the comments submitted by the Ten Tribes Partnership regarding the proposed stipulation. The briefing held in Phoenix on March 14, 2000, provided very little opportunity for those in attendance to adequately express their concerns, both because of short notice of the briefing and the limited time available to discuss the implications of the proposal upon the water rights of the mainstream Tribes, both adjudicated and unadjudicated.

The Colorado River is the northern boundary of the Hualapai Reservation (which encompasses the lower portion of the Grand Canyon) for a distance of approximately one hundred twenty miles. It is superfluous to say that this is an area of great natural beauty which has been inhabited by the Hualapai since time immemorial. Although some economic benefit is realized from a development known as Grand Canyon West and through fees paid by outfitters

This document is an attachment to the Hualapai Nation's Septermber 8, 2000 comment letter. All relevant comments are addressed above in the response to the Septermber 8, 2000 letter.

and guides, with a sustainable water supply the potential for future development and use of this area to the benefit of the Tribe is enormous, if done in a culturally sensitive manner.

The Tribe has subsisted on this land for hundreds of years, using the meager water resources available on tributary systems due to the lack of financial resources and the will of the United States to quantify and assist in the development of the Tribe's mainstream water rights in one of the great rivers of North America, which fortuitously flows through the Reservation. In *Arizona v. California,* the United States filed a claim on behalf of the Tribe only to abandon it without explanation. Some forty years later, the Tribe's trustee has neglected to take any action to protect the Tribe's water. Now, because the proposed action of the Department jeopardizes the future ability of the Tribe to access these waters for beneficial uses, the Tribe will fall further behind in its drive toward economic self-sufficiency.

The Navajo Nation has made a very coherent case for the quantification and development of the mainstream rights of the three tribes omitted in the *Arizona v. California* adjudication prior to, or at the least in conjunction with, the CAWCD settlement. To avoid redundancy, the Tribe will not repeat that analysis. The failure to quantify and protect the tribe's rights in the mainstream adjudication was a clear breach of trust. We believe that the Department will compound this breach of trust responsibility by going forward with this settlement without first addressing Hualapai's mainstream rights. The Tribe's only hope for development, including tourism, rests in its ability to access sufficient water resources to sustain such development. The settlement of this action, as proposed, may well deprive the Tribe of this one opportunity at self-sufficiency.

On behalf of the Hualapai Tribe, I urge you to convene an early meeting with the three mainstream tribes whose rights are not protected by decree. Thank you for your consideration.

Very truly yours,

Louise Benson

Louise Benson, Chairwoman