

**S. 664 AND S. 1770**

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**HEARING**  
BEFORE THE  
**COMMITTEE ON INDIAN AFFAIRS**  
**UNITED STATES SENATE**  
**ONE HUNDRED FIFTEENTH CONGRESS**  
FIRST SESSION  
\_\_\_\_\_  
DECEMBER 6, 2017  
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## S. 664 AND S. 1770

WEDNESDAY, DECEMBER 6, 2017

U.S. SENATE,  
COMMITTEE ON INDIAN AFFAIRS,  
*Washington, DC.*

The Committee met, pursuant to notice, at 2:50 p.m. in room 628, Dirksen Senate Office Building, Hon. John Hoeven, Chairman of the Committee, presiding.

### OPENING STATEMENT OF HON. JOHN HOEVEN, U.S. SENATOR FROM NORTH DAKOTA

The CHAIRMAN. Good afternoon. I call this hearing to order. I want to thank our witnesses for being here today.

Before we begin, I also want to extend my sincerest condolences to the Navajo Nation and to President Begaye, who is testifying before us today, on the recent loss of Navajo Nation Code Talker, George B. Willie, Sr.

Mr. Willie served in the Marine Corps with the 2nd Marine Division. His bravery and sacrifices, and that of all code talkers, was absolutely invaluable in securing freedom and victory during World Wars I and II.

On a personal note, my dad was a Marine. I can remember the movie on the code talkers. As a matter of fact, a friend of mine growing up, a fellow by the name of John Rice, I think, wrote the screenplay for that amazing, amazing movie about the code talkers of World War II.

Certainly we remember and honor Mr. Willie's service and life today.

With that, this Committee will receive testimony on two Indian water rights settlement bills, S. 664 and S. 1770.

In the early 1900s, the Supreme Court paved the way for Indian tribes to settle their water rights in the case of *Winters v. United States*. Since then, only a handful of the Indian tribes have settled their claims for water rights. Many more claims still need to be addressed.

S. 664, the Navajo Utah Water Rights Settlement Act of 2017 is intended to resolve claims between the Navajo Nation and the State of Utah regarding water allocation in the San Juan River.

The bill would authorize over \$210 million for approved water development projects for the Navajo Nation and also would allocate 81,500 acre feet per year of water from the San Juan River.

S. 1770, the Hualapai Tribe Water Rights Settlement Act of 2017 would resolve the claims of the Hualapai Nation to water in the

Colorado River Basin. The bill would authorize approximately \$173.5 million for water development projects and reallocate 4,000 acre feet per year of water from the Central Arizona Project to the tribe.

A lot of stakeholders have given their input on these bills and we appreciate our witnesses being here today to testify on them.

Before turning to Senator Flake, I will turn to our Vice Chairman, Senator Udall, for his opening remarks.

**STATEMENT OF HON. TOM UDALL,  
U.S. SENATOR FROM NEW MEXICO**

Senator UDALL. Thank you so much, Mr. Chairman.

First of all, let me recognize President Begaye who is here from the Navajo Nation. The Navajo Nation is the largest tribe in the Nation and overlaps into three States. He is one of the great leaders in Indian Country. I know the Senators who serve in those three States always respect having his point of view.

It is wonderful to have you here today, President Begaye and all your distinguished people here with you. I know we also have two Navajo Council delegates here with you.

Let me also echo what the Chairman has said regarding condolences for George Willie, one of the great code talkers. My father also served in World War II and talked a lot about the code talkers and the many Navajo code talkers he met during his life. It is a sad occasion when we have the passing of a code talker.

With that, because we have votes fast approaching and we want to get to questions before we have to get over there and vote, I am going to ask the Chairman to put my opening statement in the record.

The CHAIRMAN. Without objection.

[The prepared statement of Senator Udall follows:]

PREPARED STATEMENT OF HON. TOM UDALL, U.S. SENATOR FROM NEW MEXICO

Thank you, Chairman Hoeven, for calling today's legislative hearing. I'd first like to acknowledge and welcome President Begaye of the Navajo Nation. President Begaye is no stranger to this Committee. He is a strong advocate for the Navajo people. And I welcome his valuable input on behalf of the Navajo Nation.

I'm glad that we have the opportunity to discuss the specifics of the bills we're considering today . . . but I'd also like to underscore the importance of Indian water rights settlements generally.

Indian water settlements are critically important—not only to fulfilling the United States' fiduciary obligations to tribes, but also for the long-term economic vitality of the surrounding communities. This is especially true for my home state of New Mexico and across the west where water is the lifeblood of many communities, both Indian and non-Indian.

I often say that western water has a 19th century legal framework—with 20th century infrastructure—and 21st century pressures of increasing demand and dwindling resources due to climate change.

Our long-term water supply and consumption are out of balance—even with current conservation efforts. Every year brings a new “warmest year on record” forecast and with it increased water insecurity across the arid west.

We must work together to tackle these big challenges. Collectively, we must step up our efforts to combat climate change as we plan for a changing planet and what it means for our future water supplies.

I can go on about the threat of severe droughts, decreased snowpack, and increasing wildfire threats that ravage our precious watersheds.

Instead, I would simply like to stress that we need more collaboration and less litigation when it comes managing water in the 21st century.

Indian water rights settlements are a perfect example of the benefits of collaboration over litigation. These settlements fund vital water infrastructure for communities that may have gone decades without adequate sources of water . . . while also providing certainty and fostering cooperation within and among communities and all water stakeholders.

It is my sincere hope that the Department of the Interior prioritizes the management, negotiation and implementation of Indian Water Settlements now and into the future.

For my part, I will work with my Senate colleagues to ensure that Congress fulfills its promise. And makes adequate funding available for these settlements. I'm particularly interested in exploring alternative funding mechanisms for future Indian water settlements, like extending the Reclamation Water Settlements Fund established in the Omnibus Public Lands Management Act of 2009.

This could help provide some certainty in our commitment to work collaboratively on future Indian water rights settlements.

Turning to the bills themselves, I appreciate the sponsors' efforts to bring these bills forward. But have some questions on the specifics. I look forward to our witnesses' testimonies, which will hopefully provide clarity on potential impacts to tribes in New Mexico and Arizona.

Again, thank you, Mr. Chairman, for calling this hearing. I yield back.

The CHAIRMAN. With that, I would turn to our President Pro Tem, Senator Hatch.

**STATEMENT OF HON. ORRIN HATCH, PRESIDENT PRO  
TEMPORE, U.S. SENATE**

Senator HATCH. Thank you so much, Mr. Chairman, for the opportunity to share my thoughts with the Committee.

I am here today to speak in support of the Navajo Utah Water Rights Settlement Act of 2017. In doing so, I would like to introduce two men who were instrumental in making this agreement a reality: the Lieutenant Governor of my home State of Utah, Spencer Cox and the President of the Navajo Nation, Russell Begaye. I am proud of both of you.

These men are good friends who have kindly made the trip to Washington to provide testimony and speak to the merits of the legislation before us. I am proud to be able to say a few words about both of them.

The Committee should know that the State of Utah, represented by Lieutenant Governor Cox, and the Navajo Nation, represented by President Begaye, has spent over 13 years formalizing a negotiated settlement over Navajo water rights claims on the Colorado River.

Both parties invested significant time and resources on this issue because water rights settlements are critically important in many western States, especially in Utah. As everyone here can appreciate, reaching agreement on water settlements is extremely difficult, so I applaud our witnesses today and their hard work in helping us reach the settlement outlined in my legislation.

My bill would settle the water rights claims of the Navajo Nation and the United States within the State of Utah by providing a permanent source of water for the Navajo Nation in Utah and a water settlement fund to be used for the construction of drinking water infrastructure on the Navajo reservation.

In consideration for this water and funding, the Navajo Nation will waive its water-related claims against the United States and Utah. Importantly, this will provide both Navajo and non-Native Americans citizens in the Upper Colorado River Basin and Utah

with certainty regarding their respective water rights that will allow them to plan for their futures.

It should come as no surprise that the State of Utah and the Navajo Nation strongly support this settlement.

Mr. Chairman, as you know, water settlement negotiations are high stakes, take years to complete and often involve contentious issues. I am appreciative that you are willing to face up to these issues and handle them.

These negotiations can only be successful when the participants are dedicated to the cause, act in good faith and show they are willing to stand up for the people they represent. Lieutenant Governor Cox and President Begaye have proven to be valuable partners in the Utah-Navajo settlement discussions.

Both are committed to moving the Utah-Navajo settlement forward and working with the Federal Government to resolve any outstanding issues. They are eager to secure benefits for the citizens both of the Navajo Nation and the State of Utah. Their leadership has been invaluable in advancing the settlement negotiations. I personally am confident they will continue to push the settlement forward until the job is done.

I am honored to introduce these two wonderful men, these two witnesses to the Committee, and look forward to working with all involved stakeholders who share a common goal of enacting a mutually supportive settlement.

Thank you for allowing me this opportunity to say these few words. I wish you the best as the leadership of the Committee. I appreciate the work you are doing.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator. Thank you for being with us today.

Senator Flake.

**STATEMENT OF HON. JEFF FLAKE,  
U.S. SENATOR FROM ARIZONA**

Senator FLAKE. Thank you, Mr. Chairman.

Thank you all for being here. I especially want to welcome Dr. Clarke of the Hualapai Tribe and also Tom Buschatzke, the director of the Arizona Department of Water Resources.

Because we are in such a rush, I will ask unanimous consent to have my opening statement included as part of the record.

I described, in a similar hearing last year, the importance of this settlement, both for the tribe and for those outside of the reservation in the region. This is critically important to have some surety moving ahead in terms of the disposition of Colorado River water and the settlement claims of the Hualapai.

It is also great to have Russell Begaye here from the Navajo Nation as well.

I welcome all of you and look forward to the questions and answers.

I would also ask unanimous consent to submit as part of the record some statements in support from Mohave County, as well as some other organizations.

The CHAIRMAN. Without objection.

Senator FLAKE. Thank you.

## PREPARED STATEMENT OF HON. JEFF FLAKE, U.S. SENATOR FROM ARIZONA

Mr. Chairman, Mr. Vice Chairman, I appreciate you holding this hearing on S. 1770, The Hualapai Tribe Water Rights Settlement Act.

I would also like to welcome the Hualapai Tribe's Chairman, Dr. Clarke, and the Director of the Arizona Department of Water Resources, Tom Buschatzke and thank them for their appearances before the Committee today.

This is a widely supported settlement and I am pleased to see representatives from other parties to this settlement, the State of Arizona, the Central Arizona Water Conservation District, the Salt River Project, and the Freeport Minerals Corporation here in support of this settlement.

I also ask that the unanimous resolution of support from Mohave County be included in the hearing record.

[The information referred to follows:]

## RESOLUTION NO. 2017-063

A RESOLUTION CONVEYING THE UNANIMOUS SUPPORT OF THE MOHAVE COUNTY BOARD OF SUPERVISORS FOR THE HUALAPAI WATER SETTLEMENT AND URGING SENATOR FLAKE, SENATOR MCCAIN AND CONGRESSMAN GOSAR AND THE ENTIRE ARIZONA CONGRESSIONAL DELEGATION TO REINTRODUCE AND PURSUE THE PASSAGE OF S. 3300 ORIGINALLY INTRODUCED BY SENATORS FLAKE AND MCCAIN IN 2016

**WHEREAS**, the Board of Supervisors met in Regular Session this 15th day of May, 2017; and

**WHEREAS**, the Hualapai Tribe is a key member and economic driver of Mohave County; and

**WHEREAS**, the water settlement they have negotiated with the State of Arizona as well as other parties represents a responsible and rational allocation of water for the Hualapai Tribe; and

**WHEREAS**, the water will allow the Tribe to create hundreds of jobs for both residents of the Hualapai Reservation and non-reservation residents of Mohave County.

**NOW, THEREFORE, BE IT RESOLVED** that the Mohave County Board of Supervisors conveys its support of this water settlement and urges Senator Flake, Senator McCain, Congressman Gosar and the entire Arizona Congressional Delegation to reintroduce and pursue passage of S. 3300, originally introduced by Senators Flake and McCain in 2016.

**PASSED, APPROVED and ADOPTED** this 15th day of May, 2017.

MOHAVE COUNTY BOARD OF SUPERVISORS

GARY WATSON, *Chairman*

**ATTEST:**

GINNY ANDERSON, *Clerk of the Board*

This is an important piece of legislation for the tribe and for Arizona.

The roughly one-million-acre reservation is ill-suited for an economy based on mining, oil and gas, timber, or agriculture and the Hualapai are building an economy based on one resource they have in abundance—people wanting to experience the Grand Canyon and Colorado River.

Without access to additional reliable water supplies, they are unable to realize its full potential, which includes a residential community at Grand Canyon West for their tribal members who work there.

In short, this legislation provides significant but fair benefits for the Hualapai.

Mr. Chairman, as I described at a similar hearing last year, this settlement and legislation also have important benefits outside the reservation and region.

The Hualapai Tribe makes a claim to Colorado River, a critically important water source for the state that provides roughly 40 percent of our water supplies.

This fair settlement dedicates 4,000 acre-feet of CAP's Colorado River water to the tribe in a way that puts them on par with existing CAP water users.

Because of the priority of the tribe's claims, there is the possibility that future development of their water rights would displace current water users in Arizona.

I am pleased to see the Administration's support of the policy of settling tribal water rights claims, but am somewhat disappointed with their continued resistance to support this particular settlement.

The administration's insistence on repeating the last administration's commitment to endless groundwater studies is frustrating.

I ask that the 2015 memorandum from Natural Resource Consulting Engineers documenting the 16 studies of groundwater on the reservation that have been in the past 65 years be entered into the hearing record.

[The information referred to follows:]

NATURAL RESOURCES CONSULTING ENGINEERS, INC.  
Oakland, CA, December 4, 2015

**MEMORANDUM**

To: Hualapai Project Files

RE: PREVIOUS GROUNDWATER STUDIES

This memorandum presents a list and brief description of previous groundwater studies on the Hualapai Reservation. The list of studies is separated between the deep regional aquifer and the alluvial-volcanic aquifers.

**Deep Regional Aquifer**

*Description:* The deep regional aquifer on the Hualapai Reservation includes the Redwall-Muav Aquifer (R-Aquifer) and the Tapeats Sandstone lying at the bottom of the Paleozoic section in contact with crystalline basement rocks.

- Representative well yields from the R-Aquifer range from 5 to 40 gallons per minute, with 150 gallons per minute the highest reported in the region (Twenter, 1962; Myers, 1987; and others).
- There is some evidence indicating that faults, fractures, and folds may enhance aquifer properties that can localize potential for larger well yields; however targeting these features using surface geophysics is speculative and drilling costs are very high.
- The USGS conducted a hydrogeological study of the Reservation between 1957 and 1962 (Twenter, 1962). The R-Aquifer was identified as the most promising aquifer, but drilling depths were prohibitive.
- Several wells were drilled to various depths (mostly shallow) in the late '60's and '70's by the BLM and the BIA loosely based on Twenter's recommendations but most were unsuccessful (Huntoon, 1977).
- Several deeper wells were completed on the Hualapai Plateau in 1992 by the Bureau of Reclamation. One well drilled near the GCW resort in 1992 targeted the deep regional R-Aquifer. The well was deepened in 1999 (Watt, 2000). That well (GCW-1) encountered groundwater only in the Tapeats Sandstone. The shallower Redwall and Muav Formations were unsaturated. The well is equipped with an oilfield-type pumping unit but is currently unused due to low water quality and low yield (15–26 gpm).
- NRCE was contracted in 2005 to investigate and evaluate all possible water supply options for the resort. The preferred alternative recommended diversion from the Colorado River. Groundwater development options were judged to be infeasible for a variety of reasons, but primarily because of their inability to supply the sustainable yield required by the Grand Canyon West resort at a reasonable overall project cost.
- DOWL (2013) further assessed a few Colorado River alternatives considered in the NRCE study. Groundwater development alternatives were judged to be infeasible in this study for the same reasons as the 2005 study by NRCE.

**Alluvial-Volcanic Aquifers**

*Description:* The main alluvial-volcanic aquifers are in the northern Aubrey Valley around Frazier Wells (eastern part of the Reservation), Westwater Canyon, Peach Springs-Truxton Wash Valley, and elsewhere along the southwest flank of the Hualapai Plateau (e.g. Horse Flat area and the upper Milkweed Canyon). The alluvial-volcanic aquifers have areal extents that are limited by the valleys and washes that contain them. The volume of stored groundwater is similarly limited. Depth to water is generally shallow, typically less than 500 feet below ground level, and well yields of up to 170 gallons per minute have been reported. Water from these aquifers is generally acceptable for domestic use.

- The Santa Fe Railroad drilled 6 fairly shallow wells within Peach Springs between 1903 and 1922. The Hualapai Tribe acquired use of water from the railroad spring-fed water system between 1931 and 1954. One well near the town is currently used.
- The USGS conducted a study in 1942 to assist location of prospective sites for development of stock water supply on the Hualapai Reservation (Peterson, 1942). In addition to a hydrogeological characterization of the region, the study

inventoried numerous existing wells and stock ponds. Peterson recommended 18 sites across the Reservation for drill-testing.

- N. J. Devlin evaluated the Peach Springs water system in 1973 and considered possibilities for development of additional water supplies for the town. Devlin recommended further development of the aquifer contained in the lake beds of Truxton Valley. Development of other springs and other exploration areas were judged to have low potential.
- The Indian Health Service drilled two wells in Truxton Valley in 1972 to provide additional water supply for Peach Springs. A third well was drilled in 1976 by the IHS in Truxton Valley near the wells drilled in 1972. These wells currently supply all of the water needs for the town of Peach Springs.
- The Bureau of Reclamation drilled an unsuccessful hole into Cenozoic volcanics near the head of Milkweed Canyon in 1975. A second successful well in Westwater Canyon alluvium and volcanics was completed in 1975. This well currently provides most of the water to Grand Canyon West via a 30-mile pipeline.
- A well drilled in the Frazier Wells area in the eastern part of the Reservation serves a fish-rearing facility. An additional two boreholes were completed in the shallow alluvial aquifer in the Frazer Wells area in an effort by the Tribe to develop additional groundwater supply. Both wells were dry and were abandoned.
- Regional hydrogeological mapping by Richard Young (State University of New York at Geneseo) focused on the Tertiary volcano-sedimentary aquifer in the area of Westwater Canyon near the well drilled by the Bureau of Reclamation (Young, R. A., 1987, 1991, 1992, 2007). Stantec (2009) estimated the safe yield of this aquifer to be approximately 600 afy. Further development of this aquifer is prohibited by tribal policy as it would likely reduce spring flow (considered to be a cultural resource) in its discharge area.
- NRCE conducted an evaluation of the groundwater supply for the town of Peach Springs in 2011. That study included an inventory of wells in the sub-regional area, a comprehensive review of the regional geology, an evaluation of hydrologically attractive areas for development of additional groundwater supplies in the southern part of the Reservation, and made some specific recommendations for exploratory evaluation of both the R-Aquifer and alluvialvolcanic aquifers. The adequacy of natural aquifer recharge to support existing and future water needs was also assessed.

Furthermore, I am frustrated that this administration continues to overlook the significant contributions by the tribe, Freeport Minerals, and the State.

The non-federal contributions to this settlement are at least as significant as recently completed and currently pending settlements, yet the administration's position is that it is still not enough.

This legislation is an important step that the State of Arizona needs to take, both for the sake of the Hualapai Tribe and for all of us in Arizona who depend on Colorado River water

I look forward to working with the tribe, the state parties, and the administration to find a way forward for this settlement.

Thank you.

The CHAIRMAN. Thank you, Senator Flake.

With that, we will turn to the witnesses. I understand at this point, the witnesses have agreed to forego their opening statements in the interest of time because of the votes on the floor. However, I would ask if there is anything briefly that the witnesses want to put on the record in the form of an opening statement? I would offer this opportunity.

Chairman BEGAYE.

#### **STATEMENT OF HON. RUSSELL BEGAYE, PRESIDENT, NAVAJO NATION**

Mr. BEGAYE. Thank you, Chairman Hoeven, Senator Udall, Senator Flake and members of the Committee.

I want to really say thank you to the State of Utah for partnering and collaborating with the Navajo Nation to make this come about. This has been a very unusual relationship and partnership in making this come about.

I want to publicly say, I appreciate the leadership from the Senators and members of Congress, from the Governor and members of the legislative body in the State of Utah for coming alongside Navajo and making this possible. I just want to express my appreciation in that regard.

Thank you.

[The prepared statement of Mr. Begaye follows:]

PREPARED STATEMENT OF HON. RUSSELL BEGAYE, PRESIDENT, NAVAJO NATION

Yá'át'ééh Chairman Hoeven, Vice-Chairman Udall, and members of the Committee. My name is Russell Begaye. I am the elected President of the Navajo Nation. Thank you for this opportunity to present testimony on S. 664, the Navajo Utah Water Rights Settlement Act. I also wish to convey the gratitude of the Navajo Nation to Senator Hatch for his commitment to improving the lives of the Navajo People and for his leadership in sponsoring this important legislation.

The Navajo Utah Water Rights Settlement Act accomplishes two things. First, the Act would authorize the Secretary of the Interior to execute, on behalf of the United States, the Navajo Utah Water Rights Settlement Agreement. The Settlement Agreement was approved by the Navajo Nation Council in January 2016. It reflects over a decade of negotiations involving officials from the Navajo Nation, State of Utah, and since 2013, the federal government. Second, the Act provides funding for water supply infrastructure intended to address short-term and long-term water development needs in the Utah portion of the Navajo Nation. The challenges of providing access to water on the Navajo Reservation in Utah are monumental and the conditions are dire—more than 40 percent of Navajo households lack running water or adequate sanitation in their homes. In some cases, such as in the community of Oljato on the Arizona-Utah border, a single spigot on a desolate road, miles from any residence, serves 900 people.

As this Committee is well aware, in the Treaty of 1868, Navajo leaders pledged their honor to keep peace with the United States and, in return, the United States pledged to assist the Navajo People to create a permanent homeland on their reservation lands. The original Navajo Reservation on the border of present day Arizona and New Mexico was enlarged numerous times both by executive order and Congressional act to encompass lands where Navajos were already living. Land in Utah was added to the Reservation by executive orders in 1884 and 1905, and additional acreage was added by the Act of March 1, 1933, 47 Stat. 1418. These Utah Reservation lands would be valueless without a water supply. In the arid West, it is clear—no lands can be a permanent homeland without an adequate supply of water, especially potable water. The Navajo Nation will secure its water rights either through litigation or through settlement. As this testimony seeks to make clear, the advantages of settlement in this case far outweigh the costs, risks, and policy disadvantages of divisive litigation.

#### **I. The Settlement Agreement**

The Settlement would result in a win-win for the Navajo Nation and the State of Utah by quantifying the Navajo Nation's water rights in the Upper Basin of the Colorado River in Utah in a manner that will benefit not only the State of Utah and the Navajo Nation, but the federal government and all water users in the Colorado River basin. Without a negotiated settlement, conflict over these water rights could easily devolve into protracted, expensive, and divisive litigation. Choosing a more conciliatory and productive path, the State of Utah and the Navajo Nation devoted years to developing an agreement that would protect existing uses while at the same time guarantee the Navajo Nation the firm supply of drinking water we need for our reservation to function as a permanent homeland. We are grateful to Utah Governor Gary Herbert, Lt. Governor Spencer Cox, their staff and advisors for their steadfast work to make this settlement a reality.

Of course, Indian water rights settlements require the involvement and approval of the federal trustee. In February of 2013, Interior Secretary Ken Salazar appointed a federal negotiation team to participate in the resolution of the Navajo Nation's claims in Utah. The Navajo Nation has been working with the federal team

to address their concerns about the terms of the settlement and to develop information required by the *Criteria and Procedures for the Participation of the Federal Government in Negotiations for the Settlement of Indian Water Rights Claims*, 55 FR 9223 (Mar. 12, 1990). The Nation is particularly appreciative of the work that the United States Bureau of Reclamation (Reclamation) has undertaken at the behest of the federal team to evaluate the water development projects analyzed by the Nation in determining the dollar amount of the settlement Fund. For example, Reclamation's *Design, Estimating and Construction Advisory Team Review Report: Navajo Nation/State of Utah Water Rights Settlement Projects*, a report completed in September 2013, made findings and recommendations that the Navajo Nation Department of Water Resources (NNDWR) has used to determine the best way to bring water to Navajo people in Utah.

#### A. *Quantifying the Nation's Water Rights in Utah*

Turning first to the quantification of the Navajo Nation's water rights in Utah, this settlement is a fair and comprehensive resolution to problems that affect not only the Navajo Nation, but also non-Indians in Utah and in other parts of the Colorado River Basin as well as federal interests such as Reclamation projects and endangered species. The work that has gone into this settlement has resulted in an agreement that is just and equitable to all parties.

As is typically the case in an Indian water rights settlement, the Navajo Nation would agree through this settlement to forbear use of senior water rights that the Nation would likely be able to establish in litigation. Less typically, the Navajo Nation has worked in partnership with the State of Utah to develop an agreement that will maintain the delicate equilibrium that is the Law of the River. The Navajo Nation recognizes that the San Juan River, the source of its Utah water rights, is part of the Colorado River system. The Colorado River is the subject of several interstate Compacts and has been a touchstone for some of the most complex water litigation of the last century. The settlement is constructed to avoid further divisive litigation, including litigation over the applicability of those compacts to the reserved water rights of the Navajo Nation.

Under the Settlement Agreement, the Navajo Nation has the right to deplete 81,500 acre-feet per year of surface and groundwater from the Upper Colorado River Basin in Utah. The Nation further has the right to divert and store this water right at a rate of 435 cubic feet per second. The Nation would also secure the ability to market its water rights to the same extent as other Utah water rights holders. The bulk of the Nation's Utah water rights would have a priority date of 1884, when the Utah portion of the Reservation was first set aside for the Navajo people. Finally, the Settlement Agreement provides for a water development fund to be used for water infrastructure development to allow the Navajo Nation to put these water rights to use.

The subordination provisions in the agreement are of substantial benefit to the non-Indians in Utah. Non-Indian water development in the San Juan River Basin has been extensive, especially in comparison to development on the Navajo Reservation. The records of the Utah State Engineer identify 1,510 state law based permits in the San Juan River Basin in Utah for water rights, with major surface diversions totaling more than 158,000 acre-feet per year. In the Navajo Utah settlement, as in virtually every Indian water rights settlement, the State sought to protect existing non-Indian uses from impairment by potentially senior Indian water rights. This result is possible only by the Navajo Nation agreeing to subordinate its water rights to existing non-Indian water users. As a result of this subordination, it is estimated that existing and proposed Navajo uses supplied by infrastructure constructed with the Fund will experience shortages between 1.8 percent and 11.6 percent of the time, depending on how Navajo Dam is operated upstream. When the Navajo Nation puts its entire 81,500 acre-foot per year right to use, the subordination of the Nation's water right to non-Indian uses could result in shortages for the Nation 11 percent to 46 percent of the time.

#### B. *Value of the Settlement*

I understand that the Administration and this Committee have a keen interest in ensuring that water rights settlements, including this one, make sense for the United States and for the American taxpayer. I will address this concern briefly in this testimony, and I will be glad to provide additional follow up information to fully address any concerns expressed by members of Congress or the Administration's Office of Management and Budget. There are various ways of calculating the value of the settlement, and I will highlight two of them today.

First, the Navajo Nation will forbear the use of water that we would claim in litigation and to which we claim the senior right. Using conservative estimates of the

value of water in this water-stressed basin, at \$3,000 to \$10,000 per acre-foot for a perpetual supply of Colorado River water, the value of the water forborne by the Navajo Nation is in the range of \$250 million to more than \$850 million. These numbers provide clear evidence that the roughly \$211 million authorization of appropriations in the bill as introduced is an excellent value for American taxpayers.

A second approach to determining the value of this settlement is to look more closely at the potential liability of the United States, and the litigation and related costs that would be anticipated in the absence of settlement. The United States, as trustee for the Navajo Nation, has a responsibility to protect the Nation's trust resources. In quantifying the Nation's reserved water rights claims within the State of Utah, the settlement resolves potential claims that could be brought against the United States for failure to develop and protect Navajo water resources. These claims include the failure of the United States to ensure that the Upper Colorado River Basin Compact (UCRBC) does not limit Navajo uses of water in Utah.

In the Settlement Agreement, the Navajo Nation made concessions to protect the State of Utah in two distinct ways. First, the Nation agreed to reduce the extent of its water right claim to enable Utah to stay within its Upper Colorado River Basin apportionment. Second, the Nation agreed not to make calls against upstream water users on the San Juan River in Colorado and New Mexico because the UCRBC does not allocate San Juan River water to Utah. By agreeing not to make calls against upstream water users, the Navajo Nation sidesteps the significant question of the effect of the interstate compacts on Indian tribes, and avoids the threat of litigation that could jeopardize the Law of the River.

The costs of litigation of these issues would be incredibly high for all sides. The value of this settlement, when viewed as necessary to maintain existing interstate allocations of the Colorado River, is practically incalculable, and when this value (of keeping the settlement within Utah's Upper Colorado River Basin Compact apportionment and avoiding the displacement of existing water rights) is added to the value of the water rights discussed above, enactment of S. 664 is undoubtedly very much in the interest of all taxpayers. Finally, the forgoing discussion of the return on investment from this settlement does not take into account the programmatic and policy priorities that would be fulfilled with the funding that this settlement proposes for water infrastructure development.

## **II. Water Development Fund**

The settlement includes a water development fund (Fund). Funding for water management and delivery infrastructure included in this settlement would improve living conditions for the Nation's citizens. The economic and human costs of hauling water—which consists of conveying water in non-sterile containers obtained from water sources ranging from relatively clean watering points to livestock storage facilities, often over very long distances—are significant. As the Navajo Nation's population increases, the need for water delivery and treatment infrastructure intensifies. S. 664 would establish two funds, one for planning, design and construction and the other for operation and maintenance. The bill authorizes the appropriation of approximately \$210 million dollars to these two funds. The State of Utah will contribute \$8 million dollars to the funds for planning, design, and construction. The United States is also authorized to appropriate \$1 million for the hydrographic surveys that are needed to complete the quantification of Navajo water rights.

Unfortunately, as a result of the hurricanes that wrought havoc in Houston, Florida, and Puerto Rico this fall, the terrible economic and social costs associated with the lack of safe water supplies were thrown into vivid relief for many Americans. Whereas less than 1 percent of Americans overall live in areas without safe water supply and waste disposal facilities, the corresponding rate on the Navajo Reservation in Utah has been estimated to be at least 40 percent. Investment in basic water delivery infrastructure is essential for the Navajo people, as it is for all Americans; in the absence of the investment in human sustenance this settlement represents, more Navajo families will be consigned to living without running water. One study commissioned by the Nation found that while the Navajo Tribal Utility Authority, a Navajo government enterprise, delivers about 400 acre-feet of water per year for municipal and domestic use, meeting the projected water needs by the year 2050 would require more than a fifteen-fold increase, to about 6,700 acre-feet/year. Significant investments must be made now if the Nation has any chance of meeting these future demands for water.

Safe drinking water is a basic human need, and the consequences of lack of access to reliable potable water supplies can be staggering. The Indian Health Service (IHS) reports that for every dollar the agency spends on home sanitation facilities, at least a twentyfold return in health benefits is achieved. See <https://www.ihs.gov/newsroom/index.cfm/factsheets/safewater/>. Accordingly, the water in-

infrastructure the Nation plans to construct with funding provided in this settlement will yield important benefits that will conserve federal health care dollars while sparing people the economic and human costs of illness directly attributable to contaminated water and lack of adequate sanitation facilities.

In 2014, NNDWR produced a “White Paper” proposing a series of water development projects to address the water needs of Navajo communities in Utah. The White Paper was the culmination of work performed by NNDWR, the engineering firm of Brown & Caldwell, and Reclamation assessing alternatives methods that might be employed to meet Navajo water needs. After consideration of all viable alternatives, the Nation proposed a regional water infrastructure supply project as the primary method to meet the minimum needs for drinking water on the Navajo Reservation in Utah. The project as proposed would rely on groundwater and San Juan River water conjunctively to most effectively utilize available supplies. In an attempt to meet water needs in Utah in a comprehensive manner, the White Paper also proposed a package of smaller developments that would address long overdue projects on the IHS Sanitation Deficiency List, address necessary short-term capital improvements, and implement an agricultural water conservation program. The estimated cost of the projects included in the White Paper formed the basis for the amount of the settlement Fund.

The Nation, together with the United States and the State of Utah, has expended significant time and effort to develop proposed uses of this funding that will give us the greatest return from the investment. However, there is flexibility built into the settlement, and once funds are appropriated under this Act, actual project design, construction, and management will be the full responsibility of the Navajo Nation. This Fund-based approach is unique. While other settlements authorize a federal agency to plan, design and construct water infrastructure projects, there are several reasons that we think a settlement fund is the right approach for this settlement. First, the Navajo Nation has an expert Department of Water Resources with the technical capacity to manage these kinds of projects and to build them in the most cost-efficient manner. Second, the water planning studies that have preceded this settlement make clear that future developments that cannot be accurately projected now—whether in population size, community development, water quality, or others—and the Nation needs flexibility to adapt its water infrastructure plans on an on-going basis. Third, given the fact that the Navajo Reservation extends into multiple states, there are potential costs savings in constructing water projects that may cross-state lines. Fourth, Navajo management of the funds is consistent with the federal goal of tribal self-determination. While the Nation is aware that funding associated with this settlement is limited to use within the boundaries of the State of Utah, the flexibility to adopt project designs that take advantage of economies of scale is particularly important for this settlement. In summary, the Navajo Nation has the institutional capacity to manage these funds effectively, to adapt to unforeseen developments, and to produce results demanded by the Navajo people.

However ultimately configured, the projects that the Navajo Nation plans to undertake with the settlement Fund will make a lasting impact on the lives of the Navajo people in Utah. Together, a regional water supply project, coupled with short-term capital improvements and water/sanitation facilities connecting homes to the water supply project, though modest in terms of overall need, represent a comprehensive approach to meet current and future demands. The work on agricultural water conservation will help Navajo farmers deal proactively with the risk of water shortage, and allow for the potential leveraging of funds available from the USDA for water management. The Fund will make possible projects that will lead to improved water management and water availability, making the Navajo Reservation in Utah a place where people can live and work.

### **Conclusion**

I cannot emphasize enough that securing the Nation’s water rights, and building infrastructure to convert paper water rights into wet water, are the necessary foundation for economic growth. S. 664 is important legislation that would confirm the settlement of the Nation’s water rights and help build desperately needed water infrastructure. When I campaigned for President, the need for infrastructure development was constantly brought up as a priority by my constituents, the Navajo people. Infrastructure development is one of the Four Pillars of my administration, together with job creation, and programs for Navajo veterans, elders and youth. Your assistance in enacting S. 664 into law will help the Navajo people to realize our economic potential, creating jobs and improving living conditions in a part of the country that has been ignored for far too long.

Since signing the Treaty of 1868, the Navajo people have taken their treaty obligations seriously. When the United States needed us, brave Navajo men and women

heeded the call to serve in all branches of the armed forces. The Navajo Code Talkers used our language to devise an unbreakable code; there could be no better example of the way the partnership between the United States and Native peoples strengthens us all. For my people, fighting to preserve American freedom is also fighting to preserve the Navajo homeland. The American ideal is not just an abstraction; it is a place where communities like those within the Navajo Nation have a chance to develop into viable economies, where our young people can learn our values, and where our culture can thrive. We have a saying, *tó bee iiná*—water is life; water helps us live. Without water and a means to get it to our people, we cannot survive.

This settlement legislation, if enacted, will help the Navajo Nation to build vital infrastructure and help our next generation to be our most successful generation yet. We are asking the United States to fulfill its promises under the Treaty of 1868 to work with us to create a viable homeland. We stand ready to work with Congress and the Administration, together with the State of Utah, to push this settlement to this finish line and to ensure that it is implemented. Again, we appreciate Governor Herbert's and Senator Hatch's leadership and the Committee's attention to this important issue. With your help, we can secure a bright and prosperous future for the Navajo Nation. Thank you. *Ahéhee'*.

The CHAIRMAN. Thank you, Chairman Begaye.  
Mr. Mikkelsen.

**STATEMENT OF ALAN MIKKELSEN, DEPUTY COMMISSIONER,  
BUREAU OF RECLAMATION, U.S. DEPARTMENT OF THE INTERIOR**

Mr. MIKKELSEN. Mr. Chairman, I would ask that my opening statement be submitted for the record.

I would also simply like to note that the department, for the record, does support Indian water rights settlements, particularly as an alternative to the protracted and divisive litigation that often results if we do not do this.

With that, I will forego my opening statement.

[The prepared statement of Mr. Mikkelsen follows:]

PREPARED STATEMENT OF ALAN MIKKELSEN, DEPUTY COMMISSIONER, BUREAU OF RECLAMATION, U.S. DEPARTMENT OF THE INTERIOR

Good afternoon Chairman Hoeven, Vice Chairman Udall, and Members of the Committee. My name is Alan Mikkelsen, and I am the Deputy Commissioner at the Bureau of Reclamation (Reclamation) and Chair of the Working Group on Indian Water Settlements at the Department of the Interior (Department). I am pleased to appear before you today to discuss Indian water rights settlements, a subject I have first-hand and extensive experience with given my years working and living throughout the West.

Thank you for the opportunity to provide the Department's position on S. 1770, the Hualapai Tribe Water Rights Settlement Act of 2017, which would approve and provide authorizations to carry out the settlement of certain water right claims of the Hualapai Tribe in Arizona (Tribe). The Department has significant concerns about the Federal costs of the settlement, totaling approximately \$173.5 million in 2016 dollars, which we believe may also underestimate its true cost. In addition, the United States has significant concerns regarding the overly-broad and unnecessary waiver of federal sovereign immunity in S. 1770. For these, and other reasons, the Department cannot support S. 1770 as introduced, but is eager to work with all of the interested parties to negotiate a settlement that adheres to the *Criteria and Procedures*.

**I. Introduction**

Before I begin discussing the Hualapai settlement, I want to note that the Department supports the policy that negotiated Indian water rights settlements are preferable to protracted and divisive litigation. Indian water rights settlements have the potential to resolve long-standing claims to water, provide certainty to water users, foster cooperation among water users within a watershed, allow for the development of water infrastructure, promote tribal sovereignty and self-sufficiency, and improve

environmental and health conditions on reservations. We understand that Congress plays an important role in approving Indian water rights settlements, especially when they involve federal spending, the alteration of the Tribe's reserved water rights, or the waiver of the United States' sovereign immunity, and we stand ready to work with this Committee and Members of Congress to advance Indian water rights settlements. The framework the Department follows to guide the negotiation of Indian water rights settlements, and the support for legislation to authorize these settlements, includes four general principles set forth in the *Criteria and Procedures* published in 1990. First, settlements must be consistent with the Nation's trust responsibilities. Second, Indian tribes must receive equivalent benefits in exchange for the rights they, and the United States as trustee, release as part of a settlement. Third, Indian tribes must obtain the ability to realize value from confirmed water rights, which ensures they do not receive legal rights to water supplies that never materialize in the delivery of water. Fourth, settlements must contain an appropriate cost-share by all parties benefiting from the settlement. In our current budget climate, concerns over federal costs are an area of particular interest to the Department as we evaluate Indian water rights settlements.

## II. Historical Context

### A. *The Hualapai Reservation and the Hualapai Tribe*

The Hualapai Tribe's aboriginal homeland is located in the Grand Canyon and plateau region to the south of the Grand Canyon. The Tribe's main Reservation was established in January 4, 1883 by Executive Order, and is comprised of approximately 992,462 acres of tribal trust lands in northwestern Arizona. The tribal headquarters is Peach Springs, Arizona, near the southern boundary of the Reservation. The northern boundary of the main Reservation is 108 miles along the Colorado River in the Grand Canyon. There is also a 60-acre Executive Order Reservation located in the Big Sandy River Basin, approximately 40 miles south of the main Reservation.

The population of the Reservation is 1,621, of whom 1,353 are tribal members, according to the 2010 U.S. Census. The total tribal membership in 2010, including members living off the Reservation, was 2,300. The majority of on-Reservation residents reside in or near Peach Springs.

The primary sources of employment on the Reservation are recreation, tourism, and tribal and federal government services. The Grand Canyon is the primary source of tourism on the Reservation, with considerable tourism activities located at the Tribe's tourism center, Grand Canyon West, and from river rafting in the Colorado River. The Tribe also owns and operates the Hualapai Lodge, located in Peach Springs.

In 2007, the Tribe completed Grand Canyon West, which includes the Skywalk, a horseshoe-shaped glass-bottom walkway that extends out from the rim of the Grand Canyon. Annual visitation at Grand Canyon West has steadily increased since its opening, and exceeded one million visitors for the first time in 2015, making it the primary economic driver on the Reservation.

### B. *Water Resources of the Hualapai Reservation*

The main Reservation is located primarily in the Colorado River Basin with a small portion in the Upper Verde River Basin. The majority of on-Reservation streams are ephemeral. Several springs discharging from the regional aquifer at the bottom of canyons can provide base-flow for short perennial reaches, which ultimately discharge to the Colorado River. The largest of these perennial streams are Diamond Creek and Spencer Creek, with mean annual flows of over 3,700 acre-feet per year (afy) and 4,600 afy, respectively. The springs that feed these streams are remotely located in deep canyons and are not practically accessible for use by the Tribe. Smaller springs on the plateaus provide water for livestock purposes.

Groundwater resources on the Reservation occur in varying degrees of magnitude, depending on the type and location of water-bearing zones. The Department is conducting groundwater studies in an effort to accurately characterize the groundwater resources on and near the Reservation.

The major water use on the Reservation occurs in two locations: the town of Peach Springs and Grand Canyon West. Three wells serve the Peach Springs public water supply system and are located approximately 6.5 miles southwest of the town. The current level of water use in Peach Springs is approximately 250 afy. All supply wells produce water from the Truxton aquifer, an aquifer in the Truxton Valley that extends off the Reservation. Water for Grand Canyon West is supplied via a pipeline from a well approximately 30 miles away. Current water use at Grand Canyon West is 40 afy. Current cumulative water use for the Reservation is approximately 300 afy.

### III. Proposed Hualapai Tribe Settlement Legislation

The Tribe claims water rights in the Colorado, Verde, and Bill Williams River basins. Negotiations regarding potential settlement of the Tribe's water rights claims have been ongoing since 2011, when the United States established a negotiating team to negotiate a comprehensive settlement of all the Tribe's water rights within Arizona. The settlement was divided into two phases; the first phase addressed reserved water rights to several off-reservation tracts in the Bill Williams River Basin and resulted in the Bill Williams River Water Rights Settlement Act of 2014, P.L. 113–223. The second phase, addressed in S. 1770, covers additional water rights in the Bill Williams River Basin, as well as the remainder of the Tribe's water rights in the Colorado River Basin and the Verde River Basin.

S. 1770 would resolve the Tribe's remaining water rights claims in Arizona; ratify, and confirm the Hualapai Tribe water rights settlement agreement among the Hualapai Tribe, the United States, the State of Arizona, and others; and authorize funds to implement the settlement agreement. The bill would reallocate 4,000 acre-feet of fourth-priority Central Arizona Project (CAP) non-Indian agriculture priority water to the Tribe to be used for any purpose on or off the Reservation within the lower Colorado River basin in Arizona.

S. 1770 authorizes the appropriation of a total of \$173,500,000 for the following purposes:

- \$134,500,000 to design and construct the Hualapai Water Project (Project), consisting of approximately 70 miles of pipeline from the Colorado River to Peach Springs and Grand Canyon West, two water treatment plants, several pumping plants, and other appurtenant features with an overall capacity designed to deliver 3,414 afy;
- \$32,000,000 for the Hualapai OM&R Trust Account, to be used by the Tribe for operation, maintenance, and replacement of the Project;
- \$5,000,000 for the Secretary of the Interior for operation, maintenance, and replacement of the Project until such time that title of the Project is transferred to the Tribe by the Secretary; and
- \$2,000,000 for the Secretary to provide technical assistance to the Tribe, including operation and management training for the Project.

### IV. Department of the Interior Positions on S. 1770

While the Department continues to strongly support Indian water rights settlements, the Department has significant concerns about S. 1770 and cannot support the legislation as introduced.

The Department is concerned about the scope and size of the Project given current and projected water uses on the Reservation. In addition, we believe the cost to construct a 70-mile pipeline from the Colorado River lifting water over 4,000 feet in elevation will greatly exceed the costs currently contemplated in S. 1770 and might trigger significant additional litigation.

The Department believes it should evaluate the water rights, water availability, and water resource needs of the tribe from a holistic viewpoint, including information regarding available groundwater resources. Completing ongoing groundwater studies will inform the Department's views on the proposed pipeline.

The *Criteria and Procedures* require us to analyze whether the settlement "include[s] non-Federal cost sharing proportionate to the benefits received by the non-Federal parties." We believe that the State parties can and should contribute a commensurate share of the cost of the settlement in return for the benefits they will receive. As an example, the state of Montana, with barely one million residents, has contributed tens of millions of dollars in appropriated settlement funds to Montana Indian Water Rights Settlements.

S. 1770 includes an overly broad waiver of sovereign immunity provision—which allows for suits against the United States by "[a]ny landowner or water user in the Verde River Watershed or the Colorado River basin within the State of Arizona" and for the interpretation of previously enacted statutes. This waiver of sovereign immunity is unnecessary and overly broad and presents a significant concern for the United States.

S. 1770 also includes several additional provisions that the Department is concerned about, including an unnecessary reference to 25 USC Section 211, which we believe is of limited application based on more current statutes; ambiguous settlement fund management language; and unnecessary obligations placed on the Bureau of Reclamation with respect to the proposed Project.

As a final matter, the Department must register serious concern about provisions of S. 1770 and the settlement agreement that prohibit the Tribe and the United

States from objecting to any use of groundwater outside the boundaries of the Reservation, even if those uses interfere with acknowledged Federal reserved groundwater rights.

## V. Conclusion

The Department recognizes that the Tribe, the State of Arizona, and the state parties want to achieve a Hualapai water settlement and have devoted substantial efforts to that goal. The Department shares this goal and is committed to working with the Tribe and the parties to reach a final and fair settlement of the Tribe's water rights claims that adheres to the *Criteria and Procedures*, and that we can fully support.

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Thank you for the opportunity to provide the Department's position on S. 664, the Navajo Utah Water Rights Settlement Act of 2017, which would authorize the settlement of water right claims of the Navajo Nation (Nation) to the portion of its land within the State of Utah. The Department supports the goals of the settlement, which include quantifying the reserved water rights attached to the Utah portion of the Navajo reservation and facilitating the development of essential municipal water systems that will provide a reliable quantity and quality water supply for the communities within the Reservation, which currently lacks the sort of basic services that most Americans take for granted. The Department is working with the Nation and sponsor of S. 664 to ensure this bill meets these goals while adhering to the *Criteria and Procedures* that guide the Department's participation in Indian water right settlements.

## I. Introduction

Before I begin discussing the Navajo Utah settlement, I want to note that the Department supports the policy that negotiated Indian water rights settlements are preferable to protracted and divisive litigation. Indian water rights settlements have the potential to resolve long-standing claims to water, provide certainty to water users, foster cooperation among water users within a watershed, allow for the development of water infrastructure, promote tribal sovereignty and self-sufficiency, and improve environmental and health conditions on reservations. We understand that Congress plays an important role in approving Indian water rights settlements, especially when they involve federal spending or the waiver of the United States' sovereign immunity, and we stand ready to work with this Committee and Members of Congress to advance Indian water rights settlements.

The framework the Department follows to guide the negotiation of Indian water rights settlements, and the support for legislation to authorize these settlements, includes four general principals set forth in the *Criteria and Procedures* published in 1990. First, settlements must be consistent with the Nation's trust responsibilities. Second, Indian tribes must receive equivalent benefits in exchange for the rights they, and the United States as trustee, release as part of a settlement. Third, Indian tribes must obtain the ability to realize value from confirmed water rights. This ensures Tribes do not receive legal rights to water supplies that never materialize in the delivery of water. Fourth, settlements must contain an appropriate cost-share by all parties benefiting from the settlement. In our current budget climate, concerns over federal costs are an area of particular interest to the Department as we evaluate Indian water rights settlements.

## II. Historical Context

The Navajo Reservation is the largest Indian reservation in the United States with a current total membership of 300,048, of which 217,609 live on the reservation. The Navajo Reservation has a total unemployment rate five times the national average, a median household income of \$20,005, and a poverty level of approximately 42 percent. The Navajo Indian Reservation consists of approximately 26,600 square miles in Arizona, New Mexico, and Utah. Approximately 1,987 square miles lie in southeastern Utah and are the focus of this settlement. The current boundaries of the Navajo Nation Reservation in Utah were established over a period of time by two Executive Orders and two congressional Acts between the years of 1884 and 1958. Currently, there are 5,029 Navajo tribal members residing within the Utah portion of the reservation.

The portion of the Navajo Reservation in Utah is primarily a desert landscape with much of the area receiving about 7 inches of water per year. Surface water resources include the San Juan River and its tributaries, which flow along the much of the northern boundary of the Reservation in Utah. The primary potable water source is almost entirely from groundwater and the majority of the groundwater is of relatively low quality. The shallow aquifers near Monument Valley provide the

highest quality water, but those aquifers are nearly fully utilized. The deeper bed-rock aquifers in the eastern portions of the Reservation contain more water but have significant water quality issues, including high total dissolved solids (TDS) and arsenic. Much of the Reservation in Utah lacks easy access to potable water. Of the 2,581 households, only roughly half have indoor plumbing. Approximately 46 percent of households haul water, some as far as 50 miles round-trip from Halchita to Monument Valley.

### III. Proposed Navajo Utah Settlement Legislation

Since 2003, the State of Utah, the Nation, and the United States have worked cooperatively, without litigation, to negotiate a water rights settlement for the portion of the Navajo Reservation within Utah.

As introduced, S. 644 contains a number of provisions that the Department supports. The legislation recognizes a reserved water right of 81,500 acre-feet per year of depletion for the Navajo Nation, which will be deducted from the State of Utah's allocation of water in the Upper Basin of the Colorado River. The Department believes that the amount of water negotiated is an appropriate quantification of the Nation's water rights and is in keeping with important statutes, compacts, and regulations that make up the "Law of the Colorado River." As part of the proposed settlement, the Navajo agree to subordinate their reserved water right to all perfected non-tribal water rights as of the date the settlement is signed, which is relatively common in tribal water rights settlements. Finally, S. 664 provides for exchange and lease of Navajo's water rights within Utah, allowing for greater flexibility in the use of water resources and greater drought resiliency.

As introduced, Section 6 of the bill would authorize \$198.3 million in appropriations for Reclamation to plan, design, and construct several Navajo water development projects. S. 664 also includes \$11.4 million to establish an operation and maintenance fund to cover the initial operation and maintenance costs associated with projects constructed from the water development fund, as well as \$1 million for a survey of all current water uses on the Utah portion of the Reservation, which will allow both the State and Nation to manage water resources. Section 6 also includes a state contribution of \$8 million payable to the Secretary of the Interior for planning, design and construction of the Navajo water development projects.

In evaluating the project plans and cost estimates, Reclamation identified deficiencies that would require significant time and effort to resolve and very likely would lead to project cost overruns in the future. Subsequent to the introduction of S. 664, the United States, the Nation, and the State discussed a simplified settlement, which would replace the Department's construction obligations under Section 6 with a water development fund to be used by the Nation to build water projects on an as needed basis. Such a revision would afford the Navajo Nation the opportunity to achieve economic efficiency and flexibility in designing and construction water projects over time as needs arise. We believe that a fund-based settlement would allow for tribal self-sufficiency in meeting future water needs while, at the same time, relieving the Department of the risks inherent in attempting to design and estimate the costs of projects that have not advanced beyond a conceptual level. We will continue to work with the Nation, the State, and the bill sponsor to craft changes to the proposed bill that would allow for Administration support.

The Department also has other concerns about the bill as introduced. Of significant concern is how the water rights held by individual Indians on public domain allotments located within the exterior boundaries of the Reservation will be quantified and protected. We have made substantial progress with the Nation and the State in negotiating potential changes to bill language that would address this concern and are confident that we will be able to satisfactorily address this issue. The provisions on indexing the water development fund are also under discussion. Finally, the waiver language included in the bill as introduced needs to be modified to be consistent with current Administration policy.

### IV. Conclusion

In conclusion, the Department supports the goals of the settlement which include quantifying the reserved water rights attached to the Utah portion of the Navajo reservation and facilitating the development of essential municipal water systems that will provide a reliable quantity and quality water supply for the communities within the Reservation. The Department is supportive of a fund-based settlement for the Navajo Utah Reservation, as it would allow the Nation the greatest flexibility and self-determination in meeting its future water needs. The Department is working with the Nation and sponsor of S. 664 to ensure this bill meets these goals while adhering to the *Criteria and Procedures* established for tribal water right settlements.

The CHAIRMAN. Mr. Clarke.

**STATEMENT OF HON. DAMON CLARKE, CHAIRMAN, HUALAPAI NATION**

Mr. CLARKE. I wanted to thank you, Senator Hoeven, Senator Udall and members of the Committee, especially Senator Flake, for bringing this forward to the Committee for their consideration.

I thank everyone else who has been a part of this to give us the opportunity to bring water to a very, very rural area. Without it, we would not be making strides to give our tribe that economic development.

Thank you.

[The prepared statement of Mr. Clarke follows:]

PREPARED STATEMENT OF HON. DAMON CLARKE, CHAIRMAN, HUALAPAI NATION

Chairman Hoeven, Vice Chairman Udall and members of the Committee, my name is Dr. Damon Clarke, Chairman of the Hualapai Tribe.

The Hualapai Tribe strongly supports S. 1770, the Hualapai Tribe Water Rights Settlement Act of 2017. Before I describe the major elements of this legislation and the critical benefits the Tribe receives from it, let me briefly inform the Committee of the Tribe's pressing water needs.

The Hualapai Reservation encompasses approximately 1 million acres in northwestern Arizona. All lands on the Reservation are tribal trust lands; there are no allotments or fee inholdings. The Colorado River forms the 108-mile northern boundary of the Reservation through a portion of the Grand Canyon.

Our Reservation has no significant surface streams other than the Colorado River, and has very limited groundwater resources. While the Tribe now relies on groundwater to serve Peach Springs, which is our principal residential community, that groundwater is a depletable resource and well levels on the Reservation are dropping. The Colorado River is the only feasible water supply for satisfying the long-term future needs of Peach Springs and of the rest of our Reservation. Our Tribe needs delivery of Colorado River water both to provide a permanent and secure water supply for the domestic and residential needs of our present and future population, and also to fully realize the unique opportunities for economic development that we have at Grand Canyon West—a world class on-Reservation tourist development that the Tribe operates on the western rim of the Grand Canyon.

The Hualapai Reservation does not have the natural resources to permit commercial agriculture, timber or mineral development. But the Reservation's virtually unique location on the Grand Canyon gives the Tribe a strong basis to create a self-sustaining tourism-based economy. Grand Canyon West is the centerpiece of the Tribe's economy. The Grand Canyon Resort Corporation, a tribal corporation which operates Grand Canyon West and other tribal enterprises, along with the tribal government, currently employs more than 1,500 workers (more than 550 of which are non-Hualapai members). The Hualapai Tribe is the second largest employer in Mohave County, Arizona. Grand Canyon West hosts over 1 million visitors a year.

As successful as Grand Canyon West has been to date, there is an even greater unrealized potential to further develop Grand Canyon West—but we are unable to take advantage of this potential because of a critical lack of water. The nearest groundwater to Grand Canyon West is 35 miles away, and the supply from that low-production well is barely adequate for current operations, and completely inadequate for growth. With the Colorado River water that the Tribe would receive from this settlement, and with the infrastructure to deliver that water to Grand Canyon West that would be authorized by this legislation, the Tribe could take full advantage of the potential for further development of Grand Canyon West that would create additional jobs for both tribal members and non-Indians, as well as provide new revenues for our tribal government.

But there would also be significant benefits beyond this. I am accompanied today by Professor Joseph P. Kalt from the Harvard Project on American Indian Economic Development at the John F. Kennedy School of Government. Professor Kalt was commissioned by the Tribe to analyze the economic impact that enactment of S. 1770 would have on the regional economy of northwestern Arizona and southern Nevada, as well as on the economy of the State of Arizona and the Nation as a whole. Professor Kalt's report, which is attached to his written testimony, states that the

significant increase in visitors to both Grand Canyon West and the Grand Canyon National Park in recent years serves as evidence that the Grand Canyon will continue to attract a growing number of visitors in the coming years. His report also states that the economic development of Grand Canyon West that would be triggered by the water and infrastructure authorized by this legislation would support an average of more than 6,500 jobs per year in Arizona, and close to 1,000 jobs per year in southern Nevada. For the Nation as a whole, the project would support an average of more than 10,000 jobs per year, nearly \$1.5 billion in federal tax revenues in present value, and a present value of more than \$9.3 billion in gross domestic product (GDP) for the United States. I believe this settlement is unique among Indian water settlements in supporting this level of regional and national economic benefits—benefits that dwarf the level of federal outlays authorized by S. 1770.

The use and delivery of water for this kind of economic development is well within the parameters of past Indian water rights settlements. Most Indian water rights settlements in this century have provided federal funding for infrastructure development to support commercial as well as residential uses of water. There is, for example, ample recent precedent for federally-funded irrigation projects to deliver water to Indian reservations for purposes of commercial agricultural, where agriculture is the basis of a tribe's economy. And in other recent settlements, federally-funded projects have delivered water to support other kinds of economic development—including hydropower and other energy development, and a retail travel center. Therefore, the infrastructure development for the Hualapai Tribe's tourism-based economy that is authorized by S. 1770 is completely consistent with past Indian water rights settlements approved by Congress.

The lack of water we currently suffer at Hualapai also imposes another substantial burden on our members. Grand Canyon West is located a two-hour drive on a dirt road from Peach Springs, where virtually all tribal members on the Reservation live. Thus, tribal employees at Grand Canyon West have daily round-trip commutes of four hours a day to their jobs, longer in inclement weather. Currently, it is impossible to locate a residential community at Grand Canyon West because of the lack of water there. This imposes an unsustainable burden on tribal members who work at Grand Canyon West, and on their families. The Tribe urgently needs Colorado River water at Grand Canyon West in order to allow the Tribe to construct a residential community there so tribal member can reside near to their jobs on the Reservation.

Over the past seven years, the Hualapai Tribe has, in two phases, negotiated a settlement of all of the Tribe's reserved water rights with the State of Arizona and major private entities in Arizona. The United States actively participated in these settlement negotiations through a Federal Negotiating Team consisting of representatives from affected Interior Department agencies and from the Department of Justice. In phase 1, the parties successfully resolved a portion of the Tribe's water rights—those in the Bill Williams River watershed, where the Tribe has a small parcel of Reservation land and some allotted trust land—in a settlement that was ratified by the Bill Williams River Water Rights Settlement Act of 2014, Pub. L. 113–223, 128 Stat. 2096 (Dec. 16, 2014).

The Tribe and the State parties have now reached agreement on phase 2. The legislation now before the Committee, S. 1770, would resolve the Tribe's remaining water rights claims on a comprehensive basis. The legislation is strongly supported by the State of Arizona and by the private entities which are parties to the settlement—the Salt River Project, Central Arizona Water Conservation District and Freeport Minerals Corporation. It is also strongly supported by Mohave County, the local jurisdiction in which most of the Reservation is located.

Let me now summarize the principal elements of the comprehensive water rights settlement ratified by S. 1770:

- The Act comprehensively settles all of the Hualapai Tribe's federally reserved water right claims for its Reservation and trust lands.
- The Tribe receives exclusive rights to all groundwater and surface water on the Reservation and its other trust lands, and agrees not to object to any pumping of groundwater or diversions of surface water outside the Reservation or its trust lands.
- The Tribe receives an allocation of 4,000 acre-feet a year of Central Arizona Project water from the Colorado River. Of this amount, 1,115 acre-feet a year will be "firmed" (half by the United States and half by the State) until 2108 to protect against future shortages of the availability of Colorado River water in Arizona. The Act also provides that the Tribe itself can "firm" additional portions of the Central Arizona Project Water allocated to the Tribe in any year the water is available and is not needed for delivery to the Reservation.

- The legislation authorizes the expenditure of \$134.5 million in federal funds (in 2016 dollars) to construct an infrastructure project to deliver up to 3,414 acre-feet a year from the Colorado River to the Reservation. The project would divert water from the Colorado River on the Reservation at Diamond Creek and then deliver it through a 70-mile pipeline to both Peach Springs and Grand Canyon West. This system would replace the Tribe's reliance on the existing groundwater wells (except when those wells are needed as an emergency backup). The legislation also authorizes an OM&R Trust Fund of \$32 million for the Tribe partially to defray future costs of operating, maintaining and replacing the project works, \$5 million for OM&R costs prior to transfer of the project to the Tribe, and \$2 million for training of Tribal members in operating and managing the project.
- Certain lands designated by the legislation owned by the Hualapai Tribe near the Reservation will be brought into trust status and certain other lands currently held in trust for the Tribe will be made part of the Hualapai Reservation.

There are substantial non-federal contributions to this settlement. As part of the phase 1 Bill Williams settlement, the Freeport Minerals Company provided a significant multi-million dollar contribution to a Hualapai Tribe economic development fund which the Tribe can use to purchase Colorado River water rights to supplement the allocation of CAP water provided by the settlement. The 2014 Bill Williams Settlement Act expressly states that this substantial funding from Freeport constitutes a non-federal contribution to the Tribe's comprehensive water rights settlement. Pub. L. 113-223 at sec. 5(d)(1)(B). Freeport also contributed an additional \$1 million to the Tribe that enabled the Tribe to conduct an essential "appraisal-plus level" study to determine the feasibility and costs of alternative infrastructure projects to bring Colorado River water to the Hualapai Reservation. That study is the technical report referenced in this settlement legislation. The State of Arizona is also making a contribution, which it values at approximately \$3.2 million, in the form of "firming" 557.5 acre-feet-per year of the CAP water allocated to the Tribe, until the year 2108. Finally, the Tribe has agreed to fund the cost of constructing an electrical transmission line to the project, which the infrastructure study estimates will cost about \$40 million. In aggregate these various non-federal contributions to the settlement constitute over 30 percent of the Federal costs of the comprehensive settlement.

Passage of this legislation is absolutely essential if our Tribe is to realize the full economic potential of our Reservation. We have done everything possible to provide jobs and income to our people in order to lift them out of poverty—but the lack of a secure and replenishable water supply on our Reservation is our major obstacle to achieving economic self-sufficiency, a goal that Federal Indian policy has long favored. Passage of this legislation is essential to allow my Tribe to attain this goal.

Thank you for the opportunity to testify before you today. I will be pleased to answer any questions you may have, and our Tribe will help in any way it can to secure enactment of this critical legislation.

#### SUPPLEMENTAL TESTIMONY

This supplemental testimony is in response to several "concerns" about the legislation set forth in the written testimony of Deputy BOR Commissioner Alan Mikkelsen, chair of the Department of Interior's Working Group on Indian Water Settlements.

The Hualapai Tribe remains disappointed that the Department of Interior continues to withhold its support for a water rights settlement that has the strong support not just of the Tribe, but also of all of the major State and local stakeholders—the Governor of Arizona, the Arizona Department of Water Resources, the Central Arizona Water Conservation District, the Salt River Project and Freeport Minerals Corp. The settlement also has the strong support of Mohave County, the local jurisdiction in which most of the Reservation is located.

Disputes between Indian tribes and non-Indians over rights to the Colorado River are particularly contentious and divisive matters in Arizona. When, as here, the Hualapai Tribe and the State parties have worked hard over a period of seven years to resolve one of these disputes and to craft a compromise that will strengthen both the Tribe and the non-Indian stakeholders, the Department should respect that effort by giving its support to that settlement.

For the reasons set forth below, I believe that the criticisms of the settlement legislation set forth in Deputy Commissioner Mikkelsen's testimony are misguided.

### 1. The Need for Additional Groundwater Studies

The Deputy Commissioner's testimony states that the Department must "complet[e] ongoing groundwater studies" in order to "inform the Department's view on the proposed pipeline."

This position is, for the Tribe, a particularly frustrating objection that is likely to lead to years of unnecessary delay in moving this settlement forward. I have previously pointed out to the Committee that the groundwater on the Hualapai Reservation has already been studied for decades, and none of the many prior studies has shown that there is a supply of groundwater sufficient to meet the long-term domestic and municipal needs of the Hualapai Tribe. Nor have any of the prior studies shown that the groundwater is sufficient to permit the Tribe to realize the significant opportunities for economic development that exist on the Reservation, but which the Tribe cannot pursue because of the lack of water. In my supplemental testimony to the Committee last year on S. 3300, I provided the Committee with a summary of all of the past Reservation groundwater studies that have been done.<sup>1</sup>

This summary, which I attach again for the convenience of the Committee, references 16 prior studies of the groundwater on the Reservation, from 1942 through 2011, most of which were done by agencies of the Interior Department, including the U.S. Geological Survey (USGS), the Bureau of Reclamation (BOR), the Bureau of Land Management (BLM) and the Bureau of Indian Affairs (BIA). None of these prior studies gives any reason to believe that the groundwater on the Reservation can serve as a sufficient and reliable source of water even for the Tribe's short-term needs, much less for our long-term needs.

In responses to written questions posed by Senator McCain after the Committee's hearing on S. 3300 last year, then-Assistant Secretary Larry Roberts said that the prior studies provide "only general ranges of estimated groundwater discharges" and do not "give a high degree of certainty" about the occurrence and movement of groundwater on the Reservation. Further study, the Assistant Secretary said, "will provide improved understanding" of the hydrogeology and "may lead to improved characterization of groundwater resources."<sup>2</sup>

Deputy Commissioner Mikkelsen appears to adhere to this prior Departmental position. Although it is hard to dispute the proposition that more study "may lead" to more information, the relevant question is whether the additional information is likely to provide the assurance the Tribe must have if we are expected to rely on groundwater—a depletable resource—instead of Colorado River water, as a long-term solution to our Tribe's critical water needs. And based on the many studies that already have been done—none of which shows that there are substantial groundwater resources on the Reservation—the answer to this question is certainly no.

Further, the Department's insistence on conducting additional groundwater studies comes at an unacceptable cost to the Tribe in terms of delay, which will certainly be measured in years. The Tribe's experience with regard to the Department's most recent groundwater study is instructive.

In February 2015, four years after the Tribe and the State parties began negotiating this settlement with the active participation of the Interior Department, the Department—for the first time—told the Tribe that it wanted to conduct additional groundwater studies on the Reservation. The Department said that it first would commission the USGS to study the Truxton Aquifer, which partially underlies the Reservation in the Peach Springs area, and that the study would be completed in six months.

The Tribe received the results of that study in January 2017—almost two years later. And the USGS report was, in the opinion of our hydrogeological experts, so flawed as to be neither credible nor useful. Our experts reviewed the study and concluded that it overstates the amount of groundwater in the Truxton Aquifer by a probable factor of 2. When we promptly provided the Department in February 2017 with our experts' reviews of the USGS study, we were told that USGS would consider those views and inform us as to whether it would revise its own report in light of them. Ten months later, we have heard nothing further. Thus, almost three years after the Department told the Tribe it intended to conduct additional groundwater studies, its first study is not yet complete. And the Department has admitted that other groundwater studies on the Reservation will also take years to complete.

This delay is unfair, unjustified and unacceptable. It is unfair to the Tribe and the State parties, who have worked diligently and cooperatively for years to resolve

<sup>1</sup>S. 2636, S. 3216, S. 3222, and S. 3300, Hearing before the Committee on Indian Affairs, United States Senate, 114th Cong., 2d. Sess. (Sept. 14, 2016) (hereafter "Hearing on S. 3300") at 17–20 (Supplemental Testimony of Dr. Damon Clarke, chairman of the Hualapai Tribe).

<sup>2</sup>*Id.* at 48 (emphasis added).

the Tribe's claims to the Colorado River, and whose work is being undermined by the Department's call for years of additional studies. It is unjustified because multiple studies of groundwater on the Reservation have already been done, most of them by the Department itself, and none of the prior studies suggest that there is adequate groundwater to satisfy the Tribe's long-term needs. And it is unacceptable because, as I discuss in my initial testimony, the lack of water on the Reservation is causing tribal members to suffer ongoing hardship by having to endure daily four-hour commutes from their homes in Peach Springs to their jobs at Grand Canyon West, where the lack of water prevents any residential development. A solution to this problem cannot be put off for an indefinite number of additional years in order to allow the Department to conduct more groundwater studies simply because those studies "may lead" to more information.

## 2. The Cost Estimates for the Infrastructure Project

Deputy Commissioner Mikkelsen repeats a criticism also made by the Department in its testimony before this Committee last year that the costs of the infrastructure project "will greatly exceed the costs currently contemplated in S. 1770. . . ." The Tribe has repeatedly asked the Department to substantiate this claim of cost overruns so we could respond to it, and the Department has failed to do so.

The costs in the legislation are based on a thorough study conducted by a highly regarded engineering firm, DOWL, of Tucson, Arizona. The DOWL study included significant field investigations and was conducted at above the appraisal-level standard commonly used in Indian water settlements. Further, DOWL designed and completed its study in conjunction with staff from the Bureau of Reclamation, and based its study on BOR cost estimating methods. Another nationally recognized water resources specialty contractor, ASI Contractors, independently developed cost estimates for the project which were used by DOWL as a check on its own estimates. In short, the Tribe knows of no reason to expect cost overruns in this project, and nothing in Deputy Commissioner Mikkelsen's testimony, or in any other information the Department has provided to the Tribe, is a basis for concluding otherwise.

In his responses to Senator McCain's written questions last year, then-Assistant Secretary Roberts did list certain broad cost categories for which he said BOR concluded that DOWL had underestimated the costs.<sup>3</sup> But he also said that BOR has "no finalized specific reports with respect to costs of the infrastructure project." *Id.* Without specific information about which costs the Department believes DOWL has underestimated, by how much, and why, it is simply impossible for the Tribe (or for DOWL) to evaluate the Assistant Secretary's generic summary of BOR's generic claim of cost overruns, or to respond to it. We do not think it is responsible for the Department to continue to criticize the DOWL cost estimates without substantiating its criticisms, providing specific information to the Tribe, and allowing us the opportunity to address the merits of the specific cost estimates that concern BOR.

## 3. The Threat of Litigation

Another unsubstantiated Departmental criticism repeated by Deputy Commissioner Mikkelsen is that the Hualapai settlement "*might* trigger significant additional litigation." (emphasis added). The Tribe knows of no litigation threat that has been made about the infrastructure project in the Hualapai settlement, even though information about the project has been in the public domain for well over a year, since the bill was first introduced in September 2016 in the 114th Congress.

In his responses to Senator McCain's written questions last year, Assistant Secretary Roberts said it is "likely that environmental and conservation organizations will oppose the project, and such opposition *may* include litigation. . . ." <sup>4</sup> This is speculation on top of conjecture. To the Tribe's knowledge, no environmental or conservation organization has publicly expressed opposition to the project, much less threatened litigation. If the Department has information to the contrary, it has a responsibility to discuss that information with the Tribe, which would permit the Tribe to reach out to the concerned organization in an effort to allay its concerns. The fact that the Department has never given the Tribe any specific basis for its fear of litigation, and instead appears to be basing its concern on no more than what "may" happen, is hardly a reasonable ground for not supporting the settlement.

<sup>3</sup>*Id.* at 49

<sup>4</sup>*Id.* at 49–50 (emphasis added).

#### 4. The Non-Federal Cost Share

Deputy Commissioner Mikkelsen criticizes S. 1770 because, he says, the State parties have not contributed “a commensurate share of the costs of the settlement in return for the benefits they will receive.”

As I pointed out in my principal testimony, the non-federal cost share in S. 1770 is over 30 percent of the amount of the federal cost, when all non-federal contributions are taken into account (including the Tribe’s own very substantial contribution to the cost of constructing the project).

It is, however, illuminating to see that the Department raised no issue with the nonfederal cost share in the Navajo Utah settlement in S. 664, a bill that was also examined by the Committee at the December 6 hearing. In his testimony on that legislation, Deputy Commissioner Mikkelsen says that S. 664 authorizes a total of \$210.7 million in federal appropriations for the projects contemplated in that settlement, and includes a State contribution of \$8 million. That non-federal cost share by Utah is less than 4 percent of the federal cost of that settlement, as compared to a non-federal cost-share in the Hualapai settlement that is a full 30 percent of the federal cost.

Indeed, just one element of the non-federal cost share in the Hualapai settlement—the contribution by Freeport Minerals to the Tribe’s economic development fund—is by itself larger than the entire contribution by the State of Utah in S. 664, even though the federal cost of the Hualapai settlement is 18 percent less than the federal cost of the Navajo Utah settlement. And as I previously pointed out, Congress specifically stated in the 2014 Bill Williams Settlement Act that this Freeport contribution is to be treated as a non-federal contribution to the comprehensive water rights settlement in S. 1770. Pub. L. 113–223, sec. 5(d)(1)(B).

Thus, as compared to the Navajo Utah settlement, the non-federal cost share in the Hualapai settlement is more than six times greater in absolute terms (approximately \$50 million v. \$8 million), and more than seven times greater relative to the federal cost of each settlement (approximately 30 percent v. 4 percent). Yet the Department raises no objection to the nonfederal cost share in the Navajo Utah settlement while it criticizes the Hualapai settlement as having a non-federal cost share that is not “commensurate.”

The Department’s differential treatment of the non-federal cost share in these two settlements is stark, unexplained and unfair.

#### 5. Off-Reservation Groundwater Pumping

The final significant concern raised in Deputy Commissioner Mikkelsen’s testimony is that S. 1770 prohibits the Tribe from objecting to any use of groundwater outside the Reservation boundaries.

This concern ignores the fact that the Tribe is given the right to the exclusive use of all groundwater on the Reservation, thereby prohibiting any non-Indian from objecting to any tribal use of groundwater on the Reservation. It also ignores the fact that this settlement is a negotiated compromise, with reciprocal concessions by the parties. As the Department surely knows from its participation in the six years of negotiations that led to this settlement, the State parties firmly refused to agree to any restrictions on groundwater pumping outside the Reservation, and advised the Tribe that such restrictions would require changes to State law that would, as a practical matter, be impossible to enact in the Arizona Legislature.

The Tribe’s agreement to forego such off-Reservation groundwater restrictions is reasonable because the thrust of the settlement is to provide the Tribe with sufficient water from the Colorado River to meet its domestic, commercial and municipal needs, so that the Tribe is not solely reliant on groundwater, as it is at present.

In this light, the Department’s concern that the Tribe has waived its right to object to off-Reservation groundwater pumping is neither wise nor practical: had the Tribe adopted the Department’s policy position, it would only have led to an impasse among the parties and a failure of the settlement negotiation.

While I am disappointed in Deputy Commissioner Mikkelsen’s testimony, I am pleased that he said the Department is “eager to work with all of the interested parties” in the Hualapai settlement to reach a “final and fair settlement of the Tribe’s water rights claims” that the Department can support. The Tribe intends to engage the Department promptly on this promise, but we nonetheless urge the Committee to support S. 1770 and to report the bill for action by the full Senate.

I appreciate the opportunity to submit this supplemental testimony to the Committee.<sup>5</sup>

<sup>5</sup>I would also like to take this opportunity to correct a misstatement made in my answer to a question at the hearing about the number of jobs that would be created if S. 1770 is enacted. I have again reviewed Professor Kalt’s report which concludes, at page 51, that the economic

**Attachment**

NATURAL RESOURCES CONSULTING ENGINEERS, INC.  
December 4, 2015 MEMORANDUM

To: Hualapai Project Files  
From: NRCE, Inc.

RE: PREVIOUS GROUNDWATER STUDIES

This memorandum presents a list and brief description of previous groundwater studies on the Hualapai Reservation. The list of studies is separated between the deep regional aquifer and the alluvial-volcanic aquifers.

**Deep Regional Aquifer**

*Description:* The deep regional aquifer on the Hualapai Reservation includes the Redwall-Muav Aquifer (R-Aquifer) and the Tapeats Sandstone lying at the bottom of the Paleozoic section in contact with crystalline basement rocks.

- Representative well yields from the R-Aquifer range from 5 to 40 gallons per minute, with 150 gallons per minute the highest reported in the region (Twenter, 1962; Myers, 1987; and others).
- There is some evidence indicating that faults, fractures, and folds may enhance aquifer properties that can localize potential for larger well yields; however targeting these features using surface geophysics is speculative and drilling costs are very high.
- The USGS conducted a hydrogeological study of the Reservation between 1957 and 1962 (Twenter, 1962). The R-Aquifer was identified as the most promising aquifer, but drilling depths were prohibitive.
- Several wells were drilled to various depths (mostly shallow) in the late 1960s and 1970s by the BLM and the BIA loosely based on Twenter's recommendations but most were unsuccessful (Huntoon, 1977).
- Several deeper wells were completed on the Hualapai Plateau in 1992 by the Bureau of Reclamation. One well drilled near the GCW resort in 1992 targeted the deep regional R-Aquifer. The well was deepened in 1999 (Watt, 2000). That well (GCW-1) encountered groundwater only in the Tapeats Sandstone. The shallower Redwall and Muav Formations were unsaturated. The well is equipped with an oilfield-type pumping unit but is currently unused due to low water quality and low yield (15–26 gpm).
- NRCE was contracted in 2005 to investigate and evaluate all possible water supply options for the resort. The preferred alternative recommended diversion from the Colorado River. Groundwater development options were judged to be infeasible for a variety of reasons, but primarily because of their inability to supply the sustainable yield required by the Grand Canyon West resort at a reasonable overall project cost.
- DOWL (2013) further assessed a few Colorado River alternatives considered in the NRCE study. Groundwater development alternatives were judged to be infeasible in this study for the same reasons as the 2005 study by NRCE.

**Alluvial-Volcanic Aquifers**

*Description:* The main alluvial-volcanic aquifers are in the northern Aubrey Valley around Frazier Wells (eastern part of the Reservation), Westwater Canyon, Peach Springs-Truxton Wash Valley, and elsewhere along the southwest flank of the Hualapai Plateau (e.g. Horse Flat area and the upper Milkweed Canyon). The alluvial-volcanic aquifers have areal extents that are limited by the valleys and washes that contain them. The volume of stored groundwater is similarly limited. Depth to water is generally shallow, typically less than 500 feet below ground level, and well yields of up to 170 gallons per minute have been reported. Water from these aquifers is generally acceptable for domestic use.

- The Santa Fe Railroad drilled 6 fairly shallow wells within Peach Springs between 1903 and 1922. The Hualapai Tribe acquired use of water from the railroad spring-fed water system between 1931 and 1954. One well near the town is currently used.
- The USGS conducted a study in 1942 to assist location of prospective sites for development of stock water supply on the Hualapai Reservation (Peterson, 1942). In addition to a hydrogeological characterization of the region, the study

development caused by the Diamond Creek pipeline would support an average of slightly over 10,000 jobs per year.

inventoried numerous existing wells and stock ponds. Peterson recommended 18 sites across the Reservation for drill-testing.

- N. J. Devlin evaluated the Peach Springs water system in 1973 and considered possibilities for development of additional water supplies for the town. Devlin recommended further development of the aquifer contained in the lake beds of Truxton Valley. Development of other springs and other exploration areas were judged to have low potential.
- The Indian Health Service drilled two wells in Truxton Valley in 1972 to provide additional water supply for Peach Springs. A third well was drilled in 1976 by the IHS in Truxton Valley near the wells drilled in 1972. These wells currently supply all of the water needs for the town of Peach Springs.
- The Bureau of Reclamation drilled an unsuccessful hole into Cenozoic volcanics near the head of Milkweed Canyon in 1975. A second successful well in Westwater Canyon alluvium and volcanics was completed in 1975. This well currently provides most of the water to Grand Canyon West via a 30-mile pipeline.
- A well drilled in the Frazier Wells area in the eastern part of the Reservation serves a fish-rearing facility. An additional two boreholes were completed in the shallow alluvial aquifer in the Frazier Wells area in an effort by the Tribe to develop additional groundwater supply. Both wells were dry and were abandoned.
- Regional hydrogeological mapping by Richard Young (State University of New York at Geneseo) focused on the Tertiary volcano-sedimentary aquifer in the area of Westwater Canyon near the well drilled by the Bureau of Reclamation (Young, R. A., 1987, 1991, 1992, 2007). Stantec (2009) estimated the safe yield of this aquifer to be approximately 600 afy. Further development of this aquifer is prohibited by tribal policy as it would likely reduce spring flow (considered to be a cultural resource) in its discharge area.
- NRCE conducted an evaluation of the groundwater supply for the town of Peach Springs in 2011. That study included an inventory of wells in the sub-regional area, a comprehensive review of the regional geology, an evaluation of hydrologically attractive areas for development of additional groundwater supplies in the southern part of the Reservation, and made some specific recommendations for exploratory evaluation of both the R-Aquifer and alluvialvolcanic aquifers. The adequacy of natural aquifer recharge to support existing and future water needs was also assessed.

The CHAIRMAN. I apologize. I should have said President Begaye and Chairman Clarke. I just wanted to correct the record.

Lieutenant Governor Cox, do you have any initial comments?

**STATEMENT OF HON. SPENCER J. COX, LIEUTENANT  
GOVERNOR, STATE OF UTAH**

Mr. COX. I would just say in my small town, we have a saying that whiskey is for drinking and water should be for fighting.

Mr. Chairman, I am so grateful that we are not fighting about this one because it has been 15 years, a long time. It has been a wonderful relationship. We appreciate President Begaye and his leadership in making this happen. The entire State of Utah is in full support of this bill and this settlement.

Thank you.

[The prepared statement of Mr. Cox follows:]

PREPARED STATEMENT OF HON. SPENCER J. COX, LIEUTENANT GOVERNOR, STATE OF  
UTAH

Mr. Chairman and members of the Committee, thank you for the opportunity to testify today and to highlight an important example of two groups with sometimes differing interests coming together to find a solution to a critical challenge.

Utah is one of the driest states in the Nation. Water is our lifeblood. Generally, water rights in Utah may only be created under state law. We recognize, however, that properly-established, federally-reserved water rights, particularly tribal rights,

are an important exception to that rule. We have committed to use negotiation rather than litigation as our preferred method of resolving reserved right claims. Such negotiations require commitment, patience, and trust.

We have developed a high level of trust with the Navajo Nation as we have worked together for nearly 15 years to develop a reasonable and equitable resolution of water right claims for the portion of the Nation located within Utah's borders. This settlement is tremendously important to Utah because it fits within the structure of the Colorado River compacts, protects state-based water rights, and improves life for Utah Navajos.

**With these facts in mind, we wholeheartedly support Senator Hatch's Senate Bill 664 which embodies the Utah/Navajo Settlement and we ask you to quickly pass the bill.**

The following principles guided Utah in its settlement discussions with the Navajo Nation:

- Protecting existing water right commitments, including those dictated by the structure and language of the Colorado River compacts, the Law of the Colorado River generally, and water rights established under Utah law;
- Providing finality with respect to the amount of Utah's Colorado River allocation available for appropriation under Utah law;
- Improving economic opportunities and quality of life for citizens of the Nation who live in Utah, many of whom lack basic necessities; including safe drinking water and water for agriculture and industry,
- Respecting neighboring sovereigns, both the Nation and sister states; and
- Promoting positive outcomes from negotiation which would be unattainable through litigation;

The agreement Senate Bill 664 embodies was initially negotiated between Utah and the Nation. Confident a settlement could be achieved, in 2007 the sovereigns petitioned the Department of Interior for the appointment of a federal negotiating team. The Department appointed a team in 2013. Review of the settlement by members of that team has resulted in helpful input.

The Utah Legislature expressed support for the settlement by passing legislation in 2012 which established a water right settlement fund for Utah's monetary contribution toward the settlement. The State legislature has put \$2 million in that fund with the understanding that additional, necessary funds will come from the State's "rainy-day" fund.

We recognize funding for this settlement must compete for limited federal resources with other pressing needs. Nevertheless, we believe the settlement is essential for success of the Navajo Nation in Utah. The State and the Nation agree that the contemplated expenditure of about \$200M of federal funds to achieve the settlement is both justified and appropriate. Both parties also agree that the appropriate State share for the settlement is \$8M and Utah proposes to contribute that amount.

The settlement fits within the structure of the Colorado River compacts and protects existing Utah water right commitments. It also ensures the United States' compliance with its trust obligation to the Navajo Nation and provides important, related waivers of liability regarding water rights and past water resource development. The settlement is fair, reasonable, and equitable to all parties. It benefits Utah, the Navajo Nation, and all states in the Colorado River Basin.

**This bill, and the process that led to it, is the essence of cooperative federalism. The state and tribal governments, with input and assistance from the federal government, have worked together to find an equitable solution to pressing challenges. This is the kind of agreement we should celebrate and try to do more often. Again, we recommend the Committee act favorably on this bill.**

And with that Mr. Chairman, I'm happy to answer any questions.

The CHAIRMAN. Mr. Buschatzke, any opening comments before we proceed with some questions?

**STATEMENT OF THOMAS BUSCHATZKE, DIRECTOR, ARIZONA  
DEPARTMENT OF WATER RESOURCES**

Mr. BUSCHATZKE. Chairman Hoeven, Vice Chairman Udall, and Senator Flake, I too want to express my support to the Hualapai

Tribe and the rest of the State parties who have helped us to negotiate this settlement. It is really important to the State of Arizona.

It is one in a line of settlements the State has been able to work through with tribes in the State. I think it is a great step forward.

Thank you.

[The prepared statement of Mr. Buschatzke follows:]

PREPARED STATEMENT OF THOMAS BUSCHATZKE, DIRECTOR, ARIZONA DEPARTMENT OF WATER RESOURCES

### **I. Introduction**

My name is Thomas Buschatzke. I am the Director of the Arizona Department of Water Resources. Thank you for the opportunity to testify on behalf of the State of Arizona on S. 1770, the Hualapai Tribe Water Rights Settlement Act of 2017. The State of Arizona strongly supports S. 1770.

### **II. Importance of settling Indian water rights claims in Arizona**

There are 22 federally recognized Indian tribes within the State of Arizona. The total population of all Indian tribes in Arizona as of 2010 was 234,891, which is the third highest among all states. The total area of all Indian reservations in Arizona is approximately 20 million acres, which is second only to Alaska. Arizona ranks first among all states in the percentage of tribal land in the state—27.7 percent.

Half of the 22 federally recognized Indian tribes in Arizona still have unresolved water rights claims. Resolving these claims through settlement is a strategic priority for the State, not only because it will avoid the cost and uncertainty of litigating the claims, but it will provide certainty to all water users in the state regarding available water supplies in the most expeditious manner possible. In many cases, a settlement will also provide the tribe with funding to construct the infrastructure necessary to put its water supplies to beneficial use.

### **III. Hualapai Tribe's water rights claims**

The Hualapai Tribe is one of the eleven Indian tribes in Arizona with unresolved water rights claims. The Tribe's main reservation covers approximately one million acres in the northwestern portion of the state. The Colorado River forms the northern boundary of the reservation, and the Grand Canyon National Park is located immediately north of the reservation. The Tribe also has reservation and trust lands south of its main reservation in the Bill Williams River watershed.

The Tribe has asserted claims for both groundwater and surface water for its reservation and trust lands. The Tribe's claims include a claim to water from the Colorado River, a critical water supply for agricultural, municipal and industrial water users along the Colorado River, as well as water users in Central Arizona using Colorado water delivered through the Central Arizona Project (CAP).

The Tribe claims a right to Colorado River water for domestic, municipal and industrial uses on its reservation and trust lands, including use at Grand Canyon West. Grand Canyon West is a major tourist attraction located adjacent to the Grand Canyon on the Tribe's main reservation. One of the main features of Grand Canyon West is the Skywalk, a glass walkway overhanging the Grand Canyon where tourists can walk out and look through the glass walkway to the bottom of the Canyon.

### **IV. Settlement Negotiations with Hualapai Tribe**

In late 2011, the State of Arizona and several other major water users in the state (collectively referred to as the "State Parties") began negotiating with the Hualapai Tribe for a comprehensive settlement of the Tribe's water rights claims. The United States participated in the settlement negotiations through a negotiating team appointed by the Secretary of the Interior.

Early in the settlement negotiations, the Tribe and State Parties agreed that as part of a comprehensive settlement of the Tribe's claims, the Tribe should receive an allocation of CAP water from the volume of Non-Indian Agricultural (NIA) priority CAP water set aside for future Indian water rights settlements in Arizona in the Arizona Water Settlements Act of 2004 (Public Law 108-451). The Tribe and the State Parties also agreed that the settlement should include an authorization by Congress of an appropriation of monies to construct a pipeline to carry the CAP water from the Colorado River to Peach Springs, the Tribe's main residential center, and Grand Canyon West.

### **V. Hualapai Phase 1 Settlement**

In late 2012, the parties agreed to bifurcate the settlement into two phases, with Phase 1 consisting of a limited settlement of the Tribe's water rights claims in the Bill Williams River watershed and Phase 2 consisting of a comprehensive settlement of all the Tribe's water rights claims in Arizona, including the Tribe's claims to water for its main reservation. The settlement was bifurcated so that Phase 1 could become effective as soon as possible without waiting for the comprehensive settlement to be negotiated. Finalization of the Phase 1 settlement by the end of 2015 was necessary to expedite a water rights transfer as part of the settlement, resulting in benefits to a state party, the federal government and the environment.

The Phase 1 settlement was approved by Congress in December 2014 and became law on December 16, 2014 (Public Law No: 113-223). The settlement became effective in December 2015 after all the conditions for the settlement were met.

Although the Phase 1 settlement was not a comprehensive settlement of the Tribe's water rights claims, it included provisions designed to facilitate a comprehensive settlement that would include an allocation of NIA priority CAP water to the Tribe and the construction of a pipeline to carry the water to the Tribe's reservation. Those provisions are the following:

1. The settlement agreement provides that Freeport Minerals Corporation ("Freeport"), one of the State Parties, will transfer \$1 million to the Tribe as a contribution toward the cost of the Tribe's study of water project alternatives for its main reservation.
2. The settlement agreement provides that Freeport will contribute money to the Hualapai Tribe Economic Development Fund. Both the settlement agreement and the legislation approving the settlement provide that the money may be used only for the purpose of facilitating settlement of the claims of the Tribe for rights to Colorado River Water by enabling the Tribe to acquire Colorado River water rights with the intent to increase the security of the Tribe's water rights, and to otherwise facilitate the use of water on the Tribe's reservation.
3. Both the settlement agreement and the legislation approving the settlement provide that Freeport's contribution to the Hualapai Tribe Economic Development fund shall be considered a non-federal contribution that counts toward any non-Federal contribution associated with a settlement of the claims of the Tribe for rights to Colorado River water.

Before the Phase 1 settlement agreement became effective, Freeport transferred \$1 million to the Tribe for the study of water project alternatives. After the Phase 1 settlement became effective, Freeport made a multi-million dollar contribution to the Hualapai Tribe Economic Development Fund for the purposes described above.

### **VI. Hualapai Phase 2 Settlement**

During negotiations for a Phase 2 settlement, the Tribe contracted with an engineering firm to conduct a study of alternative projects to bring water from the Colorado River to Peach Springs and Grand Canyon West on the Tribe's reservation. The Tribe paid for the study in substantial part with the \$1 million that Freeport contributed for that purpose as part of the Phase 1 settlement. The study concluded that the most feasible project was a pipeline carrying Colorado River water from Diamond Creek, located near the southeastern portion of the Tribe's reservation, to Peach Springs and then on to Grand Canyon West, a total of 70 miles.

In June 2016, the Tribe and the State Parties agreed to the terms of a Phase 2 settlement. The key terms of the settlement are the following:

1. The Tribe will receive an allocation of 4,000 acre-feet per year of NIA priority CAP water from the volume of NIA priority CAP water set aside for future Indian water rights settlements in the Arizona Water Settlements Act of 2004.
2. The United States and the State of Arizona will each firm 557.50 acre-feet per year of the Tribe's NIA priority CAP water to the equivalent of the higher priority CAP municipal and industrial priority water during water shortages.
3. The Secretary of the Interior, acting through the Commissioner of the Bureau of Reclamation, will plan, design, and construct the Hualapai Water Project, which includes a pipeline to convey not less than 3,414 acre-feet per year of Colorado River water from Diamond Creek to Peach Springs and Grand Canyon West for municipal, commercial, and industrial uses. Congress will authorize an appropriation of \$134.5 million for construction of the Project, \$32

million for operation, maintenance and replacement costs by the Tribe, and \$7 million for use by the Secretary of the Interior in operating the water project before title is conveyed to the Tribe and to provide technical assistance to prepare the Tribe for the operation of the Project.

4. The Tribe will have the right to use all groundwater under and surface water on its reservation and trust lands.
5. Certain lands adjacent to the Tribe's reservation will be brought into reservation status and certain lands owned in fee by the Tribe near its reservation will be held in trust for the Tribe by the Secretary of the Interior. No additional lands may be brought into trust for the Tribe without approval by Congress.
6. The Tribe, the United States and the State Parties will execute mutual waivers of claims for water rights and injury to water rights.

A bill approving and authorizing the Phase 2 settlement was introduced in Congress by Senator Jeff Flake on September 8, 2016 (S. 3300), with Senator John McCain as a co-sponsor. The bill was heard by the Senate Committee on Indian Affairs on September 14, 2016, but no further action was taken on the bill. On September 7, 2017, Senator Flake reintroduced the bill with minor changes, again with Senator McCain as a co-sponsor. The reintroduced bill, S. 1770, is before you today.

#### **VII. The State of Arizona Supports S. 1770**

The State of Arizona strongly supports S. 1770. The State believes the Phase 2 settlement authorized by the bill is a reasonable and fair settlement that will benefit the Hualapai Tribe, the State of Arizona, Arizona water users and the United States.

##### *A. Hualapai Tribe*

For the Hualapai Tribe, the settlement provides a renewable water supply and the infrastructure to convey that water supply from the Colorado River to critical areas on the Tribe's reservation. Because there are no significant surface water streams on the reservation, water from the Colorado River is the only renewable water supply available to the Tribe. The water supply will serve the Tribe's main population center at Peach Springs, which is currently served groundwater from wells that are experiencing declining water levels. The water supply will also serve Grand Canyon West, the only viable economic development area on the Tribe's reservation. Grand Canyon West is currently served groundwater from a low-production well approximately 35 miles away.

A pipeline to bring Colorado River water to Grand Canyon West is essential for further economic development on the Tribe's reservation. The Tribe's reservation is in a location with breathtaking views of the west rim of the Grand Canyon. This provides the Tribe with a unique asset that is a significant economic development resource. Currently, approximately one million visitors come to Grand Canyon West each year to walk on the Skywalk and experience the views of the Grand Canyon. The Tribe would like to further develop Grand Canyon West to include additional tourist attractions that would significantly increase the number of visitors each year. However, development at Grand Canyon West, and the annual number of visitors, is essentially capped at current levels due to the lack of additional water supplies for the area. Construction of a pipeline to bring Colorado River water to Grand Canyon West would remove that cap and allow the Tribe to fully utilize the unique asset on its reservation for economic development.

In addition, the current lack of water supplies prevents the Tribe from constructing housing near Grand Canyon West for the employees who work there. As a result, most of those employees live in Peach Springs and drive to work each day over a dirt road. The travel time is two hours each way in good weather, for a total travel time of four hours each day. Travel time is significantly longer in wet or snowy conditions. Construction of a pipeline to carry Colorado River water to Grand Canyon West would allow the Tribe to construct a residential community near Grand Canyon West where its employees can live. Housing closer to Grand Canyon West will benefit the employees and their families who would have more time together.

##### *B. State of Arizona and Arizona Water Users*

For the State of Arizona, the settlement is a major step toward resolving the outstanding water rights claims of Indian tribes in the state. Resolving the Hualapai Tribe's claims through settlement will avoid the costs and risks associated with litigating the claims and will provide certainty to water users in the state. Perhaps the main risk to water users in the state from litigating the Tribe's claims is a risk

to their Colorado River water supplies. As mentioned previously, the Tribe's reservation is located adjacent to the Colorado River and the Tribe has asserted claims to water from the River. The Colorado River supplies the Tribe will receive through the settlement will not affect the Colorado River entitlements of other water users in the State because the Tribe will receive a portion of the NIA priority CAP water being held by the Secretary of the Interior for Indian water settlements in the state.

Another benefit to the State of Arizona is that the settlement will provide the Tribe with a renewable water supply to replace its current groundwater pumping. Use of renewable water supplies instead of groundwater is consistent with the State's policy of preserving groundwater supplies for times of drought. Additionally, because the aquifer beneath the Tribe's reservation extends to areas off the reservation, the Tribe's use of a renewable water supply will help preserve groundwater supplies not just for the Tribe, but for non-tribal water users in the region. This is especially important in this area of the state, where the groundwater supplies are limited and there is minimal groundwater recharge.

### C. *United States*

For the United States, the settlement will avoid the costs and risks to the United States associated with litigating the Tribe's water rights claims. The risks include the possibility that the Tribe would prevail in an action in the Court of Federal Claims to recover damages against the United States for failing to protect its water rights in the *Arizona v. California* litigation.

In addition to avoiding the costs and risks of litigation, the settlement would likely result in a significant economic benefit to the United States Treasury. The Tribe contracted with Professor Joseph P. Kalt, Ford Foundation Professor (Emeritus) of International Political Economy at the John F. Kennedy School of Government at Harvard University, to prepare a report on the economic benefits of a pipeline to carry Colorado River water to Grand Canyon West. In his report, Professor Kalt concluded that the pipeline would result in significantly more visitors to Grand Canyon West, and that over a 50-year period, the benefits to the United States from increased federal tax revenues resulting from the additional visitors would greatly exceed the federal outlays for construction, operation, and maintenance of the pipeline. Professor Joseph P. Kalt, *Economic Impact of the Hualapai Water Rights Settlement and Proposed Diamond Creek Pipeline*, July 16, 2017.

## VIII. Issues Raised by the Department of the Interior with the 2016 Bill and Phase 2 Settlement

On September 14, 2016, the previous administration provided this Committee with a statement ("Statement") of its position on the bill introduced in 2016 (S. 3300). The statement raised several issues with the bill and with the Phase 2 settlement. I would like to address two of those issues.

### A. *Non-Federal Contribution*

In its Statement, the Department of the Interior stated that "the State Parties have failed to make earnest efforts to provide for adequate cost-sharing relative to the benefits they will receive in this Indian water rights settlement." The State of Arizona disagrees with this statement. As previously mentioned, Freeport made a multi-million dollar contribution to the Hualapai Tribe Economic Development Fund as part of the Phase 1 settlement. The Tribe may use this money only for the purpose of facilitating settlement of its claims for rights to Colorado River Water by enabling it to acquire Colorado River water rights to increase the security of the Tribe's water rights, and to otherwise facilitate the use of water on the Tribe's reservation.

As required by the federal legislation approving the Phase 1 settlement, Freeport's financial contribution to the Hualapai Tribe Economic Development Fund must be considered a non-federal contribution towards the Phase 2 settlement. Freeport's payment of \$1 million to the Hualapai Tribe to use toward a study of water project alternatives to bring water to the Tribe's reservation should also be considered a non-federal contribution because it was made for the purpose of facilitating the Phase 2 settlement.

In addition to Freeport's large financial contribution, the State of Arizona has agreed to firm 557.5 acre-feet of the Tribe's 4,000 acre-feet per year allocation of NIA priority CAP water to the equivalent of CAP municipal and industrial priority during water shortages until 2108. The State estimates the cost to firm this water at \$3.2 million dollars.

Finally, the Tribe has agreed to pay the cost of constructing an electric transmission line to supply power to pump the water through the pipeline. The Tribe's consultant estimates this cost at approximately \$40 million. Although this is not a contribution by a State Party, it is a contribution that should be considered when

evaluating the percentage of the costs of the settlement that the federal government will not be paying because of non-federal contributions.

The financial contributions that will be made to this settlement by Freeport and the State of Arizona are very substantial. The State firmly believes that these contributions show that the State Parties have made an “earnest effort” to provide for adequate cost-sharing relative to the benefits they will receive from the settlement. When the \$40 million contribution by the Tribe is added to the State Parties’ contribution, the non-federal contributions to the settlement are more than adequate.

#### *B. CAP Fixed OM&R Charges*

The Department of the Interior also expressed opposition to the provision in the bill requiring the Tribe to pay a CAP fixed OM&R charge for the use of NIA priority CAP water on the Tribe’s reservation. This charge is an annual charge assessed against all users of CAP water based on the amount of CAP water they use. The charge is used by the Central Arizona Water Conservation District (CAWCD) to pay its fixed costs in operating the Central Arizona Project. The Department stated that it did not support the charge because it believed it amounted to a double charge to be paid by the Tribe for water deliveries—the Tribe’s OM&R costs to bring the water to its reservation through the pipeline to be constructed on the reservation, and the CAP fixed OM&R charge. The State of Arizona disagrees with the Department’s position on this issue.

First, the Colorado River water the Tribe will receive in this settlement is legally classified as CAP water. It is appropriate for all users of CAP water to pay the CAP fixed OM&R charge because without proper operation, maintenance and replacement of the CAP, there would be no CAP canal and no CAP water.

Second, the Tribe’s payment of CAP fixed OM&R would not amount to a double charge. All users of CAP water are responsible for paying the expenses relating to their own delivery systems, as well as CAP fixed OM&R charges relating to the CAP system. These are separate and distinct charges.

Third, the Department’s argument that the Tribe will not use the CAP canal to bring its CAP water to its reservation misses the point. The settlement reduces the water supply that otherwise would be available to be diverted through the CAP and used for other purposes, so the Tribe should pay the CAP fixed OM&R charge for the CAP water it receives. If the Tribe were relieved of the requirement to pay the charge, the reduced supply in the CAP system would cause an increase in the charges assessed against all other CAP users, including other Indian tribes that receive CAP water. It is important to retain the provision in the bill to avoid this inequitable result.

Moreover, the Tribe has the ability to use the CAP canal in the future to carry its CAP water for storage in central Arizona or for use pursuant to a water exchange or lease. The Tribe should therefore be required to help pay the fixed costs of operating, maintaining and replacing the CAP.

Finally, it is important to note that the Tribe agreed to pay the CAP fixed OM&R charge during the negotiations for the Phase 2 settlement in return for the benefits it will receive through the settlement. It is also important to note that payment of the charge by the Tribe will not impose any additional costs on the federal government. For those reasons, it is not inequitable to either the Tribe or the Federal Government to retain the provision in the bill.

### **IX. Conclusion**

The State of Arizona strongly supports S. 1770, the Hualapai Tribe Water Rights Settlement Act of 2017. The bill is important to the State of Arizona because it authorizes a comprehensive settlement of the Hualapai’s Tribe’s water rights claims, including its claims to the Colorado River—a critical water supply for water users in the state. Settlement of the Tribe’s water rights claims is an important step in achieving the State’s goal of settling all outstanding Indian water rights claims in the state. Settlement of the claims will avoid the costs and risks of litigation, and will provide certainty to water users in the state.

The settlement will provide significant benefits to the Hualapai Tribe in return for settling its water rights claims. The settlement will allow the Tribe to replace its groundwater use with a renewable water supply, consistent with the State’s policy of preserving non-renewable groundwater supplies for use during drought conditions. The settlement will allow the Tribe to maximize economic development on the reservation by providing the water necessary for expansion of development at Grand Canyon West. The Tribe will also have sufficient water to construct a residential community near Grand Canyon West so that employees will no longer be required to endure a daily commute of two-hours to work and two-hours back to their homes.

Finally, the settlement will provide significant benefits to the United States. The settlement will avoid the costs and risks to the United States of litigating the Tribe's water rights claims. It will also provide a significant financial benefit to the United States Treasury through increased tax revenues resulting from the Tribe's expansion of Grand Canyon West. The financial benefits that the United States will receive through the settlement will greatly exceed the costs that the United States will incur in constructing a pipeline to bring water from the Colorado River to the Tribe's reservation.

The CHAIRMAN. Again, thanks to all of our witnesses for being here.

I would open with a question for Mr. Buschatzke. In Mr. Mikkelsen's testimony, he points out that "Parties can and should contribute commensurate share of the costs of the settlement in return for benefits they receive."

He notes, the State of Montana and that they have contributed millions of dollars in appropriated settlement funds to the Montana Indian Water Rights Settlement.

My question, has the State of Arizona decided how much of their money should be contributed or will be contributed to the Indian water rights settlement?

Mr. BUSCHATZKE. Chairman Hoeven, the total non-Federal contribution from within the State of Arizona among the State parties, including the State itself, is about 30 percent compared to the Federal appropriation. We think that is a pretty significant contribution.

The State of Arizona itself is putting \$3.2 million towards furthering of non-Indian agricultural CAP water. The threshold for meeting the criteria for a reasonable split between Federal and non-Federal is a little unclear.

I would note that in Mr. Mikkelsen's testimony on S. 664, the total contribution from the State of Utah was about 8 percent compared to the appropriation. I think from the perspective of the State of Arizona and the State parties, our non-Federal contributions are significant and do come up with a fair and reasonable mixture between non-Federal and Federal.

The CHAIRMAN. I would ask President Begaye for his thoughts on that same issue.

Mr. BEGAYE. I just want to say that this bill will provide water to 40 percent that do not have water in the State of Utah, members of my Nation. We have waited years for the opportunity to be able to say to Utah Navajos that this settlement will give all of our Utah Navajos water.

Right now, many of them do haul water. A lot of the contamination that is up there they deal with on a daily basis. To have this settlement done and providing water to all of our Utah Navajos is something we are looking forward to. The quality of water will be there.

Thank you.

The CHAIRMAN. Lieutenant Governor Cox, in your testimony, you state the settlement proposed by S. 664 is fair, reasonable and equitable to all parties. You went on to say that this bill benefits all States in the Colorado River Basin.

Talk about that a bit in terms of the big picture and how it benefits all the States?

Mr. COX. In the big picture, it gives us some certainty when it comes to the water rights in the Colorado River Basin by finally putting to bed this outstanding claim. Within the water rights already reserved for the State of Utah, it gives us an opportunity to have certainty while protecting existing water rights. We are now able to ensure the water rights of the Navajos as well.

One thing I would add to your previous question, Mr. Chairman, is that none of the infrastructure that is contemplated with the proceeds of this bill would be used for non-Indian rights. Unlike the Arizona bill, this is 100 percent for the Navajo Nation and those in need.

The State of Utah has already set aside \$2 million for this project and has committed to set aside another \$6 million in addition for a total of \$8 million, again 100 percent going to bringing drinking water to the Navajos in Utah.

The CHAIRMAN. Thank you, Lieutenant Governor.

Commissioner Mikkelsen, from the perspective of the Bureau, your thoughts on these settlements in terms of support and benefit?

Mr. MIKKELSEN. Mr. Chairman, thank you.

We do not have a formula to determine whether State or local cost share is sufficient, but we must be mindful of what funding the Federal Government can provide in assisting communities to resolve these longstanding disputes.

We have not made a determination on such for the Navajo-Utah settlement. However, just as a general matter, the higher the State and local contribution, the better.

The CHAIRMAN. Thank you.

Again, I would like to thank all of the witnesses for being here today and turn to Vice Chairman Udall.

Senator UDALL. Thank you, Mr. Chairman. Thank you for holding this very important hearing.

Mr. Mikkelsen, it has been brought to my attention that S. 1770 has a reference to an outdated statute from 1918 that deals with reservation lands. That statute is 25 U.S.C. 211. It says "No Indian reservation shall be created, nor shall any additions be made to one, within the limits of the States of New Mexico and Arizona except by an act of Congress."

If you go back and read the Congressional Record from 1918 when this was proposed, the intent is very clear that Senators at the time wanted to restrict Native Americans from acquiring land.

Mr. Chairman, I would like to include this legislative history in today's Committee record.

The CHAIRMAN. Without objection.

[The referenced information follows:]

State School of Agriculture at Tuscoloma, Okla., and to be immediately available in addition to the sum of \$200,000 provided for the same use by section 10 of the Indian Appropriation Act of March 2, 1917.

Mr. SMOOT. Mr. President, as I understand, that is the same amendment that was offered by the Senator from Oklahoma (Mr. Owen), as to which he said that the Indians themselves requested this appropriation.

Mr. ASHBURST. That is true. It is not an appropriation out of the Treasury, but out of Indian funds.

Mr. SMOOT. I understood that it was out of the Indian funds.

Mr. ASHBURST. And they wish it to be made.

Mr. SMITH of Arizona rose.  
Mr. ASHBURST. If my colleague will yield to me for a moment before we leave the question of people, I wish to make a unanimous consent to include in the Record, without reading them, a telegram from the governor of the State of Utah and one also from the governor of the State of Nevada on the subject of people. These telegrams are in the nature of petitions, and that is the reason I ask that they be included in the Record.

The PRESIDING OFFICER. Without objection, permission to do so will be granted.

The telegrams referred to are as follows:

SENATE COMMITTEE ON TERRITORIES, Washington, D. C., February 27, 1918.  
CHAIRMAN COMMITTEE ON TERRITORIES, Washington, D. C.

I wish to urge the passage by Congress of a measure prohibiting the use of peyote, a drug used extensively by Indians with frequently vicious results. Utah now has a law prohibiting use of the drug.

— SENATOR JAMNISON, Governor.

SENATE COMMITTEE ON INDIAN AFFAIRS, Washington, D. C., February 26, 1918.

Understanding that Bill (H. R. 1024) for interstate shipment of the drug peyote has been introduced and is to come before your committee, I take the liberty of most respectfully urging you to report the bill favorably. Nevada has passed a law prohibiting the sale of this drug, and we need the interstate prohibition act to protect our Indians. We consider this a matter of very great importance.

— SENATOR D. BOYCE, Governor of Nevada.

Mr. CORE rose.  
Mr. SMITH of Arizona. Mr. President, I understand the committee amendments have been disposed of, and I offer the amendment which I send to the desk.

The PRESIDING OFFICER. The Chair will state that the amendment proposed by the Senator from Oklahoma (Mr. Owen) has not yet been disposed of and is now before the Senate for action. The question is on that amendment.

The amendment was agreed to.  
Mr. CORE. I wish to say I had risen to make an inquiry as to whether or not the amendment had been disposed of. My understanding was that it had not been.

The PRESIDING OFFICER. The amendment has now been agreed to.

Mr. SMITH of Arizona. I offer the amendment which I send to the desk.

The PRESIDING OFFICER. The amendment proposed by the Senator from Arizona will be stated.

The SECRETARY. On page 25, line 13, it is proposed to add the following:

That hereafter no Indian reservation shall be created nor shall any addition be made to one heretofore created within the limits of the States of New Mexico and Arizona, except by act of Congress.

Mr. SMITH of Arizona. Mr. President, I wish to detain the Senate but one minute about this amendment. States other than the States of New Mexico and Arizona have been protected as proposed by the amendment. Only last year there was created an enormous Indian reservation for which there was no earthly need in the county in which it lies. It is now threatened by Executive order to enlarge other reserves affecting both New Mexico and Arizona. Notwithstanding, as I am informed, the Indians now have something like 10,000 acres of land apiece for every member of the tribe, this policy has been pursued to a point which makes us feel that when we make an appropriation from the Treasury we must have the guarantee of an act of Congress to make it good. There is no limitation on the power of the Commissioner of Indian Affairs to recommend the extension in any direction or for any length of time Indian reservations in our State for the enlargement of which there is no earthly necessity.

Any one who will look at conditions in that State and at the map will know, I think, before any more public land is taken away from the people who have got to meet conditions subsequent to this war when the Indians are so simply provided for, that it would be an outrage on the people not only of that State,

but upon all who are interested in the public lands of the United States.

In connection with this matter I have prepared an exhibit, and I have had my secretary make it a little bigger, showing the areas which are devoted to Indian and forest reservations. There (indicating) are the Indian reserves which have already been made in my State, which are shown in red; the green indicates the forest reserves, and the white indicates the desert and mountain lands; all that is left. There has been taken from that State nearly half of the best land in the State. It has been dedicated to the balance of the United States in the shape of forest reserves. The department has given the land which is indicated on this map by red to the Indians, when there are 20 white men to one Indian in the State. That land (indicating) is all that is left to the State of Arizona with which to pay taxes to support its government. Then it is sought on behalf of the Commissioner of Indian Affairs to run across the line into New Mexico. Senators will observe from the map that in connection with the Navajo Reservation the yellow area goes clear into the adjoining State of New Mexico. To make these outrageous claims in Arizona or New Mexico is contrary to all common sense and reason.

I sincerely hope that the Senate will maintain its dignity by saying that no more public lands of the United States, which will be badly needed by and for, shall be carried out of the possession of the people of the United States by mere Executive order.

Mr. GRONNA. Mr. President, may I ask the Senator from Arizona a question?

Mr. SMITH of Arizona. Yes.

Mr. GRONNA. I heard the Senator's amendment read only hurriedly, but, as I understand, it only applies to the States of Arizona and New Mexico.

Mr. SMITH of Arizona. It applies to Arizona and to New Mexico only because the other States are protected. Arizona and New Mexico have the right to that protection, and they have got to come to Congress for it. Those two States have been left out. It is only proposed to give those States the right which other States already have.

Mr. GRONNA. If the Senate will permit me further, the Senator also discussed the question of the public lands, but simply has reference to the Indians; it has reference to the enlargement of Indian reservations.

Mr. SMITH of Arizona. The amendment provides that no other Indian reservation shall be created or that no Indian reservation now in existence shall be enlarged without being authorized by an act of Congress. That is all. It proposes to retain what Congress ought always to have kept—the right of disposition of the public lands.

Mr. ASHBURST. Mr. President, I hope the amendment which has been proposed by my colleague will be adopted. I speak with familiarity as to the Indian reservations in Arizona and New Mexico. The reservations in those two States are large enough now, and even as I speak I have before me a letter from the Bureau of Indian Affairs, in which I am advised that the Interior Department has under consideration the question of making a large addition to a certain reservation in New Mexico and Arizona.

There was a tribe of Indians in Arizona, to wit, the Papagos, which the Arizona delegation in Congress felt ought to have some small additions made to their reservation to take care of the watering places used by those Indians; indeed, we went so far in 1910 as to ask the department to set aside a proper area as an addition to their reservation, but when the Executive order came down we found to our amazement that instead of a few thousand acres being set aside, over 2,000,000 acres were set aside, and it required months for us to correct this error.

Mr. JONES of Washington. Mr. President—

The PRESIDING OFFICER. Does the Senator from Arizona yield to the Senator from Washington?

Mr. ASHBURST. I do.

Mr. JONES of Washington. Does not the Senator from Arizona think that under the circumstances it would be wise to insert a provision in this amendment to the effect that any reserve created by Executive order shall be considered invalidly created after this date, or something like that, to prevent the establishment of a reserve by Executive order before this bill goes into effect?

Mr. ASHBURST. I think that is a very wise plan, and I hope my colleague will give his attention to it.

Mr. JONES of Washington. It will be done, if they contemplate doing it, before this bill goes into effect. I suggest whether it would not be possible to insert a provision in this

bill to make unlawful the creation of such reservations after this date? I merely make the suggestion for consideration.

Mr. SMITH of Arizona. I think I shall take the opportunity of adopting that suggestion, though I do not think the department will do anything contrary to the spirit of the amendment proposed. As will be remembered, however, as the Senator suggests, when some years ago a bill was passed here declaring that no further reservations should be made in certain States, the President, before the bill became a law, made reservations as big as he pleased, and then signed the bill.

Mr. JONES of Washington. That is why I suggested that there should be some such provision in the amendment.

Mr. SMITH of Arizona. I desire, if I possibly can, to stop that policy, because it is so manifestly unjust, but I think the department, or at least the President of the United States, on the proper showing by this map of these conditions, will consent that no more public lands shall be disposed of without the sanction of Congress being obtained before the disposition.

Mr. SULLIVANT. Mr. President, I should like to say a few words with relation to the amendment which has been offered by the Senator from Arizona [Mr. SMITH].

We in the West have had a large and unfortunate experience relative to the withdrawal of public lands from entry. The manner in which these reserves have been made by the Government has become almost unendurable. There is hardly a Western State in which millions and millions of acres of land have not been set aside as forest reserves. The policy became of such a serious nature that Congress passed an act that no longer should there be withdrawals of public lands for forest purposes without the consent of Congress.

Mr. President, reference has been made here to the passage of that bill 10 or 12 years ago. It passed the House and then passed the Senate, and before the conference committee could report upon it there were forest reserves equal to about 40,000,000 acres created by the proclamation of the late President of the United States. He knew, or should have known, that there was about to be passed in Congress a bill which would prevent the creation of forest reserves, and thus his action was an evasion not appreciated by the West.

Mr. President, in my opinion, Arizona has too many Indian reservations. The creation of a reserve deprives a State of the right to tax the land within its borders and is an interference with the rights of the State. It is an outrage that millions of acres of land in a sovereign State of this Union should be set aside and forever held without the right of taxation by the State. That never was in contemplation by the framers of the Constitution, because the National Government, if it should carry that principle to the extreme, would have the power to almost annihilate a State by withdrawing great portions of the land of the State from taxation.

Mr. President, it seems to me if there is no provision of law prohibiting the setting aside of Indian reservations that we ought to adopt such a provision now and have it in force as quickly as possible, so that the rights of the States may be protected against the encroachments of the Federal Government in that respect.

The PRESIDING OFFICER. The question is on agreeing to the amendment offered by the Senator from Arizona [Mr. SMITH].

The amendment was agreed to.

Mr. OWEN. I send to the desk an amendment proposing to quiet titles in eastern Oklahoma. I will say to the Senate that it comes with a unanimous report from the committee; that it was drawn by the Interior Department in conjunction with the Oklahoma delegation, and is asked for at the request of the attorney representing the farm-land bank of Wichita, who has found some difficulty with the titles in eastern Oklahoma.

The PRESIDING OFFICER. The amendment will be stated. The SECRETARY. On page 63, after line 10, it is proposed to insert the following:

That a determination of the question of fact as to who are the heirs of any deceased citizen natives of the five civilized tribes of Indians who may die or may have heretofore died, intestate, testate, or by the probate courts of the State of Oklahoma having jurisdiction to settle the estate of said deceased, conducted in the manner provided by the laws of said State, the true determination of heirs to the estate of deceased persons, shall be conclusive of said question, and where such proceedings have heretofore been conducted in compliance with the laws of said State then in force, the judgment and final order therein entered shall have the effect as of the date of its entry. Provided, that an appeal may be taken in the manner and to the extent provided by law in cases of appeal in probate matters generally; provided further, that where the time limited by the laws of said State for the institution of administrative proceedings has elapsed without their institution, as well as in cases where there exists no lawful ground for the institution of administrative proceedings in said courts, a petition may be filed therein having for its object a determination of such heirs, and the same shall proceed in all respects as administrative proceedings upon other proper grounds and been regularly brought, provided further, that said petition shall be verified, and in all cases existing

hereunder verified by publication may be had on all unknown heirs, the parties to be in accordance with the method of serving unknown heirs known in civil suits in the district courts of said State; and if any person so served by publication does not appear and move to be heard within six months from the date of the final order, he shall be considered equally with parties personally served or voluntarily appearing.

That the lands of fee-simple owners of any of the five civilized tribes are hereby made subject to the laws of the State of Oklahoma, pertaining to the partition of real estate. Any land situated in said territory to a fee-simple owner or conveyed to him upon his election to take the same at the appointment, shall remain subject to all partition upon alienation and in such partition shall be subject to such partition. In case of a sale under any decree or partition, the respective landowner shall operate to relieve the land described in all resolutions of every character.

Mr. WILLIAMS. Mr. President, I move to strike out the last word.

Now, Mr. President, I ask, in support of the motion I have just made, not wishing to ride up the floor of the Senate unnecessarily, to have inserted in the Record without reading, an editorial appearing upon page 2 of the Milwaukee Journal of March 25 entitled "Why Lusk is unavailable," followed by the subtitle "Chicago Republican paper critic Chairman West's bluff. Chance Wisconsin would take with Lusk or as Senator."

Mr. McCUMB. Mr. President, we can not hear the Senator.

The PRESIDING OFFICER. Will the Senator from Mississippi speak a little louder?

Mr. WILLIAMS. Mr. President, I thought it rather inappropriate that I should be heard. How far does the Senator from North Dakota want me to go back in my rooming?

Mr. McCUMB. The Senator does not need to go back, if he will let us hear the remainder.

Mr. ASHURST. Mr. President—

Mr. WILLIAMS. The editorial is headed "Why Lusk is unavailable. Chicago Republican paper critic Chairman West's bluff. Chance Wisconsin would take with Lusk or as Senator. Chairman West passes the lie, and how it is up to him to show who is telling it."

Then I ask that there be inserted in the Record following that Chairman West's statement headed "Who is telling a lie?" so that the two statements may appear, one cancelling the other as far as possible.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Mississippi?

Mr. SHAW. Mr. President—

Mr. ASHURST. Mr. President, I wish to speak a moment with respect in this matter.

Mr. WILLIAMS. Mr. President—

Mr. SMITH of Arizona. Let us have a vote on the pending bill.

Mr. ASHURST. There is no request the Senator from Mississippi could make of me that I would object to; but, Mr. President, let me say now that we could have passed the Indian appropriation bill in 30 minutes yesterday had it not been for the miserable twaddle that Senators indulged in respecting politics. Let us in this great crisis show that we are men, and act as become men. Let us do the business of the country, instead of talking about something that has no relation to the subject. Now, I give warning that if any more of this political twaddle is brought into this Chamber while the bill which I have in charge is under consideration, I will move to adjourn in order that the country may know that the Senate of the United States has degraded to such a low estate that it can not do its own routine business.

Mr. WILLIAMS. Mr. President, in reply to the Senator from Arizona, I have only to state that the Senate's "routine business" is a very contemptible thing in comparison with the war situation and the world situation as we are faced with it to-day, and what I am proposing to put in the Record has something to do with the war situation and the world situation. I am, of course, sorry to receive a lecture from the Senator from Arizona, and I feel absolutely rebuffed to insinuation by the power and force of it; but, at the same time, I believe I know something about my duties as an American citizen and something about my duties as a Member of the Senate, and I am pursuing those duties to the best of my ability.

I have not brought my politics upon this floor; I have not been guilty of any "political twaddle," as the Senator from Arizona has appeared to say. I am merely answering certain things that came out in the debate on March 29, when the troops of the allies were fighting the Germans in Europe and which we were being criticized here.

Mr. ASHURST. Mr. President, if the Senator will yield for just a moment, when I characterized the performance of yesterday as "miserable twaddle" I did not have in mind the Senator. The Senator knows I would not characterize any-

Senator UDALL. Mr. Mikkelsen, do you feel it is appropriate to cite this statute in S. 1770? Is it needed to accomplish the bill's goals?

Mr. MIKKELSEN. Mr. Chairman, Senator, thank you.

We are aware of the Section 211 language in this bill and have had several conversations with tribes about this language. This Administration has concerns about citing Section 211 in this bill.

Senator UDALL. Do you basically consider this an obsolete provision that should just be ignored?

Mr. MIKKELSEN. Again, we have concerns about citing Section 211 and we have not reached any determinations beyond that at this time, sir.

Senator UDALL. Will you give me in writing the opinion of the department in consultation with your solicitor as to how you feel about this specific provision?

Mr. MIKKELSEN. Certainly.

Senator UDALL. Thank you very much.

As I understand it, the Navajo-Utah project could be the first of its kind project where the Federal Government gives the money directly to the tribe to plan, design and construct the water project as opposed to Congress giving the funds to the Bureau of Reclamation and they would do those activities.

President Begaye, can you please describe for the Committee why the tribe prefers planning and constructing the project itself versus Reclamation constructing the project for the tribe?

Mr. BEGAYE. What is really important in this situation with that is by Navajo Nation constructing the project, we use Navajo purpose, meaning that unemployment being at 46 percent, we would be able to address much of that by using Navajo people to construct any of the construction that will be taking place. That is one that is really important to us, that we put our Navajo people to work using these dollars.

Secondly, we would be able to use our own Navajo Nation laws. That is also important to us because we have assumed authority over our surface land, so any type of archeological or clearances, we will be able to use Navajo Nation laws in that regard.

We can expedite the process of any kind of construction that may take place. It is important as a sovereign Nation that we are able to do that, employ our people and use our laws in order to build and construct any kind of construction that may take place in relationship to this. That is really important to us.

Thank you.

Senator UDALL. Thank you, President Begaye.

Mr. Mikkelsen, is this model where Congress provides planning and construction dollars directly to tribes the new normal? What are the implications of this new model to the Federal trust responsibility?

Mr. MIKKELSEN. Each Indian water rights settlement is unique in its own way so it is difficult to say broadly that this is the new direction of Indian water rights settlements. However, that being said, we are confronting serious cost gaps on specific projects included in recent settlements. This has underscored the problems inherent in trying to estimate costs on projects at a conceptual level.

A fund-based settlement allows the tribes to make the decisions on the kinds of projects that best fit their needs as noted by the President.

Senator UDALL. Thank you so much.

We are now five minutes into a vote. I have a number of other questions. I will submit those to you for the record and hope you will get back to us promptly on those.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Flake.

Senator FLAKE. Thank you, Mr. Chairman. I will be as brief as I can.

Mr. Buschatzke, can you clarify a response given to an earlier question? Will any of the infrastructure contemplated in the bill, the Hualapai bill, serve non-Indian entities?

Mr. BUSCHATZKE. Senator Flake, the entire breadth of that bill does create infrastructure to deliver water exclusively to the Hualapai Tribe and on the reservation itself.

Senator FLAKE. Exclusively to the Hualapai, no non-Indian uses. Thank you.

Mr. Mikkelsen, thanks for your leadership for the Bureau of Reclamation and services as chair of the Working Group on Indian Water Rights Settlements. I am pleased with the commitments we have received from Secretary Zinke to work with me to advance the settlement. I appreciate the work the working group has done.

I am a bit troubled, however, that despite these commitments we continue to see old concerns raised that were raised and addressed during the last Administration. The Administration's position is additional non-Federal contributions are required but to the best of my knowledge, the Administration has not set a required threshold for State parties.

As I have said before, I think the non-Federal contributions in the settlement are larger than other completed or pending settlements. Will the department work with State parties to better define a threshold for non-Federal contributions it thinks is appropriate?

Mr. MIKKELSEN. The answer to that question is obviously yes. We will work with all the parties to advance these settlements.

Senator FLAKE. Dr. Clarke, you make a very compelling case for what this settlement means for the economy of the Hualapai people. I appreciated the study that Professor Kalt produced. I was impressed by the economic benefits that it showed for the tribe, the State and the region.

Have you had a chance to explain the tribe's perspective and Professor Kalt's study to the OMB?

Mr. CLARKE. No, we have not. We have asked for numerous meetings with OMB and we have been turned away. We would still like to meet with them to provide them with this opportunity to show what Professor Kalt has given us.

Senator FLAKE. Very briefly, what are some of the economic benefits that will accrue to the tribe?

Mr. CLARKE. The economic benefits are going to be that we want to provide numerous jobs, over 10,000 jobs. At this time, I would like to defer this question to Professor Kalt.

Mr. KALT. Senator, I won't recap my entire study but in a nutshell, while the Hualapai Water Rights Settlement arises in the context of an Indian water rights dispute, it actually economically should be viewed as a regional economic development project.

The current water situation is such that not only is the Hualapai Tribe and its population being capped by limited water supplies, but the very successful and growing economic development occurring particularly with the tribe's Grand Canyon West Tourism Development Enterprise, it is reaching its maximum given the water supplies that are available.

Removing that cap via the settlement would produce substantial net benefits, not only to the United States GDP, but also to the Federal Government. Even from a Federal perspective, my research, using modeling routinely employed by Federal agencies, for example, in studying their impacts, my research finds this project would pay off the Federal appropriation of roughly \$173 million in less than three years and have 47 years of benefits if you have a 50-year life to a pipeline.

This is a net positive for the Nation. It is a regional economic development project in its economic instance. It happens to arise in this case in the context of an Indian water rights settlement.

Senator FLAKE. Thank you.

Thank you, Director Buschatzke, the State has done very good work. There is a great partnership between the tribes and the State and with our office will have to try to advance this settlement and others.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Flake.

I want to thank all of the witnesses for being here today. I apologize that we had to move through this as quickly as we did because of the votes. I think your being here and the information you provided is very important and very helpful for the process.

Vice Chairman, do you have anything else?

Senator UDALL. I would just thank the witnesses very much. We really appreciate it.

The CHAIRMAN. With that, the hearing record will be open for two weeks.

Again, thanks to our witnesses for being here.

We are adjourned.

[Whereupon, at 3:15 p.m., the Committee was adjourned.]

## A P P E N D I X

PREPARED STATEMENT OF PROF. JOSEPH P. KALT, CO-DIRECTOR, THE HARVARD PROJECT ON AMERICAN INDIAN ECONOMIC DEVELOPMENT, JOHN F. KENNEDY SCHOOL OF GOVERNMENT, HARVARD UNIVERSITY

Thank you for the opportunity to submit this testimony concerning S. 1770, the *Hualapai Tribe Water Rights Settlement Act of 2017*. My name is Joe Kalt and I am the Ford Foundation Professor (Emeritus) of International Political Economy at the John F. Kennedy School of Government, Harvard University and co-director of The Harvard Project on American Indian Economic Development. For more than 30 years, the Harvard Project on American Indian Economic Development has been engaged in research into the sources of, and impediments to, sustained economic development on America's Indian reservations.

I have been asked by the Hualapai Tribe to examine the regional economic implications of the proposed settlement of the Tribe's water rights claims, as this settlement is set out in S. 1770. The centerpieces of the settlement are: (1) the proposed federally-funded construction of a 70-mile pipeline that would divert Colorado River water at Diamond Creek on the Hualapai reservation to the Hualapai Tribe's principal residential community at Peach Springs, Arizona, and to the Tribe's world-class tourist development on the south rim of the Grand Canyon at Grand Canyon West; and (2) provision of a maximum of 4,000 acre feet of low priority Central Arizona Project (CAP) Non-Indian Agricultural water for use on the reservation. Under the settlement, the federal outlays for construction, operation, and maintenance of the Pipeline are calculated to be \$173.5 million.

I find that this expenditure would pay for itself many times over in terms of a metric of relevance. Specifically, in terms of jobs and worker income, business revenues and gross domestic product, and state, local and federal tax collections, the cost to the Federal Government of building the Pipeline would be swamped by the benefits that the expansion of adequate water supplies via the Pipeline would generate. These results are set out in detail in my report to the Tribe, attached hereto.

The reasons for the overwhelmingly positive payoffs of the proposed Hualapai water rights settlement are straightforward. First, without the additional water supplies that the Diamond Creek Pipeline would deliver, the Hualapai Tribe is effectively maxed out in its ability to accommodate further growth in its onreservation population because its current water supplies will not support the housing and related infrastructure that the Tribe's citizens will need. This portends forcing increasing numbers of Hualapai citizens to live off-reservation.

Second, with critical implications for the entire regional economy of northwest Arizona and southern Nevada and at the heart of the federal and overall US public's interest in the settlement, existing water supplies and sources are insufficient to support further economic development of the Hualapai Tribe's thusfar highly successful Grand Canyon West tourism enterprise. Grand Canyon West, with its iconic Skywalk overlook at the western reaches of the Grand Canyon, currently enables approximately 1.1 million tourists per year to visit and experience the Grand Canyon. Foreign visitors to the United States, many of whom utilize Las Vegas as a "jumping off" point, make up a very large portion of Grand Canyon West's patrons. The visitors to Grand Canyon West spend their money on locally-provided travel and tourism services. This has proven to be a tremendous boon to the regional economy, with the Hualapai Tribe's Grand Canyon Resort Corporation (which owns Grand Canyon West) employing more than 1,500 workers. More than 550 of these workers are non-Hualapai, and the Tribe is now the second largest employer in Mohave County, Arizona.

The consuming public of the United States and beyond has a strong and growing demand for the recreational and tourism experiences that Hualapai enterprises produce: Paralleling the experience of the United States' National Park Service at Grand Canyon National Park, visitorship at Grand Canyon West has skyrocketed in recent years. Allowing inadequate water supplies at Hualapai to now choke off demand at Grand Canyon West will demonstrably and severely harm not only the

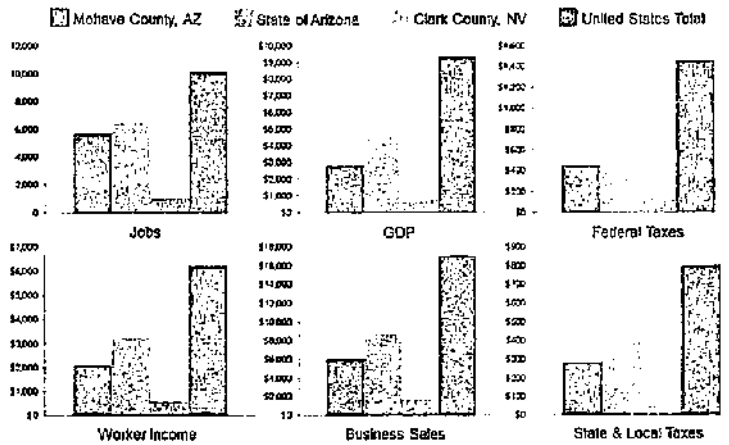
Hualapai Tribe, but also the recreational tourism industry and the workers and suppliers who support that industry in Arizona, Nevada and, ultimately, the nation.

While the proposed Diamond Creek pipeline arises in the context of an Indian water rights settlement, in its economic essentials, the Pipeline is properly viewed as a region-wide economic infrastructure project. Such projects are in the national economic interest when they support economic growth and activity with net economic benefits for the nation which exceed project costs. This is decidedly the case here.

My research finds that building the Diamond Creek Pipeline and supplying the much-needed water it will carry to the region will create and sustain decades of economic growth and development for Hualapais and non-Hualapais alike. Using standard and widely-accepted tools of regional economic impact modeling of the same type routinely used by federal agencies in assessing the impacts of those agencies' spending, I find that over a useful pipeline life of at least fifty years, and expressed in terms of net present value, the growth in visitorship and economic development made possible by the Pipeline would support an average of more than 10,100 American jobs per year, nearly \$1.5 billion in federal tax revenues in present value, over \$6.2 billion in income for US workers in present value, and more than \$9.3 billion in gross domestic product (GDP) for the United States (in present value). These results are summarized in Figure 1.

Figure 1

**ECONOMIC IMPACTS OF THE HUALAPAI WATER RIGHTS SETTLEMENT:  
JOBS PER YEAR & NET PRESENT VALUES  
IN MILLIONS OF DOLLARS OVER 60 YEARS**



The job and value generation that would be supported by the Diamond Creek Pipeline would accrue to the benefit of the US economy as a whole, with the most concentrated impacts occurring in Arizona and southern Nevada. The human results would be substantial improvement in economic conditions for Hualapai and non-Hualapai citizens alike. For the federal government, the Pipeline would be a substantial net revenue generator. Looking at the net present value of federal tax revenues on a levelized basis (i.e., treating the federal tax receipts generated over the life of the pipeline like an annual mortgage payment made to the Federal Government), the settlement would result in \$58 million in annual levelized federal tax collections. Economically, this means that the settlement would have an effective "pay-back" period of only 3 years, leaving decades of continuing federal tax collections after paying off the \$173.5 million federal cost of the settlement. The proposed Hualapai water rights settlement would be a net benefit to the U.S. taxpayer.

Upon reflection, the foregoing economic impacts of the proposed settlement should not be surprising. The very positive effects that the proposed settlement would have for the federal treasury and the U.S. economy as a whole arise because the Diamond Creek Pipeline would ultimately enable far greater numbers of U.S. and non-U.S. consumers to enjoy resources that can be supplied by the Hualapai Tribe. Those re-

sources take the form of the scenic wonder that is the Grand Canyon and the experiences the Tribe's tourism enterprises create around that scenic wonder. If current water supply constraints at Hualapai are allowed to cap the Tribe's economic development, the Tribe's—and the nation's—resource that is the Grand Canyon will have much of its productive potential for the consuming public untapped. Economics would say that failure to adopt the settlement and build the Diamond Creek Pipeline would leave an incredible and durable national resource “underemployed” in serving the wants and desires of the consuming public. The consuming public and the many parts of the U.S. economy that directly and indirectly undergird the Hualapais' tourism economy will be the losers if the Diamond Creek Pipeline project does not go forward.

In short, the nature of the resource that is the Grand Canyon is such that the most basic economic “outputs” that visitors seek—i.e., the vistas, the cultural impact, and the other experiences that the Grand Canyon “produces”—can be “reused” or “re-consumed” by visitors again and again, one consumer after another, at effectively little or no incremental cost. The only costs are the costs of enabling consumers to be at Grand Canyon West with the kind of tourism support services (lodging, meals, the Skywalk, etc.) provided by the Hualapai Tribe and made possible by an adequate water supply. We know from the willingness of consumers to pay on the order of \$100 per day for more than a million tickets per year that expanding the ability of consumers to experience the Grand Canyon yields tremendous economic value. The proposed Diamond Creek Pipeline project has the capacity to do just that—and thus yield benefits which far exceed the costs to the Hualapai Tribe, the regional economy, the national economy, and state, local, and federal governments that far outweigh its costs. When we look for infrastructure projects which can benefit the nation and its economy, the Diamond Creek Pipeline is precisely the kind of project we should be looking for.

\*The report, *Economic Impact of the Hualapai Water Rights Settlement and Proposed Diamond Creek Pipeline* has been retained in the Committee files.\*

# PASCUA YAQUI TRIBE OFFICE OF THE CHAIRMAN

November 29, 2017

Hon. Chairman John H. Hoeven, III  
Hart Senate Office Building, SH-838  
Washington, DC 20510-6450

Hon. Vice Chairman Tom Udall  
Hart Senate Office Building, SE-838  
Washington, DC 20510-6450

*Re: Opposition to the Reference to 25 U.S.C. § 211 in Section 9 of the Hualapai Tribe Water Rights Settlement Act (S.1770)*

Dear Chairman Hoeven and Vice-Chairman Udall:

As Chairman of the Pascua Yaqui Tribe of Arizona, I am writing to express the Tribe's strong opposition to the reference to 25 U.S.C. § 211 in Section 9 of the Hualapai Tribe Water Rights Settlement Act (S.1770). While the Pascua Yaqui Tribe supports the Hualapai Tribe's efforts to settle its long-standing water rights claims in Arizona, the reference in Section 9 of the current bill that would allow the Tribe to take additional lands into trust as part of its water settlement "*in accordance with*" 25 U.S.C. § 211,<sup>1</sup> is a plain attempt by the State settling parties to revive the power of § 211, despite the fact that this statute has been held to have been superseded by the Indian Reorganization Act of 1934 (IRA).

If § 211 were revived, the State parties and perhaps others, will most certainly argue (as they have in the past) that it prohibits the ability of Indian tribes in Arizona and New Mexico to take lands into trust under the Secretarial process permitted by the IRA (25 U.S.C. § 465 and 467) and to proclaim additions to existing reservations within these two States. The reference could also place a cloud on title to lands that have been taken into trust for Tribes in Arizona and New Mexico since the 1918 enactment of 25 U.S.C. § 211.

For this reason, the Pascua Yaqui Tribe requests that this language be removed from the Hualapai Water Rights Settlement bill. Notably, removal of the reference to § 211 in the bill will have no impact on the other elements of the Hualapai Settlement. Indeed, at the most recent NCAI General Assembly, NCAI passed a resolution that supported the Hualapai Tribe Water Rights Settlement Act, but only after amending the Resolution to make clear that NCAI does not support the inclusion of any reference to 25 U.S.C. § 211 in the Hualapai Bill. See NCAI Resolution #MKCE-17-001

We urge you to take any action within your power to have this reference removed from the bill.

Yours Truly,  
**PASCUA YAQUI TRIBE**

  
Robert Valencia, Chairman

<sup>1</sup> 25 U.S.C. § 211 (1918) provides:  
"No Indian reservation shall be created, nor shall any additions to one heretofore created, within the limits of the States of New Mexico and Arizona, except by Act of Congress." (May 25, 1918, ch. 86, § 2, 40 Stat. 570.)

PREPARED STATEMENT OF ALFRED BENNETT III, SHIPROCK/NORTHERN AGENCY,  
NAVAJO NATION

I'm Alfred Bennett 3rd of Shiprock, New Mexico, Shiprock/Northern Agency, Navajo Nation. Part of the Shiprock Agency extends into Southern Utah. First of all I'm against S.664 because it is not in the best interest of my People as a whole. Your version has it as a final work, but it is a proposed legislation from our Council (leg-

islation no. 0412–15 Approving the “Proposed” Navajo Utah Water Rights Settlement Agreement 01/26/2016 passed yea 13 nay 07 not voting 04). As in past Anglo-Native American histories all agreements & treaties has always been changed or broken to take advantage of the different Native Nations thru out history. So this agreement is an example of what has happen in the past. I can say our Navajo President was out of line by agreeing to this “Proposed” settlement. The reason is that he is giving away our claims of 60+ or- miles of water of the Big Colorado River/Lake Powell in Utah for nothing. The U.S. Government has not even finish constructing the 12 farm blocks in the 1962 Navajo Indian Irrigation Project (NIIP) Act, but they did finish the Rio Chama diversion tunnel under the Continental Divide in New Mexico in the 1970s. They even enlarged the tunnel during construction. Which our leaders are now in Washington D.C. requesting money to finish this project. This delay cost us hundreds of thousands or millions of acre feet of water per year. Only God knows! The priority date is also wrong because there were Navajos hiding out in the canyons of southern Utah who never surrendered and went to Ft. Sumner/Bosque Redondo and signed the Treaty of 1868. The Navajo water rights priority date on this agreement should be 1866 not what is in S.664! There is no real goal & timetables in this agreement and no Environmental Impact Statement (EIS) that I have seen. Mr. Chairman and Committee members thank you for your time and blessing to all. Vote no until we are truly compensated for our losses of the past.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. TOM UDALL TO  
ALAN MIKKELSEN

*Question 1.* Funding for Indian water rights settlements can often include a mix of discretionary spending and mandatory spending, as you know. Mandatory funds are an increasingly important part of the spending equation, given Interior’s budget constraints.

This falls against the backdrop of growing backlog of “authorized but unfunded” settlements, potentially as large \$1 billion dollars as of FY2016, as Interior asserted at a 2016 hearing before the House Committee on Natural Resources.<sup>1</sup>

*a.* The department did not specify the methodology for the figure referenced above (i.e., whether it includes expenditures that have been foregone when they were initially expected to take place and/or those that are planned for obligation in future years). Please provide a list of projects referenced in the testimony that remain “authorized but unfunded.”

*b.* Please provide a list of Indian water rights settlements in which Congress provided direct/mandatory funds, the amount of mandatory appropriations versus discretionary appropriations, and any remaining amounts necessary relative to the authorization ceiling.

Answer. The following tables provide a list of Indian water rights settlements that are currently authorized, but have not been fully funded or have on-going, statutorily mandated costs. As requested, the tables distinguish between mandatory and discretionary appropriations.

**Table 1**

Settlement	Source of Funding	Estimated Cost	Appropriated through 9/30/17	Balance to Complete
Aamodt Litigation	Construction	65,287,000	29,266,993	36,020,007
	Trust Fund	37,500,000	37,500,000	0
	Mandatory	73,100,000	56,400,000	16,700,000
	<i>Total</i>	175,887,000	123,166,993	52,720,007
Crow	Construction	198,139,000	36,152,413	161,986,587
	Trust Fund	0	0	0
	Mandatory	277,935,000	277,935,000	0
	<i>Total</i>	476,074,000	314,087,413	161,986,587
Navajo-Gallup	Construction	771,593,000	432,717,449	338,875,551

<sup>1</sup> Testimony of John Bezdek, Senior Advisor to the Deputy Secretary of the U.S. Department of the Interior, in U.S. Congress, House Natural Resources Committee, Subcommittee on Water and Power, Legislative Hearing on Water Settlements, 110 Congress, 2nd sess., May 24, 2016, available at <http://democrats-naturalresources.house.gov/irno/media/doc/testimonvbezdek.pdf>

**Table 1—Continued**

Settlement	Source of Funding	Estimated Cost	Appropriated through 9/30/17	Balance to Complete
	Trust Fund	50,000,000	41,978,000	8,022,000
	Mandatory	680,000,000	180,000,000	500,000,000
	<i>Total</i>	1,501,593,000	654,695,449	846,897,551
Pechanga	Construction	0	0	0
	Trust Fund	37,166,000	400,000	36,766,000
	Mandatory	0	0	0
	<i>Total</i>	37,166,000	400,000	36,766,000
Blackfeet	Construction	246,500,000	0	246,500,000
	Trust Fund	234,290,000	800,000	233,490,000
	Mandatory	0	0	0
	<i>Total</i>	480,790,000	800,000	479,990,000
Federal Total	Construction	1,281,519,000	498,136,855	783,382,145
	Trust Fund	358,956,000	80,678,000	278,278,000
	Mandatory	1,031,035,000	514,335,000	516,700,000
	<i>Federal Total</i>	2,671,510,000	1,093,149,855	1,578,360,145

**Table 2**

## Other Ongoing: IWRS Settlements—Federal

	Appropriated in FY 2017
Ak Chin	15,735,000
Animas La-Plata	2,652,000
Nez Perce	5,184,000
Pyramid Lake	142,000
San Carlos Apache	1,550,000
<i>Total Other</i>	25,263,000

Note: Table 2 lists the FY2017 appropriated funding for those enacted settlements with ongoing costs but no authorization ceiling. That funding provides for a variety of activities. Funding for the Ak Chin and Animas La Plata water rights settlements will predominantly provide for ongoing operations and maintenance (O&M) costs for completed water projects. Funding for the Nez Perce water rights settlement will allow for annual leasing of water from willing sellers to augment the flow of the Snake River. Funding appropriated for the Pyramid Lake water rights settlement will be used to cover the Federal portion of the preparation and implementation of the Truckee River Operating Agreement (TROA). For the San Carlos Apache water rights settlement, the annual appropriations will be used to continue planning, designing, and completing pre-construction activities for a project to deliver 12,000 acre-feet of allocated Central Arizona Project (CAP) water.

**Question 2.** In 2014, The Bureau of Reclamation's Upper Colorado Region and Lower Colorado Region, in collaboration with the 10 member tribes of the Colorado River Basin Tribes Partnership commenced the Colorado River Basin Ten Tribes Partnership Tribal Water Study to build on the technical foundation of the Colorado River Basin Water Supply and Demand Study. Please provide a status update on Tribal Water Study?

Answer. The Colorado River Basin Ten Tribes Partnership Tribal Water Study is nearly complete. The Study's Draft Report has been reviewed by the member tribes of the Ten Tribes Partnership and is currently under review by DOI and Reclamation. We anticipate the Study's Final Report will be published in 2018.

**Question 3.** What are the Department's views regarding the applicability of 25 USC 211 in S. 1770? (Question posed during hearing)

Answer. Enacted in 1918 (40 Stat. 570), the statute placed certain limitations on the creation of Indian reservations in New Mexico and Arizona. However, it has

been the longstanding position of the Department that, following the enactment of the Indian Reorganization Act (25 USC 5101 et seq.) in 1934, Section 211 does not limit the addition to (or creation of) Indian reservations when done consistent with Congressional enactments such as the IRA. That position has been confirmed by the Interior Board of Indian Appeals and a federal district court. Accordingly, the Department does not believe its citation in the pending legislation would be relevant or useful, but would instead be unnecessary and potentially create confusion regarding applicable authorities.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. CATHERINE CORTEZ MASTO  
TO ALAN MIKKELSEN

*Question 1.* The Bureau of Reclamation, like so many other agencies within the Federal Government, have dealt with shortfalls in budgetary funding, which has hurt our government's ability, at times, to partner effectively with necessary stakeholder, and have sometimes inflicted negative impacts on our public lands, natural resources, and conservation programs.

Do you believe more funding would allow the Interior Department to be a better partner to industry and the taxpayer?

Answer. The Administration is committed to making the tough decisions that will lead to a balanced budget. At the same time, Reclamation remains fully committed to upholding Reclamation's mission to deliver water and power in an economically and environmentally sustainable manner in the interest of the American public. We must continue to prioritize our resources in order to ensure we uphold Reclamation's mission and remain vigilant stewards of taxpayer money.

*Question 2.* The recent budget request for the Bureau of Reclamation is \$1.1 billion, a cut of \$209 million. The request proposes cuts for WaterSMART grants [the 50/50 cost share funding program used by irrigation/water districts, Tribes, and States can to quickly implement projects that conserve and use water more efficiently—and helping to increase use of renewable energy and protect fragile environment], water recycling and reuse projects, drought response, and rural water projects. The state of Nevada gets the least rainfall than any other state in the Nation so we have to be incredibly mindful of persistent drought conditions as well as infrastructure improvements.

*a.* Do you believe these cuts will undermine these successful programs that help Nevada and other locations in the West respond to drought conditions in innovative ways?

Answer. The President's FY 2018 budget proposes to balance program priorities. WaterSMART grants, water recycling and drought response activities allow Reclamation to assist local communities in their need to address current and future water shortages. In addition to those activities, rural water projects help build strong, secure communities and are important to supporting the livelihood of local economies. In order to ensure Reclamation continues to deliver water and generate hydropower into the future, we must work to carry out Reclamation's mission in an efficient and sustainable manner.

*b.* The Bureau of Reclamation operates significant facilities in both the Upper and Lower Colorado River Regions. How will these budget cuts affect needed rehabilitation of aging water delivery infrastructure in both regions?

Answer. As Reclamation's assets continue to get older, there is a growing need to monitor and rehabilitate Reclamation's infrastructure. It is essential that Reclamation maintain and improve its existing infrastructure in order to deliver reliable water and power, ensure system reliability and maintain safety and sustained water conservation. Reclamation's annual budget includes the best yearly representations of the appropriated funds needed for maintenance at Reclamation facilities. When funding is not available from revenues, customers or other federal agencies, Reclamation aims to strategically leverage its appropriated funds to ensure the delivery of water and power benefits.

*c.* In rural communities, the availability of funding and resources to meet treatment standards and improve water reuse is more challenging. Do you believe that funding cuts will undermine your administration of these programs, if you are confirmed?

Answer. The WaterSMART program assists entities as they plan for and implement actions to increase water supply reliability and maintain economic productivity in the western United States in the face of serious water challenges brought on by wide-spread drought, increased populations, aging infrastructure, and envi-

ronmental requirements. The Department requested \$59.1 million in funding for this program in the FY18 budget.

*Question 3.* Most people know the Colorado River is the economic engine of the southwest and supplies drinking water to 36 million Americans, and that the use of that water outstrips supply. The seven states, water users, federal agencies and even the country of Mexico have a history of close cooperation, which has become ever more important as drought and increased water demands have left the two big reservoirs, Lakes Powell and Mead, at all-time lows.

Projections show that if no action is taken to reduce water use, usage restrictions could devastate the environment, cripple our communities and agriculture, and stall the economy.

Several years ago, four large municipal water suppliers (Denver, Las Vegas, Phoenix and southern California) partnered with the U.S. Bureau of Reclamation on a pilot \$11 million “system conservation” program. This System Conservation Program (SCP) pays water users to conserve and dedicate extra water to storage in Lakes Powell or Mead.

The program has successfully demonstrated that farmers and ranchers want to participate in programs that provide for temporary, compensated and voluntary reductions of water use. Now demand from farmers and ranchers is so high that the program can only afford one in four requests. In 2016, the Senate voted 77 to 23 to authorize appropriations up to an additional \$50 million for SCP, and it was included in the Water Infrastructure Improvements for the Nation (WIIN) Act.

Can you say whether the Bureau of Reclamation will continue and expand this market-based program that compensates farmers and ranchers for voluntarily conserving water?

*Answer.* Reclamation is currently investing significant effort to contend with the long-term impacts of the multi-year drought in the Colorado River Basin, which, among Colorado River

water conservation activities, includes the Pilot System Conservation Program. The System Conservation Program was conceived by the funding entities and Reclamation as a 2-year program to test the viability of voluntary, compensated, water conservation projects that reduce consumptive use and create “system water” to assist with maintaining storage in Lakes Powell and Mead. Although Reclamation is currently operating under a continuing resolution for 2018 and Reclamation’s 2018 budget is uncertain, Reclamation has obtained commitments for additional funding from the non-federal partners and additional conservation projects will be implemented for the fourth consecutive year. Under the Consolidated and Further Continuation Appropriations Act, 2015, Public Law No 113–235, Section 206 (128 Stat. 2312), the Secretary of the Interior is required to submit to Congress by September 30, 2018, a report evaluating the effectiveness of the pilot projects and making a recommendation whether the activities undertaken by the pilot projects should continue. Reclamation continues to work with funding entities to determine the future of the program.

*Question 4.* Regarding the Colorado River, the years-long drought in the West have taken a toll on our water resources, as you know. Both the Lower Basin states and the Upper Basin States are working to develop Drought Contingency Plans (DCP) to improve water management in way that stabilizes reservoir levels. Lake Mead is one of the two largest storage reservoirs on the Colorado River system. Lake Mead water levels are important to Nevada because they determine whether a shortage is declare on the Colorado River. If a shortage is declared, Nevada would see a reduction in its water supply. The proposed DCP specifies voluntary reductions for each of the Lower Basin states in order to protect the water in Lake Mead. Meanwhile, the Upper Basin States are reviewing the DCP and developing actions of their own as well. If an agreement were to be implemented, my constituents especially would have greater certainty about the longer-term reliability of the Colorado River, supporting the economic and environmental health of southern Nevada.

Will you exercise your authority and leadership to help the states finalize their DCPs, work with them on the legislation necessary to implement it, and then help them make implementation successful? We need your help to make finalizing the DCP a priority.

*Answer.* Reclamation continues to be engaged in ongoing conversations regarding the development of Drought Contingency Plans in the Lower and Upper Colorado River Basins. We are encouraged by the diligent efforts of all the Basin States in working toward final agreement on their Drought Contingency Plans and to work within available water supplies. Reclamation has conducted modeling that indicates that the current plans proposed by the States would benefit both the Upper and Lower Basin states. Reclamation and Interior have actively participated in negotia-

tions between the states and between the basins, have suggested solutions and have encouraged the States to finalize their plans. We look forward to continuing our work throughout the Colorado River Basin to develop plans that prevent Lake Mead and Lake Powell from reaching critically low elevations.

*Question 5.* A March 2016 Reclamation study says, “One of the greatest challenges we face is dealing with the impacts of climate change on our nation’s water. . . We need to continue to develop collaborative strategies across each river basin to ensure that our nation’s water and power supplies, agricultural activities, ecosystems, and other resources all have sustainable paths forward.”

Specifically in regards to the Colorado River Basin, the report projects that the growing threat of climate change impacts the region saying that reductions in spring and early summer runoff could translate into a drop in water supply for meeting irrigation demands and adversely impact hydropower operations at reservoirs.

Obviously, climate change impacts play a large factor in the further work to be done on water settlements. Can you describe the challenges climate change poses to this process and how Reclamation takes these issues into consideration?

*Answer.* Reclamation is at the forefront of dealing with changing conditions in the Colorado River Basin, whether due to the highly variable flows into the Basin, the ongoing 18 year historic drought, or the growing demands on Colorado River water supplies from competing interests. As mentioned above, Reclamation is actively involved with the Basin States through Drought Contingency Planning to address short and long term solutions for the basin to work within the Law of the River and the water supplies available during the current drought and potential long-term supplies.

