

LAW OFFICES  
**MORISSET, SCHLOSSER, JOZWIAK & McGAW**  
 A PROFESSIONAL SERVICE CORPORATION

FRANK R. JOZWIAK (WA)  
 KYME A. M. McGAW (WA)  
 MASON D. MORISSET (WA)  
 THOMAS P. SCHLOSSER (WA)

OF COUNSEL  
 SHARON J. HAENSLY (WA)

LEGAL ADMINISTRATOR  
 JEARL E. RUGH

1115 NORTON BUILDING  
 801 SECOND AVENUE  
 SEATTLE, WASHINGTON 98104-1509  
 FACSIMILE: (206) 386-7322  
 (206) 386-5200

WASHINGTON, D.C. OFFICE  
 1730 RHODE ISLAND AVENUE, N.W.  
 SUITE 209  
 WASHINGTON, D.C. 20036-3120  
 FACSIMILE: (202) 331-8738  
 (202) 331-8690

PLEASE REPLY TO THE  
 SEATTLE OFFICE

Via Facsimile

March 29, 2002

Regional Director  
 Attn: BCOO-4600  
 Lower Colorado Region, BOR  
 P.O. Box 61470  
 Boulder City, Nevada 89006-1470

Re: Comments of Quechan Indian Tribe on Existing Coordinate Long Range  
 Operating Criteria for Colorado River Reservoirs

Dear Regional Director:

We represent the Quechan Indian Tribe ("Tribe") and submit these comments on the Tribe's behalf on the Bureau of Reclamation's ("BOR") Existing Coordinate Long Range Operating Criteria for Colorado River Reservoirs ("Operating Criteria").

The Tribe's Fort 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 in the Colorado River were allocated by federal decree (51,616 acre feet per year), and others remain under dispute.<sup>1</sup> *Id.* The U.S. Supreme Court recently allowed the Tribe to pursue its claim to about 25.6 billion gallons (78,519 afy) per year of Colorado River water. *Arizona v. California*, 530 U.S. 392 (2000).

BOR must draft and implement the Operating Criteria in accordance with federal law, which includes executive orders and treaties establishing Indian reservations and their reserved water rights, and the Colorado River Basin Project Act, which requires regulating the River's flow "for municipal, industrial, and other beneficial purposes." 43 U.S.C. § 1501. Accordingly, the Tribe is extremely concerned that Operating Criteria and its implementation not interfere with the Tribe's senior perfected federal reserved water rights in the Colorado River or the additional senior rights that are being litigated. The Tribe requests that BOR review its Operating Criteria in that light, and make any necessary modifications.

The Tribe is also concerned that the Operating Criteria and its implementation not

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<sup>1</sup>*See 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.

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inappropriately facilitate, validate or permanently secure use by others of Colorado River water that the Tribe is not beneficially using. As you know, the Tribe does not have to beneficially use all of its reserved water. BOR should therefore not designate water as "surplus" to the extent that such designation makes the water available for others. The Tribe requests that BOR review its Operating Criteria with that in mind, and make any necessary modifications.

The Operating Criteria have apparently remained unchanged since 1970, but can "be modified from time to time as a result of actual operating experiences of unforeseen circumstances. The Tribe asks that BOR consider whether the following events mandate modification, particularly in light of the BOR's trust responsibilities to Indian tribes and their members: (1) present and future plans for tribal water marketing and banking; (2) Arizona's and Nevada's full use of their allotments; and (3) overallocation of the Colorado River. Please note that the Tribe has proposed a Tribal Accounting Pool (TAP) in Lake Mead to allow undeveloped tribal watership to be tracked by an in-reservoir accounting system.

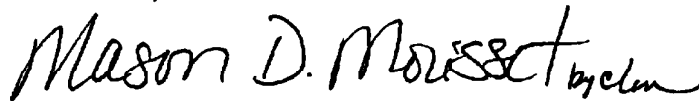
The Tribe further asks BOR to consider whether BOR should adopt the Operating Criteria as a rule, pursuant to the Administrative Procedures Act.

The Tribe is also concerned about the Operating Criteria's cumulative effects on the Colorado River and on its senior rights in the River, when considered with the many other federal activities that affect the River's flow. Specifically, we point the BOR to Council on Environmental Quality's guidance entitled, *Considering Cumulative Effects Under the National Environmental Policy Act* (Jan. 1997), which describes components of a meaningful cumulative effects review.

Finally, the Tribe requests that BOR comply with the National Environmental Policy Act if it: (1) modifies the Operating Criteria; or (2) determines that application of the Operating Criteria has or will have significant adverse effects (short- or long-term) on the environment, the Tribe's water rights or the Fort Yuma Reservation.

Sincerely yours,

MORISSET, SCHLOSSER, JOZWIAK & McGAW



Mason D. Morisset

cc: Mike Jackson Sr., President  
Quechan Indian Tribe

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