

# GILA RIVER INDIAN COMMUNITY

*Executive Office of the Governor & Lieutenant Governor*

“Gila River Strong”

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March 29, 2024

Camille Calimlim Touton  
Commissioner  
Bureau of Reclamation  
Department of the Interior  
1849 C Street NW  
Washington, DC 20240

Re: Gila River Indian Community's comments on Lower Basin Alternative and Upper Basin Alternative and request for Reclamation to model a proposal that uses assumptions that differ from the two Basin States' proposals ("Community Alternative")

Dear Commissioner Touton:

One purpose of this letter is to share the Gila River Indian Community's ("Community's") initial comments regarding the Lower Basin Alternative for the Post-2026 Coordinated Operations of the Colorado River Basin ("LB Alternative"), and the Upper Division States' Alternative ("UB Alternative"). We do so in the context of our on-going government-to-government consultation regarding the Environmental Impact Statement regarding the Post-2026 Coordinated Operations of the Colorado River Basin. We view these as our initial comments only and we look forward to continuing our dialogue on these two alternatives as we continue our consultations on this critical regulatory process.

As you will see, the Community has serious concerns with both proposals. The UB Alternative does not appear to us to present a reasonable or balanced approach at all, shifting all of the burden for addressing the current drought crisis onto the Lower Basin States.<sup>1</sup> The LB Alternative, on the other hand, while it gets a great deal right, and does make a serious effort at actually addressing the crisis in a responsible way, still falls far short of an acceptable proposal from the Community's perspective.

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<sup>1</sup> Reclamation has indicated that it will model any reasonable set of assumptions presented for consideration. The Community, for its part, does not view the UB Alternative as a reasonable set of assumptions, so the Community would understand and support Reclamation if it determined not to model the UB Alternative.



As a result, this letter also requests that the Bureau of Reclamation (“Reclamation”) model what the Community believes are more middle ground operating assumptions as part of Reclamation’s National Environmental Policy Act (“NEPA”) review of operational guidelines, strategies, and other issues concerning the upcoming environmental impact statement for the Post-2026 Colorado River reservoir operational guidelines and strategies for Lake Powell and Lake Mead (“Post-2026 Operations”). We understand that this is the first time that a tribe has proposed a set of modeling assumptions as an alternative to proposals put forward by Basin States. This is in keeping with Reclamation’s own historic outreach to tribes generally as part of its process in charting a path forward, and with the Community’s own, demonstrated commitment to partnering with Reclamation in finding the right path forward.

As I know you are well aware, the Community has demonstrated its repeated commitment to partner with Reclamation to address the challenges caused by drought, climate change, and aridification that will almost certainly lead to lower runoff conditions in the Colorado River Basin for the foreseeable future. The Community remains committed to working with Reclamation, and with Basin States, Basin Tribes, and other stakeholders to develop, under the NEPA process, Post-2026 Operations.

Although the Community is one of 30 tribes located within the Colorado River basin (“Basin Tribes”), it is unique among Basin Tribes because it has a significant annual entitlement to Colorado River water<sup>2</sup> that we have fully developed, much of which is being threatened by unfirmed cuts once the Post-2026 Operations are adopted. Our initial analysis of the LB Alternative indicates that under their static reduction proposals, at a minimum, the Community’s Colorado River supplies that we are currently using would likely be reduced by 130,000 acre-feet, 42% of our entire Colorado River supply, even after Arizona’s firming obligations are met. These cuts would become more draconian under both the LB Alternative and the UB Alternative when additional reductions beyond 1.5 million acre-feet are needed, which would be often based on our review of the various models we have seen.

The United States has a clear statutorily established and confirmed trust obligation to the Community to mitigate any negative impacts to its water rights caused by Post-2026 Operations. This is an obligation that a majority of the Basin Tribes believe the United States has, as indicated in the attached March 25, 2024, letter signed by 17 tribal leaders setting forth key Basin Tribes’ principles regarding the development of Post-2026 Operations.<sup>3</sup> One key principle in the Basin Tribes’ March 25 letter is the need to find alternative water supplies for tribes that will be negatively affected by the Post-2026 Operations. The Community strongly supports this principle, but also believes Basin Tribes and the United States should work to limit the overall impact to all Basin Tribes in order to reduce the United States’ obligation to develop alternative tribal water supplies and/or mitigate impacts to tribal water supplies pursuant to its trust responsibility.

With this in mind, the Community has developed a set of its own operating assumptions that are in line with the Basin Tribes’ principles and the Community’s key principles when it comes to Colorado River management issues: (i) protect tribal water settlements, (ii) follow the “rule of

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<sup>2</sup> 311,800 acre-feet delivered through the Central Arizona Project (“CAP”).

<sup>3</sup> This letter was initially signed by 16 tribal letters on March 11, 2024. The Community agreed to sign the letter on March 21 and it is being considered by a number of other Basin Tribes that have yet to sign on.



holes” (*i.e.*, do not adopt solutions that compound the problem you are seeking to solve), and (iii) fairly share the burden of living with less water in the Colorado River Basin. Our proposal (“Community Alternative”) will put more water in Lake Mead in a manner that more fairly shares the burden of the reductions contemplated, enabling the United States to more readily meet its trust responsibility to replace or mitigate tribal water supplies that will be reduced for the benefit of others, thereby allowing tribes to agree to the proposal rather than fight it.

To provide context for the Community Alternative, we first set forth our initial comments on the LB Alternative and the UB Alternative, both of which fail to meet the Community’s test for a path forward to which the Community can agree. After that, we will set forth the modeling assumptions that we are formally requesting that Reclamation also model as part of its review and analysis of viable alternatives for consideration in your upcoming draft EIS, which is expected in December of this year.

As we noted, this is the first time that any tribe has been sufficiently involved in a Colorado River negotiation process to be in a position to present its own alternative, a milestone in the inclusion of tribes in a government-to-government process that deeply affects all tribes in the Basin. We deeply appreciate the Biden Administration’s commitment to the inclusion of Basin Tribes in this historic manner and look forward to working closely with you in the coming weeks to refine our request in any manner necessary to ensure that it is a set of modeling assumptions that you include for serious consideration when you make your publication of the selected models in May.

#### 1. Community’s Initial Comments on the LB Alternative

There is much we like in the LB Alternative, and our own modeling request is similar in many ways to the overall approach embodied in the LB Alternative. But we cannot support the LB Alternative placing the majority of the burden from its proposed cuts from its proposed Initial Reduction Zone and Static Reduction Zone reduction volumes on Arizona, with a maximum of 760,000 acre-feet per year (“AFY”). The Community believes that the Lower Basin States developed the LB Alternative in good faith, but we can only assume little attention was given to the specific impacts caused by these levels of reductions in Arizona.<sup>4</sup>

Although we do not have any issue with the LB Alternative being modeled, the Community simply cannot support it as an alternative because it would impose cuts that are more severe than DCP Tier 3 cuts in Arizona on what we fear will be an almost permanent basis. The Community can only assume that CAP water users, of which the Community is the largest, will withstand the most of these cuts. It would thereby place an untenable burden on federal resources to replace or

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<sup>4</sup> This concern is amplified by the fact that the LB Alternative does not indicate how it would suggest the Arizona cuts might be met, making it presumptively all fall on the CAP unless or until water entitlement holders with rights on the Colorado River voluntarily agree to contribute. Given past experience, this seems entirely unlikely, unless they are motivated by cuts that could be imposed on them otherwise, which means we have to assume the entire 760,000 AFY in reductions would come from the CAP system. That would be catastrophic for the CAP, and particularly for tribes such as the Community, and would place an enormous burden on federal resources to mitigate these impacts.



mitigate these reductions, which would constrain the United States in its ability to meet this obligation.<sup>5</sup>

As you are aware, we are seeking to find ways to mitigate the impacts of the LB Alternative on the Community, but our preliminary analysis indicates that the volume of mitigation and cost associated with it are immense. As such, we believe it is prudent for the United States to model operating assumptions that more fairly share the burden of the reductions.

*a. LB Alternative's Total System Contents Concept*

We strongly support the LB Alternative embrace of system contents and hydrology as the trigger for water use reductions under Post-2026 Operations. The Community has consistently supported looking at all available supplies in Lakes Mead and Powell, but also the upstream Colorado River Storage Project Initial Units as well. Not only should reductions of Lower Basin water uses be linked to total system storage, but total system storage should also be the barometer for Lake Powell's release to Lake Mead and ensuring compliance with the 1922 Compact.

*b. LB Alternative's Proposed Water Reductions*

We also agree that the likely best approach to addressing the drought crisis moving forward is to use a "front-loaded" set of initial reductions, provided the tribal reductions are mitigated or replaced, in order to provide the maximum potential buffer to Lake Mead possible. This must be done in conjunction with a program of replacement or mitigation of at least the tribal water reductions, however, because to do so otherwise would be taking tribal water supplies for the benefit of the system overall, not for the benefit of the tribes themselves, a direct violation of the federal government's fiduciary obligations as trustee for these statutorily protected water entitlements.

The LB Alternative places too much of its proposed Initial Reduction Zone and Static Reduction Zone reduction volumes on Arizona, with a maximum of 760,000 AFY. This is completely unacceptable to the Community because it violates the Community's key principles when it comes to Colorado River management issues. It fails to protect tribal water settlements by threatening to permanently eliminate a quarter of the Community's entire water supply. It also does not fairly share the burden of living with less water in the Colorado River Basin. California is only taking a 10% cut under the LB Alternative's proposed Static Reduction Zone despite having more opportunities through water conservation and other projects, compared to Arizona, to meet its current use and growth demands.<sup>6</sup>

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<sup>5</sup> Adoption of the LB Alternative without acceptable replacement or mitigation and without the Community's consent would constitute a clear violation of the United States trust responsibility to the Community and other tribes as statutorily enshrined in the Arizona Water Settlements Act and would be an alternative the United States could not adopt without exposing the United States to billions of dollars of liability. This is why the Community views the LB Alternative as giving the United States an untenable choice. A different outcome must be found or the situation will likely devolve into protracted litigation and federal liability.

<sup>6</sup> The Community understands that water costs and other market forces have reduced demand in Southern California urban areas, while at the same time California has been working to increase storage capacity within the states and make other improvements to take advantage of periodic wet seasons. As a result, the Community believes that California can easily absorb reductions beyond the 440,000 AFY it has agreed to under the LB Alternative.



With respect the LB Alternative's proposed Basin-wide Reduction Zone cuts there is not sufficient detail provided by the proposal to fully analyze the impact of these cuts. We do agree that reductions above 1.5 million acre-feet should be allocated such that 50% comes from the Upper Division States and 50% comes from the Lower Division States and Mexico, and that outcome should be modeled. However, we believe it is unrealistic and impractical that the entire reduction of up to 2.4 million acre-feet per year on the Second Linear Ramp come out of the Upper Basin. Although the LB Alternative asks you to model this approach to "provide the full range of analysis for compliance purposes," the Community does not view this as a reasonable set of assumptions, and we fail to see the utility in modeling this specific request. The Community believes another approach that would share reductions above 1.5 million acre-feet among the Basin States on a proportional basis based on actual use by each state is worth analyzing. As such, we have asked you to model such an approach in the Community's Alternative.

*c. LB Alternative's Parameters Post-2026 Conservation and Augmentation*

There is not sufficient detail in the LB Alternative for the Community to take a firm position on the proposed parameters for conservation, augmentation, and storage, but the Community will want to ensure that Post-2026 Operations do not threaten the Community's existing ICS and that voluntary paid system conservation remains a tool in the Lower Basin toolbox. The Community also believes that water augmentation will be needed to ensure that Post-2026 Operations can be implemented in a manner acceptable to all tribes within the Colorado River Basin.

2. Community's Initial Comments on the UB Alternative

The Community has not fully analyzed the UB Alternative. Even a superficial review, however, demonstrates that it is simply not practical, reasonable, or feasible. The UB Alternative proposes that reductions up to 1.5 million acre-feet will be in effect in almost all circumstances, except when Lake Mead is above 90% capacity. Although we are proposing a different volume and trigger, the 1.3 MAFY of evaporation and system loss that we are requesting be modeled would be in effect under almost all conditions, which is somewhat similar to the UB Alternative.

With respect to the UB Alternative's Lake Powell Operations, too little detail is provided, and it seemingly ignores how compliance with the 1922 Compact would be met. Thus, the Community does not view this proposal as something that can be considered practical, reasonable, or feasible.

We would also note that having the Lower Basin States carry the entire burden of reductions beyond 1.5 million acre-feet is as impractical as the LB Alternative proposing the same for the Upper Basin States. The Community does not view the UB Alternative as a reasonable set of assumptions, and we fail to see the utility in modeling this proposal.

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California also has ocean access and the opportunity to develop additional desalination plants within the state. Further, the Community believes there are opportunities for California irrigation districts to become more efficient and stretch supplies within the state. In short, California has more feasible opportunities to develop water supplies within the state compared to Arizona, which has some, but not in the magnitude needed to absorb 45% - 48% cut to Colorado River water supplies in central Arizona.



### 3. Community Suggested Modeling Assumptions

Again, the Community remains committed to working with Reclamation, and with Basin States, Basin Tribes, and other stakeholders to develop Post-2026 Operations that respect tribal water rights, stabilize the entire system, and fairly share the burden of having to rely on less water in the Colorado River system. In line with these principles, we are formally asking Reclamation to consider modeling the operating assumptions set forth in our Community Alternative.

Our operating assumptions incorporate many of the concepts set forth in the LB Alternative. The operating assumptions would use a total system contents approach, a static reduction zone and Basin-wide maximum reduction zone. The Community also supports the LB Alternative's coordinated operations of Lake Mead and Lake Powell concepts. The Community also wishes to explore new conservation, augmentation and storage concepts summarized in the LB Alternative.

The Community's Alternative differs from the LB Alternative in two significant ways. First, somewhat similar to the UB Alternative, we suggest implementing the first phase of our proposed front-loaded reduction (accomplished through implementation of Lower Basin Evaporation and System Loss ("ESL")) under almost every condition (whenever system contents are lower than 90%), except in the rare instances needed to reduce the risk of spillage in system reservoirs.<sup>7</sup>

We believe the United States has the authority to apply ESL to consumptive use in the Lower Basin in a proportional manner. It is our understanding that United States believes it has the authority to apply ESL to consumptive use in the Lower Basin on a proportional basis and, as such, we believe this should be modeled. Second, we suggest modeling proportional distribution of Basin-wide cuts when total system contents are below 38%.

Specifically, the Community is asking Reclamation to model Post-2026 Operations that would adopt annual water use reductions when total system contents are:

- [90%, *see* footnote 7] – 58%: ESL implementation in Lower Basin resulting in a 1.3 MAFY cut to Lower Basin water uses.
- <58% - 38%: additional 200 KAFY cut to Lower Basin uses [1.3 MAFY ESL cut plus additional 200 KAFY cut is the equivalent of the LB Alternative 1.5 MAFY static cut] ("Static Cut").
- <38% - 23%: Static Cut to Lower Basin water uses of 1.5 MAFY plus additional, proportional cuts to both the Upper Basin and Lower uses as total system reductions increase from 1.5 MAFY to 3.9 MAFY.
- <23%: 3.9 MAFY cut remains.

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<sup>7</sup> The Community assumes Reclamation can establish, through a total system storage and/or Lake Mead reservoir elevations triggers, a threshold that would trigger a surplus condition that would pause the implementation of evaporation and system loss reductions.



*a. ESL Reduction Zone*

When the total system contents are at or below [90%] on August 1, but at or above 58%, the reduction volume for water users in the Lower Divisions States and Mexico for the subsequent calendar year would be 1.3 MAFY to account for the ESL volumes identified in Reclamations' December 2023 *Lower Colorado River Mainstream Evaporation and Riparian Evapotranspiration Losses Report*. We ask that Reclamation model the 1.3 MAFY ESL consumptive use reductions by reach and be distributed among Lower Basin water users in the same or similar fashion described in the Southern Nevada Water Authority's October 2022 Lower Basin System Loss Assessment Approach.

*b. Static Reduction Zone*

When the total system contents are below 58% on August 1, but at or above 38%, the reduction volume imposed on water users in the Lower Division States and Mexico for the subsequent calendar year will be 1.5 MAFY. The 1.5 MAFY Static Reduction will be distributed as follows:

- 1.3 MAFY of ESL cuts will be distributed as indicated in section 3.a. above; and
- 200 KAFY of additional cuts will be distributed as agreed among the Lower Division States and Mexico.

With respect to the additional 200 KAFY, we ask that Reclamation model these cuts on both a proportional basis and by priority.

*c. Basin-wide Reduction Zone*

When the total system contents are below 38% on August 1, but at or above 23%, the reduction volume that would be imposed on water users in the Upper Division States, the Lower Division States and Mexico for the subsequent calendar years would be a linear function of the total system contents increasing from 1.5 MAFY at 38% to 3.9 MAFY at 23%.

The reductions in this zone above 1.5 million acre-feet would be shared proportionally among the Basin States and Mexico based on a denominator comprised of (1) the average consumptive use and losses within Upper Division States, as determined by Reclamation's Upper Colorado River Basin Consumptive Uses and Losses 2016-2020 report, and (2) post-Static Reduction allotment to the Lower Divisions States and Mexico, which totals 11.648 million acre-feet.

Implementation of Basin-wide Reduction Zone cuts would ensure that water could be delivered outside of priority for public health and safety purposes before being delivered for agricultural purposes.

*d. Basin-wide Maximum Reduction Zone*



When the total system contents are below 23% on August 1, the reduction volume imposed on water users in the Lower Division States, the Upper Division States, and Mexico for the subsequent calendar year would be 3.9 MAFY to be distributed as described in section 3.c. above.

4. Next Steps

I am sure that Reclamation will have questions regarding the Community Alternative and we are ready to meet at your convenience to answer your questions and provide additional information you may need to consider this request and continue our government-to-government consultation with you. To be clear, we are providing the Community Alternative as part of our government-to-government consultation, and it should be viewed as a good faith attempt to explore ways to ensure that the United States meets its trust obligations to the Community and other Basin Tribes and achieve the purpose and need of EIS.

We deeply appreciate our continued collaboration with you and the Biden Administration's commitment to the inclusion of Basin Tribes in this historic manner and look forward to working closely with you in the coming weeks to refine our request in any manner necessary to ensure that it is a set of modeling assumptions that you include for serious consideration when you make your publication of the selected models in May.

Thank you for consideration of this request.

Sincerely,



Stephen Roe Lewis, Governor  
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