

From: [Elena Iyua](#)
To: [Water Quality Guidance Document](#)
Cc: [trambler](#); [tao etpison](#); [bernadette goode](#); [CM John Antonio, Jr.](#); [simon hooke](#); [Velasquez sneezysr](#); [john bush](#); [valerie Key](#); [ned anderson](#); [alred pike](#); [jonathan Kitcheyan](#); [joesparks](#); [Laurel Herrmann](#); [James Reilly](#); [Steve Titla](#); [Kevin Parsi](#); [Harding1 Burdette](#); [Justine Jimmie](#); [Christabelle Mull](#); [apachevern](#); [Alex Ritchie](#)
Subject: San Carlos Apache Tribe Comments on Draft Water Quality Guidance
Date: Thursday, June 25, 2020 9:58:17 PM
Attachments: [Comment.WQ guidelines non-project water to CAP.final signed.062520.pdf](#)

Hello Ms. Meyers,

Please find the attached letter from, Chairman Terry Rambler, that submits the following comments on the Draft Water Quality Guidance For the Introduction of Non-Project Water into the Central Arizona Project. If you have any further questions, feel free to contact our office at the number listed below. Thank you.

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Elena T. Iyua
Legal File Clerk
Department of Justice
San Carlos Apache Tribe
P.O. Box 40
San Carlos, Az 85550
E: elena.iyua@scat-nsn.gov
P: 9284753339 9284753344

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SAN CARLOS APACHE TRIBE

P.O. Box 0, San Carlos, Arizona 85550
Phone (928) 475-1600 ❖ Fax (928) 475-2567

June 25, 2020

Via E-Mail to: WQGuidanceDoc@cap-az.com

Leslie Meyers
Area Manager
Phoenix Area Office
Bureau of Reclamation
U.S. Department of Interior
6150 W. Thunderbird Road
Glendale, AZ 85306

Re: Comments of the San Carlos Apache Tribe on the April 2020 Draft Water Quality Guidance For the Introduction of Non-Project Water into the Central Arizona Project

Dear Ms. Meyers:

On behalf of the 17,000 members of the San Carlos Apache Tribe (the "Tribe") and the San Carlos Council, the Tribe's governing body, I submit the following comments on the Draft Water Quality Guidance For the Introduction of Non-Project Water into the Central Arizona Project. In addition to these comments, the Tribe reserves the right to comment further as the program to introduce Non-Project water into the Central Arizona Project ("CAP") system moves forward.

Even as these comments are submitted, due to the COVID-19 pandemic, the Tribe's normal operations remain curtailed. Most tribal employees have been placed on administrative leave since before the Draft Guidance was made available for review. The Tribe's resources are primarily dedicated to fighting this deadly disease and attempting to safeguard our Members.

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While the Tribe's efforts have kept the virus at bay on our Reservation over the last two months, since the last week of May some cases have developed requiring the Tribe engage in further actions. Arizona is now the second leading state for the rate of COVID-19 infections. The Tribe must devote the preponderance of its resources to safeguarding reservation residents.

The Tribe has prepared the comments for the Draft Water Quality Guidance. However, the Tribe must reserve its right to supplement these comments or provide additional comments at a later time. We ask that the Bureau of Reclamation ("Reclamation") carefully consider the comments submitted today and any comments, which the Tribe may provide at a later date.

Background Information

The CAP system was designed to divert and deliver Project Water, which is Colorado River water along with certain Agua Fria inflows captured at Lake Pleasant. The quality of CAP water has met high standards over the years and has required minimal treatment prior to delivery for potable uses. However, introducing Non-Project Water into the CAP system has raised concerns about whether this same standard of water quality can be sustained.

The Tribe views the proposed Water Quality Guidance as just that—as a guidepost that includes technical limitations for allowing Non-Project Water into the CAP system and to ensure continued high water quality within the CAP system.

The Tribe is aware that various stakeholders with expertise in water quality matters have collaborated in the development of the Water Quality Guidance. The Tribe understands that the water quality standards in the Water Quality Guidance are intended to ensure continued high water quality within the CAP system. However, Reclamation is still bound by its trust responsibility to the Tribe and other affected tribes and to protect tribal entitlements to high quality water within the CAP system as tribal assets.

Required Environmental Reviews Must Continue

Every application to wheel in the CAP system must be reviewed individually under the required environmental regulations, including the National Environmental Policy Act ("NEPA"). The CAP remains a federal facility and remains subject to the required environmental review for every application to wheel Non-Project Water into the CAP system. The Water Quality Guidance should be viewed as just that – as guidance. Applicants must still comply with the requirements of NEPA. And, the Water Quality Guidance document should assist in that review process. Reclamation needs to ensure that the Water Quality Guidance document adequately guarantees high quality water will continue to be delivered.

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Consultation with the Tribe on Applications Must Occur

Consulting with tribes is an important part of making sure federal actions, including allowing wheeling into the CAP system, is done with the input and consideration of tribal nations' interests. Tribes should have access to the data reviewed by Reclamation and CAWCD which is used to make a determination of the likely effect of introducing Non-Project Water source into the CAP system.

The Tribe has a strong interest in maintaining the high water quality in the CAP system. Even as Reclamation and CAWCD attempt to increase the use of the CAP system, the introduction of Non-Project Water must not cause any degradation in the CAP water quality. Reclamation has a trust and fiduciary responsibility to Indian tribes. That responsibility includes the duty to ensure that the Tribe's CAP Water entitlement is not degraded by the introduction of Non-Project Water. Reclamation owes a continuing fiduciary duty and trust responsibility to the San Carlos Apache Tribe and all other tribes with CAP Water entitlements to ensure that the high quality of water in the CAP system is maintained. *See Draft Water Quality Guidance For the Introduction of Non-Project Water into the Central Arizona Project, paragraph 2.1, page 5.*¹

Costs of Applications and Review

The costs of the application and review of proposal, including the testing and other requirements, must be borne by the applicant. None of those costs should be covered by the CAP system, which would necessarily increase the costs to individual contractors. The Tribe is satisfied with the language in the Draft Guidance document that requires applicants bear all the costs associated with the review of applications.

CAP Water Quality Must Not Be Degraded

Even as Reclamation and CAWCD attempt to increase the beneficial use of the CAP system, the introduction of Non-Project Water must not cause any degradation in the water quality of the CAP system. Prohibiting the degradation of CAP water quality is part of Reclamation's trust responsibility to protect the Tribe's entitlement to CAP water. The following

¹ "CAP water is high quality and suitable for a variety of uses by tribes, cities, private water companies, irrigation districts and others. It meets most (if not all) established primary drinking water standards, and requires minimal treatment prior to delivery for potable uses. CAWCD has been monitoring water quality within the CAP system since 1996 and the historical data show a high degree of consistency through time. The historical data also provide a baseline for many of the water quality standards referenced in this document (see Appendix A). Although CAWCD does not warrant the quality of water and is under no obligation to treat the water, CAWCD recognizes that the high quality and chemical stability of CAP water is highly valued by water users.

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comments address the Tribe's concerns related to the degradation of the quality of the water in the CAP system.

Water Quality Standards Should Not Be Sidestepped

Section 2.2 of the Draft Guidance states, "The Secretary is also required to take into consideration the impact that wheeling of such Non-Project water will have on the quality of the project water when considering the approval of such a contract." This section of the Draft Guidance goes on to state that "the System Use Agreement calls for CAWCD and Reclamation to establish 'uniform water quality standards' that must be adhered to by all parties introducing Non-Project Water into the CAP system." Section 2.5, however, states that "[a]lthough this document can be used as a general guideline, CAWCD and Reclamation reserve the right to modify its contents at any time and waive specific provisions, if applicable." The ability and intent to waive provisions of the Draft Guidance undermine the notion that the standards "must be adhered to by all parties," and weaken any confidence that Reclamation will use the Water Quality Guidance to prevent degradation of CAP water quality. Neither Reclamation nor CAWCD should have the ability to waive provisions of the Final Water Quality Guidance.

The Tribe finds it troubling that Section 3.4.5 states that:

In the event that modeling during the Initial Analysis shows that the proposed Non-Project Water supply would meet the Introduction Standards, but would, in combination with all other previously approved Non-Project Water sources, result in an exceedance of one or more Delivery Standards, CAWCD and Reclamation will take steps to accommodate the proposed project. This may include reducing the relevant Introduction Standard(s) applicable to both the proposed and all previously approved Non-Project Water supply projects, provided CAWCD and Reclamation have first consulted with all affected parties and provided opportunities for alternative resolution.

The Tribe does not understand why Reclamation would work to accommodate an applicant who would introduce non-project water to the CAP system at the expense of the water quality enjoyed by the CAP contractors and subcontractors. Reducing relevant standards to accommodate an applicant is unacceptable.

Variances Should Not Be Allowed

Likewise, in order to protect the high water quality of the CAP, variances should not be available. A variance simply allows for a degradation of the quality of the CAP water in the system. Instead of issuing a variance, if quality standards have been exceeded, the introduction of the non-project water should immediately cease in order to alleviate that level of the constituency in the system. The existing water in the CAP system should not be used to be a buffer for non-

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project water of inferior quality. Dilution of constituents introduced by the non-project water is by nature a degradation of the water quality in the system.

Applicants Should Be Required to Demonstrate Introduction of Water Will Not Degrade CAP Water Quality Prior to Award of Wheeling Contract

The Tribe requests that applicants be required to prove, prior to the award of a wheeling contract, that the water they propose to introduce to the CAP system will not degrade the existing quality of the Colorado River water in the CAP system for delivery by CAWCD. To do so applicants should be required to demonstrate that no adverse chemical or ionic reaction would occur when introduced to the existing water in the CAP system, existing CAP facilities, and any municipal or other water treatment systems which treat CAP water. This should include, for example, the delivery and distribution systems of CAP water users, such as the Tribe's CAP exchange partners and the lessees of the Tribe's CAP water.

Limitation on Constituents Should Be More Stringent

The Tribe requests that the following limitations on constituents be adopted:

1. The Final Water Quality Guidance should not allow for the introduction of non-project water which contains human, animal or artificial hormones.
2. The Final Water Quality Guidance should not allow for the introduction of water with a higher biological or chemical oxygen demand than the existing CAP water in the system.
3. The Final Water Quality Guidance should not allow the introduction of constituents that have not previously been detected in CAP water. For example, non-project water with a detectable mercury load or compounds of mercury should not be allowed to be introduced into the CAP system. Additionally, non-project water with detectable lead or compounds of lead which would degrade the quality of CAP water, making the lead detectable, should not be introduced into the CAP system.

The Economic Value of the Tribe's CAP Water Should Not Be Risked

The Tribe encourages Reclamation to note that any introduction of constituents into the CAP system will diminish the economic value of the Tribe's CAP water for leasing and exchange purposes.

Water Quality Reporting Requirements Should Be More Stringent

The Tribe requests that the following provisions regarding reporting be adopted:

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1. Under Section 5.2.2, Wheeling Entities should have to retain records for more than five years.
2. Section 3.4.1.3 should require that water samples be stored securely in refrigeration in order to preserve the integrity of the samples.
3. Section 5.2.1 should require water quality testing results to be reported instantaneously and simultaneously to Reclamation, CAWCD, and the Arizona Department of Environmental Quality. Water quality results should be available online to all CAP contractors and subcontractors.

Other concerns of the Tribe

Two provisions of the Water Quality Guidance document provide for testing by “a laboratory exempted under A.R.S. § 36-495.02”. *See e.g.* 3.4.1.2, 4.2.2. A.R.S. § 36-495.02 provides for the exemption of certain environmental laboratories under Title 36, Chapter 4.3, Article 1. Subsections A. 2 through A. 5 should be carefully examined to determine whether an exemption is truly appropriate in the Water Quality Guidance document. Further explanation should be provided to explain why the laboratories listed in these subsections are appropriately exempted.

No provision is made in the Water Quality Guidance document for an emergency process to stop Non-Project Water being introduced into the CAP system. CAWCD must be able to immediately halt the introduction of Non-Project Water in the event of a terrorist attack or the accidental introduction of deadly contamination by poison or otherwise.

As we say in our Apache language, Ahi'yi'é (thank you) for this opportunity to provide our thoughts on the Draft Water Quality Guidance document. We would be grateful for your careful consideration of and response to our comments.

Sincerely,

SAN CARLOS APACHE TRIBE



Terry Rambler
Chairman

Cc: Tao Etpison, Vice Chairman
San Carlos Council Members
Water Rights Team

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Vernelda Grant, THPO
A.B. Ritchie, AG, DOJ
Chrono