



June 27, 2020

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

RE: Scope and Approach to Review of 2007 Interim Guidelines

Dear Secretary Bernhardt:

As leaders of the undersigned Tribes within the Colorado River Basin, we are providing initial input on Reclamation's proposed scope and approach to reviewing the effectiveness of the 2007 Interim Guidelines (7.D. Review). Reclamation has made clear in several forums its recognition of the need to increase the Tribes' involvement in addressing Colorado River management issues and we look forward to the opportunity to engage in a meaningful dialogue on the Interim Guidelines (IGs), particularly as we prepare for the renegotiation process. As a threshold matter, this letter is intended to address some common perspectives among the signatory Tribes. Notwithstanding these common views, each of the undersigned Tribes reserves the right to raise individual issues of specific relevance to its own rights and interests affected by the IGs in separate correspondence.

To be clear, we remain concerned that Tribal interests never received strong consideration in developing and implementing the IGs. This has been a disappointment given the federal government's trust responsibility over our rights and interests. Moreover, it is surprising since Tribes in the basin hold reserved rights and legitimate claims to well over 3 million

acre-feet of Colorado River water, at least 20-25% of its current average annual flow. This percentage will only increase as climate change continues to diminish overall runoff amounts and reduce lower priority uses, as highlighted in a number of recent reports.

The lack of attention to Tribes in 2007 is once again made clear in Reclamation's proposed approach to the 7.D. Review. The kickoff webinar in late March 2020 indicated that Reclamation will evaluate the effectiveness of the IGs by assessing their performance in comparison to the stated purposes of the IGs, as well as certain common themes. None of these purposes or themes address Tribal interests. While Tribal water rights were not a priority at the time the IGs were developed, this does not mean the effect on Tribal interests should not be considered in the 7.D. Review.

We disagree with Reclamation's finding in its 2007 decision documents that Indian trust assets would not be significantly affected by the adoption of the IGs. At a minimum, the focus on shortages and their implications increased concerns across the basin about any new development of water resources. This has added to the difficulty Tribes have in putting their senior water rights to use. Reclamation could also have advanced Tribal interests in 2007 by developing and including a program to encourage conservation through efficiency investments on Tribal land. This would have helped Tribes plan for shortages and build resiliency to deal with future challenges such as climate change. These themes were clearly on the table in 2007 since they are expressly identified as criteria to be applied in evaluating the IGs. Moreover, proactively addressing Tribal interests in the manner just described would have advanced the three stated purposes of the IGs: (1) improved Reclamation's management of the Colorado River; (2) provided mainstream users of Colorado River water greater predictability of future water deliveries; and (3) added to the mechanisms for increasing storage in Lake Mead.

All that being recognized, some tribal water interests have been advanced in the last 13 years since the IGs have been in place. We appreciate the close working partnership with Reclamation that led to the development and release of the 2018 Tribal water study for the Tribes in the Ten Tribes Partnership -- a study that came *after* recognition that Tribal water had not been considered adequately in the first Basin Study. A similar focus is now needed to develop in-depth information and analysis with the remaining Tribes in the Basin, many of whom would benefit from a comparable review of their rights and interests. We also recognize that, while still imperfect, the consultation process significantly improved as Reclamation worked with the Basin States and other interested parties in developing the Drought Contingency Plan (DCP). Because of that, at least two Tribes were in a position to substantively participate in the final set of negotiations and carve out key roles in the Arizona plan, clearing the way for final approval of the DCP which is benefitting most people and water use sectors in the basin. This demonstrates our fundamental point: When Tribes are included in major discussions and actions concerning the Colorado River, we can contribute -- as we already have -- to the creative solutions needed in an era of increasing water scarcity.

From that standpoint, it would be helpful to include in the 7.D. review some analysis of certain critical actions undertaken since 2007 (e.g. Minutes 319/323, Pilot System Conservation Program (PSCP), and the DCP) since without those actions the IGs most likely would not have been successful in addressing the purposes and themes set out in 2007. In particular, a review that includes the PSCP and DCP is likely to provide very useful information on the important role that tribal water rights can play in advancing basin-wide interests.

In sum, we believe it is critical for Reclamation to continue to work in partnership with Basin Tribes as has become more the norm in the past 5-6 years. Accordingly, we hope there will be direct and meaningful consultation with the Tribes as the 7.D. Review gets underway and content and drafts of the report are developed and produced. We believe frequent communication, preferably face-to-face, is appropriate and constructive. Moreover, as the federal trustee, it is unclear how you can exercise that role effectively without such meaningful interaction. Also, as set out above, we ask that Reclamation provide an in-depth review of Tribal participation in conservation programs (i.e. ICS, PSCP, and DCP) to inform all water users of the benefits of engaging Tribes in these types of programs. The 7.D. Review should also document the challenges to tribal participation in each of these conservation programs that must be overcome to increase participation. We think this information will have value in the review of the IGs and also will assist Tribes as they prepare for negotiations regarding the next set of operating guidelines. Reclamation should also expand the scientific and technical resources available to Tribes to better facilitate our participation in Basin governance processes, including the forthcoming renegotiation of the IGs.

Finally, we think it is related to the 7.D. Review and very important for Reclamation to follow through on the key next steps identified in the Tribal Water Study that would benefit all Tribes in the basin. One such example is the recommendation to refine CRSS to better account for present and future tribal water use to improve an overall understanding of the effect of future tribal water development. This type of information will be valuable in further assessing the effectiveness of the current IGs and will inform future discussions.

These are some initial thoughts regarding Reclamation's plan for the 7.D. Review. Thank you again for the opportunity. We look forward to more direct dialogue and a thoughtful exchange of ideas as the Review moves forward.

Sincerely,

Curtis Anderson, Chairman, Las Vegas Paiute Tribe

Damon R. Clarke, Chairman, Hualapai Tribe

Sherry Cordova, Chairwoman, Cocopah Indian Tribe

Manuel Heart, Chairman, Ute Mountain Ute Tribe

John Huey, Chairman, Yavapai-Apache Nation
Jordan D. Joaquin, Chairman, Fort Yuma Quechan Indian Tribe
Evangeline Kissoon, Chairwoman, Havasupai Tribe
Robert Miguel, Chairman, Ak-Chin Indian Community
Austin Nunez, Chairman, San Xavier District, Tohono O'odham Nation
Timothy L. Nuvangyaoma, Chairman, Hopi Tribe
Darrell Paiz, President, Jicarilla Apache Nation
Val R. Panteah, Chairman, Zuni Tribe
Laura Parry, Chairwoman, Moapa Band of Paiutes
Dennis Patch, Chairman, Colorado River Indian Tribes
Timothy Williams, Chairman, Fort Mojave Indian Tribe
Charles F. Wood, Chairman, Chemehuevi Indian Tribe
Peter S. Yucupicio, Chairman, Pascua Yaqui Tribe

Postscript:

All 29 tribes in the basin were invited to participate in this joint letter. Due to the COVID-19 pandemic and other priorities, some tribes have not had an opportunity to adequately consider and take action on the joint letter by June 27, 2020. The Water & Tribes Initiative will continue to invite all 29 tribes to participate in this joint letter and will submit a final copy of the letter in the coming weeks.

Copies to:

Brenda Burman, Commissioner, US Bureau of Reclamation
Brent Esplin, Regional Director, Upper Colorado Basin, US Bureau of Reclamation
Terry Fulp, Regional Director, Lower Colorado Basin, US Bureau of Reclamation
Malcom Wilson, Manager, 7.D. Review, Upper Colorado Basin, US Bureau of Reclamation
Carly Jerla, Manager, 7.D. Review, Lower Colorado Basin, US Bureau of Reclamation



December 14, 2020

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

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

Dear Secretary Bernhardt:

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

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

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

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

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

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

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

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

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

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

Sincerely,

Manuel Heart, Chairman, Ute Mountain Ute Tribe

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

Robert Miguel, Chairman, Ak-Chin Indian Community

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

Sierra Pencille, Chairwoman, Chemehuevi Indian Tribe

Christine Sage, Chairman, Southern Ute Indian Tribe

Edward Velarde, President, Jicarilla Apache Nation

Postscript:

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

Copies to:

Brenda Burman, Commissioner, US Bureau of Reclamation

Jacklynn Gould, Acting Regional Director, Upper Colorado Basin, US Bureau of Reclamation

Stacy Wade, Acting Regional Director, Lower Colorado Basin, US Bureau of Reclamation

Malcom Wilson, Manager, 7.D. Review, Upper Colorado Basin, US Bureau of Reclamation

Carly Jerla, Manager, 7.D. Review, Lower Colorado Basin, US Bureau of Reclamation

Pam Adams, Native American Affairs Program Manager, Lower Colorado Basin, US Bureau of Reclamation

Ernest Rheume, Native American Affairs Program Manager, Upper Colorado Basin, US Bureau of Reclamation

KayLee Nelson, Planner, Lower Colorado Region, US Bureau of Reclamation