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January 5, 2001

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James Williams
Bureau of Land Management
6221 Box Springs Blvd.
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G30

Jack Safely
Metropolitan Water District
P.O. Box 54153
Los Angeles, CA 90054

Re: Quechan Indian Tribe's Comments on DEIS/DEIR for Cadiz Groundwater
Storage Dry-Year Supply Program

Dear Messrs. Williams and Safely:

We are submitting the following comments on the above document ("Cadiz DEIS") on behalf of the Quechan Indian Tribe ("Tribe").

The Tribe's Ft. Yuma reservation at its current site was established in 1884, which gave the Tribe, under federal law, reserved rights to water in the Colorado River with a priority date of 1884; *see Arizona v. California I*, 376 U.S. 344 (1964); *Arizona v. California II*, 460 U.S. 605 (1983). Some of the Tribe's water rights were allocated by federal decree, *see id.*, and others are still under dispute.¹ The U.S. Supreme Court recently allowed the Tribe to pursue its claim to about 78,000 AFY per year of Colorado River water. *Arizona v. California*, 530 U.S. ____ (on exceptions to report of special master, No. 8, decided June 19, 2000).

G30-1

The Department of the Interior and its Bureau of Land Management ("BLM") have adopted many policies and procedures to ensure that their actions comply with their trust responsibility to Indian tribes and their members. Interior's policy, to which BLM is subject, states that it will "recognize and fulfill its legal obligations to identify, protect, and conserve the

¹See *Metropolitan Water District v. United States*, 628 F. Supp. 1018 (S.D. Cal. 1986), 830 F.2d 139 (9th Cir. 1987); *California v. United States*, 490 U.S. 920 (1989). See also Report of the Special Master, *Arizona v. California*, No. 8, July 28, 1999, original.

trust resources of federally recognized Indian tribes and tribal members.” 512 DM 2.2 (Dec. 1995). Interior’s 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). Indian trust assets include water rights. Cadiz DEIS at 5-295.

G-30-1

For the following reasons, the Cadiz DEIR may be in error when it concludes that (1) there would be no impacts to Indian trust assets or to surface water resources, and (2) no mitigation is necessary. Cadiz DEIS at ES-19, -23, -36, -37. The document may also be in error when it concludes that the Cadiz project would only “enhance the management of water from the Colorado River.” *See id.* at 1-3.

G-30-2

The Cadiz project will take Colorado River surplus or unused water. The availability of surplus Colorado River water comes largely from unused existing entitlements, including those of the Tribe. The Lower Basin presently exceeds its compact apportionment, even though the Quechan Tribe and other tribes have not fully developed their perfected water rights.

G-30-3

The Cadiz DEIS is unclear as to the effect of the Metropolitan Water District’s (“MWD”) taking this surplus or unused water on the overappropriated Colorado River and the Tribe’s senior water rights. Will the Cadiz project reduce the Colorado River’s annual flows? If so, by how much?

Moreover, the Cadiz DEIS does not address the effect of the MWD developing a reliance on surplus or unused water, which will have the direct, practical effect of diminishing the Tribe’s ability to utilize its quantified and unquantified entitlements. Nor does the DEIS discuss mitigation for this disincentive to the Tribe’s water development.

G-30-4

Finally, the DEIS may improperly conclude that the Cadiz project will have no cumulative environmental effect. *Id.* at ES 35-36. The DEIS’ cumulative effects analysis only focuses on other projects in the Cadiz Project Area. *Id.* at 35. It does not mention the numerous other past, present and reasonably foreseeable future projects that are located outside of the project area, but that also involve using water that comes either directly or indirectly from the Lower Colorado River. NEPA and CEQA require agencies to examine a project’s cumulative and indirect effects on water systems. *See, e.g.,* 40 C.F.R. § 1508.7, § 1508.8, CEQ, *Considering Cumulative Effects Under the National Environmental Policy Act* at 12 (Jan. 1997) (“When analyzing the contribution of th[e] proposed action to cumulative effects, however the geographic boundaries of the analysis almost always should be expanded. Project-specific analyses are usually conducted on the scale of counties, forest management units, or installation boundaries, whereas cumulative effects analysis [sic] should be conducted on the scale of human communities, landscapes, watersheds, or airsheds.”).

G-30-5

Some of these omitted projects include:

- a. Imperial County's Felicity project, which allows the applicant to construct a mid-size city adjacent to the Tribe's Ft. Yuma Reservation, and 3-4 miles from the Colorado River. Imperial County will allow the city to pump groundwater to serve its 22,000 residents, and industrial and commercial uses. The recent U.S.G.S. report shows that Felicity lies within the Colorado River Aquifer, and is therefore presumed to be taking Colorado River water.
- b. BLM's proposed privatization of over 3,000 acres of land within Imperial County's Felicity Specific Plan Area and adjacent to the Tribe's Ft. Yuma Reservation, which is occurring in an area slated by Imperial County for future development and which will intensify area water use. *See* FEIS 3-109. The privatization is occurring through two BLM land exchanges.

The BLM has not considered the cumulative effect of BLM's privatizing of 3,162.59 acres of land through several land exchanges. The to-be-privatized parcels lie only a few miles from the Colorado River. Most of the land is within the Felicity Planning Area. Once in private ownership, development pursuant to the Felicity Plan may occur. The BLM refuses to consider the privatization's effects on the Colorado River or the Tribe's interests. The Tribe has formally protested the BLM's inadequate environmental analysis. All of the BLM privatized lands are within the Colorado River Aquifer, as shown in the recent BOR report mentioned above.

- c. Proposed Coachella Canal Lining Project, which will decrease water flows in the lower Colorado River. BOR has inadequately considered the cumulative effect of this program, particularly on the Colorado River and the Tribe's senior water rights.
- d. Proposed Lower Colorado River Multi-Species EIS/EIR Process, which is analyzing the effects of current water diversions and power production, and facilitating opportunities for future water and power development. The BOR has inadequately considered the cumulative effect of this program, particularly on the Colorado River and the Tribe's senior water rights.

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- e. Proposed BOR Colorado River Interim Surplus Criteria, in which the BOR has inadequately considered the cumulative effect of these criteria, particularly on the Colorado River and the Tribe's senior water rights.
- f. Proposed All American Canal Lining Project, which will decrease water flows in the lower Colorado River. The BOR has inadequately considered the cumulative effect of lining the All American Canal, particularly on the Colorado River and the Tribe's senior water rights.
- g. Lower Colorado River Multi-Species Conservation Program (LCRMSCP). The BOR has inadequately considered the cumulative effect of this program, particularly on the Colorado River and the Tribe's senior water rights.
- h. IID-San Diego County Water Authority Water Conservation and Transfer Project. The BOR has inadequately considered the cumulative effect of the proposed transfer, particularly on the Colorado River and the Tribe's senior water rights. G30-5
- i. Imperial Open Pit Gold Mine Project. We highly commend the BLM for selecting the no-action alternative as the preferred alternative, and trust that this alternative will be contained in the BLM's final decision. The project could have a significant and cumulative effect on the hydrology in the area of the Ft. Yuma Reservation and the Tribe's water rights, among other things. The Tribe outlined its hydrological concerns in its comments on the FEIS, dated December 18, 2000 (and in other correspondence relating to cultural resource impacts).

We request that addition work addressing these concerns be done in all these areas before an FEIS is issued. Thank you for your consideration of these comments. G30-6

Sincerely yours,

MORISSET, SCHLOSSER, AYER & JOZWIAK


Mason D. Morisset

MDM:sih

cc: Honorable Mike Jackson Sr., President, Quechan Indian Tribe
Members of the Quechan Tribal Council