

PASCUA YAQUI TRIBE

OFFICE OF THE CHAIRMAN DEC 21 2009

December 14, 2009

Via U.S. Mail and Email: lee.anita@epa.gov

Laura Yoshii, Acting Regional Administrator
U.S. ENVIRONMENTAL PROTECTION AGENCY, Region IX
c/o Anita Lee
75 Hawthorne Street
San Francisco, CA 94105-3901

Re: Pascua Yaqui Tribe's Comments to Advanced Notice of Proposed Rulemaking – Assessment of Anticipated Visibility Improvements at Surrounding Class I Areas and Cost Effectiveness of Best Available Retrofit Technology for the Four Corners Power Plant and Navajo Generating Station - Docket No. EPA-R09-OAR-2009-0598

Dear Ms. Yoshii:

As the Chairman of the Pascua Yaqui Tribe of Arizona ("Tribe"), please accept these comments on behalf of the Tribe with regard to the U.S. Environmental Protection Agency's ("EPA") Advanced Notice of Proposed Rulemaking ("ANPR") on the Assessment of Anticipated Visibility Improvements at Surrounding Class I Areas and Cost Effectiveness of Best Available Retrofit Technology ("BERT") for the Four Corners Power Plant and Navajo Generating Station ("NGS") - Docket No. EPA-R09-OAR-2009-0598.

The Pascua Yaqui Tribe is deeply concerned about the potential effects of this rulemaking on the Tribe's ability to use its Central Arizona Project ("CAP") water for Tribal homeland purposes, including water necessary for domestic, municipal and industrial use on the Pascua Yaqui Reservation, and to achieve a final Indian water rights settlement for the Tribe in the future.

The Pascua Yaqui Tribe has a contract with the Secretary of Interior dated December 11, 1980, for the delivery of 500 acre-feet of CAP water to the Pascua Yaqui Reservation. The Pascua Yaqui Reservation is located in southern Arizona, near Tucson. Due to limited surface and groundwater supplies in the area, the Tribe relies on its CAP water to a large extent to meet its demand for a water supply for Tribal homeland purposes.

As you know, the CAP requires power to operate the pumps and canal system to deliver the CAP water from the Colorado River to Arizona, including to our Reservation. This power is supplied by the Navajo Generating Station by virtue of the United States'

24% ownership stake in the NGS for this very purpose. The current pumping energy charges for CAP are already expensive, at \$49 per acre foot for 2010 delivery rates, plus the additional operation, maintenance and replacement ("OM&R") charge which is set at \$69 for 2010, making a total delivery charge of \$118 per acre foot for 2010. These rates continue to increase from year to year. Thus, the Tribe is concerned that requiring an expensive retrofit of technology for the NGS may result in a substantial increase in the cost of CAP charged to the Pascua Yaqui Tribe for delivery of its CAP water.

In addition, in the Arizona Water Rights Settlement Act of 2004 ("AWSA"), Congress established a portion of the Lower Colorado River Basin Development Fund ("LCBDF"), pursuant to the Colorado River Basin Project Act of 1968, as a funding supply for future Indian water rights settlements in Arizona, as well as for defraying the OM&R charges for Indian CAP water. Revenues from the NGS which contribute to the LCBDF are vital to the Tribe to help defray the annual OM&R charges for the Tribe's 500 acre-feet of CAP water, as well as for the Indian water rights settlement process for those remaining Tribes in Arizona, like the Pascua Yaqui Tribe, who are seeking to achieve a water rights settlement. Reductions in NGS revenues to the LCBDF would jeopardize these goals for the LCBDF which were established by Congress.

While the Tribe generally supports federal efforts to reduce pollution at the NGS, these efforts must be undertaken in consultation with, and with due consideration given to affected tribal governments. See Executive Order 13175, *Consultation and Coordination with Tribal Governments* dated November 6, 2000 ("Executive Order 13175"), as further effectuated in *EPA Region 9 Approach to Consultation with Tribal Governments Regarding Non-Enforcement Related Matters* ("Region 9 Consultation").

The Tribe requests that EPA engage in meaningful consultation with the Pascua Yaqui Tribe at the earliest possible moment, as the actions contemplated by the ANPR could have a significant impact upon the Tribe and its ability to provide Tribal Members with adequate and affordable water for the future.

Please ensure that the Pascua Yaqui Tribe's Attorney General, Mr. Rolando Flores, 4725 W. Calle Tetakusim, Bldg. B, Tucson, AZ 85757-9264, ph. (520) 883-5109, is added to your mailing list on this matter. You may contact his office with any questions and to make arrangements for consultation.

Thank you in advance for your attention to this important matter.

Yours Truly,

PASCUA YAQUI TRIBE



Peter Yucupislo, Chairman

Cc: Honorable Ken Salazar, Secretary, U.S. Department of Interior
Honorable Janice K. Brewer, Governor, State of Arizona
Senator John McCain
Senator Jon Kyl
Larry Echohawk, Assistant Secretary for Indian Affairs, U.S. Department of Interior
David Hayes, Deputy Secretary, U.S. Department of Interior
Letty Belin, Counselor to Deputy Secretary Hayes, U.S. Department of Interior
Hilary Tompkins, Solicitor, U.S. Department of Interior
Pilar Thomas, Deputy Solicitor for Indian Affairs
Kimberly Teehee, Senior Policy Advisor for Native American Affairs, white House
Domestic Policy Council
Michael L. Connor, Commissioner, Bureau of Reclamation
Carol Lynn Erwin, Area Manager, Bureau of Reclamation, Phoenix Area Office
Randy Chandler, Deputy Area Manager, Bureau of Reclamation, Phoenix Area Office
Allen Anspach, Regional Director, Bureau of Indian Affairs, Western Region
Katosha Nakai, Policy Advisor for Tribal Affairs, Office of the Governor
Lisa Jackson, Administrator, U.S. Environmental Protection Agency
Chris Hoff, Acting Director, U.S. Environmental Protection Agency, American Indian Environmental Office
Brian Davidson, Tribal Relations Liaison, Arizona Department of Environmental Quality
John Lewis, Executive Director, Inter Tribal Council of Arizona, Inc.
Douglas K. Miller, General Counsel, Central Arizona Water Conservation District
Robyn L. Interpreter, Montgomery & Interpreter, PLC