

5. Environmental Compliance

A legally defensible document, most likely an environmental impact statement (EIS), will be prepared that complies with Council on Environmental Quality's (CEQ) regulations implementing the National Environmental Policy Act (NEPA), Department of the Interior regulations implementing NEPA (available at:

<http://www.doi.gov/oepec/nepafr/docs/Federal%20Register%20October%2015,%202008%20NEPA.pdf>)

and applicable Department of the Interior environmental memoranda (available at: <http://www.doi.gov/oepec/nrm.html>).

CEQ regulations implementing NEPA (40 CFR Part 1506.5(c)) indicate the Federal lead agency must select the contractor preparing the EIS. Therefore, at a minimum, Reclamation must participate in the evaluation and ranking of proposals, and will need to approve the Tribe's decision regarding selection of the NEPA Consultant. The Consultant must not have a conflict of interest regarding the outcome of the EIS (e.g., the Consultant cannot work for a design/build contractor who is hired to both design the project and then construct it).

Once selected, the Tribe and its Consultant (Tribe) shall develop and submit a general staffing plan to Reclamation that identifies and provides résumés of key personnel who will accomplish the work for each Task/subtask. The staffing plan is to indicate each team member's affiliation and clearly identify the roles and responsibilities of each person. The Tribe will provide an organizational chart of the team working on the EIS (i.e. an organizational chart showing each person, his/her title, and responsibility, and the person or persons to whom he/she reports), as well as related work products. The Tribe will make Reclamation aware of any proposed change in personnel, and Reclamation must approve any staff replacements. During the course of the project, the organizational chart will need to be updated if a change in personnel, duties, or responsibilities is made.

The remainder of this SOW assumes the Tribe is contracting for the maximum amount of work allowable by the CEQ regulations; however, the actual roles and responsibilities will be determined under Task 2.1.

5.1. Project Initiation

As soon as practicable, the Tribe shall solicit and award a fixed price contract to a qualified environmental consultant who, once under contract with the Tribe, will meet with the Tribal and Reclamation staff to ensure that roles and responsibilities of Reclamation, as the lead Federal Agency, and the Tribe are defined and understood, and reach consensus on how the NEPA process will be conducted. At this meeting, project objectives will be confirmed and the proposed action and the range of alternatives will be discussed and evaluated. The potential for additional studies or surveys that might be required, and other issues that should be

considered, will be identified. Any changes or additions to this scope of work resulting from this meeting will be defined, scoped, priced, and scheduled in a bi-lateral modification to this contract. Reclamation and the Tribe will identify any other agencies which should be invited to become a cooperating agency in the preparation of the EIS. Reclamation will extend invitations as determined appropriate, and Reclamation will prepare an MOU for each agency agreeing to become a cooperating agency.

The Tribe will prepare and provide to Reclamation a draft project schedule and work plan for completing the NEPA document, and other related documents, as applicable. Prior to submitting the work plan and schedule, the Tribe will meet with Reclamation to fully understand Reclamation's requirements in performing its inherent Federal responsibilities. While the schedule and work plan are dynamic documents that may be revised as deemed necessary and appropriate, such revisions will require Reclamation's approval. Significant departures from this scope of work or project schedule will be documented in a bilateral modification to this contract. Reclamation will provide samples of EIS documents that are structured and/or organized in the manner preferred by this office.

5.2. Description of Project Purpose and Need, Reclamation's Purpose and Need, and Background Regarding Alternatives

Although alternative water supply options and variations of the proposed project – Miner Flat Dam – have been investigated since the 1980s, the purpose and need for the currently proposed project must be carefully defined and described. The “purpose and need” for the project frames the alternatives that are either eliminated from further consideration, or are carried forward in the EIS as reasonable action alternatives. The Miner Flat Dam project has evolved from an irrigation-only project to an irrigation and domestic water supply project, and now to a domestic water supply only project. Numerous alternatives have been investigated at various times for each of these project needs. The document shall provide a summary of these past efforts, and a clear statement regarding the current need for and purpose of the currently proposed project. The Tribe and Reclamation will decide if the EIS will address feasible action alternatives for providing a domestic water supply to the targeted communities, or focus on feasible alternative methods for constructing the Miner Flat Dam and/or alternative routes for delivering the domestic water supply to the targeted communities. Reclamation and the Tribe will establish the “Project Area” to be evaluated in the EIS

Brief descriptions will be prepared for the alternatives that are anticipated to be carried forward in the EIS as action alternatives to the proposed project. These will be included in the public scoping document (see 2.3 below).

In addition, resource areas and their associated issues (if already known), that will be addressed in the EIS shall be identified, including the methodology or approach to be used in evaluating the potential impacts from the proposed project. Resource areas not necessary to be included

in the document will also be identified along with a justification as to why there are no issues related to these resource areas.

5.3. Public Scoping Process

Reclamation will be responsible for submitting the Notice of Intent to prepare an EIS in the Federal Register; however, the Tribe may assist in drafting the notice including any specific information or graphics related to scoping information (e.g., newsletter or handouts) that are desired.

Upon securing Reclamation's concurrence on meeting date(s) and time(s), the Tribe will complete arrangements for meeting(s), including reserving the meeting room facilities, audio/visual equipment, court reporters (if used) and translators if requested (e.g., hearing impaired, Apache, Spanish). If a court reporter is required, Reclamation will require two certified copies of public hearing transcripts (if transcript is not made publicly available by reporter). The Tribe will prepare display boards and/or other graphics for scoping meeting presentations, which shall be subject to Reclamation's approval.

At the end of the scoping period, the Tribe will prepare and submit to Reclamation a preliminary draft scoping summary report which summarizes all comments received during the scoping process, identifying major issues/concerns raised. The Tribe and Reclamation will organize and prepare responses to comments. The Tribe will provide Reclamation with a preliminary draft scoping summary report for review and comment. After incorporating Reclamation's comments, the Tribe will finalize the scoping summary report. The Tribe will provide Reclamation one print-ready hard copy and an identical electronic version of the final scoping summary report.

As a result of the scoping process, the Tribe will identify and document any new major issues/concerns that require additional significant effort to address in the EIS, as well as the proposed approach and any implications this will have to the overall budget or schedule.

5.4. Refinement of Alternatives Description

After considering scoping comments, Reclamation and the Tribe will establish a final list of the alternatives that will be considered in detail in the EIS (referred to as action alternatives). The Tribe will prepare a clear, detailed description of each action alternative, which should be developed in great enough detail to be compared on an equivalent basis to the proposed project. The Tribe also will develop a working description of the "future with" each of the action alternatives, as well as the "future without" the proposed project (i.e., projected future conditions that would occur if the proposed project is not implemented). The Tribe will submit these descriptions to Reclamation for review/comment and/or approval in order to reach consensus prior to proceeding with preparation of the preliminary draft EIS. Assumptions used to develop each of these descriptions need to be included. The entire team (Reclamation and Tribe) will meet to go over these alternatives so that everyone has the same understanding and

assumptions regarding each alternative. Once consensus has been reached on these descriptions, they will be used by each discipline in evaluating and describing the environmental impacts from the proposed project and action alternatives, as well as the No Action alternative.

The Tribe will identify and list cumulative impacts from the proposed project, and the rationale for what is and is not included on the list based on past, present, and reasonably foreseeable future actions.

5.5. Data Collection

The Tribe will identify information and data sources expected to be used in the preparation of the NEPA document, as well as where data or information are lacking, dated, or difficult to obtain. The Tribe will provide recommendations on how to proceed for those resource areas.

5.6. Preparation of the EIS

From this point forward in preparation of the EIS, appropriate Reclamation staff and the Tribe will have team meeting(s) on a regular on-going basis, to ensure changes to the design, new information, or new assumptions are applied consistently to all resources. This will also ensure issues that may affect more than one resource are handled consistently.

5.7. Preparation of Draft EIS

Once all necessary data have been collected and there is consensus on the list of alternatives to be considered in detail in the EIS, including a detailed description of each alternative and the anticipated future conditions under each alternative, the Tribe will prepare a preliminary draft of the EIS (except for the Executive Summary, index, and distribution list, which will be incorporated into the revised preliminary draft version of the document). The Tribe will submit an electronic version and 10 paper copies of the preliminary draft EIS to Reclamation for review.

Reclamation will provide its review comments to the Tribe, and the Tribe will revise the preliminary draft document to address these comments. The Tribe will also prepare an Executive Summary, index, and distribution list and include it in the revised preliminary draft document. The Tribe will submit an electronic version and five paper copies of this version to Reclamation for review. A meeting will be convened to discuss any other outstanding issues, if deemed necessary.

The Tribe will incorporate any additional review comments from Reclamation. After approval by Reclamation, the Tribe will submit one electronic version and 15 paper copies for review by the cooperative agencies.

Upon receipt of comments from the cooperating agencies, Reclamation and the Tribe will determine how to respond to and/or incorporate these comments into the document. If required, the document will be transmitted to the Department's Office of Environmental Policy and Compliance (OEPC) for approval to print (if more than one agency of the Department of the Interior is involved).

5.8. Federal Register Notice of Availability/Production of Draft EIS

Consistent with guidance from Reclamation, the Tribe will ensure the document complies with Reclamation's Visual Identify requirements as well as any other Department of the Interior publication requirements. Once approval to print has been obtained, either by Reclamation or OEPC, the Tribe will provide 20 paper copies and five disk copies of the draft EIS to Reclamation's Phoenix Area Office (PXA) for filing the EIS with the Environmental Protection Agency and Washington office retention. The Tribe will provide 30 of hard copies and 100 electronic disk copies of the draft EIS to Reclamation for distribution to the public. The electronic document and its appendices shall be sized to be easily accessed, with links to files as appropriate. If necessary, an ASCII version formatted for the visually impaired will be produced.

5.9. Public Hearing

Reclamation will be responsible for preparing and processing all Federal Register notices, but may request assistance from the Tribe in preparing specific information or graphics related to the public hearing as Reclamation determines to be necessary. Once text and dates of publication are approved by Reclamation, the Tribe shall make all arrangements for the public hearing including:

- Display boards or other graphics in support of the hearings;
- Reserving and preparing meeting room facilities;
- Provide for a court reporter, and translators (hearing impaired, Spanish), if requested.

The Tribe will ensure two certified copies of public hearing transcripts are submitted to Reclamation.

5.10. Preparation of Final EIS

Both Reclamation and the Tribe will review all the public comments and identify the major issues and concerns raised in the comments. Reclamation and the Tribe will then meet to discuss the comments received and general approach to developing responses, as well as determine how and who shall resolve any outstanding issues identified during the public review and comment period. If the Tribe prefers, the Tribe will make a preliminary determination of how the comments should be broken out on each letter, and prepare preliminary responses for comments that are not specifically related to Reclamation's or other agencies' authorities or responsibilities. The Tribe will draft a unique response to each comment, unless the comments

are identical (or so similar the same response can be referenced). Reclamation will provide guidance as requested or deemed appropriate.

The Tribe will make revisions to the text of the EIS as deemed appropriate and/or indicated in responses to comments; these revisions will be shown in redline/strikeout in the working version of the document. This preliminary final EIS also will include copies of all comment letters (with comments bracketed and numbered) and responses as a new appendix. The Tribe will submit an electronic version and 10 paper copies of the preliminary final EIS for Reclamation's review.

Reclamation will provide its review comments to the Tribe, and the Tribe will revise the preliminary final document to address these comments. A meeting will be convened to discuss any other outstanding issues, if deemed necessary.

The Tribe will incorporate any additional review comments from Reclamation. After approval by Reclamation, the Tribe will submit one electronic version and 15 paper copies for review by the cooperative agencies.

Upon receipt of comments from the cooperating agencies, Reclamation and the Tribe will determine how to respond to and/or incorporate these comments into the document. If required, the document will be transmitted to the Department's Office of Environmental Policy and Compliance (OEPC) for approval to print (if more than one agency of the Department of the Interior is involved).

5.11. Federal Register Notice of Availability/Production of Final EIS

Once approval to print has been obtained, either by Reclamation or OEPC, the Tribe will provide 20 paper copies and five disk copies of the final EIS to PXAO for filing the EIS with the Environmental Protection Agency and Washington office retention. The Tribe will provide an as-yet-to-be-determined number of hard copies (estimated 30 copies) and electronic disk copies (estimated up to 50) of the final EIS to Reclamation for distribution to the public. The electronic document and its appendices shall be sized to be easily accessed, with links to files as appropriate. If necessary, an ASCII version formatted for the visually impaired will be produced.

5.12. Administrative Record

The Tribe will provide five electronic copies (in .pdf format) on a diskette, of all references used in the preparation of the document (title page, copyright information page, and page[s] of referenced text); analyses prepared; copies of pertinent emails and correspondence related to decisions made regarding the content of the document.

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6. Endangered Species Act (ESA) Compliance

6.1 Biological Assessment (BA)

The Tribe will prepare a draft BA for Reclamation's review; the Tribe will consult with Reclamation prior to initiating the Biological Assessment (BA) to ensure all requirements are included in the study and to concur on the species to be addressed. The Tribe will incorporate any revisions requested by Reclamation, and then submit the revised draft BA to Reclamation. The BA's findings shall be included in the draft EIS. Once Reclamation has approved the BA, Reclamation will submit it to the U.S. Fish and Wildlife Service (FWS) to initiate the ESA Section 7 process. The schedule for this work should ensure Reclamation will receive a Biological Opinion (BO) prior to issuance of the final EIS; therefore, the BA needs to be in final approved form no less than 180 days prior to the scheduled final EIS to provide adequate time for consultation with the FWS.

6.2 Consultation

Pursuant to Secretarial Order No. 3206, Appendix Section 3(C)(3)(b), Section 7 Consultation, Reclamation must provide for the participation of the Bureau of Indian Affairs in the process. Accordingly, the Tribe, BIA and Reclamation will jointly conduct informal and formal consultation with the Fish and Wildlife Service to discuss the potential impacts to threatened and endangered species

6.3 Mitigation Plan

The Tribe will review the draft BO and provide comments as appropriate. Additionally, the Tribe will participate in the development of a mitigation plan for biological impacts, which will be included in the EIS. This effort is expected to entail a minimum of three site visits and three meetings.

6.4. Necessary Data

The Tribe will provide five electronic copies (in .pdf format) on a diskette, of all references used in the preparation of the BA (title page, copyright information page, and page[s] of referenced text); analyses prepared; copies of pertinent emails and correspondence related to decisions made regarding the content of the document.

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7. National Historic Preservation Act

7.1 Cultural Resource Report

The Tribe will consult with Reclamation, in defining the Area of Potential Effect. The Tribe shall then prepare a scope of study, identifying the types of cultural resources investigations that are to be conducted, locations (e.g., Class I, II, or III surveys), a schedule, and a description of who will be conducting the work (Tribal or consultant personnel). At a minimum, the Tribe shall conduct a Class I survey and prepare a Class I survey report. Based upon the Class I survey/report, the Tribe shall conduct an intensive Class III survey and prepare the Class III survey report inclusive of the proposed treatment plan. Cultural resource report(s) will be submitted to Reclamation for review and acceptance prior to Reclamation's submittal to the State Historic Preservation Officer. All cultural resource-related work will be conducted by archaeologists meeting the Secretary's standards, and will comply with requirements of the NHPA, ARPA, and other pertinent federal laws.

7.2 Testing

If any testing is required, the Tribe shall assist Reclamation in determining areas to be tested and protocol to be followed. A separate scope and budget will be prepared and submitted to Reclamation if testing is deemed necessary.

7.3 Data Recovery

The Tribe will meet with Reclamation to discuss the need for and extent of any data recovery, if appropriate.

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8. Clean Water Act Compliance

A preliminary jurisdictional delineation shall be prepared and submitted to the Corps of Engineers (COE) with a request for a delineation of jurisdictional waters within the project area. The Tribe shall meet with the COE to discuss and confirm assumptions and to provide any additional information that the COE requires to make its determination.

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9. Fish and Wildlife Coordination Act (FWCA)

Since the proposed project will impound water and modify a river, Reclamation is required to consult and coordinate with the FWS and affected Tribal fish and game agency to address ways to prevent loss of and damage to wildlife resources, as well as further develop and improve them.

In coordination with Reclamation and FWS, the Tribe will develop a draft FWCA report and mitigation plan and submit it to Reclamation. The mitigation plan that is agreed upon will be included in the EIS, as appropriate

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10. NEPA/Environmental Deliverables

- a. Develop and submit a general staffing plan to Reclamation that identifies and provides résumés of key personnel who will accomplish the work for each Task/subtask associated with this environmental compliance component of this scope of work (reference paragraph 5.);
- b. Prepare and provide to Reclamation a draft project schedule and work plan for completing the NEPA document, and other related documents (reference paragraph 5.1);
- c. Prepare and submit a preliminary draft scoping summary report; after incorporating Reclamation's comments, finalize the scoping summary report - provide Reclamation one print-ready hard copy and an identical electronic version of the final scoping summary report (reference paragraph 5.3 above);
- d. Develop working description of the "future with" each of the action alternatives, as well as the "future without" the proposed project (i.e., projected future conditions that would occur if the proposed project is not implemented); submit these descriptions for review/comment and/or approval in order to reach consensus prior to proceeding with preparation of the preliminary draft EIS; prepare preliminary draft of the EIS; submit electronic version and 10 paper copies of preliminary draft EIS for review/approval; revise the preliminary draft document to address these comments; prepare and submit an electronic copy and 5 paper copies of Executive Summary, index, and distribution list and include it in the revised preliminary draft document for review and approval; incorporate any additional review comments from Reclamation; after approval by Reclamation, submit one electronic versions and 15 paper copies for review by the cooperative agencies (reference paragraph 5.7);
- e. Provide 20 paper copies and five disk copies of the draft EIS to Reclamation's Phoenix Area Office for filing the EIS with the Environmental Protection Agency and Washington office retention; provide 30 of hard copies and 100 electronic disk copies of the draft EIS to Reclamation for distribution to the public (reference paragraph 5.8);
- f. Submit two certified copies of public hearing transcripts to Reclamation (reference paragraph 5.9);
- g. Submit electronic version and 10 paper copies of the preliminary final EIS; revise the preliminary final document to address Reclamation these comments; incorporate any additional review comments; submit one electronic versions and 15 paper copies for review by the cooperative agencies (reference paragraph 5.10);
- h. Provide 20 paper copies and five disk copies of the final EIS to PXAO for filing the EIS with the Environmental Protection Agency and Washington office retention; provide 30 hard copies and electronic 50 disk copies of the final EIS to Reclamation for distribution to the public (reference paragraph 5.11);

- i. Provide five electronic copies (in .pdf format) on a diskette, of all references used in the preparation of the Administrative Record document (title page, copyright information page, and page[s] of referenced text); analyses prepared; copies of pertinent emails and correspondence related to decisions made regarding the content of the document (reference paragraph 5.12);
- j. Submit revised draft BA to Reclamation (reference paragraph 6.1);
- k. Provide five electronic copies (in .pdf format) on a diskette, of all references used in the preparation of the BA (title page, copyright information page, and page[s] of referenced text); analyses prepared; copies of pertinent emails and correspondence related to decisions made regarding the content of the document (reference paragraph 6.4);
- l. Submit cultural resource report(s) for review and acceptance prior to Reclamation's submittal to the State Historic Preservation Officer (reference paragraph 7.1);
- m. Develop a draft FWCA report and mitigation plan and submit for approval (reference paragraph 9);
- n. Prepare a Class I survey report (reference paragraph 7.1);
- o. Prepare the Class III survey report inclusive of the proposed treatment plan (reference paragraph 7.1).