

From: [Christopher Molina Jr.](#)
To: [Water Quality Guidance Document](#)
Cc: [Laura Berglan](#); [Robyn Interpreter](#); SMontgomery@milawaz.com; JayTomkus@milawaz.com; [Jane Westrope](#)
Subject: PYT Comments Regarding Draft Water Quality Guidance for the Introduction of Non-Project Water into Central Arizona Project
Date: Thursday, June 25, 2020 2:23:05 PM
Attachments: [PYT Comments Regarding Draft Water Quality 6.25.2020.pdf](#)

Good Afternoon Ms. Meyers

Here is the signed Letter from the Pascua Yaqui Tribes Chairmen office in regards to our comments regarding Draft Water Quality Guidance for the introduction of Non-Project Water into Central Arizona

If you do have any questions please feel free to contact the Attorney General Office at (520) 883-5106

Thank you

Christopher Molina Jr.
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Pascua Yaqui Tribe

PASCUA YAQUI TRIBE

OFFICE OF THE CHAIRMAN

June 25, 2020

Via Email: WQGuidanceDoc@cap-az.com

Ms. Leslie A. Meyers, Area Manager
U.S. BUREAU OF RECLAMATION
Phoenix Area Office
6150 West Thunderbird Road
Glendale, AZ 85306

RE: Pascua Yaqui Tribe's Comments Regarding Draft Water Quality Guidance for the Introduction of Non-Project Water into the Central Arizona Project

Dear Ms. Meyers:

On behalf of the Pascua Yaqui Tribe ("Tribe"), I write today to provide comments to the Draft Water Quality Guidance for the Introduction of Non-Project Water into the Central Arizona Project ("Draft Guidance").

At the outset, the Tribe recognizes the consensus process in development of the Draft Guidance and the constituent limits included therein. The Tribe monitored this effort and appreciates the active participation of our neighboring stakeholders, such as the Metro Water District and the City of Tucson, who raised issues common to those users who take water from the Central Arizona Project ("CAP") canal at the end of the project in the development of the Draft Guidance. While the Tribe further appreciates the completeness of this Draft Guidance, it is critical to note that the responsibility of the Bureau of Reclamation ("Reclamation") and CAP to remain vigilant in protecting the contract rights of federal contractors does not end with this guidance. As Non-Project Water is introduced into the canal, Reclamation and CAP have a continuing obligation to communicate and consult with the Tribe in order to protect the Tribe's federal contract water.

As is made clear in § 2.4 of the Draft Guidance, the document "does not alleviate the Applicant from satisfying any requirements of NEPA," and therefore does not alleviate the responsibility of Reclamation or CAP to protect federal trust assets, including the Tribe's contract water.¹ The Tribe's CAP allocation is a critical part of its water portfolio and it is incumbent on Reclamation and CAP to ensure that the water delivered in execution of that contract continues to be of adequate quality to meet its current uses on the Pascua Yaqui Reservation. If, as Non-Project Water is introduced to the system, there are impacts to the quality of water that deviate from the standards in the Guidance Document, Reclamation and CAP must address these impacts

¹ Pursuant to its contract with the Secretary of the Interior, the Pascua Yaqui Tribe is entitled to 500 Acre-Feet of Indian Priority water, to be delivered to the Pascua Yaqui Reservation via the CAP Project. Central Arizona Project Water Delivery Contract Between the United States and the Pascua Yaqui Tribe (December 11, 1980) at §§ 4.5 & 4.9.

immediately and prevent future degradation of water quality.² Further, as exceedances are reported to CAP, it is critical that the information be shared as quickly as possible with CAP water users, including federal contract holders, as required by § 7.2.3 of the Draft Guidance.

The Draft Guidance also requires that the applicant for introducing Non-Project Water be responsible for all costs associated with that project. As a federal contract holder and a lessee of additional CAP water, any impacts to Fixed OM&R from Non-Project Water would be unacceptable. As CAP staff noted at the April 23, 2020 Guidance Briefing,³ the Tribe understands that there will be an expanded role for CAP's water quality efforts, which will move forward independently of Non-Project Water wheeling projects. While ensuring water quality is important for contract holders, including the Tribe, it is critical that this expanded water quality role for CAP not be a functional subsidy to those entities engaged in the introduction and wheeling of Non-Project Water. As stated in § 3.3 of the Guidance Document, "all costs and expenses related to the transportation" of Non-Project Water must be borne by the applicant.

Finally, the Tribe appreciates the opportunity for review and comment every five years after the first introduction of Non-Project Water, as contemplated by § 8.2 of the Draft Guidance. As noted above, however, when Non-Project Water is introduced in the CAP system, as impacts from that introduction are realized by CAP users, Reclamation and CAP must be ready to accept feedback and, if necessary, to make revisions to its policy regarding Non-Project Water, as the need becomes apparent. CAP water is a federal trust asset that Reclamation and CAP have a continuing obligation to protect accordingly. As a result, Reclamation and CAP should not view the five-year review as the sole opportunity for comment and consultation on this program.

The Pascua Yaqui Tribe appreciates the opportunity to provide these comments. In addition to the Tribe, please ensure that our Water Rights Counsel, Ms. Robyn L. Interpreter and Ms. Susan B. Montgomery are included on all future notice and mailing lists related to this matter.

Yours Truly,

PASCUA YAQUI TRIBE

A handwritten signature in black ink, appearing to read 'PY', followed by a long horizontal line extending to the right.

Peter Yucupicio, Chairman

cc: Laura Berglan, Attorney General (Laura.Berglan@pascuayaqui-nsn.gov)
Robyn L. Interpreter (RInterpreter@milawaz.com)
Susan B. Montgomery (SMontgomery@milawaz.com)

² [Central Arizona Project System Use Agreement Between the United States and the Central Arizona Water Conservation District, §§ 12.1 – 12.3 \(February 1, 2017\)](#)

³ [Water Quality Guidance Briefing \(April 23, 2020\).](#)