BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, DC

In re Final RCRA Permit for Evoqua Water Technologies LLC and Colorado River Indian Tribes 2523 Mutahar Street Parker, Arizona 85344 EPA RCRA ID No. AZD982441263	)	RCRA Appeal No. 18-01

COLORADO RIVER INDIAN TRIBES RESPONSE TO PETITION FOR REVIEW

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Introduction

On October 25, 2018, Evoqua Water Technologies, LLC ("Evoqua") filed a petition for review of the final Resource Conservation and Recovery Act ("RCRA") permit issued for its carbon regeneration facility ("Facility") located on the Colorado River Indian Reservation ("Reservation"). Pursuant to 40 C.F.R. sections 124.19(b)(3) and (4), the Colorado River Indian Tribes ("CRIT or the Tribes"), as both beneficial owner of the land on which the facility is located and tribal government with authority over the Facility, hereby responds to the petition for review. CRIT opposes Evoqua's petition for review insofar as it seeks to remove permit conditions that are intended to protect the health and wellbeing of CRIT tribal members and the environment on the Reservation.

I. Threshold Procedural Requirements

Pursuant to 40 C.F.R. section 124.19(b)(4), CRIT is a "State or Tribal authority where the permitted facility or site is or is proposed to be located (if that authority is not the permit issuer)." CRIT is a federally recognized Indian tribe with jurisdiction over the site where the Facility is located. Pursuant to 40 C.F.R. section 124.19(b)(3), CRIT also is a "permit applicant who did not file a petition but who wishes to participate in the appeal process." CRIT files its response to Evoqua's petition for review within the time limit provided, as extended by the EAB's Order Granting Motion for Extension of Time to File Response RCRA Appeal No. 18-01, Docket No. 5.

CRIT also participated in the comment period on the draft permit. *E.g.*, Admin. R., 2016 12 27 CRIT Comments on Draft Evoqua Permit.pdf. However, CRIT does not seek review of any of the issues raised in its comments and instead responds only to Evoqua's petition.

II. Factual Background

The existing Facility is located on a 10-acre site within the Colorado River Indian Tribes' Industrial Park in Parker, Arizona. Admin. R., 1993 08 30 Request of Documents ("Lease") at 3.

The town of Parker is located on the Colorado River Indian Reservation, which was created by Congress in 1865 "for the Indians of [the Colorado] river and its tributaries." Act of March 3, 1865, 13 Stat. 541, 559. Approximately 3,000 people live in the town of Parker; of these residents, nearly two-thirds identify as a minority, including 20 percent Native American. 2016 American Community Survey. Nearly one in five residents live below the poverty line. *Id.*

The Facility was originally constructed in the early 1990s as a way of encouraging economic development on the Reservation. Since that time, the Facility has operated under an interim permit. The Tribes have worked with Evoqua and EPA for a number of years to secure a final RCRA permit for the facility. *See* Admin. R., 2016 12 27 CRIT Comments on Draft Evoqua Permit.pdf. The Tribes believed that a final permit would provide additional health and safety benefits for both tribal members and other residents of Parker.

The Facility was constructed by Evoqua's predecessor through a long-term ground lease with the Tribes. CRIT retains some authority over the Facility, both in its capacity as landlord and in its capacity as regulator. For instance, the lease provides that Evoqua "will not use or cause to be used any part of the leased premises for any unlawful conduct or purpose, or engage in any activity in violation of any applicable law." Lease at 6. The lease also states that "[i]n the event the environmental impacts of Lessee's operations on the leased premises pose an imminent and substantial threat to the safety of persons on the Reservation, in [CRIT's] reasonable discretion, Lessee will cease operation until such condition can be corrected." Lease at 40. CRIT retained the ability to inspect the Facility at any time for compliance with these and other terms (Lease at 52), and holds the right to terminate the Lease for acts of non-compliance (Lease at 36).

III. Standard of Review

Pursuant to 40 C.F.R section 124.19(a), a petition for review can only be successful if it demonstrates that "[a] finding of fact or conclusion of law [] is clearly erroneous" or EPA exercised

its discretion or made an important policy consideration in a way that the Environmental Appeals Board "should, in its discretion, review." 40 C.F.R. § 124.19(a)(4)(i)(A), (B). To the extent EPA already responded to these issues in its response to comments, the Board can only act if the response was "clearly erroneous" or otherwise "warrant[ing] review." *Id.* § 124.19(a)(4)(ii). These standards are highly deferential to EPA's permit decision. *See Citizens for Clean Air v. U.S. EPA*, 959 F.2d 839, 845 (9th Cir. 1992) (the "power of review should be only sparingly exercised" and "most permit conditions should be finally determined at the Regional [State] level") (internal citations omitted). As a result, Evoqua bears a heavy burden of demonstrating that the final permit should be modified. *Mich. Dep't of Envtl. Quality v. U.S. EPA*, 318 F.3d 705, 708 (6th Cir. 2003).

IV. Argument

Evoqua challenges ten separate aspects of the final RCRA permit issued for the Facility. Evoqua Water Technologies LLC's Petition for Review ("Petition") at 3-5. The Tribes take no position on two of these challenges: 7 (concerning reporting requirements to the National Response Center) and 8 (concerning dispute resolution provisions). With respect to the remaining provisions, the Tribes respond in the same format presented by Evoqua.

A. CRIT Supports Efforts to Clarify the Different Roles and Responsibilities of Evoqua and CRIT in the Final Permit.

Federal law requires that both facility operators and owners obtain RCRA permits for hazardous waste facilities. 40 C.F.R. § 270.10(b) (if "facility . . . is owned by one person but is operated by another person," both owner and operator must apply for a RCRA permit). CRIT is the beneficial owner of the land on which the facility is located. Final RCRA Permit for Colorado River Indian Tribes and Evoqua Water Technologies LLC, September 2018 ("Permit") at 1. While Evoqua is correct that it currently owns and operates the Facility (Petition at 7), the lease provides that upon termination or expiration of the lease, all buildings and permanent improvement become

CRIT's property. Lease at 13. Likewise, if Evoqua fails to remove its personal property or trade fixture at the end of the lease, such property also becomes CRIT's property. Lease at 13-14. Consequently, CRIT also has a residual ownership interest in the Facility itself. CRIT therefore agreed to be a co-permittee in Evoqua's application for a final RCRA permit for the facility. Admin. R., 2016 04 Evoqua Part B Application, at 156-59 (CRIT signature on permit application and approving resolution).

Evoqua now argues that neither RCRA section 3004 nor 40 C.F.R. section 270.1(c) require CRIT to be a co-permittee under RCRA, as CRIT is a sovereign government entity, an independent regulator of the facility, and Evoqua's landlord. Petition at 6-7. Evoqua, however, offers no legal support for its position that EPA should remove CRIT entirely from the permit, even given the unique factual situation here. Given RCRA's clear language requiring owners to maintain permits under 40 C.F.R. section 270.1(c), removing CRIT entirely from the permit could place the Tribes in unwarranted legal jeopardy.

However, CRIT supports Evoqua's suggestion that the permit could be revised to better clarify the respective roles of CRIT and Evoqua. As currently drafted, the permit lists the Tribes as the Beneficial Landowner and Evoqua as the Operator. Permit at 1. It then defines both the Tribes and Evoqua as the "Permittees." *Id.* It states that "[t]he Permittees must comply with all the terms and conditions of this Permit." *Id.*; *see also* Permit § I.A.6 ("Unless set for specifically otherwise herein, requirements of this Permit apply to both the Tribal trust landowner and the operator of the Facility . . . ."). It then makes no further differentiation between the Tribes and Evoqua in describing all of the terms and conditions.

This lack of distinction is potentially problematic. As one easy example, final permit section I.E.9.b states that "the Permittees shall retain records of all monitoring information required by this permit (including all calibration and maintenance records and all digital and original strip chart

recordings for continuous monitoring instrumentation)." The permit is clear that if Evoqua fulfills this requirement, then that action shall satisfy the terms of the permit. Permit § I.A.6. However, in the event Evoqua *fails* to comply with this requirement, CRIT has no ability to separately comply—the Tribes are not involved in monitoring and therefore have no ability to retain monitoring information. Likewise, as the retention of monitoring information is intimately connected with Evoqua's business operations, CRIT also has no obvious way of ensuring that Evoqua complies with this term. Thus, the permit imposes obligations on CRIT that it cannot meet given its removed status as landlord and regulator.

CRIT urges the Board to reconsider a more nuanced approach. Evoqua should be primarily responsible for complying with the terms of the permit that are aimed at business operations that are solely within Evoqua's control. On the other hand, it may be more appropriate for CRIT to be jointly responsible for compliance with any terms that are within CRIT's control as landlord or independent regulator. This clearer division of responsibility will help ensure better compliance with the permit and clearer lines of enforcement if necessary in the future.

B. CRIT Supports EPA's Determination that MACT EEE Standards Are Necessary to Protect Public Health.

Evoqua takes a two-pronged attack on a wide range of permit conditions related to maximum achievable control technology ("MACT") standards found in 40 C.F.R. part 63, subpart EEE.

As a preliminary matter, it is important to note that many of the challenged conditions relate to protection of public health and the environment. For instance:

- V.C.1.b and Table V-1 set limits on the quantities of spent activated carbon that can be treated at any given time based on permissible SO2 and NOx emissions limits. SO2 and NOx both have the potential to cause short-term and long term human health impacts.
- V.C.4.a, Table V-3 and V.C.5 establish operation and calibration requirements to limit how quickly spent activated carbon and other materials are fed into the carbon reactivation unit

(RF-2) and to ensure that it shuts off if permit conditions are exceeded. Again, these limitations are intended to ensure that emissions do not exceed pollution levels set to protect public health.

- V.E is intended to ensure that fugitive emissions do not escape from the RF-2, and are instead treated in accordance with the permit. Again, this condition is intended to ensure the Facility operates in a manner that has been demonstrated to protect public health.
- V.G.2 ensures that Evoqua properly documents when the facility does not operate as anticipated and the automatic waste feed cutoff system either stops operations or fails to work as required.
- V.I requires periodic trial burns, performance testing, or performance demonstration tests and human health and ecological risk assessments. These requirements are extremely important to CRIT, as they demonstrate that the Facility is operating as anticipated and within parameters intended to protect human health and the environment. *See* EPA Region IX Responses to Public Comment, September 2018 ("Responses to Public Comments") at 66 (EPA statement that "periodic trial burn testing is necessary to demonstrate the emissions limits, which in turn demonstrates that the unit's operations do not pose an unacceptable risk to human health or the environment").

Given the purpose of these conditions, CRIT is concerned by Evoqua's attempt to remove them from the final RCRA permit.

Evoqua first appears to argue that EPA has improperly concluded that carbon regeneration facilities are hazardous waste combustors and thus *automatically* subject to MACT EEE. Petition at 9. But EPA has never claimed that carbon regeneration facilities in general *are* hazardous waste combustors or incinerators, or that this particular facility is an incinerator. Indeed, such a conclusion would appear to be contrary to the regulatory language. Subpart EEE applies automatically to "all hazardous waste combustors," which is defined to include "hazardous waste incinerators." 40 C.F.R. § 63.1200; *see also id.* § 63.1201 (defining hazardous waste combustors). However, "incinerators" specifically do not include carbon regeneration units. 40 C.F.R. § 260.10 (defining "incinerator" as "any enclosed device that . . . uses controlled flame combustion" but *does not* qualify as a "carbon regeneration unit"); *id.* (defining a "carbon regeneration unit" as "any enclosed thermal treatment devise used to regenerate spent activated carbon"); *see also* 56 Fed. Reg. 7200 (Feb. 21, 1991). Consequently, most of Evoqua's argument—that EPA is improperly

treating the facility as an incinerator—amounts to nothing more than a strawman.

Instead, EPA exercised its discretion to impose certain MACT EEE requirements on this particular carbon regeneration facility.[1] The imposition of such standards is specifically anticipated by the guidelines. For miscellaneous facilities, the RCRA regulations authorize EPA to impose MACT EEE standards when "necessary to protect human health and the environment." 40 C.F.R. § 264.601 ("permit terms and provisions *must* include those requirements of . . . part 63 subpart EEE . . . that are appropriate for the miscellaneous unit being permitted") (emphasis added); *see also* 56 Fed. Reg. 7200 (Feb. 21, 1991) (stating that standards for miscellaneous units specify that "health and environmental safety must be a primary concern during the management of hazardous wastes in miscellaneous units"). No one disputes that carbon regeneration facilities are properly categorized as miscellaneous facilities. Responses to Public Comments at 66.

Therefore, Evoqua also attacks EPA's finding that imposition of such standards is necessary. But EPA provided more than adequate justification for its decision. For example, it explained that similar to incinerators, the Facility "uses thermal treatment with air pollution control equipment to regenerate hazardous spent carbon with toxic organic compounds that are hazardous waste." Responses to Public Comment at 67. As a result, EPA determined that the MACT EEE standards were necessary to "ensure[] that volatile organic compounds are controlled before emissions reach the stack" or that such compounds are sufficiently destroyed. *Id.* EPA specifically found that these standards prevent stack emissions that would pose an "unacceptable risk to human health or the environment," and cited to the risk assessment. *Id.*

Rather than explain why this response was inadequate, Evoqua simply reiterates its belief that the MACT EEE standards are unnecessary. Petition at 13-14. But "a petitioner may not simply

[1] For instance, EPA specifically removed some of the MACT EEE requirements from the final permit. *See* Responses to Public Comments at 12.

restate or refer to its original comments in order to be granted review." *Mich. Dep't of Envtl. Quality*, 318 F.3d at 708. It must explain why the response was "clearly erroneous or otherwise warrants review." 40 C.F.R. § 124.19(a)(4)(ii). Evoqua has not met this burden. As a result, CRIT urges the Board to defer to EPA's conclusion that the MACT EEE standards imposed in the final permit are necessary to protect the health of tribal members and other residents of Parker, AZ.

C. AWFCO Requirements Should Be Imposed to the Extent Feasible.

Evoqua claims that "[i]t is not possible to have the Facility's [automatic waste feed cutoff ("AWFCO")] system automatically shut off flow whenever there is a CMS malfunction or an AWFCO system failure because the instrumentation cannot detect the wide range of potential malfunctions that could occur." Petition at 15.

CRIT takes no opinion on the feasibility of implementing all operational and recordkeeping requirements contained in conditions V.C.5 and V.G.2. But to the extent Evoqua argues that it should be released from complying with *any* shutoff requirements because it cannot assure that flow would be shut off in *all* circumstances, CRIT urges the Board to deny the request. A more appropriate remedy—to the extent one is required—would be to tailor the permit requirements to require automatic waste feed cutoff whenever it is necessary and technically feasible to do so.

D. CRIT Supports EPA's Determination that MACT Continuous Emissions Monitoring System Maintenance and Calibration Requirements Are Necessary to Protect Public Health.

Evoqua claims that EPA did not provide an adequate explanation for why the MACT Continuous Emissions Monitoring System Maintenance and Calibration Requirements in final permit condition V.C.4.a are necessary to protect human health and the environment. Petition at 16. CRIT disagrees with this statement.

Specifically, in response to Evoqua's comments, EPA explained that condition V.C.4.a and its reference to Table V-3 are "necessary to ensure proper operation of [the carbon reactivation unit

(RF-2)].” Responses to Public Comments at 92. The Facility includes a number of different instruments; each instrument is assigned a specific “calibration and maintenance practice[]” to ensure the instrument operates as anticipated over the life of the permit. *Id.* EPA then provided two example instruments: the oxygen monitor and the carbon monoxide CEMS. *Id.* It explained, as an example, that if these monitors failed, the stack emissions could exceed standards to protect public health without detection. *Id.* Likewise, EPA also explained that quality assurance and quality control requirements in condition V.C.4.a are necessary to ensure adequate “emissions monitoring and unit performance.” *Id.*

As EPA has provided a response to Evoqua’s comments, Evoqua was required to explain why the response was “clearly erroneous or otherwise warrant[ing] review.” 40 C.F.R. § 124.19(a)(4)(ii). Evoqua has failed to meet this burden.

E. EPA Appropriately Required PDTs Every Five Years to Ensure the Protection of Human Health and the Environment.

As part of final permit condition V.I.1.b, EPA requires a Performance Demonstration Test (“PDT”) approximately every 55 months to ensure the protection of human health and the environment. Evoqua claims that periodic PDTs are unnecessary given that prior tests have demonstrated that the “Facility operates safely” and conducting PDTs is “extremely burdensome and expensive.” Petition at 19. Contrary to Evoqua’s claims, CRIT believes that the imposition of this condition is both appropriate and important “to protect both human health and the environment.” Responses to Public Comments at 106. EPA notes that it is not requiring continuous emissions monitoring for several performance and emissions standards. Responses to Public Comments at 106. Therefore, the five-year interval between PDTs is necessary to verify that these standards are being met. *Id.*

Additionally, as the Facility ages, periodic PDTs are an efficient way to ensure that the

carbon reactivation unit (RF-2) does not pose an unacceptable risk to human health or the environment. As EPA noted in its response to comments, "[b]y the time the first trial burn test required by the Permit is performed, the unit will be over 22 years old and more frequent trial burn tests, (*i.e.,* one every 5 years instead of every 10 years), are appropriate as the system continues to age further." Responses to Public Comments at 107. EPA appropriately recognized that "long-term stress to the critical components of RF-2, such as its firing systems and emission control equipment, could adversely affect emissions." *Id.*

EPA has authority and discretion to require periodic PDTs in order to ensure the protection of human health and the environment. As discussed above, RCRA regulations for miscellaneous units authorize EPA to incorporate "terms and provisions as necessary to protect human health and the environment, including, but not limited to, as appropriate, design and operating requirements, *detection and monitoring requirements*, and requirements for responses to releases of hazardous waste or hazardous constituents from the unit." 40 C.F.R. § 264.601 (emphasis added); *see also* 40 C.F.R. § 270.10(k). EPA also has authority under 40 C.F.R. section 270.23, which requires operators of miscellaneous units to provide "[i]nformation on the potential pathways of exposure of humans or environmental receptors to hazardous waste or hazardous constituents and on the potential magnitude and nature of such exposures." 40 C.F.R. § 270.23; *see also* Responses to Public Comments at 106 ("[t]he Region maintains that the specific references in the RCRA Subpart X regulations to the CAA MACT Subpart EEE standards for combustion units, and the seven considerations enumerated at 40 C.F.R. § 264.601(c), in combination with the added authority of 40 C.F.R. § 270.23, not only justify the obligations to perform a PDT, but also to periodically repeat performance testing to ensure that operating conditions remain within acceptable ranges over the life of the Permit.").

Evoqua failed to demonstrate that EPA lacks discretion to require monitoring or testing.

Additionally, Evoqua cannot show that periodic PDTs would not protect public health and the environment. Therefore, Evoqua has failed to meet its burden of proving that the final permit condition V.I.1.b, requiring periodic PDTs, resulted from a clearly erroneous conclusion of law or that there are any policy reasons for the Board to modify this condition. 40 C.F.R. § 124.19(a)(4). CRIT supports EPA's determination that periodic PDTs are necessary and important to protect public health and the environment.

F. EPA Appropriately Required an Additional HHERA to Ensure the Protection of Human Health and the Environment.

Evoqua claims that the additional Human Health and Ecological Risk Assessment ("HHERA") required in final permit condition V.I.4 is inappropriate because (a) it is "extremely burdensome and expensive," (b) prior testing has already demonstrated that the Facility meets risk criteria, and (c) potential changes to the Facility and EPA testing—which could necessitate further testing—have not been identified. Petition at 23. CRIT disagrees with these arguments and asserts that EPA appropriately required an additional HHERA for the purpose of protecting human health and the environment.

As a preliminary matter, requiring an additional HHERA to ensure the protection of human health and the environment is well within EPA's authority and discretion. 40 C.F.R. § 264.601; 40 C.F.R. § 270.10(k); 40 C.F.R. § 270.23(c); 42 U.S.C. §§ 6924, 6925(c)(3). As a result, Evoqua cannot show that inclusion of this condition is clearly erroneous as a matter of law.

Moreover, EPA demonstrated that an additional HHERA is necessary to "ensure appropriate protection of human health and the environment" over the lifespan of the permit. *See* Responses to Public Comments at 115. Although an HHREA was previously conducted by Evoqua in 2008, that single assessment is insufficient for a permit with a 10-year lifespan. Permit § I.E.3. As EPA determined, when the carbon regeneration system ages, it could potentially cause

inefficiency in the pollution control system. Responses to Public Comments at 115. Additionally, EPA's testing requirements change over time based on the best available science. As EPA has noted, "the 2008 risk assessment was conducted using methods and procedures that are no longer supported or have been updated by EPA," including "updated air dispersion and deposition modeling analysis, updated toxicity criteria, and updated exposure assessment analysis." Responses to Public Comments at 115. Given these changes, as well as EPA's clear explanation regarding the need for further assessments, Evoqua has failed to meet its burden of proving that there are contrary policy considerations that warrants review by the Board. Thus, CRIT supports EPA's determination that an additional HHERA is necessary to protect public health and the environment.[2]

G. EPA Appropriately Required Evoqua to Maintain Stack Flow Data for NOx Combustion Calculations.

Final permit condition V.C.6.c requires Evoqua to determine the flow rate out of the stack in calculating nitrogen oxide emissions caused by the burning of natural gas. Contrary to Evoqua's argument that this information is not necessary (Petition at 29), EPA appropriately requires this measurement to ensure that emissions do not pose risks to public health and environment. Evoqua, in a letter dated September 2016, "voluntarily agreed to a 22-tons per year limit on NOx emissions to be included in the RCRA permit in order to ensure that such emissions are kept below the major source threshold for the [new source review] permit program and the 100 tons per year major source threshold for the CAA Title V operating permit program." Responses to Public Comments at 109. The 22-tons per year limit was based in part on flow rate out of the stack. Evoqua's letter of agreement stated: "[f]or NOx, a 22 tons per year limit, demonstrated on a calendar year basis, using the NOx stack gas concentration from the most recent stack test where NOx was measured (average

[2] Evoqua claims that both the PDT and HHREA were required in response to "spirited criticism from an activist group." Petition at 20, 23. However, the CRIT Tribal Council requested these conditions as well.

of 3 runs), *flow rate out the stack* and the hours of operation of the reactivitation unit." *See* Admin. R., 2016 09 19 Evoqua Ltr to USEPA R9 re SO2 and NOx Limitations on Emissions.pdf (emphasis added). Given that the agreed upon limit for the permit was in part based on flow rate out of the stack, CRIT supports EPA's determination that it is an appropriate measurement for NOx combustion calculations to ensure that emissions do not exceed regulatory thresholds intended to protect human health. Evoqua therefore has failed to demonstrate that the condition requiring stack flow data is outside of EPA's discretion and clearly erroneous as a matter of law or that there are important policy considerations to justify excluding this measurement. *See* 40 C.F.R. § 124.19(a).

H. EPA Appropriately Determined that Tank T-11 Is Subject to a *Partial* Exemption from RCRA Regulations.

Evoqua claims that Tank Systems T-11 is *entirely* exempt from RCRA regulations under 40 C.F.R. Part 264, Subpart CC. Petition at 30. CRIT disagrees with this conclusion. Rather, EPA appropriately determined that Tank Systems T-11 is subject only to a partial exemption from RCRA, and therefore imposed certain conditions in final permit condition IV.G.1.

Pursuant to 40 C.F.R. section 264.1082(c)(1), EPA recognizes that Tank T-11 is eligible for partial exemption from the requirements of 40 C.F.R. sections 264.1084 through 264.1087. Responses to Public Comments at 47. However, Evoqua would still be required to comply with record keeping and reporting requirements of 40 C.F.R. §§ 264.1089 and 264.1090. Responses to Public Comments at 47. Thus, Tank T-11 would still be "subject to" 40 C.F.R. Part 264, Subpart CC. *Id.* Meeting these reporting and record keeping requirements is important to ensure that the facility does not pose risk factors for human health and the environment. Given that Evoqua failed to demonstrate that the record keeping and reporting requirements do not apply to Tank T-11 or that there are contrary policy considerations for their application, Evoqua fails to meet its burden to prove that the final permit should be modified. Thus, CRIT supports EPA's determination that

Tank T-11 is only partially exempt from RCRA regulations.

Conclusion

For the foregoing reasons, the Board should deny Evoqua's petition for review with respect to issues 2 – 6 and 9 – 10. With respect to issue 1, CRIT encourages the Board to remand the final permit back to EPA with directions to further clarify the distinct roles and responsibilities of CRIT and Evoqua in the permit. CRIT takes no position on issues 7 or 8.

DATED: December 3, 2018

Respectfully submitted,

SHUTE, MIHALY & WEINBERGER LLP

By: /s/ Sara A. Clark
SARA A. CLARK

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STATEMENT OF COMPLIANCE WITH WORD LIMITATION

Sara A. Clark, counsel for the Colorado River Indian Tribes, hereby certifies that this petition complies with the word limit of 40 C.F.R. section 124.19(d)(3) because, excluding the parts of the petition exempted by 40 C.F.R. section 124.19(d)(3), this petition contains 4,440 words.

DATED: December 3, 2018 SHUTE, MIHALY & WEINBERGER LLP

By: /s/ Sara A. Clark
SARA A. CLARK

Attorneys for Colorado River Indian Tribes

CERTIFICATE OF SERVICE

I hereby certify that, on behalf of the Colorado River Indian Tribes, a true and correct copy of the foregoing "CRIT Response to Petition for Review" has been served on the following parties via the following methods on this 3rd day of December, 2018:

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