

**H.R. 1304, H.R. 3977, H.R. 6599, H.R. 7240,
H.R. 8685, H.R. 8791, H.R. 8920, H.R. 8940,
H.R. 8945, H.R. 8949, H.R. 8951, AND H.R. 8953**

LEGISLATIVE HEARING

BEFORE THE

SUBCOMMITTEE ON WATER, WILDLIFE AND
FISHERIES

OF THE

COMMITTEE ON NATURAL RESOURCES
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED EIGHTEENTH CONGRESS

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HOUSE COMMITTEE ON
NATURAL RESOURCES
CHAIRMAN BRUCE WESTERMAN

To: Subcommittee on Water, Wildlife and Fisheries Republican Members
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Date: Tuesday, July 23, 2024
Subject: Legislative Hearing on 12 Bills

The Subcommittee on Water, Wildlife and Fisheries will hold a legislative hearing on H.R. 1304 (Rep. Leger Fernandez), “*Rio San José and Rio Jemez Water Settlements Act of 2023*”; H.R. 3977 (Rep. Leger Fernandez), “*Navajo-Gallup Water Supply Project Amendments Act of 2023*”; H.R. 6599 (Rep. Leger Fernandez), “*Technical Corrections to the Northwestern New Mexico Rural Water Projects Act, Taos Pueblo Indian Water Rights Settlement Act, and Aamodt Litigation Settlement Act*”; H.R. 7240 (Rep. Rosendale), “*Fort Belknap Indian Community Water Rights Settlement Act of 2024*”; H.R. 8685 (Rep. Leger Fernandez), “*Ohkay Owingeh Rio Chama Water Rights Settlement Act of 2024*”; H.R. 8791 (Rep. Zinke), “*Fort Belknap Indian Community Water Rights Settlement Act of 2024*”; H.R. 8920 (Rep. Fong), “*Tule River Tribe Reserved Water Rights Settlement Act of 2024*”; H.R. 8940 (Rep. Ciscomani), “*Northeastern Arizona Indian Water Rights Settlement Act of 2024*”; H.R. 8945 (Rep. Leger Fernandez), “*Navajo Nation Rio San José Stream System Water Rights Settlement Act of 2024*”; H.R. 8949 (Rep. Schweikert), “*Yavapai-Apache Nation Water Rights Settlement Act of 2024*”; H.R. 8951 (Rep. Vasquez), “*Zuni Indian Tribe Water Rights Settlement Act of 2024*”; and H.R. 8953 (Rep. Zinke), “*Crow Tribe Water Rights Settlement Amendments Act of 2024*”

The hearing will take place on **Tuesday, July 23, 2024, at 10:15 a.m. in 1324 Longworth House Office Building.**

Member offices are requested to notify Lindsay Walton (lindsay.walton@mail.house.gov) by 4:30 p.m. on Monday, July 22, 2024, if their Member intends to participate in the hearing.

I. KEY MESSAGES

- The House Committee on Natural Resources has primary authorizing jurisdiction over the legislative resolution of Indian water rights claims.
- It has been the longstanding policy of the United States that disputes regarding Indian water rights should be resolved through negotiated settlement rather than through litigation.
- Indian water rights settlements should be completed in such a way that all outstanding water claims are resolved, and finality is achieved.
- The federal government’s involvement in the Indian water rights settlement process is guided by a 1990 policy statement.
- This hearing will examine how the proposed settlements, which collectively total over \$12 billion, meet the criteria set out by the federal government.

II. WITNESSES

Panel I

- Members of Congress TBD

Panel II—(H.R. 7240, H.R. 8685, H.R. 8791, H.R. 8920, H.R. 8951, and H.R. 8953)

- **The Hon. Bryan Newland**, Assistant Secretary for Indian Affairs, Department of the Interior, Washington, DC (all bills)
- **The Hon. Jeffery Stiffam**, President, Fort Belknap Indian Community, Harlem, MT (H.R. 8791)
- **The Hon. Frank White Clay**, Chairman, Crow Tribe of Indians, Crow Agency, MT (H.R. 8953)
- **The Hon. Lester Shine Nieto**, Vice Chairman, Tule River Indian Tribe of California, Porterville, CA (H.R. 8920)
- **The Hon. Larry Phillips, Jr.**, Governor, Ohkay Owingeh Pueblo, Ohkay Owingeh, NM (H.R. 8685) [Minority Witness]
- **The Hon. Arden Kucate**, Governor, Pueblo of Zuni, Zuni, NM (H.R. 8951) [Minority Witness]
- **Mr. Marko Manoukian**, Co-Chair, St. Mary Rehabilitation Working Group, Malta, MT (H.R. 7240)

Panel III—(H.R. 1304, H.R. 3977, H.R. 6599, H.R. 8940, H.R. 8945, and H.R. 8949)

- **Mr. David Palumbo**, Deputy Commissioner of Operations, Bureau of Reclamation, Department of the Interior, Washington, DC (all bills)
- **The Hon. Craig Andrews**, Vice Chairman, Hopi Tribe, Kykotsmovi, AZ (H.R. 8940)
- **The Hon. Tanya Lewis**, Chairwoman, Yavapai-Apache Nation, Upper Verde Valley, AZ (H.R. 8949)
- **The Hon. Buu Nygren**, President, Navajo Nation, Window Rock, AZ (H.R. 3977, H.R. 6599, H.R. 8940, and H.R. 8945) [Minority Witness]
- **The Hon. Fred Romero**, Governor, Pueblo of Taos, Taos, NM (H.R. 6599) [Minority Witness]
- **The Hon. Randall Vicente**, Governor, Pueblo of Acoma, Acoma, NM (H.R. 1304) [Minority Witness]

III. BACKGROUND

Key Terms

Water Right: A water right is the right to use surface water, groundwater, or other water resources. Each state has different rules that define water rights. For most Western states, water rights are based on the principles of prior appropriation and beneficial use.

Types of Water Rights:

- **Senior Right:** A claim to water that is older (more senior) than those of junior rightsholders. The older the claim, the more secure the right. Senior water rights are often associated with farming, ranching, and agricultural uses.
- **Junior Right:** A claim to water that is more recent than senior rightsholders. Junior rights are fulfilled after all senior rights have been met. Junior rights are often associated with municipal, environmental, or recreational uses.
- **Federal Reserve Right:** When land is withdrawn from public domain by the federal government for tribal reservations, national forests, or national parks, it holds a federal reserve right. The date that the land was founded or settled by the federal government is the date of the associated water right.

Prior Appropriation: Often described as “first in time, first in right,” prior appropriation allocates water rights based on timing of use, place of use, and purpose of use. In a prior appropriation jurisdiction, water rights are granted based

on when a person uses water for a beneficial use. This allows for diverting water from its source to fulfill water rights and determines who gets water during times of shortage. Unlike in a riparian system, water rights are not attached to land ownership.

Beneficial Use: Any use recognized by the state as being an appropriate use of water. Common beneficial uses include irrigation, hydropower generation, recreation, mined land reclamation, and other valuable domestic, municipal, or commercial purposes.

Winters Doctrine: The 1908 United States Supreme Court (Supreme Court) opinion in *Winters v. United States* held that by reserving land for tribal use, the federal government implicitly reserves a sufficient amount of water for the reservation.¹ This case did not go into the development of water rights (i.e., building infrastructure).

Arizona v. Navajo Nation (No. 21-1484) and Department of the Interior v. Navajo Nation (No. 22-51): In these consolidated cases, the Navajo Nation alleged that their 1868 Treaty with the United States requires the federal government to take affirmative steps to secure water for the Navajo Nation. The Supreme Court's majority opinion held that the 1868 treaty did not require the United States to take affirmative steps to secure water for the Navajo Nation beyond those that the Supreme Court identified in *Winters*.² This meant that only a specific and affirmative obligation in a treaty, statute, or regulation could compel the United States to quantify or secure Tribal water rights. Legislation enacting Indian water right settlements are the typical route to "compel" the United States to develop these rights.

Indian Water Rights

Indian water rights were first recognized in the Supreme Court decision *Winters v. United States* (1908).³ Under *Winters*, when Congress reserves land (i.e., creates an Indian reservation), it implicitly reserves water "for a use which would be necessarily continued through years."⁴ This has been translated to mean water rights sufficient to fulfill the purpose of the reservation. In most cases, however, the water rights in question are not quantified when the reservation was established. Meaning they must often be adjudicated under lengthy legal processes. Under *Winters*, water rights of tribes are often senior to those of non-Indian water rights holders because they date to the creation of the reservation. This process has typically been addressed through litigation or, more recently, resolved through negotiated settlements.

The quantification and adjudication of Indian water rights can be costly and take several decades to complete. For this reason, negotiated settlements have been the preferred means of resolving many Indian water rights disputes. The federal government's involvement in the Indian water rights settlement process is guided by a 1990 policy statement established during the George H. W. Bush Administration.⁵ It lists 16 criteria to establish the basis for negotiation and settlement of claims concerning Indian water rights. Some of the criteria are:

- Settlements must resolve all outstanding water claims and provide finality (*criterion 3*).
- The total cost of a settlement for all parties should not exceed the value of the existing claims as calculated by the federal government (*criterion 4*).
- Federal contributions to a settlement should not exceed the federal government's legal exposure and costs related to federal trust responsibilities (*criterion 5*).
- Should include non-federal cost share proportionate to the benefits received (*criterion 6*).

¹ *Winters v. United States*, 207 U.S. 564 (1908), <https://tile.loc.gov/storage-services/service/ll/usrep/usrep207/usrep207564/usrep207564.pdf>

² *Arizona v. Navajo Nation*, 599 U.S. ____ (2023), https://www.supremecourt.gov/opinions/22pdf/21-1484_aplc.pdf

³ *Winters v. United States*, supra note 1.

⁴ *Id.*

⁵ "Criteria and Procedures for the Participation of the Federal Government in Negotiations for the Settlement of Indian Water Rights Claims," Working Group in Indian Water Settlements, Department of the Interior. Federal Register, Vol. 55, No. 48, March 12, 1990. <https://www.doi.gov/sites/doi.gov/files/criteria-and-procedures-for-the-participation-of-the-federal-government-in-negotiations-for-the-settlement-of-indian-water-rights-claims.pdf>

- Settlements should **NOT** include the following:
 - Federal subsidy of operations, maintenance and repair (OM&R) costs of Indian and non-Indian parties (*criterion 11(e)*).
 - Per-capita distribution of trust (*criterion 11(g)*).
 - Exemption from Reclamation law (*criterion 11(j)*).

There are four steps associated with settlements: pre-negotiation, negotiation, settlement, and implementation. Once the negotiation phase is complete and the parties have agreed to specific terms, the settlement typically is presented for congressional authorization. Congressional authorization is provided through the enactment of legislation authorizing funding for the settlement. As a result, Indian water rights settlements have historically included authorizations of specific water infrastructure projects or funds for the water to be developed by the tribe.

H.R. 1304 (Rep. Leger Fernandez), “Rio San José and Rio Jemez Water Settlements Act of 2023”

H.R. 1304 would authorize the Secretary of the Interior to sign two separate water rights settlement agreements that impact four Pueblo chapters in Northern New Mexico. The Rio San Jose Settlement would settle claims and active litigation between the Pueblo of Acoma and Pueblo of Laguna against the State of New Mexico and other non-Indian water users within the Rio San Jose basin. The Rio Jemez Settlement would settle similar claims and litigation between the Pueblo of Jemez and Pueblo of Zia against the State of New Mexico in the Rio Jemez basin.

Rio San Jose Settlement

The Rio San Jose Settlement is a fund-based settlement that would ratify the Pueblo of Acoma and Laguna’s existing water rights to over 20,000 acre-feet per year (afy) in the Rio San Jose basin.⁶ This would be split, 7,982 afy to Acoma and 12,263 afy to Laguna, and may come from both groundwater and surface water sources. However, 1,300 afy of groundwater must also be reserved for economic development for each tribe.

The settlement would protect non-Indian water users in the basin by the tribe’s agreeing not to make priority calls on the water rights of non-Indian users. If not for this agreement, the tribes would have the power to make priority calls because their water rights are senior to those of non-Indian users. As a part of the settlement the tribes have also agreed to establish Pueblo water codes. These codes will govern the use of Pueblo water rights and provide a process for those impacted by these rights to challenge their use.

The settlement would establish trust funds for both Acoma and Laguna that total \$850 million. Acoma would receive \$296 million, and Laguna would receive \$464 million to use and develop water infrastructure on their lands as they see fit and within their own timeframe. For operation and maintenance of water infrastructure, Acoma would receive \$14 million, and Laguna would receive \$26 million. The tribes would also receive a total of \$5 million for feasibility studies for water supply infrastructure, \$1.75 million for Acoma and \$3.25 for Laguna. An additional \$45 million must be used jointly by the two tribes to repair Acomita Dam, which is located on the Acoma Reservation, but utilized by both tribes. In addition to the federal money to the tribes, the agreement also includes over \$36 million from the State of New Mexico to non-Indian water users.

The bill sets a July 1, 2030, deadline as the enforceability date. Should the deadline be missed, all the legal waivers and releases included as part of the settlement expire.

Rio Jemez Settlement

The Rio Jemez Settlement is a fund-based settlement that would ratify the Jemez and Zia Pueblo’s water rights to more than 9,000 afy in the Rio Jemez basin, 6,055 afy to Jemez and 3,699.4 afy to Zia, and may come from both groundwater and surface water sources.⁷ This also must include 1,200 afy for economic development for

⁶ Rio San José Stream System Water Rights Local Settlement Agreement Among the Pueblo of Acoma, the Pueblo of Laguna, the Navajo Nation, the State of New Mexico, the city of Grants, the Village of Milan, the Association of Community Ditches of the Rio San José and Nine Individual Acequias and Community Ditches, May 13, 2022, https://www.ose.nm.gov/Legal/settlements_IWR.php.

⁷ Pueblos of Jemez and Zia Water Rights Settlement, *United States of America, et al. v. Abouseleman, et al.* Civil No. 83-cv-01041 (KR) (Jemez River Basin adjudication) Local Settlement Agreement, May 11, 2022, https://www.ose.nm.gov/Legal/settlements_IWR.php.

each tribe. Like the Rio San Jose Settlement, the Rio Jemez Settlement would protect non-Indian water users by the tribe's agreeing not to make priority calls and to establish Pueblo water codes. The Pueblo of Santa Ana also utilizes the Rio Jemez Basin but has chosen not to sign on to this agreement and will be pursuing litigation to adjudicate their water rights claims.

The agreement would establish trust funds for both tribes that total \$490 million, \$290 for Jemez and \$200 for Zia. Most of this funding can be used as the tribes see fit to develop water infrastructure on tribal lands and on their own timeframe. However, \$25 million of the amounts deposited into each tribe's trust fund must be used for economic development, environmental compliance, or other administrative costs. In addition to the federal money to the tribe's, the agreement also includes over \$20 million from the State of New Mexico to non-Indian water users.

The bill sets a July 1, 2030, deadline as the enforceability date. Should the deadline be missed, all the legal waivers and releases included as part of the settlement expire.

H.R. 3977 (Rep. Leger Fernandez), “Navajo-Gallup Water Supply Project Amendments Act of 2023”

H.R. 3977 amends the Northwestern New Mexico Rural Water Projects Act authorized as part of the Omnibus Public Lands Management Act of 2009 (P.L. 111-11). The Act authorized and funded the construction of the Navajo-Gallup Water Supply Project. This project is a key component of the Navajo Nation San Juan River Basin Water Rights Settlement in New Mexico. Notably, the settlement will not take effect until this project is completed.⁸

The Navajo-Gallup Water Supply Project consists of two pipelines, two water treatment plants, and several pumping stations to bring water from the San Juan River to the Navajo Nation and other surrounding communities.⁹ P.L. 111-11 authorized \$870 million from fiscal year (FY) 2009 through 2024 to construct this project,¹⁰ and required that the project be completed by December 31, 2024.¹¹ While progress has been made and parts of the project are currently delivering water to the Navajo Nation and other surrounding communities, portions of the project are still under construction. For example, in September 2022, the Bureau of Reclamation (Reclamation) announced a \$73 million contract for Archer Western Construction for the construction of two of the project's pumping plants.¹² H.R. 3977 would extend the authorization through FY 2029.

H.R. 3977 also expands the project service area to serve the Navajo Nation's Community of Lupton, Arizona and additional communities in New Mexico. In testimony before the Senate Committee on Indian Affairs, the Department of the Interior's (Interior) Assistant Secretary for Indian Affairs, Bryan Newland, noted that this could “help the Navajo Nation increase the customer base and potentially lower OM&R [operation, maintenance, and replacement] costs.”¹³

The legislation increases the authorized Project cost ceiling by providing an additional authorization of \$725.7 million to complete the Project, making the total Project cost \$2.175 billion. This is comprised of \$689.45 million to address a funding cost gap, \$30 million for Navajo community connections to the Project water transmission line, and \$6.25 million for renewable energy features. During the consideration of the original legislation, administration testimony warned that they “have not yet been able to fully analyze the costs of this legislation.”¹⁴ The bill also establishes a new \$250 million OM&R trust fund for the Navajo Nation and up to a \$10 million OM&R trust fund for the Jicarilla Apache Nation, the latter conditioned on

⁸Navajo Nation, San Juan River New Mexico. <https://nnwrc.navajo-nsn.gov/Basin-Updates/San-Juan-River-New-Mexico>

⁹Testimony of Dr. Buu Nygren, President of the Navajo Nation. Committee on Indian Affairs, U.S. Senate. July 12, 2023. <https://www.indian.senate.gov/wp-content/uploads/2023-07-12-HRG-Testimony-Nygren.pdf>

¹⁰P.L. 111-11

¹¹Bureau of Reclamation. Navajo-Gallup Water Supply Project. <https://www.usbr.gov/uc/progact/navajo-gallup/index.html>

¹²Bureau of Reclamation. “Reclamation awards \$73 million construction contract for continued progress on the Navajo-Gallup Water Supply Project's San Juan Lateral.” September 23, 2022. <https://www.usbr.gov/newsroom/news-release/4342>

¹³Statement of Bryan Newland, Assistant Secretary of the Interior for Indian Affairs. U.S. Senate Committee on Indian Affairs. July 12, 2023. <https://www.indian.senate.gov/wp-content/uploads/2023-07-12-HRG-Testimony-Newland.pdf>

¹⁴Testimony of Robert Johnson, Commissioner of the Bureau of Reclamation, and Carl Artman, Assistant Secretary of the Interior for Indian Affairs. June 27, 2007. https://www.doi.gov/ocl/hearings/110/hr1970_72407

an ability to pay analysis. Lastly, the bill extends the date by which the Project must be completed to December 31, 2029.

H.R. 6599 (Rep. Leger Fernandez), “Technical Corrections to the Northwestern New Mexico Rural Water Projects Act, Taos Pueblo Indian Water Rights Settlement Act, and Aamodt Litigation Settlement Act”

H.R. 6599 would amend the Omnibus Public Land Management Act of 2009 and the Claims Resolution Act of 2010 to authorize funding for the Navajo Nation Water Resources Development Trust Fund, the Taos Pueblo Water Development Fund, and the Aamodt Settlement Pueblos’ Fund equivalent to the amounts that would have accrued to the trust funds if the Interior had the authority to invest the funds original appropriation.

When these settlements were enacted, the law did not explicitly allow for Interior to invest the funds upon appropriation. However, mistakenly, Interior started investing the funds.¹⁵ When Interior discovered this error, the Solicitor’s Office determined that the interest amounts earned prior to the date that the funds were authorized to be invested were contrary to the Antideficiency Act (P.L. 97-258, 31 U.S.C. § 3302) and must be returned to Treasury.¹⁶

H.R. 6599 would return to the impacted Tribes the interest earned on the funds that were returned to the Treasury. Specifically, it authorizes appropriations totaling \$18.5 million, of which \$7.79 million would be deposited into the Taos Pueblo Water Development Fund, \$4.3 million for the Aamodt Settlement Pueblos’ Fund, and \$6.35 million for the Navajo Nation Water Resources Development Trust Fund.

H.R. 7240 (Rep. Rosendale), “Fort Belknap Indian Community Water Rights Settlement Act of 2024”

The Gros Ventre and Assiniboine Tribes of the Fort Belknap Indian Community (FBIC) were at the center of the Supreme Court’s *Winters* decision. Since 1990 the FBIC, the State of Montana, and the United States have engaged in negotiations regarding the quantification of the Tribes’ water rights. In 2001, the Montana legislature approved the Montana-Fort Belknap Indian Community Water Rights Compact (Compact).¹⁷ Congressional approval is necessary before the United States may join in the Compact.

H.R. 7240 would approve and fund the Compact. In the Compact, the FBIC is entitled “to divert up to 645 cubic feet per second “Cfs” of the United States’ Share of the Natural Flow of the Milk River and its tributaries upstream from the diversion point on the Reservation.”¹⁸ According to the Department of the Interior’s testimony on the Senate companion this translates to “over 446,000 afy of surface water, plus groundwater.”¹⁹ In addition, H.R. 7240 includes a 20,000 afy allocation of storage from Lake Elwell, a Reclamation facility on the Marias River, also known as Tiber Reservoir.²⁰

The bill would also authorize over \$1.4 billion to implement its provisions and those of the Compact. Of that total, \$435.8 million is mandatory funding. The State of Montana would contribute \$5 million to the cost of the settlement. These funds would be used for three general purposes: rehabilitation of the Fort Belknap Indian Irrigation Project; administration and development of the Tribes’ water rights; and mitigation for the impacts on water users outside the Reservation.

As introduced, the legislation does not include an offset for the new funding authorizations. In addition, there are several provisions that go beyond a water right settlement, including the authorization of Tribal wellness center and several land exchanges. Specifically, the bill transfers 10,322.58 acres of federal land and 3,519.3 acres of land currently owned by the Tribes into trust for the Tribes as part of the Reservation.

¹⁵ Testimony of Jason Freihage. “Legislative Hearing to receive testimony on S. 2783, S. 3406, S. 3857 & S. 4365.” Senate Committee on Indian Affairs. July 10, 2024. <https://www.indian.senate.gov/wp-content/uploads/07-10-2024-Freihage-Testimony.pdf>

¹⁶ *Id.*

¹⁷ Fort Belknap-Montana Compact Ratified, 85-20-1001 Montana Code Annotated, https://leg.mt.gov/bills/mca/title_0850/chapter_0200/part_0100/section_0010/0850-0200-0100-0010.html

¹⁸ *Id.*

¹⁹ Statement of Bryan Newland, Assistant Secretary for Indian Affairs, Department of the Interior, before the Senate Committee on Indian Affairs. July 12, 2023. <https://www.doi.gov/ocls-1987>

²⁰ Section 7 of H.R. 7240, <https://www.congress.gov/bill/118th-congress/house-bill/7240/text>

The bill sets a January 21, 2034, deadline for all the funding to be made available, and a January 21, 2035, deadline as the enforceability date. Should those deadlines be missed, all the legal waivers and releases included as part of the settlement expire.

Breakdown of federal funds provided in H.R. 7240:

Tribal Irrigation and Other Water Resources Development: funding will be used for the development of new irrigated lands through a new water infrastructure project, wetlands restoration, and environmental compliance.

- **Discretionary:** \$89.6 million
- **Mandatory:** \$29.8 million

Irrigation Project System Account: funding will be used for the rehabilitation, modernization, and expansion of the Fort Belknap Irrigation Project.

- **Discretionary:** \$187 million
- **Mandatory:** \$228.7 million

Domestic Water and Sewer Systems/Lake Elwell Project: funding will be used for drinking water supply and treatment plants, sewer, infrastructure to deliver water from Lake Elwell, and “Tribal wellness center for a workforce health and wellbeing project.”

- **Discretionary:** \$331.8 million
- **Mandatory:** \$110.6 million

Water Resources and Water Rights Administration/Operation and Maintenance: funding will be used to develop a Tribal water code, the administration of water rights and development, and operations, maintenance and repair activities.

- **Mandatory:** \$66.6 million

Milk River Project Mitigation: Milk River Project is a Reclamation project that would be impacted by the development of the Fort Belknap Indian Community’s water rights. The Compact includes an agreement to implement mitigation measures. Funding will be used to rehabilitate project components that are over 100 years old to restore capacity in the system. This funding is specifically made non-reimbursable to the project.

- **Discretionary:** \$300 million

H.R. 8685 (Rep. Leger Fernandez), “Ohkay Owingeh Rio Chama Water Rights Settlement Act of 2024”

H.R. 8685 would approve the Settlement Agreement concerning the water rights claims of Ohkay Owingeh Pueblo in the general stream adjudication of the Rio Chama Stream System in New Mexico.²¹ Of note, the Pueblo has other outstanding water rights claims, primarily on the Rio Grande. Those are not settled in this legislation.

H.R. 8685 codifies the Settlement Agreement’s quantification of the Ohkay Owingeh water rights for the following uses:

Irrigation: the right to use surface water to irrigate 310.45 acres based on Ohkay Owingeh’s past and present uses.²² This results in the following respective quantities: Consumptive Irrigation Requirement: 522 afy, Farm Delivery Requirement: 1,158 afy, and Project Diversion Requirement: 1,929 afy.²³

Livestock: The right to divert and consume water, including springs, groundwater, or surface water, on Pueblo Lands within the Rio Chama Steam System portion of the Pueblo Grant for livestock watering, which includes the right to water wildlife.

²¹ *State of New Mexico, ex rel. State Engineer v. Aragon*, Civil No. 69-cv-07941-KWR/KK (all Ohkay Owingeh Claims)

²² Ohkay Owingeh Rio Chama Water Rights Settlement, State of New Mexico, ex rel. State Engineer v. Roman Aragon, et al., Case No. 69-cv-07941-KWR/KK (D.N.M.) Local Settlement Agreement, July 5, 2023 https://www.ose.nm.gov/Legal/settlements_IWR.php

²³ *Id.*

Historic Domestic, Commercial, Municipal, and Industrial: the right to divert 6 afy from two existing domestic wells, the diversion from each well shall not exceed 3 afy. Additionally, the right to divert 204 afy for existing public water system from existing wells.

Groundwater Economic Development Water: The right to divert and consume an additional 771 afy of groundwater in the Rio Chama Stream System portion of the Pueblo Grant for domestic, commercial, municipal, and industrial purposes.

Additional Irrigation Acres: Ohkay Owingeh has the right to irrigate up to 1,562 additional acres within the Rio Chama Stream System portion of the Pueblo Grant. The 1,562-acre limit on this right derives from the agreed upon total number of acres in the Rio Chama Stream System portion of the Pueblo Grant that was historically or is currently irrigated and is now owned by non-Pueblo persons.

Additionally, the legislation establishes the Ohkay Owingeh Water Rights Settlement Trust Fund, which would provide \$745 million in mandatory funding for specified uses. These include domestic and municipal supply or wastewater infrastructure, on-farm improvements for irrigation, and watershed and endangered species habitat protection. As introduced, the legislation does not include an offset for the new funding authorizations. The State of New Mexico would contribute \$131 million toward the fulfillment of the settlement agreement to fund water development projects.

The bill sets a July 1, 2038, deadline as the enforceability date. Should the deadline be missed, all the legal waivers and releases included as part of the settlement expire.

H.R. 8791 (Rep. Zinke), “Fort Belknap Indian Community Water Rights Settlement Act of 2024”

H.R. 8791 includes the same language as H.R. 7240 (Rep. Rosendale), a summary of which is included above. However, this bill also adds a provision which authorizes appropriations for the Blackfeet Tribe in Section 14. Specifically, this new provision would authorize \$250 million in appropriations for a new water distribution and wastewater treatment facility. This language does not impact the Blackfeet Tribe’s water rights settlement, which was signed into law in 2016.²⁴

H.R. 8920 (Rep. Fong), “Tule River Tribe Reserved Water Rights Settlement Act of 2024”

H.R. 8920 approves and authorizes a water settlement agreement between the Tule Tribe and downstream state-based water users, the Tule River Association, and the South Tule Independent Ditch Company (2007 Agreement).²⁵ The 2007 Agreement, which was amended in 2009, established water allocations and release schedules for future water storage projects that may be constructed by the Tribe on the South Fork Tule River.²⁶ H.R. 8920 establishes the Tribe’s water right as 5,828 acre-feet per year of surface water from the South Fork of the Tule River. Water use on the Reservation is largely domestic and municipal as less than five percent of the Reservation is suitable for agricultural purposes.²⁷

The bill establishes the Tule River Indian Tribe Settlement Trust Fund and authorizes a total of \$568 million in mandatory appropriations. Of this \$518 million would be for the Tule River Tribe Water Development Projects Account and \$50 million for the Tule River Tribe Operations, Maintenance and Replacement Account. As written, there are no non-federal contributions to this settlement.

Lastly, the bill sets the enforceability date for implementing the settlement at eight years from the date of enactment. Failure to meet this deadline results in the repeal of the legislation.

²⁴ Subtitle G, Part II, Title III of Public Law 114-322, <https://www.congress.gov/114/statute/STATUTE-130/STATUTE-130-Pg1628.pdf>.

²⁵ 2007 Agreement, https://republicans-naturalresources.house.gov/UploadedFiles/Fully_Signed_Tule_River_2007_and_2009_Settlement_Agreements.pdf

²⁶ Testimony of Bryan Newland, “Legislative Hearing to receive testimony on S. 4870, S. 4896 & S. 4898.” Senate Committee on Indian Affairs. November 16, 2022. <https://www.doi.gov/oc/pending-legislation-41>

²⁷ *Id.*

H.R. 8940 (Rep. Ciscomani), “Northeastern Arizona Indian Water Rights Settlement Act of 2024”

H.R. 8940 would settle the water rights claims of the Navajo Nation, Hopi Tribe, and San Juan Southern Paiute Tribe (Tribes) in Arizona by codifying the Settlement Agreement dated May 9, 2024 (Settlement Agreement).²⁸ The Settlement Agreement resolves the Tribes’ claims on the Colorado River Basin, the Little Colorado River Basin, the Gila River Basin, and aquifers and washes on tribal lands in northeastern Arizona. While formal discussions began in 1994, efforts to quantify these water rights date to the 1970s.²⁹

Navajo Nation

H.R. 8940 settles all the Navajo Nation’s water rights within Arizona. Specifically, the Settlement Agreement provides:

- *Underground Water*: The right to use all underground water on the Navajo Reservation, subject to an inter-tribal agreement with the Hopi Tribe.
- *Effluent*: The right to effluent developed on the Navajo Reservation for any purpose determined by the Navajo Nation, developed off of the Reservation on trust land and allotments on those lands for any purpose determined by the Navajo Nation in accordance with applicable law, and developed on Navajo-owned fee land located outside of the Reservation consistent with Arizona state law.
- *Springs*: The right to all springs on the Navajo Reservation, subject to an inter-tribal agreement with the Hopi Tribe.
- *Little Colorado River Tributaries*: The right to divert and deplete all surface waters of the Little Colorado River tributary streams that reach the Navajo Reservation, but without diminishment of or interference with existing non-tribal water rights on such streams.
- *Little Colorado River Mainstem*: The right to divert and deplete all surface waters of the Little Colorado River that reach the Navajo Reservation, including specifically identified water rights and priorities for certain lands, without the right to make calls against existing upstream or downstream off-Reservation water users with respect to such mainstem water, and with the right to make calls against new upstream or downstream off-Reservation water users.
- *Navajo Nation Upper Basin Colorado River Water*: The right to 44,700 afy of Arizona’s allocation of Upper Basin Colorado River Water that may be diverted in Arizona, New Mexico, or Utah and be transported and used on the Navajo Reservation within Arizona whether located in the Upper Basin or the Lower Basin.
- *Navajo Nation Cibola Water*: The right to 100 afy of Hopi Tribe Cibola water, if used in the same location and for the same irrigation purpose as in the Hopi Tribe Cibola contract, or 71.5 acre-feet per year if used in other locations or for a different purpose, that may be diverted in Arizona, New Mexico, or Utah and be transported and used on the Navajo Reservation within Arizona whether located in the Upper Basin or the Lower Basin, and be stored in either of the two New Mexico reservoirs or in underground storage facilities in Arizona, and may be leased or exchanged by the Nation for use in Arizona, and be transported using Central Arizona Project (CAP) facilities.
- *Navajo Nation Fourth Priority Water*: The right to 3,500 afy of Fourth Priority Colorado River water that may be diverted in Arizona, New Mexico, or Utah and transported and used on the Navajo Reservation within Arizona whether located in the Upper Basin or the Lower Basin, stored in New Mexico reservoirs or in underground storage facilities in Arizona, leased or exchanged by the Nation for use in Arizona, and transported using CAP facilities.

²⁸ Northeastern Arizona Indian Water Rights Settlement Agreement, May 9, 2024, <https://nswrc.navajo-nsn.gov/Portals/0/Files/Arizona%20Settlement/CMY-26-24.pdf>

²⁹ *Id.*

Hopi Tribe

The Hopi Tribe's water rights within Arizona are quantified as follows:

- *Underground Water*: The right to use all underground water on the Hopi Reservation, with an agreed upon 5,600 afy limit on pumping from Navajo Aquifer.
- *Effluent*: The right to effluent developed on the Hopi Reservation for any purpose determined by the Hopi Tribe, developed off of the Reservation on trust land for any purpose determined by the Hopi Tribe in accordance with applicable law, and developed on Hopi-owned fee land located off of the Reservation consistent with Arizona state law.
- *Surface Water*: The right to divert and deplete all surface water that reaches or flows within the Hopi Reservation, subject to an inter-tribal agreement with the Navajo Nation.
- *Springs*: The right to all springs on the Hopi Reservation, subject to an inter-tribal agreement with the Navajo Nation.
- *Hopi Tribe Upper Basin Colorado River Water*: The right to 2,300 afy of Arizona's allocation of Upper Basin Colorado River water, for transport and use anywhere on the Hopi Reservation and within Arizona whether located in the Upper Basin or Lower Basin.
- *Hopi Tribe Cibola water*: The right to 4,178 acre-feet per year of Fourth Priority Water, 750 acre-feet per year of Fifth Priority Water, and 1,000 afy of Sixth Priority Water for use only within the State of Arizona, consistent with the provisions of the Hopi Tribe Cibola contract.

San Juan Southern Paiute Tribe

The bill would establish an approximate 5,400-acre reservation for the San Juan Southern Paiute Tribe from lands that are currently a part of the Navajo Nation's reservation. The legislation would also ratify a treaty between the San Juan Southern Paiute and Navajo Nation signed in 2000, which contains terms clarifying the sovereign authority of both tribes, providing lands for a San Juan Southern Paiute reservation, and resolving other related mutual concerns. The Indian and Insular Affairs Subcommittee held a hearing on similar legislation on June 7, 2023. Information on that hearing can be found [here](#).

The legislation also quantifies the San Juan Southern Paiute Tribe's water rights in Arizona as follows:

- *Underground Water*: The right to all underground water in the Southern Area.
- *Effluent*: The right to all effluent developed by the San Juan Southern Paiute Tribe for use on the Southern Area for any purpose determined by the Tribe, developed off of the Southern Area on trust land in accordance with applicable law, and developed on San Juan Southern Paiute Tribe fee land located outside of the Southern Area consistent with Arizona state law.
- *Surface Water*: The right to divert and deplete all surface water that reaches or flows within the Southern Area.
- *Springs*: The right to all springs in the Southern Area.
- The right to water delivered by the Navajo Nation through a service agreement with the Navajo Tribal Utility Authority to the Southern Area, in an amount not to exceed 350 afy.

In total the bill authorizes \$5 billion in mandatory funding for the development of water infrastructure and related operation, maintenance, and replacement work. Specifically, the bill authorizes an initial \$1.715 billion for Reclamation to construct a pipeline to divert Colorado River water from Lake Powell to the Tribes. The bill also provides for the authorization of appropriations of "such sums" for the completion of the pipeline, should the mandatory funding not be enough. The legislation requires that the pipeline must be capable of delivering up to 6,750 afy for the Navajo Nation, 3,076 afy for the Hopi Tribe, and up to 350 afy for the San Juan Southern Paiute Tribe.

The remaining \$3.285 billion in mandatory funding is allocated to the Tribes for the continued development of their water rights.

- *Navajo Nation Water Settlement Trust Fund*: \$2.75 billion for water development projects, operation and maintenance, irrigation system and agricultural improvements, renewable energy development, and lower Colorado River water acquisitions.
- *Hopi Tribe Water Settlement Trust Fund*: \$508.5 for groundwater projects, operation and maintenance, irrigation system and agricultural improvements, and lower Colorado River water acquisitions.
- *San Juan Southern Paiute Tribe Water Settlement Trust Fund*: \$29.8 million for groundwater projects, operation and maintenance, and irrigation system and agricultural improvements.

Lastly, the bill sets June 30, 2035, as the enforceability date for implementing the settlement. Failure to meet this deadline results in the repeal of the legislation.

H.R. 8945 (Rep. Leger Fernandez), “Navajo Nation Rio San José Stream System Water Rights Settlement Act of 2024”

This agreement will settle all the Navajo Nation water rights claims in the Rio San José Basin in New Mexico.³⁰ Additionally, this agreement describes and quantifies water rights in the Rio Puerco Basin for the Navajo Nation. The agreement is the product of approximately 40 years of litigation and decades of negotiations. The Rio San José general stream adjudication, known as *New Mexico ex rel. Martinez v. Kerr-McGee Corp.*, still pending in the Thirteenth Judicial District Court for the State of New Mexico, was initiated in 1983. The Navajo statement of claims was filed in 1987.

The agreement is the Navajo Nation counterpart to the Local Settlement Agreement settling the water rights claims of the Pueblos of Acoma and Laguna (the basis of H.R. 1304). The same parties who worked on the settlement for these Pueblos worked to develop an agreement that resolves the Navajo Nation’s claims in the same geographic area covered by the Pueblos’ Local Settlement Agreement. The agreement approved by this legislation is written as an Addendum to the Pueblo’s Settlement Agreement.

H.R. 8945 approves the Navajo Nation’s water claims quantified in the settlement which include 2,444 afy of groundwater for the two basins, 417 afy for livestock use, and 493 afy of additional storage rights for stock ponds in the Rio San José Basin. The settlement agreement does not address allottees’ water rights. The legislation creates a settlement trust fund, which is appropriated \$223 million in mandatory funding, for the development of water infrastructure for the benefit of rural Navajo communities in New Mexico. The State of New Mexico would contribute \$5 million toward the settlement.

Lastly, the bill sets July 30, 2030, as the enforceability date for implementing the settlement. Failure to meet this deadline results in the repeal of the legislation.

H.R. 8949 (Rep. Schweikert), “Yavapai-Apache Nation Water Rights Settlement Act of 2024”

H.R. 8949 authorizes the Settlement Agreement for the Yavapai-Apache Nation in Arizona.³¹ The settlement requires the Secretary of the Interior through the Bureau of Reclamation to plan, design, and construct a water infrastructure project which consists of two components: the Cragin-Verde Pipeline Project and the Yavapai-Apache Nation (YAN) Drinking Water System Project.

The Cragin-Verde Pipeline would deliver no less than 6,836.92 afy of water from the C.C. Cragin Dam and Reservoir. The C.C. Cragin Dam and Reservoir is part of the Salt River Project managed by the Bureau of Reclamation. H.R. 8949 also authorizes that the capacity of the pipeline could be increased to deliver up to an additional 1,912.18 afy of water for use by water users in Yavapai County. The bill also authorizes the construction of the YAN Drinking Water System Project. This system will be capable of treating and delivering 2.25 million gallons of water per day.

³⁰Navajo Addendum to the Rio San José Stream System Water Rights Local Settlement Agreement among the Pueblo of Acoma, the Pueblo of Laguna, the Navajo Nation, the State of New Mexico, the city of Grants, the Village of Milan, the Association of Community Ditches of the Rio San José and Nine Individual Acequias and Community Ditches dated May 13, 2022.

³¹Yavapai-Apache Nation Water Rights Settlement Agreement, June 26, 2024, https://republicans-naturalresources.house.gov/UploadedFiles/1_YAN_Settlment_Agreement_Approved_by_Tribal_Council_6.26.2024.pdf

H.R. 8949 establishes two funds. The first is the Yavapai-Apache Nation Water Settlement Trust Fund, which in total would receive \$156 million in mandatory funding for environmental compliance, water management, OM&R, and additional purposes provided for in the bill. The second is the TU NLIINICHOH Water Infrastructure Project Implementation Fund which would receive a total of \$883.55 million in mandatory funding for the Cragin-Verde Pipeline Project (\$731.059 million) and the YAN Drinking Water System Project Account (\$152.490 million).

Lastly, the bill sets a June 30, 2035, deadline as the enforceability date. Should the deadline be missed, all the legal waivers and releases included as part of the settlement expire.

H.R. 8951 (Rep. Vasquez), “Zuni Indian Tribe Water Rights Settlement Act of 2024”

H.R. 8951 would authorize the Secretary of the Interior to sign the fund-based water rights settlement agreement to settle claims and litigation between the Pueblo of Zuni, the United States, and the State of New Mexico.³² The settlement stems from existing claims of water rights by Zuni and the State of New Mexico in the Zuni River stream system in Western New Mexico. This settlement does not address water rights claims by the Navajo Nation in the Zuni basin, as those are still being negotiated. In addition, this agreement also does not address non-Indian water rights in the basin.

The settlement authorized by this bill is a fund-based settlement that would authorize \$655.5 million in mandatory spending to a newly created Zuni Tribe Water Rights Settlement Trust Account. The settlement would also authorize \$29.6 million in mandatory spending into the newly created Zuni Tribe Operation, Maintenance, and Replacement Trust Account. The State of New Mexico has also agreed to provide \$750,000 for development and execution of water monitoring and \$500,000 in an interest-bearing account to mitigate any negative impacts to non-Indian domestic and livestock groundwater rights because of new Tribal water usage. The legislation would also set aside \$50 million in interest-bearing, mandatory funding for activities such as economic water development plans, environmental compliance costs, design costs, and establishing a water resource department by the Tribe.

Title II of the bill pertains to protection of Zuni Salt Lake and approximately 217,037 acres of private, Tribal trust, State, and Bureau of Land Management lands around the lake, known as “The Sanctuary.” The legislation would withdraw approximately 92,364 acres of Federal land within the Zuni Salt Lake and Sanctuary from entry, appropriation, or disposal under public land laws for any type of mineral leasing. The land would be managed by the Bureau of Land Management and new water wells, grazing permits, rights-of-way leases, timber sales, and fossil collecting would be prohibited.

The bill would also require the Secretary of the Interior to take 4,756 acres of land designated as the “Tribal Acquisition Area” into trust.³³ The land taken into trust will be subject to valid existing rights and claims unless the holder requests earlier termination. The Bureau of Indian Affairs will assume all benefits and obligations of land management agency who previously administered these lands. Under the agreement, any amounts accrued by the United States from these lands shall be disbursed to the tribe. The legislation would also require the Secretary to take land into trust in the future if the tribe acquires title for any lands labeled “potential future acquisition areas” on the map.³⁴

Lastly, the bill sets a July 1, 2030, deadline as the enforceability date. Should the deadline be missed, all the legal waivers and releases included as part of the settlement expire.

³² Settlement Agreement to Quantify and Protect the Water Rights of the Zuni Indian Tribe in the Zuni River Basin in New Mexico and to Protect the Zuni Salt Lake, May 1, 2023, https://www.ose.nm.gov/Legal/settlements_IWR.php.

³³ “Legislative Map for Zuni Pueblo Water Settlement.” Bureau of Land Management. April 11, 2024. https://naturalresources.house.gov/uploadedfiles/proposedzunisaltlakesanctuaryarea_april11_2024_508_1.pdf

³⁴ *Id.*

H.R. 8953 (Rep. Zinke), “Crow Tribe Water Rights Settlement Amendments Act of 2024”

H.R. 8953 amends the Crow Tribe Water Rights Settlement Act of 2010, which was enacted as part of the Claims Resettlement Act of 2010 (P.L. 111-291). This legislation appropriated \$158 million in discretionary funding to enact the settlement and an additional \$302 million in mandatory funding.³⁵ The law directs Reclamation to use these funds to improve to the Crow Irrigation Project (CIP) and to design and construct a Municipal, Rural, and Industrial (MR&I) water system.³⁶

The bill does not change the funding levels or existing water rights. However, it would reform the way that funding for the CIP is used by creating a Crow CIP Implementation Account within the Treasury. Since the enactment of P.L. 111-291, the Crow Tribe and Interior have relied on a private bank for appropriated funds to gain interest to carry out rehabilitation and improvement projects; creating a dedicated fund within Treasury removes the costs and fees associated with relying on a private bank. In testimony before the Senate Committee on Indian Affairs earlier this year, the Chairman of the Crow Nation, Frank Whiteclay, noted that this would help reduce costs to the Tribe.³⁷

H.R. 8953 also repeals the section of P.L. 111-291 authorizing the MR&I water system and creates a MR&I Projects Account the Crow Tribe could use to ensure compliance with environmental laws, purchase on-Reservation land with water rights, or for water infrastructure. Additionally, the legislation states that the federal government shall have no obligation to pay for the operation, maintenance, or replacement of any MR&I Project.

The bill would also extend the Crow Feet Tribe’s exclusive access “to develop and market power generation on the Yellowtail Afterbay Dam”³⁸ until 2030. At the Senate Committee on Indian Affairs earlier this year, Chairman White Clay, referenced the importance of this provision; recently, the Tribe “engaged a hydro plant developer, revised the site and engineering concerns, and intends to start construction prior to the December 2025 deadline.”³⁹

IV. MAJOR PROVISIONS & SECTION-BY-SECTION

H.R. 1304 (Rep. Leger Fernandez), “Rio San José and Rio Jemez Water Settlements Act of 2023”

- Ratifies two separate fund-based settlement agreements: the Rio San Jose Settlement for the Acoma and Laguna Pueblos, and the Rio Jemez Settlement for the Jemez and Zia Pueblos.
- The Rio San Jose Settlement establishes trust funds for both Acoma and Laguna that total \$850 million in mandatory spending.
- The Rio Jemez Settlement would establish a trust fund for both Jemez and Zia that total \$490 million in mandatory spending.
- In each settlement the tribes have agreed to establish Pueblo water codes which will govern the use of Pueblo water rights and provide a process for those impacted by these rights to challenge their use.
- The State of New Mexico has agreed to provide over \$36 million in the Rio San Jose Settlement and over \$20 million in the Rio Jemez Settlement.

³⁵ Congressional Research Service. Indian Water Rights Settlements. Updated October 13, 2023. <https://crsreports.congress.gov/product/pdf/R/R44148>

³⁶ Statement of Bryan Newland, Assistant Secretary of the Interior for Indian Affairs. Committee on Indian Affairs, U.S. Senate. June 12, 2024. <https://www.doi.gov/ocl/pending-legislation-77>

³⁷ Testimony of Frank White Clay, Chairman, Crow Nation. U.S. Senate Committee on Indian Affairs. June 12, 2024. <https://www.indian.senate.gov/wp-content/uploads/06.12.24-Whiteclay-Testimony.pdf>

³⁸ P.L. 111-291

³⁹ Testimony of Frank Whiteclay, Chairman, Crow Nation. U.S. Senate Committee on Indian Affairs. June 12, 2024. <https://www.indian.senate.gov/wp-content/uploads/06.12.24-Whiteclay-Testimony.pdf>

H.R. 3977 (Rep. Leger Fernandez), “Navajo-Gallup Water Supply Project Amendments Act of 2023”

- Extends the authorization for the construction of the Navajo-Gallup Water Supply Project through FY 2029 and increases the project’s authorization to \$2.175 billion.
- Expands the Project service area to allow for additional water supply.
- Establishes the Navajo Nation Operations, Maintenance, and Replacement Trust Fund and the Jicarilla Apache Nation Operations, Maintenance, and Replacement Trust Fund.

H.R. 6599 (Rep. Leger Fernandez), “Technical Corrections to the Northwestern New Mexico Rural Water Projects Act, Taos Pueblo Indian Water Rights Settlement Act, and Aamodt Litigation Settlement Act”

- Authorizes \$18.5 million in authorization of appropriations for the Taos Pueblo, Aamodt Pueblos, and the Navajo Nation.

H.R. 7240 (Rep. Rosendale), “Fort Belknap Indian Community Water Rights Settlement Act of 2024”

- Ratifies the Fort Belknap Indian Community water rights settlement for irrigation, livestock, domestic use, and to support fish and wildlife.
- \$415 million to rehabilitate, modernize, and expand the Fort Belknap Indian Irrigation Project.
- \$119 million for the Southern Tributary Irrigation Project and Peoples Creek Irrigation Project.
- \$443 million for domestic, municipal, and commercial water supply and wastewater removal systems on the Reservation.
- \$300 million to restore the St. Mary Project Canal and enlarge the Dodson South Canal.
- \$66 million to establish a trust fund for OM&R for Tribal irrigators on the Reservation.

H.R. 8685 (Rep. Leger Fernandez), “Ohkay Owingeh Rio Chama Water Rights Settlement Act of 2024”

- Approves the Settlement Agreement concerning the water rights claims of Ohkay Owingeh Pueblo in the general stream adjudication of the Rio Chama Stream System in New Mexico.
- \$745 million in mandatory funding for the Ohkay Owingeh Water Rights Settlement Trust Fund.
- The State of New Mexico would contribute \$131 million toward the fulfillment of the settlement agreement to fund water development projects.

H.R. 8791 (Rep. Zinke), “Fort Belknap Indian Community Water Rights Settlement Act of 2024”

- Includes the Fort Belknap Indian Community settlement described in H.R. 7240.
- \$250 million in authorization of appropriations for a new water distribution and wastewater treatment facility for the Blackfoot Tribe.

H.R. 8920 (Rep. Fong), “Tule River Tribe Reserved Water Rights Settlement Act of 2024”

- Secure water rights for the Tule River Tribe of California by ratifying a 2007 agreement between the Tribe and other parties.
- Establishes and appropriates \$568 million in mandatory funds for the Tule River Indian Tribe Settlement Trust Fund.
- Transfer federal land to a trust for the benefit of the Tule Tribe Reservation.

H.R. 8940 (Rep. Ciscomani), “Northeastern Arizona Indian Water Rights Settlement Act of 2024”

- Settles the water rights claims of the Navajo Nation, Hopi Tribe, and San Juan Southern Paiute Tribe in Arizona.
- The Settlement Agreement resolves claims on the Colorado River Basin, the Little Colorado River Basin, the Gila River Basin, and aquifers and washes on tribal lands in northeastern Arizona.
- In total the bill provides \$5 billion in mandatory funding for the development of water infrastructure and related operation, maintenance and replacement work.
 - \$1.715 billion for Reclamation to construct a pipeline to divert Colorado River water from Lake Powell to the Tribes;
 - \$2.75 billion for the Navajo Nation Water Settlement Trust Fund;
 - \$508.5 million for the Hopi Tribe Water Settlement Trust Fund; and
 - \$29.8 million for the San Juan Southern Paiute Tribe Water Settlement Trust Fund.

H.R. 8945 (Rep. Leger Fernandez), “Navajo Nation Rio San José Stream System Water Rights Settlement Act of 2024”

- This agreement will settle all the Navajo Nation water rights claims in the Rio San José Basin in New Mexico.
- The agreement is the Navajo Nation counterpart to the Local Settlement Agreement settling the water rights claims of the Pueblos of Acoma and Laguna (the basis of H.R. 1304).
- Creates a settlement trust fund, which is appropriated \$223 million in mandatory funding, for the development of water infrastructure for the benefit of rural Navajo communities in New Mexico.
- The State of New Mexico would contribute \$5 million toward the settlement.

H.R. 8949 (Rep. Schweikert), “Yavapai-Apache Nation Water Rights Settlement Act of 2024”

- H.R. 8949 approves the settlement agreement for all the outstanding claims for water rights for the Yavapai-Apache Nation.
- It authorizes \$731.06 million in mandatory funding to construct the Cragin-Verde Pipeline and \$152.49 million for the YAN Drinking Water System Project.

H.R. 8951 (Rep. Vasquez), “Zuni Indian Tribe Water Rights Settlement Act of 2024”

- Ratifies the fund-based Settlement Agreement between the Zuni Indian Tribe, the United States, in its capacity as trustee for the Zuni tribe, and the State of New Mexico in the Zuni River basin.
- Establishes a trust fund for the Zuni tribe and deposits \$655.5 million in mandatory appropriations in that fund. The settlement also establishes a trust fund for operation and maintenance funding of Zuni water projects and deposits \$29.6 million in that account.
- Limits use of Trust Fund money to any activity related to water resource development or water supply, as well as watershed and ecological protection and Tribal water rights management and administration. Operation, maintenance, and replacement costs of any project constructed using funds from the Trust Fund are the responsibility of the Tribe.
- The State of New Mexico has agreed to contribute \$750,000 for development and execution of monitoring plans and \$500,000 in an interest-bearing account to mitigate impairment to non-Indian domestic and livestock ground-water rights because of new Tribal water use.
- Withdraws 92,364 acres of federal land, and any land acquired by the United States in the future, within the boundary of Zuni Salt Lake and Sanctuary is withdrawn from all forms of entry, appropriation, or disposal under public land laws, location, entry and patent under mining laws, and disposition

under all laws pertaining to mineral and geothermal leasing or mineral materials.

- Authorizes the Secretary of the Interior to take land 4,756 acres of land into trust for Tribe.

H.R. 8953 (Rep. Zinke), “Crow Tribe Water Rights Settlement Amendments Act of 2024”

- Extends the Crow Tribe’s exclusive authority to hydropower development at the Yellowtail Afterbay Dam.
- Creates a new ‘Crow Implementation Project’ account within the Department of the Treasury that will be able to gain interest, rather than a private banking institution.
- Creates a new Municipal, Rural, and Industrial (MR&I) water system account to grant the Tribe greater discretion or flexibility in carrying out projects.

V. COST

A formal cost estimate from the Congressional Budget Office (CBO) is not yet available.

VI. ADMINISTRATION POSITION

The administration has testified in support of the Senate companions to H.R. 1304, H.R. 3977, H.R. 6599, H.R. 7240, H.R. 8920, and H.R. 8953.

The remaining bills have not received hearings; therefore, the administration position is unknown.

VII. EFFECT ON CURRENT LAW

H.R. 3977

https://naturalresources.house.gov/uploadedfiles/h.r._3977_-_ramseyer.pdf

H.R. 6599

https://naturalresources.house.gov/uploadedfiles/h.r._6599_-_ramseyer.pdf

H.R. 8953

https://naturalresources.house.gov/uploadedfiles/bill-to-law_s.4432_tester-daines_crow_water_amendments.pdf

LEGISLATIVE HEARING ON H.R. 1304, RIO SAN JOSE AND RIO JEMEZ WATER SETTLEMENTS ACT OF 2023; H.R. 3977, NAVAJO-GALLUP WATER SUPPLY PROJECT AMENDMENTS ACT OF 2023; H.R. 6599, TECHNICAL CORRECTIONS TO THE NORTHWESTERN NEW MEXICO RURAL WATER PROJECTS ACT, TAOS PUEBLO INDIAN WATER RIGHTS SETTLEMENT ACT, AND AAMODT LITIGATION SETTLEMENT ACT; H.R. 7240, FORT BELKNAP INDIAN COMMUNITY WATER RIGHTS SETTLEMENT ACT OF 2024; H.R. 8685, OHKAY OWINGEH RIO CHAMA WATER RIGHTS SETTLEMENT ACT OF 2024; H.R. 8791, FORT BELKNAP INDIAN COMMUNITY WATER RIGHTS SETTLEMENT ACT OF 2024; H.R. 8920, TULE RIVER TRIBE RESERVED WATER RIGHTS SETTLEMENT ACT OF 2024; H.R. 8940, NORTHEASTERN ARIZONA INDIAN WATER RIGHTS SETTLEMENT ACT OF 2024; H.R. 8945, NAVAJO NATION RIO SAN JOSE STREAM SYSTEM WATER RIGHTS SETTLEMENT ACT OF 2024; H.R. 8949, YAVAPAI-APACHE NATION WATER RIGHTS SETTLEMENT ACT OF 2024; H.R. 8951, ZUNI INDIAN TRIBE WATER RIGHTS SETTLEMENT ACT OF 2024; AND H.R. 8953, CROW TRIBE WATER RIGHTS SETTLEMENT AMENDMENTS ACT OF 2024

Tuesday, July 23, 2024

U.S. House of Representatives
Subcommittee on Water, Wildlife and Fisheries
Committee on Natural Resources
Washington, DC

The Subcommittee met, pursuant to notice, at 10:17 a.m. in Room 1324, Longworth House Office Building, Hon. Cliff Bentz [Chairman of the Subcommittee] presiding.

Present: Representatives Bentz, Radewagen, LaMalfa, Carl; Huffman, Hoyle, Gallego, and Porter.

Also present: Representatives Ciscomani, Crane, Fong, Rosendale, Schweikert, Zinke; Leger Fernández, Stansbury, Stanton, and Vasquez.

Mr. BENTZ. The Subcommittee on Water, Wildlife and Fisheries will come to order.

Good morning, everyone. I want to welcome Members, witnesses, and our guests in the audience to today's hearing.

Without objection, the Chair is authorized to declare a recess of the Subcommittee at any time, and we probably will be doing that after opening statements since we have votes scheduled for 10:20, and then we will probably return at about 11:15.

Under Committee Rule 4(f), any oral opening statements at hearings are limited to the Chairman and the Ranking Member. I, therefore, ask unanimous consent that all other Members' opening statements be made part of the hearing record if they are submitted in accordance with the Committee Rule 3(o).

Without objection, so ordered.

I also ask unanimous consent that the Congressmen from Arizona, Mr. Schweikert, Mr. Ciscomani, and Mr. Crane; the Congressmen from Montana, Mr. Zinke and Mr. Rosendale; and the Congressman from California, Mr. Fong, be allowed to participate in today's hearing.

Without objection, so ordered.

We are here today to consider 12 legislative measures: H.R. 1304, "Rio San José and Rio Jemez Water Settlements Act of 2023", sponsored by Representative Leger Fernández; H.R. 3977, "Navajo-Gallup Water Supply Project Amendments Act of 2023", sponsored by Representative Leger Fernández; H.R. 6599, "Technical Corrections to the Northwestern New Mexico Rural Water Project Act, Taos Pueblo Indian Water Rights Settlements Act, and Aamodt Litigation Settlement Act", sponsored by Representative Leger Fernández; H.R. 7240, "Fort Belknap Indian Community Water Rights Settlement Act of 2024", sponsored by Representative Rosendale; H.R. 8685, "Ohkay Owingeh Rio Chama Water Settlement Act of 2024", sponsored by Representative Leger Fernández; H.R. 8791, "Fort Belknap Indian Community Water Rights Settlement Act of 2024", sponsored by Representative Zinke; H.R. 8920, "Tule River Tribe Reserved Water Rights Settlement Act of 2024", sponsored by Representative Fong; H.R. 8940, "Northeastern Arizona Indian Water Rights Settlement Act of 2024", sponsored by Representative Ciscomani; H.R. 8945, "Navajo Nation Rio San José Stream System Water Rights Settlement Act of 2024", sponsored by Representative Leger Fernández; H.R. 8949, "Yavapai-Apache Nation Water Rights Settlement Act of 2024", sponsored by Representative Schweikert; H.R. 8951, "Zuni Indian Tribe Water Rights Settlement Act of 2024", sponsored by Representative Vasquez; and H.R. 8953, "Crow Tribe Water Rights Settlement Amendment Act of 2024", sponsored by Representative Zinke.

I now recognize myself for a 5-minute opening statement.

**STATEMENT OF THE HON. CLIFF BENTZ, A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF OREGON**

Mr. BENTZ. Good morning again. I want to thank the Members that are joining us today for their interest in these important bills. I also want to thank the witnesses who have traveled to Washington to be with us today.

We look forward to hearing from you.

This morning the Subcommittee will examine 12 bills addressing proposed Indian reserved water rights settlements. Of these, 9 would authorize Indian water rights settlements in the states of Arizona, California, New Mexico, and Montana. The remaining bills would amend enacted settlements. Collectively, these bills, if enacted as proposed, would cost something over \$12 billion, the majority of which would fall within the mandatory funding category.

Few issues in the American West are as pressing or vexing as the escalating water crisis, and as the water in the West continues to dry up and become more and more dear, tribal water rights issues are becoming more and more critical.

In the landmark 1908 case of *Winters v. the United States*, the Supreme Court recognized the existence of implied reserved tribal water rights when construing treaties and other similar legal instruments. The precise scope and extent of these rights in any treaty are unknown until quantified by a court ruling or an agreement ratified by Congress. When litigation is the quantification tool, tribal claims are generally caught up in a massive general stream of adjudication, of which I am very familiar given the Klamath issue back in Oregon.

These adjudications are massive because to obtain jurisdiction over Indian water rights and over the United States as trustee to the tribes, states must adjudicate all claims to a given river system. They may not engage in piecemeal litigation of only Indian and Federal claims. The result can be that there are thousands of state water rights holders who must be joined as parties to exceedingly complex litigation that takes too long and costs too much.

Moreover, even when such adjudications are litigated to a conclusion and tribes win a decreed water right, such a paper right may do little to advance tribal needs because most tribes do not have the financial ability or the infrastructure to put the water to use.

At the same time, growth of competing non-Indian uses has created expectations among non-Indians that their state law water rights were secure. In fact, many non-Indian rights are far from secure, just as Indian rights are far from being quantified or implemented.

Well over a century after the *Winters* case, we are still grappling with the rightful recognition, quantification, and apportionment of Indian reserved water rights. These Indian water rights settlements have the potential to resolve long-standing claims to water. Such quantification and agreement would provide certainty to water users, improve cooperation with watersheds, and pay for the development of tribal water infrastructure.

So, where exactly is the Federal Government when it comes to dealing with reserved rights? I would just note that the most recent case, decided on June 22, 2023, is the Navajo Nation case.

And I can't say that it completely solved everything. That would be the most dramatic overstatement. In this case, the court declined to hold that the treaties impose an affirmative obligation on the government. Such affirmative obligations, as the court stressed, are judicially enforceable only when expressly accepted by the government in specific rights-creating or duty-imposing language.

In the Navajo Nation case, the court concluded that the treaty said nothing about any affirmative duty for the United States to secure water. This puts even more pressure on Congress to try to figure out if these settlement agreements are in the best interest of everyone.

The Committee recognizes that negotiated settlements are almost always preferable to litigation, which does little to provide water and certainty to both tribal and non-tribal parties. But settlements, of course, require agreements and are a challenging matter, to be sure. The Federal Government's involvement in the Indian water rights settlement process is somewhat guided by the principles set forth in the criteria and procedures published back in 1990. There are 16 criteria in the administrative rule. I will highlight several of those that I believe serve as the basis for evaluating these settlements.

Criterion 3: settlements should be completed in such a way that all outstanding water claims are resolved and finality is achieved.

Criterion 4: the total cost of a settlement to all parties should not exceed the value of the existing claims as calculated by the Federal Government.

Criterion 5: Federal contributions to a settlement should not exceed the Federal Government's legal exposure and costs related to Federal trust responsibilities.

Lastly, Criterion 11 states that settlements should not include a number of things, and here are three of them: Federal subsidy of operations, maintenance, and repair, usually referred to as OM&R costs, of Indian and non-Indian parties; per capita distribution of trust funds; and exemption from reclamation law. In other words, these settlement agreements should not include any of these things. I expect all witnesses before us today to be able to explain how the legislation implementing their settlement agreement complies with these criteria.

Without a doubt, Congress has 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 sovereign immunity.

I want to once again thank the Members and their witnesses for their time and interest today, and I look forward to a robust discussion.

We don't have our Ranking Member. So, they have called votes, but I think we still have enough time for one Member to speak. I recognize Congresswoman Leger Fernández for 5 minutes.

STATEMENT OF THE HON. TERESA LEGER FERNÁNDEZ, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW MEXICO

Ms. LEGER FERNÁNDEZ. Thank you, Chair Bentz and Ranking Member Huffman, for holding today's hearing. I want to also thank

you for your commitment to tribes and your first-hand experience around the complexities of water issues in the West.

Today, we consider legislation that positively impacts 12 of New Mexico's 21 tribes, including five of my bills.

In New Mexico, we say, "Agua es vida," water is life. Water is also key to tribal sovereignty. I ask you to picture our mountainous, arid landscape, where tribal and non-tribal farms and villages hug close to the rivers of green, dependent on the river's flow to irrigate the orchards and fields. Drinking water systems draw from the same flow to quench tribal and non-tribal systems, businesses, and households. These tribes, villages, businesses, and people are interconnected economically and hydrographically.

On the Navajo Nation, nearly one in three residents lack access to reliable drinking water. Thousands of families haul water for miles just to cook dinner or wash their babies. At Laguna Pueblo, upstream diversions cause intermittent stream flows which impact the pueblo's ability to conduct important traditional cultural ceremonies. In the arid Southwest, there have always been struggles around who gets to control and access this life-giving resource. This has had profound effects on tribes' economic vitality, health, and culture.

It also hurts non-tribal water users, their businesses, villages, and towns. At Ohkay Owingeh, acequias several hundred years old rely on the same water for which the pueblo has senior water claims. Litigation to resolve these competing claims has sapped these communities and tribes of financial resources. The Federal Government shares in the blame for failing to resolve and enforce claims.

To remedy this long-standing litigation and failures, tribes and their partners and neighbors have worked diligently to reach agreement on the water rights. In some cases, like for Jemez and Zia pueblos, this has meant 40 years of litigation, 40 years of litigation that eventually gave way to negotiation with neighboring towns, acequias, and the state. These agreements were not easy to reach. Tribes are giving up their valuable senior rights in exchange for settlement and project funds.

The tribes have acted in good faith. It is now Congress' turn to act and approve them. The longer we wait, the more expensive it will be. We must remember that each of these settlements is a good deal for the United States, given the value of what tribes are giving up and the value of the investments that will bring benefits not only to their tribes but to their surrounding communities. Remember that. These are investments.

H.R. 1304, the Rio Jemez Settlement, would allow the Jemez and Zia pueblos to construct a new water and wastewater system, improve irrigation, and support livestock watering. The Rio San Jose Settlement would confirm water rights for the pueblos of Laguna and Acoma. It would increase water delivery, support drinking and wastewater infrastructure, and improve irrigation.

Alongside H.R. 1304, H.R. 8945 would approve the Navajo Nation's water rights in the Rio San Jose Basin to help with wastewater treatment and water hauling. I look forward to working with Navajo and the pueblos on technical corrections to that bill.

H.R. 8685 would settle Ohkay Owingeh pueblo's water rights in the Rio Chama. In addition to improving water delivery for the pueblo, this settlement would also provide for bosque restoration, benefiting everybody in the area and downstream. I thank you for your forward-looking ideas about that settlement.

H.R. 3977 amends the existing Navajo-Gallup Water Supply Project's authorization to give the project additional time and resources to complete the drinking water system. This will finally deliver water to families and communities on Navajo land and across northwestern New Mexico and Gallup.

Importantly, under each of these settlements New Mexico will provide millions of dollars for non-tribal user water projects.

Next, H.R. 6599 provides a simple technical fix to enact its settlements for Navajo and the Pueblos of Taos, Nambe, San Ildefonso, and Tesuque to further support water infrastructure.

I also support Representative Vasquez's bill, H.R. 8951 for Zuni pueblo, of which I am an original co-sponsor.

Last, Mr. Chair, I request unanimous consent to enter into the record letters of support and testimony for these bills from the pueblos and tribes who didn't fit at the table. And those are from the pueblos and tribes, the state of New Mexico, and several other supporting municipalities and acequias.

Mr. BENTZ. Without objection.

[The information follows:]

RIO DE CHAMA ACEQUIA ASSOCIATION

June 29, 2024

Hon. Bruce Westerman, Chairman
House Natural Resources Committee
1324 Longworth House Office Building
Washington, DC 20515

Hon. Cliff Bentz, Chairman
Subcommittee on Water, Wildlife, and Fisheries
1324 Longworth House Office Building
Washington, DC 20515

Re: Request for hearing on H.R. 8685, Ohkay Owingeh Rio Chama Water Rights Settlement Act of 2024

Dear Chairmen Westerman and Bentz:

The purpose of this letter is to express our complete support for the Rio Chama water rights settlement, and we respectfully request a hearing on this important legislation. The Rio Chama Acequia Association ("RCAA") is made up of 21 acequias serving more than six hundred families and 5,000 irrigated acres located within the mainstream section of the Rio Chama, with flows originating from the base of Abiquiu Dam and joined by flows from Abiquiu Creek, El Rito Creek, Rio del Oso, and Rio Ojo Caliente. Our member water users will have their water rights and traditional uses protected by the settlement, if enacted.

If this settlement is approved, it will be a monumental achievement for our part of Northern New Mexico. The settlement is comprehensive and resolves major issues on the river, including greater reliability of supply and greater certainty of water use, and the funding from such settlement will provide for employment opportunities and other direct economic benefits to the parties and to the businesses and companies in the State of New Mexico. The settlement will provide jobs on the Pueblo and well as in the neighboring communities bringing in desperately needed revenues to improve the lives of the people within the Rio Chama Basin. Federal approval of the settlement will result in a win-win situation for all the parties. This is an inclusive and comprehensive settlement, and the residents of the Rio Chama

Valley are greatly encouraged and very supportive of this settlement. The RCAA respectfully urges you to hold a hearing and help us get this bill enacted into law.

Sincerely,

DAREL MADRID,
President

CITY OF ESPANOLA

June 7, 2024

Hon. Teresa Leger Fernandez, Representative
3rd Congressional District-New Mexico
1510 Longworth House Office Building
Washington, DC 20515

Dear Representative Leger Fernandez:

The purpose of this letter is to convey the City of Espanola's support for the Ohkay Owingeh Water Rights Settlement Act of 2024. Espanola approved the Local Settlement Agreement for the Pueblo of Ohkay Owingeh's Rio Chama water rights in July of 2023. That followed several years of negotiations in which the settling parties—including Ohkay Owingeh Pueblo, the State of New Mexico, Espanola and multiple Rio Chama acequias—reached an agreement on water rights of the Pueblo and non-Pueblos in the Rio Chama Stream System as well as on water projects to enhance their water uses. This settlement eliminates long and costly litigation with uncertain outcomes. Funding to be received by Espanola under the agreement will provide the City with additional wells to protect the City's long-term water security. The settlement also provides protection from challenges by others in the Chama Stream System to the City's water rights.

As a center of social and commercial activity in the Espanola Valley, the City of Espanola has a vital interest in providing a reliable, safe and sustainable water supply to meet the needs of the community. Water is a scarce and valuable resource that requires protection and needs to be used in a manner that recognizes the unique historic, social, cultural, demographic and geographic characteristics of both Pueblo and non-Pueblo water users. Water resources are being affected by climate change and the drought conditions that face the Southwest. It is vitally important that this resource be used to the extent possible to satisfy the rights recognized by the parties in the settlement. The successful resolution of the settlement is highly desirable and, after years of negotiations, achieves a final determination of the claims of Ohkay Owingeh on the Rio Chama Stream System. Implementation of the settlement agreement, as provided for by the Settlement Act, will help to ensure a sustainable supply of water to meet the needs of the residents of Espanola and the entire Espanola Valley.

The Aragon water rights adjudication was originally filed in 1969 to resolve water right claims on the Rio Chama. The negotiated settlement facilitates greater reliability of supply and greater certainty of water use. Funding provided for under the settlement provides for employment opportunities and other direct economic benefits to the parties and to the businesses and companies in the State of New Mexico. The settlement will support jobs on the Pueblo and in the neighboring communities, including Espanola, bringing in needed revenues to improve the lives of the people within the Rio Chama Stream System.

The Local Settlement Agreement for Ohkay Owingeh's Rio Chama water rights is the result of the tireless efforts of the settling parties to negotiate a settlement that is in the best interest of all of the parties. The City of Espanola fully supports the passage of the Ohkay Owingeh Water Rights Settlement Act of 2024.

Sincerely,

PEGGY SUE MARTINEZ,
Mayor Pro Tem

Statement for the Record

**Tanya Trujillo
New Mexico Deputy State Engineer**

on H.R. 1304, H.R. 8685, H.R. 3977, H.R. 6599, H.R. 8940, H.R. 8945, and H.R. 8951

H.R. 1304, RIO SAN JOSÉ AND RIO JEMEZ WATER SETTLEMENTS ACT OF 2023

Mr. Chairman Bentz, Vice Chair Kiggans, and members of the Committee, I am Tanya Trujillo, New Mexico Deputy State Engineer. My agency, the Office of the State Engineer, is responsible for the administration of water rights in New Mexico. The State Engineer has authority over the supervision, measurement, appropriation, and distribution of all surface and groundwater in New Mexico, including all interstate streams and rivers. I appreciate the opportunity to submit this testimony to you today and provide comments on behalf of the State of New Mexico in support of House of Representatives Bill 1304, the Rio San José and Rio Jemez Water Settlements Act of 2023.

H.R. 1304 is comprised of the Pueblos of Acoma and Laguna Water Rights Settlement Act (Title I) and the Pueblos of Jemez and Zia Water Rights Settlement Act (Title II). House Bill 1304 was introduced on March 1, 2023, by sponsor Representative Teresa Leger Fernandez with co-sponsors Representative Melanie Stansbury and Representative Gabe Vasquez. This bill seeks to authorize, ratify and confirm two water rights settlements involving four Pueblos in the State of New Mexico. The companion Senate Bill 595 was introduced and heard in the Senate Indian Affairs Committee in March of 2023 and reported favorably without amendment. All parties involved continue to advocate for enactment of the legislation and implementation of the agreement.

New Mexico is a semi-arid to arid state. Like other western states, New Mexico is experiencing extended periods of drought and declining surface water supply due to climate change. These conditions threaten many of the deeply rooted cultural traditions that make New Mexico unique. This legislation offers a historic opportunity to authorize funding to secure and develop water sufficient to support the permanent homeland for the Pueblos of Acoma and Laguna in the Rio San José Stream System and the Pueblos of Jemez and Zia in the Jemez River Basin. At the same time, this legislation protects the scarce water supplies and existing water uses in both stream systems.

The legislation will resolve the water rights claims of these Pueblos by authorizing, ratifying and confirming two comprehensive settlement agreements among the State, the Pueblos, surrounding municipalities, and historic acequias and community ditches. These settlements represent the culmination of decades of litigation and subsequent negotiations among the signatories, Navajo Nation, and the United States as trustee, and would not have been possible without their support and active participation in the negotiations.

Title I: Pueblos of Acoma and Laguna Water Rights Settlement Act of 2023

Title I of H.R. 1304 seeks to confirm the settlement agreement among the State, the Pueblos of Acoma and Laguna, Navajo Nation, the United States as trustee, the City of Grants, the Village of Milan, and the Association of Community Ditches of the Rio San Jose and its nine area acequias and community ditches. House of Representative Bill 8945, the Navajo Nation Rio San José Stream System Water Rights Settlement Act of 2024, is also being heard today and is an addendum to this settlement agreement among these same parties.

The settlement resolves the water rights claims of the Pueblos of Acoma and Laguna within the Rio San José Stream System and provides funding for much needed water supply infrastructure. These claims arise from the adjudication suit filed by the State in 1983 (*New Mexico ex rel. Martinez v. Kerr-McGee Corp.*, Nos. D-1333-CV-1983-00190 and D-1333-CV-1983-00220 (consolidated) (N.M. 13 Jud. Dist. Ct)). The settlement represents the end of forty years of litigation and negotiation, and offers the desired opportunity to resolve long-standing concerns over the use of scarce water supplies in the Rio San José Stream System.

The Rio San José Stream System is located in western New Mexico and is one of the most water-scarce stream systems in the State. For centuries, the Pueblos of Acoma and Laguna irrigated thousands of acres along the Rio San José and its tributaries. This supply has been dramatically reduced as a result of upstream uses of surface water and groundwater by non-Tribal water users over the past century.

One of these uses, uranium mining, has led to widespread contamination of groundwater in the area.

Most Acequias and other traditional non-Tribal water uses in this region date back to the 1800s and rely on diminished surface water supply. Acequias have suffered from the same drop in surface supplies as the Pueblos. Current Acequia irrigation is only a fraction of what it was historically due to lack of water supply.

Today, the Pueblos of Acoma and Laguna, the City of Grants, the Village of Milan, various Acequias and farmers, certain Navajo Nation Chapters, and industrial users continue to rely on water from the Rio San José Stream System, including surface water from the Rio San José, and groundwater from the Bluewater and Rio Grande Basins. Climate change has compounded the lack of water, and, like other western states, New Mexico is experiencing extended periods of drought, furthering the strain on surface water supply.

Authorizing the settlement will avoid the uncertainty and expense of protracted litigation regarding the Pueblos' senior water rights claims. If the rights of the Pueblos were litigated to their conclusion, the only way to increase the flows of the Rio San José for the benefit of the Pueblos would be to shut off all other users in the Steam System. Instead of seeking to curtail other water users, the settlement contemplates the need to find alternative sources of supply for the Pueblos and ensure water security for everyone.

Recognizing the need for cooperation among the water users in the Stream System and the limited water resources available, the settlement agreement is structured to allow the Pueblos to develop alternative sources of water based on availability, hydrologic assessment, and community need. Additionally, the Pueblos have agreed to give up their right to make a priority call on junior non-Pueblo water rights existing prior to the settlement enforcement date, which provides security to all water rights holders in the region. The settlement also provides for the establishment of district-specific management tools to monitor and protect water resources and existing valid water uses in the entire Rio San José Stream System, putting this region at the front of efforts to create resiliency in water use not only in the present, but also into the future.

The proposed settlement will also provide for federal funding for the development of alternative water sources for the Pueblos and state funding for much needed infrastructure improvements for non-Tribal settling parties. The settlement ensures that non-Tribal water users will be able to continue using their water rights as they have done in the past and does not contain any new restrictions on other existing water users. Importantly, authorizing this fund-based settlement provides the Pueblos flexibility to determine the scope and design of future projects and infrastructure.

For the Pueblos, the legislation provides Federal funding for alternative water supplies, water infrastructure, water rights management and administration, watershed protection, support of agriculture, water-related community welfare and economic development in the amount of \$850 million.

The Settlement provides that the State will seek appropriations to support projects for the signatory acequias and municipalities. The Acequias, the City of Grants and the Village of Milan would receive \$36 million from the State to protect against future impairment and improve water and wastewater infrastructure, which will contribute to the efficiency and conservation in the overall stream system. This approach also prioritizes Pueblo sovereignty and self-determination by ensuring that the Pueblos are able to make decisions based on the current and future interests of their communities, while also considering water use in the neighboring non-Pueblo communities.

Title II: The Pueblos of Jemez and Zia Water Rights Settlement Act of 2023

Title II confirms the settlement agreement among the State, the Pueblos of Jemez and Zia, the United States as trustee, the City of Rio Rancho, the Jemez River Basin Water Users Coalition, of which the San Ysidro Community Ditch Association is one of the eleven-member acequias of the Coalition. The parties have reached an agreement after nearly forty years of litigation and intensive settlement negotiations. It is no small matter that the local parties reached this settlement, and together we urge your support for the Act which would authorize, ratify and confirm the historic settlement agreement.

The Jemez River Stream System is located in north central New Mexico, and the Jemez River is a tributary to the Rio Grande. The water users in this basin include the villages of San Ysidro and Jemez Springs, unincorporated areas surrounding them consisting of well-established acequias, and the Pueblos of Zia, Jemez and Santa Ana. The Pueblos and non-Pueblo acequias rely on the river for traditional irrigation practices that have existed since long before New Mexico statehood.

Members of these communities have lived and worked side by side for many generations and during this time, water supply has dwindled while the demand has only increased.

The settlement agreement ratified by H.R. 1304 will resolve the water rights claims of the Pueblos of Jemez and Zia, and provide funding for much needed water supply infrastructure to the Pueblos and non-Pueblo water users in the Jemez River Basin. These claims arise from the trespass suit filed by the United States on behalf of the Pueblos in 1983 and are proceeding in the United States District Court, District of New Mexico as a general stream adjudication of the water rights of all users in the Jemez River Basin (*United States of America, et al. v. Abousleman, et al.*, Civil No. 83-cv-01041 (KR)). The water rights of all non-Pueblo claimants have been adjudicated, and the Pueblos have the only claims remaining in the Basin.

Despite years of ongoing litigation, the people of the Jemez River Basin continued to live and work together. An example of their cooperative approach to managing scarce water resources is that in 1996, the U.S., the Pueblos of Jemez and Zia and several non-Pueblo ditch associations entered into an agreement whereby during times of low flow of the Jemez River, a rotation schedule would be initiated in order to meet the irrigation requirements of the Pueblos and the associations and the religious and ceremonial requirements of the Pueblos. These same communities who have lived and worked side by side and jointly manage a reduced water supply are now here asking for your support for the Settlement Act.

The settlement prevents conflict over surface water by providing federal funding to the Pueblos and state funding to the San Ysidro Community Ditch to use groundwater to augment their surface water supplies. In order to preserve the cooperative administration of water among the water users in the stream system, the Pueblos have agreed to give up their right to request enforcement of their senior priority against other signatories and water users that are a party to the 1996 Shortage Sharing Agreement.

The settlement further provides for alternative administration between the two Pueblos and non-Pueblo water users to supplement surface water supply during periods of low flow and a groundwater augmentation project that will benefit all water users, including ten upstream acequias which will no longer be subject to curtailment from Pueblo priority calls. By providing a critical buffer against climate change's effects on surface supplies, the augmentation of surface water and other proposed settlement projects will help preserve ancient cultural and agricultural practices and strengthen the relationship between Pueblo and non-Pueblo communities in the Jemez River Basin.

As a fund-based settlement, federal funding in the amount of \$490 million is contemplated for water and wastewater infrastructure improvements, watershed protection, water-related projects for community welfare and economic development, and costs relating to implementation of the settlement. The State has committed to seeking funding for the San Ysidro Community Ditch Association's capital and operating expenses relating to the augmentation project in the amount of \$3.4 million, and approximately \$16 million for Jemez River Basin Water Users Coalition acequia ditch improvements. The State will also seek appropriations for a mitigation fund for \$500,000 to protect against future impacts to domestic and livestock wells and provide funding for necessary administrative needs in the Jemez River Basin. Finally, the Settlement also provides for the establishment of a water master district with the goal of protecting water resources in the Jemez River Basin for future generations while allowing all parties to fully exercise their water rights.

The Settlement Act is key to resolving long-standing water issues in the Jemez River Basin, as it addresses the quantification of the Pueblos' water rights, protects water users in the Basin from impairment of their water rights, and will help ensure a sustainable water supply into the future.

Conclusion

Mr. Chairman Bentz, Vice Chair Kiggans, and members of the Committee, the State of New Mexico asks you to support H.R. 1304. If approved, this legislation will create a mechanism for cooperation and coordination among the Pueblos and the State regarding water rights administration, thereby avoiding jurisdictional conflicts and allowing for comprehensive administration across the stream system. The funding authorized by the Settlement Act will contribute to Pueblo water security and provide significant economic benefits and employment opportunities to Pueblo members and surrounding communities in both stream systems. There will also be broader statewide economic benefits because the scope of these projects will create demand for additional labor, construction, and technical expertise from elsewhere in the State. Importantly, authorizing this fund-based settlement provides the Pueblos flexibility to determine the scope and design of future projects and infrastructure.

New Mexico's water issues are dire, and they will only get worse with climate change. The State of New Mexico enthusiastically supports this legislation and believes H.R. 1304 is crucial to addressing critical water needs in some of the most water-stressed communities in the state. Relief for these communities cannot come soon enough.

I thank you for your consideration of this issue and stand ready to provide any support necessary to encourage the passage of this critical legislation.

H.R. 8685, Ohkay Owingeh Rio Chama Water Rights Settlement Act of 2024

Mr. Chairman Bentz, Vice Chair Kiggans, and members of the Committee, I am Tanya Trujillo, New Mexico Deputy State Engineer. My agency, the Office of the State Engineer, is responsible for the administration of water rights in New Mexico. The State Engineer has authority over the supervision, measurement, appropriation, and distribution of all surface and groundwater in New Mexico, including all interstate streams and rivers. I appreciate the opportunity to submit this testimony to you today and provide comments on behalf of the State of New Mexico in support of House of Representatives Bill 8685, the Ohkay Owingeh Rio Chama Water Rights Settlement Act of 2024.

H.R. 8685 will resolve Ohkay Owingeh's water rights claims in the Rio Chama Stream System by authorizing, ratifying, and confirming a comprehensive agreement among the State, Ohkay Owingeh, the City of Espanola, the Asociación de Acequias Norteñas de Rio Arriba, the Rio de Chama Acequias Association, La Asociación de las Acequias del Rio Vallecitos, Tusas, y Ojo Caliente, El Rito Ditch Association, representing 80 acequias and community ditches. This legislation offers a historic opportunity to authorize funding for Ohkay Owingeh to secure and develop water sufficient to support the Pueblo's needs, while also protecting scarce water supplies, existing water uses, and acequia culture in the heart of northern New Mexico.

For centuries, Ohkay Owingeh irrigated along the banks and fertile lands along the river near the confluence of the Rio Chama and Rio Grande. Over the last century, the construction of large reservoirs, the channelization of the river, increased upstream uses, and climate change have greatly reduced the Rio Chama water supply.

There are more than 80 acequias in the Rio Chama Stream System. The three oldest acequias in New Mexico divert from the Rio Chama just outside Ohkay Owingeh's grant boundary, but Ohkay Owingeh has time immemorial water rights, making it the most senior water user in the basin. The Acequias and the Pueblo are all suffering from diminished surface water supply and Ohkay Owingeh often struggles to receive enough water to farm their land at the bottom of the Stream System.

Litigation over the Rio Chama water rights of Ohkay Owingeh has been ongoing for nearly thirty years. The federal court adjudication was filed in 1969 (*State of New Mexico, ex rel. State Engineer v. Aragon*, 69-cv-07941 (D.N.M.)). Recognizing the need for cooperation among the water users in the Stream System and the limited water resources available, the parties structured this settlement to protect existing uses and scarce resources.

The Pueblo, the State, and the Acequias developed an administrative agreement to share and curtail water in times of shortage in order to increase wet water supply and extend the irrigation season. The Pueblo has agreed to give up its right to make a priority call on junior non-Pueblo water users, providing security to all water rights holders in the region. Additionally, the legislation will provide Ohkay Owingeh with crucial funding for projects that will restore the culturally significant Rio Chama Bosque, which will support the health of the river and the ecosystem as a whole.

As a fund based settlement, Ohkay Owingeh is seeking federal funding in the amount of \$818.3 million for purposes related to restoring and maintaining the Rio Chama and Rio Grande bosques, developing water supply and wastewater infrastructure, acquiring water rights or water supplies, and managing and administering Pueblo Water Rights. Importantly, authorizing this fund-based settlement provides the Pueblo flexibility to determine the scope and design of future projects and infrastructure.

The State of New Mexico has committed to seek State funding in the amount of \$98.5 million to the Acequias for projects and infrastructure needs, and \$32 million to the City of Espanola for the development of safe drinking water production wells.

Mr. Chairman Bentz, Vice Chair Kiggans, and members of the Committee, the State of New Mexico asks you to support H.R. 8685. If approved, this legislation will

create a mechanism for cooperation and coordination among Ohkay Owingeh and the State regarding water rights administration, thereby avoiding jurisdictional conflicts and allowing for comprehensive administration across the stream system. The funding authorized by the Settlement Act will contribute to Ohkay Owingeh's water security and provide significant economic benefits and employment opportunities to the Pueblo and surrounding communities. There will also be broader statewide economic benefits because the scope of these projects will create demand for additional labor, construction, and technical expertise from New Mexico contractors. The State of New Mexico enthusiastically supports this legislation and believes H.R. 8685 is a key tool in addressing critical water needs of Ohkay Owingeh and protecting the way of life in northern Mexico for generations to come.

I thank you for your consideration of this issue and stand ready to provide any support necessary to encourage the passage of this critical legislation.

H.R. 3977, Navajo-Gallup Water Supply Project Amendments Act of 2023

H.R. 6599, Technical Corrections to the Northwestern New Mexico Rural Water Projects Act, Taos Pueblo Indian Water Rights Settlement Act, and Aamodt Litigation Settlement Act

H.R. 8940, Northeastern Arizona Indian Water Rights Settlement Act of 2024

Mr. Chairman Bentz, Vice Chair Kiggans, and members of the Committee, I am Tanya Trujillo, New Mexico Deputy State Engineer. My agency, the Office of the State Engineer, is responsible for the administration of water rights in New Mexico. The State Engineer has authority over the supervision, measurement, appropriation, and distribution of all surface and groundwater in New Mexico, including all interstate streams and rivers. I appreciate the opportunity to submit this testimony to you today and provide comments on behalf of the State of New Mexico regarding H.R. 3977, Navajo-Gallup Water Supply Project Amendments Act of 2023; H.R. 6599, Technical Corrections to the Northwestern New Mexico Rural Water Projects Act, Taos Pueblo Indian Water Rights Settlement Act, and Aamodt Litigation Settlement Act; and H.R. 8940, Northeastern Arizona Indian Water Rights Settlement Act of 2024.

The State of New Mexico supports the resolution of Indian Water Rights claims through negotiated settlements, including the claims of the Taos, Nambe, Pojoaque, Tesuque and San Ildefonso referenced in H.R. 6599, and the claims of the Navajo Nation in New Mexico referenced in H.R. 3977 and H.R. 6599 and the claims of the Navajo Nation, the Hopi Tribe and the San Juan Southern Paiute Tribe in Arizona referenced in H.R. 8940. The State fully supports the language in H.R. 3977 and H.R. 6599 and requests the Committee to move forward with those bills as quickly as possible. New Mexico has participated in recent discussions with the Navajo Nation regarding amendments to H.R. 8940 that will be necessary to ensure New Mexico's interests can be protected and details related to New Mexico's position regarding H.R. 8940 are stated below.

A. Implications for New Mexico's 1948 Compact Apportionment

Pursuant to the 1948 Upper Colorado River Basin Compact, New Mexico is entitled to a total quantity of consumptive use per annum of 11.25 percent of the water apportioned to the States of the Upper Division by the 1922 Colorado River Compact. New Mexico's Upper Basin water use is currently about half of its apportionment. Most of New Mexico's plans to develop its apportionment in the San Juan River Basin are for tribal water development that has been authorized by Congress pursuant to the Indian water rights settlements between the State and the Jicarilla Apache Nation and the State and the Navajo Nation. New Mexico is proposing amendments to H.R. 8940 to eliminate the possibility that this settlement could negatively affect New Mexico's ability to implement the previously approved settlements and otherwise utilize and protect New Mexico's Colorado River Basin apportionment.

B. Implications for ESA Compliance in New Mexico

The San Juan River is designated as critical habitat for the Colorado pikeminnow and the razorback sucker from Farmington, New Mexico to Lake Powell. The U.S. Bureau of Reclamation releases water from Navajo Reservoir as needed throughout the year to ensure that certain target flows beneficial to the endangered fish are met daily. Since 1992, the releases have occurred in coordination with the San Juan

River Basin Recovery Implementation Program. Under the Endangered Species Act, these environmental flows provide ESA coverage for all existing diversions below Navajo Reservoir, including all diversions in New Mexico. New Mexico is proposing to amend H.R. 8940 to ensure that the ESA releases, in conjunction with diversions of water to support the settlement, do not have a negative effect on the amount of water available for New Mexico to use from its Colorado River Basin apportionment.

C. Implications for Water Use and Storage in New Mexico

Amendments will be required to protect storage rights for New Mexico parties in Navajo Reservoir and Frank Chee Willetto, Sr. Reservoir. The proposed settlement between the Nation and Arizona calls for storing the Navajo Nation's water, including portions of the Navajo Nation's Lower Basin Colorado River Water, in those two reservoirs in New Mexico. New Mexico is proposing an amendment, so that the new storage authorization does not adversely impact the existing New Mexico water users who benefit from storage in those reservoirs. New Mexico is also proposing an amendment to ensure that any evaporation or transit losses associated with the Navajo Nation's Lower Basin Colorado River Water stored in New Mexico would be accounted for against Arizona's apportionment.

D. Initial Areas of Proposed Amendments from New Mexico

- Adding language addressing conditions for storage and diversion of water in New Mexico.
- Ensuring that the State of New Mexico, acting through the New Mexico Interstate Stream Commission and/or the State Engineer will be able to issue permits and approve agreements for storage, diversion, delivery and operations that will have effects on New Mexico water uses.
- Adding language to protect New Mexico's Compact apportionment and ensure further development of that apportionment.
- Adding language regarding accounting for water that is diverted from sources in New Mexico for use in Utah and/or Arizona including coverage of losses.
- Ensuring consistency with applicable provisions in P.L. 111-11.
- Limiting the use, leasing or transfer of water apportioned to the State of New Mexico without agreement of the State of New Mexico and issuance of appropriate permits.

Conclusion

Mr. Chairman Bentz, Vice Chair Kiggans, and members of the Committee, the State of New Mexico asks you to support H.R. 3977 and H.R. 6599. The State of New Mexico also asks you to support H.R. 8940 with the inclusion of the amendments as referenced in this testimony and further developed in coordination with the Navajo Nation and other parties to the Arizona settlement. New Mexico appreciates the opportunity to provide this testimony and coordinate with the Committee on these bills as they move forward.

I thank you for your consideration and stand ready to provide any support necessary to encourage the passage of these critical pieces of legislation.

H.R. 8945, Navajo Nation Rio San Jose Stream System Water Rights Settlement Act of 2024

Mr. Chairman Bentz, Vice Chair Kiggans, and members of the Committee, I am Tanya Trujillo, New Mexico Deputy State Engineer. My agency, the Office of the State Engineer, is responsible for the administration of water rights in New Mexico. The State Engineer has authority over the supervision, measurement, appropriation, and distribution of all surface and groundwater in New Mexico, including all interstate streams and rivers. I appreciate the opportunity to submit this testimony to you today and provide comments on behalf of the State of New Mexico in support of House of Representatives Bill 8945, the Navajo Nation Rio San José Stream System Water Rights Settlement Act of 2024.

The Settlement Act we ask you to support today is the Navajo Nation companion to H.R. 1304, the Rio San Jose and Rio Jemez Water Settlements Act of 2023, and involves those same parties: the State of New Mexico, Navajo Nation, the Pueblos of Acoma and Laguna, the United States as trustee, the City of Grants, the Village of Milan, and the Association of Community Ditches of the Rio San Jose and its nine area acequias and community ditches. This settlement resolves the water rights claims of Navajo Nation within the region and provides funding for much needed

infrastructure and creates administrative safeguards to protect for non-Tribal water users.

These claims arise from the adjudication suit filed by the State in 1983 (*New Mexico ex rel. Martinez v. Kerr-McGee Corp.*, Nos. D-1333-CV-1983-00190 and D-1333-CV-1983-00220 (consolidated) (N.M. 13 Jud. Dist. Ct)). The settlement represents end of forty years of litigation and negotiation and offers the desired opportunity to resolve long-standing concerns over the use of scarce water supplies in the Rio San Jose Stream System.

The agreement confirmed by H.R. 8945 is written as an Addendum to the Local Settlement Agreement resolving the Pueblo of Acoma and Laguna's water rights claims in the Rio San José Stream System. These fully compatible water rights settlement agreements, when approved by Congress, will provide a comprehensive settlement of tribal claims in the Rio San José Stream System and ensure water sources for many Navajo communities that rely on hauling to meet household needs.

Authorizing the settlement will avoid the uncertainty and expense of protracted litigation regarding Navajo Nation's water rights claims. If the rights of the Nation were litigated to their conclusion, the only way to increase the flows of the Rio San José for the benefit of the Nation would be to shut off junior users in the Steam System. Instead of seeking to curtail other water users, the settlement contemplates the need to find alternative sources of supply for Navajo Nation and communities in desperate need. Federal funding would be used for construction of a regional water supply to Navajo Nation communities, including wastewater development, chlorination stations, hauling stations and other water infrastructure projects. This influx of federal money and projects in turn boosts the New Mexico economy and provides stability for all communities in the area. The legislation offers a historic opportunity to authorize funding to secure and develop groundwater sufficient to support the needs of nine Navajo Chapters in the Rio San Jose Basin (Baca/Prewitt, Casamero Lake, Crownpoint, Littlewater, Mariano Lake, Ramah, Smith Lake, Thoreau, Tóhajiilee), and the seven chapter communities in the Rio Puerco Basin (Tóhajiilee, Torreon, Ojo Encino, Pueblo Pintado, Whitehorse Lake, Counselor, Littlewater).

The Rio San José Stream System is located in western New Mexico and is one of the most water-scarce stream systems in the State. Today, Navajo Nation, the Pueblos of Acoma and Laguna, the City of Grants, the Village of Milan, various Acequias and farmers, and industrial users continue to rely on water from the Rio San José Stream System, including groundwater from the Bluewater and Rio Grande Basins. Climate change has compounded the lack of water, and, like other western states, New Mexico is experiencing extended periods of drought, furthering the strain on surface water supply.

Recognizing the need for cooperation among the water users in the Stream System and the limited water resources available, the settlement agreement is structured to allow the Nation to develop alternative sources of water based on availability, hydrologic assessment, and community need. Additionally, the Nation has agreed to give up its right to make a priority call on junior non-Tribal water rights, providing security to all water rights holders in the region. The settlement also provides for the establishment of district-specific management tools to monitor and protect water resources and existing valid water uses in the entire Rio San José Stream System, putting this region at the front of efforts to create resiliency in water use not only in the present, but also into the future.

New Mexico's water issues are dire, and they will only get worse with climate change. The State of New Mexico enthusiastically supports this legislation and believes H.R. 8945 is crucial to addressing critical water needs in some of the most water-stressed communities in the state. As a fund-based settlement, the Nation is seeking federal funding in the amount of \$244 million. The Acequias will receive \$3 million from the State to protect against future impairment and improve the efficiency of their ditches and conservation in the overall stream system. This approach also prioritizes Tribal sovereignty and self-determination by ensuring that the Nation is able to make decisions based on the current and future interests of their communities, while also considering water use in the neighboring non-Tribal communities.

Mr. Chairman Bentz, Vice Chair Kiggans, and members of the Committee, the State of New Mexico asks you to support H.R. 8945. If approved, this legislation will create a mechanism for cooperation and coordination among Navajo Nation and the State regarding water rights administration, thereby avoiding jurisdictional conflicts and allowing for comprehensive administration across the stream system. The funding authorized by the Settlement Act will contribute to Navajo water security and provide significant economic benefits and employment opportunities to Navajo Nation and surrounding communities in both stream systems. There will also be

broader statewide economic benefits because the scope of these projects will create demand for additional labor, construction, and technical expertise from elsewhere in the State. Importantly, authorizing this fund-based settlement provides the Navajo Nation flexibility to determine the scope and design of future projects and infrastructure.

I thank you for your consideration of this issue and stand ready to provide any support necessary to encourage the passage of this critical legislation.

H.R. 8951, Zuni Indian Tribe Water Rights Settlement Act of 2024

Mr. Chairman Bentz, Vice Chair Kiggans, and members of the Committee, I am Tanya Trujillo, New Mexico Deputy State Engineer. My agency, the Office of the State Engineer, is responsible for the administration of water rights in New Mexico. The State Engineer has authority over the supervision, measurement, appropriation, and distribution of all surface and groundwater in New Mexico, including all interstate streams and rivers. I appreciate the opportunity to submit this testimony to you today and provide comments on behalf of the State of New Mexico in support of House of Representatives Bill 8951, the Zuni Indian Tribe Water Rights Settlement Act of 2024.

H.R. 8951 will resolve the Zuni Tribe's water rights claims in the Zuni River Stream System by authorizing, ratifying, and confirming a comprehensive agreement between the State and the Zuni Tribe. The settlement represents the culmination of over 25 years of litigation and subsequent negotiations among the signatories and the United States as trustee, and would not have been possible without their support and active participation in the negotiations.

The Zuni Tribe Reservation is at the very end of the Zuni River Stream System and one of the most remote and water-scarce river basins in New Mexico. The Settlement Agreement will not only determine the water rights of the Zuni Tribe, but will provide financial resources to develop a sustainable water supply to satisfy the Tribe's water needs, today and into the future, while minimizing adverse impacts to other water users in the basin.

The Settlement Agreement provides for administrative protections for the non-Tribal water users in the basin, the critically endangered bluehead sucker fish, and importantly, the Zuni Salt Lake, a culturally sacred site for Zuni and many other Pueblos, Tribes, and Nations in the Southwest. The State of New Mexico has committed to seek \$1.2 million in funding for costs related to monitoring the Critical Protection Areas and Zuni Salt Lake, mitigation funding to protect against future impacts to domestic and livestock wells and necessary administrative needs in the Zuni River Basin with the goal of protecting water resources in the Zuni River Stream System for future generations while allowing all parties to exercise their water rights.

As a fund-based settlement, the Zuni Tribe is seeking federal funding in the amount of \$749 million for water related projects, including irrigation infrastructure improvements, water and wastewater infrastructure improvements, watershed protection, water-related tribal community welfare and economic development, and costs relating to implementation of the Agreement. Importantly, this legislation will provide the Tribe flexibility to determine the scope and design of future projects critical to obtain a reliable supply of water and create water security for the future.

Mr. Chairman Bentz, Vice Chair Kiggans, and members of the Committee, the State of New Mexico asks you to support H.R. 8951. If approved, this legislation will create a mechanism for cooperation and coordination among the Zuni Tribe and the State regarding water rights administration, thereby avoiding jurisdictional conflicts and allowing for comprehensive administration across the stream system. The funding authorized by the Settlement Act will contribute to the Zuni Tribe's water security and provide significant economic benefits and employment opportunities to the Tribe and surrounding communities. There will also be broader cultural and ecological benefits from the cooperative management components of the agreement that underscore the commitment of both the State and the Tribe to protect and restore precious resources in the Zuni River Stream System. The State of New Mexico enthusiastically supports this legislation and believes H.R. 8951 is key to providing the Zuni Tribe with sufficient water to satisfy its needs and protect the Zuni Salt Lake, natural springs, and sacred sites for generations to come.

I thank you for your consideration of this issue and stand ready to provide any support necessary to encourage the passage of this critical legislation.

**ALL PUEBLO COUNCIL OF GOVERNORS
RESOLUTION NO. APCG 2024-02**

**URGING NEW MEXICO CONGRESSIONAL DELEGATION TO SUPPORT
AND APPROVE PUEBLOS WATER RIGHTS SETTLEMENTS**

WHEREAS, the All Pueblo Council of Governors (APCG) is comprised of the New Mexico Pueblos of Acoma, Cochiti, Isleta, Jemez, Laguna, Nambe, Ohkay Owingeh, Picuris, Pojoaque, San Felipe, San Ildefonso, Sandia, Santa Ana, Santa Clara, Santo Domingo, Taos, Tesuque, Zia, and Zuni and one Pueblo in Texas, Ysleta del Sur, each having sovereign authority to govern their own affairs; and

WHEREAS, the purpose of the All Pueblo Council of Governors is to advocate, foster, protect, and encourage the social, cultural, and traditional well-being of the Pueblo Nations; and

WHEREAS, the 20 Pueblos possess governmental authority and sovereignty over their lands and over the protections of their languages, cultures, and traditions; and

WHEREAS, the Pueblos have occupied the southwest since time immemorial with the first documented Tribal leadership meeting occurring in 1598 under the Spanish crown; and

WHEREAS, prior to the founding of the United States, the well-established agricultural Pueblo communities' water uses were not only recognized under both Spain and Mexico it was also protected; and

WHEREAS, the United States asserted sovereign authority over the Pueblos in New Mexico under the Treaty of Guadalupe Hildalgo, which protected rights recognized by prior sovereigns including the Pueblos; and

WHEREAS, increased water uses by non-Indians for irrigation, dam construction, and diversion of water have severely reduced the Pueblos' access to current water supplies; and

NOW THEREFORE, BE IT RESOLVED, the All Pueblo Council of Governors contends Congress to uphold its solemn obligation and fulfill the federal trust responsibility to the Pueblos in securing water rights settlements; and

BE IT FINALLY RESOLVED, the All Pueblo Council of Governors urges the New Mexico Congressional Delegation to fully support and authorize the passage of the Pueblos' water rights settlements. Specifically, the:

- S. 4896—Rio San Jose and Rio Jemez Water Settlement Act of 2023
- S. 4898—Pueblos of Acoma and Laguna Water Rights Settlement Act of 2022
- S. 4505, H.R. 8685—To approve the settlement of water rights claims of Ohkay Owingeh in the Rio Chama Stream System, to restore the Bosque on Pueblo Land in the State of New Mexico, and for other purposes
- Pueblo of Zuni—Zuni Water Rights Settlement Act and Salt Lake Protection Act (Legislation yet to be introduced)

CERTIFICATION

We, the undersigned officials of the All Pueblo Council of Governors hereby certify that the foregoing Resolution No. APCG 2024-02 was considered and adopted at a duly called council meeting held on the 27th day of June 2024, and at which time a quorum was present and the same was approved by a vote of 18 in favor, 0 against, 0 abstain, and 2 absent.

ALL PUEBLO COUNCIL OF GOVERNORS

By:

James R. Mountain, APCG Chairman

ATTEST:

Governor Arden Kucate, APCG Secretary

Statement for the Record

Peter Madalena
THE PUEBLO OF JEMEZ

**on H.R. 1304, Rio San José and Rio Jemez Water Settlements
 Act of 2023**

My name is Peter Madalena. I have the honor of serving as Governor of the Pueblo of Jemez. On behalf of our Pueblo, I thank you Chairman Bentz, Ranking Member Huffman, and distinguished members of the Subcommittee for Water, Wildlife, and Fisheries for this opportunity to provide our written testimony on the Rio San José and Rio Jemez Water Settlements Act (H.R. 1304). The Pueblo extends a special greeting and our respects to our Congresswoman, the Honorable Teresa Leger Fernandez. We thank her for sponsoring this legislation. We also extend special greetings and our gratitude to Congresswoman Melanie Stansbury, who is of course a member of this Subcommittee and a cosponsor of the bill, as well as to Congressman Gabe Vasquez for his co-sponsorship. We also thank our two Senators, Martin Heinrich and Ben Ray Luján for sponsoring companion legislation in the Senate. It is our honor to have the full support of the New Mexico congressional delegation, as well as the support of our Governor, the New Mexico State Engineer, and our non-Indian partners in our Settlement Agreement.

For the reasons discussed below, enactment of legislative language to implement our water rights settlement is critical to the health and welfare of the Jemez people, and the preservation of our cultural and spiritual values. It is also critical to the health and welfare of non-Indian users of Jemez River water, and to the continued relationships that bind our communities together. It took us nearly forty years to negotiate this settlement. In the nearly two years since our legislation was originally introduced in the 117th Congress, the draught conditions that plague Pueblo and non-Indian communities alike have worsened. Water users are not getting enough water and are losing their crops. Irrigation rotations are being implemented forcing some farmers to sacrifice their alfalfa and hay fields to make water available to farmers growing crops like corn, chili, melons and other vegetables for consumption. For these reasons we desperately need your help. We are grateful that H.R. 1304 will be the subject of this Subcommittee hearing today, and we urge the full Committee to take up our legislation and report it out of Committee with all due speed.

Summary

For centuries Jemez has been an agricultural community. Our people are subsistence farmers producing traditional crops, as well as crops needed to feed our livestock. Our farmers rely on water from the Jemez River, which flows south through our Pueblo. In 1983, the United States brought litigation to protect Pueblo water rights in the Jemez River Basin in a case known as *U.S. v. Abouseleman*. For nearly forty years, the Jemez Pueblo engaged in good faith negotiations, investing an incredible amount of time and resources to find common ground with our non-Indian neighbors. Finally, in 2022 we were able to reach a settlement that meets the needs of our Pueblo and the Pueblo of Zia, non-Indian water users, and the State of New Mexico. But this hard-won Settlement Agreement is meaningless without federal implementing legislation.

The Pueblo of Jemez is not a wealthy Tribe; we do not have a casino or vast energy resources. For us, access to a sustainable water supply is the only path to our long-term health and stability, and cultural preservation. If implemented, the Settlement Agreement will protect our access to water to sustain our agricultural practices and livestock needs, and to provide water for current domestic, commercial, municipal and industrial use. Implementation of the Settlement will provide funding for the construction of critical wells for both Jemez and Zia to obtain groundwater to reduce reliance on surface water from the Jemez River. Access to the water made available by these wells will help avoid conflicts between the Pueblos and non-Indian water users over access to increasingly scarce surface water, and so will protect and strengthen relationships among the community of water users in the Jemez River Basin.

In addition, the Settlement Agreement projects will provide state-wide economic benefits for non-tribal businesses that will be involved in the Pueblo's projects. Most importantly for the Pueblo, these projects will bring revenues into the tribal government from construction projects, and bring desperately needed income into Pueblo households, helping to decrease the Pueblo's 40% unemployment rate. We are proud to underscore that the Settlement Agreement also serves the crucial needs of our

neighbors, as it will benefit upstream water projects, help augment surface water supplies to guard against the effects of climate change, and provide a reliable supply of much needed irrigation water for the surrounding community.

Only with your help can we actually secure our water rights, and in turn secure the future for our Pueblo members, accommodate the future growth of our population, realize the full economic potential of our tribal homelands, and preserve ancient agricultural and other practices critical to our cultural survival. *We ask that the House Natural Resources Committee and its Water, Wildlife and Fisheries Subcommittee do everything in its power to move H.R. 1304 swiftly toward passage.*

Brief Background of the Pueblo and History of Jemez

Since time immemorial the Jemez people (traditionally pronounced as “He-mish”) have maintained our traditional and distinct way of life supported by strong cultural values, deep religious respect and our Towa language, a language only we speak. The unique Towa language is spoken by 91% of our members. We are a federally recognized Indian tribe and one of the 20 Pueblos in present-day New Mexico and Texas. Our Reservation is located 45 miles northwest of Albuquerque in central New Mexico with a land base totaling more than 89,000 acres. Our Reservation is composed of three large parcels, the original Jemez Pueblo grant, Ojo del Espiritu Santo grant, and the Canada de Cochiti grant. These lands are agricultural, grazing and forest lands. Jemez Pueblo is the gateway to the popular Jemez Mountains, a designated National Recreation Area and gateway to the Pueblo’s ancestral lands in the Valles Caldera National Preserve now under the management of the National Park Service. Both federal areas are carved from lands that are within our traditional ancestral territory.

Jemez Pueblo has a unique history, one that is different from the rest of the Pueblos in New Mexico. Jemez Pueblo is one of two Towa speaking Pueblos. At the time of the Spanish Entrada in New Mexico there were two Towa Pueblos, both recognized by the Spanish government—Jemez Pueblo and Pecos Pueblo. Pecos Pueblo was located northeast of Santa Fe, New Mexico just downstream from the headwaters of the Pecos River, and between two major Spanish settlements—Santa Fe and Las Vegas—placing it on various trade routes of Indian and non-Indian groups from the Plains into the Rio Grande Valley. The two Pueblos were agricultural communities located in separate river basins, living and farming on lands used by them since time immemorial. While the Jemez Pueblo survives to the present day, the people of Pecos Pueblo were forced to leave their lands due to many factors, including trespasses to their lands and waters as well as a significant drop in population. By 1838 there were only 17 surviving Pecos members and these people moved to Jemez to join their Towa brethren for protection and survival. The historic record is clear that the move to Jemez was not an abandonment of the Pecos Pueblo by its people. By 1929 the Pecos descendants were estimated to be up to 250 people. In 1933, Jemez and Pecos requested of Congress that they be merged into just the Pueblo of Jemez which was achieved in 1936 by congressional act.¹ Today, several Jemez Pueblo members descend from those 17 survivors, and the traditions and religious practices brought over by the Pecos survivors are practiced and carried on in Jemez Pueblo.

Tribal Government

Jemez Pueblo is governed by the Jemez Tribal Council, the Governor and two Lieutenant Governors. The Governor represents the Pueblo of Jemez as an official Head of State and is the Chief Executive Officer of the Pueblo. The Governor, Lieutenant Governor and Second Lieutenant Governor are appointed at the start of each year by religious leaders and entrusted sole authority to oversee and carry out all secular duties and responsibilities of the tribal government.

Our government also contains many active government services agencies such as our Tribal Administration, Natural Resources Department, Planning and Transportation, Tribal Courts, Police Department, Education Department, Public Works, Realty and Jemez Health and Human Services. Jemez Pueblo became a Self-Governance tribe in 2013 under the Indian Self-Determination and Education Assistance Act which enabled tribes to contract with the United States for administration of certain federal programs. *See* 25 U.S.C. §§ 5301-5423.

Pueblo Members

The number of our enrolled tribal members as of July 19, 2024 is 3,952. Most of our Pueblo members reside in the Pueblo Village traditionally known as “Walatowa”

¹The Act of 19 June 1936, 49 Stat. 1528.

(a Towa word meaning “this is the place”). In addition to our tribal members, non-tribal members living on the pueblo who are residing on the pueblo by marriage, adoption or through family relations. Some of our tribal members live off the reservation in the neighboring non-Indian communities of San Ysidro, Ponderosa, Canon and in the City of Rio Rancho. Others live in Albuquerque and Santa Fe.

Since time immemorial the Jemez people have maintained their traditional way of life, a life supported by strong agricultural values and deep cultural respect. For many centuries Jemez has been an agricultural community and will continue to be as these practices are passed on to our children. The farmers are subsistence farmers producing traditional crops such as chili, corn, squash melons and other vegetables but are also livestock owners expanding their irrigation practices to growing alfalfa, oats and grass for livestock feed.

The Jemez River Basin

The main water feature for the Pueblo of Jemez is the Jemez River whose headwaters are in the Valles Caldera National Preserve. The main tributary streams in the Valles Caldera National Preserve are San Antonio Creek and the East Fork Jemez River that join to form the Jemez River mainstem. The Jemez River flows south through the Canon de San Diego, between the Jemez Mountains and the Nacimiento Mountains to Jemez Springs, and continues south through the canyon to its confluence with the Rio Guadalupe, near Canones and Canon. From there the Jemez River runs through the Pueblo Village providing water for the farmers and recharges the alluvial aquifer from which the pueblo draws its drinking water. Vallecito Creek, an ephemeral stream, joins the Jemez River above and near Jemez Pueblo. At the south boundary of the Jemez Pueblo grant, the Jemez River continues into the non-pueblo community of San Ysidro and couple of miles to the south of San Ysidro, the Jemez River enters the Zia Indian Reservation and is joined by the Rio Salado, about four miles upstream from Zia Pueblo. The Jemez River continues southeast and enters the Santa Ana Pueblo reservation passing by Santa Ana to its confluence with the Rio Grande just north of the town of Bernalillo.

Today, the Jemez River (and hydrologically connected groundwater) does not only supply water for irrigation on the Pueblo; it supplies water for a wide variety of tribal uses including, but not limited to domestic, municipal, economic development, livestock, wildlife, fisheries, and other natural resources in the River Basin. The waters of the Jemez River Basin also support a complex ecology that Jemez has used in the past and continues to use today for many sacred and culturally significant resources that exist because of the river and the groundwater.

Brief History of Settlement Negotiations

The United States originally filed the *Abousleman* litigation in 1983 to protect the water rights of the Pueblos of Jemez, Zia and Santa Ana; parties in the litigation included the State of New Mexico and non-Indian parties the Jemez River Basin Water Users Coalition and the San Ysidro Community Ditch Association. In 1993 the Department of Interior appointed a Federal Negotiation Team to assist the Pueblos in their pursuit of a negotiated settlement. In 1994 the Jemez Pueblo Tribal Council adopted a resolution confirming its desire to engage in settlement negotiations in the *Abousleman* case. Settlement negotiations in the case began more seriously in March 1996, when Mr. Brian James, attorney for the New Mexico State Engineer’s office invited the United States and the three Pueblos to the negotiation table.

Negotiations were catalyzed in 1996 when the Pueblos filed a “Priority Call” on the non-Indian water users within the basin. Negotiations continued for several years with the parties agreeing on Settlement Principles which became the framework for the negotiations. With the assistance of a Mediator, the parties continued negotiating the terms of the settlement agreement and developed their settlement costs proposal. Unfortunately, in March 2012 the negotiations fell apart when the State of New Mexico withdrew its support for the settlement and walked away from the negotiation table.

After this breakdown of negotiations that lasted over a four-year span, the Pueblo of Jemez took the initiative to bring the parties back to the negotiation table by hosting several group and individual meetings with the parties. As a result of the Pueblo’s efforts, negotiations resumed in 2016 with the same parties plus the City of Rio Rancho, except that the Pueblo of Santa Ana, declined to participate in the negotiations. The Pueblo of Santa Ana prefers to litigate its claims in the Jemez River basin in federal court.

Since 2016, with the assistance and involvement of the Federal Negotiation Team, the settling parties negotiated a tentative settlement agreement² including settlement cost proposals for projects to be funded from the settlement. The settlement cost projection for Jemez Pueblo is \$290,000,000 and for Zia Pueblo is \$200,000,000 for a combined settlement cost of \$490,000,000 for the Pueblos. The non-Pueblo portion of the settlement cost is projected at \$19,559,000, which will be borne by the State of New Mexico. Below is an overview of the settlement agreement and components for which we are seeking congressional approval.

Overview of Settlement Agreement

The Settlement Agreement recognizes and describes four categories of Pueblo water rights with a time immemorial priority: (1) irrigation water rights based on the Pueblos' Historically Irrigated Acres ("HIA"); (2) current Domestic, Commercial, Municipal, and Industrial ("DCMI") uses; (3) water for Livestock Uses; and (4) Economic Development Water.

The focal point of the Settlement Agreement is the construction of augmentation projects on Jemez and Zia lands. Each Pueblo will benefit from construction of a well field that will augment surface supply with groundwater. The well fields will provide groundwater for irrigation and other uses by the two Pueblos and members of the San Ysidro Community Ditch Association during periods of insufficient surface flow in the Jemez River. By making groundwater available, the settlement will prevent conflicts between the Pueblos and San Ysidro Community Ditch Association over surface water use. Federal funding for the Pueblos and state funding for the San Ysidro Community Ditch is critical to implementing this augmentation agreement. Further, by providing a critical buffer against climate change's effects on surface supplies, the augmentation and other proposed settlement projects will help preserve ancient cultural and agricultural practices and strengthen the relationship between Pueblo and non-Pueblo communities in the Jemez River Basin.

Settlement Components

The Pueblo of Jemez' settlement components are the following:

1. Jemez Village Water Supply and Wastewater Feasibility Investigation
2. Water and Wastewater facilities
3. Firmed Up Acreage (FUA) Irrigation Project
4. Pueblo Water Department
5. Multi-Use Water Development
6. Stockwater Facilities
7. Canon Area Land Acquisition
8. River Improvement Projects
9. Pipeline to San Ysidro Parcel

1. Jemez Village Water Supply and Wastewater Feasibility Investigation

Over the past two decades, the Pueblo has taken active steps to improve the dependability and quality of its water supply. Nevertheless, several water supply problems still persist on the Pueblo including lack of water pressure, water quality concerns, insufficient storage capacity, and outdated infrastructure. The Pueblo must also identify and evaluate source(s) of supply for future water demands as the Pueblo's population and economy continue to grow. It is particularly important now to address water supply and treatment issues that affect the health of Pueblo residents in light of the ongoing COVID-19 outbreak and severe damage it has caused to Native American communities in the Southwest.

Due to the lack of adequate domestic water systems and sewer infrastructure in areas suitable for housing development, coupled with inadequate domestic water supply systems within the Village, tribal members are forced to seek housing off the reservation. The existing system was built in the 1960's. Not only is there a lack of infrastructure for new development, but within the Village, based on a survey done several years ago, there are approximately 550 families living in substandard housing, 370 families living in overcrowded homes and 420 homes needing rehabilitation of some form. It was these housing conditions on the pueblo that created a real challenge in protecting the members from and preventing the spread of Covid 19 during the pandemic.

²The settlement is tentative because the United States cannot approve the settlement until it is authorized by Congress.

The Settlement funding will help resolve the Pueblo's serious problems by providing adequate domestic water drinking systems and sewer systems.

2. Water and Wastewater Facilities

The Pueblo currently has two separate water systems that produce approximately 186 acre-feet per year for the Pueblo's various domestic, municipal, and commercial uses. In the near future, it is expected that the Pueblo will grow, both in population and level of economic development. Future demands were divided into three distinct areas: (1) Jemez Village, extending from the mouth of Vallecito Creek down to the southern Reservation boundary; (2) Red Rocks, located near the northern Reservation boundary and described under a separate economic development plan; and (3) Vallecito Housing, a proposed housing development located east of the Jemez Village along Vallecito Creek. Separate water supply systems were planned for each of these three areas. Costs for the water supply systems were developed as part of a 2012 Bureau of Reclamation study and were expressed in 2012 dollars.

The Pueblo's wastewater treatment needs are currently served by four non-discharging evaporation lagoons located along the Jemez River near the Village. The Pueblo has had a desire to move away from lagoons and toward more conventional forms of treatment and discharge. Wastewater system improvements include costs for the replacement and expansion of the wastewater collection or sanitary sewer system on the Pueblo. Three separate sanitary sewer systems were designed for the three water demand areas: (1) Jemez Village, (2) Red Rocks area, and (3) Vallecito Housing area. Sanitary sewer system cost estimates include costs for lift stations, manholes, and collection mains conveying wastewater from the segmented demand areas on the Pueblo to the wastewater treatment facility. Costs for the wastewater treatment and collection systems were developed as part of a 2011 settlement proposal and were expressed in 2010 dollars.

3. Firmed Up Acreage (FUA) Irrigation Project

The FUA Project is an irrigation system design developed for the Pueblo and provided for in the 2008 Settlement Principles that seeks to make improvements to existing irrigation infrastructure on the Pueblo and to expand the capabilities and improve the reliability of the system. A component of the FUA Project is the addition of water resource augmentation to provide a firm supply to a fixed amount of acreage through the construction of new wells and the improvement of water delivery infrastructure to provide additional water supply through improved irrigation efficiency. The FUA project consists of the following: (1) conveyance system improvements, (2) on-farm improvements, (3) augmentation wells, and (4) remote flow monitoring and control systems to provide improved system management.

The overall goal of conveyance system improvements is to increase the efficiency with which the Pueblo's canals and laterals deliver water to the farm fields. The 60 plus year old concrete ditches and their two diversion dams on the Jemez River have exceeded their functional capacity making it difficult to effectively deliver water to Pueblo fields. Projects identified for the conveyance system include improvements intended to remove or reduce debris in the system, to protect existing infrastructure from degradation, and to reduce water loss due to seepage, as well as increases in system capacity to allow for carriage of Zia and San Ysidro water demands under low flow periods through the West Main Canal. The federal funding from the Settlement will provide the necessary funds to completely re-engineer the diversion dams and revamp the entire irrigation distribution system.

Crucially, the majority of the work proposed in the improvement of the irrigation distribution system is work that can be done with the Pueblo's work force. Approximately 30% of the Pueblo's work force is skilled in construction, transportation, extraction and material moving occupations and maintenance occupations. These opportunities will help decrease the Pueblo's 40% unemployment rate and bring in needed revenues into the family households to improve the quality of life for our Pueblo members.

4. Pueblo Water Resources Department

Establishment of a Pueblo Water Resources Department is a crucial piece to a successful water rights settlement. A Pueblo Water Resources Department will administer water rights and oversee the management and protection of Pueblo water resources and water rights. Funds are sought under the water rights settlement to maintain a Pueblo Water Resources Department through a trust fund and to complete specific capital projects and studies that will assist in properly administering and managing water rights including development of a Tribal Water Code.

5. Multi-Use Water Development

The Settlement will provide the Pueblo with an additional quantity of water based on the historically irrigated acreage (HIA) water right claim separate from the FUA project water rights. These rights are based on irrigation, but will likely not be used for agriculture and so are known as “Multi-Use Water” in the settlement. In addition, the Settlement will provide an additional amount of water known as “Remaining Water” to the Pueblo. A quantification of these two additional water rights is provided in the settlement. Together, these two additional rights represent the domestic, commercial, municipal and industrial (DCMI) water rights of the Pueblo. A portion of these water rights will be used to meet the future domestic water supply demands of the Pueblo.

6. Stockwater Facilities

The Pueblo intends to establish new, and rehabilitate existing, stock watering facilities on the Reservation. The proposed settlement includes three categories (ponds, springs and wells) of water rights for livestock and wildlife. Costs for development are included in the Settlement for all three categories of livestock water rights. An inventory of stockwater facilities was performed by the Pueblo and the results indicate that there are 22 springs, 48 ponds, and 18 wells on the Reservation that service livestock. Costs for a single spring, pond, and well are shown in the settlement agreement.

7. Canon Area Land Acquisition

The Pueblo has had periodic conflicts with upstream water users near Canon who share use of the Jemez Pueblo West Side and East Side canals (historic Pueblo ditches). The Pueblo desires to purchase the lands and associated water rights for these lands to alleviate any future conflicts over access, ingress and egress issues. Funds are proposed as part of the water rights settlement to acquire lands and water rights adjacent to the Pueblo ditches and around the Jemez River.

For the purpose of estimating costs, it was assumed that the Pueblo would acquire all lands that are currently designated as agriculture lands. Land acquisition costs were based on a February 2011 appraisal study for the San Ysidro Ditch easement completed by Deborah Lewis at the BIA Regional Office and indexed to 2021 values using the Bureau of Reclamation land value index for New Mexico. Information provided in the appraisal report indicated a range of land values. Developed (leveled, cleared, planted) farmland is estimated to have a value of \$24,760 per acre based on information included in the appraisal study.

Water rights acquisition costs were based on a November 2007 article by F. Lee Brown for the New Mexico Water Resources Research Institute. In this article, Brown provides a price range of \$20,000 to \$35,000 per acre-foot for the purchase of water rights in the Middle Rio Grande Basin (upper basin use area). A separate 2006 article by Thomas C. Brown assesses water markets in the western United States and establishes an annual rate of increase of about 1.28% based on the median price of water (for all uses) between 1990 and 2003. Applying this rate to the 2007 water rights prices per acre-foot results in a value of \$35,837 per acre-foot in 2021.

To ensure that the Pueblo will be able to avoid conflicts that may develop with any other landholders in the vicinity of the Pueblo’s projects, the Pueblo will require funding for the purchase of an additional 300 acres of land plus appurtenant water rights at a consumptive irrigation requirement (CIR) of 2.0 afy/ac. This acquisition cost totals to approximately \$28,930,200.

8. River Improvement Projects

The Jemez River is an important natural and cultural resource for the Pueblo, and the Pueblo is committed to maintaining the ecological health and function of the River into the future. Funds are sought by the Pueblo to complete stream restoration projects on the Reservation. Activities would include stabilization of the Jemez River channel; removal of tamarisk, Russian olive, and other invasive tree/shrub species; re-vegetation of the riparian corridor with native species; and performing geomorphology and ecological resource studies associated with the river. It is estimated that there are 8.5 river miles to be addressed with the funds, stretching from the West Main / East Side diversion dam in Canon to the Highway 4 bridge just north of San Ysidro. The total cost of stream restoration projects is estimated at \$10,710,000.

9. Pipeline to San Ysidro Parcel

The Jemez Pueblo plans to commercially develop approximately 95 acres of land south of San Ysidro that are owned by the Pueblo in fee and formerly known as the lands of Frederick Fiber. The land is made up of four parcels bounded by Highway 550 on the west and on the east by Zia Pueblo Reservation land. In order to supply the area with water (95 afy), a pipeline was designed to deliver water from multi-use wells planned for construction east of the Pueblo Village. The pipeline is gravity flow and travels a distance of approximately 32,620 feet (6.2 miles) including connection to the multi-use wellfield and generally following Highway 4 and 550.

The total settlement cost includes the total capital cost of the project as well as funding for 50 years of operational costs, which is estimated at \$4,498,000 using the 10-year nominal discount rate of 0.8% from OMB Circular A-94-C (2021) as recommended by the Department of Agriculture's Natural Resources Conservation Service.

Settlement Benefits

The Settlement brings long overdue investments in infrastructure to our Pueblo. The Settlement Agreement will provide federal funds to the Pueblo for costs associated with irrigation infrastructure improvements, water and wastewater infrastructure improvements, watershed protection, water-related Pueblo community welfare and economic development, and costs relating to implementation of the Agreement.

The economic development opportunities will be enhanced by the development of domestic water and sewer systems in the Pueblo's commercial area. The Pueblo's Visitor Center and convenience store are located north of the Pueblo in the beautiful Red Rock area, which is prime for development but seriously limited due to lack of funding to bring a reliable water source to this development area. The settlement funding will help us provide the water source.

Not only will the settlement projects bring income to the Pueblo members but it will also bring in gross receipts tax revenues into the tribal government from the construction projects, and it will have a state-wide economic benefit for other businesses, construction companies and professionals that can provide technical services for the Pueblo's projects.

More importantly, the settlement establishes the rights of the Pueblo to use water for its own people and purposes, and provides for quantification of Pueblo water rights, reliability of supply, and economic development for the Pueblo both now and into the future. It protects surface and groundwater in the Jemez River Basin for future generations while allowing all parties to fully exercise their water rights and while addressing impacts on aquifer and surface flows of future water development both in the basin and affecting the basin.

Conclusion

The Pueblo of Jemez engaged in good faith negotiations for nearly forty years to reach this settlement of its water rights in the Jemez River Basin. We have invested an incredible amount of time and resources in these efforts. We are not a wealthy Tribal government nor wealthy people; we do not have a casino or vast energy resources. We know that water is the key to our long-term health and stability. We have worked in good faith to have our water rights confirmed, and we need your help to ensure that we will be able to use our water to secure the future for our tribal members, to accommodate future growth of our population, and to realize the full economic potential of our Reservation. We ask that this Committee do everything in its power to move swiftly toward passage of H.R. 1304, the Pueblos of Jemez and Zia Water Rights Settlement Act of 2022, so that we may achieve these goals.

Thank you for the opportunity to testify before you today.

CITY OF GALLUP
Gallup, New Mexico

July 15, 2024

Hon. Bruce Westerman, Chair
 Hon. Raul Grijalva, Ranking Member
 House Natural Resources Committee
 1324 Longworth House Office Building
 Washington, DC 20515

Hon. Harriet Hageman, Chair
 Hon. Teresa Leger Fernandez, Ranking Member
 Subcommittee on Indian and Insular Affairs
 1324 Longworth House Office Building
 Washington, DC 20515

Hon. Cliff Bentz, Chair
 Hon. Jared Huffman, Ranking Member
 Subcommittee on Water, Wildlife and Fisheries
 1324 Longworth House Office Building
 Washington, DC 20515

Dear Distinguished Members of the House Natural Resources Committee Leadership:

We write to express our enthusiastic support for the prompt passage of H.R. 3977, the Navajo-Gallup Water Supply Project Amendments Act of 2023. The Act is of immense and historic consequence to the Navajo Nation and Navajo people, to the City of Gallup, New Mexico, and to McKinley County, New Mexico. Its passage will mark a turning point in the lives of hundreds of thousands, ensuring the stability and vitality of their homes and communities, and their futures.

The Act honors and effectuates the United States' trust responsibilities to the Navajo people inhering in the 2005 San Juan River Basin Water Rights Settlement between the Navajo Nation, the United States, and the State of New Mexico. Its importance and benefits are difficult to overstate. Purely by way of example:

1. Currently, the eastern Navajo Reservation, the City of Gallup and McKinley County rely on dwindling groundwater resources that are increasingly expensive and difficult to develop. Water from the San Juan River constitutes the only available and economically viable long term supply. Completion of the Project is therefore essential to—and guarantees—the futures of the Reservation, the City and the County.
2. Approximately 40% of the Reservation's residents have no water service and must haul water to their homes and businesses. Passage of the Act, assuring the Project's completion, will set the stage for the piped delivery of water to communities lacking water service, assuring and enhancing their health and their social, cultural and economic vitality.
3. The City of Gallup and McKinley County have lost a substantial portion of their industrial and commercial base, leading to employment loss, stagnation and associated ills. The City and County (over half of whose residents are Navajo) are poised to attract and foster new industrial and other business development due to the availability of land and Gallup's location as a rail and road transportation hub. Delivery of Project Water will turn those possibilities to realities. In economic terms, the Project is a "game changer" for the City and County.
4. The Navajo Nation, Gallup and the County were severely impacted by the Covid pandemic (Gallup was literally closed and quarantined at the pandemic's height) due in substantial part to longstanding limitations in the availability of health care services. Recently, the Nation and Indian Health Services (IHS) determined to establish a new hospital on land owned by the Nation near Gallup's northern boundary and adjacent to land the City is in the process of annexing. The new hospital will substantially expand and improve the delivery of health care services to members of the Nation, and will foster economic development in the City, the County and on the Reservation. The availability of Project water is key to the new hospital's success and sustainability.

These and other critical Project benefits are mirrored by their opposites should the Act fail to pass. The Project, 15 years into its planning and construction at a cost of about \$1.5 billion, is largely complete. The Act's failure will not only strand those massive investments, it will undermine trust in the Project and its founding Settlement by forcing the Reservation and the City and County to continue their reliance on increasingly scarce groundwater. Communities will continue to stagnate, economic opportunities will lapse and go elsewhere, and the health of those on the Reservation and in the City and County will suffer. Passage of the Act quite literally means the difference between a trust honored through an assured future and one diminished by doubt and contingency.

Each of you has our thanks and full-fledged support in advancing the Act, and we are confident you will each do your best to assure its passage.

Sincerely,

City of Gallup, New Mexico

Louis Bonaguidi, Mayor

Linda Garcia, City Councilor

Michael Schaaf, City Councilor

Sarah Piano, City Councilor

Ron Molina, City Councilor

McKinley County, New Mexico

Robert Baca, Chairperson

Danielle Notah, County
Commissioner

Walt Eddy, County Commissioner

Statement for the Record

David Eason
City Attorney of Gallup

INTRODUCTION

Chairman Cliff Bentz, Ranking Member Jared Huffman, and Members of the Subcommittee,

I want to first thank you for inviting and giving me the opportunity to testify today before the House Committee on Natural Resources Subcommittee on Water, Wildlife and Fisheries regarding H.R. 3977-The Navajo-Gallup Water Supply Project Amendments Act of 2023.

My name is David Eason and I am the City Attorney for Gallup, New Mexico. The City of Gallup is composed of approximately 20,000 diverse individuals. Gallup lies in the heart of Native American ancestral homelands. Tribal members—members of the Navajo, Hopi, and Zuni tribes—make up 49.1% of the population. Today, I am here to support and provide an overview of The Navajo Water Supply Project and to underscore the critical need for passage of H.R. 3977, introduced by Rep. Teresa Leger Fernandez on June 9th of 2023. H.R. 3977 recognizes and addresses the pressing need to provide sustainable water resources, improve infrastructure, and promote the well-being of the communities in the region.

Water is essential for healthy and fulfilling lives. Long-standing water uncertainties and shortages undermine public health and economic development, and touch virtually all aspects of daily life. Water settlements protect Tribal Nations' senior water rights, ensuring reliable and safe water for drinking, cooking, and sanitation. They improve public health and the environment on reservations, support growing and sustainable economies, promote Tribal sovereignty and self-sufficiency, and fulfill the U.S.'s trust responsibilities.

Areas served by the Project currently rely on a depleting, expensive, and low quality groundwater supply that is inadequate both for current and future needs. Passage of the Bill is crucial to avoid delays in Project completion, thereby ensuring ample supplies of clean water for Navajo and other native communities into the foreseeable future and beyond. Having invested approximately \$46 million in Project capital, together with other expenses and countless hours of personnel time, the City of Gallup has pegged its future and the future of its residents (about 45% of whom are Navajo) on the successful completion of the Project. If the Bill does not

pass, the City's future is in substantial doubt. This Bill must pass before its funding runs out. It's time to finally fulfill promises and secure water rights for the Navajo Nation and surrounding communities.

The importance of this Bill's passage is underscored by its bipartisan support in both the Senate and House, with co-sponsorship from both Democrats and Republicans. The Senate Bill uniquely includes provisions to extend water supplies to Navajos residing in Utah, highlighting its comprehensive approach to addressing water needs across state lines. Bipartisan backing reflects the universal recognition of the necessity and urgency of ensuring water security and fulfilling the nation's commitments to Tribal communities.

BACKGROUND

CONCEPT OF WATER AGREEMENTS

The law governing Tribal water rights was first established in *Winters v. United States*, a case concerning the Milk River in Montana, which bordered the Fort Belknap Indian Reservation.¹ Non-Indians had diverted the river's waters for irrigation, depriving the reservation of water. The United States sued to stop the diversion.² The Supreme Court eventually heard the case and determined that, although there was no specific treaty regarding the Milk River, an agreement existed that designated the reservation as a permanent home for the tribes. The Court noted that the reservation lands were arid and "in order to make them productive require large quantities of water."³ The Court held that the tribes did not give up their water rights when establishing the reservation, and that their rights superseded those of non-native landowners who obtained state law rights after the tribes' agreement.⁴ The Court further held that in interpreting Indian treaties "ambiguities occurring will be resolved from the standpoint of Indians."⁵ Following *Winters*, courts have generally held that "tribes have a reserved right to water sufficient to fulfill the purpose of their reservations," which rights are effective as of "the date the reservations were established."⁶

Since 1990, the Department of the Interior's policy has been to resolve Indian water rights through negotiated settlements rather than litigation. The approach and implementation of these settlements require federal action.⁷ As of October of 2023, 39 Indian water rights settlements had been federally approved, the majority of which have been approved and enacted by Congress.⁸

Indian water rights are vested property rights as to which the United States has trust responsibilities.⁹ The United States Supreme Court has long recognized the "distinctive obligation of trust incumbent upon the Government in its dealings" with Native Americans and "under a humane and self imposed policy has found expression in many acts of Congress and numerous decisions of the court, it has **charged itself with moral obligations of the highest responsibility and trust.**"¹⁰ This trust doctrine has been at the center of dealings with Native tribes and is one of the most important principles in federal Indian law.¹¹

The Navajo Water Supply Project

Brief History

The Navajo Water Supply Project has a very long history dating back to the 1970s. In 1971 and 1984, two different studies were conducted to expand water supply to the Navajo communities and the City of Gallup.¹² In 1986, an appraisal-level estimate for a system with a main transmission line along Highway 371 was conducted, and by 2000, five viable alternatives for the project had been

¹ Leonard R. Powell, *The Supreme Court and Tribal Water Rights*, AMERICAN BAR ASSOCIATION, (Jan. 22, 2024), https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/native-american-issues/supreme-court-and-tribal-water-rights/.

² Id.

³ *Winters v. United States*, 207 U.S. 564 (1908).

⁴ Leonard R. Powell, *The Supreme Court and Tribal Water Rights*, AMERICAN BAR ASSOCIATION, (Jan. 22, 2024), https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/native-american-issues/supreme-court-and-tribal-water-rights/.

⁵ *Winters v. United States*, 207 U.S. 564, 576 (1908).

⁶ CHARLES STERN, CONG. RSCH. SERV., R44148, *Indian Water Rights Settlements* (2023).

⁷ CHARLES STERN, CONG. RSCH. SERV., R44148, *Indian Water Rights Settlements* (2023).

⁸ CHARLES STERN, CONG. RSCH. SERV., R44148, *Indian Water Rights Settlements* (2023).

⁹ CHARLES STERN, CONG. RSCH. SERV., R44148, *Indian Water Rights Settlements* (2023).

¹⁰ *Seminole Nation v. United States*, 316 U.S. 286, 297 (1942).

¹¹ U.S. Dep't of the Interior, *What is the Federal Indian Trust Responsibility?* (2017), <https://www.bia.gov/faqs/what-federal-indian-trust-responsibility>.

¹² Bureau of Reclamation, *Navajo-Gallup Water Supply Project*, <https://www.usbr.gov/projects/index.php?id=580>.

evaluated.¹³ The Omnibus Public Land Management Act of 2009 authorized this project as part of the Navajo Nation San Juan River Basin Water Rights Settlement, with a completion deadline of December 31, 2024, unless extended by agreement among the Navajo Nation, New Mexico, and the Department of the Interior.

The Navajo Gallup Water Supply Project spans about 300 miles of pipeline, with 19 pumping plants and two water treatment plants. It provides sustainable water from the San Juan River to the eastern Navajo Nation, southwestern Jicarilla Apache Nation, and Gallup, New Mexico, meeting the long-term needs of approximately 250,000 people. Currently, these areas rely on a depleting groundwater supply that is expensive to access, of poor quality, and inadequate to meet the current and future demands of the served population. Over 30% of the Navajo Nation hauls water to meet their daily needs.

In 2020, water deliveries to Navajo communities began on the Project's Cutter Lateral. Deliveries to the Jicarilla Apache Nation from the Cutter Lateral began in 2021. On the Project's San Juan Lateral, pipeline, pump station and storage construction is nearly complete, with construction of treatment and storage facilities slated for completion in 2028.¹⁴

The Project Construction Committee, comprising representatives from the Bureau of Reclamation, Gallup, the Navajo Nation, the Jicarilla Apache Nation, and New Mexico, sets the project schedule, which depends on funding from Congress and Project Participants.

The Project includes two principal pipelines (referred to as "laterals"): the Cutter Lateral and the San Juan Lateral. The Cutter Lateral transports water from the Cutter Reservoir via pipelines and pumping stations to the Cutter Lateral Water Treatment Plant, from which treated water is supplied to communities on and around the Jicarilla reservation. The San Juan Lateral diverts water from the San Juan River at the San Juan Generating Station diversion point, transports the water to a nearby reservoir for storage, then conveys the water through pumping stations and pipelines to the San Juan Lateral Water Treatment Plant, from which treated water is delivered to Navajo communities in western New Mexico and to Gallup. At peak construction, the project is expected to create 600–650 jobs.

Navajo-Gallup Water Supply Project Amendments Act of 2023 (H.R. 3977)¹⁵

H.R. 3977 amends the Northwestern New Mexico Rural Water Projects Act to extend the Project's completion date, provide additional funding, and add other improvements to the Act.

Highlights of H.R. 3977:

1. Increase the authorized Project cost ceiling: The Bill increases authorized funding from \$870 million to \$2.175 billion.
2. Deferred Construction Fund:
 - A. The Bill establishes a deferred construction fund for project facilities and allows for future construction or alternative facilities.
3. Project Service Area Expansion: The Bill authorizes expansion of the project to service area to include communities within Rio San Jose Basin, New Mexico, and Lupton, Arizona, within the Little Colorado River Basin.
4. Land Trust Provisions: The Bill directs the Department of Interior to take specified land into trust for Navajo Nation's benefit, including land where various project facilities are located.
5. Renewable Energy:
 - A. Provides up to \$6.25 million for renewable energy development and \$1.25 million specifically for hydroelectric power development within project facilities.

¹³ Bureau of Reclamation, Navajo-Gallup Water Supply Project, <https://www.usbr.gov/projects/index.php?id=580>.

¹⁴ Bureau of Reclamation, Navajo-Gallup Water Supply Project, <https://www.usbr.gov/projects/index.php?id=580>.

¹⁵ Navajo-Gallup Water Supply Project Amendments Act of 2023, H.R. 3977, 118th Cong. (2023).

6. Management of Trust Funds:
 - A. **Navajo Nation Operations, Maintenance, and Replacement Trust Fund:** Establishment of a trust fund for operations, maintenance, and replacement costs with a maximum appropriation of \$250 million.
 - B. **Jicarilla Apache Nation Operations, Maintenance, and Replacement Trust Fund:** A similar trust fund for the Jicarilla Apache Nation with a maximum appropriation of \$10 million.
7. Eliminate Double Taxation:
 - A. Tribal land:
 - i. Activities related to construction, operation, or maintenance of project facilities on tribal land are subject to Navajo Nation taxation and exempt from state and local taxes.
 - B. Non-Tribal Land:
 - i. Such activities on non-tribal land are subject to state taxation and exempt from Navajo Nation taxes.
8. Deadline Extensions:
 - A. The deadline for constructing project facilities is extended to December 31, 2029.
 - B. Deadlines for waivers and releases are extended from 2025 to 2030.

In sum, the Bill's amendments are designed to enhance funding, expand service areas, manage land trust issues, promote renewable energy, and ensure long-term support for water infrastructure projects benefiting the Navajo Nation, the Jicarilla Apache Nation, and the City of Gallup.

WHY WE ARE HERE TODAY

We are here today to urge the performance of a promise long unfulfilled. In 1868, the U.S., after displacing the Navajo through a series of forced marches known as the Long Walk, entered into a treaty with the Navajo, recognizing their nation, their reserved land, and, under *Winters*, their rights to water. Yet currently, over 30% of the Navajo on the reservation lack running water, and must travel great lengths to collect it.¹⁶

We are here today because the United States, as trustee, holds and exercises fiduciary responsibilities respecting Native Tribes of the highest moral and legal order, including the obligation to protect the ability of Tribes and their citizens to sustain their communities and lives on ancestral lands.

We are here today because water is crucial for healthy and fulfilling lives and because long-standing uncertainties and shortages of water undermine public health and economic development, impacting all aspects of daily life.

We are here today because the City of Gallup, having invested \$46 million in project capital, depends on the Project's success for its future, with nearly 45% of its residents being Navajo.

We are here today because if the Bill does not pass, Gallup's future is in jeopardy. We will do everything we can with your Subcommittee and the Congress. Thank you for the opportunity to present this testimony to you today.

¹⁶Leonard R. Powell, *The Supreme Court and Tribal Water Rights*, AMERICAN BAR ASSOCIATION, (Jan. 22, 2024), https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/native-american-issues/supreme-court-and-tribal-water-rights/.

Statement for the Record

Louis Bonaguidi
Mayor of Gallup, New Mexico

INTRODUCTION

Chairman Cliff Bentz, Ranking Member Jared Huffman, and Members of the Subcommittee, I want to first thank you for inviting and giving me the opportunity to testify today before the House Committee on Natural Resources Subcommittee on Water, Wildlife and Fisheries regarding H.R. 3977, The Navajo-Gallup Water Supply Project Amendments Act of 2023.

My name is Louis Bonaguidi and I am the Mayor of Gallup, New Mexico. I was born and raised in Gallup, and am proud to continue serving this community. Gallup, New Mexico is composed of approximately 20,000 diverse individuals. Gallup lies in the heart of Native American ancestral homelands. Tribal members—members of the Navajo, Hopi, and Zuni tribes—make up 49.1% of the population. Today, I am here to support and provide an overview of The Navajo Water Supply Project and to underscore the critical need for passage of H.R. 3977, introduced by Rep. Teresa Leger Fernandez on June 9th of 2023. H.R. 3977 recognizes and addresses the pressing need to provide sustainable water resources, improve infrastructure, and promote the well-being of the communities in the region.

Persistent poverty and long-standing water uncertainties touch virtually all aspects of daily life. Despite substantial funding, the over \$1 billion invested may yield minimal progress if this bill is not passed, leaving residents with inadequate returns on the financial efforts made.

BACKGROUND

The Navajo-Gallup Water Supply Project encompasses approximately 300 miles of pipeline, incorporating 19 pumping plants and two water treatment facilities. This project delivers sustainable water from the San Juan River to the eastern Navajo Nation, southwestern Jicarilla Apache Nation, and Gallup, New Mexico, addressing the long-term needs of around 250,000 individuals. Presently, these areas depend on a diminishing groundwater supply that is costly to access, of poor quality, and insufficient to meet both current and future demands. Over 30% of the Navajo Nation transports water to fulfill their daily needs.

Water deliveries to Navajo communities began on the Project's Cutter Lateral in 2020 and deliveries to the Jicarilla Apache Nation started in 2021. Construction on the San Juan Lateral, including pipeline, pump station, and storage facilities, is nearing completion, with final treatment and storage facilities expected to be completed by 2028.¹

HISTORY AND AUTHORIZATION

The Omnibus Public Land Management Act of 2009 authorized this project as part of the Navajo Nation San Juan River Basin Water Rights Settlement, with a completion deadline of December 31, 2024, unless extended by agreement among the Navajo Nation, New Mexico, and the Department of the Interior.

PROJECT COMPONENTS

The project includes two main pipelines (referred to as "laterals"): the Cutter Lateral and the San Juan Lateral. The Cutter Lateral transports water from the Cutter Reservoir to the Cutter Lateral Water Treatment Plant, supplying treated water to communities on and around the Jicarilla reservation. The San Juan Lateral diverts water from the San Juan River, storing it in a nearby reservoir before transporting it to the San Juan Lateral Water Treatment Plant, which provides treated water to Navajo communities in western New Mexico and Gallup. At peak construction, the project is expected to create 600–650 jobs.

PERSISTENT POVERTY & WATER SECURITY IN GALLUP, NEW MEXICO

Gallup, New Mexico, meets the criteria for persistent poverty, having sustained a poverty rate of 20% or more since the 1990 census. As of 2022, 33.6% of the population was in poverty.² Simultaneously, "there are few places in the world where

¹ Bureau of Reclamation, *Navajo-Gallup Water Supply Project*, <https://www.usbr.gov/projects/index.php?id=580>.

² Gallup, New Mexico, Data USA (2022), <https://datausa.io/profile/geo/gallup-nm-31000US23700>

water holds such profound significance as here in New Mexico.”³ Poverty and water scarcity pose severe dangers to communities. Poverty limits access to basic needs and water scarcity exacerbates these issues by restricting access to clean water, essential for drinking, sanitation, and agriculture. This can result in the spread of diseases, dehydration, food insecurity, and heightened stress, undermining socio-economic development and quality of life.⁴

At the current rate, New Mexico will have 25% less water by the time a high school graduate of 2024 reaches retirement age.⁵ There is no time to waste in ensuring water delivery to the population. Immediate action is required to mitigate the future detrimental effects of inadequate progress in water infrastructure. The COVID-19 pandemic exacerbated the urgency of water access in Gallup, a community already grappling with chronic water scarcity. In 2021, five of Gallup’s 16 water wells, including two of the largest, ceased producing water.⁶ Delays in the project forces a significant number of our population to rely on these “strained groundwater sources.”⁷ With no nearby rivers, the city relies on wells tapping groundwater stored in underground sandstone. Water levels have declined over the decades, increasing scarcity and causing great concern among residents.⁸ Thousands of Navajos and residents of Gallup lack clean and running water at home.⁹ Across the Navajo Nation, residents use a fraction of the water the average American uses due to the most severe drought in a century. They must travel long distances to haul water for personal use and to sustain livestock.¹⁰

Water is fundamental to sustainable development, socio-economic growth, and a healthy and capable population.¹¹ Studies on drought have found an association with acute stress and worsening of chronic diseases, dehydration, higher risk for heat-related illness, and greater infectious disease incidence.¹² Moreover, mental distress heightens when there are service shut offs and financial stress related to access to clean water.¹³ Achieving water equity, quality, and accessibility in Gallup, NM can be achieved through the passage of H.R. 3977.

The city is counting on the passage of H.R. 3977 to provide water to a population that has been promised water delivery since 2009 and to build a stronger future for the community.

CONCLUSION

The passage of H.R. 3977, the Navajo-Gallup Water Supply Project Amendments Act of 2023, is vital for addressing the water scarcity issues in Gallup, New Mexico, and surrounding Navajo Nation communities. The project, authorized in 2009, delivers sustainable water resources and improves infrastructure to support approximately 250,000 people. The urgency of this legislation cannot be overstated, as delays exacerbate the region’s water challenges, impacting health, socio-economic development, and overall quality of life. The passing of this bill fulfills long-standing promises and secures a sustainable future for these communities.

Thank you for the opportunity to present this testimony to you today. We remain committed to working with your Subcommittee and Congress. I am happy to answer any questions.

³ *50-Year Water Action Plan*, NM.GOV, <https://www.nm.gov/water-security-in-new-mexico/>.

⁴ *Water and Poverty: How Access to Safe Water Reduces Poverty*, Lifewater (Dec. 26 2014), <https://lifewater.org/blog/water-poverty/>.

⁵ *50-Year Water Action Plan*, NM.GOV, <https://www.nm.gov/water-security-in-new-mexico/>.

⁶ Elizabeth Miller, *Navajo-Gallup water delay spurs problem solving in arid Southwest*, New Mexico in Depth (May 7, 2021) <https://nminddepth.com/2021/navajo-gallup-water-delay-spurs-problem-solving-in-arid-southwest/>.

⁷ *Id.*

⁸ *Id.*

⁹ Richard Tsong-Taatar, *On the Navajo Nation, a life without water*, Searchlight New Mexico (Nov. 29, 2023), <https://searchlightnm.org/on-the-navajo-nation-a-life-without-water/>.

¹⁰ *Id.*

¹¹ *Water*, United Nations, <https://www.un.org/en/global-issues/water>.

¹² Lara J. Cushing et al., *Water Insecurity And Population Health: Implications For Health Equity And Policy*, Health Affairs (Oct. 12 2023), <https://www.healthaffairs.org/content/briefs/water-insecurity-and-population-health-implications-health-equity-and-policy#:~:text=Drought%20can%20also%20lead%20to,and%20greater%20infectious%20disease%20incidence.>

¹³ *Id.*

NORTHERN PUEBLOS TRIBUTARY WATER RIGHTS ASSOCIATION
Albuquerque, New Mexico

July 16, 2024

Hon. Cliff Bentz, Chairman
 Hon. Jared Huffman, Ranking Member
 House Natural Resources Committee
 Subcommittee on Water, Wildlife and Fisheries
 1324 Longworth House Office Building
 Washington, DC 20515

Re: Support of the Pueblo of Nambé, Pueblo of Pojoaque, Pueblo de San Ildefonso and Pueblo of Tesuque for H.R. 6599

Dear Representative Bentz and Representative Huffman:

The Pueblo of Nambé, the Pueblo of Pojoaque, the Pueblo de San Ildefonso, and the Pueblo of Tesuque (collectively “Pueblos”), as the four members of the Northern Pueblos Tributary Water Rights Association, write this letter in support of the bill sponsored and introduced by Representative Leger-Fernández of the New Mexico delegation, H.R. 6599, to restore interest on the *Aamodt* Settlement Pueblos’ Fund established by section 617(c)(1)(B) of the *Aamodt* Settlement Act, Pub. L. No. 111-291. The Pueblos herein state their support for the bill.

Section 617(c)(1)(B) of the *Aamodt* Settlement Pueblos’ Fund authorized the appropriation of \$37.5 million “to assist the Pueblos in paying the Pueblos’ share of the cost of operating, maintaining, and replacing the Pueblo Water Facilities and Regional Water System.” The *Aamodt* Settlement Act appropriated an additional \$15 million for the Pueblos, for a total of fund amount of \$52.5 million. The authorized funds are for the Pueblos only, for operation and maintenance expenses related to the Pojoaque Basin Regional Water System, the critical infrastructure necessary to effectuate the *Aamodt* settlement. Unlike other Indian water rights settlements, the *Aamodt* Settlement Act did not provide that the funds authorized in section 617 could be invested between the authorization date and the settlement enforcement date, which was September 15, 2017. As a result, the Pueblos’ funds sat for a period of 81 months, uninvested, without earning any interest.

H.R. 6599 will restore interest for that 81-month period so that the Pueblos’ settlement will be treated equally to other Indian water rights settlements whose funds Congress allowed to be invested. The Pueblos will, as a result of the bill, receive approximately \$4.3 million which will be added to the operation, maintenance and replacement fund shared by the Pueblos. The restored funds will bring the Pueblos into parity with other Indian tribes who have settled their water rights and invested the funds appropriated to them by Congress. Given the expectation of increasing costs to the Pueblos relating to operation, maintenance and replacement of the Regional Water System, the addition of \$4.3 million in forgone earned interest will be critically important.

The Pueblos wish to express their appreciation your actions to ensure that the Pueblos are treated on equal footing with other Indian tribes in this country. We thank you for undertaking this important rectification of the *Aamodt* Settlement Act.

Sincerely,

Governor Nathaniel S. Porter

Governor Jenelle Roybal

Governor Christopher Moquino

Governor Milton Herrera

**La Asociación de las Acequias del Río Vallecitos
Ojo Caliente, NM**

July 2, 2024

Hon. Bruce Westerman, Chairman
House Natural Resources Committee
Hon. Cliff Bentz, Chairman
Subcommittee on Water, Wildlife, and Fisheries
1324 Longworth House Office Building
Washington, DC 20515

Re: Request for hearing on H.R. 8685, Ohkay Owingeh Rio Chama Water Rights Settlement Act of 2024

Dear Chairmen Westerman and Bentz:

I am writing on behalf of La Asociación de las Acequias del Río Vallecitos, Tusas y Ojo Caliente to convey our support for the Rio Chama water rights settlement and to request a hearing on this critical legislation.

Our regional acequia association represents approximately 32 community acequias and hundreds of *parciantes* (water-rights users) in our region who irrigate almost 2,500 acres collectively. The proposed settlement will safeguard our water rights and traditional practices.

Approval of this settlement will mark a significant milestone for northern New Mexico. The settlement promises not only enhanced water security and the preservation of our historic lifestyle and cultural traditions but also substantial economic benefits throughout the region, spurring business activity and creating job opportunities.

This settlement is a well-designed, inclusive, and thorough resolution. The residents of Ojo Caliente and surrounding communities are supportive of this agreement. We at La Asociación de las Acequias del Río Vallecitos, Tusas y Ojo Caliente earnestly urge you to assist in enacting this bill into law.

Sincerely,

LUIS J. PEÑA,
Vice-President

**Asociación de Acéquias Norteñas de Rio Arriba
Tierra Amarilla, New Mexico**

June 29, 2024

Hon. Bruce Westerman, Chairman
House Natural Resources Committee
Hon. Cliff Bentz, Chairman
Subcommittee on Water, Wildlife, and Fisheries
1324 Longworth House Office Building
Washington, DC 20515

Re: Request for hearing on H.R. 8685, Ohkay Owingeh Rio Chama Water Rights Settlement Act of 2024

Dear Chairmen Westerman and Bentz:

On behalf of the Asociación de Acéquias Norteñas de Rio Arriba, I want to express our strong and enthusiastic support for the Rio Chama water rights settlement, and we respectfully request a hearing on this important legislation. Our organization represents 545 individual private individuals and families irrigating nearly 8,000 acres in the upper Rio Chama, whose water rights and traditional uses will be protected by the settlement, if enacted.

If this settlement is approved, it will be a monumental achievement for our part of Northern New Mexico. The settlement is comprehensive and resolves major issues on the river. In addition to settling the Pueblo water rights, the agreement comprises water sharing terms that benefit all water users on the Rio Chama, including

the 80 community non-tribal ditches that rely on this vital source for their continued existence and vitality.

In addition to greater security in water supply and preservation of our historic way of life and cultural practices, the settlement will generate substantial economic benefits up and down the valley, increasing business activity and employment opportunities.

This is a well-crafted, inclusive and comprehensive settlement. Residents of the Rio Chama Valley are greatly encouraged and very supportive of this settlement. The Acequias Norteñas respectfully urge you to help us get this bill enacted into law.

Very Truly Yours,

ANTONIO MANZANARES,
President

EL RITO DITCH ASSOCIATION
El Rito, NM

July 1, 2024

Hon. Bruce Westerman, Chairman
House Natural Resources Committee
Hon. Cliff Bentz, Chairman
Subcommittee on Water, Wildlife, and Fisheries
1324 Longworth House Office Building
Washington, DC 20515

Re: Request for hearing: H.R. 8685, Ohkay Owingeh Rio Chama Water Rights Settlement Act of 2024

Dear Chairmen Westerman and Bentz:

I am writing on behalf of the El Rito Ditch Association, an association of the 11 community acequias located near the Village of El Rito in Rio Arriba County, New Mexico, in regard to H.R. 8685. This legislation would authorize and approve the Ohkay Owingeh Rio Chama Water rights Settlement Agreement, entered into by the major water users of the Rio Chama, including the El Rito Ditch Association. The El Rito Ditch Association strongly supports the settlement and respectfully asks that you schedule and conduct a hearing on the legislation soon.

The El Rito Ditch Association members provide irrigation water from the Rio El Rito to over four hundred water rights owners who collectively irrigate about 2,500 acres. The Rio El Rito is a tributary to the Rio Chama, and the Association has been actively involved in the water adjudication suit, *State of New Mexico v. Aragon*, US Dist. Ct. No. 69cv07941 D.N.M. since its inception to defend the water rights of the local users. The continuity of irrigation is essential to the lifeblood of the local area. The local settlement agreement of Ohkay Owingeh's water rights claims from the Rio Chama protects the continued water uses that have sustained our rural community since 1780. It is constructed around a water sharing agreement that benefits the historic non-Indian community ditches like El Rito, as well as Ohkay Owingeh pueblo. In addition, the settlement provides that the non-Indian parties will have access to funding provided by the State of New Mexico that will allow improvements to infrastructure owned by the non-Indian acequias. Overall, the settlement agreement is inclusive and comprehensive and will be overall beneficial to all water users on the Rio Chama. The El Rito Ditch Association respectfully request that schedule a hearing on this important legislation, and help the local parties see finality with it is enacted into law.

Respectfully,

STEVE GALLEGOS,
President

**Rio Rancho
Rio Rancho, NM**

October 17, 2023

Hon. Teresa Leger Fernandez
House Natural Resources Committee
1324 Longworth House Office Building
Washington, DC 20515

Re: Support for H.R. 1304/S. 595, the Pueblos of Jemez and Zia Water Rights Settlement Act of 2022 (Title II)

Dear Congresswoman Leger Fernandez:

The City of Rio Rancho appreciates the opportunity to thank you for sponsoring H.R. 1304 that includes the Pueblos of Jemez and Zia Water Rights Settlement Act of 2022, and for your continued support of this important legislation. The Bill provides for Congressional approval of the Settlement Agreement for the determination of the water rights of the Pueblos of Jemez and Zia and provides multiple benefits for the region and area water users including the City of Rio Rancho. The City approved and is a signatory to the Settlement Agreement and wholeheartedly supports full approval of legislation by Congress to allow the settlement to move forward. The settlement resolves the Pueblos' water claims concluding longstanding litigation over those claims; protects the City's essential water rights for municipal purposes; and provides a collaborative basis to manage the vital and shared water resources of the Jemez Basin for all water users going forward.

We thank you for your representation of the City's interests and for your efforts to obtain Congressional approval of the Pueblos of Jemez and Zia Water Rights Settlement Act of 2022. We would welcome the opportunity to answer any questions you may have.

Sincerely,

MATTHEW GEISEL,
City Manager

**La Acequia Madre del Ojo del Gallo
San Rafael, New Mexico**

Hon. Teresa Leger Fernandez
House Natural Resources Committee
1324 Longworth House Office Building
Washington, DC 20515

Re: Support for H.R. 1304/S. 595, the Rio San José and Rio Jemez Water Settlements Act of 2023

Dear Congresswoman Leger Fernandez:

We are writing on behalf of La Acequia Madre del Ojo del Gallo, an acequia in the Rio San Jose Basin, to thank you for sponsoring Bill H.R. 1304, the Rio San Jose and Rio Jemez Water Settlements Act of 2023, and for your continued support of this very important legislation. This Bill gives Congressional approval of the Settlement Agreement for determination of the water rights of the Pueblos of Acoma and Laguna and includes many benefits for our Acequia and parciantes. The settlement was reached after many years and hundreds of hours of intense negotiations among the principal water right claimants in the Rio San Jose Basin in New Mexico, including this Acequia and the other eight Acequias and Community Ditches located in the Rio San Jose Basin.

We believe the Settlement Agreement contains many provisions beneficial to our Acequias and to this community as a whole. It brings the 40 year litigation over the Pueblos' water rights to a close while containing many protections for our own irrigation rights from the Pueblos' water uses. The Pueblos will not be able to make priority calls against our water rights and we will have the ability to evaluate and protest new Pueblo water projects and changes in their water usage. The State adjudication Court will retain jurisdiction to enforce and interpret the Settlement

Agreement and appeals from Pueblo administrative decisions as to their water rights. The parties will seek State legislation to expressly authorize such appeals to the State adjudication Court. In addition, \$12 Million in State funding will be provided for development of water projects to improve and conserve the Acequias' water supplies and to evaluate and protest Pueblo water projects that might impact Acequia water supplies.

Because of the many benefits it provides, our Acequia approved the Settlement Agreement by vote of our parciantes meeting in quorum after public notice given in accordance with our Bylaws and the New Mexico Open Meetings Act. We understand that another Indian water rights settlement, the Fort Belknap Indian Community Water Rights Settlement Act of 2023, recently received Senate approval by attaching it to the National Defense Authorization Act bills voted on by the Senate. If an opportunity arises for H.R. 1304 to be similarly attached to the NDAA or other legislation that might be coming up for vote, we hope that you will advocate for that.

We thank you very much for your representation of our interests and all your efforts on our behalf to obtain Congressional approval of the Rio San José Settlement Agreement. We would welcome the opportunity to discuss this further with you and your staffers and answer any questions you may have.

Sincerely,

RANDALL CHAVEZ,
President

CEBOLLETITA ACEQUIA ASSOCIATION

Hon. Teresa Leger Fernandez
House Natural Resources Committee
1324 Longworth House Office Building
Washington, DC 20515

Re: Support for H.R. 1304/S. 595, the Rio San José and Rio Jemez Water Settlements Act of 2023

Dear Congresswoman Leger Fernandez:

We are writing on behalf of the Cebolletita Acequia Association, an acequia in the Rio San Jose Basin, to thank you for sponsoring Bill H.R. 1304, the Rio San José and Rio Jemez Water Settlements Act of 2023, and for your continued support of this very important legislation. This Bill gives Congressional approval of the Settlement Agreement for determination of the water rights of the Pueblos of Acoma and Laguna and includes many benefits for our Acequia and parciantes. The settlement was reached after many years and hundreds of hours of intense negotiations among the principal water right claimants in the Rio San José Basin in New Mexico, including this Acequia and the other eight Acequias and Community Ditches located in the Rio San José Basin.

We believe the Settlement Agreement contains many provisions beneficial to our Acequias and to this community as a whole. It brings the 40 year litigation over the Pueblos' water rights to a close while containing many protections for our own irrigation rights from the Pueblos' water uses. The Pueblos will not be able to make priority calls against our water rights and we will have the ability to evaluate and protest new Pueblo water projects and changes in their water usage. The State adjudication Court will retain jurisdiction to enforce and interpret the Settlement Agreement and appeals from Pueblo administrative decisions as to their water rights. The parties will seek State legislation to expressly authorize such appeals to the State adjudication Court. In addition, \$12 Million in State funding will be provided for development of water projects to improve and conserve the Acequias' water supplies and to evaluate and protest Pueblo water projects that might impact Acequia water supplies.

Because of the many benefits it provides, our Acequia approved the Settlement Agreement by vote of our parciantes meeting in quorum after public notice given in accordance with our Bylaws and the New Mexico Open Meetings Act. We understand that another Indian water rights settlement, the Fort Belknap Indian Community Water Rights Settlement Act of 2023, recently received Senate approval by attaching it to the National Defense Authorization Act bills voted on by the Senate. If an opportunity arises for H.R. 1304 to be similarly attached to the NDAA

or other legislation that might be coming up for vote, we hope that you will advocate for that.

We thank you very much for your representation of our interests and all your efforts on our behalf. We would welcome the opportunity to discuss this further with you and your staffers and answer any questions you may have.

Sincerely,

EDWARD MICHAEL,
Chair

COMMUNITY DITCH OF SAN JOSE DE LA CIENEGA
San Fidel, New Mexico

October 2, 2023

Hon. Teresa Leger Fernández
House Natural Resources Committee
1324 Longworth House Office Building
Washington, DC 20515

Re: Support for H.R. 1304/S. 595, the Rio San José and Rio Jemez Water Settlements Act of 2023

Dear Congresswoman Leger Fernández:

We are writing on behalf of the Community Ditch of San Jose de la Cienega, an acequia in the Rio San Jose Basin, to thank you for sponsoring Bill H.R. 1304, the Rio San José and Rio Jemez Water Settlements Act of 2023, and for your continued support of this very important legislation. This Bill gives Congressional approval of the Settlement Agreement for determination of the water rights of the Pueblos of Acoma and Laguna and includes many benefits for our Acequia and parciantes. The settlement was reached after many years and hundreds of hours of intense negotiations among the principal water right claimants in the Rio San Jose Basin in New Mexico, including this Acequia and the other eight Acequias and Community Ditches located in the Rio San José Basin.

We believe the Settlement Agreement contains many provisions beneficial to our Acequias and to this community as a whole. It brings the 40 year litigation over the Pueblos' water rights to a close while containing many protections for our own irrigation rights from the Pueblos' water uses. The Pueblos will not be able to make priority calls against our water rights and we will have the ability to evaluate and protest new Pueblo water projects and changes in their water usage. The State adjudication Court will retain jurisdiction to enforce and interpret the Settlement Agreement and appeals from Pueblo administrative decisions as to their water rights. The parties will seek State legislation to expressly authorize such appeals to the State adjudication Court. In addition, \$12 Million in State funding will be provided for development of water projects to improve and conserve the Acequias' water supplies and to evaluate and protest Pueblo water projects that might impact Acequia water supplies.

Because of the many benefits it provides, our Acequia approved the Settlement Agreement by vote of our parciantes meeting in quorum after public notice given in accordance with our Bylaws and the New Mexico Open Meetings Act. We understand that another Indian water rights settlement, the Fort Belknap Indian Community Water Rights Settlement Act of 2023, recently received Senate approval by attaching it to the National Defense Authorization Act bills voted on by the Senate. If an opportunity arises for H.R. 1304 to be similarly attached to the NDAA or other legislation that might be coming up for vote, we hope that you will advocate for that.

We thank you very much for your representation of our interests and all your efforts on our behalf. We would welcome the opportunity to discuss this further with you and your staffers and answer any questions you may have.

Sincerely,

Harding Polk II
Chairman

Juanita Aranda-Vigil
Secretary

Beverly Tafoya
Treasurer

Martin Vigil
Mayordomo

**Cubero Acequia Association
Cubero, NM**

Hon. Teresa Leger Fernández
House Natural Resources Committee
1324 Longworth House Office Building
Washington, DC 20515

Re: Support for H.R. 1304/S. 595, the Rio San José and Rio Jemez Water Settlements Act of 2023

Dear Congresswoman Leger Fernández:

We are writing on behalf of the Cubero Acequia Association, an acequia in the Rio San José Basin, to thank you for sponsoring Bill H.R. 1304, the Rio San Jose and Rio Jemez Water Settlements Act of 2023, and for your continued support of this very important legislation. This Bill gives Congressional approval of the Settlement Agreement for determination of the water rights of the Pueblos of Acoma and Laguna and includes many benefits for our Acequia and parciantes. This settlement was reached after many years and hundreds of hours of intense negotiations among the principal water right claimants in the Rio San Jose Basin in New Mexico, including this Acequia and the other eight Acequias and Community itches located in the Rio San Jose Basin.

We believe the Settlement Agreement contains many provisions beneficial to our Acequia and to this community as a whole. It brings this 40 litigation over the Pueblos' water rights to a close while containing many protections for our own irrigation rights from the Pueblos' water uses. Of prime importance, the Pueblos will not be able to make priority calls against our water rights, and we will have the ability to evaluate and protest new Pueblo water projects and changes in their water usage. Second, the State adjudication Court will retain jurisdiction to enforce and interpret the Settlement Agreement and appeals from Pueblo administrative decisions as to their water rights. The parties will be seeking State legislation to authorize such appeals to the State adjudication Court. In addition, \$12 Million in State funding will be provided for development of water projects to improve and conserve our water supplies and evaluate and protest Pueblo water projects that might impact Acequia water supplies.

Because of the many benefits it provides, our Acequia approved the Settlement Agreement by vote of our parciantes meeting in quorum after public notice given in accordance with our Bylaws and the New Mexico Open Meetings Act. We understand that another Indian water rights settlement, the Fort Belknap Indian Community Water Rights Settlement Act of 2023, recently received Senate approval by attaching it to the National Defense Authorization Act bills voted on by the Senate. If an opportunity arises for H.R. 1304 to be similarly attached to the NDAA or other legislation that might be coming up for vote, we hope that you will advocate for that.

We thank you very much for your representation of our interests and all your efforts on our behalf. We would welcome the opportunity to discuss this further with you and your staffers and answer any questions you may have.

Sincerely,

PETER SALAZAR,
Chair

CUBERO ACEQUIA ASSOCIATION

**Resolution Approving Settlement Agreement in State of New Mexico ex. rel.
State Engineer v. Kerr McGee Corp. et al.**

**Cibola Cause No. D-1333-CV-198300190 and No. D-1333-CV-198300220
(Combined)**

WHEREAS, Cubero Acequia Association (“Association”) is an organized acequia and pursuant to § 73-2-28, NMSA 1978, is a political subdivision of the State of New Mexico; and

WHEREAS, the Association is a party in the pending stream adjudication of the Rio San Jose stream system styled as State of New Mexico ex. rel. State Engineer v. Kerr McGee Corp. et. al. Cibola Cause No. D-1333-CV-198300190 and No. D-1333-CV-198300220 (Combined); and

WHEREAS, counsel and the hydrologist for the Association and for the other area acequias and community ditches have engaged in confidential settlement negotiations over the nature and extent of the water rights of the Pueblos of Acoma and Laguna and the Navajo Nation in the Rio San Jose Basin for a number of years; and

WHEREAS, counsel and hydrologists for the participating parties have now negotiated a Local Settlement Agreement for consideration by the Association; and

WHEREAS, these settlement documents are still being finalized and may require grammatical and minor language corrections and clarifications; and

WHEREAS, notice of a special meeting of the members of the Association to consider this agreement was properly posted as required by the Association’s bylaws; and

WHEREAS, the members of the Association then met in a special meeting with a quorum present to review and consider this proposed settlement agreement.

NOW, THEREFORE, BE IT RESOLVED by a majority vote of its members present that the Association hereby approves the Local Settlement Agreement.

BE IT FURTHER RESOLVED that counsel for the Association are authorized to propose and to accept and approve what they consider to be any minor modifications to these settlement documents.

**VILLAGE OF MILAN
Milan, New Mexico**

September 21, 2023

Hon. Teresa Leger Fernández
House Natural Resources Committee
1324 Longworth House Office Building
Washington, DC 20515

Re: Support for H.R. 1304/S. 595, the Rio San José and Rio Jemez Water Settlements Act of 2023

Dear Congresswoman Leger Fernández:

The Village of Milan, New Mexico, thanks you for sponsoring H.R. 1304, The Rio San José and Rio Jemez Water Settlements Act of 2023, and for your continued support of this critically important legislation. This Bill gives Congressional approval of the Settlement Agreement for determination of the water rights of the Pueblos of Acoma and Laguna and includes many benefits for the Village and its residents. This settlement was reached after many years of litigation and intense settlement negotiation between the Pueblos and the other major water rights claimants in the Rio San Jose Basin in New Mexico, including Milan.

The Board of Trustees of the Village of Milan unanimously approved the Settlement Agreement on May 11, 2022, because it protects and benefits the Village in

several ways. First, under the settlement the Pueblos have agreed to give up their right to request a priority call against Milan and other junior non-Pueblo water rights holders. Second, the settlement provides protections for the Village's municipal water supply from impairment caused by the Pueblos' future development of their water rights. Third, the State adjudication court will retain jurisdiction to enforce and interpret the Settlement Agreement and hear appeals from Pueblo administrative decisions concerning their water rights. Fourth, the settlement provides for up to \$11 million in State funding to the Village for much needed water and wastewater infrastructure repairs and improvements. A secure municipal water supply and functioning infrastructure are critical to the welfare of our residents and the Village's ongoing efforts at economic development.

We understand that another Indian water rights settlement, The Fort Belknap Indian Community Water Rights Settlement Act of 2023, recently received Senate approval by attaching it to the National Defense Authorization Act bills voted on by the Senate. We hope that you will support attaching H.R. 1304 to the NDAA or other legislation coming up for a vote should such an opportunity arise.

We thank you for representing the Village's interests and your continuing efforts to enact this legislation. Please do not hesitate to contact us should you wish to discuss this matter with us.

Respectfully submitted,

Felix O. Gonzalez
Mayor

Vivian Brumbelow
Mayor Pro Tem

James Mercer
Trustee

Chris Archuleta
Trustee

Roseanne Lopez
Trustee

NEW MEXICO INTERSTATE STREAM COMMISSION
Santa Fe, New Mexico

September 7, 2023

Hon. Martin Heinrich
Hon. Ben Ray Lujan
U.S. Senate
Washington, DC 20510

Hon. Gabriel Vasquez
1517 Longworth House Office Building
Washington, DC 20515

Hon. Teresa Leger Fernández
Hon. Melanie Stansbury
House Natural Resources Committee
1324 Longworth House Office Building
Washington, DC 20515

Re: Letter of Support for H.R. 3977

Dear members of the New Mexico Congressional Delegation:

In March 2009, Congress passed the Omnibus Public Land Management Act of 2009 (Pub. L. 111-11). This Act included an authorization to construct, operate and maintain the Navajo Gallup Water Supply Project ("Project"), as part of a settlement to resolve the Navajo Nation's water rights claims in the San Juan River Basin in New Mexico.

Due to circumstances that were not foreseen in 2009, additional time and resources are needed to complete the Project as authorized by Congress. Therefore, for a couple of years, the Project Participants worked collectively on proposed amendments to Pub. L. 111-11. The participants in the Projects are the Navajo

Nation, the Jicarilla Apache Nation, the City of Gallup, and the State of New Mexico through the New Mexico Interstate Stream Commission ("NMISC"). The State of New Mexico, through the NMISC, is a member of the Project Construction Committee with the other Project Participants.

The amendments were introduced in the Senate as S. 1898 and in the House as H.R. 3977. The NMISC has reviewed the draft of the Navajo-Gallup Water Supply Project Amendments Act of 2023 and appreciates its introduction in Congress. The NMISC supports advancing forward H.R. 3977.

Sincerely,

MARK SANCHEZ,
Chairman

Ms. LEGER FERNÁNDEZ. With that, I yield back.

Mr. BENTZ. Now that everyone has found a place to sit and a place to stand, we are going to go into recess until the end of votes, which is probably about 45 minutes.

[Recess.]

Mr. BENTZ. The Committee will come back to order. the Chair recognizes the Ranking Member for his opening statement.

STATEMENT OF THE HON. RUBEN GALLEGGO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARIZONA

Mr. GALLEGGO. Good morning. Thank you, Chairman Bentz.

Today, we will hear from tribal leaders from Montana, New Mexico, California, and my home state of Arizona on their water rights settlements. The sheer number of bills on today's agenda is not only a testament to the importance of water in Indian Country, but a culmination of generations of work. The legislation before us will resolve decades of litigation, and support tribal economic development and the delivery of water to Tribal Nations.

The Federal Government has a legal obligation to protect tribal water rights and, as the Committee with primary jurisdiction over tribal water rights settlements, it is our responsibility to ensure that tribes have secure access to water for current and future generations. While the tribes before us today have been working on their settlements for decades, the fight for water does not start with litigation nor negotiations.

Tribes have utilized water resources on their ancestral homelands since time immemorial. However, as Europeans begin to migrate and colonize land to form the United States, tribes were forcibly removed from their ancestral homelands and often restricted from accessing significant water resources and cultural resources. As the tribal leaders here today can attest, the United States has a particularly gruesome track record when it comes to their relationship with Tribal Nations, from forced removal, termination, and assimilation policies to the failure to live up to their trust and treaty obligations. These policies have had long-lasting impacts on Tribal Nations, and have left many Native communities without access to clean, reliable water.

Despite the trust responsibility and the fact that tribes typically hold the most senior water rights in several river basins, many tribal water rights remain largely under-developed, and unprotected. While tribes can and do go to court to quantify and enforce their water rights, many tribes seek to negotiate their water rights

through a settlement rather than lengthy, divisive, and costly litigation.

Negotiated water rights settlements bring together tribes, states, the Federal Government, and other water users to resolve competing water claims. Settlements are preferred by parties as they provide tribes with the resources they need to bring clean water to their community and reduce legal, financial, and water supply uncertainty for all the settlement parties. While settlements are preferred, they often require tribes to give up their full senior priority for the ability to get wet water and approval from states, the Federal Government, and non-Indian water users. This is a significant loss for tribes, but a sacrifice many Tribal Nations have made to guarantee access to water for their citizens.

As we will hear today, every settlement is different, but each seeks to provide tailored solutions that benefit all parties and ensure access to reliable, clean drinking water for tribes. I look forward to hearing testimony from the Administration and tribal leaders with us here today on how each of these settlements will better support the development of water infrastructure across tribal communities.

I sincerely hope that we can work across the aisle on each of these bills to move them through the Committee in a timely manner to provide tribes here today with the justice they deserve. And while I am pleased to see 12 tribal water settlements before us today, I would be remiss if I didn't mention my disappointment to see that Ranking Member Grijalva's H.R. 8937 is not included on this agenda.

Ranking Member Grijalva's bill would provide \$2.8 billion in mandatory funding to implement settlements like the ones before us today. Securing a reliable funding stream to enact current and future settlements is essential, and I expect we will hear a lot more about that in testimony today. I respectfully urge the Majority to bring Ranking Member Grijalva's legislation before the Subcommittee as soon as possible.

Lastly, I would like to ask unanimous consent for Representatives Leger Fernández, Stansbury, and Vasquez of New Mexico and Stanton of Arizona to participate in today's hearing.

It is my pleasure to Chair this hearing right now.

Mr. BENTZ. Without objection.

Mr. GALLEGO. Without objection, yes.

Mr. BENTZ. Go ahead.

Mr. GALLEGO. It is my pleasure to be chairing this hearing. This is my 10th year on this Committee. It has really been a labor of love, especially on this Subcommittee, and I thank everyone that has been involved, especially my colleagues across the way, for showing leadership there.

Thank you, Mr. Chair, and I yield back.

Mr. BENTZ. The Chair recognizes Congressman Vasquez for 5 minutes.

STATEMENT OF THE HON. GABE VASQUEZ, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW MEXICO

Mr. VASQUEZ. Thank you, Mr. Chairman, for holding this critical hearing to ratify the water rights settlement for the pueblo of Zuni and the other federally recognized tribes before us here today.

I also want to extend a warm welcome to Governor Arden Kucate, who is testifying before us here today on how this landmark legislation would benefit the Zuni people. It is my honor to represent Zuni Pueblo, who have called the northwest corner of New Mexico home for time immemorial.

My legislation, the Zuni Indian Tribe Water Rights Settlement Act, provides congressional approval for the settlement agreement between the Zuni Tribe, the state of New Mexico, the New Mexico State Engineer, and the United States in its capacity as trustee for the Zuni Tribe.

I ask unanimous consent to enter into the record these letters of support from the state of New Mexico and the Zuni Tribe.

Mr. BENTZ. Without objection.

[The information follows:]

**STATE OF NEW MEXICO
OFFICE OF THE STATE ENGINEER
Sante Fe, NM**

July 12, 2024

Hon. Gabe Vasquez
1517 Longworth House Office Building
Washington, DC 20515

Dear Congressman Vasquez:

The New Mexico Office of the State Engineer is thankful for your commitment in our efforts to settle the water rights claims of the New Mexico Pueblos, Tribes, and Nations, and for introducing H.R. 8951, the *Zuni Tribe Water Rights Settlement Act of 2024* and referring it to the House Committee on Natural Resources for consideration.

The State of New Mexico and the Zuni Tribe reached a settlement agreement in March of 2023 resolving the claims of the Zuni Tribe in the ongoing adjudication of water rights in the Zuni River Basin. The Zuni Tribe Reservation is in one of the most remote and water-scarce river basins in New Mexico. This legislation will provide funding for the Tribe to build critical infrastructure needed to obtain a reliable supply of water and create water security for generations to come. The only other significant surface water rights owners in the region—the Ramah Land and Irrigation Company and the Navajo Nation—support the settlement.

The Settlement Agreement also provides for administrative protections for the non-Tribal water users in the basin, the critically endangered bluehead sucker fish, and importantly, the Zuni Salt Lake, a culturally sacred site for Zuni and many other Pueblos, Tribes, and Nations in the Southwest. Thank you again and please let me know if you have any additional questions or concerns.

Sincerely,

TANYA TRUJILLO,
Deputy State Engineer

PUEBLO OF ZUNI
Zuni, New Mexico

July 9, 2024

Hon. Gabe Vasquez
1517 Longworth House Office Building
Washington, DC 20515

Re: H.R. 8951 "Zuni Indian Tribe Water Rights Settlement Act of 2024"

Dear Congressman Vasquez:

On behalf of the Zuni Tribe and our Tribal Council, I want to express our sincere appreciation for your and your staff's assistance and support in getting the final details of our water settlement legislation worked out and the bill introduced in the House. Approval of this settlement by Congress is our number one priority as it will help to ensure the protection of our limited water supply, and provide the water we need to sustain and grow our community. It will also provide critical protections for Zuni Salt Lake, an irreplaceable cultural resource that is sacred to our Tribe, as well as to a number of other tribes in the southwest.

As we have previously advised, in addition to the support of Governor Michelle Lujan-Grisham and the New Mexico State Engineer's office, the Settlement Agreement is supported by the Ramah Land and Irrigation Company, the only irrigation company, and the largest non-Indian irrigator, in the basin. Significantly, the Company's water rights, as well as those of nearly all other non-Indian water users in the basin, have already been quantified, and the settlement essentially protects those rights from a priority call by the Tribe. In short, all water users in the basin will benefit from our settlement, and we are not aware of any opposition to it.

Title II of the Settlement bill codifies existing federal protections for certain federal lands—specifically 92,364 acres of BLM lands within the approximately 217,037 acres of combined federal, Zuni trust, private and state lands that are referred to as the Zuni Salt Lake and Sanctuary. Title II also provides for the transfer of 4,756 acres of BLM land to the Tribe, which transfer will be subject to all existing rights, including the rights of the current grazing lessee. As requested, we reached out to ranchers who either lease or own land within the Sanctuary, and to the County Commissions of both Catron and Cibola counties, to inform them of the proposed settlement and specifically the additional protections that the settlement bill will provide for the Lake and Sanctuary lands.

The settlement is the culmination of over twenty-five years of study, litigation and negotiations. Your leadership, and the assistance of your staff, particularly Austin Yager, is greatly appreciated, and I look forward to working with you and your office in getting H.R. 8951 passed by Congress so that our community has a secure water future.

We will, of course, respond promptly to any questions or concerns that you or your staff may have as the legislative process proceeds.

Sincerely,

ARDEN KUCATE,
Governor

Mr. VASQUEZ. This settlement was necessary because, for far too long, the United States has failed Zuni in the protection of its rights. For hundreds of years, upstream development depleted the Zuni River, putting Zunis' agriculture at risk and straining an already arid region. To help right this wrong, the legislation provides nearly \$685 million to implement common-sense projects, including irrigation infrastructure improvements, water and wastewater treatment projects, watershed protection, groundwater storage, and economic development projects.

In addition, the bill recognizes the Tribe's senior water rights in a manner that honors tribal sovereignty by providing Zuni the

ability to manage their water rights for agriculture, commercial, residential, and other uses.

It is also important to note that the settlement includes protections for non-Indian water users in the basin, so that all New Mexicans will benefit from this critical agreement.

Finally, the bill implements permanent protections for the sacred Zuni Salt Lake. For those of you who have never been to the Zuni Salt Lake, it is truly a special location of sacred importance to the Zuni people and other New Mexico tribes. The home of the Salt Mother, the minerals at the Salt Lake are used by Zuni, Laguna, Acoma, and other regional tribes for ceremonial events and other purposes, and it is essential that this area be protected from development or other environmental threats. This legislation would protect over 90,000 acres of Federal land in and around the Zuni Salt Lake, and also move 4,756 acres into trust for Zuni to ensure that all sacred areas are included within the protected boundaries.

The U.S. Government has a trust responsibility to the Zuni people, and this legislation takes a critical step towards fulfilling that promise by providing for the codification of Zunis' water rights and protection of their sacred lands.

I also want to acknowledge my support for the Rio San Jose and Rio Jemez Water Rights Settlements Act, which provides for over \$800 million for the pueblos of Acoma and Laguna to develop water infrastructure and repair the Acomita Dam. I want to express my appreciation to Governor Randall Vicente, who is with us as well here today and testifying on this legislation. This is another critical bill for my constituents, and I appreciate the opportunity to work alongside Representative Leger Fernández to introduce this and support our shared tribal partners.

The legislation before the Committee today would fully honor the United States' obligation to the tribes in my district and throughout New Mexico. We must pass these bills.

Thank you, and I yield back, Mr. Chairman.

Mr. BENTZ. The Chair recognizes Congressman Zinke for 5 minutes.

**STATEMENT OF THE HON. RYAN ZINKE, A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF MONTANA**

Mr. ZINKE. Thank you, Mr. Chairman, Ranking Member Huffman, and members of the Subcommittee, and thank you for holding this hearing today to fulfill our treaty obligations.

As a former Secretary, water compacts are one of the most complex of all instruments. And it was agreed to do a compact rather than lawsuits. And the compact is an agreement really between the Nation as a sovereign Nation, our government, and the state. And I am an absolute champion and advocate for getting these things done. In Montana, we have two done and sealed, and this is the third. And, believe me, you have my full support for getting it done.

I would also like to begin by introducing President Jeff Stiffarm from the Fort Belknap Indian Community. I can tell you the President has been a tireless leader for his people and a staunch advocate for completing this settlement.

And I am also honored to be called "Wowonga Intacha". That is my adopted Assiniboine name.

Also in the audience today, we have representing the Blackfeet Nation, Councilmember Mike Comes at Night, and we welcome Mike and his wife. I am unique in this in that I represent the Blackfeet in Montana, but I am also adopted Assiniboine. And as a former Secretary, I honor the tradition and honor the Nations as a full partner and equal. So, in that, we are going to get these things done.

This bill improves infrastructure and provides needed economic development. And as far as the Belknap Tribe, for those that are not familiar with it, it is about 7,000 enrolled members, and the reservation is over 775,000 acres. So, that is bigger than most states.

This bill also includes \$300 million for repair of the Saint Mary's Canal and Dobson Dam system. For those not familiar with it, it broke. It was a 1906 syphon that brings water from one basin to another. And without it, Indian Country and northern Montana is dry.

My bill is nearly identical to Representative Rosendale's bill, with one exception. My bill looks at the treaty obligations and corrects a wrong with the Blackfeet Nation for upstream water interests, and that needs to be addressed, and it is.

So, with that, Mr. Chairman, I am honored to be here before you, and you have my assurance that I will do everything within my power to make sure this compact is successful and we meet, as the United States and Congress, our obligations.

With that, Mr. Chairman, I yield back.

Mr. BENTZ. The Chair recognizes Congressman Rosendale for 5 minutes.

STATEMENT OF THE HON. MATT ROSENDALE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MONTANA

Mr. ROSENDALE. Thank you very much, Chairman Bentz and Ranking Member Huffman, for holding this extremely important hearing.

The Fort Belknap water rights settlement is a significant milestone that Montanans have been working on for over 20 years, providing crucial upgrades to the water systems across the Hi-Line and for the tribes.

This bill will affirm the Fort Belknap Indian community's water rights, settle the water rights damages against the United States, and provide essential mitigation for non-Indian water users, especially in light of the recent events.

Just a month ago, the Saint Mary Canal experienced a catastrophic failure of a siphon in the Montana community of Babb. More than 18,000 of my constituents rely on this water for potable use, and now the water source is no longer available. The Bureau of Reclamation currently estimates that these residents and irrigators across Montana Hi-Line will be without a reliable water source until the fall of 2025. These communities will have to depend on runoff to recharge their water towers and reservoirs until the Bureau of Reclamation repairs are completed over a year from now.

While this bill will not accelerate the repair timeline, it will at the very least lessen the burden on those citizens and irrigators

who are without reliable water for the foreseeable future. As it stands, the BOR plan allocates \$70 million for the canal repairs, with the local cost share amounting to approximately \$34 million, of which \$26 million is interest bearing, further increasing the burden on our local communities. This bill will eliminate this burdensome fee, and ensure significant upgrades to the system which is well over 100 years old, so local communities no longer need to fear another collapse that would leave them without water in the future.

And we just had a flume that blew out about 3 years ago on this exact same system. Again, this is over 100 years old.

Importantly, this bill will settle the Fort Belknap Indian community's claims against the United States for its failure to protect, manage, and respect the Tribe's water rights. These long-standing claims will be addressed through funding that will provide the tribes with critical water infrastructure projects throughout the reservation. These projects include the modernization of irrigation systems, new systems to provide clean and secure wastewater removal, and water to support fish and wildlife on the reservation.

I am extremely pleased that we finally have a full consensus throughout the entire state regarding this important bill, and want to emphasize its importance to all of Montana. While I am glad to see Fort Belknap Indian Community reaching an agreement for their water rights, I am equally excited for the economic stability and resource reliability this bill will provide for every citizen throughout the Hi-Line.

It is wonderful to see so many familiar faces in the crowd today, which shows how far we have come over the past 20 years in getting this compact done. I look forward to hearing from all of our great Montana witnesses today and this Committee's support finally getting these important fixes passed into law.

Thank you, Mr. Chair, and I yield back.

Mr. BENTZ. The Chair recognizes Congressman Ciscomani for 5 minutes.

STATEMENT OF THE HON. JUAN CISCOMANI, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARIZONA

Mr. CISCOMANI. Thank you, Chairman Bentz and Subcommittee members, for allowing me to testify in support of my bill, H.R. 8940, the Northeastern Arizona Indian Water Rights Settlement Act, and for holding this critical hearing today.

And thank you, as well.

First off, Mr. Chair, I would like to request unanimous consent to submit the testimony of Mr. Buschatzke, the Director of Arizona Department of Water Resources; Ms. Leslie Meyers, the Chief Water Executive and the Associate General Manager of Water Resources for Salt River Project; and Ms. Brenda Burman, General Manager of Central Arizona Water Conservation District.

Mr. BENTZ. Without objection.

[The information follows:]

Statement for the Record

**Thomas Buschatzke, Director
Arizona Department of Water Resources**

**on H.R. 8940, Northeastern Arizona Indian Water Rights Settlement
Act of 2024**

I. Introduction

My name is Thomas Buschatzke. I am the Director of the Arizona Department of Water Resources. Thank you for the opportunity to provide written testimony on behalf of the State of Arizona on the Northeastern Arizona Indian Water Rights Settlement Act of 2024 (Act). The State of Arizona strongly supports this important legislation, which approves and authorizes a settlement of the water rights claims of the Navajo Nation, Hopi Tribe, and San Juan Southern Paiute Tribe in Arizona, ending decades of litigation and bringing much needed safe and reliable water supplies to all three Tribes.

II. Importance of settling Indian water rights claims in Arizona

There are 22 federally recognized Indian Tribes within Arizona. The total area of all tribal land in Arizona is approximately 20 million acres, which is second only to tribal landholdings in Alaska. Over one fourth of Arizona is tribal land. Indian tribes have some of the oldest and largest claims to water in the State based on the federal reserved rights doctrine articulated in *Winters v. United States*.

Eleven¹ of the 22 federally recognized Indian Tribes in Arizona still have unresolved water rights claims, including the claims of the Navajo Nation, Hopi Tribe, and San Juan Southern Paiute Tribe, which we are seeking to settle through the Act. Resolving tribal water rights claims through settlement is a priority for the State. Settlement avoids the cost and uncertainty of litigation and provides certainty to both tribal and non-tribal communities in the State regarding available water supplies. In many cases, including here in the Act, settlement also provides critical funding for the water treatment and delivery infrastructure necessary to bring water to tribal nations and their members. Such infrastructure development often also enables much needed economic development projects.

III. In General: Navajo Nation's, Hopi Tribe's and San Juan Southern Paiute Tribe's water rights claims

The Navajo Nation, Hopi Tribe, and San Juan Southern Paiute lands cover approximately 18,087.728 square miles in Arizona. All three Tribes have asserted claims to in-state surface water and groundwater for their lands. The Navajo Nation and the Hopi Tribe have also asserted claims to water from the Colorado River in both the Lower and Upper Basins. These water rights claims are some of the largest outstanding tribal water rights claims in Arizona.

The State of Arizona and key stakeholders² in the State have been involved in discussions with the Navajo Nation and Hopi Tribe to settle their water rights claims since the 1980s. Federal legislation authorizing a settlement of both Tribes' claims to the Little Colorado River in Arizona was introduced in Congress in 2012. However, that legislation was never enacted. Negotiations actively resumed in late 2023, with the San Juan Southern Paiute Tribe joining the negotiations earlier this year.

After tireless efforts by representatives of the three Tribes, the State, municipalities and numerous other non-tribal water users, a comprehensive settlement of all the water rights claims of the three tribes in Arizona has been reached in the Northeastern Arizona Indian Water Rights Settlement Agreement (Settlement Agreement).

¹This number includes the Hualapai Tribe whose settlement was approved by Congress in 2022. The post-legislation amended and conformed Hualapai Tribe Settlement Agreement is anticipated to be executed by all parties later this year. This number also includes the San Carlos Apache Tribe and the Tohono O'odham Nation, whose claims have been partially settled. The other federally recognized Tribes with outstanding claims in Arizona are: the Havasupai Tribe, Kaibab Band of Paiute Indians, Pascua Yaqui Tribe, Tonto Apache Tribe, and Yavapai Apache Nation.

²Arizona State Land Department, Arizona Game and Fish Commission, Arizona Department of Transportation, Cities of Flagstaff, Winslow and Holbrook, Towns of Taylor, Snowflake, Show Low, Eagar, Springerville, and St. Johns, Salt River Project, Central Arizona Water Conservation District, Arizona Public Service Corporation, Atkinson Trading Company, Inc., U.S. Department of the Interior (will sign after being directed to by the Act) and numerous water districts, water companies and landowners in the Little Colorado River Basin.

Under the terms of the settlement, the Tribes will receive the right to use all surface water from the Little Colorado River and its tributaries flowing on their Reservations and all Underground Water beneath their Reservations, with certain limitations described below. "Underground Water" is defined in the Settlement Agreement and Act as all water beneath the surface of the Earth, within the State, other than Effluent and Colorado River Water.

The Navajo Nation and the Hopi Tribe will receive a total of 47,000 acre-feet of the State's annual 50,000 acre-foot apportionment of Upper Basin Colorado River water. Arizona's Upper Basin Colorado River water is the highest priority Colorado River water in the Upper Basin. The Navajo Nation will also receive Fourth Priority Lower Basin Colorado River water, and a portion of the Hopi Tribe's existing entitlement to Fourth Priority Lower Basin Colorado River water associated with land owned by the Hopi Tribe in La Paz County, Arizona.

The Act authorizes the Navajo Nation and the Hopi Tribe to divert their Upper Basin and Lower Basin Colorado River water supplies anywhere in the Upper or Lower Basin in Arizona, including Lake Powell, and use the water on or off their Reservations anywhere in the Upper or Lower Basin in the State. The Navajo Nation will also have the right to divert its Upper Basin and Lower Basin Colorado River water supplies in New Mexico and Utah for use in Arizona.

The Act authorizes the Navajo Nation and the Hopi Tribe to use, lease, exchange and store their Upper and Lower Basin Colorado River supplies on or off their Reservations in both the Upper and Lower Basins of the State. The Act also authorizes the Navajo Nation to store its Upper and Lower Basin Colorado River supplies in the Navajo Reservoir and Frank Chee Willetto, Sr. Reservoir in New Mexico for use in Arizona.

The three Tribes, and the United States as trustee for the Tribes, Navajo Allottees and Hopi Allottees, will waive claims for: (1) additional water rights for existing lands; (2) injury to water based on changes in or degradation of the salinity or concentration of naturally occurring chemical constituents contained in water; and (3) injury to their water rights with certain exceptions. Those exceptions include retention of the right to make claims for injury caused by: (A) certain new surface water uses by means of direct diversion; (B) new reservoirs and reservoir enlargement (with limited exceptions); and (C) withdrawals of groundwater from certain wells within Buffer Zones adjacent to the southern and western boundaries of the Navajo Reservation (described below).

The Act provides for a limited waiver of sovereign immunity by the Tribes and the United States acting as trustee for the Tribes, the Navajo Allottees and the Hopi Allottees, so that they can be joined in actions involving the interpretation or enforcement of the Settlement Agreement and Act brought by the parties to the Settlement Agreement and landowners and water users in the Little Colorado River Watershed and the Gila River Watershed. The Tribes have consented to this limited waiver of sovereign immunity.

The Act approves, ratifies and confirms a treaty entered into by the Navajo Nation and the San Juan Southern Paiute Tribe in 2000 to settle land claims and other disputes between the Tribes, and an addendum to the treaty entered into by the Tribes in 2004. Additionally, the Act creates a reservation for the San Juan Southern Paiute Tribe, consisting of two non-contiguous areas in Arizona and Utah, within the boundaries of the Navajo Reservation. The Act and the Settlement Agreement resolve water rights claims only for the portion of the San Juan Southern Paiute Tribe Reservation in Arizona, known as the "Southern Area."

The Act provides \$5 billion dollars in federal funding primarily for the construction, operation, maintenance and replacement of various water projects on the three Reservations, including a major pipeline to bring the Colorado River water from Lake Powell to the Navajo Reservation and the Hopi Reservation. The funding also includes money for the Navajo Nation and Hopi Tribe to use to purchase land within the State and associated Lower Basin Colorado River Water Rights.

A. Settlement Provisions Concerning the Navajo Nation

1. The Navajo Nation will have unlimited rights to withdraw Underground Water within the boundaries of its Reservation. However, the Navajo Nation and Hopi Tribe have entered into an Inter-Tribal Agreement (the terms of which are included in the Settlement Agreement), which limits withdrawals of Underground Water from the N-aquifer, one of two aquifers beneath the Reservations, to protect aquifer storage and certain washes and springs on the Reservations.

Two buffer zones are established along the southern and western boundaries of the Navajo Nation Reservation. Buffer Zone 1, which extends two sections

from the Navajo Reservation's boundary, and Buffer Zone 2, which extends an additional four sections from the southern and western boundaries of the Reservation. In Buffer Zone 1, the Nation retains the right to challenge new wells with a pump capacity greater than 35 gallons-per-minute (gpm) that cause injury to its groundwater rights. In Buffer Zone 2, the Nation retains the right to challenge new wells with a pump capacity greater than 500 gpm that cause injury to its groundwater rights.

2. The Navajo Nation will have the right to divert and deplete any surface water from the mainstem of the Little Colorado River and its tributaries that reaches its Reservation, including quantified amounts and priority dates for specific historic Navajo irrigation projects totaling 40,780 acre-feet per year (afy).
3. The Navajo Nation will have the right to use water on lands held in fee by the Nation in accordance with State law, and the right to use water on lands held in trust for the Nation as permitted by applicable law.
4. The Navajo Nation will receive an allocation of 44,700 afy of the State of Arizona's annual 50,000 acre-foot apportionment of Upper Basin Colorado River water, which is the highest priority Colorado River water in the Upper Basin. This water may be used on and off the Navajo Nation Reservation anywhere in the Upper and Lower Basin in Arizona. The Navajo Nation will have the right to use the Colorado River and the San Juan River in the Upper Basin to convey its Upper Basin Colorado River water from the Upper Basin for use in the Lower Basin of the State.
5. The Navajo Nation will receive an allocation of 3,500 afy of previously unallocated Fourth Priority Lower Basin water from the State of Arizona's annual Lower Basin entitlement. This water may be used anywhere in the Upper and Lower Basins in the State.
6. The Navajo Nation will also receive an allocation of 100 afy from the Hopi Tribe's existing contract for Fourth Priority Lower Basin water currently being used for agricultural purposes along the mainstem of the Lower Basin Colorado River. This water may be used anywhere in the Upper and Lower Basins in the State.
7. The Navajo Nation will be authorized to divert its Upper Basin and Lower Basin Colorado River water supplies anywhere in the Upper or Lower Basin in Arizona, including Lake Powell. The Navajo Nation will also have the right to divert its Upper Basin and Lower Basin Colorado River water supplies in New Mexico and Utah for use in Arizona.
8. The Navajo Nation will be authorized to lease, exchange and store its Upper Basin and Lower Basin Colorado River water anywhere within the Upper and Lower Basins in the State. The Nation will also be authorized to store the water in the Navajo Reservoir and Frank Chee Willetto, Sr. Reservoir in New Mexico for use in Arizona.
9. The Navajo Nation will have the right to use all effluent produced on the Navajo Reservation, off-reservation lands held in trust for the benefit of the Navajo Nation, and lands owned in fee by the Navajo Nation.

B. Settlement Provisions Concerning the Hopi Tribe

1. The Hopi Tribe will have unlimited rights to withdraw Underground Water within the boundaries of its Reservation. Withdrawal of Underground Water from the N-aquifer, however, is limited in certain parts of the Reservation pursuant to the Inter-Tribal Agreement between the Navajo Nation and Hopi Tribe referenced above.
2. Off-reservation groundwater pumping is subject to restrictions in Buffer Zones 1 and 2 and subject to a separate agreement with the Navajo Nation and other parties.³
3. The Hopi Tribe is entitled to divert and deplete all surface water that reaches or flows within its Reservation.

³The separate agreement is titled "Certain Agreements Among The United States, The Hopi Tribe, The Navajo Nation, Bar T Bar, And The Arizona State Land Department Concerning Underground Water And Related Rights And Obligations In The Navajo Hopi C-Aquifer Pumping Restriction Area And Bar T Bar Ranch" and included as Exhibit 9.10 to the Settlement Agreement.

4. The Hopi Tribe will have the right to use water on lands currently held in fee by the Tribe and off-reservation lands currently held in trust for the Tribe as described in Exhibits to the Settlement Agreement. The Tribe will have the right to use water on new fee lands as permitted by State law and new trust lands as permitted by applicable law.
5. The Hopi Tribe will receive an allocation of 2,300 acre-feet per year of the State of Arizona's annual 50,000 acre-foot entitlement to Upper Basin Colorado River water, which is the highest priority Colorado River water in the Upper Basin. This water may be used on and off the Hopi Tribe's Reservation and trust lands in the Upper or Lower Basin in Arizona.
6. The Hopi Tribe currently holds a contract for a total of 5,928 afy of Lower Basin Colorado River water that is used to irrigate land owned by the Tribe along the Colorado River mainstem in the Cibola Valley Irrigation Drainage District in Arizona (Cibola Water). This contract includes 4,278 afy of Fourth Priority water. Under the terms of the Settlement Agreement, the Tribe will transfer 100 acre-feet of this Fourth Priority contract to the Navajo Nation. The retained Hopi Tribe Cibola Water may be used by the Hopi Tribe anywhere within Arizona and pursuant to its delivery contract with the United States.
7. The Hopi Tribe will be authorized to divert its Upper Basin and Lower Basin Colorado River water supplies anywhere in the Upper or Lower Basin in Arizona, including Lake Powell.
8. The Hopi Tribe will be authorized to lease, exchange and store its Upper Basin and Lower Basin Colorado River water anywhere in the Upper or Lower Basin in the State.
9. The Hopi Tribe will have the right to use all effluent produced on the Hopi Reservation, off-reservation lands held in trust for the benefit of the Hopi Tribe, and lands owned in fee by the Hopi Tribe.

C. Settlement Provisions for the San Juan Southern Paiute Tribe

1. The Act creates a reservation for the San Juan Southern Paiute Tribe consisting of two non-contiguous areas in Arizona and Utah, within the boundaries of the Navajo Reservation. The settlement provisions apply only to the portion of the Reservation located in Arizona, referred to as the "Southern Area."
2. The San Juan Southern Paiute Tribe will have unlimited rights to withdraw Underground Water within the boundaries of its Reservation.
3. The San Juan Southern Paiute Tribe will have the right to divert and deplete all surface water that reaches or flows across its Reservation.
4. The San Juan Southern Paiute Tribe will have the right to use water on lands held in fee by the Tribe as permitted by State law, and the right to use water on lands held in trust for the Tribe as permitted by applicable law.
5. The San Juan Southern Paiute Tribe will have the right to receive up to 350 afy of water delivered from the Navajo Tribal Utility Authority.
6. The San Juan Southern Paiute Tribe will have the right to all effluent developed on the Southern Area of the Reservation, off-reservation lands held in trust by the United States for the benefit of the San Juan Southern Paiute Tribe, and lands owned in fee by the San Juan Southern Paiute Tribe.

IV. Congressional Funding for the Northern Arizona Indian Water Rights Settlement

The Act provides \$5 billion dollars in Congressional funding for the settlement. The majority of the funding will be deposited into funds to be used for the construction of various water infrastructure projects on the three Reservations, and for the operation, maintenance and replacement costs associated with the infrastructure.

A list of projects to be funded by the Act is provided below:⁴

1. The *iiná bá-paa tuwaqat'si* pipeline is estimated to cost \$1.7 billion dollars and will be designed and constructed to bring Colorado River water from Lake Powell to the Navajo Nation, Hopi Tribe and San Juan Southern Paiute Reservation.

⁴A complete list of all projects and fund accounts may be found in Section 13 of the Act.

2. Several Navajo Nation-specific water projects have been included in the Settlement Agreement and Act totaling approximately \$2.4 billion dollars for the delivery of Colorado River water, Little Colorado River water and groundwater to communities on the Navajo Nation Reservation.
3. \$390 million dollars is allocated for the Hopi Arsenic Mitigation Project and Hopi Slide Rock Project.
4. \$28 million dollars is allocated to the San Juan Southern Paiute Tribe for groundwater development, treatment, and delivery projects.
5. Lower Basin Colorado River water acquisition funds of \$28 million dollars and \$1.5 million dollars for the Navajo Nation and Hopi Tribe, respectively, are provided to the two Tribes for the purchase land and associated Lower Basin Colorado River rights within the State.
6. Agricultural conservation funds of \$80 million dollars, \$30 million dollars, and \$300,000 dollars for the Navajo Nation, Hopi Tribe, and San Juan Southern Paiute Tribe, respectively, are allocated for agricultural efficiency improvement projects and well replacement.

V. Transbasin Use, Lease, Exchange and Storage of Colorado River Supplies

As mentioned above, the legislation authorizes the Navajo Nation and Hopi Tribe to use, lease, exchange and store their Upper and Lower Colorado River water supplies in both the Upper Basin and Lower Basin in Arizona. The ability of the Hopi Tribe and Navajo Nation to utilize these supplies in both the Upper and Lower Basins is of critical importance to the settlement. The Navajo Nation Reservation is located in both the Upper and Lower Basin in Arizona and the Nation must have the ability and flexibility to utilize water supplies as it determines necessary and practical throughout its Reservation. The Hopi Tribe Reservation is located entirely in the Lower Basin and must have the ability to utilize its Upper Basin and Cibola water supplies on its Reservation. Authorization of transbasin use and leasing of Colorado River water supplies is a critical component of the legislation that supports the continued sovereignty and self-determination of the Navajo Nation and Hopi Tribe by affirming their autonomy over resource management.

Further, the ability of the Tribes to lease Colorado River water supplies for use in either the Lower or Upper Basins in Arizona will maximize economic opportunities for the Tribes. It will also provide flexibility in water management for both Tribes and the State.

The Act contains accounting provisions to ensure that the Navajo Nation's and Hopi Tribe's Upper Basin water supplies are accounted for as Arizona's Upper Basin water regardless of the place of diversion, use or lease of the water. Similar accounting provisions are contained in the Act for the Tribes' Lower Basin water to ensure that those water supplies are accounted for as Arizona's Lower Basin water regardless of their place of diversion, use or lease.

VI. Water Delivery Contracts

During the settlement negotiations, the United States Bureau of Reclamation informed the State and other settlement parties that water delivery contracts for the Colorado River supplies included in the Settlement Agreement could not be drafted within the Settlement Agreement completion timeframe contemplated by the Tribes. Typically, these contracts are completed and attached to a Settlement Agreement prior to its execution and introduction of authorizing legislation in Congress.

Because the Settlement Agreement will be executed in advance of the completion of the water delivery contracts, several express limitations on these contracts were included in the Settlement Agreement and the Act. These limitations include, but are not limited to: (1) prohibiting any alteration or reduction of the State's annual Lower Basin apportionment; (2) prohibiting any alteration or impairment of the State's rights, authorities, and interests under the Boulder Canyon Project Act of 1928 or the Upper Colorado River Basin Compact of 1948; (3) prohibiting any limitation on the State's ability to seek or advocate changes in the Colorado River system's operating rules, criteria, or guidelines for the State's Upper and Lower Basin apportionments; (4) such contracts may not prejudice the interests of the State or serve as precedent against the State in litigation; and (5) such contracts must also provide that any Lower Basin water must be curtailed to the same extent as other Lower Basin delivery contracts for the same type and priority water regardless of whether used in the Upper or Lower Basin of the State.

These water delivery contracts will be unprecedented because they will permit the transbasin use of Upper and Lower Basin Colorado River by the Tribes and the

lease, exchange and storage of the water by third parties in Arizona. These tools will give the Navajo Nation and Hopi Tribe access to new markets resulting in significant economic benefits.

VII. Enforceability Date

The settlement will become enforceable, and the waivers and releases executed by the Parties will become effective, when certain conditions are met following enactment of the Act. Those conditions include: (1) the entry of a Judgment and Decree by the Little Colorado River Adjudication Court and Gila River Adjudication Court approving the portions of the settlement applicable to those adjudications; (2) the appropriation by Congress of \$5 billion dollars and the deposit of that money in the designated accounts for the Tribes pursuant to section 13 of the Act; (3) amendment of the Settlement Agreement to both conform to the Act and add as Exhibits the required water delivery contracts between the Secretary of the Interior and the Navajo Nation and the Hopi Tribe; and (4) execution of the amended Settlement Agreement by the Secretary of the Interior, the Tribes, the State and certain other parties.

If all the conditions of enforceability are not met by June 30, 2035, or such alternative later date as may be agreed upon by the Tribes, the Secretary, and the State, the Act will be repealed and the Settlement Agreement will be void, except that the San Juan Southern Paiute Tribe Reservation will remain in existence.

VIII. Non-Federal Contribution

The Settlement Agreement provides 47,000 afy of the State's 50,000 afy apportionment of Upper Basin Colorado River Water to the Navajo Nation and Hopi Tribe and 3,500 afy of unallocated Lower Basin Colorado River water to the Navajo Nation. The Upper Basin Colorado River water is an extremely valuable water supply because of its high priority. The ability of the Navajo Nation and the Hopi Tribe to lease these supplies in either the Lower or Upper Basins of the State will provide a significant economic benefit to the two Tribes.

The Settlement will also provide the Tribes with a renewable water supply from in-state surface water as well as unlimited use of groundwater beneath each of the Reservations, subject to certain limitations agreed to between the Tribes. The Settlement's restrictions on groundwater withdrawals in Buffer Zones 1 and 2 adjacent to the exterior boundary of the Navajo Nation Reservation will protect finite groundwater supplies for communities on the Navajo Nation, Hopi Tribe and San Juan Southern Paiute Tribe Reservations.

In addition, the State legislature has established three funds that provide for the development and implementation of projects designed to improve, protect and augment water supplies in the State, they include the Arizona Water Protection Fund, the Long-term Water Augmentation Fund, and the Water Supply Development Revolving Fund. State monies in these funds are available to any tribe with qualifying projects in Arizona. Both the Navajo Nation and the Hopi Tribes are recipients of grant monies from the Arizona Water Protection Fund.

IX. Importance of the Legislation to the Parties and the Entire State

Enactment of the legislation is of critical importance to all the parties to the settlement, as well as to the entire State. Settlement of the Tribes' water rights claims will put an end to decades of conflict and litigation over the Tribe's claims and will provide other important benefits to the Tribes and non-tribal water users throughout the State.

For all three Tribes, the settlement will provide reliable and sustainable water supplies for their lands. In particular, it will provide access to safe running water to the many households on the three Reservations that are without that basic water service. For the Navajo Nation and Hopi Tribe, the settlement will also provide an economic opportunity by allowing the Tribes to lease their Colorado River water supplies within the State. The settlement will provide a unique benefit to the San Juan Southern Paiute Tribe by creating a long-awaited Reservation for the Tribe from lands within the Navajo Reservation.

For other water users in the State, the settlement will provide water stability and security, ending decades of litigation and uncertainty. Further, the ability of the Navajo Nation and Hopi Tribe to lease their Colorado River water supplies across basin boundaries within the State is of great importance to the future of the State because it will facilitate the movement of water to extremely water-challenged areas of the State.

X. Conclusion

The State of Arizona strongly supports H.R. 8940, the Northeastern Arizona Indian Water Rights Settlement Act of 2024. The Act authorizes a comprehensive settlement of the water rights claims of the Navajo Nation, Hopi Tribe and San Juan Southern Paiute Tribe in Arizona, including claims to the Colorado River. Settlement of the Tribes' water rights claims is an important step in achieving the State's goal of settling all outstanding Indian water rights claims and ensuring all Arizona residents have access to clean, reliable, running water. Settlement of the claims will end decades of litigation, provide certainty to tribal and non-tribal water users throughout the State, and at long last provide the Tribes with reliable, sustainable and safe water supplies.

Statement for the Record

**Leslie A. Meyers, Associate General Manager
Salt River Valley Water Users' Association**

**on H.R. 8940, Northeastern Arizona Indian Water Rights Settlement
Act of 2024**

Chairman Bentz, Ranking Member Huffman, and members of the Subcommittee, Thank you for the opportunity to submit testimony in support of H.R. 8940, the Northeastern Arizona Indian Water Rights Settlement Act of 2024. My name is Leslie A. Meyers. I am the Associate General Manager and Chief Water Resources and Services Executive at Salt River Project ("SRP"), a large multi-purpose federal reclamation project serving the water and power needs of the Phoenix, Arizona metropolitan area. The Northeastern Arizona Indian Water Rights Settlement Agreement ("Settlement Agreement") is a monumental achievement and the product of negotiations spanning over 30 years. The settlement provides the Navajo Nation, the Hopi Tribe, and the San Juan Southern Paiute Tribe with desperately needed water supplies and infrastructure to secure their future. The settlement also brings certainty to water users throughout northeastern Arizona and those along the Colorado River regarding the allocation of a scarce resource.

About Salt River Project

Congress and the Secretary of the Interior ("Secretary") authorized the construction of the Salt River Federal Reclamation Project as one of the first projects under the Reclamation Act of 1902. The Salt River Valley Water Users' Association, an Arizona Territorial corporation, was organized in 1903 by landowners in the Salt River Valley to contract with the federal government for the construction of Theodore Roosevelt Dam on the Salt River, located some 80 miles northeast of Phoenix. In exchange for pledging their land as collateral for the federal loans to construct Roosevelt Dam, which loans have long since been fully repaid, landowners in the Salt River Valley received the right to water stored behind the dam.

Today, SRP operates six dams and reservoirs on the Salt and Verde Rivers in the Gila River Basin, one dam and reservoir on East Clear Creek in the Little Colorado River Basin, and 1,300 miles of canals, laterals, ditches and pipelines to deliver water to approximately 400 square miles of land in the greater Phoenix area. The dam and reservoir system can store approximately 2.3 million acre-feet of water runoff from the Salt and Verde River and East Clear creek systems, making SRP the largest raw water provider in the Phoenix Metropolitan area.

C.C. Cragin Dam and Reservoir ("C.C. Cragin Reservoir"), located on East Clear Creek in the Little Colorado River Basin, is an important feature of the Salt River Federal Reclamation Project. Located approximately 25 miles north of the Town of Payson, C.C. Cragin Reservoir stores water from a 71-square-mile watershed on East Clear Creek, a tributary to the Little Colorado River. SRP acquired C.C. Cragin Reservoir in 2004 from Phelps Dodge Corporation as part of the Gila River Indian Community Water Rights Settlement. Title II of the Arizona Water Settlement Act, P.L. 108-451, specifies that up to 3,500 acre-feet of the water stored in Cragin Reservoir will be made available for municipal and domestic uses in northern Gila County at no cost to SRP or the Bureau of Reclamation. Water from C.C. Cragin Reservoir is a crucial resource to meet the municipal demands of the Town of Payson and other nearby communities, who previously relied solely upon the area's meager groundwater resources.

In addition to water operations, SRP is also the third largest not-for-profit community based public power utility in the country, providing reliable, affordable, and sustainable electricity to nearly 3 million people in Arizona. SRP has a diverse energy portfolio that includes nuclear, solar and wind, natural gas, battery storage, coal, geothermal and hydropower. From 1969 until 2019, SRP was a part owner and the operating agent of the Navajo Generating Station (“NGS”), a coal fired power plant located on the Navajo Reservation in the Upper Colorado River basin. Coal used for fuel at NGS was supplied by the Kayenta Mine, located on land within both the Navajo and Hopi Reservations. Members of the Navajo Nation and the Hopi Tribe were employed at both NGS and Kayenta Mine. Over its 50-year history, water for the operation of NGS was supplied from Arizona’s annual entitlement to Upper Basin Colorado River water. SRP also owns and operates the Coronado Generating Station located near St. Johns, Arizona and owns Unit 4 at the Springerville Generating Station located near Springerville, Arizona. Both of those power plants are located in the Little Colorado River basin and rely on local groundwater resources for operations.

The Water Needs of The Three Tribes

The Navajo Nation is the largest Native American tribe in the country, with a membership of more than 400,000 tribal members. The Navajo Reservation spans 17.3 million acres in the states of Arizona, Utah, and New Mexico. About half of the Navajo Nation tribal members reside on the reservation. The Little Colorado River in Arizona, a tributary to the Colorado River, traverses the Arizona portion of the Navajo Reservation. The Navajo (“N”) Aquifer and the deeper Coconino (“C”) aquifer underlie the reservation. The lack of dedicated water supplies and water infrastructure are urgent problems in the daily lives of the Navajo. Approximately 30 percent of Navajo households lack running water and must rely on hauling water to meet their daily needs.

The Hopi Tribe’s ancestral territory encompassed the entire Little Colorado River watershed from its confluence with the Rio Puerco River west to its confluence with the Colorado River in Arizona for many centuries. The present-day Hopi Reservation covers approximately 3,000 square miles in the eastern part of Coconino County and the northern part of Navajo County in northeastern Arizona. The Hopi Reservation is bordered on all sides by the Navajo Reservation. Current tribal enrollment is close to 15,000 members, with approximately 9,000 living on the reservation. Surface water on the Hopi Reservation is present in seeps, springs, wetlands, and washes. These washes are tributaries to the Little Colorado River and are primarily ephemeral with limited perennial reaches supplied by springs. Groundwater is essential to ensure that the Hopi Reservation serves as a permanent and sustainable homeland for the Hopi. Groundwater project infrastructure and access to perennial surface water supplies are pressing needs for the Hopi Tribe.

The San Juan Southern Paiute Tribe is a small tribe located in Northern Arizona and Southern Utah, within the exterior boundaries of the Navajo Reservation. The portion of Tribe’s community located within Arizona is in the Little Colorado River Basin. The San Juan Southern Paiute Tribe is an ancient tribe but did not receive federal recognition until 1989. In the context of litigation to determine the rights of the Tribe to lands within the Navajo Reservation, the parties negotiated a treaty to partition the land between the two tribes. The Navajo Nation agreed to partition 5,400 acres as the San Juan Southern Paiute Tribe’s exclusive reservation. However, Congress has not yet ratified the treaty. Further, the San Juan Southern Paiute Tribe lacks a dedicated source of water and the water delivery system needed to serve the Tribe’s members.

H.R. 8940 is Transformative for the Future of the Three Tribes and for Northeastern Arizona Communities

SRP has long held that the resolution of tribal water rights claims broadly benefits both the tribal communities receiving water and funding, and water users throughout the basin. This is particularly true in the context of the Settlement Agreement.

By providing water access and funding for water infrastructure to the tribes, the Settlement Agreement and authorizing legislation will support tribal economic growth, self-sufficiency, and sovereignty. Resolving the water claims of the Navajo Nation, the Hopi Tribe, and the San Juan Southern Paiute Tribe also addresses a major outstanding item in Arizona’s Little Colorado River Adjudication—a proceeding that has been ongoing for nearly half a century. The settlement will result in the entry of a judgment and decree adjudicating the three tribes’ claims to the Little Colorado River system and will place restrictions on the tribes’ participation in the litigation going forward.

Finally, of particular importance to SRP, the settlement confirms SRP's right to store water in C.C. Cragin Reservoir on East Clear Creek and deliver that water to communities in Gila County, Arizona, and potentially the Yavapai-Apache Nation and neighboring municipalities in Yavapai County, Arizona.

Noteworthy Benefits of the Settlement and H.R. 8940

Securing and Delivering Colorado River Water Supplies

The settlement is particularly timely in the context of ongoing negotiations of post-2026 Colorado River operating guidelines, as the Navajo Nation's claim to the Colorado River is among the largest outstanding claims in that basin. Since the closure of NGS in 2019, SRP has expressed its unwavering commitment to ensuring that the Navajo Nation and the Hopi Tribe receive Upper Basin Colorado River water supplies apportioned to the State of Arizona under Article III of the Upper Colorado River Basin Compact of 1948. The Agreement and H.R. 8940 would bring this about by providing nearly 57,000 acre-feet of Colorado River water to the Navajo Nation and the Hopi Tribe, including 47,000 acre-feet of Arizona's 50,000 acre-feet Upper Basin apportionment. These renewable supplies would be delivered through a pipeline funded by H.R. 8490 to the Navajo and Hopi Reservations, providing potable drinking water to areas of the reservations currently without water or water infrastructure.

Additional Water Delivery Projects

H.R. 8940 also includes funding for at least ten other water delivery projects for tribal communities. The funding would make possible the construction of ground-water projects on the Navajo, Hopi, and San Juan Southern Paiute Reservations that are desperately needed to deliver water to currently unserved and underserved areas. These projects would address both infrastructure and water quality needs existing on the reservations. Construction of these projects, along with the Colorado River pipeline project described above, would make it possible for individual communities on all three reservations to thrive and grow.

San Juan Southern Paiute Reservation

H.R. 8940 ratifies and confirms the treaty between the Navajo Nation and the San Juan Southern Paiute Tribe and permanently sets aside the San Juan Southern Paiute Reservation. The creation of this reservation is long overdue and will remain in effect whether or not other components of the settlement are completed or made effective.

Agreement Between the Navajo Nation and the Hopi Tribe Regarding the Management and Use of the N-Aquifer, Springs, and Washes

The Settlement Agreement includes an agreement between the Navajo Nation and the Hopi Tribe regarding the management and use of the N-Aquifer, as well as springs and washes that occur on their reservations. This intertribal agreement also makes room for potential joint water projects that could benefit both tribes. The tribes' agreement on these issues was essential to reaching the overall settlement and is illustrative of their commitment to work together as they manage their water resources going forward.

Resolution of the Three Tribes' Claims to Little Colorado River Water and Groundwater

All three tribes have asserted claims in the Little Colorado River Adjudication. The Little Colorado River is a fully appropriated system, and the claims of the tribes, which are based in part on future use under the federal reserved rights doctrine, exceed the flow of the river even before existing uses of water are considered. Under the settlement, the tribes would receive surface water flows reaching their respective reservations, as well as underlying groundwater. At the same time, the Tribes would confirm and agree not to object to existing uses of surface water and groundwater, as well as some future uses (within certain parameters). These provisions bring clarity to neighboring water users and avoids significant litigation costs, including for SRP's water uses at its power generating plants in the basin.

Confirmation of SRP's Right to Store and Deliver Water in C.C. Cragin Reservoir

Through the Settlement Agreement, the three tribes would confirm and agree not to challenge or object to SRP's right to store water in C.C. Cragin Reservoir on East Clear Creek and deliver that water to communities in Gila County, Arizona. The three tribes' confirmation of SRP's Cragin right also protects water deliveries from C.C. Cragin Reservoir to the Yavapai-Apache Nation, and potentially other

communities in Yavapai County, Arizona, through the proposed Cragin-Verde Pipeline Project from any challenge. This project, which would be authorized by H.R. 8949, is the centerpiece of the water rights settlement for the Yavapai-Apache Nation. The agreement by the Navajo Nation, the Hopi Tribe, and the San Juan Southern Paiute Tribe not to challenge or object to SRP's rights in C.C. Cragin Reservoir, which is located in the Little Colorado River watershed, paves the way for deliveries of Cragin water to Yavapai County.

Conclusion

The Northeastern Arizona Indian Water Rights Settlement Agreement is critical to augmenting the water resources and infrastructure that is so urgently needed by the Navajo Nation, the Hopi Tribe, and the San Juan Southern Paiute Tribe. The settlement provides a foundation for the future of these tribes, making it possible for tribal members and their families to live, work and thrive on their reservations. The settlement also puts an end to longstanding litigation with the tribes' neighbors and achieves greater certainty regarding allocation of resources in the Colorado River Basin and the Little Colorado River Basin. SRP urges the passage of H.R. 8940 to authorize and fund the settlement.

Statement for the Record

**Brenda Burman, General Manager
Central Arizona Water Conservation District**

**on H.R. 8940, Northeastern Arizona Indian Water Rights Settlement
Act of 2024**

Chairman Bentz, Ranking Member Huffman and members of the Subcommittee, I am Brenda Burman, General Manager of the Central Arizona Water Conservation District (CAWCD). Thank you for the opportunity to provide the views of the CAWCD on H.R. 8940 "Northeastern Arizona Indian Water Rights Settlement of 2024" through this statement for the record. For the reasons I will discuss below, CAWCD supports H.R. 8940.

Role of CAWCD in Arizona

CAWCD manages the Central Arizona Project (CAP), a 336-mile canal system that delivers Colorado River water into central and southern Arizona. CAWCD's service area includes more than 80 percent of Arizona's population. The largest supplier of renewable water in Arizona, CAWCD has a right to divert over 1.5 million acre-feet of Arizona's 2.8 million acre-foot Colorado River entitlement each year through the CAP to deliver water to municipal and industrial users, agricultural irrigation districts, and Indian communities. Our goal at CAWCD is to provide our customers with an affordable, reliable, and sustainable supply of Colorado River water.

Background

For many decades, Navajo Nation, Hopi Tribe, San Juan Southern Paiute Tribe (collectively the "Tribes"), the United States, the State of Arizona, CAWCD, and dozens of other state parties have been involved in either litigation of, or negotiations to resolve, the Tribes' water right claims. Those unresolved claims cast significant water rights uncertainty across the State and left many tribal communities without reliable access to clean drinking water. The Northeastern Arizona Indian Water Rights Settlement of 2024, if approved by Congress, would eliminate that uncertainty and provide funding for the infrastructure necessary to deliver clean drinking water supplies across each of the Tribes' reservations.

The Northeastern Arizona Indian Water Rights Settlement of 2024 is a comprehensive settlement agreement fully and finally resolving all the Tribes' claims to the Colorado River (including all Upper and Lower Colorado River Basin claims in Arizona), the Little Colorado River watershed (including all tributary watersheds and groundwater basins), and for land owned by the Navajo Nation in Arizona, all associated Navajo water right claims in the Gila River watershed.

Among other things, the Settlement would allocate to the Navajo Nation 44,700 acre-feet per year (afy) of Upper Basin Colorado River water, 3,600 afy of Fourth Priority Mainstem Lower Colorado River Water, and allocate to the Hopi Tribe 2,300 afy of Upper Basin Colorado River water. The Settlement would grant the Navajo Nation and the Hopi Tribe flexibility in utilizing and managing its Colorado

River supplies including the authority to use, lease or exchange, within the State of Arizona, the allocated Upper Basin Colorado River in the Lower Colorado River Basin and Lower Colorado River Water in the Upper Colorado River Basin. That flexibility is essential for ensuring clean drinking water deliveries throughout the Reservations and provides potential state-wide benefits.

The Settlement also allocates Little Colorado River watershed supplies including tributary and groundwater resources to the Tribes, providing greater certainty to Northeastern Arizona non-tribal communities regarding the right to access, use and develop those supplies.

These agreed upon allocations provide greater certainty for CAWCD water users and all the parties as they plan for future water needs; planning that is vital when faced with on-going drought and potential reductions in available water supplies.

The water supply allocations mean little without the funding needed for infrastructure to divert, treat and deliver these water supplies to the reservations. According to Navajo Safe Water, a water access coalition group comprised of Navajo agencies, federal agencies, public health researchers and nongovernmental organizations, approximately 30% of Navajo Nation homes currently lack access to piped water service and rely on hauled water as their primary source of water. The requested federal funding in this settlement will provide the infrastructure required to deliver drinking water to homes, thereby eliminating the need to haul water for basic needs.

Conclusion

For the reasons noted, the CAWCD Board of Directors voted unanimously to support the settlement and H.R. 8940. Thank you for your consideration.

Mr. CISCOMANI. Thank you sir.

The Northeastern Arizona Indian Water Rights Settlement Act settles the Navajo Nations', the Hopi Tribe's, and the San Juan Southern Paiute Tribe's claims to their portion of the Colorado River water, and establishes a homeland for the San Juan Southern Paiute Tribe. And I would like to acknowledge the presence of the leadership of these Nations here with us today.

Thank you for joining us.

I know they will be speaking to the Committee later today.

This settlement represents a monumental moment for the tribes and the state of Arizona's water future as a whole. It is hard to overstate the tireless efforts and decades of work that all parties of this legislation have put into the settlement. For far too long, many tribal communities in northern Arizona have had a lack of access or no access at all to clean drinking water. It is high time we right this wrong, and ensure these families and communities have reliable water resources, which is the foundation of a thriving community.

This legislation also provides significant and much-needed Federal investment in Arizona's water infrastructure. Those of us in the West understand that water claims are inadequate without the infrastructure needed to move the water. Investing in our water infrastructure is more important now than ever, with the persistent drought affecting the Colorado River and all communities that rely on it, as well.

Further, the bill allows for the Navajo Nation and Hopi Tribe to lease their water, creating economic opportunities until local demand is met and the possibility of new partnerships between the tribes and the local governments, farmers, ranchers, and also the business community. When this settlement is approved by Congress, it will be a historic achievement for Arizona,

safeguarding our most precious resource for future generations, and finally fulfilling our obligation to our tribal neighbors.

I applaud the Committee for discussing this legislation today, and urge the Subcommittee to swiftly move this legislation through the Committee and to the House Floor.

Thank you. And with that, I yield back.

Mr. BENTZ. Thank you. I thank the Members for their testimony. I will now introduce our second panel.

The Honorable Bryan Newland, Assistant Secretary for Indian Affairs with the Department of the Interior; the Honorable Jeff Stiffarm, President of the Fort Belknap Indian Community; the Honorable Frank White Clay, Chairman of the Crow Tribe of Indians; the Honorable Shine Nieto, Vice Chairman of the Tule River Indian Tribe; the Honorable Larry Phillips, Jr., Governor of the Ohkay Owingeh Pueblo; and the Honorable Arden Kucate, Governor of the Pueblo of Zuni.

Let me remind the witnesses that under Committee Rules, they must limit their oral statements to 5 minutes, but their entire statement will appear in the hearing record.

To begin your testimony, please press the button on the microphone.

We use timing lights. When you begin, the light will turn green. When you have 1 minute remaining, the light will turn yellow. At the end of 5 minutes, the light will turn red, and I will ask you to please complete your statement.

I will also allow all witnesses to testify before Member questioning.

I now recognize Assistant Secretary Newland for 5 minutes.

STATEMENT OF THE HON. BRYAN NEWLAND, ASSISTANT SECRETARY FOR INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR, WASHINGTON, DC

Mr. NEWLAND. [Speaking Native language.] Thank you, Chairman Bentz and Congresswoman Leger Fernández. It is great to see you this morning. My name is Bryan Newland. I have the privilege of serving as the Assistant Secretary for Indian Affairs at the Department of the Interior, and I want to thank the Committee for the opportunity to present the Department's testimony on bills concerning Indian water rights settlements.

The United States has a trust obligation to protect the continued existence of Indian tribes. This means ensuring that each Tribe has a protected homeland where its citizens can maintain their tribal existence and way of life. Everyone should understand that water is essential to meeting those obligations.

In my written statement, I expressed the Department's support for nine of the bills before the Committee today, but I want to focus my oral statement on some key points in a few of those bills. Due to other hearings and obligations, I am not able to remain for the entirety of today's hearing. My colleague and friend, Deputy Commissioner David Palumbo from the Bureau of Reclamation, will provide additional testimony and responses to your questions today.

The Northeastern Arizona Indian Water Rights Settlement Act will provide reliable and safe water for the Navajo Nation, the Hopi

Tribe, and the San Juan Southern Paiute Tribe. This settlement authorizes \$5 billion to acquire, build, and maintain essential water development and delivery projects. It would also establish a homeland for the San Juan Southern Paiute Tribe, and would allow the Navajo Nation and the Hopi Tribe to lease their water.

Approval of this settlement would mark the resolution of long-standing claims and conflicts over water in northeastern Arizona, and it would be a historic milestone in our Nation's efforts to ensure access to water for Native people in their homelands, and it would also benefit so many others in the drought-stricken region.

The Department supports the parties' efforts to get this done, and strongly supports the goals and purposes of H.R. 8940. Our written statement highlights some important issues that need to be addressed in the legislative language to ensure the settlement can be successfully implemented. That includes working with Congress to ensure there is enough funding appropriated to support the projects in the bill.

But I want to be clear on the bigger picture. We are closer than we ever have been before in reaching a final settlement, and we are prepared to work with the sponsors, the tribes, and other parties to address those issues so this settlement can be enacted in this Congress. We want to fulfill our trust obligations to the Navajo, Hopi, and San Juan Southern Paiute people, and we will not let the perfect be the enemy of the good.

H.R. 7240 and H.R. 8791, both titled, "The Fort Belknap Indian Community Water Rights Settlement Act," those bills would resolve the Assiniboine and Gros Ventre Tribes' water rights claims through a comprehensive settlement, and authorize certain funds. The Department supports H.R. 7240, but does not support H.R. 8791: H.R. 8791 would designate the Bureau of Indian Affairs alone as the lead agency for implementation; H.R. 7240 has compromised language that identifies the Bureau of Indian Affairs, in coordination with the Bureau of Reclamation, as the lead agency for the Fort Belknap Irrigation Project, rehabilitation, modernization, and expansion, and this is the Department's preferred option. Therefore, we support H.R. 7240.

The Department is also pleased to support H.R. 8920, the Tule River Tribes Reserve Water Right Settlement Act. I had the opportunity to visit the Tule River Indian Reservation two summers ago, and I saw firsthand the need for a reliable water source on the reservation. This bill would resolve all of the Tule River Tribe's water rights claims in California, and ratify its water rights settlements agreement between the Tribe and most downstream users, and it would also transfer various lands into trust for the Tribe.

The Yavapai-Apache Nation Water Right Settlement Act authorizes a little more than \$1 billion to build and maintain essential water infrastructure, including the Cragin-Verde Pipeline and a surface drinking water plant. The settlement will provide the Nation with confirmed rights to 4,600 acre-feet of water per year, promote water conservation, and protect the flow of the Verde River. H.R. 8949 also includes a land exchange with the Forest Service to lands contiguous to the Middle Verde Reservation.

The Department supports the goals of H.R. 8949, and recognizes further discussions need to be had regarding the cost and size and scope of this project.

Mr. Chairman and members of the Committee, I want to thank you again for the opportunity to provide the Department's views today, and I look forward to answering any questions you may have.

[The prepared statement of Mr. Newland follows:]

Statement for the Record

U.S. Department of the Interior

**on H.R. 1304, H.R. 3977, H.R. 6599, H.R. 7240, H.R. 8685, H.R. 8791, H.R. 8920,
H.R. 8940, H.R. 8945, H.R. 8949, H.R. 8951, and H.R. 8953**

Thank you for the opportunity to present the Department of the Interior's (Department) testimony on the following bills concerning Indian water rights settlements.

At the core of the United States' trust and treaty obligations is our responsibility to ensure that Indian Tribes have the right to continue to exist in their homelands. Everyone should understand that water is essential to meet this obligation. Without access to water in their homelands, Tribes cannot remain in their homelands, and we cannot fulfill our most solemn obligation to American Indian and Alaska Native people.

The Biden Administration recognizes that water is a sacred and valuable resource for Tribal Nations and that long-standing water crises continue to undermine public health and economic development in Indian Country. This Administration strongly supports the resolution of Indian water rights claims through negotiated settlements. Indian water settlements help to ensure that Tribal Nations have safe, reliable water supplies; improve environmental and health concerns on reservations; enable economic growth; promote Tribal sovereignty and self-sufficiency; and help advance the United States' trust relationship with Tribes. At the same time, water rights settlements have the potential to end decades of controversy and contention among Tribal Nations and neighboring communities and promote cooperation in the management of water resources.

Indian water rights settlements play a pivotal role in this Administration's commitment to putting equity at the center of everything we do to improve the lives of everyday people—including Tribal Nations. We have a clear charge from President Biden and Secretary Haaland to improve water access and water quality on Tribal lands. Access to water is fundamental to human existence, economic development, and the future of communities—especially Tribal communities.

To that end, the Biden Administration's policy on negotiated Indian water settlements continues to be based on the following principles: the United States will participate in settlements consistent with its legal and moral trust responsibilities to Tribal Nations; Tribes should receive equivalent benefits for rights, which they, and the United States as trustee, may release as part of the settlement; Tribes should realize value from confirmed water rights resulting from a settlement; and settlements should contain appropriate cost-sharing proportionate to the benefits received by all parties benefiting from the settlement. In addition, settlements should provide finality and certainty to all parties involved.

Congressional enactment of these settlements should be considered within the context of all Tribal priorities and the availability of all resources. That is why the Administration encourages Congress to consider mandatory funding for this and other pending Indian water rights settlements, which was also requested in the 2025 President's Budget, included in the enacted Bipartisan Infrastructure Law, and already proposed in some of the bills we are discussing today.

H.R. 1304, Rio San José and Rio Jemez Water Settlements Act of 2023

H.R. 1304 would approve and provide authorizations to carry out the settlement of certain water rights claims of the Acoma, Laguna, Jemez, and Zia Pueblos (Pueblos) in New Mexico.

I. Background

A. Historical Context

Like other Pueblos in New Mexico, the Pueblos of Acoma, Laguna, Jemez, and Zia Pueblos were agricultural people living in established villages when the Spanish explorers first came to New Mexico. Before the Pueblos' lands became part of the United States, they fell under the jurisdiction first of Spain, and later of Mexico, both of which recognized and protected the rights of Pueblos to use water. When the United States asserted its sovereignty over Pueblo lands and what is now the State of New Mexico, it did so under the terms of the Treaty of Guadalupe Hidalgo, which protected rights recognized by prior sovereigns, including Pueblo rights.

B. Acoma and Laguna Pueblos and Their Water Resources

The Rio San Jose, located in west-central New Mexico and west of Albuquerque, is a tributary of the Rio Puerco, which flows into the Rio Grande. The area is also home to the Pueblos of Acoma and Laguna. In total, the Pueblos hold approximately 1.064 million acres (over 563,000 acres for Acoma Pueblo and over 501,000 acres for Laguna Pueblo).

While there were small communities established by Spain and Mexico on smaller tributaries of the Rio San Jose, there were no mainstem upstream users disrupting the Pueblos' water use until the United States' acquisition of the territory. The United States' establishment of Fort Wingate near Ojo del Gallo spring in 1862, and subsequent use of the area by the Village of San Rafael, resulted in the diversion of spring flow that had previously provided a significant contribution to Rio San Jose flows and had been available to both Pueblos. Acequias on Rio San Jose tributaries began diverting water from the system in the late 19th century to the detriment of the Pueblos. Non-Indian water users' construction of a dam on Bluewater Creek, above and upstream of Acoma Pueblo, also reduced flows to the Rio San Jose, impacting both Pueblos. As the non-Indian water users began to irrigate more and more acreage, they turned to groundwater. This groundwater pumping siphoned off water that would have flowed as surface water in the Rio San Jose for the Pueblos' use.

Groundwater depletions in the Rio San Jose basin increased after uranium was discovered in the Grants Mineral Belt in the 1950s. The uranium was located in the same rock formations where water was stored, and that water supplied perennial springs within the basin, many of which contributed to Rio San Jose flows. These aquifers, and those located above them, were dewatered by mining companies, resulting in depleted spring flow contributions to the Rio San Jose. Uranium milling facilities also consumed large amounts of groundwater. The growth of this mining economy and the concomitant growth of non-Indian communities, such as the city of Grants, increased water use in the Rio San Jose basin to the detriment of the Pueblos.

The long-term pumping of groundwater and unimpeded diversion of surface water by non-Indian water users has resulted in significant impacts to the water supply. Even if the Pueblos were able to successfully curtail the water use of non-Indian junior users as part of the ongoing adjudication, the Rio San Jose system would not recover to provide the historic flow levels for the two Pueblos for several decades.

In 1983, general stream adjudication of the Rio San Jose (to resolve the dispute over the water rights of Acoma Pueblo and Laguna Pueblo, as well as the Navajo Nation) was initiated in New Mexico. Negotiations regarding potential settlement of the Pueblos' water rights claims have been ongoing since 1993, when the United States established teams to negotiate comprehensive settlements of all the Navajo Nation's and Pueblos' water rights in the Rio San Jose basin. H.R. 1304 addresses the water rights of the Pueblos of Acoma and Laguna. Separate legislation, H.R. 8945, addresses the rights of the Navajo Nation.

C. Jemez and Zia Pueblos and Their Water Resources

The Rio Jemez basin, located in north-central New Mexico and to the northwest of Albuquerque, is a major tributary of the Rio Grande and is home to the Pueblos of Jemez and Zia. In total, the Pueblos hold nearly 250,000 acres (approximately 89,600 acres for Jemez Pueblo and 160,000 acres for Zia Pueblo).

The Rio Jemez basin is an arid region of New Mexico, and drought is a common occurrence that has impacted, and continues to impact, the Pueblos. Recent effects of global warming and climate change are exacerbating these effects and surface water supplies are dwindling. Historic increases in water use by non-Indians impacted, and continue to impact, the Pueblos' ability to access adequate surface and groundwater supplies. Increased groundwater pumping by non-Indians,

pursuant to permits issued by the State of New Mexico, make the Pueblos' access to groundwater supplies increasingly difficult.

Since 1996, Jemez and Zia Pueblos and non-Indian water users have been operating under a negotiated irrigation rotation agreement. The lack of a reliable water supply continues to impact the Pueblos' ability to sustain their agricultural practices and to move forward with water development projects to benefit the Pueblos and their members.

The general stream adjudication of the Rio Jemez (to resolve the water rights of the Pueblos of Jemez, Zia, and Santa Ana) began in 1983. Negotiations to resolve the water rights of the Pueblos also began in 1983. Jemez and Zia Pueblos reached a settlement of their water rights, but the Santa Ana Pueblo has elected to continue to litigate its water rights claims.

II. Proposed Acoma and Laguna Pueblos Settlement Legislation

Acoma and Laguna Pueblos, the State of New Mexico, and non-Indian water users executed a settlement agreement in 2022, quantifying the two Pueblos' water rights and resolving other key issues, including the requirements and parameters of a possible future project to import water to Pueblo lands. The United States is not a signatory to the settlement agreement.

Title I of H.R. 1304 would resolve all of the Acoma and Laguna Pueblos' water rights claims in the Rio San Jose basin in New Mexico; ratify and confirm the water rights settlement agreement among the Pueblos, the State of New Mexico, and non-Indian water users; authorize the Secretary of the Interior to sign the settlement; and authorize funds to implement the settlement agreement. In addition, the Pueblos are conditionally settling their claims in the Rio Salado (Acoma Pueblo) and Rio Puerco (Laguna Pueblo) basins.

Title I of H.R. 1304 would ratify and confirm the Pueblos' water rights to over 20,000 acre-feet per year (AFY)—7,982 AFY for Acoma Pueblo and 12,263 AFY for Laguna Pueblo—from various surface water and groundwater resources on each Pueblo. These amounts include 1,300 AFY of future groundwater use for economic development for each Pueblo.

Title I of H.R. 1304 would also protect non-Indian water users, as the Acoma and Laguna Pueblos would agree not to make priority calls for their senior rights against the water rights of junior non-Indian users in existence at the time that the settlement becomes enforceable. In addition, the Pueblos would agree to promulgate Pueblo water codes, which will govern permitting of uses of the Pueblos' water rights; provide processes for protests by parties affected by Pueblo permitting decisions; and ensure that water use under a Pueblo permit does not impair existing surface and groundwater rights.

Finally, Title I of H.R. 1304 would establish trust funds for both Pueblos totaling \$850 million, to be indexed. Acoma Pueblo would receive \$311.75 million, and Laguna Pueblo would receive \$493.25 million. The Pueblos could use their trust funds to develop water infrastructure on Pueblo lands as they determine necessary and on their own timeframe. In addition, \$45 million is to be allocated to both Pueblos jointly to use for repairs at the existing Acomita Dam.

Of the monies that would go to each Pueblo individually, \$40 million could be spent on operation, maintenance, and repair of Pueblo water infrastructure for domestic, commercial, municipal, and industrial uses (\$14 million for Acoma Pueblo and \$26 million for Laguna Pueblo) and \$5 million could be spent on feasibility studies for water supply infrastructure to serve Pueblo domestic, commercial, municipal, and industrial water uses (\$1.75 million for Acoma Pueblo and \$3.25 million for Laguna Pueblo). The remaining \$760 million (\$296 million for Acoma Pueblo and \$464 million for Laguna Pueblo) could be used by the Pueblos for: acquiring water rights or water supply; planning, permitting, designing, engineering, constructing, operating, rehabilitating, and repairing water production, treatment, or delivery infrastructure; Pueblo water rights management and administration; watershed protection and enhancement; support of agriculture; water-related Pueblo community welfare and economic development; costs relating to implementation of the settlement; and environmental compliance in development and construction of infrastructure. The State of New Mexico has also agreed to contribute just over \$36 million to provide for the benefit of non-Indian water users, including \$500,000 for a fund to mitigate impairment to non-Indian domestic well and livestock well users resulting from new or changed Pueblo water uses.

III. Proposed Jemez and Zia Pueblos Settlement Legislation

Jemez and Zia Pueblos, the State of New Mexico, and non-Indian water users executed a settlement agreement in 2022, quantifying the rights of the Pueblos and resolving other key issues, including the requirements and parameters of a possible

future Augmentation Project, which the Pueblos and non-Indian water users may construct to improve infrastructure and provide groundwater to firm up the irrigation water supply for certain agricultural acreage. The United States is not a signatory to the settlement agreement.

Title II of H.R. 1304 would resolve all of the Jemez and Zia Pueblos' water rights claims in the Rio Jemez Basin in New Mexico; ratify and confirm the water rights settlement agreement among the Pueblos, the State of New Mexico, and non-Indian water users and authorize the Secretary of the Interior to sign the settlement agreement; and authorize funds to implement the settlement agreement.

Title II of H.R. 1304 ratifies and confirms the Jemez and Zia Pueblos' water rights to over 9,000 acre-feet per year (AFY)—6,055 AFY for Jemez Pueblo and 3,699.4 AFY for Zia Pueblo—from various surface water and groundwater sources on each Pueblo. These amounts include 1,200 AFY of future groundwater use for economic development for each Pueblo.

Title II of H.R. 1304 also protects non-Indian water users, as the Jemez and Zia Pueblos would agree to not make priority calls for their senior rights on all decreed water rights of junior non-Indian users. In addition, the Pueblos would agree to promulgate Pueblo water codes, which will govern permitting of uses of the Pueblos' water rights; provide processes for protests by parties affected by Pueblo permitting decisions; and ensure that water use under a Pueblo permit does not impair existing surface and groundwater rights.

Finally, Title II of H.R. 1304 establishes Trust Funds for both Pueblos totaling \$490 million, to be indexed, (\$290 million for Jemez Pueblo and \$200 million for Zia Pueblo). The Pueblos could use their trust funds to develop water infrastructure on Pueblo lands as they determine necessary and on their own timeframe. Monies in the fund could be used by the Jemez and Zia Pueblos for: planning, permitting, designing, engineering, constructing, operating, maintaining, and repairing water production, treatment, delivery infrastructure, and the Augmentation Project; Pueblo water rights management and administration; watershed protection and enhancement; support of agriculture; water-related Pueblo community welfare and economic development; costs relating to implementation of the settlement; and environmental compliance in development and construction of infrastructure. The State of New Mexico has also agreed to contribute just over \$20 million to provide for the benefits of non-Indian water users, including \$500,000 for a fund to mitigate impairment to non-Indian domestic well and livestock well users resulting from new or changed Pueblo water uses.

IV. Department of the Interior Position on H.R. 1304

The Department is pleased to support H.R. 1304. This bill is the result of over three decades of good-faith negotiations to reach consensus on key issues. The Department looks forward to continued discussions with the U.S. Department of Agriculture (USDA), regarding USDA's role in implementing Title I of the bill. Finally, the Department has been working with the settlement parties on some minor technical changes to the bill that would clarify some issues and conform it more closely to other pending Indian water rights settlements in New Mexico. We look forward to working with the settlement parties and the Subcommittee on these technical changes.

H.R. 1304 is designed to meet all four Pueblos' current and long-term needs for water by providing trust funds that could be used by the Pueblos according to their needs and their own decisions. Rather than committing the Pueblos or the United States to construct specific water infrastructure projects, H.R. 1304 would allow the Pueblos to make decisions regarding how, when, and where to develop water infrastructure. This approach to settlement is consistent with Tribal sovereignty and self-determination, and with our trust responsibilities, and will help to ensure that the Pueblos can maintain their way of life.

H.R. 6599, Technical Corrections to the Northwestern New Mexico Rural Water Projects Act, Taos Pueblo Indian Water Rights Settlement Act, and Aamodt Litigation Settlement Act

H.R. 6599 would amend the Omnibus Public Land Management Act of 2009 and the Claims Resolution Act of 2010 to authorize funding for deposit into the Navajo Nation Water Resources Development Trust Fund, the Taos Pueblo Water Development Fund, and the Aamodt Settlement Pueblos' Fund equivalent to the amounts that would have accrued to the trust funds if the Department had the authority to invest the funds upon appropriation.

In the 111th Congress, four Indian water rights settlements (the Taos Pueblo Indian Water Rights Settlement Act, Pub. L. No. 111-291; the Aamodt Litigation

Settlement Act, Pub. L. No. 111-291; the Duck Valley settlement, Pub. L. No. 111-11; and the Crow Tribe Water Rights Settlement Act of 2010, Pub. L. No. 111-291) included provisions authorizing an investment of monies into the settlement trust funds after the enforceability date. The enforceability date is effective when the Secretary finds that all conditions for the full effectiveness and enforceability of the settlement had occurred and publishes that finding in the Federal Register. The Northwestern New Mexico Rural Water Projects Act, Pub. L. No. 111-11, (Navajo Settlement), also allowed for the investment of monies into the Navajo Nation Resources Development Trust Fund, only upon a specified date certain 10 years after the enactment date.

These provisions prohibited the Department from investing trust fund monies before the enforceability date or a date certain. However, the Department mistakenly started investing trust fund monies when they were appropriated, which was before the enforceability date. When the Department discovered this error, the Department's Solicitor's Office determined that the interest amounts earned prior to the date that the funds were authorized to be invested were contrary to the Antideficiency Act and, in accordance with 31 U.S.C. § 3302, must be returned to Treasury. The Department then returned all interest monies accrued prior to the authorized date back to Treasury.

The issue that H.R. 6599 addresses is a provision in certain Indian water rights settlements that prohibited investment until the enforceability date was reached. This provision is not common in Indian water rights settlements. Similar provisions appeared in other settlements enacted in 2009-2010, including the Crow Tribe Water Rights Settlement Act of 2010; the Taos Pueblo Indian Water Rights Settlement Act; the Aamodt Litigation Settlement Act; and the Navajo-Gallup Water Supply Project and Navajo Nation Water Rights. In each of these settlements, funds were inadvertently invested and returned to Treasury. The Department supported similar legislation to resolve this issue, and thus supports H.R. 6599 to correct this issue for the Northwestern New Mexico Rural Water Projects Act, the Taos Pueblo Indian Water Rights Settlement Act, and the Aamodt Litigation Settlement Act.

H.R. 8685, Ohkay Owingeh Rio Chama Water Rights Settlement Act of 2024

H.R. 8685 would approve and provide authorizations to carry out the settlement of all water rights claims of the Ohkay Owingeh in the Rio Chama basin in New Mexico.

I. Background

A. Historical Context

Like other Pueblos in New Mexico, Ohkay Owingeh were agricultural people living in established villages when the Spanish explorers first came to New Mexico. Before Ohkay Owingeh's lands became part of the United States, they fell under the jurisdiction first of Spain, and later of Mexico, both of which recognized and protected the rights of the Pueblos to use water. When the United States asserted its sovereignty over Pueblo lands and what is now the State of New Mexico, it did so under the terms of the Treaty of Guadalupe Hidalgo, which protected rights recognized by prior sovereigns, including Ohkay Owingeh's rights.

B. Ohkay Owingeh and the Rio Chama

The Rio Chama, located in north-central New Mexico and to the northwest of Albuquerque, is a major tributary of the Rio Grande. The river originates in Colorado, just above the New Mexico border, and runs about 130 miles to its confluence with the Rio Grande. Ohkay Owingeh, located 28 miles north of Santa Fe, has approximately 13,244 acres in the Rio Chama, Rio Grande, and Rio Santa Cruz basins. Ohkay Owingeh has approximately 2,880 enrolled members, of which about 2,205 reside on Ohkay Owingeh lands.

Ohkay Owingeh is located in an arid region of New Mexico, and drought is a common occurrence that has impacted, and continues to impact, Ohkay Owingeh lands. Since time immemorial, Ohkay Owingeh has made use of the water in the Rio Chama basin. However, the supply of water in the Rio Chama available to Ohkay Owingeh has been reduced over time by diversions by neighboring non-Indian water users. Consequently, Ohkay Owingeh is facing water shortages that impact its ability to provide sustainable water for its current and future water needs. Additionally, a portion of Ohkay Owingeh's lands lie within the "bosque," or forested habitat, along the Rio Chama and Rio Grande, which is of great historical and cultural significance to Ohkay Owingeh. The bosque areas within Ohkay Owingeh's lands were altered as a result of flood control and irrigation projects constructed by the United States on both the Rio Chama and Rio Grande in the mid-

1900s. Recent effects of global warming and climate change are exacerbating these effects and surface water supplies are dwindling. Ohkay Owingeh seeks funding as part of the proposed settlement to remedy the damage to its lands that lie within these bosque areas and to also develop Ohkay Owingeh's water resources for various uses, including domestic and municipal purposes for current and future population.

In the late 1940s, a general stream adjudication of the Rio Chama was initiated in New Mexico state court and was eventually removed to Federal District Court in 1969. Negotiations regarding potential settlement of Ohkay Owingeh's water rights claims have been ongoing since 2015, when the United States established a negotiation team.

II. Proposed Ohkay Owingeh Settlement Legislation

H.R. 8685 would resolve all of Ohkay Owingeh's water rights claims in the Rio Chama basin in New Mexico; ratify and confirm the water rights settlement agreement signed in 2023 by Ohkay Owingeh, the State of New Mexico, and non-Indian water users; authorize the Secretary of the Interior to sign the settlement agreement; and provide funding to implement the settlement.

H.R. 8685 would ratify and confirm Ohkay Owingeh's water rights to approximately 1,756 acre-feet per (AFY) from surface water and groundwater sources. These amounts include 771 AFY of future groundwater use for economic development and an important right to 250 AFY of water to provide for bosque health and restoration on Ohkay Owingeh lands, as well as water to continue irrigated farming in the Rio Chama basin.

H.R. 8685 would also protect non-Indian water users, as Ohkay Owingeh would not make priority calls for its senior rights against other settlement parties, owners of domestic wells and livestock rights, and any non-signatory water users who cooperate in shortage sharing. In addition, Ohkay Owingeh would promulgate a water code, which would govern permitting of uses of its water; provide processes for protests by parties affected by Ohkay Owingeh permitting decisions; and ensure that water use under an Ohkay Owingeh permit would not impair existing surface and groundwater rights.

Finally, H.R. 8685 would establish a trust fund totaling \$745 million, to be indexed, that Ohkay Owingeh could use to develop water infrastructure as it determines necessary and on its own timeframe. Monies in the fund could be used for:

1. Planning, permitting, designing, engineering, constructing, reconstructing, replacing, rehabilitating, operating, or repairing water production, treatment, or delivery infrastructure, including for domestic and municipal supply or wastewater infrastructure;
2. Planning, permitting, designing, engineering, constructing, reconstructing, replacing, rehabilitating, operating, or repairing water production, treatment, or delivery infrastructure, acquisition of water, or on-farm improvements for irrigation, livestock, and support of agriculture;
3. Planning, permitting, designing, engineering, constructing, reconstructing, replacing, rehabilitating, operating, monitoring, or other measures for watershed and endangered species habitat protection, bosque restoration or improvement (including any required cost shares for and allowable contributions to a Federal project or program), land and water rights acquisition, water-related Ohkay Owingeh community welfare and economic development, and costs relating to implementation of the settlement agreement;
4. The management and administration of water rights; and
5. Ensuring environmental compliance for projects developed with settlement funds.

The State of New Mexico would contribute \$131 million to provide for benefits to non-Indian water users, including \$500,000 for a fund to mitigate impairment to non-Indian domestic and livestock well users resulting from new or changed water uses by Ohkay Owingeh.

III. Department of the Interior Position on H.R. 8685

The Department is pleased to support H.R. 8685. This bill is the result of multiple decades of litigation and nearly a decade of good-faith negotiations to reach consensus on key issues. H.R. 8685 is designed to meet Ohkay Owingeh's current and long-term needs for water by providing a trust fund to be used by Ohkay Owingeh according to its needs and its own decisions. Rather than committing Ohkay Owingeh or the United States to construct specific water infrastructure projects, the bill would allow Ohkay Owingeh to make decisions regarding how, when, and where to develop water infrastructure. H.R. 8685 would also allow Ohkay Owingeh to

restore and protect its culturally important bosque lands. This approach to settlement is consistent with Tribal sovereignty and self-determination, and with our trust responsibilities, and will help to ensure that Ohkay Owingeh can maintain its way of life.

H.R. 8920, Tule River Tribe Reserved Water Rights Settlement Act of 2024

H.R. 8920 would approve and provide authorizations to carry out the settlement of all water rights claims in the State of California of the Tule River Tribe.

I. Background—the Tule River Reservation and the Tribe

A. Historical Context

The aboriginal territory of the ancestors of the Tule River Tribe, the Yokuts, encompassed most of what is now the San Joaquin Valley, an agricultural mainstay in California. The influx of non-Indians into the Tribe’s ancestral lands in the 1850s, after the discovery of gold and California statehood, created tremendous conflict with the Yokuts and left them dispossessed, displaced, and without title to a homeland.

The quest to provide a permanent homeland for the Yokuts’ descendants, the Tule River Tribe, was fraught with difficulties and setbacks. First, the United States attempted to rectify Tribal dispossession by negotiating the Treaty of Paint Creek, which would have created the Tule River Reservation in the San Joaquin Valley near present-day Porterville, California. However, this Treaty, along with other California treaties, was never ratified by the Senate. The United States’ second attempt to secure a homeland for the Tribe was the creation in 1856 of the “Tule River Indian Farm,” later referred to the “Madden Farm,” out of the public domain. The subsequent patenting of the farm to an unscrupulous Indian agent deprived the Tribe of title to those lands.

In 1872, the California Superintendent of Indian Affairs was ordered to find a reservation for the Tribe. A tract of 48,000 acres of steep and rocky terrain in the foothills of the Sierra Nevada Mountains was proclaimed by the Executive Order of January 9, 1873, as the Tule River Indian Reservation. In 1874, the Indian Agent at the Tule River Agency described the Reservation as containing “no first-rate tillable land” with only “about 200 acres of such as might be termed passably good for agricultural purposes, and that not lying in one body.” Except for some timber land in the mountains in the extreme east of the Reservation, the balance of the Reservation was said to be “utterly valueless . . . consisting of rough, rocky mountains.” Unsurprisingly, members of the Tribe were reluctant to leave the productive land they were farming at the Madden Farm to locate to the Reservation. When, by 1876, only six families had moved to the Reservation, the remaining Tule River Indians at the Madden Farm were forcibly removed to the Reservation. Now nearly 150 years later, the Tribe continues to search for an adequate and secure water supply for the domestic and municipal needs of its members.

B. The Reservation Today

Today, the Tribe’s Reservation remains located on the western slope of the Sierra Nevada Mountains, in south-central California, 75 miles south of Fresno and 45 miles north of Bakersfield and is comprised of over 55,000 acres of tribal trust lands. The topography is generally steep, with elevations ranging from about 900 feet to 7,500 feet above sea level. Most of the inhabited land is along the lower reach of the South Fork Tule River on the western side of the Reservation.

The primary sources of employment on the Reservation are the Tribe’s Eagle Mountain Casino, the Tribal government, and the Tule River Indian Health Center. The Tribe is in the process of relocating the Eagle Mountain Casino, due in part to water shortages, to trust lands in the city of Porterville.

C. Water Resources of the Tule River Reservation

The Reservation is located almost entirely in the South Fork Tule River drainage basin. Because the Reservation is located in the Sierra Nevada headwaters of the river, there are no upstream diverters on the river above the Tribe. The South Fork Tule River, which is the primary water source on the Reservation, is flashy (flows are high during spring runoff and decrease during the summer and fall months) and subject to extended periods of drought. Groundwater is very limited due to both water quantity and quality issues.

The major water use on the Reservation is for domestic and municipal purposes. Less than 5 percent of the Reservation is suitable for agriculture, though some members graze livestock in various locations. In dry years, which are increasingly common (including this year), the Tribe has had to truck-in water and donate bot-

tled water to its members for domestic and municipal purposes due to water shortages, with members sometimes relying on bottled water for months at a time. These shortages affect Tribal members in multiple ways, including precluding them from cooking and bathing or from going to work or attending school. In the hottest part of summer, the Tribe has to open its government buildings to provide refuge for elders that rely on water for the cooling systems in their homes. This lack of reliable water supply results in interruptions to critical services, including education programs, emergency services, elder care, and the Tribe's justice center and government functions. It has also contributed to a housing shortage that impacts the number of Tribal members who can reside on the Reservation.

II. Proposed Tule River Tribe Settlement Legislation

Negotiations regarding potential settlement of the Tribe's water rights claims have been ongoing since 1996, when the United States established a team to negotiate a comprehensive settlement of all the Tribe's water rights in California. Over the course of the negotiations, the United States conducted numerous studies examining options for water development on the Reservation. The studies point to water storage as a key component of a reliable water supply.

Relying on these studies, and other studies the Tribe conducted on its own, the Tribe and the downstream water users reached a 2007 Agreement. That Agreement sets-out water allocation between the parties and addresses how water release schedules will be determined for any future water storage project the Tribe may construct on the South Fork Tule River. The 2007 Agreement identified a possible location for water storage and included operational rules for a reservoir at that location but allowed the Tribe to choose a different site if the planned site proved infeasible. The Tribe's efforts to finalize plans for the reservoir's location are ongoing. If the Tribe selects an alternative site, the parties will need to establish operational rules, which are relevant for delineating the Tribe's water right. The 2007 Agreement was amended for technical issues in 2009. The United States is not a signatory to either the 2007 Agreement or the 2009 technical amendments.

H.R. 8920 would resolve all of the Tribe's water rights claims in California; ratify and confirm the Tule River Tribe water rights settlement agreement among the Tribe and most downstream water users, and authorize the Secretary of the Interior to sign the agreement; provide a mechanism for the parties to obtain federal court approval of a settlement that would bind all water users in the basin; authorize funds for water development projects to implement the settlement agreement; and transfer various lands into trust for the Tribe.

H.R. 8920 would ratify and confirm a Tribal water right, which includes the right to up to 5,828 acre-feet per year of water flows from the South Fork Tule River, as described in the 2007 Agreement. The 2007 Agreement provided that the Tribal water right would be administered in accordance with agreed-upon operational rules for the water storage facility that the Tribe was to build, rather than according to priority date. If the parties could not agree upon operational rules, the 2007 Agreement contemplated that the parties could submit competing proposals to the court, which would be charged with assessing which proposal better satisfied the criteria set forth in the Agreement. In addition, the Tribal water right, as described in the 2007 Agreement and ratified by H.R. 8920, would also include the right to divert and use certain amounts of water from springs on the Reservation and the right to use groundwater on the Reservation, subject to some restrictions. H.R. 8920 would also establish a process to authorize the parties to file suit in Federal District Court in California, for the purpose of entering a decree approving the Tribe's Federal reserved water right, consistent with the 2007 Agreement, and binding all water users in the basin.

H.R. 8920 would establish a Trust Fund of \$568 million, to be indexed. \$518 million of the trust fund could be used to develop water infrastructure on its Reservation, as the Tribe determines necessary and on its own timeframe. The remainder of trust fund (\$50 million) could only be used to pay OM&R for water projects developed by the Tribe.

H.R. 8920 also would transfer approximately 825.66 acres of Bureau of Land Management land, 1,837.46 acres of fee land owned by the Tribe, and approximately 9,037 acres of Forest Service land to the United States, to be held in trust for the Tribe.

III. Department of the Interior Position on H.R. 8920

The Department supports H.R. 8920.

H.R. 8920 is designed to meet the Tribe's current and long-term needs for water by providing a trust fund to be used by the Tribe according to its needs and its own decisions. Rather than committing the Tribe or the United States to construct

specific water infrastructure projects, H.R. 8920 would allow the Tribe to make decisions regarding how, when, and where to develop water infrastructure on its Reservation. This approach to settlement is consistent with Tribal sovereignty and self-determination, and with our trust responsibilities, and will help ensure that the Tribe can maintain a viable homeland on its Reservation.

H.R. 8951, Zuni Indian Tribe Water Rights Settlement Act of 2024

H.R. 8951 would approve and provide authorizations to carry out the settlement of certain water rights claims of the Zuni Tribe in the Zuni River basin in New Mexico.

I. Background

A. Historical Context

Like other Pueblos in New Mexico, the Zuni Tribe were agricultural people living in established villages when the Spanish explorers first came to New Mexico. Before the Zuni Tribe's lands became part of the United States, they fell under the jurisdiction first of Spain, and later of Mexico, both of which recognized and protected the rights of Pueblos to use water. When the United States asserted its sovereignty over Pueblo lands in what is now the State of New Mexico, it did so under the terms of the Treaty of Guadalupe Hidalgo, which protected rights recognized by prior sovereigns, including Pueblo rights.

B. The Zuni Tribe and Zuni Basin Water Resources

The Zuni Tribe has approximately 448,000 acres in west-central New Mexico, approximately 32 miles south of Gallup, New Mexico, and approximately 15,000 acres in east-central Arizona. All of the Zuni Tribe's main villages are in New Mexico and the Tribe has approximately 11,800 enrolled members, of which about 9,323 reside on the Tribe's lands.

The Zuni River basin, located in west-central New Mexico, is a tributary to the Little Colorado River. The river originates in the western slopes of the Zuni Mountains in New Mexico and flows for about 90 miles in a southwesterly direction through the Zuni Reservation and joins the Little Colorado River, a tributary to the Colorado River, in Arizona.

The Zuni Tribe is located in an arid region of New Mexico, and drought is a common occurrence that has impacted, and continues to impact, the Tribe. Since time immemorial, the Zuni Tribe has made use of the water in the Zuni River basin. However, the supply of water in the Zuni River available to the Zuni Tribe has been reduced over time from diversions by neighboring non-Indian water users, including Ramah Dam on Cebolla Creek, which lies upstream of the Zuni Tribe. In addition, irrigation infrastructure constructed by the Department of the Interior many years ago needs to be rehabilitated and reconstructed. While the Zuni Tribe has senior water rights in the basin, it is facing water shortages that impact its ability to provide sustainable water for its current and future water needs. Recent effects of global warming and climate change are exacerbating these effects and surface water supplies are dwindling. The Zuni Tribe seeks funding as part of the proposed settlement to rehabilitate the irrigation structures on its lands and to develop the Tribe's water resources for various uses, including domestic and municipal purposes, for current and future Tribal populations.

In 2001, after a failed adjudication in state court, the United States filed suit in Federal court to adjudicate water rights in the Zuni River basin in New Mexico. The adjudication will resolve the water rights claims of non-Indians, the Zuni Tribe, the Navajo Nation, and allottees.

Negotiations originally began in 1990 and were renewed in 2013, when the United States revived its team to negotiate a comprehensive settlement of the Tribal water rights in the Zuni River basin. The Zuni Tribe has reached settlement of its claims in the basin, but the Navajo Nation has not.

II. Proposed Zuni Tribe Settlement Legislation

The Zuni Tribe and the State of New Mexico executed a settlement agreement in 2023, quantifying the rights of the Tribe and reaching agreement on other key issues. The Ramah Land and Irrigation Company, comprised of non-Indian water users upstream of the Zuni Tribe and the owner and operator of Ramah Dam, signed a letter of support for the settlement agreement in 2023, as well. The United States is not a signatory to the 2023 settlement agreement.

H.R. 8951 would resolve all of the Zuni Tribe's water rights claims in the Zuni River basin in New Mexico; ratify and confirm the water rights settlement agreement among the Tribe and the State of New Mexico; authorize the Secretary of the

Interior to sign the settlement agreement; and authorize funds to implement the settlement.

H.R. 8951 would ratify and confirm the Zuni Tribe's water rights to approximately 24,809 acre-feet per year (AFY) from surface water and groundwater sources on the Pueblo, as well as 22,453 acre-feet in existing reservoir and stock pond storage. These amounts include 5,000 AFY of groundwater use for past, present, and future uses, including economic development for the Zuni Tribe. In addition, pursuant to the settlement agreement, the State closed both the Zuni River basin and the Zuni Salt Lake and Sanctuary to any future appropriations of groundwater and surface water in June and July 2023, (with the exception of new livestock and domestic wells, which will be limited to 0.5 acre-feet per year).

H.R. 8951 would also protect non-Indian water users, as the Zuni Tribe would agree to not make priority calls against non-Tribal adjudicated water rights as long as the water rights holder does not object to the Zuni's Tribe's settlement.

Finally, H.R. 8951 would establish a Trust Fund for the Zuni Tribe, totaling \$685 million, to be indexed: (1) \$655.5 million in a Water Rights Settlement Trust Account and (2) \$29.5 million in a Operation, Maintenance, & Replacement Trust Account. The Zuni Tribe could use these Trust Funds to develop water infrastructure as it determines necessary and on its own timeframe. Monies in the Water Rights Settlement Trust Account could be used by the Zuni Tribe for:

1. Planning, permitting, designing, engineering, constructing, reconstructing, replacing, rehabilitating, operating, or repairing water production, treatment, or delivery infrastructure, including for domestic and municipal supply, or wastewater infrastructure;
2. Planning, permitting, designing, engineering, constructing, reconstructing, replacing, rehabilitating, operating, or repairing water production, treatment, or delivery infrastructure, acquisition of water, or on-farm improvements for irrigation, livestock, and support of agriculture;
3. Planning, permitting, designing, engineering, constructing, reconstructing, replacing, rehabilitating, operating, monitoring, or other measures for watershed and endangered species habitat protection and enhancement, land and water rights acquisition, water-related Tribal community welfare and economic development, and costs relating to the implementation of the settlement agreement;
4. Ensuring environmental compliance in the development and construction of projects under the legislation; and
5. Tribal water rights management and administration.

The State of New Mexico would contribute \$1.25 million to provide for benefits of non-Indian water users. The State's commitment includes \$500,000 for a fund to mitigate impairment to non-Indian livestock and domestic well rights resulting from new or changed water uses by the Zuni Tribe and \$750,000 to develop monitoring programs to assess impacts to the Zuni Salt Lake, which has significant cultural importance to the Zuni Tribe and other Tribes and Pueblos.

There are 15 allotments within or near Zuni lands that total approximately 2,213 acres. The water rights of these allotments would not be settled at this time but would be adjudicated later in the on-going adjudication. H.R. 8951 would not in any way impose any conditions on the use of water on these allotments or alter the ability of the United States and allottees to make water rights claims for these lands in the future.

Title II of H.R. 8951 would provide for protections for the Zuni Salt Lake, a lake outside the Zuni basin that has great spiritual and cultural meaning to the Zuni Tribe and other Pueblos and Tribes in New Mexico. The legislation would transfer approximately 4,822 acres of land surrounding the Lake and managed by the Bureau of Land Management (BLM) into trust for the Zuni Tribe upon the enforceability date of the settlement. In addition, the legislation would withdraw approximately 92,364 acres of BLM land near the Zuni Salt Lake and impose various restrictions on the management of those lands to protect the Lake and its cultural values. The withdrawal would include all BLM lands that are within the closure order the State of New Mexico issued in July of 2023, closing the area around the Zuni Salt Lake and Sanctuary to any new appropriations of groundwater or surface water (with the exception of new livestock and domestic wells, which will be limited to 0.5 acre-feet per year).

III. Department of the Interior Position on H.R. 8951

The Department of the Interior is pleased to support H.R. 8951. This bill is the result of decades of litigation and over a decade of good-faith negotiations. H.R. 8951

is designed to meet the Zuni Tribe's current and long-term needs for water by providing Trust Funds to be used by the Tribe according to its needs and its own determinations. Rather than committing the Zuni Tribe or the United States to construct specific water infrastructure projects, the bill would allow the Tribe to make decisions regarding how, when, and where to develop water infrastructure on Zuni lands. This approach to settlement is consistent with Tribal sovereignty and self-determination, and with our trust responsibilities, and will help to ensure that the Zuni Tribe can maintain its way of life.

H.R. 3977, the Navajo-Gallup Water Supply Project Amendments Act of 2023

H.R. 3977, the Navajo-Gallup Water Supply Project Amendments Act of 2023, would amend the Northwestern New Mexico Rural Water Project Act, P.L. 111-11, Title X, Subtitle B, Part III, *amended* by P.L. 114-57 (together the 2009 Act). The Department supports H.R. 3977.

I. Background

The 2009 Act, which was part of the Omnibus Public Land Management Act of 2009, approved settlement of the Navajo Nation's water rights claims in the San Juan River Basin in New Mexico and, as the cornerstone of the settlement, directed the Secretary (acting through the Bureau of Reclamation (Reclamation)) to design, construct, operate, and maintain the Navajo Gallup Water Project (Project). When completed, the Project will provide a reliable and sustainable domestic, municipal, and industrial water supply from the San Juan River to 43 Chapters of the Navajo Nation, including the Nation's capital of Window Rock, Arizona; the city of Gallup, New Mexico; and the southwest portion of the Jicarilla Apache Reservation. All of these entities are currently relying on a shrinking supply of groundwater that is of poor quality and is inadequate to meet present domestic water needs, let alone projected needs.

The 2009 Act authorized an appropriation of \$870 million (2007 price level), adjusted annually using engineering cost indices, to plan, design, and construct the Project, which includes construction of two water transmission laterals—the Cutter and San Juan Laterals. The Department, through Reclamation, has been implementing the 2009 Act with significant success. In October 2021, Reclamation declared substantial completion of the Cutter Lateral, the smaller of the two laterals, and it transferred operation, maintenance, and replacement responsibilities for the Cutter Lateral to the Navajo Nation in June 2022. As of May 2021, the completed segments of the Project have facilitated delivery of drinking water to 6,200 people (1,550 households) in eight Navajo chapters, including an additional 50 homes that previously did not have drinking water. Reclamation has also made significant progress on the San Juan Lateral and has completed over 60 percent of the features on the lateral. Reclamation and their partners have completed or are currently constructing 285 of the 300 miles of Project water transmission pipelines. Last year, Reclamation acquired the San Juan Generating Station water system facilities that will provide both construction and operation and maintenance savings, increased operational flexibility, and reduced risks to operations for the Project.

II. H.R. 3977 Provisions and Positions of the Department of the Interior

H.R. 3977 would amend the Act in several ways:

Increase the authorized Project cost ceiling. H.R. 3977 provides an additional authorization of \$725.7 million to complete the Project. This is comprised of \$689.45 million to address a cost/funding cost gap, \$30 million for Navajo community connections to the Project water transmission line, and \$6.25 million for renewable energy features.

The 2009 Act's appropriation ceiling was based on a preliminary, 2007 appraisal-level design estimate rather than a feasibility level design estimate, which is the level of estimation that Reclamation recommends for reliability. As final design and construction of the Project progressed, the difference between the 2009 Act's appropriation ceiling and the costs estimated to complete the Project (Working Cost Estimate) became apparent. At the time H.R. 3977 was introduced in July of 2023, the indexed authorized appropriation ceiling was \$1,413.7 million (October 2022 price level) but the Project Working Cost Estimate was \$2,138.4 million (October 2022 price level). After accounting for non-Federal funding contributions from the Project beneficiaries received through the Contributed Funds Act, Reclamation estimates the cost/funding gap is \$689.45 million. The cost increases are based on more reliable cost estimate updates, primarily associated with the two water treatment plants and the San Juan Lateral intake, as well as the increased cost of heavy civil construction in remote areas of New Mexico. Moreover, the latest Working Cost

Estimate reflects the significant inflation and market volatility, at levels not seen in 40 years, which have far outpaced projected indexing used in updating the appropriation ceiling.

The Department supports the additional authorization contained in H.R. 3977. The additional authorization will enable Reclamation to complete the Project in accordance with requirements of the 2009 Act and is reflective of Project participant's needs and the reality of construction costs in this remote area of New Mexico. The additional authorization of \$6.25 million for renewable energy development will enable Reclamation to construct lower cost and alternative power generation for areas on the project (notably the Cutter Lateral) where Colorado River Storage Project (CRSP) power is not available. This provision also provides up to \$1.25 million of the \$6.25 million to develop small hydropower generation for Project facilities to help offset a portion of the Project's pumping costs. The additional authorization of \$30 million for community connections is critical to the Project's success and will help ensure that water deliveries are made to all Navajo communities within the original Project service area. The Navajo Nation has agreed to provide an additional \$60 million, approximately, of its own funding to cover the full costs of connecting all existing Navajo communities to the San Juan Lateral.

Operation, Maintenance, and Replacement (OM&R) Waiver. H.R. 3977 provides for a \$250 million OM&R trust fund for the Navajo Nation and up to a \$10 million OM&R trust fund for the Jicarilla Apache Nation, the latter conditioned on an ability to pay analysis. The 2009 Act includes a provision allowing the Secretary to waive, for a period of not more than 10 years, the OM&R costs allocable to the Navajo Nation when the Secretary determines those costs exceed the Nation's ability to pay. Reclamation conducted an ability to pay analysis in 2020, following Reclamation practice for evaluating the end-user's ability to pay for municipal and industrial water systems, that concluded the Navajo Nation did not have the ability to pay.

The Department supports establishing a \$250 million OM&R trust fund for the Navajo Nation because it will assist the Nation in paying OM&R during the time needed to increase the customer base and economic development necessary to support full OM&R payments. While the 2009 Act did not provide OM&R assistance to the Jicarilla Apache Nation, the Department supports up to a \$10 million OM&R trust fund if the allocable OM&R costs are in excess of the Jicarilla Apache Nation's ability-to-pay.

Expand the Project service area. H.R. 3977 would also expand the Project to serve the Navajo Nation's four chapters in the Rio San Jose Basin (RSJB) in New Mexico and the Lupton community in Arizona to help the Navajo Nation increase the customer base and potentially lower OM&R costs. The proposed amendments do not include funding that would be needed to increase the capacity of the Crownpoint Lateral, nor additional improvements necessary to supply the RSJB.

The Department supports the expansion of the Project service area.

Cap the city of Gallup's Repayment Obligation. H.R. 3977 would cap the city of Gallup's (City) repayment obligation at 25% of its allocated construction costs, not to exceed \$76 million. Under the 2009 Act, the City is responsible for paying between 25% to 35% of its allocable costs, based on its ability to pay. Reclamation estimates that this provision would reduce the City's repayment obligation by approximately \$33 million.

The Department does not oppose the cap on the City's repayment obligation.

Project Lands Transfer. H.R. 3977 would transfer Navajo fee lands and Bureau of Land Management lands, upon which easements have been acquired for Project purposes, to the Navajo Nation in trust with the condition that Reclamation would retain easements for Project construction, operation, and maintenance. H.R. 3977 also transfers ownership of land underlying the recently acquired San Juan Generating Station water conveyance and storage facilities to the Navajo Nation in trust. H.R. 3977 provides for an easement for Reclamation to continue to carry out construction, operation, and maintenance necessary to incorporate those facilities into the Project until title transfer under section 10602(f) of the 2009 Act.

The Department supports the land transfer provisions of S. 1898, which would take land into trust, exclusive of Project facilities. We would like to make technical changes to the Bill, similar to those contained in the amendment in the nature of a substitute to S. 1898 reported out of the Senate Committee on Indian Affairs on November 15, 2023, to clarify that Reclamation would retain ownership of Project facilities and infrastructure on the land until transferred to the Navajo Nation under section 10602(f) of the 2009 Act.

Deferred Construction. H.R. 3977 would authorize establishment of a Deferred Construction Fund and execution of a deferred construction agreement under which

the Navajo Nation would acknowledge that full capacity of several Project features will not be needed until future demands materialize. The Navajo Nation would be able to use the Deferred Construction Fund to construct or expand facilities as higher demand requires over time.

The Department supports establishing a Deferred Construction Fund because it will allow Reclamation to construct only those water treatment and storage facilities needed to satisfy anticipated demand over the next 20-plus years, rather than immediately beginning work on the larger facilities that will not be needed until demand increases substantially. This provision is fiscally conscious and minimizes OM&R costs that would otherwise be spent on un-used Project facilities in the first years of water deliveries while providing for the later development of facilities to meet the Project's full build-out demand.

Extend Completion Deadline to December 31, 2029. H.R. 3977 extends the date by which the Project must be completed to December 31, 2029.

The Department supports extending the Project completion. Necessary design changes, including incorporating San Juan Generating Station water system facilities into the Project, have created delays in construction and a deadline extension is necessary to allow remaining Project features to be completed.

Eliminate Double Taxation. H.R. 3977 would allow taxation by either the Navajo Nation or the State of New Mexico depending on the ownership of land underlying Project facilities. Currently, both the State of New Mexico and the Navajo Nation have been taxing Federal contractors on construction activities on Navajo Tribal lands.

The Department supports eliminating the double taxation that is an additional and unnecessary cost to the Project. Reclamation estimates that this provision will save approximately \$50 million.

Non-Project Water Use in the State of Utah. While not included in H.R. 3977, but included in the amendment in the nature of a substitute to S. 1898 reported out of the Senate Committee on Indian Affairs on November 15, 2023, is a provision that grants the Navajo Nation authority to use the Navajo-Gallup Water Supply Project's San Juan Lateral to treat, store, and convey up to 2,000 acre-feet of its Navajo-Utah Settlement water rights (non-Project water) to Navajo communities in southeast Utah without increasing the capacity of any Project infrastructure in the State of New Mexico or any infrastructure in the State of Arizona or Utah necessary to deliver water to Navajo communities in Utah.

The Department would support the inclusion of similar language in H.R. 3977.

In sum, the Department supports H.R. 3977, as it will allow the Department to fulfill the commitments made in the 2009 Act to deliver clean drinking water to the Navajo Nation and other Project beneficiaries.

H.R. 8945, Navajo Nation Rio San José Stream System Water Rights Settlement Act of 2024

H.R. 8945, the Navajo Nation Rio San Jose' Stream System Water Rights Settlement Act of 2024, would approve and provide authorizations to carry out the settlement of water rights claims of the Navajo Nation in the Rio San José River basin in New Mexico.

I. The Navajo Nation and Rio San José Basin Water Resources

The Navajo Nation has approximately 298,000 enrolled members, of which about 122,000 live in New Mexico. The Navajo Nation consists of five agencies, further subdivided into 110 chapters. The Eastern Navajo Agency, headquartered in Crownpoint, encompasses 31 chapters within Western New Mexico as well as the satellite reservation areas of To'hajiilee and Alamo. Four of the chapters, with a total estimated population of 3,810 Tribal members, are within the Rio San José Basin. These are the chapters of Smith Lake, Casamero Lake, Thoreau and Baca/Prewitt. In addition, the satellite reservation of To'hajiilee, within the Rio Puerco basin, has an estimated 1,424 tribal members.

The Navajo Nation is located in an arid region of New Mexico and the chapters in the Rio San José Basin are primarily reliant on intermittent surface flows and groundwater supplies. Drought is a common occurrence that has impacted, and continues to impact, the Tribe. The supply of water available to the Navajo Nation has been reduced over time from extensive groundwater demands by non-Indian water users. An estimated 30 percent of residences do not have running water. While the Navajo Nation has water rights senior to the majority of non-Indian users in the basin, it is facing water shortages that impact its ability to provide sustainable water for its current and future water needs. Recent effects of global warming and climate change are exacerbating these effects and surface water supplies are

dwindling. The Navajo Nation seeks funding as part of the proposed settlement to develop its water resources for various uses, including domestic and municipal purposes for current and future Tribal populations.

II. Proposed Navajo Rio San José Settlement Legislation

The Settlement would resolve all outstanding water claims in the Rio San José basin in New Mexico that could be brought by the Navajo Nation or by the United States, in its capacity as trustee for the Nation, and would achieve finality with respect to all those claims. Legislation (H.R. 1304) is currently pending to resolve the water rights claims of Acoma and Laguna in the Rio San José basin. If both H.R. 1304 and H.R. 8945 are enacted, all Tribal water rights claims in the Rio San José basin would be resolved. H.R. 8945 would also approve a conditional settlement of Navajo Nation claims in the Rio Puerco basin.

H.R. 8945 would ratify and confirm the Navajo Nation's water rights to approximately 2,355 acre-feet per year (AFY) from surface water and groundwater sources in the Rio San José basin. These amounts include 638 AFY of groundwater for past and present uses, and 1300 AFY of groundwater for future uses. Conditionally settled claims in the Rio Puerco basin would be 506 AFY.

H.R. 8945 would also protect non-Indian water users, as the Navajo Nation would agree to not make priority calls against certain non-Indian water rights.

While the Navajo Nation Rio San José settlement would be fund-based, the proposed Federal contribution is largely based on the expansion of the existing Navajo-Gallup Water Supply Project and the creation of a regional water transmission system and community connections to bring imported water into the Rio San José basin. The trust fund to be established by H.R. 8945 totals \$223.271 million, to be indexed. Of that amount, \$200.271 million could be used for:

1. Acquiring water rights or water supply;
2. Planning, permitting, designing, engineering, constructing, reconstructing, replacing, rehabilitating, operating, or repairing water production, treatment, or delivery infrastructure, including for domestic and municipal use, on-farm improvements, or wastewater infrastructure;
3. Navajo Nations' water rights management and administration;
4. Watershed protection and enhancement, support of agriculture, water-related Navajo community welfare and economic development, and costs relating to implementation of the settlement agreement; and
5. Environmental compliance associated with project developed with trust funds.

The remaining trust fund money (\$23 million) could only be used for OM&R. The State of New Mexico would contribute \$3 million for the benefit of non-Indian acequia projects.

There are over 300 "Navajo" allotments in the basin. While the Department believes that most of these are allotments that were issued to individual Indians out of the Public Domain under section four of the General Allotment Act, final historic studies have not been completed and water rights claims have not been developed. Therefore, it has not been possible to include these allotments in the settlement. The water rights of these allotments would be adjudicated at a later date in the on-going adjudication of the Rio San José basin. H.R. 8945 would not in any way impose any conditions on the use of water on these allotments or alter the ability of the United States and allottees to make water rights claims for these lands in the future.

The Department of the Interior is pleased to support H.R. 8945. This bill in combination with H.R. 1304 would settle all Tribal rights in the Rio San José Basin, bringing stability to the basin for all water users. H.R. 8945 would provide funding to allow the Navajo Nation to plan water infrastructure for the current and long-term water needs of its people. This approach to settlement is consistent with Tribal sovereignty and self-determination, and with our trust responsibilities, and will help to ensure that Navajo Nation can maintain itself in a viable homeland.

H.R. 8949, Yavapai-Apache Nation Water Rights Settlement Act of 2024

H.R. 8949, the Yavapai-Apache Nation Water Rights Settlement Act of 2024, among other things, would approve the settlement of the Yavapai-Apache Nation and authorize construction of a water project relating to the Nation's water rights claims. The Department supports the goals of H.R. 8949 and is committed to working with the Nation and the Committee to resolve the Department's concerns with H.R. 8949 as introduced.

I. Background

A. Historical Context

The ancestors of Yavapai-Apache Nation (“Nation”) have lived and occupied lands in the Verde Valley in Arizona since time immemorial and were well-established as a hunting, gathering, and agricultural people before the United States secured the area from Mexico through the Treaty of Guadalupe Hidalgo in 1848. Since 1848, pursuant to statute and administrative action, the United States has taken into trust approximately 1,850 acres as the Yavapai-Apache Reservation (“Reservation”). The Reservation includes five non-contiguous districts: the Clarkdale District, consisting of approximately 120 acres northwest of the Town of Clarkdale and the city of Cottonwood; the Middle Verde District, consisting of approximately 1,600 acres northwest of the Town of Camp Verde; the Rimrock District, consisting of approximately 4 acres east of the Middle Verde District; the Montezuma District, consisting of approximately 80 acres northeast of the Town of Camp Verde and between the Middle Verde and Rimrock Districts; and the Camp Verde District consisting of approximately 50 acres southeast of the Town of Camp Verde. Of the approximately 2,673 enrolled members of the Nation, approximately 750 live on the Reservation. Current water needs on the Reservation are satisfied through surface and groundwater. The Verde River—one of the few remaining perennial rivers in Arizona—flows through the Reservation.

B. Water Resources, Litigation, and Settlement Negotiation

The water rights of the Nation are the subject of ongoing litigation in the Gila River general stream adjudication (“Adjudication”). The United States claimed 4,922 acre-feet per year (“AFY”) of surface and groundwater to satisfy the Nation’s past, present, and future needs.

Efforts to resolve the Nation’s water rights through settlement have been on-going since approximately 2008. As the Adjudication continued, the urgency for a settlement increased. In August 2023, the Department, Nation, and Salt River Project Agricultural Improvement and Power District and the Salt River Valley Water Users’ Association, met and committed to intensify negotiations with a goal of reaching agreement expeditiously.

II. Proposed Yavapai-Apache Nation Water Rights Settlement

H.R. 8949 would resolve all the water rights claims in Arizona of the Nation; ratify and confirm the Settlement Agreement among the Nation, the State of Arizona, and other local parties; authorize the Secretary of the Interior to sign the Settlement Agreement; and authorize funds to implement the settlement.

H.R. 8949 would confirm the Nation’s right to divert 6,888.50 acre-feet per year (AFY). The 6,888.5 AFY diversionary right is made up of the Nation’s entitlement to 1,200 AFY of water from the Central Arizona Project, 3,410.25 AFY of water from the C.C. Cragin Reservoir, 684.48 AFY of water pumped on the Nation’s Reservation, and water rights acquired when certain lands were added to the Reservation.

Section 103 of H.R. 8949 would require the Secretary to plan, design, and construct the Tú nłínichoh Water Infrastructure Project (Project), consisting of the Cragin-Verde Pipeline Project (Pipeline) and the Yavapai-Apache Nation Drinking Water System Project (Drinking Water System). H.R. 8949 requires that the Pipeline be constructed to deliver no less than 6,836.92 AFY of water from the C.C. Cragin Dam and Reservoir for use by the Nation on its Reservation and up to an additional 1,912.18 AFY for use by water users in Yavapai County if they elect to contract for such water. The Pipeline would be owned by the United States and become part of the Salt River Federal Reclamation Project, and upon substantial completion, the Salt River Project Agricultural Improvement and Power District and Salt River Valley Water Users’ Association (collectively, called SRP) would assume responsibility for the care, operation, and maintenance of the Pipeline. The cost of care, operation, and maintenance during construction would be borne by the Secretary, and upon substantial completion would be the responsibility of the Nation and any later to be determined project beneficiaries. Lands within the United States Forest Service needed for construction of the Pipeline would be withdrawn for that purpose.

In addition to constructing the Pipeline, H.R. 8949 would require the Secretary to plan, design, and construct the Drinking Water System, including a water treatment plant capable of treating up to approximately 2,250 AFY from the Pipeline, and distribution lines to various delivery points on the Reservation. In addition, the bill would authorize the Secretary to increase the capacity of the Drinking Water System to treat additional water for use by communities in the Verde Valley, if those communities pay incremental construction cost and OM&R. Upon substantial

completion, title to, and responsibility for operation and maintenance of the Drinking Water System would transfer to the Nation. H.R. 8949 would allow for the Nation to plan, design, and construct the drinking water system pursuant to the Indian Self-Determination and Education Assistance Act.

H.R. 8949 establishes a non-trust interest-bearing Implementation Fund for use by the Secretary to plan, design and construct the Project and to reimburse SRP for the proportional capital and costs and OM&R of the C.C. Cragin Dam and Reservoir associated with the Cragin water allocated to the Nation. H.R. 8949 provides a combination of mandatory and discretionary funding for construction of the Pipeline (\$731,059,000 in mandatory funding) and the Drinking Water System (\$152,490,000 in mandatory funding). In the event this mandatory funding is insufficient to complete the Project, the bill authorizes the appropriation of “such sums as are necessary” for completion. In addition, H.R. 8949 authorizes the appropriation of such sums as necessary for the OM&R of the Project until the date of substantial completion.

H.R. 8949 establishes a trust fund of \$156 million that the Nation could use for: implementing the Settlement; expanding the drinking water system; constructing water infrastructure, including additional wells; planning, designing, and constructing wastewater treatment and reuse facilities; paying OM&R; and participating in watershed restoration activities in the Verde Valley watershed.

Under H.R. 8949, the United States Geological Service would be required to continue to operate and maintain certain gaging stations on the Verde River with an authorization for appropriations of “such sums as may be necessary” for this purpose.

H.R. 8949 also clarifies which lands make up the Nation’s existing Reservation and identifies specific parcels to be taken into trust for Nation and added to the Reservation.

Finally, H.R. 8949 would require the Secretary of Agriculture to finalize a land exchange with the Nation and to “work expeditiously” to transfer 40 acres of Forest Service land to the Town of Camp Verde.

III. Department of the Interior Position on H.R. 8949

The Department supports the goals of H.R. 8949 and appreciates the recent efforts of the settlement parties to reach a settlement within an expedited timeframe. However, the Department has some concerns with, and questions concerning, H.R. 8949. We are committed to working with the Nation, the settlement parties, and the Subcommittee to find a path forward on outstanding issues.

In particular, the Department has concerns with H.R. 8949’s mandate to plan, design, and construct the Project. As an initial matter, the bill would require the Secretary to construct the Pipeline and Drinking Water System with capacities that greatly exceed the Nation’s projected domestic, commercial, municipal, and light industrial (DCMI) needs as contained in claims filed in the Gila River Adjudication both by the Nation and the United States as trustee.

Additionally, the Department has significant concerns with the requirement that the Secretary “upsize” the Pipeline to transport water to be used by Verde Valley communities that have not committed to receiving such water or paying for their fair share of the capital costs of the Pipeline. In prior Indian water rights settlements that provided for infrastructure to serve both Tribal and non-Tribal communities, the non-Tribal communities committed to use and pay for a portion of the cost of such infrastructure.

Finally, with respect to the Drinking Water System, the Department has not had sufficient time to review plans for that system, having just received plans from the Nation on July 9, 2024.

In addition to concerns about the size and scope of the Project, the Department has concerns about the Project costs. The Pipeline’s design and cost are based, in part, on a Value Planning Study (“Study”) prepared by the Department, with input from the Nation and SRP. The purpose of the Study was not to provide a reliable estimate of the actual costs of a project, but instead to facilitate the comparison of various alternatives. Value planning studies use preliminary-level cost estimates to compare the relative costs of various infrastructure options. Value planning studies provide useful information that allows options to be ranked according to various measures, including from least to most expensive, but should not be used as a basis for congressional authorization. Moreover, the Department’s experience with other infrastructure-based settlements such as Aamodt, White Mountain Apache and Navajo-San Juan have shown significant cost increases as planning and construction move forward. Accordingly, the Department expects the mandatory funding provided for the Pipeline will be insufficient and we would like work with the Nation to identify cost-savings and alternatives to address the cost gap. With respect to the

drinking water system, the Department must evaluate the recently received cost basis submitted by the Tribe. The authorization for “such sums as are necessary” raises concerns for the Department. The Department lacks information on other aspects of the proposed settlement and costs, along with some significant legal questions with some provisions in the bill, and looks forward to continuing to work with the sponsors and Tribe to resolve those issues.

In addition to the specific concerns discussed above, the Department notes H.R. 8949 requires other technical changes.

* * *

In sum, the Department supports the goals of H.R. 8949 and commends the Yavapai-Apache Nation and the State parties for the significant progress made on this settlement in recent months. The Department is committed to continuing to work with the Nation and the bill sponsors to address the Department’s concerns.

H.R. 8953, Crow Tribe Water Rights Settlement Amendments Act of 2024

H.R. 8953 would amend the Crow Tribe Water Rights Settlement Act of 2010 (Pub. L. 111-291; 124 Stat. 3097) (Settlement Act). The Department supports H.R. 8953 and recommends an amendment to the bill, which we have discussed with the Crow Tribe, that would ensure that trust fund expenditures prioritize providing clean drinking water over land acquisitions.

I. Background

The Settlement Act authorized \$460 million, indexed to inflation, as follows: \$378.224 million, for the Bureau of Reclamation to plan, design and construct two major projects on the Crow Reservation and \$81.776 million held in trust by the BIA for Settlement implementation, O&M of the systems, and development of clean energy. The two projects are: (1) the rehabilitation and improvement of the Crow Irrigation Project (CIP), and (2) the design and construction of a Municipal, Rural, and Industrial (MR&I) water system. Both projects were to be designed and constructed as generally described in detailed engineering reports prepared by consultants to the Tribe and cited in the Settlement Act. In addition, the Settlement Act gave the Tribe a 15-year exclusive right to construct hydropower facilities at the Yellowtail Afterbay Dam, a Bureau of Reclamation facility. That exclusive right expires in 2025.

II. Proposed Amendment

H.R. 8953 would amend the Settlement Act by establishing a non-trust fund account to allow the Bureau of Reclamation to continue work on rehabilitation of the CIP and a new MR&I projects trust fund to be used by the Tribe for (i) planning, permitting, designing, engineering, constructing, reconstructing, replacing, rehabilitating, operating, or repairing water production, treatment, or delivery infrastructure, including for domestic and municipal use or wastewater infrastructure; (ii) purchasing on-Reservation land with water rights; and (iii) complying with applicable environmental laws. The amendments do not increase the funding for the Settlement Act but merely change the way some funds are held and expended. If enacted as written, it is our interpretation that while the Amendment would repeal Section 406 in its entirety, funding for the MR&I projects trust fund would not exceed \$246,381,000, as indexed, as provided in section 414(b) of the Settlement Act (which would be redesignated as 415(b) pursuant to H.R. 8953).

When the Settlement Act was enacted, it did not provide for the creation of a non-trust interest-bearing account for funds appropriated for project construction. Subsequent Indian water rights settlements have provided for such accounts to allow funds to accrue interest while projects are being planned, designed, and constructed. Because the Settlement Act did not provide this authorization, the Department and the Tribe instead opened a joint-signature account with a private bank for the investment of settlement funds. While this has allowed the funding to earn interest, it has come with costs associated with maintaining a private bank account. The Tribe now seeks to establish a non-trust interest-bearing account in Treasury so it can enjoy the benefits of earning interest without having to pay management fees to a private banking institution. H.R. 8953 would authorize the establishment of a non-trust interest-bearing account in Treasury to receive the funds already appropriated and yet to be appropriated for CIP rehabilitation. Reclamation would continue to be the lead agency responsible for the planning, design, and construction of CIP rehabilitation features.

With respect to the MR&I system, H.R. 8953 would convert this portion of the Settlement Act from an infrastructure-based settlement to a trust fund-based

settlement. H.R. 8953 would direct the Secretary to establish in the existing Crow Tribe Water Rights Settlement Trust Fund a new “MR&I Projects” account. The Tribe could then use funds from this account for several authorized purposes: plan, design, and construct MR&I systems; plan, design, and construct wastewater treatment facilities; and purchase on-Reservation land with water rights. H.R. 8953 would provide the Tribe with flexibility and discretion to plan, design, and construct the MR&I and wastewater systems that it believes will best serve communities on its Reservation.

Finally, H.R. 8953 would extend by five years the period during which the Tribe has the exclusive right to develop hydropower at the Yellowtail Afterbay Dam, to 2030.

The Department supports H.R. 8953. Allowing the Tribe to use the funding authorized for a large, centralized MR&I system to instead build smaller MR&I projects will allow it to make decisions regarding how, when, and where to develop water infrastructure on the Reservation. This approach is consistent with Tribal sovereignty and self-determination. We would like to work with the Tribe and the Committee, however, to include language in H.R. 8953 to ensure that trust fund expenditures prioritize providing clean drinking water over land acquisitions. The expansion of the authorized uses from a single use (MR&I) to multiple uses, including wastewater projects and purchases of land with water rights, will necessarily reduce the amount of funding available for badly needed drinking water systems on the Reservation. Provisions prioritizing funding for MR&I would ensure safe, reliable drinking water for the Tribe. After testifying on H.R. 8953’s companion bill in the Senate, S. 4442, the Department coordinated with the Tribe to provide technical assistance to the Senate to address this concern.

H.R. 7240 and H.R. 8791, Fort Belknap Indian Community Water Rights Settlement Act of 2024

H.R. 7240 and H.R. 8791, both titled Fort Belknap Indian Community Water Rights Settlement Act of 2024, would each approve and provide authorizations to carry out the settlement of the Assiniboine (Nakoda) and Gros Ventre (Aaniih) Tribes’ water rights in the State of Montana. The Department supports resolving the Tribes’ water rights claims through a comprehensive settlement. While the Department supports H.R. 7240, introduced by Representative Rosendale, and similar legislation that has already passed the Senate, the Department does not support H.R. 8791.

I. Reservation and Historical Background

Congress established the Fort Belknap Indian Reservation (Reservation) in 1888 to secure a homeland for what are now the Assiniboine (Nakoda) and Gros Ventre (Aaniih) Tribes. This homeland in Montana is just a small portion of the Tribes’ ancestral homelands.

Not long after the Reservation was established, the Federal Government filed a lawsuit to protect the Tribes’ right to water on its homelands. That lawsuit eventually reached the Supreme Court in 1908. The Supreme Court determined that the establishment of the Reservation included the senior right to water on the Reservation. *Winters v. United States*, 207 U.S. 564. In its opinion, the Court explained that the Reservation would be inadequate to fulfill the needs of the Tribes and the policy goals of the United States “without a change of conditions.” The Court also noted, “[t]he lands were arid and, without irrigation, were practically valueless.”

Winters has had far-reaching and long-lasting consequences for all of Indian country. The case stands for the principle that the establishment of a reservation for a Tribe includes the reservation of waters necessary to make the reservation a livable homeland. The *Winters* doctrine protects Tribal rights and homelands, safeguarding the rights and interests of Tribes across the United States. Despite their legal victory in *Winters*, Tribes of the Fort Belknap Indian Reservation have not been able to fully put their reserved water rights to use.

Today, the Reservation is comprised of approximately 605,338 acres, including lands held in Trust for the Tribes and allotments held in trust for individual Indians, situated mainly in the Milk River Basin in north central Montana. The Milk River forms the Reservation’s northern boundary. The southern boundary is from 25 to 35 miles south of the Milk River, extending on either side of the northern crest of the Little Rocky Mountains.

The low rainfall on most of the Reservation severely limits what can be grown without irrigation. Not surprisingly, the major water use on the Reservation is the Fort Belknap Indian Irrigation Project (FBIIP). The Bureau of Indian Affairs (BIA) owns the FBIIP, which diverts water from the Milk River and two tributaries,

Threemile Creek and White Bear Creek, and includes a 634 acre-feet (af) reservoir on Threemile Creek. The FBIIP serves 10,475 assessed acres, 92 percent of which are held in trust by the United States for the benefit of the Tribes or allottees. Groundwater wells on the Reservation are primarily used for domestic and municipal purposes and, to a lesser extent, stock watering.

According to BIA and Tribal data, 3,351 Tribal members currently live on the Reservation. The total Tribal membership in August 2021, including members living off the Reservation, was 8,609. Most on-Reservation residents reside in three main towns: Fort Belknap Agency on the northern boundary of the Reservation, and Lodge Pole and Hays on the southern portion of the Reservation.

The primary sources of employment on the Reservation are Tribal and Federal government services. The main industry is agriculture, consisting of cattle ranches, raising alfalfa hay for feed, and larger dryland farms. The unemployment rate on the Reservation is nearly 50%, according to a 2019 Montana State University study.

II. Proposed Fort Belknap Indian Community Settlement Legislation

In its role as Trustee, the United States filed water rights claims for Reservation lands in the Milk River and Missouri River basins in the ongoing statewide water rights adjudication. Since 1990, the Tribes, State, and United States have engaged in negotiations to resolve the Tribes' and allottees' water rights within the State. In 2001, the Montana legislature approved the Montana-Fort Belknap Indian Community Water Rights Compact (Compact). Congressional approval is necessary before the United States may join in the Compact.

Both H.R. 7240 and H.R. 8791 would authorize, ratify, and confirm the Compact to the extent it is consistent with H.R. 7240 or H.R. 8791. This would resolve the Tribes' water rights claims in Montana by recognizing the Tribal Water Right, which is defined by and established in the Compact. The Tribal Water Right entitles the Tribes to over 446,000 acre-feet per year (afy) of surface water, plus groundwater. Consistent with Federal law, both bills would protect the rights of allottees to use a portion of the Tribal Water Right for agricultural, domestic, and related uses on their allotments. In addition to the Tribal Water Rights provided by the Compact, both H.R. 7240 and H.R. 8791 include a 20,000 afy allocation of storage from Lake Elwell, a Bureau of Reclamation (Reclamation) facility on the Marias River, also known as Tiber Reservoir.

Both H.R. 7240 and H.R. 8791 would also authorize funds to implement the provisions of the Compact and each bill, respectively.

H.R. 7240 and H.R. 8791 each would authorize Federal appropriations—\$1.34 billion or \$1.17 billion, respectively—for three general purposes: rehabilitation of the Fort Belknap Indian Irrigation Project; administration and development of the Tribes' water rights; and mitigation for the impacts on water users outside the Reservation. Both bills are a mixed project- and fund-based settlement.

Both H.R. 7240 and H.R. 8791 include two specific projects that the Department is charged with planning, designing, and constructing: (1) the rehabilitation, modernization, and expansion of the existing FBIIP; and (2) the rehabilitation and expansion of certain Milk River Project facilities to satisfy the Compact required mitigation negotiated by the Tribes and the State.

Both H.R. 7240 and H.R. 8791 authorize the appropriation of up to \$415.8 million for the rehabilitation, modernization, and expansion of the FBIIP. The Department supports rehabilitating and expanding the FBIIP to serve additional lands capable of sustained and economically viable irrigation. Without further study, however, the costs of rehabilitating and expanding the FBIIP cannot be reliably determined. The Tribes believe that the requested authorization will cover the costs.

Additionally, both H.R. 7240 and H.R. 8791 contain a provision providing that the Secretary's obligations to rehabilitate, modernize, and expand the FBIIP will be deemed satisfied if, despite diligent efforts, the project cannot be completed as contemplated due solely to the authorized appropriation being insufficient. Only H.R. 8791, though, identifies the BIA as the lead agency for the rehabilitation, modernization, and expansion of FBIIP, while providing the Tribes the opportunity to perform these activities through self-determination contracts. The identification of BIA as the lead agency for the rehabilitation, modernization, and expansion of FBIIP is unusual. In contrast, previously enacted Indian water rights settlements that have required the Secretary to plan, design, and construct major infrastructure have identified Reclamation as the lead agency for such purposes. Reclamation has the staffing and expertise and a demonstrated history of success in planning, designing, and constructing infrastructure. For these reasons and to ensure successful implementation of H.R. 8791, the Department does not support H.R. 8791's identification of the Bureau of Indian Affairs alone as the lead agency. The Department supports, however, compromise language contained in H.R. 7240 that identifies "the

Bureau of Indian Affairs, in coordination with the Bureau of Reclamation” as the lead agency for FBIIP rehabilitation, modernization, and expansion.

Both H.R. 7240 and H.R. 8791 authorize the appropriation of up to \$300 million to rehabilitate and expand certain Milk River Project facilities to implement the mitigation measures required by the Compact. Both bills identify Reclamation as the lead agency to implement these mitigation projects. The Department testified in the 117th Congress about practical concerns regarding its ability to satisfy Compact provisions requiring mitigation of impacts on junior non-Indian and Milk River Project water users caused by the development of the Tribal Water Right. However, since the time of that testimony, Reclamation completed modeling that identifies viable alternatives to satisfy the Compact’s mitigation requirement. Based on Reclamation’s modeling, the Department determined that rehabilitation of the St. Mary Canal and the expansion of the Dodson South Canal will provide the 35,000 ac of mitigation required by the Compact. Again, without a feasibility level study, reliable costs of rehabilitating and expanding the FBIIP cannot be determined. In an effort to avoid cost gap issues, both H.R. 7240 and H.R. 8791 provide that the Secretary’s obligations to complete Milk River Project mitigation projects will be deemed satisfied if despite diligent efforts, the projects cannot be completed as contemplated due solely to the authorized appropriations being insufficient.

Because the St. Mary Canal is located on the Blackfeet Reservation, both H.R. 7240 and H.R. 8791 require Reclamation to complete the canal’s rehabilitation in coordination with the Blackfeet Tribe.

In addition to the project-based components described above, both H.R. 7240 and H.R. 8791 would establish a trust fund for the Tribes—in the amount of \$628.7 million or \$454.2 million, respectively—to be used for various purposes. Some of these purposes, such as the development of domestic water infrastructure and establishment of a Tribal water resources department to administer the Tribal Water Right, are commonplace in Indian water rights settlements. Both bills would specifically authorize the Tribes to use their trust fund to plan, design, and construct a pipeline to transport Lake Elwell water from an off-Reservation point of diversion on the Missouri River to the southern portion of the Reservation. The Department understands that the Tribes would be required to comply with all applicable Federal and State laws when implementing this and all other provisions in the settlement.

H.R. 7240 and H.R. 8791 would both also transfer 10,322.58 acres of federal land and 3,519.3 acres of land currently owned by the Tribes into trust for the Tribes as part of the Reservation. In addition, both bills direct the Secretary of the Interior and the Secretary of Agriculture to negotiate with the State to exchange certain State lands within the boundaries of the Reservation for federal lands elsewhere in the State.

Both H.R. 7240 and H.R. 8791 state that the United States shall not be liable for any failure to carry out any obligation or activity authorized by this Act if there are not enough funds available in the Reclamation Water Settlements Fund established by section 10501(a) of the Omnibus Public Land Management Act of 2009 (43 U.S.C. 407(a)). Regarding this section, the Administration encourages extension of this funding.

Summary

The Department recognizes that the Tribes and State of Montana have worked hard to negotiate this settlement. The Department believes that this legislation is consistent with the Administration’s priorities of protecting Tribal homelands and meeting our trust responsibility. It would also bring meaning to the legal victory the Tribes and the United States secured more than a century ago in *Winters*. For the reasons discussed above, the Department opposes H.R. 8791.

The Department supports, instead, H.R. 7240.

H.R. 8940, Northeastern Arizona Indian Water Rights Settlement Act of 2024

H.R. 8940, the Northeastern Arizona Indian Water Rights Settlement Act of 2024, would, among other things, approve and provide authorizations to carry out the settlement of water rights claims of the Navajo Nation, Hopi Tribe, and San Juan Southern Paiute Tribe in Arizona. The Department strongly supports the goals of H.R. 8940 and is committed to working with the Tribes and the Committee to resolve outstanding concerns discussed below.

I. Background

A. Historic Context

The Navajo Nation, Hopi Tribe, and San Juan Southern Paiute Tribe have occupied lands in northeastern Arizona since time immemorial. Today, the Navajo Reservation encompasses over 17 million acres in northeastern Arizona, New Mexico, and southeastern Utah. Approximately 10 million acres of the Navajo Reservation are within the State of Arizona. Of the Nation's more than 330,000 members, approximately 95,000 live on the Navajo Reservation in Arizona. There are over 540 allotments within the exterior boundaries of the Navajo Reservation in Arizona. Approximately 470 of these allotments were created out of the public domain and issued to individual Navajo Indians under section 4 of the General Allotment Act and similar authorities. The Reservation was later expanded to surround these public domain allotments. The remaining allotments within the exterior boundaries of the Navajo Reservation were created out of Reservation lands pursuant to section 1 of the General Allotment Act. In addition, there are 51 public domain allotments issued to individual Navajo Indians located outside the exterior boundaries of the Navajo Reservation in Arizona.

The Hopi Reservation is made up of approximately 1.5 million acres located in Arizona and entirely within the exterior boundaries of the Navajo Reservation. There are approximately 15,000 members of the Hopi Tribe, of whom approximately 9,000 live on the Hopi Reservation. There are 11 public domain allotments on the Hopi Reservation at Moenkopi. These allotments were issued to individual Hopi Indians under section 4 of the General Allotment Act before lands at Moenkopi were added to the Hopi Reservation.

The San Juan Southern Paiute Tribe has occupied lands within the Navajo Reservation in Arizona and Utah since time immemorial but does not yet have a reservation for its exclusive use. In 1986, the San Juan Southern Paiute petitioned the Department for recognition as a federally recognized Tribe through the Federal Acknowledgement Process. In December 1989, the Department approved the petition and recognized the San Juan Southern Paiute Tribe as an Indian Tribe. It is the only so-called "landless" federally recognized Tribe in Arizona. In 2000, the San Juan Southern Paiute Tribe and the Navajo Nation entered into an inter-Tribal treaty to resolve land disputes between the two Tribes and finally establish a Reservation, consisting of a Northern Area in Utah and a Southern Area in Arizona, for the exclusive use and benefit of the San Juan Southern Paiute Tribe. The inter-Tribal treaty requires Congressional approval to become effective. H.R. 8940 would ratify and confirm the treaty and thereby establish a 5,400-acre San Juan Southern Paiute Reservation.

B. Water Resources of the Navajo Nation, the Hopi Tribe, and the San Juan Southern Paiute Tribe

The Navajo Reservation in Arizona encompasses lands within the Colorado River Basin, including approximately 5.7 million acres within the Little Colorado River drainage, approximately 3.2 million acres within the San Juan River drainage, and approximately 1.1 million acres within the Colorado River Mainstem drainage. The Hopi Reservation and proposed San Juan Southern Paiute Southern Area are located entirely within the Little Colorado River drainage in the Lower Colorado River Basin.

All of the Tribes rely primarily on groundwater from the Navajo ("N") and Coconino ("C") Aquifers to satisfy their water needs. Surface water is primarily used for traditional farming practices and stockwatering; it is too unreliable to satisfy domestic and municipal needs. Lack of access to clean drinking water is pervasive on the Reservations. According to some estimates, up to 30% of homes on the Navajo Reservation in Arizona lack indoor plumbing. The situation on the Hopi Reservation and San Juan Southern Paiute lands is similar to that on the Navajo Reservation. Many Tribal members from all three Tribes must haul potable water to their homes to satisfy basic needs like drinking, cooking, bathing, and cleaning. Sometimes the distances traveled to haul water are staggering.

C. Litigation and Settlement Negotiation

Since 1979, an adjudication has been ongoing to resolve water rights claims in the Little Colorado River drainage. Over 13,000 claims have been filed by over 5,000 claimants. In 1988, the LCR adjudication judge appointed a "settlement committee" to resolve claims for all Tribes within the adjudication boundaries. Thereafter, in 1991, the Department of the Interior established an LCR Negotiation Team. Over the decades, negotiations have progressed at varying levels of intensity and with

various levels of success. Meanwhile, litigation of the Tribes' water rights in the LCR adjudication has continued and in recent years has increased in intensity.

Recognizing that litigation would not address the needs on the Tribes or the interests of the State parties, on October 23, 2023, leadership from the Navajo Nation, Hopi Tribe, Department of the Interior, State of Arizona, and other settlement parties met in Phoenix, Arizona and made commitments to work in good faith to reach a negotiated water rights settlement of the Navajo Nation and Hopi Tribe's claims to water in Arizona. By January 2024, the parties were meeting at least once, and often multiple times, per week and were making significant progress toward a negotiated settlement. In February 2024, the San Juan Southern Paiute Tribe began participating in the negotiations. By late-April 2024, the Tribes and local parties had reached agreement. In May 2024, all three Tribes passed resolutions in support of the Northeastern Arizona Indian Water Rights Settlement Agreement ("Settlement Agreement"). Thereafter, attorneys representing 35 local parties, including the State of Arizona, the Central Arizona Water Conservation District ("CAWCD"), the Salt River Project Agricultural Improvement and Power District and the Salt River Valley Water Users' Association ("SRP"), various Arizona cities and towns, irrigation districts, and ranchers, delivered a letter in support of the Settlement Agreement and proposed Federal legislation to the Arizona Congressional Delegation. The Settlement Agreement has been formally approved by the respective boards of SRP, CAWCD, Flagstaff City Council, and the Arizona Game and Fish Commission.

II. Proposed Northeastern Arizona Indian Water Rights Settlement

H.R. 8940 would resolve all the water rights claims in Arizona of the Navajo Nation, the Hopi Tribe, and the San Juan Southern Paiute Tribe; ratify and confirm the Settlement Agreement among the Tribes, the State of Arizona, and other local parties; establish a Reservation for the San Juan Southern Paiute Tribe by ratifying and confirming the inter-Tribal treaty between the Navajo Nation and the San Juan Southern Paiute Tribe; authorize the Secretary of the Interior to sign the Settlement Agreement; and authorize funds to implement the settlement, including for the development of water infrastructure on the Reservations.

H.R. 8940 would ratify and confirm the water rights of the Navajo Nation, the Hopi Tribe, and the San Juan Southern Paiute Tribe, as defined in the Settlement Agreement. By ratifying the Settlement Agreement, H.R. 8940 recognizes each Tribe's rights to all surface water and groundwater on its respective Reservation in Arizona, subject to an inter-Tribal agreement between the Navajo Nation and the Hopi Tribe concerning the N Aquifer, springs, and shared washes. In addition, H.R. 8940 would allocate Arizona Colorado River Water to the Navajo Nation and the Hopi Tribe, including Lower Basin and Upper Basin water. Consistent with the Settlement Agreement, H.R. 8940 would confirm the Navajo Nation's right to 44,700 acre-feet per year (afy) of Arizona Upper Basin Colorado River water and 3,600 afy of Arizona Fourth Priority Lower Basin Colorado River water and the Hopi Tribe's right to 2,300 afy of Arizona Upper Basin Colorado River water and 4,178 afy of Arizona Fourth Priority Lower Basin Colorado River water. The agreement would allow the Navajo Nation and Hopi Tribe to use these allocations of Colorado River water on their Reservations and lease the water in both the Upper and Lower Basins in the State of Arizona. Finally, H.R. 8940 requires the Secretary to enter into water delivery contracts with the Navajo Nation and the Hopi Tribe for the delivery of these Arizona Colorado River water allocations.

H.R. 8940 would also address water rights for allotments in various ways. With respect to the 11 Hopi allotments at Moenkopi, H.R. 8940 would ratify and confirm water rights consistent with the Special Master's report in the Little Colorado River adjudication. The Special Master's report largely approved the water rights claims made by the United States on behalf of the public domain Hopi allottees at Moenkopi. The Settlement Agreement requires the entry of a decree confirming those rights.

H.R. 8940 would also resolve the water rights claims for allotments of Reservation land within the exterior boundaries of the Navajo Reservation by confirming the Navajo Section 1 Allottees' rights to a just and equal distribution of water from the Navajo Nation's water rights to fulfill the purposes for which the allotments were created. H.R. 8940 would not, however, resolve the water rights claims of the more than 520 allotments of the public domain made to Navajo Indians both within and outside of the exterior boundaries of the Navajo Reservation. While the Settlement Agreement makes certain limited compromises on behalf of, and secures certain benefits to, the public domain allotments, it does not fully resolve these rights. Instead, Navajo public domain allotment water rights would be adjudicated later in the Little Colorado River adjudication.

H.R. 8940 would also resolve significant inter-Tribal issues such as the management of water sources relied on by the Navajo Nation and the Hopi Tribe and a land dispute between the Navajo Nation and the San Juan Southern Paiute Tribe.

To address management of shared water sources, H.R. 8940 would approve an agreement between the Navajo Nation and the Hopi Tribe regarding shared washes, springs, and the N-Aquifer. The inter-Tribal agreement regarding the washes and springs would allow for certain rehabilitation and betterment of historically irrigated acres and improvement projects to restore washes and springs. With respect to the N-Aquifer, the Navajo Nation and the Hopi Tribe would agree to annual pumping limits to protect the long-term viability of the N-Aquifer, which is a vital source of water for both Tribes. H.R. 8940 would also require the USGS to continue and expand its existing groundwater monitoring program in the Black Mesa area. Monitoring by the USGS would be used by the Tribes to inform future N-Aquifer management decisions.

To resolve the long-standing land dispute between the Navajo Nation and the San Juan Southern Paiute Tribe, H.R. 8940 would ratify an inter-Tribal treaty which establishes a Reservation for the San Juan Southern Paiute Tribe out of lands within the Navajo Reservation. This new San Juan Southern Paiute Reservation would consist of 5,400 acres in Arizona and Utah. In addition, the Navajo Nation, through the Navajo Tribal Utility Authority, agrees to provide water service to San Juan Southern Paiute Southern Area in Arizona.

H.R. 8940 would also protect the status quo for non-Indian water users by ratifying an agreement by the Navajo Nation, Hopi Tribe, San Juan Southern Paiute Tribe not to object to, challenge, or assert priority against certain off-Reservation water uses by non-Indians. Importantly for the non-Indian parties involved, the Settlement Agreement protects past, present, and future uses. The agreement not to object to certain future water uses is uncommon in water rights settlement. Here, however, the unique hydrology within the LCR drainage minimizes on-Reservation and on-allotment impacts of off-Reservation and off-Allotment surface water uses. With respect to off-Reservation groundwater use, the Settlement recognizes two buffer zones within which the Tribes and the United States, acting as trustee, retain their right to object to, dispute, challenge, or assert priority against off-Reservation groundwater uses if those groundwater uses do not satisfy certain criteria. Groundwater uses that meet the specified criteria within the buffer zones are protected from objection, dispute, challenge, and assertions of priority by the Tribe and the United States, as trustee. In exchange for this and other benefits, non-Indian parties agree to some restrictions on the development of future off-Reservation water uses and also agree not to object to certain elements of the water rights claims to be filed on behalf of public domain allotments outside the boundaries of the Navajo Reservation.

A centerpiece of H.R. 8940 is the *iiná bá-paa tuwaqat'si* pipeline ("Pipeline") to be planned, designed, and constructed by the Bureau of Reclamation ("Reclamation") and substantially configured as Alternative 5, Option B-100 of the Navajo-Hopi Value Planning Study—Arizona (October 2020) ("Value Planning Study" or "Study"). H.R. 8940 provides that, upon completion, the Pipeline is to be owned, operated, and maintained by the Navajo Nation and the Hopi Tribe consistent with an operation agreement to be negotiated by the two Tribes.

H.R. 8940 would authorize a Federal contribution of at least \$5 billion dollars, to be indexed, toward settlement: \$1.715 billion, plus such sums as are necessary, for construction of the Pipeline and \$3.285 billion for deposit in Trust Funds for the benefit of the Tribes.

As discussed in detail below, the Department expects completion of the Pipeline to cost significantly more than \$1.715 billion, thus making the true Federal cost of H.R. 8940 currently uncertain given the authorization for appropriation of "such sums as are necessary."

H.R. 8940 would establish three trust funds: Navajo Nation Trust Fund, Hopi Tribe Trust Fund, and San Juan Southern Paiute Tribe Trust Fund. H.R. 8940 would establish a \$2,746,700,000 trust fund for the Navajo Nation. Of this amount, \$2,369,200 is allocated to plan, design, and construct water infrastructure projects; \$229.5 million is allocated to operate and maintain projects constructed using the trust fund; \$40 million is allocated to establish renewable energy projects to support water infrastructure projects; \$80 million is allocated to modernize infrastructure on historically irrigated land and install livestock wells; and \$28 million is allocated to purchase land with senior water rights in the Lower Basin in Arizona.

H.R. 8940 would establish a \$508,500,000 trust fund for the Hopi Tribe. Of this amount, \$390 million is allocated to plan, design, and construct groundwater infrastructure projects, including the expansion of the Hopi Arsenic Mitigation Project; \$87 million is allocated to operate and maintain projects constructed using the trust

fund; \$30 million is allocated to modernize infrastructure on historically irrigated land and install livestock wells; and \$1.5 million is allocated to purchase land with senior water rights in the Lower Basin in Arizona.

H.R. 8940 would establish a \$29,800,000 trust fund for the San Juan Southern Paiute Tribe. Of this amount, \$28 million is allocated to plan, design, and construct groundwater infrastructure projects on the San Juan Southern Paiute Southern Area; \$1.5 million is allocated to operate and maintain projects constructed using the trust fund and to offset the imputed cost of delivery of water from the Pipeline to the San Juan Southern Paiute Southern Area; and \$300,000 is allocated to modernize infrastructure on historically irrigated land and install livestock wells on the San Juan Southern Paiute Southern Area.

III. Department of the Interior Position on H.R. 8940

The Department of the Interior commends the work of the Hopi Tribe, Navajo Nation, San Juan Southern Paiute Tribe, and the State of Arizona to resolve longstanding water claims. The Department strongly supports the goals of the legislation and is committed to working with the Tribes, Committee, and settlement parties to address outstanding issues in H.R. 8940 as currently drafted to ensure its implementation. The parties have made significant progress with H.R. 8940 and the Department believes this settlement is on a trajectory to completion this term.

Federal Contribution

H.R. 8940 establishes an Implementation Fund to be used by the Secretary, acting through the Bureau of Reclamation, to plan, design, and construct the Pipeline. H.R. 8940 provides \$1.715 billion in mandatory appropriations for this purpose. If the Pipeline cannot be completed for \$1.715 billion, H.R. 8940 authorizes the appropriation of such funds as may be necessary to address the cost gap. This authorization of such sums as are necessary raises significant concerns for the Department. The amount of mandatory funding for the Pipeline included in H.R. 8940 is based on a Value Planning Study completed by the Department, with input from the Navajo Nation, and the Hopi Tribe. Value planning studies are not intended to provide a true or accurate estimate of the actual cost of project construction. Instead, Value planning studies use preliminary-level cost estimates to compare the relative costs of various infrastructure options. Value planning studies provide useful information that allows options to be ranked according to various measures, including from least to most expensive, but should not be used as a basis for congressional authorization. Moreover, the Department's experience with other infrastructure-based settlements such as Aamodt, White Mountain Apache and Navajo-San Juan have shown significant cost increases as planning and construction move forward. With a substantial cost gap expected and a Pipeline completion deadline of 2040, the Department has significant concerns about the implications of covering the cost gap from its discretionary budget. Further, the Department would highlight that completion of the pipeline by the deadline of 2040 would prove challenging given the complexity of the infrastructure and agreements, as well as the uncertainty in costs. While H.R. 8940 allows the Tribes to use their trust funds to supplement funding for the Pipeline, whether to do so is left to the Tribes' discretion. Thus, whether the trust funds would be used for this purpose is uncertain. The Department would appreciate the opportunity to work with the Tribes and the Committee to identify alternatives to addressing the anticipated cost gap.

Operations Agreements

H.R. 8940 provides that ownership, operation, and maintenance of the Pipeline will transfer to the Navajo Nation and the Hopi Tribe upon substantial completion. The bill further provides that the Tribes must enter into an operations agreement, to be approved by the Secretary, as a condition of substantial completion. The Department supports the requirement that the Tribes enter into a Secretariially-approved operations agreement for operation of the Pipeline. However, as drafted, H.R. 8940 would allow construction of the Pipeline to begin before the execution of an operations agreement. The execution and approval of such an operation agreement (or agreements) should be required before the Department begins construction of the Pipeline as postponing this agreement until after construction begins introduces additional risk to the project and would reduce flexibility to make modifications necessary to help reach agreement between the Tribes and the Department.

Navajo Nation Tribal Water Code

Tribal management of water resources on Reservations is essential to sovereignty. The Department supports and encourages this exercise of sovereignty, including

with respect to the rights of Reservation allottees, provided that certain protections are guaranteed to the allottees.

Many enacted water rights settlements recognize the right of allottees to a just and equal distribution of water to serve the purposes of the allotment and require the Tribe to enact tribal water code provisions that guarantee this right and provide a process by which allottees may request a distribution of water. Water code provisions enacted to satisfy these conditions become effective only after Secretarial approval. In contrast, while recognizing the rights of Reservation allottees to a just and equal distribution of water, H.R. 8940 provides that "if necessary," the Navajo Nation will amend its water code to provide enumerated protections to Reservation allottees. H.R. 8940 is ambiguous as to who determines whether it is "necessary" for the Navajo Nation to amend its code. The Department recommends that H.R. 8940 be revised to require the Navajo Nation to amend its water code to provide necessary protections to Allottees and that those water code provisions not become effective unless approved by the Secretary.

Colorado River Operations

Consistent with the Settlement Agreement, H.R. 8940 provides for the allocation of Arizona Colorado River Water to the Navajo Nation and the Hopi Tribe. The agreement would allow the Navajo Nation and Hopi Tribe to use these allocations on their Reservations and lease water in both the Upper and Lower Colorado River Basins in the State of Arizona, allowing for the storage of water within Arizona, the transportation of water through the Central Arizona Project (CAP), as well as storage of Navajo Nation water in Navajo Reservoir and Frank Chee Willetto, Sr Reservoir, subject to certain conditions.

H.R. 8940 further authorizes the Secretary to enter into Colorado River water delivery contracts with the Navajo Nation and the Hopi Tribe subject to several requirements, limitations, and conditions, and authorizes the Secretary to use the mainstream of the Colorado River and the San Juan River to transport and deliver settlement water. Subject to approval by the Secretary, and in accordance with all applicable Federal and State laws, the Tribes would be authorized to lease and exchange the Colorado River water allocations in the Upper and Lower Basin, for use both on- and off-reservation, within the State of Arizona.

H.R. 8940 provides for the Secretary to account for the water deliveries as part of the settlement. The means by which the Secretary would account for this water is novel and Reclamation will need time to better understand the implementation of the accounting language as written. The Department would like the opportunity to make technical modifications to ensure consistency with Reclamation's accounting of Colorado River water, including participation in water conservation efforts, to ensure application would be in line with the parties' intent.

As a general matter, the Department supports the key principles of Tribal equity, Tribal sovereignty, and Tribal self-determination. Clean, reliable drinking water is critical to upholding these principles. We are committed to addressing the lack of clean, reliable drinking water in Tribal communities. Additionally, we support the opportunity for all Tribes to enjoy cultural, spiritual, and economic benefits from their water rights. In keeping with these principles and commitments, the Department supports the inclusion within the settlement and allowance for the Tribes to use, store, and lease Colorado River water as provided for in H.R. 8940. These rights and provisions are similar in concept to the rights to lease CAP water in Arizona granted to Tribes under various Indian water rights settlements in Arizona and consistent with principles of self-determination and Tribal sovereignty. We would like to work with the Sponsor and Committee on technical amendments regarding Colorado River operations and accounting.

Navajo-Gallup Amendments

HR 8940 provides authority to meet the purposes of the settlement by diverting water through the Navajo-Gallup Water Supply Project, including through the San Juan Lateral. These diversions through the Pipeline and the Navajo-Gallup Water Supply Project facilities are intended to address critical tribal and non-Indian Water supply needs in areas that otherwise lack of other reasonable alternatives. The Department supports the inclusion of these provisions, however the Northwestern New Mexico Rural Water Projects Act, P.L. 111-11, limited the size of the San Juan Lateral. In order to implement and meet the additional purposes of H.R. 8940, technical modifications are necessary to provide authority to increase the capacity of key components of the San Juan Lateral as well as modifications to expanding the service area to allow for water deliveries to additional areas in northeastern Arizona.

Energy Acquisition

Section 6(g) of H.R. 8940 provides that the amounts of energy needed to deliver water to the Tribes shall be acquired by the Tribes. As drafted, H.R. 8940 makes the Tribes responsible for acquiring energy needed for the Secretary to construct the Pipeline. In the event the Tribes are not able to acquire adequate energy for Pipeline construction, the Secretary would be unable to fulfill her obligations under the Settlement. The Department recommends that the Pipeline be exempted from Section 6(g) and the responsibility to secure energy for the Pipeline remain with the Secretary until title transfers to the Tribes.

Miscellaneous

While this testimony highlights the most pressing of the Department's concerns with H.R. 8940, it is important to note that Departmental review of H.R. 8940 and the Settlement Agreement is ongoing. Given the complexity of this Settlement, it is reasonable to expect additional drafting concerns to be identified through this review process.

* * *

In sum, the parties have worked together to resolve longstanding claims in a way that would benefit all the people of Arizona, Navajo Nation, Hopi Tribe, and San Juan Southern Paiute Tribe. The Department is committed to reaching a conclusion as proposed by H.R. 8940 and supports nearly all of the key terms in this legislation. The Department will work with the sponsors and the parties to resolve outstanding issues so that we can bring these claims to a positive resolution and fulfill our trust responsibility by delivering water to Tribal members in their homelands.

Mr. BENTZ. Thank you, Assistant Secretary Newland. I now recognize President Stiffarm for 5 minutes.

**STATEMENT OF THE HON. JEFFREY STIFFARM, PRESIDENT,
FORT BELKNAP INDIAN COMMUNITY, HARLEM, MONTANA**

Mr. STIFFARM. Good morning, Chairman Bentz, Vice Chairman Kiggans, Ranking Member Huffman, and Congresswoman Leger Fernández. My name is Jeff Stiffarm. I am the President of the Fort Belknap Indian Community, which is the home of the Aaniiih and Nakoda people, Assiniboine, and Gros Ventre. I am a member of the Gros Ventre Tribe. My name given to me is Storm Coming at You on the Gros Ventre side, and on the Assiniboine side I was given the name of Holy Eagle Spirit Man. I come to you to represent my namesakes, and to speak for my people back home for our water.

I want to thank Congressman Zinke for inviting me to the table to address our issues with our settlement, and thank the support of Councilman Mike Comes at Night for coming here and supporting us as we support the Blackfeet Nation.

We sit here with all these tribal leaders and these Tribal Nations that are here to discuss their water issues and their relatives here. Chairman White Clay of the Crow Nation and what they are trying to do, and the rest of these tribal leaders here and what they are trying to get done with their water. It has been a long road for all of us that are sitting here, and others yet to come after us, as we move forward. We have been working on this for 40 years.

And I know you mentioned the Winters Doctrine in your opening comments. The Winters Doctrine was born and bred on Fort Belknap when they sued the Federal Government over water in 1908 which led the way for tribes to get their rightful place and for their water. And I would like to thank you for mentioning that.

The Winters Doctrine was born on Fort Belknap. Our ancestors had the foresight to do that over a century ago.

But I want to thank Congressman Rosendale for introducing this bill also, and thank him for his leadership as we move forward with this and trying to get this done finally.

Our bill is kind of a big number as you look at it, but it is all for infrastructure, and \$300 million is for the Saint Mary's. As Congressman Rosendale spoke about, that siphon broke, and it is going to dry up Milk River along the Hi-Line, and it is going to affect a lot of communities, not only Fort Belknap, but all up and down the Hi-Line. And that area of the state is all agriculture, farmers and ranchers and municipalities that depend on water for their usage.

But I would like to remind the Committee this is a Fort Belknap Indian Community settlement, and it is our treaty of 1855, what we need to stand by to look at the future of our children and our grandchildren as we go forward so they will have life, they will be able to live in comfort as we do today.

I want to remind everybody, it was said in here too that water is life, not only for the two-legged, but for the ones that feed us, that take care of us, the animal life, the plant life, things like that. As you look forward, look down the road with the settlement that we have, we need to remember that the big number that is there is not that big when you look at how much money that the Federal Government gives overseas, to countries to fight wars and to kill people, and we are asking for the money to save our people.

I want to thank you all for listening to us, and you are going to take care of not only our people at Fort Belknap, but the rest of these tribal leaders who are here to represent for you, for their children, too. And I want to thank you for listening to us and listening to the few words I have to say for our people. Thank you. [Speaking Native language.]

[The prepared statement of Mr. Stiffarm follows:]

PREPARED STATEMENT OF JEFFREY STIFFARM, PRESIDENT, FORT BELKNAP INDIAN
COMMUNITY

ON H.R. 7240 AND H.R. 8791

Chairman Bentz, Vice Chair Kiggans, Ranking Member Huffman, and Honorable Members of the Subcommittee on Water, Wildlife and Fisheries, my name is Jeffrey Stiffarm and I serve as President of the Fort Belknap Indian Community (FBIC) Council of the Fort Belknap Reservation (Reservation). I appreciate the opportunity to testify in support of H.R. 7240, the "Fort Belknap Indian Community Water Rights Settlement Act of 2024" and H.R. 8791, which is also entitled the "Fort Belknap Indian Community Water Rights Settlement Act of 2024." Both of these nearly identical bills would quantify our water rights and settle our damages claims against the United States.

The only difference between the bills is that H.R. 8791 includes funding for water distribution and waste water treatment facilities for the Blackfeet Tribe. We support the Blackfeet Tribe obtaining funding for water infrastructure on their reservation needed to serve their members. We also appreciate the Subcommittee's consideration of their water infrastructure needs. While Congress sends billions in aid to other countries and people overseas, many Indian tribes and tribal members still live without basic water infrastructure. The United States' fulfillment of its treaty and trust responsibilities is long overdue and we support Congressional investment in tribal water infrastructure needed to fulfill these obligations. However, to clarify for the Subcommittee, the funding and infrastructure for the Blackfeet Tribe included in H.R. 8791 is not a part of the FBIC's water rights or damages claims that we negotiated with the United States and the State of Montana.

The version of our Water Rights Settlement Bill (Bill) included in H.R. 7240 has already passed the Senate twice. Our Bill first passed the Senate on July 27, 2023, as Division K of S. 2226, the National Defense Authorization Act (NDAA). The Senate then passed our Bill a second time as a standalone bill, S. 1987, on June 20, 2024. The Senate passed our Bill a second time because our Bill includes \$300 million for the federal Milk River Project to mitigate the impact of the development of our Indian reserved water rights on the non-Indian state water users on the Milk River. This includes funding for the restoration, rehabilitation, and repair of the St. Mary Diversion Canal which provides water for communities and irrigation across northcentral Montana, including our Fort Belknap Reservation. The St. Mary Canal System recently suffered an emergency catastrophic blowout creating a water shortage on the Milk River for 2024 that will continue into 2025, and the Senate quickly passed our Bill to support repair and upgrades for this critical water infrastructure. Through the passage of either H.R. 7240 or H.R. 8791 all of these commitments will be fulfilled.

We are grateful for the strong support of the full Montana Congressional Delegation including Senator Tester, Senator Daines, Congressman Rosendale, and Congressman Zinke. We are also grateful for the support of Montana Governor Gianforte and the Biden Administration. Our Bill is also supported by local governments, irrigators, and conservation organizations. About 40 years ago, we began working to develop and negotiate a bipartisan bill that would settle our Indian water rights, improve our agricultural economy, provide for our homelands, and benefit surrounding communities and water users. We respectfully request that the Subcommittee take action to finally and swiftly approve our Water Rights Settlement Bill and support passage by the House of Representatives.

Brief History of the Gros Ventre and Assiniboine Tribes and the Reservation

The Gros Ventre and Assiniboine Tribes (Tribes) comprise the Fort Belknap Indian Community of the Fort Belknap Reservation in the State of Montana. Through a series of treaties and agreements with the United States, Congress established our current and final, permanent homeland in 1888, the Fort Belknap Reservation for the Gros Ventre and Assiniboine Tribes.¹ Since 1905, the United States Supreme Court recognized that a “treaty was not a grant of rights to the Indians, but a grant of right from them.”² The Assiniboine and Gros Ventre Tribes, as recognized governments, retained and reserved the sovereign rights not granted to the United States—including our water rights.

The 1888 Agreement, which passed by Congress, required the relinquishment of most of our Tribes’ ancestral territory and resulted in a significant reduction in the lands that the Tribes could occupy and use. The federal purpose of the 1888 Agreement continued the policy of establishing an agricultural economy for the Tribes. The Agreement expressly stated that the Tribes would “obtain the means to enable them to become self-supporting, as a pastoral and agricultural people[.]”—creating an agricultural Reservation economy. Funds were provided for the purchase of cows, bulls, and other stock, and agricultural implements, among other purchases, and for “undertak[ing] the cultivation of the soil.”³

In these negotiations, our ancestors were forced to cede millions of acres of their ancestral lands and resources. In return, through the Treaty of 1855, the 1888 Agreement, and other agreements, the United States promised to provide and support an agricultural economy that would sustain our Tribes on our reserved homelands. Irrigation began on our Reservation in 1889. By 1898, the Tribal members were irrigating about 30,000 acres on the Milk River, which forms the northern boundary of our Reservation, for grain, grass, and vegetables. Congress authorized the construction of irrigation systems on the Reservation, now known as the Fort Belknap Indian Irrigation Project.

However, non-Indian, upstream irrigators were soon depleting our main water supply, the Milk River. The United States, our trustee, protected a portion of our Indian water supplies and went to court to defend our right to water for our Reservation. In 1908, the U.S. Supreme Court concluded that the lands of the Fort Belknap Reservation were “practically valueless without irrigation—a barren waste[.]” *Winters v. United States*,⁴ and established the “Winters Doctrine.” The

¹ Agreement of May 1, 1888, 25 Stat. 113 [hereinafter “1888 Agreement”].

² *United States v. Winans*, 198 U.S. 371, 381 (1905).

³ 1888 Agreement at Articles III, V.

⁴ *Winters v. United States*, 207 U.S. 564, 576 (1908).

Indian reserved water rights began with our Reservation, and we are the “*Winters* Tribes.” Under the *Winters* Doctrine, the “the Federal Government’s reservation of land for an Indian tribe also implicitly reserves the right to use water . . . to accomplish the purpose of the reservation.” *Arizona v. Navajo Nation* case (U.S. Supreme Court, June 22, 2023).⁵

Despite actions in *Winters v. United States*, over the next 100 plus years, the United States failed to fulfill many of its promises and commitments, including protecting and preserving our waters. Because of a failure by the Federal Government to maintain and complete construction of our federal Indian Irrigation Project, we are currently irrigating only about 10,000 acres of our irrigable lands. It is time for Congress to ratify our historic Indian water rights and approve our Water Rights Settlement Bill, which will provide us the ability to develop and use our Indian water rights for our agricultural lands and to provide clean and safe drinking water for our people.

Montana Water Court Adjudication

In the 1970s, the Montana started a general stream adjudication of all water rights through the Montana Water Court.⁶ The Montana State Legislature also set up a process that would allow tribes to negotiate their water rights with the State instead of litigating them through the State Water Court. The negotiations process was carried out through the Montana Reserved Water Rights Compact Commission (Commission). In 1981, the FBIC Council chose to negotiate and settle its Indian water rights with the State and United States. In 1990, the FBIC stipulated to stay proceedings in pending lawsuits in the federal court of Montana and the pending adjudication in the Montana Water Courts.

However, the State Legislature ended the activities of the Commission in 2013 and set a deadline for all remaining Indian reserved water rights claims to be filed with the Water Court by June 30, 2015. The United States, as our trustee, filed the FBIC water claims on behalf of the FBIC. Our water rights claims, therefore, are before the Montana Water Court, and it is currently uncertain when the Court will initiate the adjudication of our claims. However, an adjudication of these claims after decades of negotiations, an agreed-upon Water Compact, and a proposed Water Rights Settlement Bill before Congress would be tragic for all Parties now—resulting only in a “paper water right” for the FBIC, with no ability to develop and benefit from our Indian water. Therefore, time for Congressional approval of our Water Rights Settlement is of the essence.

In short, litigation of Indian water rights is a lengthy and costly process, with an uncertain outcome—for everyone. In recent years, Montana Lt. Governor Juras also joined in support of settlement over litigation and has testified before Congress in support of our water rights settlement. We are seeking a settlement that provides us with “wet water,” with sufficient funding to settle our claims and allow for the development and use of our Indian water rights. That is the promise of settlement over litigation.

History of Settlement Negotiations

We came to the bargaining table in good faith that our Federal Negotiations Team was fully participating as the trustee over what is our most valuable natural resource—water. In the 1980s, we chose settlement over litigation with the State and Federal governments when we initiated negotiations with the Commission and our assigned Department of the Interior, Federal Negotiations Team, and the Secretary’s Indian Water Rights Office (SIWRO). Negotiations among FBIC, the State, and the United States were conducted in earnest from the 1990s until 2023.

The Commission conducted no fewer than 20 meetings between 1997–2000 throughout our region, known as the Hi-Line area of north central Montana, for public information and input on the proposed Water Compact. The Commission documented over 18 negotiating sessions with the FBIC and Federal government between 1990–2000. In addition, substantial public information and drafts of the Water Compact were distributed through numerous public and FBIC outlets.⁷ This extensive public and tribal information effort led to the overwhelming bipartisan

⁵*Arizona v. Navajo Nation*, Case No. 21-1484, 2023 WL 4110231, at *3 (S.Ct. June 22, 2023) (internal citation omitted).

⁶The following historical information is taken from a Briefing Paper (June 2000) in the Montana Reserved Water Rights Commission archives (author unknown).

⁷This information is taken from the Montana Water Rights Commission archives, provided by the State.

approval of our 2001 Fort Belknap-Montana Compact (Water Compact) by the Montana State Legislature (over 90% approval).⁸ The FBIC Council also approved the Water Compact.

Our Water Rights Settlement Bill is based on long-standing, historical principles of federal policy for the reserved water rights of Indian people that ensure we will receive the full benefit of the water rights promised to us in treaties and agreements with the United States. These principles include (1) recognition of a reservation of water for reservation homelands and the promise of assistance in establishing an agricultural economy when valuable tribal lands were ceded to the United States; (2) a method of quantifying our Indian water rights based on the practicably irrigable acreage (PIA) of the reservation; and (3) the importance and obligation of the United States to honor its treaty promises and keep its word to assist us with the establishment of a viable agricultural economy in order to create a permanent homeland. As noted here, this includes the court-approved principles of practicably irrigable acreage (PIA) to quantify the volume of our Indian reserved water rights.⁹

Overall, our Indian Water Rights Settlement Bill is structured to promote economic development and efficiency on our Reservation and our Tribal self-sufficiency.¹⁰ It is an agricultural infrastructure development plan and includes infrastructure to develop and ensure clean and safe drinking water to end water insecurity on our Reservation. It provides for the FBIC to develop, administer, use, manage, and enforce our reserved water rights and improve the poor economic condition of our members on the Reservation. This is an Indian water settlement—where 97% of our Reservation lands are trust lands, held by the United States for the benefit of the FBIC and our allottees.¹¹ Our Fort Belknap Indian Irrigation Project and other Reservation irrigated lands serve primarily the trust lands of Indian people.

FBIC Water Rights Settlement is an Infrastructure Bill

Funding in our Water Rights Settlement Bill will go toward supporting and developing long overdue traditional infrastructure investments, including the development of both agricultural and domestic water supplies, that the United States promised to the Gros Ventre and Assiniboine Tribes. The Aaniiih Nakoda Settlement Trust Fund in our Water Rights Settlement Bill, named for the Gros Ventre and Assiniboine Tribes in our respective Native languages, includes three accounts and their uses, described below.

FBIC Tribal Irrigation and Other Water Resources Development Account #1 (\$119,524,134)

- Restore the Southern Tributary Irrigation Project (STIP) and Peoples Creek Irrigation Project, including construction of the Upper Peoples Creek Dam and Reservoir, on the southern portion of the Reservation.
- Develop infrastructure for stock-watering across the Reservation.
- Provide on-farm development support.
- Repair, restore, and develop wetlands across the Reservation.
- Conduct all environmental compliance activities.
- Conduct planning, studies, and design work for all activities.

The FBIC Tribal Irrigation and Other Water Resources Development account will provide funding to restore the Southern Tributary Irrigation Project, which was

⁸Mont. Code Ann. §§ 85-20-1001 through 85-20-1008 (ratified on Apr. 16, 2001).

⁹*Arizona v. California*, 373 U.S. 546 (1963), *decree entered*, 376 U.S. 340 (1964) (quantifying the tribes' *Winters* water rights on the basis of practicably irrigable acreage (PIA), holding that PIA is the only fair and feasible way to determine the measure of an Indian reservation water right.); *See also, e.g.*, 2006 Anderson Paper at 429 ("Most important is the fact that in the era of negotiated Indian water settlements, PIA is the one component that can be objectively evaluated and thus serves as a cornerstone for the settlement framework."); *Greely v. Confederated Salish & Kootenai Tribes*, 219 Mont. 76, 712 P.2d 754 (1985); and *In re General Adjudication of All Rights to Use Water in Big Horn River System*, 753 P.2d 76 (Wyo. 1988); *aff'd by equally divided court per curiam, Wyoming v. United States*, 492 U.S. 406 (1989), *cert. denied, Shoshone Tribe v. Wyoming*, 109 S.C. 3265 (1989).

¹⁰*See* 1990 Criteria and Procedures for Participation of Federal Government in Negotiating for Settlement of Indian Water Rights Claims, 55 Fed. Reg. 9223-9225 (Mar. 12, 1990) [hereinafter "1990 Criteria"].

¹¹Montana Budget & Policy Center, Policy Basics: Taxes in Indian Country Part 2: Tribal Governments (Nov. 2017), (citing *Tribal Nations in Montana: A Handbook for Legislators*, 2016).

abandoned by the Bureau of Indian Affairs (BIA) in the 1960–70s in disrepair, preventing tribal members from an irrigation resource, and the Peoples Creek Irrigation Project. This funding includes construction of the Upper Peoples Creek Dam and Reservoir on the southern portion of the Reservation, which will provide mitigation for the FBIC due to its agreement to subordinate its priority Indian water rights on the Upper Peoples Creek to upstream state irrigators on family farms. Funding would also be provided to develop infrastructure for stock-watering across the Reservation, provide on-farm development support, and restore and develop wetlands across the Reservation.

FBIC Water Resources and Water Rights Administration, Operation, and Maintenance

Account #2 (\$66,630,752)

- Establish, operate, and provide capital expenditures to establish a Tribal water resources and water rights department for administration, management, and regulation of the Tribal water rights, including development of a Tribal Water Code.
- Create a Tribal trust fund to provide investment earnings for the long-term support of the Tribal water resources and water rights department to administer and manage the FBIC's water rights.
- Create a Tribal trust fund to provide investment earnings to pay a portion of the annual operation and maintenance assessment costs for Tribal irrigators to ensure long-term repair and upkeep of the irrigation projects.

FBIC Water Resources and Water Rights Administration, Operations and Maintenance account supports the traditional Indian water settlement activities crucial to the establishment of a Tribal water resources and water rights department. A Tribal trust fund will be established that will allow the Tribal department to operate on the annual interest earned on the Tribal trust fund and support the costs of the regulation, administration, and enforcement of the FBIC water rights with the development of a Tribal water code, as well as support the cost of capital projects that will provide the necessary infrastructure, equipment, and data to support the Tribal department activities. Finally, this account provides funds necessary to establish an Operation and Maintenance Fund for the Tribal agricultural irrigation projects on the Reservation, using annual earned interest to support a portion of the annual operation and maintenance costs of Tribal irrigators—proven to be important for sustaining the agricultural economy on the Reservation.

FBIC Clean and Safe Domestic Water and Sewer Systems, and Lake Elwell Project

Account #3 (\$442,513,627)

- Construct and improve access to and the safety of a clean, domestic water supply and wastewater removal systems on the Reservation.
- Develop two new wells at 300-ft deep, and one new well at 480-ft deep to provide water for the communities of the Fort Belknap Agency, Hays, and Lodgepole.
- Develop Homesite wells.
- Construct new water treatment facilities in the Lodge Pole and Hays communities.
- Expand existing tribal domestic water delivery lines.
- Construct a Project to deliver clean and reliable water from Lake Elwell for the southern portion of the Reservation.
- Construct a Tribal wellness center to improve and ensure a healthy workforce that will assume responsibilities related to the Project activities funded under this bill.

The FBIC Clean and Safe Domestic Water Supply and Wastewater Systems, and Lake Elwell Project account supports bringing and storing clean drinking water for the Reservation. FBIC has both drinking water supply issues and water quality concerns. The cost estimates are intended to cover needed improvements to the water facilities at each of the Reservation communities, as well as at individual homes within the rural areas of the Reservation. Renovation of the existing Fort Belknap

Agency domestic water system will support the anticipated future growth in domestic water demands on the Reservation.

The Lake Elwell Project will bring clean water to the southern portion of the Reservation to ensure an adequate water supply to the Tribal communities and members in this area of the Reservation, which is in need of safe and reliable drinking water. The southern portion of the Reservation continues to experience boil orders due to an unreliable water system and low water levels. There is also the threat to our groundwater from acid mine drainage due to terrible practices of a cyanide heap leach gold mine located on the southern border of the Reservation. Without the funding provided in this account, the FBIC Tribal members will continue to experience water insecurity on the Reservation.

**Fort Belknap Indian Irrigation Project System Implementation Non-trust
Federal Account (\$415,832,153)**

In addition to the Aaniiih Nakoda Settlement Trust Fund and its three accounts, our Bill includes funding for the rehabilitation, modernization, and expansion of the BIA Fort Belknap Indian Irrigation Project (FBIIP or Project) on the Milk River within the Reservation. The Bill includes an expansion of the BIA's Milk River unit that will consist of an additional 16,465 acres of new irrigable lands, for a total of 26,890 acres under irrigation in the FBIIP Milk River Unit. The Tribe's Indian water rights from the Milk River is secured under the Compact for the new future irrigated lands. This will also include construction of a new off-stream water storage reservoir, the Fort Belknap Reservoir, on Three Mile Creek with a capacity of about 60,000 acre-feet, and construction of levees for flood protection of the Milk River Unit lands.

The Project was originally authorized for construction in 1895, but construction of the full project was never completed. There are 358 allottee users under the FBIIP and the Tribe's original *Winters* water rights for 10,425 acres of historically irrigated lands will be used by the Project. The Project was constructed over 100 years ago and is in desperate need of rehabilitation and modernization. The construction of the Project is also long past due for being completed. Our Bill establishes the BIA's role as the Lead Agency for the FBIIP activities and requires the BIA to coordinate with the Bureau of Reclamation (BOR). Our Bill would also allow FBIC to enter into self-determination contracts to conduct all or a portion of the activities identified for the FBIIP with either BIA or BOR.

Our Water Rights Settlement Bill would require the Secretary of the Interior (Secretary) to facilitate the formation of a project management committee made up of representatives of the BIA, BOR, and the FBIC. The committee would review and make recommendations relating to cost factors, budgets, and implementing activities related to the FBIIP. The committee is also responsible for improving management of inherently governmental activities.

Mitigation for State Water Users

After our long-time cooperation and compromises with our non-Indian neighbors, Congressional support of the agreed-upon mitigation activities consistent with our negotiated FBIC-State-Federal Water Compact will create harmony at a time when water wars between water users are increasing. In fact, Montana has had a severe drought in recent years. Mitigation activities will stabilize the water supply, conserve water, and improve water use efficiency. Continued cooperation among the interested parties through the mitigation activities will also respect the sovereignty of the State and FBIC in our respective jurisdictions.¹²

As described in the Water Compact, the Parties plan improvements in the operating capabilities of the Milk River Project, where the Milk River is the FBIC's largest source of our Indian water rights and forms the northern boundary of our Reservation. These improvements will mitigate the impact of the FBIC's future water development on the Milk River Project users and tributary water users. The Water Compact also provides that the FBIC will subordinate its senior water rights in the Upper Peoples Creek to upstream non-Indian irrigation water users so that they will be able to continue their historical irrigation water use and family farms.

¹² 1990 Criteria.

Milk River Project Mitigation (\$300,000,000)

Improvements in the water supply of the Milk River for the Milk River Project, which includes the St. Mary Diversion and Canal, will mitigate the impact of the development and future use of our Tribal Water Rights in the Milk River and provide protection of water use on upstream tributaries. This is important because in our approved Water Compact, the State reserved the right to withdraw as a party if “Congress does not authorize and appropriate the federal share of funding for the modification to the Milk River Project or other alternatives necessary to mitigate the impact of development on the Tribal Water Right.”¹³

Extensive studies have been conducted to analyze the impact of FBIC’s water development and use on the Milk River. Projects were identified that would provide the required mitigation for the Milk River Project users and tributary water users. The Secretary is required to restore, rehabilitate, and repair the St. Mary Canal and associated facilities in cooperation with the State and the Blackfeet Tribe. The Secretary is also required to rehabilitate and enlarge the Dodson South Canal and associated facilities in cooperation with the State and the FBIC.

Just a few weeks ago we were alerted again to the critical need for this funding and water infrastructure repairs and upgrades. On June 17, 2024, the St. Mary Canal system suffered catastrophic failure of its siphons that transport water to the Milk River across a broad valley. Communities across the Montana Hi-Line, including FBIC, depend on the Milk River Project and its St. Mary Diversion and Canal for drinking water, municipal water, and the significant agricultural economy.

Our lives and agricultural economy are literally dependent on water infrastructure that is more than 100 years old. Even with quick action, the catastrophic failure of the St. Mary siphons at the beginning of the growing season will threaten crops and our livestock for at least the next two years. We could not withstand much more. We need quick action to restore and improve this critical water infrastructure and secure our communities for the next 100 years.

Upper Peoples Creek (included in Trust Fund, Account #1 funding)

The second mitigation-related agreement of the Parties to our Water Compact is provided at Art. VI.C.:

The Parties agree, that, as a result of the protections provided to the Upper Peoples Creek [non-Indian] water users in the Compact and the variable natural water supply in the Peoples Creek Basin, the water supply available for development of the Tribal Water Right in the Peoples Creek may be limited. The Parties agree that such impacts can and shall be mitigated . . . through the construction of a dam and reservoir . . . and to seek appropriations . . . for the benefit of the Tribes.

During the Water Compact negotiations, non-Indian, state irrigators who have historically farmed on Upper Peoples Creek, upstream of the western boundary of the Reservation, sought protection from the FBIC’s agreed-to Indian water rights quantification, development, and use in the Upper Peoples Creek. Additionally, the Peoples Creek Basin has a highly variable natural water supply, resulting in limitations in the development and use of the Tribal Water Rights in Peoples Creek on the Reservation.

Therefore, the FBIC agreed to allow the current irrigation of lands in Upper Peoples Creek by the non-Indian irrigators, subordinating the FBIC’s senior reserved water rights. In exchange for the FBIC agreement with these state water users, the State and Federal governments agreed to mitigate the impact on the FBIC water use by constructing a dam and reservoir for the benefit of the FBIC in the Upper Peoples Creek. The dam and reservoir will significantly improve the reliability, availability, and use of the FBIC water rights from Peoples Creek on the Reservation.

State and Federal Land Transfers (38,462 total acres)

The Bill authorizes the transfer of approximately 16,117 acres of federal land from the Bureau of Land Management, BIA, including former allotments, and Bureau of Reclamation. The Bill also authorizes the Secretary of Interior and Secretary of Agriculture, Forest Service, to enter negotiations with the State to exchange approximately 22,345 acres of State trust lands for Federal lands to be

¹³Fort Belknap-Montana Compact, Mont. Code Ann. § 85-20-1001, Article VII.A.4.c.

transferred and held in trust for the FBIC. The total acreage to be transferred to the Tribe is approximately 38,462 acres.

No private lands are included in the Federal land transfer and customary access to private lands will be retained. The federal lands to be transferred will be subject to valid existing rights and requirements and be held in trust for the Tribe. The land transfers provide for consolidation of Tribal lands both on and off the Reservation (including the submarginal land area adjacent to the western boundary of the current Reservation) for improved Tribal administration, better management of forested lands by our experienced land management department and fire response team, and the restoration and protection of the FBIC's cultural resources.

A significant distinction between the Bill version we initially introduced in the Senate in June 2023, S. 1987, and the version that has now passed the Senate twice is that a provision in the Federal lands transfer section was removed. The removed provision included the transfer of future allotments foreclosed by the United States Department of Agriculture (USDA). This provision would have allowed future USDA foreclosed land to be transferred to the BIA and put into trust for the Fort Belknap Indian Community. H.R. 7240 and H.R. 8791 both reflect this revision.

Conclusion

Congress has an opportunity to address more than 100 years of neglect and failure of the United States to fulfill its commitments made in treaties and agreements with the Gros Ventre and Assiniboine Tribes by passing our Indian Water Settlement Bill. Water is life. Indian water rights are one “of the four critical elements necessary for tribal sovereignty.”¹⁴ Our Water Rights Settlement Bill will provide recognition and enforceability of our reserved water rights, self-sufficiency, and economic success—and supports the permanent, livable homeland for our people that was promised to us by the United States. Our Water Rights Settlement Bill will ratify our negotiated Indian water rights and provide much-needed economic benefits for the FBIC and surrounding communities.

Approval of our Water Rights Settlement is an historic event—we are the *Winters* Tribes with United States Supreme Court adjudicated and decreed Indian reserved water rights since 1908, and we are the last Tribes in Montana to achieve our water settlement with the United States. We respectfully request that Congress work to swiftly pass our Water Rights Settlement Bill. It is long overdue.

Mr. BENTZ. Thank you. I now recognize Chairman White Clay for 5 minutes.

STATEMENT OF THE HON. FRANK WHITE CLAY, CHAIRMAN, CROW TRIBE OF INDIANS, CROW AGENCY, MONTANA

Mr. WHITE CLAY. Good morning, Chairman Bentz, Ranking Member Huffman, Congresswoman Leger Fernández, and Congressman Rosendale. I am Frank White Clay, Chairman of the Crow Nation in southeastern Montana, home to approximately 14,350 enrolled members on 2.4 million acres of our reservation, which is huge, significant, bigger than most states.

The Crow Water Rights Settlement Act of 2010 ratified the Crow Tribe State of Montana Water Compact and provided for the rehabilitation and improvement of the Crow Irrigation Project, a project owned and operated by the Bureau of Indian Affairs for the construction of municipal, rural, and industrial water systems for the delivery of clean drinking water for tribal rights for the Tribe and allottees, ratification of the storage of water in Bighorn Lake of 300,000 acre-feet per year, in addition to 500,000 acre-feet in the Big Horn and all groundwater on the Crow Reservation, the exclusive right of the Tribe to develop and market power generation on Yellowtail Dam Afterbay.

¹⁴ *City of Albuquerque v. Browner*, 97 F. 3d 415, 418 (10th Cir. 1996).

I am here today to support the amendments to the 2010 Act to revise it from a project-based settlement to a trust fund-based settlement that will allow flexibility on the delivery of clean water. Importantly, the amendments Act will extend the deadline on the exclusive right to develop the hydropower generation project, which is set to expire in 2025.

The Tribe completed engineering for the water intake facility on the Bighorn River in 2022, and advertised for bids for construction and received no bidders. This led the Tribe to reconsider the viability of the reservation-wide MR&I pipeline and identify the following concerns.

The pipeline construction time frame was approximately 20 years at a cost of over \$400 million, with an expectation that estimated construction costs will rise. Pipeline construction would be very challenging with the size of our reservation and varying geographic features. The pipeline construction time frame would result in a lengthy delay of water delivery for my communities, and some communities wait many years for clean drinking water.

The water settlement included a limited amount of \$47 million for operations, maintenance, and replacement costs, which was projected to cover approximately 8 years of costs following project completion, and this is only if there are no unplanned breaks or interruptions.

The Water Settlement Act did not include mandatory hookup for households along the pipeline. And the tribal household, if was required to hook up, would pay approximately \$120 a month in water fees: a burden, clearly, to the families with access to limited means.

The Environmental Protection Agency expressed concerns to the Bureau of Reclamation in a letter dated October 31, 2022. The location of the intake unit, resulting in water age concerns for most customers and the proposed use of complex chemicals for treatment that would necessitate operators with advanced certification requirements. Despite years of attempting to secure water rights for the pipeline, from Yellowtail Afterbay intake to the first reservation community across approximately 50 fee and trust tracts and spending \$4 million, no right-of-ways were perfected. Based on these concerns, the Tribe is proposing to move the funds into a trust account for Federal management withdrawal upon approval to develop clean water through regional water plants in the community and rural well improvement.

A BIA-funded water study proves sufficient water in two deep aquifers to support the regional plants and rural development. The alternatives can deliver water much quicker, are cost effective and manageable. The Tribe started the Crow Irrigation Improvement projects and has completed engineering for the entire system. The Tribe has proposed moving funds into an interest-bearing account, but will not change the current course of irrigation improvement projects in coordination with BOR.

On behalf of the Crow tribal membership, I am hopeful that the Crow Water Settlements Act will be adopted this congressional session. At present, without amendments, the Tribe is unable to proceed with clean water delivery projects as specifically mandated. Pipeline construction is not feasible.

Clean water has become critical for the Crow Reservation. As many studies indicate, with the high cancer rates of the Crow people, it is likely attributable to contaminated water. The amendments the Tribe seeks are at no new cost to the United States, and do not impact the other provisions of the Crow Tribe, State of Montana Water Compact, and protects all existing water users.

So, with that I would like to ask for your support in passing this bill. Thank you.

[The prepared statement of Mr. White Clay follows:]

PREPARED STATEMENT OF FRANK WHITECLAY, CHAIRMAN, CROW NATION
ON H.R. 8953

Good Morning, Honorable Members of the House Committee on Natural Resources. I am Frank Whiteclay, Chairman of the Crow Nation of Montana, and I am honored to present this testimony in support of the Crow Water Rights Settlement Amendments Act, H.R. 8953. I would like to thank Congressman Zinke for his sponsorship of this important legislation for the Crow Nation.

The Crow Tribe proposed these amendments to the Crow Water Rights Settlement Act of 2010 to amend the Act from a project specific Act to a fund-based settlement Act that is consistent with more recent Indian water rights settlements and provides flexibility for clean water delivery systems.

BACKGROUND

The Crow Reservation, formally established pursuant to the Fort Laramie Treaty of 1868, is located in southeast Montana, and currently encompasses 2.3 million acres with three mountain ranges, significant range lands, dry farm and irrigated lands with numerous water sources originating on and off the reservation. Approximately 7500 Crow Tribal members reside on the Reservation and approximately 1500 non-Indian residents possess state-adjudicated water rights throughout the reservation with the majority along the Big Horn River.

The Bureau of Indian Affairs constructed the Crow Irrigation System in the early 1900's to enhance agricultural efforts on the Crow Reservation through irrigation of farmlands along the Big Horn River, Little Bighorn River, Pryor Creek and Lodge Grass Creek. A significant portion of lands along the irrigation systems are in non-Indian fee ownership.

The Crow Tribe negotiated a Water Compact with the State of Montana Reserved Water Rights Compact Commission that was ratified by the Montana Legislature in a special session in June 1999. The Compact:

- provides water from surface flow, groundwater and storage for the Crow Tribe for existing and future Tribal water needs.
- Provides protection for all state and Tribal current water uses in the affected water basins from the Tribe's future exercise of its water rights; also protects the local conservation districts' right to future water use.
- Creates an administrative process for resolution of any future disputes between Tribal and non-Tribal water users.

CROW TRIBE WATER RIGHTS SETTLEMENT ACT OF 2010

The Crow Tribe Water Rights Settlement Act of 2010 ratifies, authorizes, and confirms the water rights 1999 Compact between the Crow Tribe and the state of Montana and provides for: 1) the Tribe to rehabilitate and improve the Crow Irrigation Project; and 2) the Tribe and Reclamation to construct the municipal, rural, and industrial water system; 3) provides tribal water rights for the tribe and allottees; 4) provides for leasing and selling of water with federal approval; 5) identifies 300,000 acre-feet per year of water stored in Bighorn Lake, Yellowtail Unit, Lower Bighorn Division, Pick Sloan Missouri Basin Program, for the Tribe in addition to the allocation of 500,000 acre-feet per year in the Big Horn and all groundwater on the Crow Reservation; and 6) provides the exclusive right of the Tribe to develop and market power generation on the Yellowtail Afterbay Dam.

The Crow Tribe proposed Amendments to the Crow Tribe Water Rights Settlement Act of 2010 to create a fund for water delivery purposes and related uses, to revise the management of the funds allocated for the Crow Irrigation

Improvement Projects, and to extend the deadline for right to develop and market power generation at the Yellowtail Afterbay Dam.

MUNICIPAL, RURAL, AND INDUSTRIAL WATER SYSTEM

The Crow Tribe Water Rights Settlement Act of 2010 (Act) ratified and confirmed the 1999 Crow Tribe/State of Montana Water Rights Compact and directed the Secretary, through the Bureau of Reclamation, to design and construct a Municipal, Rural, and Industrial (MRI) water system through an agreement with the Tribe. Section 403 of the Act specifically described the MRI system as “raw water intake, water treatment plant, pipelines, storage tanks, pumping stations, pressure reducing valves, electrical transmission facility and other items.” The Tribe has spent the last (ten)10 years designing the pipeline project as specifically described in the Act.

In 2022, 10 years after the enforcement date of the Water Settlement, the Tribe completed engineering work for the MRI system water intake unit at the Yellowtail afterbay and the project was advertised for bids. However, no bids were received due to the complexity of project and the requirement for specialized divers for underwater construction. Following this setback, the Tribe reviewed the overall MRI project plan and identified the following concerns with the MRI project as specifically described in the Water Settlement Act of 2010.

- The pipeline construction timeframe was approximately 20 years at a cost of \$400 million plus with an expectation that estimated construction costs will rise, likely resulting in a shortfall to complete construction. Pipeline construction would be daunting with the size of the reservation and the varying geographic features.
- The pipeline construction timeframe would result in a lengthy delay of water delivery for reservation communities and some communities would wait many years for clear drinking water.
- The water settlement included a finite amount of \$47 million for Operation, Maintenance and Replacement costs which was projected to cover approximately eight years of costs, without unforeseen breaks or interruptions, following project completion.
- The Water Settlement Act did not include mandatory hook-up for households along the pipeline leaving the number of actual customers unknown. However, if every Tribal household was hooked up to the pipeline, monthly consumer costs to cover operational costs would be approximately \$120 per month in today’s dollars which will be a burden to impoverished reservation households.
- Private landowners were unwilling to grant temporary permits to cross lands for water sampling and testing for placement of the water intake unit closer to reservation communities which resulted in moving the intake to Tribal lands at the Yellowtail afterbay, a location much further from the reservation’s larger communities.
- The Environmental Protection Agency expressed concerns to the Bureau of Reclamation, in a letter dated October 31, 2022, with the location of the intake unit resulting in a water age concern for most customers and the proposed use of complex chemicals for treatment that would necessitate operators with advanced certification requirements.
- Despite years of attempting to secure rights of way for the pipeline from the Yellowtail afterbay intake to the first reservation community, across approximately 50 fee and trust tracts, and expending \$4 million, no rights of way were perfected.

Upon re-assessment of the feasibility of the pipeline MRI system, the Tribe reviewed an alternative water delivery system that would utilize regional water plants in each reservation community that would be more cost-effective and deliver clean water within 2 to 4 years. Additionally, the Tribe proposed improvement of existing water wells for rural households as the majority of wells are shallow with compromised water quality.

The Bureau of Indian Affairs provided funds for a water study to support the proposed regional water plants and rural well concept. The water study indicated a vast supply of available water in two major aquifers below the Crow Reservation, the Judith River and Parkman formations which are currently largely untapped. Thus, use of water in the existing aquifers would not interfere with or compromise existing water rights in the Big Horn river or Little Big Horn river.

The water study further revealed that over 50% of Crow Reservations households have contaminated water due to inefficient water treatment and shallow wells. This fact created greater incentive to pursue a water delivery system that could be operational in a short number of years to best serve the population.

The amendments would move the MRI funds from a private bank into a trust fund for clean water delivery and related projects that would be managed pursuant to the 1994 Trust Reform Act that requires submission of an annual expenditure plan and a budget to DOI for review and approval before release for funds to the Tribe. The Tribe agrees with this management process and further agrees with the Amendments Act mandate to complete all clean drinking water delivery projects prior to any other allowable uses of the fund. Further, the Tribe agrees with the Amendment Act's limitation of transfers of funds from the clean water delivery trust fund to the Crow Irrigation Improvement fund.

CROW IRRIGATION IMPROVEMENT

The Crow Water Settlement Act of 2010 directs the Secretary, through the Bureau of Reclamation, to improve the Crow Irrigation Project (CIP) in accordance with an agreement with the Crow Tribe. Implementation of projects was preceded by in-depth studies to modernize the dilapidated 100-year-old system and allocate funds for the various components of the system. The proposed amendments do not revise the current project implementation plans and co-management of the irrigation improvement projects by the Tribe and the Bureau of Reclamation. However, the Amendment Act would move the CIP funds from a private bank to federal treasury in a non-trust interest bearing account that would maintain the joint Tribe and BOR management. This move reduces the costs of managing funds but still complies with the original Settlement Act mandate for indexing of funds. Further, the Amendment Act will ensure that all funds

ENERGY DEVELOPMENT PROJECT

The Crow Water Settlement Act of 2010 provided an exclusive right for the Crow Tribe to develop hydro power in the Yellowtail Afterbay that would expire in 2025 and provided a lump sum to cover a portion of the costs. The Crow Tribe delayed pursuit of the project due to the initial engineering design plan prospectively interfering with Yellowtail Dam operations and, later, the on-set of the COVID pandemic. The Tribe has now engaged a hydro plant developer, revised the site and engineering concerns, and intends to start construction prior to the December 2025 deadline. The Tribe has proposed a five-year extension of the deadline to complete the project to accommodate any unexpected or unforeseen complications that may arise.

CONCLUSION

On behalf of the Crow Tribal membership, I am hopeful that the Crow Water Settlement Amendments Act will be adopted this Congressional session. At present, without the Amendments, the Tribe is unable to proceed with clean water delivery projects as the specifically mandated pipeline construction is not feasible. Clean water has become critical for the Crow Reservation as many studies indicate that the high cancer rates of the Crow people is likely attributable to contaminated water.

The Amendments the Tribe seeks are at no new costs to the United States and do not impact the other provisions of the Crow Tribe/State of Montana Water Compact that protects all existing water users on Crow Reservation. Further, the Amendments do not revise the on-going Crow Irrigation Project improvements or the specific allocation of funds for those projects. Finally, the return of funds to federal oversight will avoid costs for the Crow Tribe and ensure protection of water settlement funds for future generations of the Crow Tribe.

Thank you for your consideration of this important legislation and please contact me directly with any questions.

Mr. BENTZ. Thank you. I now recognize Chairman Nieto for 5 minutes.

**STATEMENT OF THE HON. LESTER SHINE NIETO, VICE
CHAIRMAN, TULE RIVER INDIAN TRIBE OF CALIFORNIA,
PORTERVILLE, CALIFORNIA**

Mr. NIETO. Greetings, Chairman Bentz and members of the Subcommittee. My name is Shine Nieto, and it is an honor to appear before you today on behalf of the Tule River Indian Tribe, where I serve as the Vice Chairman.

I come before you today to share Tule River's greetings and strong support for H.R. 8920, which will approve the settlement of our water rights claims. This bill enjoys support from our broader coalition and community members called the South Fork Tule River Coalition.

This bill is needed for the survival of my people. It will also be a true success for all the communities involved, not only just the Tule River. It is really everyone's settlement. It will ensure water security in an area that faces catastrophic wildfire, as well as a record-breaking drought and flooding.

I would like to thank Representative Fong, Representative LaMalfa, and Sir Bryan Newland over here for all their support and assistance in our efforts.

I would also like to thank Chairman Westerman, Chairman Bentz, and the Staff Director, Annick Miller, for all the effective leadership and hard work.

The Tule River Indian Reservation covers about 85 square miles of rugged foothill terrain in the Sierra Nevada Mountains of the Central Valley. The elevations range from 900 feet to 7,500 feet. The South Fork Tule River runs through the middle of the reservation and then flows onto the main Tule River, about 10 miles west of us. There are no significant uses of water upstream.

There is a lack of sufficient water supply for the reservation. We have worked for decades to address our water rights to make our reservation a permanent homeland. The current water supply is unpredictable and unsafe. We are forced to drink brown water at times or go without. The water system relies on a series of wells, springs, and water drawn directly from the South Fork, which is treated to meet only potable water standards. Our water delivery infrastructure is held together with duct tape and wire. Actually, water demands far exceeds water availability.

The South Fork provides the Tribe with about 80 percent of its water, but our Tribe is unable to use most of the river flow. To make use of the water in a meaningful way, it must be captured and stored because the river runs low or even goes dry several months a year.

Fifty-three years of concerted work has led to this moment. We seek to quantify the agreement we have with our neighbors: the South Fork, the South Tule River, the South-Tule Independent Ditch Company, and the Tule River Association, who represent all senior water right holders. Their members are major players in the agricultural community and the livelihoods critical to the local community of America's food supply.

We also satisfied each of the requirements in the 1990 policy guidance. If we were to file a lawsuit, it would tie up existing water use for decades, settlement outside of court, including the Tribe, the downstream neighbors in the Central Valley, and the taxpayers

at large. Any litigation will be drawn out, expensive, and risky. Taxpayers have already seen negative impacts from not finalizing the settlement. In recent years, they had to pay for increased wild-fire suppression efforts, bottled water deliveries, and repairing washed-out roads.

We seek to float all boats. The bill will allow my people to finally have function in homeland with clean water that is safe to drink. It will allow the United States to meet its legal obligations, and it will impound water at high elevation, which is exactly the kind of drought solution called for by the Central Valley agricultural industry. It will also provide a strategic dipping pool in the event of a wildfire.

The Tule River Tribe is in a water crisis. Broken promises and previous failures of the United States led to where we are today. Let us delay no longer. Let us act now to address emergency conditions on our reservation, and for our Federal partners to join in to provide resources necessary to ensure a sustainable future for the Tule River Tribe. In doing so, we benefit surrounding communities, secure water availability, and ensure clarity of title.

We respectfully request that the Subcommittee recommend passage of H.R. 8920. I thank Chairman Bentz and Members for the opportunity to fully express Tule River's efforts to resolve our water rights claims. Please refer to my written testimony which includes details regarding the dam construction project, how we have met Federal Government requirements for this settlement, and for further explanation of our water shortage crisis.

[The prepared statement of Mr. Nieto follows:]

PREPARED STATEMENT OF LESTER SHINE NIETO, VICE CHAIRMAN, TULE RIVER
INDIAN TRIBE OF CALIFORNIA
ON H.R. 8920

I. Introduction

Greetings Chairman Bentz and members of the Subcommittee on Water, Wildlife and Fisheries. My name is Lester Shine Nieto, and it is an honor to appear before you today. I am a member of the Tule River Indian Tribe ("Tule River") located in central California, where I serve as the Vice Chairman of the Tule River Tribal Council. I come before you today to share Tule River's greetings and strong support for legislation currently pending before the House, H.R. 8920, which will approve the settlement of the water right claims of the Tule River Tribe. H.R. 8920 will approve a settlement agreement ("Settlement") reached with the broader coalition of community members in the San Joaquin Valley called the South Fork Tule River Alliance. While it is imperative for the survival of my people that our Settlement becomes law, passage of this bill will be a true success for all the communities involved, not just Tule River. It is really everyone's settlement. And it will ensure water security across a wide range of interests now and into the future in an area that in the last three years faced catastrophic wildfires as well as record breaking drought and flooding.

I would like to thank Representative Fong, Representative LaMalfa and their staff for their solid support for our efforts. I would also like to thank Chairman Westerman for his commitment to settle Indian water rights. When the House Committee on Natural Resources considered the Save Our Sequoias Act, I was honored to testify in support of that proactive bill and had the great pleasure of working with Chairman Westerman. The effort demonstrated Tule River's commitment to bipartisan solutions that meet all objectives fairly. Now the House Committee on Natural Resources can further gain traction and recognition for its support of Indian Country by passing the Tule River Water Settlement out of committee and recommend an expedited hearing on the House floor. Finally, I would like to thank Chairman Bentz, and the Staff Director for this subcommittee, Annick Miller. Without their effective leadership, we would not be here today.

II. Tule River Indian Reservation

The Tule River Indian Reservation is located in south central California and covers approximately 85 square miles (55,395-acres) of rugged foothill terrain in the Sierra Nevada Mountains in the Tulare Basin of the Central Valley. The topography of the Reservation is generally steep, with elevations ranging from about 900 to 7,500 feet above sea level. Many of the roads on the reservation reach grades of 7–18%, including those used to access tribal member homes. The South Fork of the Tule River runs through the Reservation, which then flows into the Tule River at Success Lake, about ten miles west of the Reservation. There are no significant uses of water upstream of the Reservation.

The Tule River Tribe was removed to its current Reservation near Porterville in 1873 by a Presidential Executive Order, which replaced a previous reservation that provided us more suitable lands for habitation closer to the valley floor. We currently house 1,990 members on the Reservation and have a waiting list of other tribal members who would like to live on the Reservation. Without water, though, we are unable to accommodate them. It is estimated that only 56% of our population lives on the Reservation, which is confirmed by the length of our waiting list. A Bureau of Reclamation Technical Evaluation Report for the Settlement indicated that by the year 2112 the Tribe's total membership will reach about 6,860 people. (See Attachment 1, p. 3-2).

Below is a map of the Reservation. The Reservation's eastern boundary abuts the Forest Service's Giant Sequoia National Monument. Just west of the Reservation is the Army Corps of Engineer's Lake Success, a dammed water body used for flood control and downstream irrigation, which is fed by the Tule River.

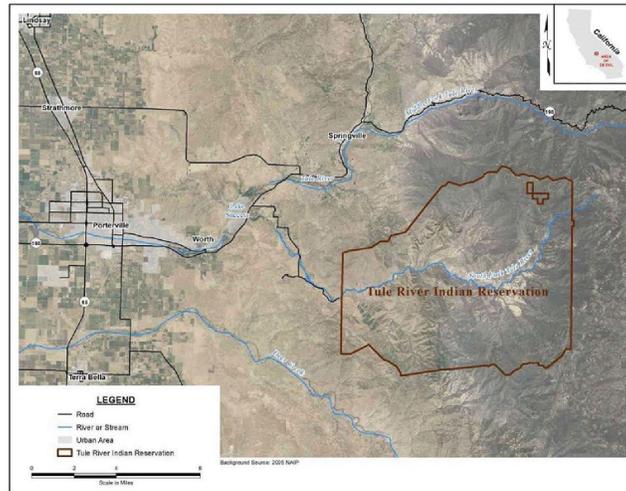


Figure 1: Reservation Location Map

III. The Need for Water on the Reservation—Fire Suppression and a Homeland

There is a lack of sufficient water supply for the Reservation. We have worked for decades to proactively address our federally reserved Indian water rights so that we can develop the necessary water resources to make our Reservation a permanent homeland. The current water supply is intermittent and suffers from water quality issues. The Reservation water system relies on a series of wells, springs, and water drawn directly from the South Fork Tule River, which is treated to meet potable water standards. Actual water demand far exceeds documented water use, which is constrained by both water availability and the water distribution system itself. (See Attachment 1, 2-1 at § 2.1.1).

The South Fork provides the Tribe with about 80% of its water. It flows through the Reservation and it is this water source that will be subject to the Tule River Tribe's federal reserved Indian water rights. Since the establishment of the Reservation, our Tribe is unable to use most of the river flow. To make use of the water in a meaningful way, it must be captured and stored, as the river runs low or even goes dry several months of the year. The hydrology of the South Fork is like most western rivers in that the flows are generally much higher in the spring months than the rest of the year. The hydrology of the South Fork is also marked by periods of drought during which the entire flow of the river is significantly reduced for long periods of time, sometimes spanning several years. These two general characteristics are depicted on the two graphs attached to this testimony. (See Attachment 2).

For the past 15–20 years, persistent drought caused water reductions as well as complete shutoffs. Homes typically run out of water during peak summer months and members must travel to trucked-in water stations to bathe and obtain bottled water for their home use. When there are outages people cannot cook, or bathe, and members must rely on bottled water for basic needs. They may miss work and/or school. Residents are asked to limit water use, sometimes drinking donated bottled water for months at a time. In the hottest parts of the summer, we open government buildings to provide refuge for elders, who rely on water for their swamp coolers. During water-short times we regularly experience interruptions in critical services like education programs, including the Towanits Elementary School, emergency services, elder care, justice center and government functions. The shortages impact not only our people's physical well-being, it also is detrimental to our economy.



Image 2: Tribal Members bathing from water tanks.



Image 3: Dry South Fork of the Tule River.

In relation to recent severe drought, we have had major fires in the last decade. (See Attachment 3). The Windy Fire of 2021 burned 97,528 acres of the neighboring Sequoia National Forest and 19,325 acres of our Reservation. When we utilize our water system to suppress fire, it completely depletes our supply, meaning we are back into the cycle described above. In the event of a wildfire, water to fight fires must therefore be imported from off the Reservation. During the Windy Fire, near vertical, rocky terrain and a lack of high elevation dipping pools for fire protection on the Reservation complicated suppression efforts. The fire killed many old growth giant sequoia trees—thousands of years in the making, and sacred to us culturally—incinerated tens of millions of board feet of timber and contributed to flooding and erosion throughout the spring of 2023. Future ignitions in remote areas continue to threaten the Reservation and neighboring communities. Catastrophic wildfire spreads quickly and can easily burn entire towns and forest stands within a 24-hour period.



Images 4 & 5: Wildfire smoke and flames on Tule River Reservation.



Image 6: Windy Fire

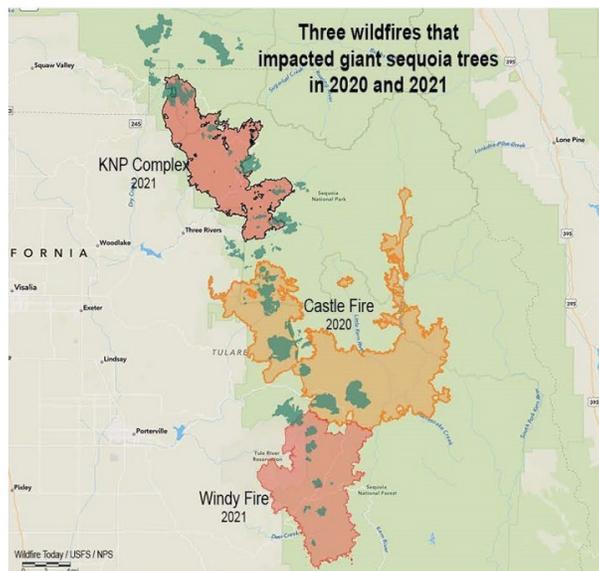


Image 7: Map of Windy Fire

The Tribe's water treatment plant currently has the capacity to provide 501,700 gallons per day (562 acre-feet per year) at maximum production. We have to run the treatment plant at maximum capacity and use groundwater sources to make up shortfalls. Many years, like last year, we have not had adequate water supplies in the late summer and early fall to meet the current minimum 100,000 gallons per day of water demand. In addition, recent flooding impacted our ability to operate the water treatment plant efficiently and requires the use of a patchwork system of generators. When the generators fail the daily functioning of government services on the Reservation are again shut down.

Water cisterns containing emergency stored water are difficult to access, and water delivery pipelines installed by the Indian Health Service (“IHS”) decades ago are of inadequate size to deliver water reliably. In seeking information about the installation of these pipes, we were told by IHS that an “as-built” plan for the system is not available, making updating it even more time-consuming and difficult. Meanwhile, the elevation difference between our water sources and end-users causes naturally occurring sulfur in our groundwater supplies to rise above the water as it gets pushed through the pipes, resulting in noxious sulfur odors polluting homes prior to the much-needed water arriving. The sulfur odors have made homes unlivable in some instances. Other homes are currently experiencing such water deficits that tribal members are unable to flush toilets, making their homes uninhabitable. Many members must live in recreational vehicles due to finances, but HUD informed us it cannot make water deliveries to RVs. “Many of the residents on the Reservation continue to have a relatively low standard of living in substantial part due to the absence of an adequate and reliable potable water supply and delivery system. Inadequate water supplies have resulted in reduced opportunities for economic development on the Reservation and prevent off-Reservation Tribal members from relocating to the Reservation.”¹

Last year, on August 17, 2023, our Tribe declared a state of emergency. (See Attachment 4). Severe water shortages began when a lightning strike shorted out the power for the Reservation’s water treatment plant, which was already struggling to treat our main water source. The South Fork of the Tule River had become excessively dirty from runoff associated with the spring’s extreme flooding, making the treatment plant work overtime already. In addition, the pump for the Reservation’s backup well was shorted by a power surge. The resulting crisis led our people to conserve water and stop all unnecessary water use—including limited water for toileting, showering, and laundry.

Meeting basic water needs is foundational to any society, and it is directly linked to our ability to exist as a sovereign nation. Last summer we learned more than ever that water is sovereignty. Our Settlement reconciles over 100 years of the effects of forced removals of the Tule River people, even at gunpoint, and the unratified 1851 Treaty of Paint Creek relied upon by our people in good faith.² The history of Tule River, and our forced removal onto the Reservation, sadly tracks the troubled history of the U.S. and its relations with native people. But the history in California is one of the darker pages.³ The Tule River Water Settlement and accompanying legislation offers a unique opportunity to correct these past wrongs.

IV. Tule River’s Settlement Benefits All Surrounding Communities and Satisfies All Requirements

Indian water settlements are traditionally negotiated through the Criteria and Procedures for the Participation of the Federal Government in Negotiations for the Settlement of Indian Water Rights Claims (“Criteria and Procedures”). We have worked hard for decades to codify the agreement we have with our neighbors—the South Tule Independent Ditch Company (“STIDC”) and the Tule River Association (“TRA”). TRAs members represent all pre-1914 water rights holders of the Tule River at and below the Richard L. Schafer Dam and Reservoir (formerly Success Dam). TRA includes the Pioneer Water Company, Vandalia Irrigation District, Porterville Irrigation District, and Lower Tule River Irrigation District. Settling with these parties implicates many interests beyond the individual entities, as all are major players in the agricultural economy and their livelihood is critical to the local community and beyond.

We have also satisfied each of the requirements of the Criteria and Procedures. If we were to file a lawsuit, that could tie up existing water rights for decades. As a result, we knew that a settlement outside of court is in everyone’s best interests. The favorability of settlement over decades of litigation is further evidenced by the support of our neighbors—the downstream state-based water right holders. Ultimately, approving the Settlement rather than going to court is in the best

¹ Tule River Tribe, Water Settlement Technical Report (2013) (https://tulerivertribe-nsn.gov/wp-content/uploads/2022/09/20130600technical_report.pdf) (last accessed 10/12/2023).

² Frank, Gelya and Carole Goldberg, *Defying the Odds: The Tule River Tribe’s Struggle for Sovereignty in Three Centuries*, p. 54, New Haven and London: Yale University (2010). Available at the National Indian Law Library (NILL) at the following link: <https://nill.softlinkliberty.net:443/liberty/OpacLogin?mode=BASIC&openDetail=true&corporation=NARF&action=search&queryTerm=uid%3D%225c659d6f0af12b193f2f1f287c6e356b%22&operator=OR&url=%2Fopac%2Fsearch.do>.

³ See Castillo, Edward D. (*Cahuilla-Luiseno*), State of California Native American Heritage Commission, California Indian History, “Short Overview of California Indian History,” <https://nahc.ca.gov/resources/california-indian-history/> (last accessed Sept. 28, 2022).

interests of the Tribe, our neighbors in the central valley in California, and taxpayers at large. Any litigation will be drawn out and expensive, with outcomes unknown and therefore risky. In addition, taxpayers have already seen negative impacts from not finalizing the Settlement. In recent years, they've had to contribute toward increased wildfire suppression efforts, help pay for bottled water deliveries, and assist in replacing outdated water delivery infrastructure and repairing washed out roads. If these impacts continue, taxpayers and the communities near the Reservation will be faced with the fallout from displacement caused by lack of reliable water access on the Reservation.

We seek commonsense, bipartisan outcomes, and passing our Settlement into law offers a unique opportunity for all to achieve success. It will allow the Tribe to finally have a functioning homeland and will ensure access to clean water for our long-struggling people. It will allow the U.S. to meet its obligations agreed to in contract, Executive Orders, and unsigned treaties. It will ensure water certainty for all the downstream state-based water users. It will impound water at high elevation, which is exactly the kind of drought solution called for by the Central Valley agricultural industry. It will also provide an advantageous dipping pool in the event of a wildfire. Furthermore, the Settlement will provide water certainty in times of drought and will ensure greater safety in times of flooding, both on and off the Reservation.⁴

Our Settlement was first reached in 2007 without the need for costly litigation and has since waited for full federal support and passage by Congress into law. We are here today because we have worked through all the concerns of our assigned federal negotiating team. We completed twenty-five years of study on the feasibility and various alternatives to secure our water rights, and we have addressed every issue that arose during our many years of negotiations. The Settlement also has broad local support. It memorializes our agreement with the STIDC and TRA, organizations that support the dairy, citrus, and other agricultural industries of the Central Valley of California.

Had our Settlement been implemented by Congress after it was reached in 2007, the last three years of drought, catastrophic wildfire, and extreme flooding would have been mitigated and the dire situation we find ourselves in today largely avoided. Instead, that potential source of life-sustaining water simply vanished downstream in the record setting flooding of the spring of 2023, eroding the only access road to the Reservation at great expense to ourselves and Tulare County.



Image 1. South Fork Tule River in Flood of 2003.
Source Caption: "The South Fork of the Tule River overflowed its banks, flooding the Tule River Indian Reservation in March."

Source: KVPR, Ester Quintanilla, "Tule River Indian Reservation recovering after storms disrupt infrastructure" (April 5, 2023) (<https://www.kvpr.org/local-news/2023-04-05/tule-river-indian-reservation-recovering-after-storms-disrupt-infrastructure>) (last accessed Oct. 10, 2023).

⁴ KVPR, Kerry Klein, "Evacuations ordered as Porterville lake fills beyond capacity, water is released" (March 15, 2023) (Evacuations ordered as Porterville lake fills beyond capacity, water is released (kvpr.org)) (last accessed Oct. 10, 2023).

V. History of the Tule River Reservation and the Struggle of Tule River to Secure a Sustainable Homeland

A. The Unratified Treaty of Paint Creek

The Tule River Reservation is part of our ancestral homeland. We are Yokuts Indians and have occupied the San Joaquin Valley in California for thousands of years. Following the discovery of gold in the late 1840s, there was massive immigration into California from the eastern U.S. In the first two years of the gold rush, it is estimated that 100,000 native people were killed.⁵

To legally obtain the lands that the Tribal Nations held, the U.S. negotiated 18 treaties with native people in California. One such treaty was the Treaty of Paint Creek that was signed on June 3, 1851. In that Treaty our ancestors reserved large tracts of land for our people. With California statehood and the desire for gold, however, there was enormous pressure on Congress to reject the 18 treaties negotiated with the Tribal Nations in California. Congress yielded to this pressure and in 1852 rejected the 18 treaties, including the Treaty of Paint Creek. The treaties were subsequently placed under an order of secrecy and hidden in the Senate's records for over 50 years.⁶ Our ancestors were never informed the treaties we negotiated with the federal government were not ratified.

Below is a map of the lands our ancestors reserved for our people in the Treaty of Paint Creek, which includes much of the agricultural hub of the central valley in California. (See also Attachment 5, Timeline of the Tule River Tribe Water Rights.)

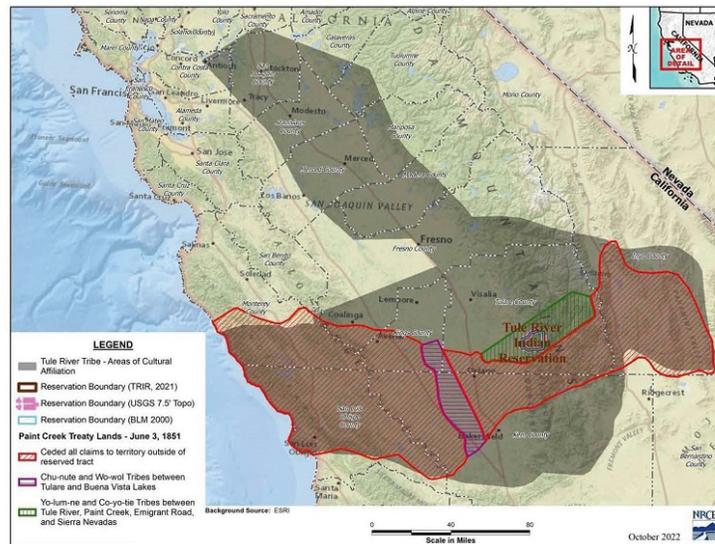


Figure 2: Map depicting area of traditional cultural affiliation for the Tule River Tribe of Yokut Indians as well as the lands ceded and retained in the Paint Creek Treaty of 1851.

B. Establishment of the Original Reservation through Fraud

After failing to ratify the treaties, Congress established the Superintendency of Indian Affairs in California in 1853 to relocate Indians to reservations. In 1856, the California Superintendency established our reservation pursuant to the 1853 authority, on approximately 2,440 acres of prime San Joaquin Valley farmland in Tulare County. The southwest corner of the land was transected by the mainstem of the Tule River. It included part of what is today the eastern portion of the city

⁵ *Id.*

⁶ See Miller, Larisa K., "The Secret Treaties with California's Indians," Archives, Hoover Institution at Stanford University, (2013), <https://www.archives.gov/files/publications/prologue/2013/fall-winter/treaties.pdf> (last accessed Sept. 28, 2022).

of Porterville. Despite being significantly smaller than what was reserved in the treaty, the location of this original Reservation was selected by the federal government to provide Tule River with the arable land and water resources needed to establish a self-sufficient homeland for our people.

Upon being promised this land as our homeland—ostensibly forever—we built homes and began to actively cultivate crops. Despite our relative prosperity in those years, two of the federal Indian agents assigned to reservations in the area decided to capitalize on the distance and ignorance of the officials in Washington, DC. Thomas Madden, a federal Indian agent assigned to the neighboring Tejon Indian Reservation, applied for, and was issued a fraudulent public land school warrant for 1,280 acres of the Tule River Reservation from the State of California.⁷ Four years later, and under a similar illegal arrangement, a land warrant for 1,160 acres of Tule River Reservation was issued to Mr. John Benson, another Indian Agent. These two state land warrants encompassed all our Reservation lands.

The federal government was fully aware that these lands were expressly reserved to us, but it made no effort to challenge the Madden and Benson land warrants—despite an investigation in 1858 confirming the fraudulent nature of the agents' land claims. Because the lands had been set aside for the Tribe, the State of California had no legal basis upon which to issue the warrants. The land transfers were also a violation of the federal Trade and Intercourse Act, which expressly prohibited Indian agents from having “any interest or concern in any trade with the Indians,” *Indian U.S. v. Hutto*, 256 U.S. 524, 525 (1921), and prohibited the sale of Indian lands except by treaty. 25 U.S.C. §177. Instead of setting aside the issuance of these warrants, the federal government actually paid rent to Agents Madden and Benson for at least a dozen years to enable our ancestors to continue farming what was our land.⁸

Gradually, over the years, hostility increased in general between the Indian farmers and the settlers in the area. In response to the tension, and rather than enforcing our rights to what was our Reservation land, in January 1873, President Grant issued an Executive Order creating a new reservation for the Tule River Tribe. It was comprised of mostly mountainous, rocky lands located about 15 miles to the east of our original Reservation. The Tule River Indians and the Indian agent at the time, Agent J.B. Vosburgh, protested the forced removal as the new lands would be difficult to cultivate.

⁷Frank, Gelya and Carole Goldberg, *Defying the Odds: The Tule River Tribe's Struggle for Sovereignty in Three Centuries*, p. 41–55, New Haven and London: Yale University (2010). Available at the National Indian Law Library (NILL) at the following link: <https://nill.softlink.liberty.net:443/liberty/OpacLogin?mode=BASIC&openDetail=true&corporation=NARF&action=search&queryTerm=uuid%3D%225c659d6f0af12b193f2f1f287c6e356b%22&operator=OR&url=%2Fopac%2Fsearch.do>.

⁸J.B. Vosburgh to CIA, September 4, 1875, Annual Report of the Commissioner of Indian Affairs (ARCIA), 1875, *HED* 1, 44th Congress, 1st Session, serial 1680, p. 730-731.



Figure 3: Map depicting the Tyler/Benson and Madden Farms in relation to current Tule River Reservation.

Agent Vosburgh, stated in his annual report to the Commissioner of Indian Affairs:

There was very little to be seen at the new agency to commend it for the purposes to which it was set apart. . . . By far the most valuable part of the reserve is upon the mountains in the extreme eastern portion, where there are extensive forests of pine available for the production of lumber, which would find a ready market among the settlers on the plains below.⁹

He further requested that the government inquire into the legality of the Madden and Benson land warrants and, if necessary, for the federal government to purchase the property from them for the benefit and use of the Indians.

No such action was taken by the federal government, and our people were forcibly removed from their homes and cultivated fields. The removal was very hard on our people. One tribal member alive then, Mary Santiago, who was born about 1859 and participated in the removal, recalled hiding in a cave as she and her brother “watched soldiers run over women and children killing some, cutting down their jerky lines, burning their tule huts that they lived in. Mostly killing men and young boys.”¹⁰

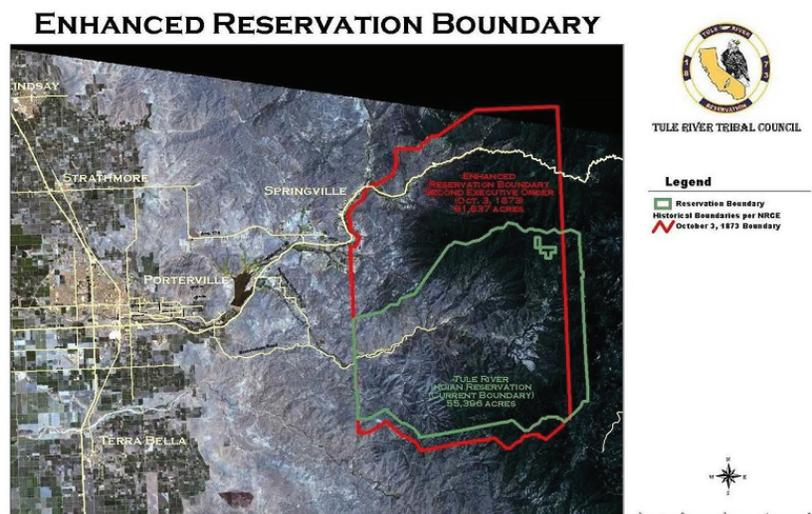
The new Reservation, while it contained 48,000 acres, was determined by the federal agents, based on the knowledge and technology of the time, to be insufficient to provide for us. An Indian agent reported, year-by-year our number had decreased by death and removal, until at this point there were only 143 Indians, embraced in 39 different families, residing on the reservation.¹¹

⁹J.B. Vosburgh to CIA, September 9, 1874, ARCIA, 1874, House Executive Document HED 1, 43rd Congress, 2nd Session, serial 1639, p. 623. Note: The acreage figure that Agent Vosburgh reflects the acreage in the January 9 executive order and not the acreage for the October 3, executive order that enlarged the reservation.

¹⁰Frank, Gelya and Carole Goldberg, *Defying the Odds: The Tule River Tribe's Struggle for Sovereignty in Three Centuries*, p. 54, New Haven and London: Yale University (2010).

¹¹H.R. 123, H.R. 2498 and H.R. 2534, Legislative Hearing before the Subcommittee on Water and Power of the Committee on Natural Resources, U.S. House of Representatives, 110th Congress, 1st Session (Sept. 25, 2007), Serial No. 110-45, Testimony of Kenneth McDarment on behalf of the Tule River Tribe of California In Support of H.R. 4685, the Tule River Indian Reservation Land Trust, Health, and Economic Development Act; citing *Reports of Agents in California*, Tule River Agency, The Commissioner on Indian Affairs, United States Indian Agent C.G. Belknap (August 11, 1883) 18-20.

Our situation was so dire that, in response, President Grant, in October 1873—just nine months after the initial Executive Order—signed another Executive Order almost doubling the Reservation’s size to 91,837 acres.¹² In August 1878, President Hays issued yet another Executive Order unlawfully reducing the reservation back to the January 1873 size of 48,000 acres.



C. The 1922 Agreement

The only known adjudication of water rights on the South Fork of the Tule River is *Poplar Irrigation Co. v. A.A. Howard*, No. 7004, Book 14, page 195, Superior Court of Tulare County, State of California, Dept. No. 2 (1916). In the proceedings, the U.S. created uncertainty when it failed to consider, evaluate, or defend any potential pre-1873 claims of the Tule River Tribe to the South Fork of the Tule River. Without involvement or consent from the Tule River Tribe, the court found that the South Tule Independent Ditch Company (STIDC) had the most senior rights, dating from 1854. The Court never made the Tule River Tribe a party to the case despite their clear water right interests.

In 1922 the U.S. perpetuated this error and, in violation of their trust duties to the Tribe, the Secretary of the Interior, acting on behalf of the Tule River Tribe, entered an agreement with STIDC to ensure certain water deliveries reached STIDC’s diversion without the Tribe’s consent (Attachment 6). The Agreement apportioned the flow of the South Fork of the Tule River under low flow conditions that guaranteed water to STIDC, even when doing so would not benefit the Tribe.

Further, in the 1922 Agreement the U.S. promised to develop Tule River’s reservation with the utilization of a permanent water right. The U.S., however, has not fulfilled its obligation to fully develop the reservation or the water resources necessary to make the reservation a permanent homeland as was promised. We continue to live under the terms of the 1922 Agreement today. We have honored the obligations made by the U.S., on our behalf and without our consent, while receiving little to none of the benefits promised.

For over a century, we have lived on the Reservation established in 1873, a mountainous land where, because of the failure of the U.S. to provide adequate water storage and irrigation facilities, we have been unable to fully achieve the agricultural homeland promised to us in the Paint Creek Treaty and partially performed in our original 1856 Reservation. The Tule River people are a proud people, and I tell this story not to complain or to blame anyone for these past injustices. They do, however, show that it is appropriate for the U.S. to now enact the Settlement into law. Passing such legislation will finally provide the Tule River Tribe a viable

¹² *Id.*

homeland and will thereby reduce financial impacts to taxpayers and alleviate any potential associated litigation risk.

VI. Overview of Settlement Terms and Proposed Legislation

We spent over 20 years studying how to best harness the water of the South Fork Tule River to meet our Tribe's needs. From a water needs assessment to a water allocation model, from a groundwater investigation to a water quality impact study for stored water, from creating a physical model of our Reservation to hydrologic studies and biological evaluations of a reservoir project, from dam cost comparisons to analysis of water supply alternatives, from an engineering geologic inspection of potential dam sites to a value planning study, and from an appraisal level dam project technical evaluation report to a hydrology and yield analysis, we have worked hard to objectively and thoroughly understand our water needs, potential solution options, and the costs involved. (Attachment 7). With help from the Bureau of Reclamation, we concluded that a reservoir that can store up to 5,000 acre-feet is the most realistic and cost-effective option to us, which will net the greatest benefit through the least amount of harm.

A site just downstream of the confluence of the South Fork of the Tule River with one of its tributaries, Lower Bear Creek, was identified as the most likely and optimal location. This site is geologically robust, with granite rock, steep unvegetated slopes, and a narrow canyon cross-section. The site will also allow for access and construction staging areas. (Attachment 1 at p. 5-11). In addition to the reservoir and raw water transmission mainline, the project will also improve and update existing delivery and water treatment systems. (Attachment 1 at p. 5-15).

Storing the water of the South Fork will also make it possible for us to consistently deliver water downstream to state-based water users. We spent 14 years negotiating with the downstream water users, STIDC and the Tule River Association. As a result of our work together, in 2007 we came to a settlement agreement ("2007 Agreement") with STIDC and TRA, which is reflected in the terms of our proposed legislation, currently pending before the Senate as S. 306. The 2007 Agreement offers flexible and realistic terms and provides built-in mechanisms to ensure fairness. The Settlement was achieved without costly litigation that could otherwise lock up the invaluable water in the Tule River basin for decades.

The 2007 Settlement and accompanying legislation respects existing downstream water rights as agreed to by all the parties, and thus benefits everyone. The Tule River water storage project will capture early season runoff and make it available year-round, creating consistency for not only our Reservation, but also the state-based water users downstream. The operation rules for the future Tule River water storage project will mandate minimum releases for the benefit of downstream users. In addition, the Tribe will limit our use of river flow during what is typically the drier portion of the year to account for downstream uses. The Tribe will rely primarily on reservoir storage, which is filled during the high-flow season. In addition, storing water in the future reservoir can also allow it to be used to enhance downstream flows during dry periods. The Tribe will also share water shortages with the downstream users during dry years. Finally, the Settlement includes provisions for record keeping, inspections, and cooperative technical decision making, which will be to everyone's benefit by increasing accuracy and thereby the wise use of water.

Based on a Bureau of Reclamation technical evaluation report, the Tribe has estimated the reservoir would likely cost \$568 million for a roller-compacted concrete dam, road improvements, raw water transmission line, water treatment plant expansion, expanded distribution system, and operation, maintenance, and replacement costs.¹³ As this is a fund-based settlement, with a one-time payment, the Tribe is taking on considerable risk due to the rapidly increasing material and construction costs we have recently witnessed. As a comparison, improvements to the downstream Schaffer Dam at Lake Success Reservoir, which entails widening the dam's spillway and improving flow control, is estimated to total \$135.5 million alone.¹⁴

Given the risk, as well as the emergency water crisis facing the Reservation, the Tribe seeks the funding on a mandatory basis, with part of the funding (\$20 million) available immediately to allow technical studies and investigations still needed to begin the preparation process for building the reservoir. While Indian water right settlements have sometimes been subject to discretionary spending, according to the Congressional Research Service, "Congress also has authorized mandatory funding

¹³ Bureau of Reclamation, "Tule River Indian Water Rights Settlement—Technical Evaluation Report" 53-61 (September 2016).

¹⁴ Gutierrez, Danielle, "Second Phase of Schafer Dam has Begun" The Sun Gazette (August 22, 2022) (<https://thesungazette.com/article/news/2022/08/27/second-phase-of-schafer-dam-project-has-begun/>).

for Indian water rights settlements.”¹⁵ Seeking a mandatory amount now will proactively prevent a backlog of U.S. moneys owed later, and it will reduce the cost, expense, and time for all involved in repeatedly seeking an appropriation from Congress in the future. It will also allow us to begin the work of securing a water source for our people immediately. With the passage of the Settlement into law, we will have achieved a durable solution to our water crisis.

The proposed legislation to implement the Settlement also includes a transfer of land into trust of ~825 acres from the Bureau of Land Management, ~1,837 acres of tribally owned fee land, and ~9,000 acres from the Giant Sequoia National Monument for Tule River, thereby also reducing impacts to taxpayers. The Giant Sequoia lands are at the headwaters of the South Fork of the Tule River and their management is critical to the success of the proposed reservoir. Just last fall the Windy Fire burned 34% of our 55,356-acre Reservation. Runoff from the burn area created a siltation overload in our water treatment system and highlights the need for reforestation efforts and ongoing management, which the Tribe is poised to provide with over a thousand years of experience in observing and understanding the ecosystem and developing sustainable management techniques. We also negotiated with the USDA and Sequoia National Forest to establish better and more formal co-stewardship provisions that will complement the land transfer. This effort is the culmination of a concerted effort to build high quality relationships by all interested parties. In fact, one of our former Tule River Tribal Councilmembers is now the Tribal Relations Specialist for the Sequoia National Forest. Being a team player with our neighboring land managers will also mean the reservoir can provide more immediate access to an emergency water supply in the face of wildfire to the benefit of all landowners and managers in the area.

The land transfer will redress the 1873 Executive Order of President Hayes that unlawfully reduced our Reservation. It will more accurately account for the land lost to the Tribe because of the past fraudulent land warrants and due to the U.S. decision to relocate the Tribe to our current location without our consent. With the transfer of the land back to the Tule River’s direct use and management, the Tribe will also be able to protect its main source of water more fully.

VII. Conclusion

The Tule River Tribe is in a water crisis. The crisis was, in part, created by broken promises and previous failures of the U.S. to act. Had action been taken even as far back as the 1870s to address this situation, we would not be here today. Let us delay no longer. The time for action is now to address the emergency conditions on our Reservation and for our federal partners to join us in providing the resources necessary to ensure a sustainable future for the Tule River Tribe. Doing so will also benefit the communities outside our reservation, providing greater water security and ensuring clarity of title to existing state-based water rights.

We respectfully request that the House Subcommittee on Water, Wildlife and Fisheries recommend passage of H.R. 8920 in the House of Representatives. I thank Chairman Bentz and the other members of the Subcommittee for the opportunity to fully express the importance to all in resolving the Tule River Tribe’s federal reserved Indian water right claims.

Mr. BENTZ. Thank you. I now recognize Governor Phillips for 5 minutes.

STATEMENT OF THE HON. LARRY PHILLIPS, JR., GOVERNOR, OHKAY OWINGEH PUEBLO, OHKAY OWINGEH, NEW MEXICO

Mr. PHILLIPS. Good morning, Chairman Bentz and Congresswoman Leger Fernández. Thank you for this, honorable members of the Committee. I am Larry Phillips, Jr., Governor of Ohkay Owingeh. I am here today with Lieutenant Governor Howie Aguino and our eldest councilman, Anthony Moquino, to show the support of our entire Tribal Council for this settlement. Thank you for

¹⁵ Congressional Research Service, “Indian Water Rights Settlements” (Updated January 18, 2022) (<https://crsreports.congress.gov/product/pdf/R/R44148>). The report discusses each type of source of mandatory funding in greater detail.

inviting us to this hearing. I have submitted written testimony for the record on behalf of Ohkay Owingeh.

I ask Congress to support and authorize H.R. 8685. My statements today will highlight several points of that testimony. I would like to first talk about the bosque and the water and their importance to Ohkay Owingeh.

Two things of the bosque, the waters that protect and preserve our bosque and our lands are the very essence of what it means to be Ohkay Owingeh. And our tribal language referred to as [speaking Native language] is the meaning of prosperous river lands and this living forest amongst our floodplains to our rivers. In our ceremonies, we cover ourselves with the attributes of our lands and waters of the bosque, to celebrate and to give thanks for the emergence from our Mother Earth.

Our people have been deprived of this ceremony for 75 years because of actions of the United States. The bosque was taken away from us from two separate actions of the United States. In 1955, both Bureau of Reclamation and Army of Corps of Engineers channelized the Rio Grande in an effort to move water away from our section of the river to benefit users further downstream. In 1956, the construction of the Abiquiu Dam changed the flows of the Rio Chama. Both of these actions resulted in devastation and resulted in depriving us our bosque and waters necessary for a proper river.

We enter into this settlement in negotiations to protect, preserve, and restore our water resources and the bosque. This is the first tribal water settlement that I am aware of that settles a claim by an Indian Tribe that the United States confiscated tribal lands and waters in a river channelization project, as I mentioned.

The United States bulldozed our rivers. It largely destroyed our rivers and bosque. This needs to be fixed. The settlement gives us the tools to do that. We seek congressional approval and funding for a comprehensive water rights settlement, a settlement that lasts for all time.

This settlement encompasses more than Ohkay Owingeh's water rights. It is a regional agreement with regional benefits. Ohkay Owingeh, the state of New Mexico, the city of Espanola, and many small farmers in the Rio Chama basin together crafted this agreement. This settlement approves water rights reliability for all water users in the Rio Chama basin. In exchange for our benefits, we will be giving up time immemorial priorities to facilitate an equitable share of the water during dry years. This settlement will increase water supplies. We will work with our neighbors to find additional water to store in existing reservoirs. The settlement will improve water efficiency by authorizing funding and delivery infrastructure. We will also provide economic benefits in the form of jobs.

We seek \$745 million in Federal funds to implement this agreement. New Mexico has committed to a local cost of \$131 million. Ohkay Owingeh will use these Federal funds for many purposes related to the settlement. These include, for example, groundwater wells, water treatment facilities, ditch improvements for irrigation to conserve water, water delivery facilities for both farm and as a backup to help restore the river and its adjacent vegetation in our

bosque, and for start-up costs to staff and manage administration of these resources.

We understand that this is fund-based settlement and that Ohkay Owingeh will not be able to return for additional funding if we under-estimate the cost of these projects. We accept that risk.

This concludes my oral remarks. I am happy to answer questions. Thank you.

[The prepared statement of Mr. Phillips follows:]

PREPARED STATEMENT OF THE HONORABLE LARRY PHILLIPS, JR., GOVERNOR,
OHKAY OWINGEH
ON H.R. 8685

Introduction

I am Larry Phillips, Jr., Governor of Ohkay Owingeh, a federally recognized Tribe in Northern New Mexico. I thank you for convening this hearing and inviting me to testify. The welfare of the people of Ohkay Owingeh is one of my primary responsibilities as Governor. I submit this testimony on their behalf. We respectfully ask that Congress enact H.R. 8685, the Ohkay Owingeh Rio Chama Water Rights Settlement Act of 2024.

At the outset, I wish to acknowledge and respect a Pueblo ancestor, Po'pay, who has been given the great honor of being recognized by the State of New Mexico with a statue in the United States Capitol. Born at Ohkay Owingeh in 1630, Po'pay lived with a desire to protect the lives and health of his people, along with other Native people, and to preserve culture and traditions so that my children and their children know and understand not just their heritage, but who they are.

In 1680, Po'pay led a coordinated revolt by all Pueblos against Spanish invaders. The invaders had enslaved us, taken our homes for themselves, and suppressed with violence and executions our efforts to practice our culture and honor our history. Po'pay was whipped for having engaged in traditional Pueblo practices; the statue in the Capitol shows the scars on his back. Together with his neighbors, Po'pay drove the Spanish out of New Mexico and restored Pueblo authority. For a period of 12 years, the Pueblos enjoyed again the ability to govern themselves consistent with their traditions.

Po'pay gave us the opportunity to restore and maintain our traditions in the face of outside challenges and enabled my ancestors to address the return of the Spanish with a renewed strength. Po'pay taught us how to both respect ourselves and our own culture and accept the new reality of a different culture living in our lands. In many respects, the water settlement you are considering is an extension of Po'pay and his teachings, as we have accepted and embraced the needs of our neighbors as part of this settlement, both politically and culturally. This water settlement reflects our sacred promise to our future generations to protect our lands and waters for their benefit.

Background of the Water Rights Settlement and Damage to the Bosque

This bill implements an agreement that settles a water rights lawsuit filed by New Mexico to establish rights to the waters of the Rio Chama Stream System. The State sought to quantify the Pueblo's water rights. After many years of litigation, we negotiated the quantifications that are established in the settlement agreement, which will provide adequate water for our needs now and into the future from the Rio Chama source on our lands. Because of the cultural importance we place on water, however, this settlement is much broader in scope, and more important than just those numbers, more important than simply assigning limits to our water uses.

This same agreement also settles a second lawsuit, one that we filed in the U.S. Court of Federal Claims seeking to restore the damage to our cultural resources caused by the United States and the damage to our people from being deprived the right to fully exercise their religious beliefs and practices. By destroying the bosque on our lands, the United States violated the constitutional principle that property shall not be taken without due process and adequate compensation. Our bosque is at the center of our cultural and religious practices. It is a sacred place. By taking our bosque and preventing our tribal members from being able to fully exercise their religious practices, the United States violated its duty to protect the resources of the Pueblo.

In the 1950s and 1960s, the Bureau of Reclamation and Army Corps of Engineers channelized that portion of the Rio Grande that flows through Ohkay Owingeh's homeland. With bulldozers and other heavy machinery, the U.S. agencies destroyed the ancient meandering ribbons of the Rio Grande and transformed the river into something very different than what the Creator gave us. The river became narrow and bounded on both sides by levees. The U.S. intended to speed the flow and increase the amount of water to be delivered through our lands to benefit junior water users in southern New Mexico. The U.S. succeeded in achieving its goals. Not surprisingly, the side channels, wetlands, robust plant- and tree-life, and the animals of the bosque, all gradually began to disappear. The groundwater table dropped. Over the last 70 years, this bosque has withered and begun its path to complete destruction.

To compound the problem, in the 1960s the Army Corps constructed a dam on the Rio Chama. The dam succeeded in its purposes of regulating Rio Chama flows and storing water for release to farmers south of us. The loss of flood flows in the Chama, which farmers had demanded, and the decrease of water in the river led to the same disaster as occurred on the Rio Grande: the slow death of the bosque.

The intentional destruction of the bosque is consequential not just because the U.S. destroyed a large swath of two healthy and vibrant rivers. This bosque is fundamental to Ohkay Owingeh traditional and cultural practices. The Ohkay Owingeh national symbol contains images of materials from the bosque. Our ceremonies are built upon, and our regalia is made up of materials from the bosque. Our world revolves around the bosque. The harm to our people from the loss of our ability to fully practice and exercise our religion is nearly immeasurable.

Ohkay Owingeh people cannot sit by while our critical resources wither and die. We must hold the U.S. to its responsibility to address the damages it has caused. Although the full extent of the harm suffered by the Ohkay Owingeh people is incalculable, this settlement will provide funding to allow us to mitigate those damages.

The bosque restoration project is supported by the State of New Mexico, city of Espanola, and the many *parciantes* on the acequias (the small farmers) in the Rio Chama. They support the bosque restoration project because they understand its importance to Ohkay Owingeh. But they also support bosque restoration because they know that a healthy, restored, and fully functioning bosque has benefits for all of New Mexico, including improved water quality, groundwater recharge, habitat for birds, fish, and plants, including species listed on the Endangered Species Act. Bosque restoration and the benefits that brings to the entire region is just one more way through this settlement that we take care of our needs and at the same time, ensure benefits to our neighbors and our State.

Separate and apart from our settlement, the U.S. Army Corps of Engineers, through the Espanola Project authorized in the Water Resources Development Act of 2018, Public Law 115-270, 132 Stat. 3830, Section 1401(4), has undertaken a bosque restoration project that includes a small part of our lands. This initial authorization will restore a small portion of our bosque. The authorization contained in this bill, H.R. 8685, will provide the means to finish the job.

This settlement is created by the people who live in that region. We will share our water resources. We will protect and conserve our water. We will respond together to the crises that will inevitably come. We will celebrate together our successes as small farmers. Ohkay Owingeh's neighbors, the signatories to this agreement, have agreed to work with the Pueblo to enable us to restore the health of the bosque, the most precious of our cultural resources. This agreement is a product of all of us: our thinking, our work, our preparation for an increasingly uncertain future. Now we ask Congress to partner with these citizens of the United States and support us in managing our water resources fairly, for the benefit of all in the region.

Specific Provisions of H.R. 8685

As authorized by H.R. 8685, the Pueblo agrees to limitations on its current and future water uses; we waive our rights to a senior priority to permit sharing our water resource with our neighbors during dry periods; the Pueblo retains its ability to acquire water rights and lands in the future from willing sellers. We are asking Congress to approve the agreement and to appropriate \$745 million for Pueblo development of water infrastructure. The Legislation reflects an agreement by the State of New Mexico for its cost share: \$98.5 million for irrigation improvements, \$32 million for the city of Espanola water infrastructure, and \$500,000 for mitigation of well impairments. The legislation in Section 5 confirms and establishes as Ohkay Owingeh's federal water rights.

The provisions of the agreement are summarized here:

- Irrigation—the Pueblo will have sufficient surface water to irrigate our farmlands of 310.45 acres. The agreement authorizes irrigation of an additional 1,562 acres formerly owned and irrigated by the Pueblo; these lands and water rights must be reacquired by the Pueblo from willing sellers.
- The Pueblo will have sufficient water for livestock.
- The Pueblo will have a right to the use of 981-acre feet per year (afy) from groundwater wells for current and future domestic, commercial, and municipal purposes; most of that water use is subject to offsets (the Pueblo must replace the water it depletes from the system) to protect downstream users and to ensure state compliance with the Rio Grande Compact.
- The Pueblo will have the right to restore the Rio Chama bosque by diverting water from the river during high-flow events under specified water conditions. The Pueblo in addition may apply 250 afy to the bosque at any time by diversions from the Rio Chama, or the use of groundwater or irrigation return flows. The Pueblo expects high flow events to allow significant improvements to the bosque, and the yearly use of 250 af to be sufficient to maintain the health of the bosque in between flood events.
- As mentioned previously, the Pueblo will waive its senior priority right to water and the parties will fairly allocate among themselves water available during times of shortage. The shortage sharing schedule will be in the form of an annual agreement, binding on all parties, and enforceable by the New Mexico State Engineer.
- The parties have agreed to pursue water storage in existing reservoirs as a joint effort.
- Ohkay Owingeh and the city of Espanola have agreed to avoid interference with each other's groundwater wells.
- The State and Pueblo will exercise their respective sovereign authorities over management of water resources. The Pueblo, pursuant to its laws, will administer water within the Pueblo Grant. The State, pursuant to its laws, will administer water outside the Grant. The administration of water rights will be conducted by both governments in a public manner with full timely disclosure to the public. The State has agreed to provide a fund to mitigate impairment to domestic and livestock wells that might arise from Pueblo water use.
- Proposed federal funding for the Pueblo may be used to acquire water rights, plan for and develop water-related infrastructure, administration of water rights, and bosque restoration.

The second part of the agreement provides funding for restoration of the Rio Chama and Rio Grande bosque within the Pueblo Grant. The damage to the rivers' riparian areas caused by the Bureau of Reclamation and Army Corps of Engineers is significant, continuing, and increasingly devastating to our cultural practices. The U.S. was focused on getting water to farmers through the dam at Abiquiu and the channelization of the Rio Grande and acted with disregard to the vast damage to people of Ohkay Owingeh.

Ohkay Owingeh fully understands that S. 4505 authorizes a fund-based settlement, which means that we are prepared to bear the risk of underestimating the cost of constructing the water infrastructure and restoring the bosque.

Ohkay Owingeh people were farmers and hunters a thousand years ago. We still are. We were people who learned from our ancestors, followed our traditional ways; we still do. We speak Tewa, our language. We hold our ceremonies. We also build industrial parks, establish businesses with operations throughout the country, build houses, run a government, educate our children in our schools, and provide our community with health care, public services, and jobs. Ours is a complex world. Our ancestors are part of our daily lives. Yet we live in the 21st century.

On behalf of my people, our ancestors who were stewards of the natural resources of northern New Mexico, and our children and grandchildren, we urge this Committee to endorse our carefully crafted plan to restore and maintain our primary cultural resource, the bosque. River restoration is in the broad public interest. Restoration will return to the people of New Mexico an environmental paradise. And restoration will assure Ohkay Owingeh that its traditional practices will continue.

Mr. BENTZ. Thank you. I now recognize Governor Kucate for 5 minutes.

**STATEMENT OF THE HON. ARDEN KUCATE, GOVERNOR,
PUEBLO OF ZUNI, ZUNI, NEW MEXICO**

Mr. KUCATE. Good morning. On behalf of the Zuni Tribe, I want to extend my sincere thanks to the Subcommittee for holding this hearing and giving me the opportunity to testify.

Zuni's reservation is the largest of New Mexico's 19 pueblos, containing almost a half-a-million acres within the Zuni River basin in New Mexico, carved out from our ancestral homelands. It is located in a very rural area of western New Mexico, and is home to close to 10,000 members.

Long before the coming of the Spanish conquistadors, we grew corn, squash, beans, and other food crops in our main village along the Zuni River and in surrounding satellite communities along tributary streams and springs, often using an irrigation technique that we are famous for: waffle gardens. Historical photographs showing the river and these gardens have been submitted as supporting documents to my testimony today. Our adaptive irrigation techniques and careful stewardship of our water and lands allowed us to irrigate thousands of acres of land. Not surprisingly, many of our prayers and rituals recognize the importance of water and agriculture to our culture and survival.

Our water supply was relatively stable until the late 19th century, when the settlers upstream of our reservation began diverting and storing virtually the entire flow of the Zuni River's primary tributary. Clear-cutting of the forest in the Zuni Mountains compounded our water supply woes, causing severe erosion and clogging our waterways with silt. Consequently, the Zuni River, once a perennial stream running through the heart of our village, is now a mere trickle for the most of the year.

Unfortunately, instead of taking action to stop these upstream diversions by the newcomers to the Valley, the Federal Government encouraged settlement by non-Indians through a poorly conceived attempt to centralize Zuni farming away from lands near our eastern and northern borders. Disregarding our traditional farming practices, the government constructed a series of dams and reservoirs within our reservation. The construction of the first and largest dam at what is called Black Rock buried Zuni's sacred spring, Malokyatsiki, the original home of our Salt Mother.

The dam failed in its first year, leaving a path of devastation downstream. Although rebuilt soon after the failure, it began silting immediately, and within 20 years, the reservoir had filled with sediment, losing nearly all of its storage capacity. Today, Black Rock Dam only serves to provide limited protection. The other dams and reservoirs allowed in the wake of Black Rock's failure were also poorly engineered and not maintained, and they effectively ended our traditional farming practices that had been successful for generations.

Today, our five irrigation units are largely useless and need to be re-engineered and rebuilt. Our pending water settlement over 25 years in the making will allow us to rehabilitate these five irrigation units in a manner suited to climatic conditions, as well as to

Zunis' traditional irrigation practices. It will provide us with funds to replace our aged municipal water system, including constructing a water treatment facility capable of addressing the high levels of contaminants occurring in our groundwater, and constructing a modern wastewater treatment facility.

For Zuni to sustain and grow, we must have modern and safe, reliable drinking water and wastewater services. The settlement will also provide funds to restore the Zuni River and Rio Nutria channels to support water flows, including for ecological and traditional purposes. We plan to rehabilitate and improve livestock watering facilities, community water hauling stations used by our farmers and ranchers.

In addition to resolving the Tribe's water rights in the Zuni River basin, H.R. 8951 will ensure the continuation of protections for the sacred Zuni Salt Lake and surrounding sanctuary, and provide for the transfer to the Tribe in trust of approximately nine sections of BLM land surrounding the lake. The Zuni Salt Lake is located approximately 60 miles south of our reservation in a remote area that is primarily used for grazing and hunting. The lake and sanctuary are sacred to our Tribe and other tribes and pueblos in New Mexico and Arizona.

Ratification of our settlement by Congress is of enormous importance to my community and its future. It will usher in what I sincerely believe will be a new chapter for our Tribe, allowing us to protect and sustainably develop our community's limited water resources, to restore traditional agriculture, and to facilitate much-needed economic development. It will also allow us to adapt to the growing impacts of climate change

The Tribe is not aware of any opposition to the settlement, and it is supported by the only irrigation company in the basin and by the state of New Mexico. Thank you. [Speaking Native language.] [The prepared statement of Mr. Kucate follows:]

PREPARED STATEMENT OF ARDEN KUCATE, ZUNI TRIBE GOVERNOR
ON H.R. 8951

Good morning Chairman Bentz, Ranking Member Huffman, and members of the Subcommittee. I am Arden Kucate, Governor of the Zuni Tribe in New Mexico. On behalf of the Tribe, I want to extend my sincere thanks to you, the Subcommittee, and Chairman Westerman for scheduling this hearing. And I want to express my gratitude to Representative Gabe Vasquez for his support and leadership in introducing H.R. 8951, along with co-sponsors Representatives Stansbury and Leger Fernandez.

Zuni's history is a story of resilience and persistence in the face of federal neglect and mismanagement. Our reservation contains almost a half million acres within the Zuni River basin, carved out from our ancestral lands where we have resided for millennia. It is located in a very rural area approximately 125 miles west of Albuquerque, extending to the Arizona border (See Attachment 1 for location map), and is currently home to close to 10,000 members and their families.

Long before the coming of the Spanish conquistadors, we grew corn, squash, beans, and other food crops in our main village along the Zuni River, and in surrounding satellite communities along tributary streams and arroyos, often utilizing an irrigation technique that we are famous for—waffle gardens (See Attachments 2 & 3 for pictures of these gardens). Our storied irrigation techniques and careful stewardship of our water and lands allowed us to irrigate over 15,000 acres of land, and provided our people with surplus supplies of corn and other subsistence crops that could carry us through winter months and other challenging periods.

Despite the region's semi-arid environment and highly variable precipitation, our water supply was relatively stable until the late 19th Century when settlers located

upstream of our reservation, established the town of Ramah, and began diverting and storing virtually the entire flow of the Zuni River's primary tributary. Clear cutting of the forests in the Zuni Mountains compounded our water supply woes, causing severe erosion and clogging our waterways with silt. As a consequence, the Zuni River, once a perennial stream running through the heart of our main village area (see Attachments 4 & 5), is now a mere trickle for most of the year. Nevertheless, it remains enormously important to our culture and traditions.

Unfortunately, instead of taking action to stop or limit these junior diversions by newcomers to the Zuni River valley and taking action to protect the watershed, the federal government, over our objections, undertook ill-fated efforts to free up some of our traditional agricultural areas for settlement by non-Indians—constructing a series of dams and storage reservoirs in a poorly conceived and executed attempt to centralize farming by our members. Those efforts included the construction of a large dam and reservoir just above our main village at what is known as Black Rock. The construction buried our sacred spring, *Malokyatsiki*, the original home of our Salt Mother (see Attachment 6). The dam failed in its first year, leaving a path of devastation downstream. (See Attachments 7 & 8). Although it was rebuilt, it began silting in immediately, and within 20 years the reservoir had filled with sediment, losing nearly all of its storage capacity, and today it only serves to provide limited flood protection.

In the wake of Black Rock's failure, the federal government effectively reversed course and constructed a series of other smaller dams and reservoirs near our traditional farming communities, but these were also poorly engineered and not maintained. In addition, construction of these dams and reservoirs destroyed Zuni's ability to use traditional farming methods that had been successful for generations. Today, our 5 irrigation units, and the diversion structures and reservoirs serving them, are sediment-laden and largely useless, and need to be re-engineered and rebuilt. In addition, upstream, off-reservation groundwater pumping has caused declines in stream flows and spring levels on our Reservation, and though these will be challenging to reverse, we are determined to stop further declines.

In addition to our irrigation infrastructure needing to be overhauled, our domestic water system is in dire need of rehabilitation. While we are a very traditional tribe, and our geographic isolation has helped us to remain that way, we are also a poor tribe, and high unemployment is a challenging problem. However, we believe that outside businesses, including manufacturing businesses, can be attracted to our reservation because our people are renowned for their skilled work in producing world famous jewelry and pottery. But we must be able to offer new businesses safe and reliable water supply and wastewater services.¹

The settlement would comprehensively resolve all of Zuni's water rights claims in the Zuni River basin, both surface and groundwater. It will also provide the Tribe with funding for various water-related projects including: 1) a much needed replacement of the Tribes aged municipal water system which is currently dependent on 2 wells located over 10 miles away from our village, and which has significant levels of contaminants (including radionuclides and arsenic); 2) a modern wastewater treatment facility that will allow the re-use of wastewater, replacing our outdated sewage lagoons; 3) redesign and rehabilitation of our 5 irrigation units and associated reservoirs in a manner that is suited to climatic conditions, as well as to Zuni's traditional irrigation practices; 4) restoration of the channels of the Zuni River and the Rio Nutria, a tributary of the Zuni River, for traditional and cultural purposes; 5) repairing and upgrading livestock watering facilities, to allow for more efficient and even use of our range lands by tribal ranchers; and 6) rehabilitating and developing additional wells and community water hauling stations in areas outside of our main village area.

In addition to resolving the Tribe's water rights in the Zuni River basin, H.R. 8951 will ensure the continuation of protections for the sacred Zuni Salt Lake and Sanctuary, and provide for the transfer to the Tribe, in trust, of approximately 4,756 acres of BLM land surrounding the Lake, subject to valid existing rights. The Zuni Salt Lake is located in a remote part of western New Mexico, approximately 60 miles south of our reservation, in an area that is primarily used for grazing and hunting (See Attachment 1 that shows Zuni lands, including the Lake's location). The Lake and Sanctuary area are sacred to our Tribe and a number of other southwestern tribes and pueblos, including the Pueblos of Laguna and Acoma, as well as the Navajo, Hopi and Apache tribes.

¹We recently worked with our local rural electric cooperative to provide highspeed internet throughout all of the populated areas of the reservation, and to upgrade and improve the reliability of electric service.

The Lake itself is a unique, naturally occurring saline lake, maintained by a delicate balance of surface water and groundwater (see Attachments 9 & 10 for pictures of the Zuni Salt Lake). For centuries, Zuni and other tribes and pueblos have made pilgrimages to the Lake, the home of Zuni's Salt Mother, for spiritual guidance and to collect the salts for ceremonial and domestic use. The surrounding land, with pilgrimage trails and other cultural resources, has similarly been respected by tribes and pueblos as a sanctuary where no hunting is allowed, and conflicts are set aside, in reverence for the sanctity of the area. The Sanctuary contains numerous sacred places, religious shrines, and ancestral archaeological sites, which H.R. 8951 will protect. These protections reflect those already included in the BLM management plan for the area, but will make them more permanent.

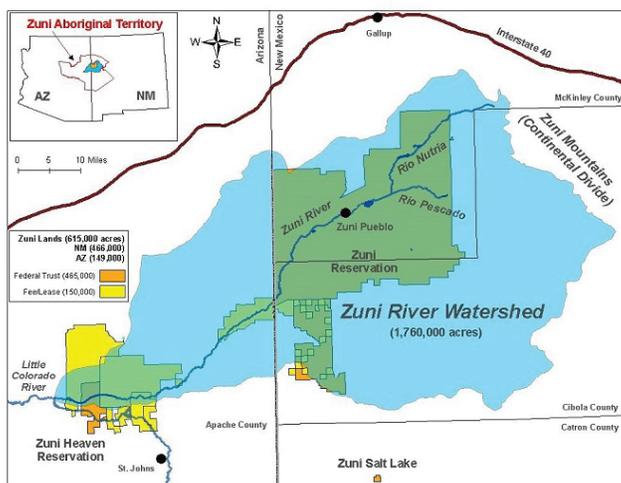
In addition, the approximately 4,756 acres of BLM land to be transferred into trust is important for the protection of the Lake as it encircles the geographic features surrounding the Salt Lake maar to create a stronger natural physical buffer. This transfer is subject to all existing grazing and other rights. There are also several hundred acres of non-federal land within the acquisition area, and we have been in communication with the land owner.

The pending settlement of the Tribe's water rights in the Zuni River basin has been over 25 years in the making, and its ratification by Congress is of enormous importance to my community and its future. It will usher in what I sincerely believe will be a new chapter for our Tribe, allowing us to protect and sustainably develop our community's limited water resources, to restore traditional agriculture, and to facilitate much needed economic development. It will also allow us to address and adapt to the growing impacts of climate change, which has resulted in diminished snowpacks in most years, along with more intense monsoonal storm events.

The Tribe is not aware of any opposition to the settlement, and it is supported by the only irrigation company in the basin, the Ramah Valley Land and Irrigation Company, and by the State of New Mexico. As an integral part of the settlement, the State of New Mexico worked closely with us to establish measures to help protect our Reservation springs and streams and our sacred Salt Lake and Sanctuary.

Thank you for the opportunity to testify before you today. I will be pleased to answer any questions you may have, and respectfully urge members of the Subcommittee to support House passage of this legislation, which is critical to our future.

Zuni Testimony - Attachment 1



Zuni Testimony - Attachment 2



Zuni Testimony - Attachment 3



Zuni Testimony - Attachment 4



Zuni Testimony - Attachment 5



Zuni Testimony - Attachment 6



This shows the springs at Blackrock prior to development the Blackrock Dam. Spring-fed pools were common along the entire Zuni River.

Zuni Testimony - Attachment 7



Zuni Testimony - Attachment 8



Zuni Testimony - Attachment 9



Zuni Testimony - Attachment 10



Mr. BENTZ. Thank you. I thank the witnesses for their testimony. I will now recognize Members for 5 minutes each for questions. We will begin with Congressman Rosendale for 5 minutes.

Mr. ROSENDALE. Thank you very much, Mr. Chair.

And thank you very much, Assistant Secretary Newland, for coming in to support the bill today. I am sure everyone here appreciates that, and it carries a lot of weight in this room.

A couple of things that I would like to make clear so that people understand that this is not just an obligation that we have to honor the treaty from 1855, but the water compact is a very, very complex legal document, as I know Mr. Chairman realizes, he has worked with them previously. And to me, to see the amount of support that we have been able to get from across the state, from all the different stakeholders. There are so many different interests, and to have everybody come together and support this compact is really an enormous achievement. It truly is.

And just so you can also help to understand how much is being lost right now, not only do we have the catastrophic failure because of this over-100-year system, but even prior to that we were already experiencing a loss of about 250 cubic feet a second of the water. So, of the 850 cubic feet a second that we were supposed to get, that the tribes are supposed to get out of the river, it has already been reduced to 600 cubic feet a second just because the facilities cannot handle that additional water.

So, basically, Canada is getting that water. And while I don't have any grind against Canada, it is water that we were supposed to use. And what I like to say is that land is king, but water is queen, and you must have both if the kingdom is going to function properly. Again, I would like to thank the folks coming from Montana to testify here today. And I am going to start off with President Stiffarm.

I have a couple of questions for you so you can help broaden the understanding for folks. What is the importance of that Saint Mary's system to the reservation?

Mr. STIFFARM. Thank you for the question, Congressman Rosendale, but the importance of that siphon is basically what I said in my testimony, it is bringing that water downstream to not only Fort Belknap, but to all the communities and the farmers and ranchers downstream from the siphon.

But to Fort Belknap, our irrigation system is 100 percent run and operated by tribal members, and have been since they were developed in the early 1900s. That is where it is going to affect the most if the Milk River goes dry, is our tribal membership on the north end of the reservation.

Mr. ROSENDALE. And it is my understanding that the Milk River actually goes dry, like, 6 out of 10 years if it does not have this additional. And, again, we are talking about support for tens of thousands of other folks there, as well.

Are all Montana counties and communities that will be affected by this settlement on board with this agreement?

Mr. STIFFARM. Yes, they are. All across the heartland throughout the state, the Governor, Lieutenant Governor, the counties around us, and up and down the Hi-Line.

My predecessor, former President Andy Werk, worked hard on getting all those support letters, and I picked up the ball from when he left to where I am at today to get the support where we are at, and I am here to testify.

Mr. ROSENDALE. And that is what I have recognized. And to me, to see that many people, that collaborative work coming together to bring those diverse interests is really remarkable.

How long have you been involved in these settlement negotiations?

Mr. STIFFARM. I have been on council as a council member for 4 years, and I have been sitting as the President for 2½ years now. So, going on 7 years. And a pretty tough, hard road.

Mr. ROSENDALE. How do you anticipate the benefits directly to the reservation once we can get this passed?

Mr. STIFFARM. We will have some clean drinking water for our community members, especially in the south and where the mountains are, where we have that Pegasus mine, where it was at, and our contaminated water coming off the mountains from that mining. We may be able to pump some water up from the Missouri River to our community members in the south end of the reservation. That is a big part of my issues, so we have clean drinking water for our people in the south.

Mr. ROSENDALE. Very good. And are you aware that the alteration of the Senate bill and my bill to add the extra \$250 million for the Blackfeet Tribe, while it might be well intentioned, would actually extend the timeline for getting your water compact signed into law?

Mr. STIFFARM. Yes, I am aware of that. To me, like I spoke about a little bit in my testimony, as tribal people, we need to stand together and help one another, and that is what we need to do here today. The Blackfeet people have their people to take care of. And they are our relatives, too. We have family that are up there. We are all intermarried, and we have to take care of one another that way, and that is why we support them.

Mr. ROSENDALE. OK. Thank you so much for your testimony.

Mr. Chair, I yield back. Thank you.

Mr. BENTZ. Thank you. I will now recognize Congresswoman Leger Fernández for 5 minutes.

Ms. LEGER FERNÁNDEZ. Thank you very much.

And to the witnesses, I really want to thank you because what you have done, even though you were coming from so many different states, is lay out the similarities with all of your settlements and the importance that water serves, and that these settlements are for your tribes.

Water infrastructure is expensive. The settlements are part of the trust responsibility. And water is more than just what comes out of your tap. Water is about your tribal sovereignty. It is about the prosperity of your communities, and it is about the prayers and sacred ceremonies that sustain your Tribe. So, I really want to thank you for having those themes that we can hear across the country. These are the same themes.

Assistant Secretary Newland, it has been raised that we have these criteria for water settlements. I want to ask you, do you

believe that the water rights settlements for the New Mexico tribes meet the criteria?

And as follow-up, if they meet the criteria, why should we do this now, rather than waiting? This is a lot of money. But why do it now?

Mr. NEWLAND. Thank you, Congresswoman. Yes, is the short answer. And in our evaluation, we believe that, in addition to those, these help us fulfill our trust obligations, as I mentioned in my oral statement, to ensure that if we are going to protect the ability of tribes to live in their homelands, that they have water to do that.

In response to your second question about why do this now: (1) the short answer to that is any delay in bringing clean, drinkable water to communities is going to harm the people who live in those communities; and (2) we know from our experience that these settlements only get more expensive, and implementation only gets more expensive the longer we wait, and not less. I worked at the Department when Congress enacted the Crow Tribe Water Settlement Act about 15 years ago, and that was an enormous settlement at that time. And now we are here testifying on legislation with larger settlement costs. So, that speaks to the urgency of doing this.

Ms. LEGER FERNÁNDEZ. Thank you. So, doing it now saves us money.

Governor Phillips, our Committee often takes up laws that really are remedying past injustices. And you did a beautiful education of the Committee of what the United States has done in the bosque area, and how that has really harmed the pueblo's ability to engage in your ceremonial practice, in your prayer, and your irrigation.

But also, can you add a little bit more about how hard it is but how rewarding it might be to work in collaboration with your neighbors to get something like this done? Because I know we are not going to be able to hear from all of the tribal leaders, but I know they have all engaged in this for these settlements.

Mr. PHILLIPS. Thank you, Congresswoman Leger Fernández. Yes, as part of the settlement discussions in the Aragon settlement, at the table sat 89 acequias with about 400 diversions amongst that. The state of New Mexico, the city of Espanola. It took us many years to understand that the resources that we were fighting were over-adjudicated. And in order for us to survive and meet Ohkay Owingeh's goal of its restoration of its bosque area, we had to realize that shortage sharing was the concept in which we all had to recognize.

So, in order for us to get our priority, which is our reconnection of our lands to what we culturally use in a daily practice, and that is our lives, we realized that the uses and traditions of the acequias also are reliable and water every day. And recognizing how to use the water we have in a turning system in which we recognize the uses, priorities, and recognizing that a shortage agreement amongst us was the way to go about that. So, that was important for all of us to come to the table, realizing that we all had to compromise in order for it to be a success not only now, but into the future.

Ms. LEGER FERNÁNDEZ. Thank you.

And Governor Kucate, I had wanted to ask you about the importance of the work that you have done with regards to Zuni Salt Lake. As a very young attorney, I mean, maybe 20-some years ago, I participated in the litigation to protect Zuni Salt Lake from the mining claims. So, thank you for that work. I have run out of time, but thank you for the work you are doing, because I know that that sacred lake is important, as you pointed out, to tribes across the region. So, our gratitude toward you for including that in your settlement.

Mr. BENTZ. Thank you. The Chair now recognizes Congressman Fong for 5 minutes.

Mr. FONG. Thank you, Mr. Chairman and Ranking Member, for the opportunity to speak in support of my bill, H.R. 8920. And thank you to all the witnesses, as well, for being here.

This bill will settle Federal water rights claims made by the Tule River Tribe, which has already been agreed upon by local water users. The Tule River Tribe's reservation encompasses portions of the Sierra Nevada mountain range, which I represent, and it is imperative that this Tribe receives the water supply that is needed.

And I want to thank Vice Chairman Shine Nieto for his testimony this morning.

During the summer, California, and specifically the Central Valley, can experience droughts depleting water in the South Fork of the Tule River, which is where the Tribe gets its water from. Because of this, members of the Tribe are at times forced to get bottled water or utilize tanked water systems for basic daily activities like cooking and bathing.

In addition, this area is prone to wildfires. And when the Tule River must be used as a water source to fight these fires, it causes the Tribe to suffer the consequences of the dried-up water source. And I have seen all of this firsthand.

Rather than filing a lawsuit, the Tule River Tribe worked with the surrounding stakeholders to establish an agreement that satisfies the water needs for all parties involved. The first settlement was agreed upon in 2007. It is time that Congress supports the Tribe and its neighbors in their settlement, and pass H.R. 8920 to provide them with a safe and reliable water supply, and I urge my colleagues to support this bill as it will provide a long-term solution to the water needs of this Tribe.

If I could ask Vice Chair Nieto a few questions, what is the Tribe's current situation related to water?

And if you could, offer some specifics of the type of infrastructure that would be constructed in the settlement that would be helpful to the community.

Mr. NIETO. Thank you, sir. Yes, our Tribe's first needs are just to have drinking water that is available to us that does not look like iced tea instead of just regular water.

But with the dam situation that we want to build the infrastructure for, that would help us control the river a little bit more and actually help the river not to dry up, a percentage of the water that our downstream users can also use. So, they are going to benefit off this because nowadays, and with the droughts and everything, the river doesn't even make it down to, it dries up before it even leaves our reservation nowadays. So, that water would be in con-

trol with the dam, the reservoir. It would help out the whole river and all the downstream users. That is why they support us while we are here, and hoping this will pass and help us out.

But us being in a remote area and mostly mountains and granite all around us, we would have to put a lot of holding tanks for the water also to help out. So, that is where most of the infrastructure costs comes from. We would have to use that to build more holding tanks for our water for our housing and bringing people home.

Mr. FONG. And when I was on the reservation, there were some additional pipelines, I think, that would move the water around. Would that also be constructed, as well?

Mr. NIETO. Yes. Those pipes have been there since 1963. So, they are probably full of sediment from the river going dry. And where the pipe comes into our main water source, the water doesn't reach it sometimes. So, most of that pipe is probably full of sediment and mud and everything else that goes into those pipes. So, we would like to get those pipes redone and not patched up how they are.

And I thank you for coming to our reservation and seeing that firsthand, as well as Mr. Newland coming.

Mr. FONG. What is the current situation when it comes to water on the reservation?

Mr. NIETO. We run out of water every year. It just depends on where you are at the time, whether you are in this section of the Tribe or up, low, it just switches on and off. It is like someone is cutting your water off.

So, with this reservoir that we want to build, it will help all of the situation on the whole reservation plus, like I said, bring people home that are off the reservation because right now we have a lock on any new housing built because we have no water for those new houses that we would be able to build.

Mr. FONG. And then lastly, could you share how long have you been working with the local water users in developing this agreement, and are you aware of any opposition?

Mr. NIETO. Back in 1971, then-Emeritus Chairman Garfield started working with the downstream users, and had great relationships with them. And he has been pushing this since 1971, and he heard about 1922, when our water rights were given away to our river. So, he has been trying since 1971 to get our water back.

Mr. FONG. Thank you, Vice Chairman, for being here.

And I thank you, Mr. Chairman. I yield back.

Mr. BENTZ. The Chair recognizes Congressman Stanton for 5 minutes.

Mr. STANTON. Mr. Chairman, thank you for allowing me to participate in today's important hearing. I would like to discuss two of the important and historical tribal water settlements that will be discussed here today, both in this panel and some of the future panels, as well. These settlements will resolve long-standing claims for four tribes in Arizona, provide a reliable water supply to these communities for generations, and greatly benefit all of the people of the state of Arizona.

And I want to extend a special welcome to Navajo Nation President Nygren, he will be in, I think, in the future panel, Hopi Vice Chairman Andrews, San Juan Southern Paiute Vice President Preston, Yavapai-Apache Nation Chairwoman Lewis, and the

Director of Arizona's Department of Water Resources, Tom Buschatzke. Their leadership and the leadership that came before these incredible leaders has been key to this critical effort.

Each of you has put long-standing differences aside to get to these agreements for the greater good of your communities, neighbors, and all of Arizona. That is exactly the type of leadership we could use more of here in Congress.

As we continue to adapt to the impacts of climate change and a drier future, these tribal water settlements are critical to securing our water future in Arizona because they provide certainty that water will be available now and for future generations, and certainty of Federal investments to harness it for future beneficial use.

This was not an easy process. It has taken decades, and I want to recognize the difficult and painstaking work it has taken for each of the parties to reach these critical agreements.

I am proud to lead the Northeastern Arizona Indian Rights Settlement Agreement, along with my colleague from Arizona, Congressman Ciscomani, to address one of the longest running water issues in Arizona for the Navajo Nation, the Hopi Tribe, and the San Juan Southern Paiute Tribe. Together, many tribal members lack access to water. But this settlement has the potential to change that by providing a reliable and safe water supply and the resources necessary to build the infrastructure to deliver it to tribal families.

Under the settlement, the tribes would be guaranteed access to over 56,000 acre-feet of Colorado River water, along with specific groundwater rights and protections. Critically, this settlement also allows for the leasing of Navajo Nation water into the Phoenix Tucson Urban Corridor, providing a badly-needed water source for central Arizona during a time in which their water supplies have already been significantly cut due to Colorado River shortage.

Additionally, I have joined Congressman Schweikert in introducing the Yavapai-Apache Nation Water Rights Settlement Act that will bring additional water supplies to the Verde Valley, and to help protect the flow of the Verde River to ensure downstream users, including the city of Phoenix, continues to receive the water it needs. The settlement provides the Yavapai-Apache Nation with confirmed rights to 4,610 acre-feet of water per year. It also authorizes funding to build and maintain a central water infrastructure, including the Cragin-Verde Pipeline and a water reclamation facility to make sure the Nation can use every drop of water efficiently and effectively.

These critical settlements demonstrate what people with widely different backgrounds, histories, and circumstances can accomplish when they choose to reject division and instead work together towards a common goal. Arizona's bipartisan work in sustainable water management is a model for the country, and I am proud to support it.

Mr. Chairman, I appreciate the work that this Subcommittee is doing in considering these settlements so quickly, and I look forward to working with you to get each of them signed into law this year. Thank you for letting me participate in today's important hearing.

Mr. BENTZ. Thank you. The Chair recognizes Congressman Vasquez for 5 minutes.

Mr. VASQUEZ. Thank you, Mr. Chairman.

Governor Kucate, thank you again so much for being here with us today. Governor, in addition to the support of the State of New Mexico's Governor, Michelle Lujan Grisham, the State Engineer, Mike Hamman, the settlement agreement is supported by the Ramah Land and Irrigation Company, the only irrigation company and the largest non-Indian irrigator in the basin. Is that correct?

Mr. KUCATE. Correct.

Mr. VASQUEZ. Thank you. And significantly, the company's water rights, as well as those of all other non-Indian water users in the basin, have already been quantified, and the settlement essentially protects those rights from a priority call by the Tribe. In short, all of these water users in the basin would benefit from this settlement, and I am not aware of any opposition to it.

Are you aware of any opposition to this, Governor?

Mr. KUCATE. Yes.

Mr. VASQUEZ. You are aware of opposition, or no opposition?

Mr. KUCATE. Can you repeat the question again?

Mr. VASQUEZ. Are you aware of any opposition to this water settlement?

Mr. KUCATE. No. We have been making every effort proactively to talk to some of the folks in the county area, so at this point there really isn't anyone in any opposition.

Mr. VASQUEZ. Thank you so much, Governor. And could you share with this Committee specifically how this legislation would benefit the people of Zuni?

Mr. KUCATE. Yes, thank you. As a child growing up in Zuni Pueblo in Rio Nutria, we had a living river. And times have changed. This settlement is really significant for our people to be able to at least have the opportunity to sustainably develop limited water resources, and also restore our traditional agriculture, which is the cornerstone of our cultural beliefs and practices, and facilitate economic development opportunities.

And then also to ensure that the preservation of our Zuni Salt Lake continues, which is very significantly a value of principle for our way of life.

Mr. VASQUEZ. Governor, if you could, just expand on the importance of the Zuni Salt Lake to your people.

Mr. KUCATE. Zuni Salt Lake is something that has been a part of our way of life since the emergence of our people. And all these centuries of years the Zuni people and other tribes have made pilgrimages to the home of the Salt Mother. And it is very significant to all of us for spiritual guidance, and we also collect the salt for ceremonial and household purposes and use.

Mr. VASQUEZ. Thank you, Governor. How did upstream development on the Zuni River have an impact on your Tribe?

Mr. KUCATE. Well, as I indicated, we have been able to live off our Zuni River for thousands of years. And since the way that things had occurred, the river is very significant for our way of life in terms of our culture, our religion, and our traditional doings that the people make offerings to the river. And that is why I really like for our people to have our river returned to us.

Mr. VASQUEZ. Thank you, Governor.

This legislation is incredibly important to Zuni and to my constituents. I appreciate the Committee's consideration of this legislation, and I urge all of my colleagues to support it.

Thank you, Mr. Chairman, I yield back.

Thank you, Governor.

Mr. BENTZ. Thank you. And I think I am the last one, so I will recognize myself for 5 minutes.

Assistant Secretary Newland, I think that the quantification of how much water a Tribe is entitled to is of great interest to me. And I was reading the various cases and law review articles on this just last night on the airplane flying in from Oregon. And it reminded me that there is a difference of opinions, shall we say, in what that quantification should be based upon.

If we go back to *Arizona v. California*, the Supreme Court pointed out the practicably irrigatable acreage approach. Is that still, in your opinion, the measure, the quantification of tribal rights?

Mr. NEWLAND. Thank you, Mr. Chairman.

Well, you have me beat in terms of having an up-to-date understanding of the history of this law. It has been a while since I read a law review article.

In terms of the quantification, I think the important thing to note here, I think you have gotten a flavor of already, is that each tribe's circumstance is different, or often within the same state. So, when you look at the Tule River Indian Tribe, for example, they are on the slopes of the Sierra Nevada mountains, and irrigable acreage as a standard is going to be a lot different than it would be, say, at Fort Belknap.

Mr. BENTZ. If I may, because we are running out of time, perhaps you can put in writing that standard that you think applies to each one of these, because you are in charge of the various groups doing the negotiations. And if we look back at the Winters Doctrine, it was based upon the purpose of the reservation to begin with, and that is how it works. So, if I am going to go to all of those who need to assist in funding each of these, the \$12 billion it is going to take, I need to be able to call out the standard. So, will you provide it for me?

Mr. NEWLAND. We can certainly follow up, Mr. Chairman. I just wanted to make the point that it is unique in each case.

Mr. BENTZ. It is, but I just want to go back because all of us struggle to find something we can point at to say this is the foundation for the determination of that amount of water that each Tribe is entitled to under the Winters Doctrine. So, that goes to the purpose, and that goes to irrigatable acreage back in the *Arizona v. California* case. That has been a while.

So, I just want to know what is being applied now so that I can share it with my colleagues when they say, hey, Chair Bentz, you are asking for \$12 billion. What is the foundation? So, you need to help provide it, if you would, please.

Mr. NEWLAND. I would be happy to do that, Chairman.

Mr. BENTZ. Thank you. I want to go to another issue that is of huge importance, and it is the fact that operation and maintenance costs are not supposed to be included in these agreements. At least

that is what is called out in the 1990 Bush administration administrative rule that still, as I understand it, applies. I won't have time to ask each one of the witnesses to do this question, so I will pick on Governor Phillips.

In your opinion, looking at the proposed settlement, what in it is going to make the Tribe enough money to pay for the O&M costs of the new investment? Because what I see happening is new investment, but then not necessarily the money that is necessary to maintain it. So, tell me what, in your opinion, is going to be used to pay for the O&M costs of whatever it is that you are going to hopefully get in your settlement agreement?

Mr. PHILLIPS. Thank you for that.

Well, part of the understanding of the system is that we will have the capacity to develop and have businesses come on now that we have a secured domestic system that will offer the uses of that.

But secondly, as for surface rights, we will also have the capacity to utilize for subleasing of that water under there, so those will be the economic—

Mr. BENTZ. Yes, and I was going to go to exactly that, the leasing that occurred perhaps just as recently as last year on the Colorado.

But what I am most interested in, there appears to be means of generating income once you have a water right that has been quantified that you can then deal with. But is it built in to each of these settlement agreements, this future commitment, if you will, to maintaining the new infrastructure that the United States is going to help pay for?

In your opinion, should that be a requirement in each of these settlement agreements?

Mr. PHILLIPS. You are correct on that a lot of these infrastructures are built for 50 years, and the capacity there is it grows and there is going to be need to improve and maintain them.

And I agree that there should be a mechanism that is offered to fund those opportunities where O&M is required, and replacement as these infrastructures get there. But that is the understanding now, is that O&M isn't part of it, so there are mechanisms, at least in Ohkay Owingeh, where we are looking to replace and understand what it is going to cost us in the future. But getting the water and the resources is the first opportunity for us to have those discussions.

[Pause.]

Mr. BENTZ. OK, my time is expired, so I am going to exercise my prerogative as Chair. And since there are only two of us left, you are recognized for 5 minutes.

Ms. LEGER FERNÁNDEZ. Thank you very much, Mr. Chair.

And as it has worked in New Mexico, and I think that this is really a highlight of how this works, is that we can look at the settlement that was engaged in with Navajo and the Jicarilla Apache Nation, and in that instance they did exactly that. They used the water rights to lease them, for example, to Santa Fe and to downstream. And that was one of the ways in which they provided resources back to be able to maintain the operations.

Governor Phillips, if you can speak to the fact that, for example, the restoration work that you were doing on the bosque actually increases the availability of water. So, in essence, are you going to

be looking at, through these water rights settlements, an ability to generate more revenue?

And I think you were getting to that. But if you can, give us some examples of what you anticipate that would generate the additional revenue that would allow you to maintain the system, including any costs and related to the actual water delivery systems. If you could, sort of tell us a little bit of what you could see in the future regarding your water rights.

Mr. PHILLIPS. Thank you for that, Chairwoman Leger Fernández, you are very right. As the ecosystem and the charging of the system in the bosque area, there is plenty of carriage water that can also be used and supported by the remaining system. With that and the recharging of the groundwater, there are efforts that not only Ohkay Owingeh see, but the surrounding areas are replenished for the uses of the water. That is important. Not only will Ohkay Owingeh see that, but the surrounding communities downstream from us will reap the rewards of having water, that it isn't just sitting there and evaporating in that.

Ms. LEGER FERNÁNDEZ. Since I actually now have a little time because we have such a generous Chair, for some of the other non-New Mexico tribes, can you answer that question of how, by settling the water rights, you are actually also settling the water rights of your neighbors? And that includes their ability to develop economically.

And I think that in some ways maybe President Stiffarm or Chairman White Clay might have addressed a bit of that. If you want to, add a little bit to how you see that this is basically an economic generator for your Tribe and the surrounding communities.

Mr. STIFFARM. Well, thank you for the question. I will go first, and then I will let the Chairman go after me.

But real quickly, the impact that Fort Belknap's settlement is going to have for our surrounding communities is that the reservoirs that we are going to be building to store water would help prevent what is happening today and in the future in the years down the road with that siphon break is that the Milk River is going to dry up, our water source is going to dry up. We have those dams built, and the water storage will have that to fall back on down the road. And we can use them, charge them O&M to irrigate their crops, their livestock, feed and water them.

But more importantly, other than a dollar figure on these settlements, is the life that it is going to keep for people for generations to come.

Mr. WHITE CLAY. Thank you. Just getting into that, in my area we are very rural. We have a huge land base through our allotments and through tribal membership ownership. A lot of our people are ranchers and farmers. And with our neighbors, we have an irrigation delivery system that we have been building, rehabbing, and moving forward with.

Our settlement was started 15 years ago, like the Assistant Secretary said, and we have been making vast improvements through my administration. We have had close to, I want to say, 16 irrigation improvement projects so far that we have completed. We are continuing to complete those irrigation projects to benefit the whole community, because in our corner of the reservation we

do have community members, partners that are non-tribal that we work with. And to be part of a whole ecosystem and economy, we have to work together to continue the reservation to thrive and not only just the reservation, but our surrounding areas to thrive. Because in our corner of Montana, agriculture is key to that.

Because of our main revenue sources going away, which was coal, we are now looking towards rebuilding and doing a lot more agricultural-based revenue from that. Thank you.

Ms. LEGER FERNÁNDEZ. And thank you.

My time is expired, and I yield back.

Mr. BENTZ. I want to thank the witnesses for their testimony and the Members for their questions.

I will now recognize our third panel.

Mr. David Palumbo, Deputy Commissioner of Operations with the Bureau of Reclamation; the Honorable Craig Andrews, Vice Chairman of the Hopi Tribe; the Honorable Tanya Lewis, Chairwoman of the Yavapai Nation.

If everyone will stay quiet, please, we are still continuing the hearing. Thank you. Take your conversations outside at least.

The Honorable Buu Nygren, President of Navajo Nation; and the Honorable Randall Vicente, Governor of the Pueblo of Acoma.

We will wait for a few minutes until everyone settles down.

[Pause.]

Mr. BENTZ. Let me remind the witnesses that under Committee Rules, they must limit their oral statements to 5 minutes, but the entire statement will appear in the hearing record.

I now recognize Deputy Commissioner Palumbo for 5 minutes.

And if everyone will please quit talking, or go out in the hall if you are going to continue talking, thank you.

Deputy Commissioner.

STATEMENT OF DAVID PALUMBO, DEPUTY COMMISSIONER OF OPERATIONS, BUREAU OF RECLAMATION, DEPARTMENT OF THE INTERIOR, WASHINGTON, DC

Mr. PALUMBO. Good afternoon, Chairman, Ranking Member, and members of the Subcommittee. I am David Palumbo, Deputy Commissioner for the Bureau of Reclamation within the Department of the Interior. Thank you for your invitation to discuss the second 6 of 12 bills before the Subcommittee today complementing the testimony from my friend and colleague, Assistant Secretary Newland, on the first six bills. I am honored to be sitting here today with these tribal leaders.

Commissioner Touton wanted me to share her gratitude for her recent visit this past weekend to the homelands of the Navajo Nation and the Hopi Tribe, and she also wanted me to share her appreciation to the Subcommittee for holding this hearing.

The United States acts as a trustee for the land and water rights of tribes, American Indians, and Alaska Natives. These obligations are about equity and ensuring tribes and their citizens can maintain their existence on lands the United States holds in trust for their benefit. Water is among the most sacred, life-sustaining and valuable resources to Tribal Nations.

The Department strongly supports resolving Indian water rights claims through negotiated settlements to help ensure Tribal

Nations have safe and reliable water supplies, improvements to environmental and health concerns, economic growth, and tribal sovereignty and self-sufficiency. All these bills seek to fulfill our trust responsibility to Indian tribes. The Department of the Interior and the Bureau of Reclamation take these responsibilities seriously, and we look forward to discussing these bills with you today.

H.R. 1304 would create new settlements for the Rio San Jose and Rio Jemez in New Mexico, home to the pueblos of Acoma and Jemez, Laguna, and Zia. This legislation is designed to meet all four pueblos' current and long-standing needs for water by providing trust funds that could be used by the pueblos according to their needs and their decisions.

H.R. 3977 would amend the Northwestern New Mexico Rural Water Projects Act by increasing the authorized project ceiling; further supporting tribal operations, maintenance, and replacement costs; expanding the Tribe's service area to serve the Navajo Nation's four chapters in the Rio San Jose Basin in New Mexico and the Lupton community in Arizona; capping the city of Gallup's repayment obligation; authorizing a deferred construction fund; extending the completion deadline to December 31, 2029; and eliminating double taxation.

Reclamation has made substantial progress implementing the settlement and constructing project features, and supports the additional funding needed to ensure it is completed.

H.R. 6599 would make a technical correction to the Omnibus Public Land Management Act of 2009 and the Claims Resolution Act of 2010 to authorize funding for deposit into the Navajo Nation Water Resources Development Trust Fund, the Taos Pueblo Water Development Fund, and the Aamodt Settlement Pueblos Fund equivalent to the amounts that would have been accrued to the trust funds if the Department had the authority to invest the funds upon original appropriation.

H.R. 8940 resolves water rights claims in Arizona for the Navajo Nation, Hopi Tribe, and the San Juan Southern Paiute Tribe. This legislation ratifies their settlement agreement and confirms each Tribe's Colorado River and other water rights. The Department supports the opportunity for all tribes to enjoy the cultural, spiritual, and physical, as well as the economic benefits of their water rights, and thus supports the inclusion within the settlement the allowance for the tribes to use, store, and lease Colorado River water off reservation.

The Department has frequently met with and worked with the tribes throughout the year to reach a negotiated settlement. The Department remains committed to addressing any remaining concerns, and I also want to echo Assistant Secretary Newland's commitment to completing this settlement as soon as possible, and fully support it.

H.R. 8945 would resolve the Navajo Nation's water rights claims in the Rio San Jose Basin, ratifying the Navajo Nation's water rights from surface and groundwater sources. Together with H.R. 1304, this legislation would settle all tribal water rights in the Rio San Jose Basin, bringing stability to the basin for all water users.

H.R. 8949 resolves water rights claims of the Yavapai-Apache Nation. It ratifies the settlement agreement and, in addition to the

associated water rights among other terms, it provides for the planning, design, and construction of the Cragin-Verde Pipeline and the Yavapai-Apache Nation drinking water system. While the Department supports the bill's goals, concerns about the scale, costs, and some of the provisions remain and will need to be addressed.

We thank the Subcommittee for the opportunity to testify today. We support these bills, and are ready to work with our tribal partners and the Subcommittee on resolving outstanding issues. We look forward to continued collaboration with our partners to find comprehensive solutions critical to the success of our mission. Thank you.

[The prepared statement of Mr. Palumbo follows:]

The statement from the Department of the Interior can be found on page 60.

Mr. BENTZ. Thank you. I now recognize Vice Chairman Andrews for 5 minutes.

**STATEMENT OF THE HON. CRAIG ANDREWS, VICE CHAIRMAN,
HOPI TRIBE, KYKOTSMOVI, ARIZONA**

Mr. ANDREWS. Thank you. [Speaking Native language.] Good morning, Chairman Bentz, Ranking Member Huffman, and members of the Subcommittee.

I also want to thank Representative Ciscomani and the entire Arizona delegation for their work on this important legislation.

The settlement stems from 50 years of negotiations. For years, many thought it would be impossible for all the parties to come together and find compromise. But here we are today. It is no secret that Arizona and much of the West is in a water crisis. I am proud that the parties were able to come together in the midst of this crisis to produce a settlement that will benefit all of our communities and offer all of our future generations water security.

[Speaking Native language.] Our ancestors have resided in northeastern Arizona since time immemorial. Upon emergence into this world, our people encountered the deity, who I will refer in English as the original caretaker, who gave us his blessing to live on the land. The caretaker required our ancestors to follow in his path as humble farmers, and to respect the land. Since that ancient time, we have remained in Hopitutskwa, our traditional homeland, where we still reside today. Untold generations of Hopisimum have lived on this land, preserving and conserving our water.

When the United States created the Hopi Reservation, it cut us off from much of our Hopitutskwa. It landlocked and waterlocked us, and completely surrounded us with the Navajo Reservation. The Hopi Reservation stands separated from many of our traditional water sources. The current water supplies on the reservation cannot sustain our population or growth into the future. Unlike others, Hopi cannot simply move away to where there is more water. We have a sacred covenant with the original caretaker to be the stewards of this land. Our culture, tradition, and religion are tied to this place. We cannot and will not leave.

Fortunately, the Settlement Act will ensure that my people have water for our current and future needs. The Settlement Act will accomplish several things. It will allow Hopi to continue to fulfill our covenant with the original caretaker as stewards on Hopitutskwa. It will provide the Hopi Tribe, Navajo Nation, and the San Juan Southern Paiute, who, unfortunately, were not able to testify today, with reliable water. It will construct the iina ba paa tuwaqat'si pipeline to serve the tribes. It will provide us with the reliable upper basin water. It will ensure that groundwater is managed appropriately. It will create multiple trust funds for the tribes to plan, construct, and operate water supply infrastructure. And it will create certainty for non-Indian communities.

I understand and appreciate the cost of this Settlement Act. This settlement covers more Native Americans than any other in U.S. history. It addresses the severe infrastructure challenges caused by decades of Federal neglect. On our reservation, approximately 30 percent of Hopis lack water. Settling our water claims means nothing if water doesn't reach our homeland. The infrastructure to accomplish this is expensive, but necessary. This isn't just a statistic. It is my family's reality. Our home does not have running water. The settlement will fix that for my family and others living without running water. [Speaking Native language.] Water is sacred. [Speaking Native language.] Water is our life.

I appreciate the opportunity to be here today and welcome any questions.

[Speaking Native language.] Thank you.

[The prepared statement of Mr. Andrews follows:]

PREPARED STATEMENT OF CRAIG ANDREWS, VICE CHAIRMAN OF THE HOPI TRIBE

ON H.R. 8940

Chairman Bentz, Ranking Member Huffman, and members of the Subcommittee on Water, Wildlife, and Fisheries, my name is Craig Andrews and I serve as Vice Chairman of the Hopi Tribe. Thank you for the opportunity to testify on behalf of the Hopi Tribe and its members in support of H.R. 8940, the "Northeastern Arizona Indian Water Rights Settlement Act of 2024." I also want to thank Representative Ciscomani for introducing this historic bipartisan bill in the House, and Representatives Stanton, Crane, Schweikert, Grijalva, and Gallego for joining as cosponsors. I also want to thank our Arizona Senators Kelly and Sinema, who jointly introduced this bill in the Senate.

Hopi are northeastern Arizona's most ancient inhabitants. Archaeological records show that our ancestors in the region date back to prehistoric times. Our oral histories go even further back. According to Hopi oral history, upon emergence into this world, our people encountered the deity who I will refer to in English as the Original Caretaker, who gave them his blessing to live on the land. The Original Caretaker required that the Hopi follow in his path as humble farmers and respect the land through religion and guidelines that he passed on to them. A covenant was thus established between Hopi and the Original Caretaker in which land was set aside for the Hopi to live as stewards.

The Hopi Reservation was created to be a permanent homeland for the Hopi people. However, when it divided up tribal lands in northeastern Arizona, the United States government landlocked the Hopi Reservation within the Navajo Reservation. As a result, we were cut off from direct access to many of the water resources that sustained our ancestors for thousands of years. The water resources we are left with on the Hopi Reservation are severely limited and inhibit our ability to experience the true tribal sovereignty and economic self-sufficiency which is our right under the law of the United States of America.

Despite the dry, arid conditions of our Reservation, Hopi have pushed the bounds of human ingenuity, finding ways to sustainably use every available water resource to the maximum extent possible to uphold our covenant with the Original Caretaker

and ensure these lands remain our home. But even as experts in desert survival since time immemorial, Hopi cannot alone keep pace with the severe water scarcity and uncertainty of today and tomorrow.

The Northeastern Arizona Indian Water Rights Settlement Agreement has shown the Hopi People that we are not alone. Through the collaborative efforts of a historic coalition of tribal and non-tribal parties—representing approximately one-third of Arizona’s geographical extent—Hopi can finally envision a future with a reliable supply of safe, clean drinking water and essential water infrastructure. Among other things, the agreement makes available to the Hopi Tribe diverse water sources to meet future water needs on the Hopi Reservation, including reliable mainstem Colorado River water. It also includes inter-tribal agreements between the Hopi Tribe and the Navajo Nation to manage and protect groundwater resources shared by the tribes, highlighting principles of sustainability and cooperation.

For the Hopi Tribe, passage of the Northeastern Arizona Indian Water Rights Settlement Act of 2024 is not just a legal milestone, it is a path forward. This Act will provide the Hopi Tribe with access to reliable water and water infrastructure necessary to ensure the health, well-being, and economic prosperity of the Hopi People for generations to come. Of paramount importance to Hopi, this settlement and the infrastructure made possible by this Act provide a way for Hopi to fulfill its covenant with the Original Caretaker: to continue to live as stewards of *Hopitutskwa*.

I. A Brief History of the Hopi People and Hopi Lands

The Hopi Tribe is a tribe of Hopi Indians organized under Section 16 of the Indian Reorganization Act of June 18, 1934 (25 U.S.C. § 476), and duly recognized by the Secretary of the United States Department of the Interior (89 Fed. Reg. 944, 945 (Jan. 8, 2024)).

We are an ancient, agrarian people with one of the oldest cultures in North America. Archaeological evidence indicates that present day Hopi are a Puebloan people descended from the ancient Basketmaker culture that existed in the Four Corners area from prehistoric times. The archaeological record confirms centuries of continuous, uninterrupted occupation of the Hopi ancestral territory culminating in the lifeway of our contemporary Hopi people. Indeed, after extensive fact-finding, the court in *Healing v. Jones* concluded that “[n]o Indians in this country have a longer authenticated history than the Hopis.” *Healing v. Jones* (“*Healing II*”), 210 F. Supp. 125, 134 (D. Ariz. 1962), *aff’d*, 373 U.S. 758 (1963) (per curiam).

For thousands of years my people have lived and farmed the valley floors, terraces, and tops of three mesas on the Colorado Plateau, using a variety of specialized farming techniques adapted to the arid region. Hopi field types included flood-water fields, *akchin* fields at the mouths of arroyos, sand dune seepage fields, irrigated terraces fed by springs, and irrigated fields fed by canals and reservoirs. Each of these field types took advantage of the scarce water available in the region. Hopi also hunted game, had poultry flocks, and gathered native seeds and plants to supplement their agrarian lifestyle. Following the introduction of livestock by the Spanish, we also mastered the art of animal husbandry, making cattle herding and livestock a mainstay of Hopi culture and development.

We continue to maintain many of the practices of our ancestors—speaking our ancient Hopi language, practicing our ancient religions, upholding ancient forms of village governance, and farming the fields around our villages. In particular, agriculture is still inextricably tied to our identity and culture as Hopi people. Our religious cycles are structured around agriculture, with ceremonies marking the cycles of the harvest season. Seeds are blessed with water and prayer for them to grow strong. To live as a farmer is part of the Hopi covenant. The Original Caretaker presented the ancient Hopi with three gifts that symbolized their life principles: corn seeds, a gourd filled with water, and a planting stick. Corn was to be the soul of the Hopi people. The planting stick provided a simple and dependable farming tool. The water gourd represented the Original Caretaker’s blessings and the relationship with the natural environment.

Water has particular religious significance to my people, beyond agriculture. We pray for rain and snow and hold religious ceremonies at springs. During the trial to quantify the Hopi Tribe’s water rights, a Hopi witness, Mr. Leonard Selestewa, eloquently testified: “Water to the Hopi people is very sacred. Water is alive. It is a spirit with life.”

Hopi Ancestral Lands. The Hopi Tribe’s ancestral territory (*Hopitutskwa*) far exceeds the lands recognized as the Hopi Reservation today. *Hopitutskwa* encompasses the entire Little Colorado River watershed from its confluence with the Rio Puerco River west to its confluence with the Colorado River. My people and our ancestors have used or occupied the Little Colorado River Basin in Arizona for many

centuries. Hopi have inhabited the area between Navajo Mountain in the north to the Little Colorado River in the south and between the San Francisco Mountains and the Luckchukas since before A.D. 1300. *See Hopi Tribe v. United States*, 23 Ind. Cl. Comm'n. 277, 292-93 (1973).

The Hopi Reservation. The Hopi Reservation covers approximately 3,000 square miles (roughly 1.66 million acres) in northeastern Arizona and is bordered on all sides by the Navajo Reservation. It is comprised of two non-contiguous geographic areas known as the 1882 Executive Order Reservation¹ ("1882 Reservation") and Moenkopi.² Unlike many Indian reservations, the Hopi Reservation is comprised entirely of trust lands held by the United States on behalf of the Hopi Tribe. There are no inholdings of fee land owned by non-members because the 1882 Reservation was never allotted. Within the exterior boundaries of the Hopi Reservation, in the lands around the Village of Moenkopi, are 11 (11) allotments, which have never left trust ownership. The Hopi Tribe has acquired a beneficial interest in most of the allotments as individual Hopi allottees' interests have fractionalized over time. *See* 25 U.S.C. § 2206, 25 U.S.C. § 373a.

There are no perennial streams located on the Hopi Reservation. Before creating the 1882 Reservation, the United States was aware there was no perennial water source on the Reservation and government officials expressed concerns that the lack of perennial water sources represented a major challenge to the Tribe's economic advancement. Nevertheless, the Hopi Reservation lines were drawn, landlocked and waterlocked, with Navajo lands on all sides.

The United States established the Hopi Reservation to protect Hopi lands from incursions by our tribal neighbors and non-tribal settlers so that Hopi could continue our agrarian lifestyle and support ourselves rather than depend on the government for support. Because the Hopi Reservation today is landlocked and isolated from water sources, however, we are deprived of the fundamental prerequisites for modern self-sufficiency: access to adequate and reliable sources of water. This Settlement Act will remedy that.

Hopi Off-Reservation Lands. Under the Navajo-Hopi Land Dispute Settlement Act of 1996 (Public Law 104-301; 110 Stat. 3649) ("1996 Settlement Act"), the Hopi Tribe acquired off-Reservation property to settle claims stemming from the loss of Hopi Reservation lands due to Navajo families settling on them. Lands acquired under the 1996 Settlement Act have express federal statutory water rights to both surface water and groundwater. *See id.* § 12.

The Hopi off-Reservation ranches include the 26 Bar Ranch, the DoBell Ranch, the Aja Ranch, the Hart Ranch, the Clear Creek Ranch, and the Drye Ranch. They are generally comprised of a mix of fee land, land held in trust by the United States for the benefit of the Hopi Tribe, and Arizona State trust land leased by the Hopi Tribe. The Hopi Tribe also has separate fee lands (at and around the site of the ancestral Hopi village of Homolovi) and trust lands (Twin Arrows and Hopi Industrial Park).

II. Elements of the Settlement for the Hopi Tribe

Let me now summarize the principal elements of the comprehensive water rights settlement ratified by H.R. 8940 specific to the Hopi Tribe:

- The Act ratifies the comprehensive settlement of all the Hopi Tribe's federally reserved and other water right claims, including the Tribe's right to water

¹The Executive Order of December 16, 1882, set aside a reservation of some 2.5 million acres for use by the Hopi Indians "and such other Indians as the Secretary [of the Interior] may see fit to settle thereon." *See also Sekaquaptewa v. MacDonald*, Case No. CIV-579-PCT-JAW (D. Ariz.), *aff'd*, 626 F.2d 113 (9th Cir. 1980). Litigation followed to resolve conflicting land claims by the Hopi Tribe and Navajo Nation to portions of the 1882 Reservation. *See Healing II*, 210 F. Supp. at 134. The Hopi Tribe was granted exclusive title to "Land Management District 6," (District 6) and the balance of the 1882 Reservation was found to be a "Joint Use Area" in which the Hopi Tribe and the Navajo Nation shared the surface and subsurface rights. *Id.* The Joint Use Area was later formally partitioned into the "Hopi Partitioned Lands" and "Navajo Partitioned Lands" in accordance with the Act of December 22, 1974 (Public Law 93-531; 88 Stat. 1712; codified as amended at 25 U.S.C. §§ 640d-640d-24).

²By the Act of June 14, 1934 (48 Stat. 960; codified at 25 U.S.C. § 640d-7), Congress set aside for the Navajo "and such other Indians as were already 'located' thereon" an additional area of land outside the boundaries of the 1882 Reservation. Pursuant to that Act, the Hopi Tribe brought an action in the federal district court to establish the Hopi Tribe's right to the 1934 Reservation. The court declared that portions of the 1934 Reservation belong to the Hopi Tribe, including the Villages of Upper Moenkopi and Lower Moenkopi and surrounding areas (collectively, "Moenkopi"). *See Masayesva v. Zah*, 65 F.3d 1445 (9th Cir. 1995); *see also Honyoama v. Shirley, Jr.*, Case No. CIV 74-842-PHX-EHC (D. Ariz. 2006).

from the Colorado River, for the Tribe's Reservation and off-Reservation trust lands, and for the Tribe's fee lands.

- The Act recognizes the Hopi Tribe's exclusive rights to all groundwater on the Hopi Reservation, subject to an agreement between the Hopi Tribe and the Navajo Nation that limits:
 - the Hopi Tribe's pumping from the confined portion of the N Aquifer to 5,600 acre-feet of water per year ("AFY") (2,000 AFY of which may be used for industrial purposes); and
 - the Navajo Nation's pumping from the confined portion of the N Aquifer and the Shonto recharge area of the Little Colorado River Basin to 8,400 AFY (2,000 AFY of which may be used for industrial purposes).
- The Act protects the Hopi Tribe's on-Reservation groundwater by ratifying agreements between the Hopi Tribe and the Navajo Nation concerning the N-Aquifer (including the pumping limits described immediately above). The N Aquifer is the primary source of groundwater for the Hopi Reservation.
- The Act recognizes the Hopi Tribe's exclusive rights to all surface water on the Hopi Reservation, subject to an agreement between the Hopi Tribe and the Navajo Nation as to the five major washes (the "Northern Washes") shared by the Tribes to: (1) grandfather existing water uses; (2) limit new uses upstream of the southern boundary of the Hopi Reservation; (3) provide for the rehabilitation of historic irrigation uses; and (4) permit traditional agriculture and wash restoration.
- The Hopi Tribe receives an allocation of 2,300 AFY of Arizona's Upper Basin Colorado River water entitlement, some of the most reliable Colorado River water in the system, which will provide a vital and reliable supplement to the insufficient water resources on the Hopi Reservation.
- The Act affords the Hopi Tribe the option to use all or a portion of 4,178 AFY of the Tribe's existing fourth priority Lower Basin Colorado River water (along with the Tribe's existing contract rights to 750 AFY of fifth priority Lower Basin Colorado River water, and 1,000 AFY of sixth priority Lower Basin Colorado River water) on the Hopi Reservation.
- With respect to the Hopi Tribe's Colorado River water rights (in both the Upper and Lower Basins), the Act authorizes leasing, exchanges, long-term storage credits accrued as a result of storage, storage on the Hopi Reservation for aquifer recovery, and inter-basin transfer of Colorado River water rights in Arizona.
- The Act ratifies agreements among the Hopi Tribe, the Navajo Nation, and the San Juan Southern Paiute Tribe to grant each other and the United States rights-of-way for water projects without objection or cost to ensure the efficient and cost-effective execution of the infrastructure projects contemplated in the Act.
- The Act authorizes and approves an agreement among the United States, the Hopi Tribe, the Navajo Nation, the Arizona State Land Department, and the Bar T Bar Ranch to facilitate cooperative and sustainable use of shared water resources, by (among other things):
 - setting certain limitations on the Hopi Tribe's pumping on its off-Reservation trust lands within six miles south and west of the Navajo Reservation;
 - limiting aggregate Hopi Tribe pumping to 6,570 AFY within certain areas of the Hart Ranch proximate to the Navajo Reservation; and
 - establishing a protective buffer zone around the Hopi Tribe's Bluebird Well near the Twin Arrows and Interstate Highway 40 interchange.
- The Act authorizes and funds the *iiná bá-paa tuwaqat'si* pipeline,³ to transport Colorado River water from Lake Powell to the reservations for municipal, domestic, commercial, and industrial water uses:
 - to serve Hopi communities with up to 3,076 AFY;
 - to serve Navajo communities with up to 7,100 AFY; and

³ *iiná ba* are Navajo words that we understand to mean "for life." *paa tuwaqat'si* are Hopi words that translate as "water is life."

- to serve the San Juan Southern Paiute Southern Area with up to 350 AFY.
- The Act authorizes and funds multiple trust funds for the Hopi Tribe for essential water infrastructure on the Hopi Reservation and other purposes:
 - \$390 million to plan, design, construct, operate, and maintain water supply infrastructure, including wells, water treatment facilities, pipelines, storage tanks, pumping stations, electrical transmission equipment, wastewater treatment facilities, and renewable energy facilities to serve Hopi Reservation communities. The groundwater projects currently contemplated include:
 - * The Side Rock-Moenkopi Groundwater Project, which is intended to provide potable water to communities at Moenkopi and unserved locations on the 1882 Reservation; and
 - * The Expanded Hopi Arsenic Mitigation Project (HAMP), which is intended to provide potable water to communities at First Mesa, Second Mesa, Third Mesa and Keams Canyon.
 - \$87 million to support the operation, maintenance, and replacement of the *iiná bá-paa tuwaqat'si* pipeline and Hopi groundwater projects.
 - \$30 million to reduce water shortages on irrigated and grazing land within the Hopi Reservation by funding the implementation or repair of sprinklers, drip or other types of irrigation systems, land leveling, stream bank stabilization and restoration, pasture seeding, pasture management, fencing, wind breaks, stockpounds, windmills and wells, spring restoration, repair, replacement, and relocation of low technology structures to support *akchin* farming, flood-water farming and other traditional farming practices, among other actions; and
 - \$1.5 million for the purchase of land and associated Lower Basin Colorado River water rights within Arizona.
- The Act's authorized and appropriated amounts for the *iiná bá-paa tuwaqat'si* pipeline and the Expanded HAMP are based on updated estimates from the Bureau of Reclamation's "Navajo-Hopi Value Planning Study—Arizona" (October 2020, updated February 2024).
- The groundwater projects will address immediate needs on the Hopi Reservation, and later be operated in conjunction with the *iiná bá-paa tuwaqat'si* pipeline to satisfy the water needs of the Hopi Reservation.

III. The Dire Need for Water and Water Infrastructure on the Hopi Reservation

A. Inadequate Surface and Groundwater Resources

Surface Water. Surface water on the Hopi Reservation is insufficient for a permanent homeland. The five Northern Washes are the Reservation's only significant potential sources of surface water. Perennial flow occurs in limited portions of three of the five washes, but these flows are too small to provide a meaningful source of water to meet future Hopi needs. The majority of the flow that occurs in the washes, estimated to be between 29,941 AFY and 31,480 AFY, is from high intensity, short duration monsoon storm flow events that are highly variable and produce flows that have excessive amounts of sediment. This excessive sedimentation inhibits storage and has historically been a problem for reservoirs and canals in the region.

Further, the Northern Washes are listed as impaired under the Hopi Tribe's *Clean Water Action Plan Unified Watershed Assessment*, due to the high sediment load, chemical contamination, and presence of coliform bacteria. As a result, surface water on the Hopi Reservation would require considerable, likely cost-prohibitive, treatment to serve as a source of drinking water.

As a result, alternative water resources, such as groundwater and off-Reservation Colorado River water, are vital to ensuring the Hopi Reservation is a permanent and sustainable homeland for the Hopi.

Groundwater. There are several groundwater aquifers beneath the Hopi Reservation, including the alluvial aquifers, the Bidahochi (B) Aquifer, the Toreva (T) Aquifer, the Dakota (D) Aquifer, the Navajo (N) Aquifer, and the Coconino (C) Aquifer. Most of these aquifers cannot provide adequate, reliable water. There is very limited potential for the development of additional water supplies from the alluvium, and the B, T, and D Aquifers. The alluvial, B and T Aquifers are limited

in extent and only produce small quantities of water to wells. The D Aquifer also is known for wells with limited yield and the water would need to be treated prior to use. The C Aquifer is present throughout the Hopi Reservation, but occurs at great depth, making it difficult and expensive to access. Moreover, water in the C Aquifer beneath the Hopi Reservation has a high salt content, and C Aquifer water would need to undergo expensive treatment in order to be used as a drinking water source. The Hopi Tribe already attempted to use the C Aquifer at one of its villages where the N Aquifer is depleted, and shut down the project after several years because the water treatment costs were prohibitive.

The N Aquifer has historically been the source of water for industrial and municipal uses in the area. In Arizona, the N Aquifer occurs only beneath portions of the Hopi and Navajo Reservations. The N Aquifer is named for the Navajo Sandstone, and known to Hopi as *Pukya*. The N Aquifer units beneath Black Mesa dip into a structural basin to more than 1,500 feet below ground surface, and in these areas, where the aquifer units are deeply buried beneath Black Mesa, the aquifer is confined (the water occurs under pressure). The N Aquifer is confined under the majority of the 1882 Reservation, including the Hopi Mesas. It is unconfined under the southern and western portions of the 1882 Reservation and Moenkopi.

The N Aquifer is primarily recharged by rainfall or snowmelt. Most of the groundwater stored in the N Aquifer was recharged during the late Pleistocene period when the temperature was cooler and precipitation was higher. N Aquifer groundwater is more than 30,000 years old in the vicinity of the Hopi villages on the 1882 Reservation. The confined portion of the aquifer is recharged near the Shonto area on the Navajo Reservation, and from there the groundwater moves to the southeast, south and southwest beneath Black Mesa. A natural groundwater divide existed under predevelopment conditions at about the northeastern tip of the Hopi 1882 Reservation. North and east of the divide, the groundwater flowed to the northeast on the Navajo Reservation. South and west of the divide, groundwater flowed to the southwest beneath the Hopi 1882 Reservation. In 1983, the U.S. Geological Survey (USGS) estimated annual recharge near Shonto to be 4,830 acre-feet. More recently, the confined N Aquifer annual recharge rate has been estimated between 2,500 and 3,500 acre-feet.

N Aquifer well yield on the 1882 Reservation in the vicinity of the Hopi Mesas is about 100 gallons per minute (gpm). The N Aquifer is thicker in the northern portion of the 1882 Reservation, where N Aquifer well yield is about 350 gpm. In the far northeastern corner of the 1882 Reservation, the well yield can reach about 500 gpm. N Aquifer well yield in the unconfined portion of the aquifer under Moenkopi is about 25–30 gpm. Significant quantities of groundwater (i.e., more than about 40 gpm) cannot be obtained from N Aquifer wells anywhere on Moenkopi. Although N Aquifer water quality is generally very good, it exceeds the U.S. Environmental Protection Agency's Maximum Contaminant Level for arsenic at First and Second Mesas.

For decades, the N Aquifer's ancient, pristine and irreplaceable water was mined to slurry coal via a pipeline to the Mohave Generating Station near Laughlin, Nevada. My people have always viewed, and continue to view, the mining of this water as a desecration. Indeed, serious questions about the circumstances and validity of Hopi "consent" to this arrangement have never been answered.

Due to concerns of the Hopi Tribe and Navajo Nation regarding the long-term effects of withdrawals from the N Aquifer, the USGS established a monitoring program for water resources in the Black Mesa area in 1971. The program monitors N Aquifer water levels and water quality, compiles information on water used by Peabody Western Coal Company (PWCC) and tribal communities, maintains several stream-gaging stations, measures discharge at selected springs, conducts studies, and reports findings. The USGS has prepared progress reports on the monitoring program since 1978.

According to published USGS monitoring reports, N Aquifer groundwater withdrawals for mining and municipal uses began around 1965. Groundwater withdrawals from the N Aquifer reached a peak of 8,000 acre-feet in 2002. The average annual withdrawal between 1965 and 2016 was 5,063 acre-feet. This includes all withdrawals from the N Aquifer by PWCC, the Hopi Tribe, and the Navajo Nation. No other entity uses the N Aquifer.

PWCC has been the largest user of groundwater on Black Mesa since the late 1960s. PWCC began pumping in 1968 and averaged about 4,000 AFY from 1972 through 2005. From 2006 through 2021, PWCC pumping averaged 1,105 AFY. As a result of PWCC's reduced pumping beginning in 2006 due to cessation of water mining for the coal slurry, some water levels in the confined portion of the N Aquifer have started to recover. Annual N Aquifer withdrawals by the Hopi Tribe between 2000 and 2016 averaged 498.2 acre-feet. Hopi Tribe N aquifer withdrawals

were just under 440 acre-feet for 2020 and 2021. The maximum amount of water withdrawn in the past from the N Aquifer by the Hopi Tribe was 562.1 acre-feet in 2007.

Groundwater pumping has caused N Aquifer water-level declines. From the prestress period (before 1965) to 2021, the USGS reports that groundwater levels declined in 18 of 25 wells with measured water levels. Water levels in the unconfined area had a median change of -0.4 feet, with 7 of the 13 wells monitored indicating a water-level decline. Water levels in the confined area of the N Aquifer had a median change of -25.9 feet, and the changes ranged from -133.7 feet to +17.3 feet. Of the 12 wells monitored in 2021, 11 showed a water level decline.

Water level declines in the N Aquifer have led to reduced flow at springs and streams. The USGS reports downward trends in flow at Moenkopi School Spring, Pasture Canyon springs, and Moenkopi Wash. Many of these springs are vital to Hopi religious ceremonies and cultural practices.

B. The Impacts of Aging and Inadequate Water Infrastructure

Current infrastructure on the Hopi Reservation is a patchwork of aging and inadequate systems, which has long jeopardized the well-being of our people and forced many to leave their ancestral lands. Without adequate infrastructure, the Hopi Tribe lacks the foundation upon which to build a well-functioning economy in the modern era.

Current Water Infrastructure. There are 16 public water systems on the Hopi Reservation, all of which are supplied by groundwater, mostly through wells. Most of the systems were constructed between the 1950s and the 1990s with federal funds and assistance from the Indian Health Service. The systems have expanded incrementally over time as the village populations increased; as a result, much of the piping and storage volumes are undersized and are incapable of providing typical water demands and adequate fire protection. Our pipes are smaller than what is ordinarily used in typical cities and towns and the distances between fire hydrants within villages exceed that typically required by national standards. Other deficiencies include water towers and storage tanks in need of maintenance and pump houses and controls in need of refurbishment and replacement. Some supply wells are over fifty years old and approaching the end of their useful life, and some exceed EPA drinking water standards for arsenic.

In 2005–2006, Dr. W. Michael Hanemann and Dr. Dale Whittington, both economists with expertise in water resource management in developing countries, conducted a household survey of 737 households in the 12 main Hopi villages on the Hopi Reservation to determine detailed household water use behavior. According to the survey, 18% of the people who lived in homes in villages were not connected to a public water supply. Of those people, 84% accessed water through public taps or neighbors with connections to the public system with the remaining 16% obtaining water from windmills and springs.

Today, the enrolled membership of the Hopi Tribe stands at 14,768, approximately 9,000 of whom are residents of the Hopi Reservation. The Hopi Tribe estimates that at least 2,700 enrolled members on the Reservation live without running water. My family and I live in one of the oldest continuously inhabited communities in the United States, the Village of Mishongnovi. Our home does not have running water. These circumstances are inexcusable in the United States of America.

Socio-Economic Conditions. Lack of reliable water resources and water infrastructure on the Hopi Reservation has been detrimental to the health, safety, and prosperity of all residents of the Hopi Reservation. It has artificially restrained economic development and population growth. The Hopi Tribe has consequently suffered poor socio-economic conditions, resulting in extremely low household incomes and increased reliance on public assistance. These challenges are compounded by the lack of housing and basic modern amenities like running water.

The socio-economic conditions on the Hopi Reservation reflect the need for economic development to improve the lives of the Hopi people. The Hopi Tribal Council, as a sovereign government, is keenly aware of these socio-economic indicators as it leads efforts to develop economic strategies on the Reservation and drive initiatives to promote federal policies of tribal self-determination and economic self-sufficiency. The Tribe has worked tirelessly to generate economic development while continuing to protect its lands and cultural resources. The Hopi Tribe continues to explore and secure funding for economic development projects to capitalize on its natural resources, including exploration of coal gasification, solar/wind generation, and other alternative energy strategies. In addition to these energy development projects, future potential business ventures on Hopi lands include RV parks, hotel/motels, restaurants, campgrounds, convenience stores with gasoline stations, small

tourism galleries or museums, billboards, and small travel centers and shopping centers. The Tribe and its affiliates also continue to be leaders in the cattle industry. Ranching is an integral part of Hopi life, and it is the most extensive land use activity on the Hopi Reservation today.

However, without reliable water and the infrastructure to deliver the water to where it is needed, the Hopi Tribe's strategies and efforts to improve economic conditions on the Reservation are doomed to failure. The Settlement Act is the first and most important step toward solving these problems.

Population. Hopi is one of the few tribes whose reservation is located on a portion of its ancestral homeland. A pillar of Hopi community is the call to return home that is inherent in all of us. However, the socio-economic conditions described above, in addition to historic federal assimilation policies, have forced many Hopi people to leave the Reservation. This, among other factors such as scattered housing and language barriers, makes it difficult to get a true count of the Hopi population.

Experts estimate the Hopi population in its ancestral territory exceeded 29,000 in the early 16th century but dropped dramatically to between 8,000 and 10,000 due to smallpox and other disease epidemics brought by the Spanish after their arrival in 1540.

During the Hopi Tribe's water adjudication, the Hopi Tribe retained expert witness, Dr. David Swanson, a renowned demographer who holds a doctorate in sociology/population studies.⁴ Using a complex autoregressive integrated moving average (ARIMA) method, Dr. Swanson forecasted that by 2100 the total population on the Hopi Reservation would be 20,142 (19,084 tribal members and 1,058 non-Hopi) and the total off-Reservation Hopi member population would be 23,338.

However, Dr. Swanson explained the limitations of the ARIMA method—namely that it relies on historical data to forecast the future and therefore assumes the same policies, economic conditions, and other factors that were in effect during the period of the beginning population data will continue unchanged into the future. Past federal laws and policies, such as the Indian Relocation Act of 1956 (Public Law 959; 70 Stat. 986), encouraged—if not outright forced—Native Americans to leave their reservations and traditional homelands and assimilate into the general population. See Cohen's Handbook of Federal Indian Law § 1.04; see also, e.g., Lorie M. Graham, *"The Past Never Vanishes": A Contextual Critique of the Existing Indian Family Doctrine*, 23 Am. Indian L. Rev. 1, 15 (1998); Ryan Seelau, *Regaining Control over the Children: Reversing the Legacy of Assimilative Policies in Education, Child Welfare, and Juvenile Justice That Targeted Native American Youth*, 37 Am. Indian L. Rev. 63, 84 (2013). Less overt federal policies also affected migration. The child welfare system had a rippling effect on the separation of Native families. Graham, at 23–25, 53–54. Criminal legislation swept Native offenders into the federal criminal justice system, incarcerating and relocating Native people to off-reservation prisons and treatment facilities. Seelau, at 92–95. Many Native American men enrolled in the military during WWI and WWII and were often relocated off-reservation when they returned home from war through the federal government's relocation policies.

These historic federal policies have had lasting effects on reservation populations, even though federal policy has shifted away from assimilation, relocation, and termination and toward tribal self-sufficiency and sovereignty. *E.g.*, the Indian Civil Rights Act of 1968, (Public Law 90-284; 25 U.S.C. §§ 1301 *et seq.*); the Indian Education Act of 1972 (Public Law 92-318); the Indian Self-Determination and Education Assistance Act of 1975 (Public Law 93-638); the Tribally Controlled Schools Act of 1988 (Public Law 100-297); the Indian Education Act of 1988 (Public Law 100-427).

The Hopi population has been deeply affected by these policies. Although Hopi resisted efforts to send our children to off-Reservation boarding schools at the turn of the 20th century, many Hopi children attended boarding schools and other off-Reservation schools through 1985 when the first high school opened on the Hopi Reservation. Many Hopis enroll in the military. Many have left in search of economic opportunities. Dr. Swanson's ARIMA method could not account for how policy changes will impact future demographic patterns.

The United States' population expert during the Hopi Tribe's water adjudication was Dr. Gretchen Greene, a PhD economist with an expertise in economic development on Indian reservations. Using a Cohort Component Method (CCM), Dr. Greene forecasted that by 2110 the total population on the Hopi Reservation would be 49,301 and would reach a stable population at 52,016 sometime thereafter. Unlike Dr. Swanson's ARIMA projection, Dr. Greene's CCM allowed her to model the

⁴Curriculum Vitae available at <https://profiles.ucr.edu/api/CvAttachment/7034812>.

“components of change” in a population (i.e., births, deaths, and migration) rather than rely only on historical population or enrollment data.

Based on all of the best available data and projection methods provided by the United States and Hopi Tribe experts, the Hopi Tribe predicts a future on-Reservation population of 52,016. The Hopi Reservation cannot serve as a permanent homeland for the Hopi people without sufficient reliable water to meet the needs of the entire population, and infrastructure to get that water to where it is needed.

IV. Conclusion

In the closing lines of the Arizona Supreme Court’s seminal opinion on the water adjudications in Arizona, the Court expressed its sincere “hope that interested parties will work together in a spirit of cooperation, not antagonism” in resolving Native American tribes’ claims to federal reserved water rights for their reservations. *In re Gen. Adjudication of All Rights to Use Water in Gila River Sys. & Source (“Gila V”)*, 35 P.3d 68, 81 (Ariz. 2001). The Court aptly observed that “the welfare and progress of our indigenous population is inextricably tied to and inseparable from the welfare and progress of the entire state.” *Id.* Twenty years later, the Hopi Tribe seeks nothing more than a fair allocation of water and adequate infrastructure to make the Hopi Reservation an abiding and livable homeland for present and future generations of Hopi. Despite the practical difficulties of surviving in such an arid, and often hostile, environment, the Hopi Tribe has a well-documented history of thriving in northeastern Arizona for a thousand years.

In a spirit of cooperation, the Northeastern Arizona Indian Water Settlement identifies the water quantities, water resources, and critical infrastructure needed to deliver safe, reliable water that will allow the Hopi Tribe to prosper and continue to preserve its history, culture, and religious traditions on its aboriginal homeland for another thousand years.

Mr. BENTZ. Thank you. I now recognize Chairwoman Lewis for 5 minutes.

STATEMENT OF THE HON. TANYA LEWIS, CHAIRWOMAN, YAVAPAI-APACHE NATION, UPPER VERDE VALLEY, ARIZONA

Ms. LEWIS. [Speaking Native language.] I am Tanya Lewis. I am the Chairwoman for the Yavapai-Apache Nation. Thank you, Chairman Bentz and the Subcommittee, for this opportunity today with you.

Thank you to Congressman Schweikert, Congressman Gallego, Congressman Ciscomani, Congressman Stanton, and Congresswoman Lesko for introducing and co-sponsoring H.R. 8949.

Thank you to our representative, Congressman Eli Crane, for his steadfast support of the Nation and the communities of Arizona’s 2nd District. His service to his constituents is a continuation of his service to our Nation, and for that we are grateful.

As I speak to you today, I am standing on the shoulders of my ancestors in the Verde River, which is a living being and the center of our cultural and religious way of life.

The passage of H.R. 8949 is essential for our Nation to finally attain a secure water future and permanent tribal homeland for the Yavapai and Dilzhe’e people. This legislation also brings water certainty to our neighboring communities by ending years of uncertainty of our water rights. In this time of persistent drought, we must take concrete and generational actions to secure the long term of our communities.

Our counterparts in metro Phoenix have a secure water supply due to historic investments by the Federal Government in reclamation projects on the Verde and Salt Rivers and elsewhere. It is

critical that my Nation also has a secure water supply and access to modern water infrastructure.

We have lived in the Verde Valley since the beginning of time. Because of our relationship to the Verde River, it is time for us to finally have access to water guaranteed in the Apache Treaty and in other agreements with the United States. It is time to protect the Verde River, which is one of Arizona's last free-flowing rivers, so it can continue to flow for future generations.

To understand the importance of our historic settlement, you must also understand our Nation's history and long-standing relationship my people have to the Verde River and the Verde Valley. Our aboriginal homelands span more than 16,000 square miles across central Arizona and extend into what is now California. When gold was discovered in the territory, there was a rush of people claiming our land, using our water, and killing the game our people relied on. The armed conflict between our people and the settlers became part of a much larger conflict referred to as the Apache Wars.

Intent on bringing an end to the conflict, President Grant established the 900-square-mile Camp Verde Indian Reservation in 1871. The reservation was to be our new permanent homeland, where we were told we would remain undisturbed by non-Indian settlers. We became productive and profitable farmers. In fact, an irrigation ditch we had dug in 1874 is still in operation today, the Cottonwood Ditch.

Unfortunately, our prosperity would not continue, due to pressure to open our reservation to settlement. On February 27, 1875, 1,476 of our people, young and old, pregnant and infirm, were force-marched by the United States military 180 miles over the mountains in the dead of winter, where we would be imprisoned for a generation on the San Carlos Apache Reservation. When efforts were made to persuade the Federal Government in charge of our removal to go around the mountains by means of wagons and horses, he responded by saying, "They are Indians. Let the beggars walk." More than 100 of our people died on the way to San Carlos.

Shortly afterward, bowing to local pressure, on April 23, 1875, President Grant terminated our 1871 reservation, which allowed non-Indians to build their lives and communities using the abundant water, land, and other resources that were guaranteed to my people. By 1890, with the end of the Apache Wars, we began to return home to the Verde Valley, mostly on foot. However, my people returned to a non-established reservation or land base of any kind.

With the assistance of the Indian agent, we were able to purchase back just a little over 18 acres in 1909. Since then, we have been able to restore additional lands to our reservation. Because of our forced removal and termination of our 1871 reservation, we don't have a large or even unified reservation today. Our reservation is just a small fraction of what we had. Because of this, our tribal members live throughout the Verde Valley, throughout the states, and across the world because we are unable to provide.

In order for the Nation to thrive, to meet the needs of our people, we have to have the water for current and future needs. The legislation will secure the water and land the Nation needs to enjoy the

prosperity the 1852 Treaty guaranteed us and the United States' trust responsibility requires.

On behalf of the Yavapai-Apache Nation and the tribal leaders that have come before me, thank you for the opportunity to testify. [Speaking Native language.]

[The prepared statement of Ms. Lewis follows:]

PREPARED STATEMENT OF TANYA LEWIS, CHAIRWOMAN, YAVAPAI-APACHE NATION
ON H.R. 8949

Good afternoon, my name is Tanya Lewis, I am the Chairwoman of the Yavapai-Apache Nation. I want to thank the Subcommittee for the opportunity to testify and thank my fellow Tribal leaders who are here today and wish them well as they work to resolve their critical water issues. The Yavapai-Apache Nation strongly supports H.R. 8949, the Yavapai-Apache Nation Water Rights Settlement Act of 2024 (Settlement) and the *Tú nliinichoh* Water Infrastructure Project that will be developed as part of this Settlement.

Our Reservation, known as the "Yavapai-Apache Reservation" (Reservation), is located in central Arizona's Verde Valley. Because of the failed Indian policies of the United States during the mid to late 1800's and other historic disparities, our Reservation lands are non-contiguous and comprised of five different "Districts" (the Middle Verde District, the Camp Verde District, the Clarkdale District, the Rimrock District, and the Montezuma District).

The Verde River, which is one of the last remaining perennial rivers in Arizona, runs through the heart of the Middle Verde and Camp Verde Districts of our Reservation. The Settlement has taken many years to accomplish, and each generation of leadership for the Yavapai-Apache Nation (Nation) has played a role in the Nation finally reaching a comprehensive settlement to confirm our water rights and help protect the health and vitality of the Verde River.

To the *Yavepé* (Yavapai) the Verde River is known as *Hatayakehela* ("big river"), and to the *Dilzhéé* (Apache—being one of the numerous subgroups or bands comprising the "Western Apache") the Verde River is known as *Tú nliinichoh* ("big water flowing"). The Verde River and its sources are within the aboriginal homeland of the *Yavepé* and *Dilzhéé* people, which, as discussed in greater detail below, spans more than 16,000 square miles across what is now central and western Arizona.

The Verde River and its associated groundwater resources are the primary sources of water used by the Nation for all municipal, commercial, industrial, agricultural, and recreational uses. We also have significant cultural and religious interests in the Verde River Watershed and in the many springs and other water sources that supply the Verde River and its tributaries. These water sources support the Bald Eagle and other wildlife that are important to the culture and lifeways of the Nation. The Verde River's water sources, and the trees and plants that are nurtured by the river, all play an essential role in the cultural and religious practices of the Yavapai and Apache People—practices that help preserve the identity and health of the Nation to this day.

It is also important to note that the Verde River and its perennial tributaries, like Oak Creek, Wet Beaver Creek, and West Clear Creek, provide diverse public recreational opportunities, including boating, kayaking, hunting, fishing, birding, hiking, picnicking, and photography. Because of this, the Verde River is a *major economic driver* for the rural communities located throughout the watershed, including the Yavapai-Apache Nation and our neighboring communities in the Verde Valley. In short, the continued reliable flow and health of the Verde River and its tributaries (and the groundwater sources that sustain these systems) are crucial to the Nation's present and future livelihood in its permanent Tribal homeland under *Winters v. United States*, 207 U.S. 564, 565, 28 S. Ct. 207, 208 (1908).

The Nation's Settlement Agreement will finally and fully resolve a host of critical water issues for the Nation by, among other things, providing water certainty for the Nation and our neighbors in the watershed and avoid further costly litigation in Arizona's Gila River Adjudication Proceedings over the Nation's water rights and those of the United States on our behalf. It will also support the capture, treatment, and reuse of effluent for use on the Nation's farming operation in lieu of groundwater pumping and provide for the importation of a *renewable water supply* from the C.C. Cragin Dam and Reservoir that will further limit groundwater pumping that threatens the longevity of local aquifers and flows in the Verde River.

To understand the importance of the Settlement, it is important to understand the Nation's history and the longstanding relationship that the *Yavepé* and *Dilzhéé* people have to the Verde River and the Verde Valley. I will briefly review our history next in my testimony. After this, I will provide a summary of the Settlement Agreement and the H.R. 8949.

HISTORY OF THE YAVAPAI-APACHE NATION

The Yavapai-Apache Nation of the Camp Verde Indian Reservation is a federally recognized Indian Tribe pursuant to the Apache Treaty of 1852, 10 Stat. 979 and Section 16 of the Indian Reorganization Act of 1934, P.L. 73-383, 48 Stat. 984 *et seq.* Our first constitution was approved in 1937 and was most recently amended in April 1992. The Nation is comprised of two distinct cultures, the *Yavepé* people and the *Dilzhéé* people.

Our aboriginal homeland spans more than 16,000 square miles across central Arizona. A map of our territory is attached to this testimony, and we ask that it be included in the record. Following the 1848 Treaty of Guadalupe Hidalgo, in which Mexico ceded the lands that comprise most of the Southwestern United States, our territory became part of the United States. Notwithstanding this, our lifeways and culture were left largely unaffected by the westward expansion of the United States until 1863, when gold was discovered in our homeland. This discovery led to a rush of people claiming our land, using our water, and killing the game our people needed to survive. The armed conflict between our people and the occupiers became part of a much larger conflict referred to by historians as the "Apache Wars" which lasted until 1890.

Intent on bringing an end to the conflict, the United States established a series of military camps across Arizona as well as reservations where a federal policy of concentrating and confining our people within a defined territory was imposed. President Grant established the Camp Verde Indian Reservation in 1871 along with the army fort known as Camp Verde. Our people were told that our homeland would now be reduced to the boundaries of the new reservation. Because the Verde River has always been necessary to sustain our people, the 1871 Camp Verde Reservation was purposefully located along the Verde River. The Camp Verde Reservation boundaries were established to encompass forty-five miles up and down the Verde River and ten miles on each side of the Verde River, totaling 900 square miles. This left our people with 6% of what had been our aboriginal territory since the beginning of time. Yet, this 900 square mile Reservation was to be our new permanent homeland, where, we were told, we would remain undisturbed by non-Indian settlers. On this supposed "permanent" homeland, we took advantage of its proximity to the Verde River to become productive and profitable farmers. In fact, an irrigation ditch we hand dug in 1874 is still in operation today as the Cottonwood Ditch.

Unfortunately, as was all too often the case throughout Indian Country in 19th century America, our Nation's prosperity would not be allowed to continue. Due to pressure to open the Camp Verde Reservation to settlement by non-Indian farmers, ranchers, and miners, and from profiteers who wanted to quash the competition from our farms and ranches, the United States was urged to open up our remaining lands to non-Indian settlement by removing our people from the Camp Verde Reservation to what amounted to a life of imprisonment on the San Carlos Apache Reservation—approximately 180 miles away in southeastern Arizona.

Beginning on February 27, 1875, without consent or consideration, 1,476 of our people, young and old, pregnant, and infirm, were force marched by federal troops as prisoners of war 180 miles over the Mazatzal Mountains, including several stream crossings at high water in the dead of winter. When efforts were made to try and persuade the Special Commissioner of Indian Affairs in charge of our removal to take a less treacherous route around the mountains by means of wagons and horses, he responded by saying "They are Indians, let the beggars walk." Corbusier, William T, *Verde to San Carlos*, p. 267 (1971). More than 100 of our people died enroute to San Carlos due to exposure, trauma, childbirth, and drowning. Today, we solemnly commemorate this date every year as Exodus Day, in honor of our ancestors and as a reminder of the suffering they endured on that two-month march. On April 23, 1875, President Grant terminated the Camp Verde Reservation and returned it to the public domain. This allowed non-Indians to build their lives and communities using the land, water, and other resources that were once guaranteed to my people by the United States.

After the surrender of Geronimo's band of Chiricahua Apache in 1886, the Army began issuing permits allowing our people to work off the San Carlos Reservation and gather traditional foods in our original territory. By 1890, the Army stopped issuing permits and my people simply started to migrate back to our original homelands. Once given this opportunity, the *Yavepé* and *Dilzhéé* returned home to the

Verde Valley on foot. In many cases it took years to make their way home. Along the way, many of my ancestors worked on the Federal dams, like Roosevelt Dam, which were constructed on the Verde and Salt Rivers to supply water to what is now metropolitan Phoenix. These dams are owned by the United States and operated today by the Salt River Project, a settling party in our Settlement.

Once we returned home, we worked as cowboys, construction workers, day laborers, and domestic workers. Our people returned to no established reservation or land base of any kind. All of our lands had been taken as a result of our 1871 forced removal to San Carlos by the United States. But our ancestors still found a way to survive in the communities that had sprung up in the Verde Valley on our former Reservation. With the assistance and advocacy of our Indian Agent, Dr. Taylor Gabbard, we were eventually able in 1909 to secure appropriations from Congress and purchase back 18.25 acres of land along the Verde River.

Since that time we have been able to restore additional lands to our Reservation and today, our Reservation totals 1,810 acres—just 0.3% of our former 1871 Camp Verde Reservation and 0.0017% of our original territory. Because of the United States' forced removal of our people from the Verde Valley and the termination of the 1871 Camp Verde Reservation, we do not have the benefit of living on a unified and large reservation. Instead, our Tribal members live throughout the Verde Valley, both on and off our current Reservation lands. And despite all the hardship and adversity, today, the Yavapai-Apache Nation is one of the largest employers in the Verde Valley and we are a young and growing population.

We who today put forward this Settlement Agreement for approval by the United States stand on the shoulders of our forebears who endured so much just so that we could return to the homeland on which our Creator placed us. More than 36 percent of the Nation's Tribal members are under the age of 18 and our waiting list for Tribal housing, now at more than 150 families, only continues to grow. As a result, it is critical that the Nation secure the necessary land and water resources we need to continue our cultural and religious practices and provide the jobs, housing, social services, and sustainable local economy that are necessary attributes of a permanent tribal homeland.

This is why this settlement is so vitally important to the Nation. It will secure a renewable imported supply of water for our Nation, which is necessary for our families and our businesses to thrive. With this renewable water supply, we can limit future groundwater pumping that depletes flows in the Verde River and we can produce new sources of reclaimed water to use in our farming operations to offset current pumping. Finally, the Settlement will ensure that lands we now own in fee surrounding our Reservation will be taken into trust and made a permanent part of our Reservation homeland.

For our Nation to thrive, we need our people to live in our homelands, and for that to happen, we need to have the water to meet their current and future needs. In short, this Settlement Agreement and the legislation confirming it will finally secure for our people the permanent home and prosperity that the 1852 Apache Treaty is supposed to have guaranteed to us.

HISTORY OF SETTLEMENT NEGOTIATIONS

The journey to reach today has been long and arduous for our Nation. I want to acknowledge all of the Nation's leaders, many of whom have now passed on, who worked so hard and with such unwavering commitment over the years on this Settlement, so that I could be here testifying before you today. Over forty years ago, the Nation, and the United States on the Nation's behalf, filed claims for federal reserved and other water rights under the *Winters Doctrine* to the Verde River and its systems and sources in Arizona's General Stream Adjudication, known as the "Gila River Adjudication." Since this time, the Nation has been an active litigant in the Gila River Adjudication, though the Adjudication has yet to quantify our water rights. While the Gila River Adjudication has dragged on, upstream development and water diversions have continued to deplete the water sources that support the Verde River, threatening the Nation's water rights and the natural and cultural resources the Nation relies upon in the Verde River. As a result, the Nation has made securing our water rights and protecting flows in the Verde River with the cooperation of our neighboring communities a top priority.

In 2008, the Secretary of the Interior's Indian Water Rights Office (SIWRO) appointed a Water Rights Assessment Team to the Nation. In 2011, the SIWRO appointed a Federal Indian Water Rights Negotiation Team. Since this time, we have been engaged in water negotiations with the federal government, our local communities, the Salt River Project, Central Arizona Project, the State of Arizona, and other key stakeholders.

In July 2023, after several years of intense analysis conducted with the assistance of the Bureau of Reclamation's Value Engineering Study Team, the Nation and our settling partners agreed that the best way to secure a renewable water supply for the current and future needs of our people and to protect the Verde River was to develop a water delivery project that will import a renewable water supply from outside the watershed. As developed by the Bureau of Reclamation, this project would deliver surface water from the existing C.C. Cragin Dam and Reservoir that is owned by the Bureau of Reclamation and operated by Salt River Project to the Yavapai-Apache Reservation.

To this end, the Nation, our Federal Team, the State of Arizona, Salt River Project, Central Arizona Project, and our neighboring communities (the city of Cottonwood, Town of Clarkdale, and Town of Camp Verde) have worked tirelessly to finalize the Settlement Agreement. This work culminated in the Nation's Tribal Council formally approving the Yavapai-Apache Nation Water Rights Settlement Agreement on June 26, 2024. The formal approval processes for each of the State parties are underway, with final approval expected by late summer. We would like to enter into the record the letter from the parties' attorneys expressing support for the Settlement Agreement and their commitment to recommend formal approval of the Settlement to their respective clients. We also would like to thank the State of Arizona and the Salt River Project SRP for their written testimony in support of this legislation.

ELEMENTS OF THE SETTLEMENT

Let me now summarize the principal elements of the comprehensive water rights Settlement Agreement ratified by H.R. 8949.

- The Settlement Agreement is a comprehensive settlement of all of the outstanding claims for water rights for the Yavapai-Apache Nation and the United States on our behalf. Importantly, as part of the Settlement Agreement and the legislation, the Nation will waive its outstanding claims for water rights and damages associated with water rights in the Gila River Adjudication against the United States and all State parties, bringing finality and certainty to all the water users in the Verde Valley Watershed.
- Under the Settlement Agreement, the three Verde Valley communities located on the Verde River (the city of Cottonwood, the Town of Camp Verde, and the Town of Clarkdale) have agreed to limit their groundwater pumping and to no longer develop wells in close proximity to the Verde River, thereby protecting the Verde River from depletions caused by these wells.
- Under the Settlement Agreement, the Nation will have confirmed and decreed water rights to:
 - The delivery of 3,410 AFY of surface water from the C.C. Cragin Dam and Reservoir through the Cragin-Verde Pipeline;
 - The delivery, by exchange, of the Nation's 1,200 AFA of high priority Central Arizona Project or "CAP" water from the C.C. Cragin Dam and Reservoir through the Cragin-Verde Pipeline;
 - The diversion of 1,593 AFY of historic Verde River water rights for irrigation uses by the Nation on its farm;
 - The diversion of 684 AFY of groundwater to meet certain existing water needs on the Reservation and rights to additional pumping (away from the Verde River) if needed as a "back up" supply in years when C.C. Cragin Reservoir water is not fully available; and
 - The right to capture, treat, and reuse all effluent produced by the Nation, which will be treated in a new modern wastewater reclamation facility and integrated into the Nation's farming operation to further reduce diversions from the Verde River.
- H.R. 8949 would authorize and fund construction of the Cragin-Verde Pipeline and other infrastructure to deliver surface water from the C.C. Cragin Reservoir Dam and Reservoir located on the Mogollon Rim, to the Yavapai-Apache Nation for treatment in a modern surface water drinking plant and distribution throughout the Reservation. The project is called the "*Tú nliinichoh* Water Infrastructure Project."
- The Settlement Agreement and H.R. 8949 provides a pathway for local Verde Valley communities to also secure a renewable water supply for their citizens, including for many of our Tribal members who live in these communities.

This will be accomplished by allowing the *Tú ńliinichoh* Water Infrastructure Project to be sized to include delivery of C.C. Cragin water to these local communities. This is a critical component of the legislation, as this would offset current and future groundwater pumping in the Verde Valley by these communities. By reducing groundwater pumping, the Nation's instream flow right in the Verde River, which is a trust resource under the Settlement Agreement and the Act, will be protected. Moreover, because several of these local communities also provide drinking water to our Reservation lands (at the Camp Verde, Middle Verde, and Clarkdale Districts), providing these communities with access to a renewable water supply from the C.C. Cragin Dam and Reservoir under the Settlement will help secure a renewable water supply for the Nation.

- As part of the Settlement Agreement and with the funds received under H.R. 8949, the Nation will replace its long-outdated wastewater treatment system of facultative sewer lagoons with a modern reclamation facility that will allow the Nation to reclaim its wastewater for use in its farming operation. This reclaimed water will allow the Nation to offset current groundwater pumping from wells near the Verde River and to support future irrigation with renewable water supplies in lieu of new groundwater pumping.
- H.R. 8949 would authorize a land exchange between the Forest Service and the Nation. This land exchange is currently underway between the Nation and the Forest Service under the normal administrative process administered by the Forest Service, and it is expected to be completed in the fall of 2024. However, because the exchanged lands are integral to the Settlement Agreement, we have included authorization for the land exchange in this legislation. If the Nation and Forest Service complete the land exchange (as expected) this fall, as we expect to do, we will not need Congress to authorize the exchange.
- H.R. 8949 directs the Secretary of the Interior to take certain lands into trust that the Nation now holds in fee, including the land exchange lands. This land will be made part of the Nation's Reservation.
- Finally, the legislation directs the Forest Service to use existing authorities to undertake a land transfer to the Town of Camp Verde for public safety purposes—including the development of public safety facility to meet the needs of the Town, the Nation, and those traveling along Interstate 17 in the Verde Valley.

CONCLUSION

The passage of H.R. 8949 to ratify the Yavapai-Apache Nation's Water Rights Settlement Agreement is essential if our Nation is to finally attain a secure water future and a permanent tribal homeland for the *Yavepé* and *Dilzhéé* people. In this time of persistent drought and aridification in Arizona, we must take concrete and generational action to secure the long-term needs of our communities. And, like our counterparts in metropolitan Phoenix who have long had the benefit of a diverse water supply due to historic investments by the United States in federal reclamation projects like Bartlett Dam on the Verde River, for the Nation to meet the future water needs of our people, we must have access to renewable water resources and modern water infrastructure.

The *Yavepé* and *Dilzhéé* people have lived in the Verde Valley since the beginning of time, and it is now time for the Nation, with the assistance of our trustee the United States, to build the water infrastructure needed to ensure that the Nation can continue to live and thrive in the Verde Valley as was guaranteed to us in our Treaty with the United States.

On behalf of the Yavapai-Apache Nation, thank you for the opportunity to testify before you today. I will be pleased to answer any questions you may have, and our Nation will help in any way it can to secure enactment of this critical legislation.

The following documents were submitted as a supplement to Ms. Lewis' testimony.



June 26, 2024

Honorable Kyrsten Sinema
Arizona Senator

Honorable Mark Kelly
Arizona Senator

Honorable David Schweikert
Arizona District 1 Representative

Honorable Eli Crane
Arizona District 2 Representative

Honorable Ruben Gallego
Arizona District 3 Representative

Honorable Greg Stanton
Arizona District 4 Representative

Honorable Andy Biggs
Arizona District 5 Representative

Honorable Juan Ciscomani
Arizona District 6 Representative

Honorable Raúl Grijalva
Arizona District 7 Representative

Honorable Debbie Lesko
Arizona District 8 Representative

Honorable Paul Gosar
Arizona District 9 Representative

Re: Support for the Yavapai-Apache Nation Water Rights Settlement Agreement by the Settlement Parties

Dear Arizona Delegation:

We, the undersigned legal counsel and representatives of the parties to the Yavapai-Apache Nation Water Rights Settlement Agreement, have reviewed the attached Yavapai-Apache Nation Water Rights Settlement Agreement and its accompanying exhibits, including the proposed federal legislation, which was approved by the Tribal Council of the Yavapai-Apache Nation by Resolution on June 26, 2024 (“Settlement Documents”).

Based upon our participation in the negotiations, the approval by the Yavapai-Apache Nation of the Settlement Documents, as well as our own review of the Settlement Documents, we express our support for the Settlement Documents and it is the intention to submit the Settlement Documents to our respective governing bodies for formal consideration, subject to review and approval of the exhibits and any subsequent changes to the Settlement Documents. Our governing bodies, however, must still conduct a final review of the Settlement Documents and make an independent decision.

Sincerely,

Settlement Parties:

Tanya Lewis, Chairperson
Yavapai-Apache Nation

R. Jeffrey Heilman
Arizona Dept. of Water Resources

Patrick Sigl
Salt River Valley Water Users Assoc.

Jay Johnson
Central Arizona Water Conservation
District

Steve Wene
Town of Camp Verde

Matthew Rojas
Town of Clarkdale

David A. Brown
City of Cottonwood

Mr. BENTZ. Thank you. I now recognize President Nygren for 5 minutes.

STATEMENT OF THE HON. BUU NYGREN, PRESIDENT, NAVAJO NATION, WINDOW ROCK, ARIZONA

Dr. NYGREN. [Speaking Native language.] Chairman Bentz, Congresswoman Leger Fernández, Congresswoman Stansbury, and members of the Subcommittee, good afternoon. I am Dr. Buu Nygren, Navajo Nation President. I am joined today by members of the 25th Navajo Nation Council, their speaker, Crystalayne Curley, Vice Chairman Craig Andrews of the Hopi Tribe, and President Robbin Preston, Jr. of the San Juan Southern Paiute Tribe. Thank you for the opportunity to testify in support of H.R. 8940, H.R. 3977, H.R. 8945, and H.R. 6599.

Thank you to Representatives Ciscomani, Crane, Gallego, Grijalva, Schweikert, and Stanton for sponsoring H.R. 8940.

Thank you also to Representative Leger Fernández for sponsoring H.R. 8945, H.R. 6599, and H.R. 3977 with Representatives Stansbury and Curtis. Your leadership in securing a safe and certain, stable water supply for the Nation will be forever remembered for generations to come.

The Navajo Nation is the largest Indigenous tribe in the country. We provide critical governmental services to over 400,000 tribal members, half of whom reside on the Navajo Nation, on our sovereign territory, which is roughly the size of West Virginia, which spans across Arizona, New Mexico, and Utah. Roughly a third of all Navajo households lack running water, including the home I grew up in.

Thousands of our people continue to haul water 30 miles round trip to meet their daily water demands, and hauling water is very expensive. The average cost is about \$600 per month for families, many of which live below the poverty line. Congress must act to end the water crisis on the Navajo Nation. This made the pandemic devastating to many people, and holds us back from health and prosperity that Americans take for granted.

First, I will speak to H.R. 8940, which will ratify a historic water rights settlement among the Navajo Nation and 38 other parties, including the Hopi Tribe, the San Juan Southern Paiute Tribe, the United States, and the state of Arizona. It will put to rest decades of expensive litigation and bring certainty to users throughout the Colorado River basin. In return for waivers of claims against the United States, this settlement will resolve the water rights claims for three Indigenous Nations. It will also invest desperately-needed water infrastructure projects that will deliver safe and reliable drinking water to these communities.

The bill will fund construction of a pipeline to divert Colorado River water from LeChee to our communities and fund other water delivery projects. The bill ratifies the treaty between the San Juan Southern Paiute Tribe and the Navajo Nation, creating the San Juan Southern Paiute Reservation. The Paiute will finally join the 21 other tribes in Arizona and have a sovereign territory of their own.

Now to H.R. 3977. In 2009, Congress approved the San Juan settlement and authorized reclamation to construct the Navajo Gallup Water Supply Project to convey water from the San Juan River to a quarter of a million people in eastern Navajo, Jicarilla Apache, and the city of Gallup, New Mexico. The project is much higher

than anticipated due to a 40-year high of inflation. The bill makes several changes to ensure full implementation of the 2009 settlement by increasing the appropriation ceiling to complete the project, and extending the completion deadline from 2024 to 2029. If not enacted, the San Juan settlement and the completion of the project will be threatened.

Third, H.R. 8945, which authorizes a settlement that resolves the Nation's water rights claims in the Rio San Jose Basin ending four decades of litigation and recognizes the Nation's water rights to the Rio Puerco Basin, this bill is the Navajo counterpart to the Acoma and Laguna settlement in H.R. 1304. Settlement funds will bring water to the Rio San Jose and Rio Puerco Basins, some of the driest in New Mexico. This will help all water users in these basins to manage depleted surface and groundwater.

Fourth, H.R. 6599 provides an interest fix for several water rights settlements, including the San Juan settlement. No one in America should be denied access to water because of where they live. These settlements will ensure a safe and secure water supply, available and accessible to tens and thousands of Navajo people now and for future generations. They will provide certainty for our homeland's future and equal opportunity for health and prosperity for the Navajo people.

I respectfully urge the Committee to swiftly pass the bills to ensure water security in our region. [Speaking Native language.]

[The prepared statement of Dr. Nygren follows:]

PREPARED STATEMENT OF DR. BUU NYGREN, PRESIDENT OF THE NAVAJO NATION
ON H.R. 3977, H.R. 6599, H.R. 8940, AND H.R. 8945

H.R. 3977—Navajo-Gallup Water Supply Project Amendments Act of 2023

Yá'at'ééh, Chairman Bentz, Ranking Member Huffman and members of the Subcommittee. My name is Buu Nygren and I am the President of the Navajo Nation ("Nation"). Thank you for the opportunity to testify in support of the Navajo-Gallup Water Supply Project Amendments Act of 2023, H.R. 3977. Thank you also to Representatives Leger Fernandez, Stansbury and Curtis for sponsoring this legislation, which is critical to ensuring implementation of the Navajo Nation San Juan River Basin Water Rights Settlement in New Mexico (the "San Juan Settlement") and the completion of the Navajo-Gallup Water Supply Project (the "Project"). Their leadership will help secure a reliable water supply for the Navajo Nation and other water users in the State of New Mexico.

The Navajo Nation and the San Juan Settlement

The Nation is the largest Native American tribe in the country. We provide critical governmental services to more than 400,000 members, almost half of whom reside on the Navajo Nation, which encompasses more than 27,000 square miles and spans portions of 11 counties across the states of Arizona, New Mexico, and Utah. Unfortunately, ensuring adequate drinking water for our members continues to be a struggle with approximately 30 percent of Navajo households lacking running water and relying on hauling water to meet their daily needs.

To address this dire need, in 2005, the Nation entered into the San Juan Settlement with the State of New Mexico. Specifically, in exchange for water development projects, including the Project, the Nation agreed, among other things, to quantify its water rights and release claims to water in the San Juan River Basin in New Mexico. Ultimately, the parties recognized that in the absence of a settlement, final resolution of the proceedings in the San Juan River Adjudication would take many years, entail great expense, and prolong uncertainty concerning the availability of water supplies in the San Juan River Basin in New Mexico.

In 2009, Congress approved and ratified the San Juan Settlement and authorized the Bureau of Reclamation to construct, operate and maintain the Project in substantial accordance with the preferred alternative outlined in the Draft Environ-

mental Impact Statement, which Reclamation completed in July 2009. See, Omnibus Public Land Management Act of 2009, Title X, Part III (Public Law 111-11) (the “2009 Act”). Consistent with the San Juan Settlement and the 2009 Act, the Nation agreed to execute waivers and releases of claims against the United States relating to water in the San Juan River Basin in exchange for the benefits of the San Juan Settlement and legislation. The waivers can be nullified if the Project is not completed under the timeline set forth in the legislation.

On December 17, 2010, the United States, the Nation, and the State of New Mexico executed the San Juan Settlement. On November 1, 2013, the San Juan River adjudication court entered two Partial Final Judgments and Decrees (“decrees”) adjudicating the water rights of the Navajo Nation.

The Project

The Project, once fully constructed, will convey a reliable municipal and industrial water supply from the San Juan River to the eastern section of the Nation, the southwestern portion of the Jicarilla Apache Nation, and the city of Gallup, New Mexico through two pipelines approximately totaling 300 miles, 19 pumping plants, and two water treatment plants. The areas currently rely on a rapidly depleting groundwater supply that is of poor quality and inadequate to meet the current and future demands of more than 43 Navajo chapters, the city of Gallup, and the Teepee Junction area of the Jicarilla Apache Nation. Of specific concern is that the city of Gallup’s groundwater levels have dropped over 200 feet over the past decade and, as noted, nearly 30 percent of the Nation’s households rely on hauling water.

The Project is designed to serve a 2040 population of approximately 250,000 through the annual delivery of 37,764 acre-feet of water from the San Juan Basin. The 2009 Act requires that all project features be completed no later than December 31, 2024, unless the Nation, the State of New Mexico, and the Department of the Interior agree to extend the completion date.

The Project’s Construction Cost Estimate of \$870 million as provided in the 2009 Act was based on Appraisal-Level designs and cost estimates. Appraisal Level studies are typically only conducted at a level to determine if there is a Reclamation interest in a proposed project and if a viable project alternative may be recommended by Reclamation for feasibility level of study. Appraisal Level studies are based primarily on existing data and information, and they only include designs and cost estimates for major features that can be used to compare potential project alternatives.

A number of elements have created conditions that have increased the Project’s cost beyond what was anticipated in the 2009 Act. Among the factors are greater expenses than expected for compliant water treatment plants to meet Safe Drinking Water Act requirements, engineering challenges in diverting water from the San Juan River, and market volatility that the indexing provided for under the 2009 Act did not completely reflect (including a 40-year high in the inflation rate). Since 2009, Reclamation has developed a Project Working Cost Estimate based on actual contract awards, required Project revisions, and final detailed design and engineering. The greatly improved quality and accuracy of the design and cost data that has gone into the current Working Cost Estimate supports the revised construction ceiling of \$2,175,000,000 (with indexing), which will adequately support the completion of this critical Project.

In 2012, construction on the Project began and is anticipated to be completed in 2029. Reclamation and its partners have made significant progress, completing certain portions of the Project. In October 2020, the Cutter Lateral, one of the two pipelines, was completed and the Navajo Tribal Utility Authority begin making initial water deliveries to Nation communities. By May 2021, Project water was being delivered to approximately 6,000 people in eight Navajo Chapters. Much work, however, is left to be done to serve the remaining population who need a reliable water supply. Although progress has been made on the Project, Reclamation does not anticipate that construction will be completed until 2029. This timeline is problematic because the 2009 Act requires the completion of all Project features by no later than December 31, 2024.

Amendments to the 2009 Act

To address the appropriations shortfall and ensure full implementation of the 2009 Act, H.R. 3977 makes the following amendments to the 2009 Act:

- increases project funding by increasing the appropriations ceiling to \$2,175,000,000 for the Project. It would also update provisions on adjustments to the appropriations ceiling to reflect changes in construction cost and applicable regulatory standards and to accommodate unforeseen market volatility,

including repricing for the types of construction and current industry standards involved.

- increases appropriations for conjunctive use wells in the San Juan River Basin to \$37,500,000 from \$30,000,000 and allows appropriations for conjunctive use wells in the Little Colorado River and Rio Grande Basins, as well as the San Juan River Basin, to be available through fiscal year 2032.
- extends the completion deadline for the Project from 2024 to 2029.
- allows for deferral of construction of facilities to save operation and maintenance costs associated with such facilities. The bill would create a Deferred Construction Fund to provide funding for facilities that have been deferred and allow for alternate project facilities if the relevant parties agree. The fund would consist of amounts that correspond to portions of the Project that have been deferred.
- creates operations and maintenance trust funds for the Navajo Nation and the Jicarilla Apache Nation to use for the Project's operations, maintenance, and replacement costs. These trust funds are created as a substitute for language in the 2009 Act allowing the Secretary to waive operation, maintenance, and replacement costs for the Nation for up to 10 years after they would otherwise be required under the Nation's contract. Trust funds would be used to lower customers' operations and maintenance charges and will help develop adequate customer bases for the water projects in their early stages.
- authorizes the expansion of the service area beyond the San Juan River Basin to deliver water supply from the Project to communities within the Rio San Jose Basin in New Mexico. The Nation would also be authorized to expand the service area in Arizona beyond Fort Defiance and Window Rock to deliver water supply from the Project to the Nation community of Lupton, Arizona, within the Little Colorado River Basin, but would still be subject to section 10603(c)(1) of P.L. 111-11 limiting the delivery of water to Arizona until certain conditions are met.
- clarifies which construction activities are subject to state taxation and which ones are subject to tribal taxation, preventing double taxation.
- caps the repayment obligation of the City of Gallup for the Project at \$76,000,000.
- takes into trust land on which project facilities are located.
- authorizes the Secretary to expend funds for the development of renewable energy, including hydropower, to provide affordable energy for the Project.

Senate Committee on Indian Affairs Amendment in the Nature of a Substitute

Note, on November 15, 2023, the Senate Committee on Indian Affairs ordered the Senate companion bill to H.R. 3977 (S. 1898) to be reported with an amendment in the nature of a substitute (ANS) favorably. The S. 1898 ANS: (1) provides for the delivery of non-Project water using Project and non-Project infrastructure to Utah for the benefit of Navajo communities, under certain conditions; (2) addresses minor drafting errors; and (3) revises language at the request of the Department of the Interior regarding the transfer of ownership of land underlying the San Juan Generating Station. The Nation would like to work with this Subcommittee and the bill's sponsors to secure the same amendments at mark-up before the House Natural Resources Committee.

Conclusion

The passage of H.R. 3977 is critical to the health and well-being of the Navajo Nation and the other communities to be served by the Project that are struggling with inadequate groundwater supplies. If H.R. 3977 is not enacted, the San Juan Settlement and the completion of the Project will be threatened, which would increase the cost of the Project, exacerbate the drinking water crisis on the Navajo Reservation, and bring uncertainty to all of the water users in the San Juan River Basin in New Mexico. I therefore respectfully urge the Committee to support the swift passage of H.R. 3977.

H.R. 6599, Technical Corrections to the Northwestern New Mexico Rural Water Projects Act, Taos Pueblo Indian Water Rights Settlement Act, and Aamodt Litigation Settlement Act

Yá'át'ééh, Chairman Bentz, Ranking Member Huffman, and members of the Subcommittee. My name is Dr. Buu Nygren and I am the President of the Navajo Nation. Thank you for the opportunity to submit written testimony in support of the Technical Corrections to the Northwestern New Mexico Rural Water Projects Act, Taos Pueblo Indian Water Rights Settlement Act, and Aamodt Litigation Settlement Act, H.R. 6599. Thank you also to Congresswoman Leger Fernandez and Congresswoman Stansbury for sponsoring this legislation. The Navajo Nation strongly supports this bill, which would fix problems with the trust fund language included in multiple Indian water rights settlements enacted during the 2009 and 2010 time period, including the three settlements addressed in H.R. 6599. The settlements to be fixed by this legislation are the Navajo Nation settlement of water rights in the San Juan River Basin in New Mexico, the Taos Pueblo settlement, and the Aamodt settlement of the water rights of the Pueblos of Nambe, Pojoaque, San Ildefonso and Tesuque.

The legislation makes a technical fix to Pub. L. No. 111-11, the legislation that both authorized a settlement of the Navajo Nation's water rights in the San Juan River Basin and created a Navajo Nation Water Resources Development Trust Fund (Navajo Trust Fund or Trust Fund). The technical fix is needed because a provision in Pub. L. No. 111-11 prohibited investment of the Navajo Trust Fund for 10 years following enactment of the legislation, until 2019. This provision prohibiting investment for 10 years is not typical in Indian water rights settlements and resulted in the Navajo Nation being deprived of millions of dollars of interest that otherwise should have accrued to the Navajo Trust Fund. The \$6.3 million that H.R. 6599 would authorize to be appropriated to the Navajo Trust Fund represents the amount of money that would have accrued in our Trust Fund if it had been properly invested and allowed to remain in the Trust Fund prior to 2019. H.R. 6599 also includes provisions that make a similar fix to the trust funds for two other New Mexico-based Indian water rights settlements originally authorized in the Taos Pueblo Indian Water Rights Settlement Act, Pub. L. No. 111-291 and the Aamodt Litigation Settlement Act, Pub. L. No. 111-291. These water rights settlements also had technical errors that resulted in the lack of appropriate investment of settlement trust funds.

The Navajo Trust Fund established under section 10702 of Pub. L. 111-11 can be used by the Navajo Nation both for construction of necessary water facilities and for water conservation activities needed for the Nation to utilize its water rights in the San Juan River Basin. This Trust Fund has and will continue to provide vitally important funding for the Nation to use in exercising the water rights recognized in Pub. L. 111-11 by completing the construction of facilities that are being built to fulfill the promises of the water rights settlement. Indeed, this fix to the Trust Fund language is necessary to fulfill the promise that the San Juan River Basin settlement represents to the Navajo Nation.

Indian water settlements provide certainty concerning the availability of water supplies for all parties. This is good policy and good sense. Consistent with the federal trust responsibility, funding these settlements is critical to ensuring the ability of settling tribes to put their water to use. Enacting this bill is an important step toward fulfilling the economic potential created by the water rights settlements that Congress enacted for the Navajo Nation, the Taos Pueblo, and the Pueblos covered by the Aamodt settlement. I therefore respectfully urge the Subcommittee to support swift passage of this legislation.

H.R. 8940, the Northeastern Arizona Indian Water Rights Settlement Act

Yá'át'ééh, Chairman Bentz and Ranking Member Huffman and members of the Subcommittee. My name is Dr. Buu Nygren and I am the President of the Navajo Nation ("Nation"). Thank you for the opportunity to testify in support of the Northeastern Arizona Indian Water Rights Settlement Act, H.R. 8940, which will secure a sustainable water supply for the Navajo Nation, the Hopi Tribe and the San Juan Southern Paiute Tribe (collectively the "Tribes") and resolve the most significant outstanding water claims in the State of Arizona. Thank you also to Representatives Ciscomani, Crane, Stanton, Grijalva, Gallego and Schweikert for sponsoring this historic legislation. And thank you to the Governor of the State of Arizona, Katie Hobbs, for her and her staff's work and to the many non-federal parties in making this settlement become a reality. For the purposes of my testimony, I am focusing my comments on those provisions of H.R. 8940 that impact the Navajo Nation.

The Navajo Nation is the largest federally recognized Indigenous nation in the country. We provide critical governmental services to more than 400,000 tribal members, approximately half of whom reside on the Navajo Nation. Our Nation encompasses more than 27,000 square miles and is approximately the size of West Virginia. Our lands extend across 11 counties and the states of Arizona, New Mexico, and Utah. Unfortunately, access to safe, clean drinking water for our members continues to be an unrealized dream with approximately 30 percent of Navajo households lacking piped water in their homes. Many of our people must instead rely on hauling water to meet their daily household needs. As discussed in more detail below, H.R. 8940 addresses these needs by investing significantly in desperately needed water delivery infrastructure projects on the Navajo Nation that will bring safe and reliable drinking water to Navajo communities in Arizona. This will make possible the connection of tens of thousands of Navajo people in Arizona to piped water in their homes for the first time ever.

The lack of access to clean drinking water results in a high cost to human life. At the height of the COVID-19 pandemic, we were losing an average of 10 Navajo people a day to the virus. Whereas the Centers for Disease Control and Prevention reports that COVID-19-associated deaths among non-Hispanic Whites was 30.3 per 100,000, our preliminary data from the Navajo Nation Epidemiology Center shows that the COVID-19-associated death rate among Navajo people was over 800 per 100,000. Our people were disproportionately impacted by the COVID epidemic and continue to experience high rates of morbidity and mortality from infectious diseases, in part because of lack of access to clean water. It's hard to wash your hands if you don't have running water. Indeed, a recent Navajo Nation Health Survey identified the key factor leading to poor health at the Navajo Nation is the lack of piped water in homes. This settlement offers a path forward in closing the severe water access gap that exists on the Nation and offers the promise of a more healthy and vibrant future for our people.

I. The Drinking Water Crisis within the Navajo Nation

More than 30 percent of Navajo households do not have running water and rely on hauling water, which has a significant impact on the quantity and quality of available water to those Navajo households that must haul water. Families that haul water sometimes must rely on non-potable water sources such as livestock wells to meet their household water needs, even drinking water needs. A recent study of livestock wells on Western Navajo found that 11 percent of livestock wells exceed the maximum contaminant levels set by the EPA for uranium. Seventeen percent contain high levels of arsenic.¹ Unfortunately, as our Department of Water Resources staff sometimes remind us, “when you're thirsty, you're thirsty,” and for some Navajo families that means drinking the closest available water even if it is unsafe. A large proportion of those who do have piped water to their homes depend on public water supply systems that have exceeded the maximum sustainable withdrawal capacity of their source aquifers, have poor water quality, and are susceptible to drought.²

The lack of a reliable and affordable potable water supply suppresses economic growth throughout the Navajo Reservation and contributes to a high incidence of disease and infection attributable to the lack of access to clean drinking water. These conditions place significant financial burdens on Navajo and federal programs that treat diseases and illnesses and that could be prevented if adequate safe water supplies were available.³

The lack of a safe and reliable water supply also places a tremendous economic burden on the Navajo people. According to the Navajo Department of Water Resources, “[f]amilies, which haul water for domestic purposes, spend the equivalent of \$43,000 per acre-foot of water compared with \$600 per acre-foot for typical suburban water users in the region. The Navajo water hauling cost is \$133 per thousand gallons. This water is among the most expensive in the United States for a sector of the population that is among the poorest.”⁴ Although H.R. 8940 will not eliminate water hauling, it will deliver a source of potable water that is of higher quality, more reliable, and closer to the homes of water haulers.

¹See Dissolved Uranium and Arsenic in Unregulated Groundwater Sources—Western Navajo Nation—Jones—2020—Journal of Contemporary Water Research & Education—Wiley Online Library.

²See Water Resources Management Strategy for the Navajo Nation prepared by the Navajo Nation Department of Water Resources, p. IX (“WRMS”) Strategy Document (frontiernet.net).

³See WRMS, p. IX.

⁴*Id.* There are 325,851 gallons in an acre foot.

In the past decade the Navajo Nation has invested \$800 million in water and wastewater infrastructure from a combination of its own investments and a mix of other federal resources. Notwithstanding the commitment of the Navajo Nation, there is a significant funding gap to meet the basic needs of our people. H.R. 8940 will address these funding deficiencies.

II. Key Components of the Settlement

H.R. 8940 authorizes, ratifies, and confirms an historic water rights settlement (“Settlement Agreement”) between the Navajo Nation and 38 other parties, including, the Hopi Tribe, the San Juan Southern Paiute Tribe, the United States, the State of Arizona, Arizona State Land Department, Salt River Project, Arizona Public Service, Central Arizona Water Conservation District, Bar T Bar Ranch, the Cities of Winslow, Flagstaff, Holbrook, Taylor, Snowflake, Show Low, Eagar, Springerville, St. Johns, local irrigation districts and ranchers located within the Little Colorado River watershed. The Settlement Agreement reflects decades of settlement negotiations and the legislation, once enacted by Congress, will settle Navajo Nation’s claims to the Little Colorado River, the Gila River, and the Upper and Lower Basins of the Colorado River, as well as with respect to washes, tributaries, springs, and underground water flowing on and underlying the Navajo Nation. Upon approval by Congress, the Nation will be able to focus efforts on developing our water resources and building an economy. Thereby we hope to improve the health and living standard of our people and ensure that our homeland and our people thrive now and into the future.

The 25th Navajo Nation Council unanimously approved the Settlement Agreement on May 23, 2024. It was also unanimously approved by the councils for the Hopi Tribe and the San Juan Southern Paiute Tribe in May 2024.

A. Water Claims Resolved

The Settlement Agreement once confirmed by Congress through enactment of H.R. 8940 and the Senate companion S. 4633 will provide a comprehensive settlement of the Nation’s water rights in Arizona. Under the terms of the Settlement Agreement, the Navajo Nation will have the right to 44,700 acre-feet per year (AFY) of Colorado River water from the State of Arizona’s Upper Colorado River Basin allocation and 3,600 AFY of Fourth Priority Lower Basin Colorado River water.

The Nation will be entitled to divert and deplete all surface water that is tributary to the Little Colorado River that reaches the Navajo Reservation, provided that such diversions and depletions shall not interfere with or diminish existing surface water uses. The Nation will have the right to divert and deplete any surface water of the mainstem of the Little Colorado River that reaches the Navajo Reservation. The Nation will also have the right to divert and deplete up to 40,780 AFY of surface water from the Little Colorado River for specific historic irrigation projects in specified quantities and with identified priority dates. The Nation will have the right to all the groundwater that underlies the Navajo Reservation including the Navajo (“N”) aquifer and the Coconino (“C”) aquifer. Resources shared by the Navajo Nation and the Hopi Tribe, including the N-aquifer and certain washes, are subject to an intertribal use and management agreement that includes a limit on annual pumping from the confined portion of the N-Aquifer and the Shonto recharge area to 8,400 AFY.

B. The *iiná bá*—*paa tuwaqat’si* pipeline and the Implementation Fund.

The *iiná bá*—*paa tuwaqat’si* pipeline is a key component to the Settlement Agreement. The pipeline will deliver a portion of the Nation’s Upper Basin Colorado River allocation and a portion of the Nation’s Lower Basin Colorado River allocation from Lake Powell to the Navajo Chapters of Cameron, Bodaway/Gap, Tuba City, Coppermine, Bitter Springs, Cedar Ridge, Coal Mine Mesa, Grey Mountain, and Lechee and to the San Juan Southern Paiute Reservation. It will also deliver water from Lake Powell to Hopi Villages at Moenkopi, First Mesa, Second Mesa, Third Mesa, Howell Mesa, and Keams Canyon. The cost of constructing the pipeline is estimated to be \$1.715 billion based on the Bureau of Reclamation’s Navajo-Hopi Value Planning Study—Arizona dated October 2020, updated in 2023). The sizing of the pipeline project is based on an annual population growth rate of 1.8% and a municipal per capita water demand of 130 gallons per capita per day. H.R. 8940 provides a mandatory appropriation of \$1.715 billion to fund the *iiná bá*—*paa tuwaqat’si* pipeline Implementation Fund to be used by the Bureau of Reclamation to plan, design, and construct the pipeline.

C. Navajo Nation Water Settlement Trust Fund

In addition to the iiná bá—paa tuwaqat'si pipeline Implementation Fund, H.R. 8940 establishes and funds a water settlement trust fund for each of the three tribes, also funded by mandatory appropriations: the Navajo Nation Water Settlement Trust Fund—\$2.7467 billion, the Hopi Tribe Water Settlement Trust Fund—\$508.5 million, and the San Juan Southern Paiute Tribe Water Settlement Trust Fund—\$29.800 million.

There are five separate accounts in the Navajo Nation Water Settlement Trust Fund. The largest account is the Navajo Nation Water Projects Trust Fund, which will receive \$2.3692 billion and will be used to plan, design, construct, operate, and maintain water supply infrastructure including wells, water treatment facilities, pipelines, storage tanks, pumping stations, electrical transmission equipment wastewater treatment facilities and renewable energy facilities to serve Navajo communities. The proposed projects include:

- The iiná bá—paa tuwaqat'si pipeline lateral that will provide potable water to serve the communities of LeChee and Antelope Point.
- The Southwest Navajo Regional Groundwater Project that will extend the Leupp-Dilkon Project to deliver C-Aquifer water to Leupp, Birdsprings, Tolani Lake, Teesto, Dilkon, and Indian Wells.
- The Ganado Regional Groundwater Project that will develop and expand public water systems to deliver C-Aquifer and Lower Basin Colorado River Water to Kinlichee, Ganado, Cornfields, Lower Greasewood, Jeddito, and Steamboat.
- The Black Mesa Project that will develop and expand public water systems to deliver N-Aquifer water to Black Mesa, Forest Lake, Pinon, and Shonto.
- The Four-Corners Project that will develop and expand public water systems to deliver Upper Basin Colorado River Water to Chinle, Many Farms, Rock Point, Rough Rock, Round Rock, Sweetwater, Teec Nos Pos, and Tsaile/Wheatfields/Blackrock.
- The Kayenta Area Project that will develop and expand public water systems to deliver N-Aquifer and Upper Basin Colorado River Water to Chilchinbeto, Rough Rock, Kayenta, Dennehotso, Mexican Water, and Oljato.
- The Lupton Area Project that will develop and expand public water systems to deliver Alluvial Aquifer and Lower Basin Colorado River Water to Houck, Lupton and Nahata'Dziil.
- The Code Talker Lateral that will extend the Code Talker Lateral waterline and expand public water systems to deliver Groundwater and Lower Basin Colorado River Water to Fort Defiance, Red Lake, and Saint Michaels, with an intertie to the Ganado Area Project.
- The Local Upper Basin Water Projects are small local projects in the Upper Basin that will develop and expand public water systems to deliver additional water to local communities.

In addition to the Navajo Nation Water Projects Trust Fund Account, H.R. 8940 confirms the establishment of four other accounts and appropriates mandatory funding for these accounts:

- The Navajo Nation Renewable Energy Project Fund Account: \$40 million to support Navajo water development projects with renewable energy;
- The Navajo Nation Agricultural Conservation Fund Account: \$80 million to support historically irrigated acreage by implementing modernized irrigation infrastructure, and including replacement and development of livestock wells and impoundments,
- The Navajo Nation OM&R (Operation, Maintenance & Replacement) Fund Account: \$229.5 million to support operation, maintenance, and replacement costs of the water projects, and
- The Navajo Nation Lower Basin Colorado River Water Acquisition Fund Account: \$28 million to purchase land in Arizona with senior water rights with the intention to sever and transfer such water rights for reallocation to the Navajo Nation.

D. Waivers

In return for resolution of the Nation's water rights claims, the federal funding to develop the water infrastructure, and such other benefits as provided in the

Settlement Agreement, the Navajo Nation will waive claims (i) against the State, the Hopi Tribe, the Hopi Allottees, the San Juan Southern Paiute Tribe and any other individual, entity, corporation, or municipal corporation under federal, State or other law including past, present and future claims for water rights arising from time immemorial and thereafter forever; past, present and future claims for water rights arising from time immemorial and thereafter forever based on aboriginal occupancy of the land; past and present claims for injury to water rights from time immemorial through the enforceability date; past, present, and future claims for injury to water from time immemorial and thereafter forever; past, present and future claims for injury to water rights arising from time immemorial and thereafter forever based on aboriginal occupancy of the land; claims for injury to water rights arising after the enforceability date in a manner not in violation of this Agreement or State law; and past, present and future claims arising out of or relating to the negotiation, execution or adoption of the Settlement Agreement, any judgment or decree approving or incorporating the Settlement Agreement, or the legislation. The Navajo Nation will also waive its claims against the United States for all water rights settled under the Settlement Agreement, including all past, present and future claims for such water; claims of past or present injury to such water rights; past, present, and future claims arising out of monitoring activities by the United States; past and present claims related to foregone benefits from non-Navajo use of water; past and present claims based on damage, loss, or injury to land or natural resources due to loss of water or water rights related to hunting, fishing, gathering, or cultural rights; past and present claims related to failure to establish or provide water delivery systems; past and present claims relating to irrigation projects; and past and present claims based on failures to provide dam safety improvements.

E. Limited Waiver of Sovereign Immunity

Pursuant to Navajo Nation Resolution CMY-26-24 unanimously approving the Settlement Agreement, the Navajo Nation will consent to a limited waiver of sovereign immunity in the circumstance that a party to the Settlement Agreement brings an action to interpret or enforce the Settlement Agreement or the legislation or a landowner or water user in the Little Colorado River Watershed or the Gila River Watershed brings an action to interpret or enforce the waivers or the decrees and so long as the action does not include request for an award of money damages, court costs, or attorneys' fees.

F. Right to Use and to Lease Colorado River water

The Navajo Nation is located in the Upper Basin and the Lower Basin of the Colorado River. In order to efficiently provide water to Navajo communities it must have the ability to move the Colorado River water allocated to the Navajo Nation from the Upper Basin to the Lower Basin and from the Lower Basin to the Upper Basin. The Settlement Agreement authorizes such transfers and H.R. 8940 confirms that ability. The Nation's right to move its water anywhere within the State is consistent with the intent of the settling parties and Congress to address critical water needs on the Navajo Reservation irrespective of which Basin a particular Navajo community is located within. The iiná bá—paa tuwaqat'si pipeline commences in the Upper Basin and crosses into the Lower Basin delivering Colorado River water from Lake Powell to both Upper Basin and Lower Basin communities. Some of the Lower Basin communities it will serve include Bitter Springs, Bodaway/Gap, and Coalmine, as well as high population/high growth communities like Cameron and Tuba City. There is a lack of viable options for development of a firm, sustainable supply of water for the Navajo Nation in Arizona without the iiná bá—paa tuwaqat'si pipeline delivering surface water to these communities. Therefore, it is absolutely essential that the Nation be able to effectively move its water supply within the Navajo Reservation. It would make no sense, neither economically nor from an engineering perspective, to preclude the efficient movement of water simply because the Navajo Reservation happens to be in both Basins.

Like many other congressionally approved Indian water settlements, the Settlement Agreement provides for the Nation to lease its Colorado River water to users anywhere within the State and H.R. 8940 confirms that right. The revenue generated by leasing its Colorado River water to off-reservation Arizona communities will allow the Navajo Nation to further develop and/or defray the cost of water infrastructure for its communities and is an appropriate use of the Nation's Colorado River water until such time as its population grows into its entitlement. The Navajo Nation should not be precluded from leasing Upper Basin Colorado River water to Lower Basin users. Doing so would severely handicap the Navajo Nation from being able to obtain the full value of the water which it negotiated.

III. Value of the Settlement

I understand this Committee has taken a keen interest in ensuring Indian water rights settlements are fiscally sound and provide value to the American taxpayer. This historic settlement is a solid investment for the United States for several reasons.

First, the Navajo Nation will forgo seeking legal confirmation through litigation for a larger amount of water even though we believe we are entitled to additional water rights under well-established legal principles. To reach a settlement, the Nation has agreed to reduce the scope of its water rights to account for the ongoing drought and to stay within Arizona's Upper Basin Colorado River apportionment. Second, the ratification of the Settlement Agreement will avoid protracted and costly litigation. Third, H.R. 8940 will fund important unfunded federal programmatic responsibilities by using H.R. 8940 infrastructure development monies to fund federal programmatic responsibilities. Fourth, securing and delivering a clean water supply to the Navajo Nation will save the federal government money that would otherwise be spent treating infectious disease on the Navajo Reservation. As an example, the Indian Health Service (IHS) estimates each dollar invested in water and sewer infrastructure could yield savings of \$1.18 in avoided direct health care costs for these diseases.⁵ The projects contemplated in the Settlement Agreement and funded in H.R. 8940 will provide the necessary clean and reliable water supply to serve these communities. Although IHS's numbers are not dispositive for the entirety of the funds authorized in the settlement, they are instructive as they show the value of providing these communities a secure and safe water supply.⁶

Finally, and perhaps most important, the Settlement Agreement has the additional benefit of resolving difficult legal questions through settlement rather than through potentially protracted, and expensive, litigation. Indeed, by the Tribes' settling their claims to the Colorado River, they have agreed to avoid complex legal questions regarding the applicability of interstate compact obligations to senior Indian water rights, which could destabilize the delicate balance that exists among the Colorado River Basin states and water users under the Law of the River. The Settlement Agreement enables the many people who depend on the Colorado River to move forward together, in harmony, rather than fighting over this limited and critical water resource.

IV. Conclusion

H.R. 8940 is historic legislation. When the history is written, passage of the Northeastern Arizona Indian Water Rights Settlement Act will be described as providing an opportunity for members of the Navajo Nation and those of the Hopi Tribe and the San Juan Southern Paiute Tribe to enjoy the health and prosperity of other citizens of the State of Arizona and the United States. It provides us with certainty that the Navajo Nation will flourish as a permanent homeland for generations to come. Once legislation is enacted, the Settlement Agreement is conformed to be consistent with the legislation, the adjudication courts issue the decrees, and the Settlement Agreement is enforceable, the Settlement Agreement provisions will encourage stronger cooperation, collaboration, and coordination between the settling parties,—both tribal and non-tribal. On behalf of the Navajo Nation, I respectfully request that this Congress pass the Northeastern Arizona Indian Water Rights Settlement Act as soon as possible.

H.R. 8945, Navajo Nation Rio San José Stream System Water Rights Settlement Act of 2024

Yá'át'ééh, Chairman Bentz, Ranking Member Huffman and members of the Subcommittee. My name is Dr. Buu Nygren and I am the President of the Navajo Nation. I appreciate this opportunity to share with you the Navajo Nation's strong support for H.R. 8945, the Navajo Nation Rio San José Stream System Water Rights Settlement Act of 2024. I also wish to convey the gratitude of the Navajo Nation to Representative Leger Fernandez for her commitment to improving the lives of the Navajo People and for her leadership in sponsoring this important legislation.

⁵See Indian Health Service Announces Allocation Decisions for \$702.6 Million in Bipartisan Infrastructure Law Funding/2023 Press Releases (ihs.gov). <https://www.ihs.gov/newsroom/pressreleases/2023-press-releases/indian-health-service-announces-allocation-decisions-for-702-6-million-in-bipartisan-infrastructure-law-funding/>

⁶Settlement trust funds are available to supplement IHS sanitation deficiencies if needed, or to provide programmatic support if the future waste-water infrastructure demands fall outside of the IHS authorities.

H.R. 8945 would authorize the Secretary of the Interior to execute, on behalf of the United States, a settlement agreement to quantify the Navajo Nation's water rights in the Rio San José Basin, ending four decades of litigation over that basin, and recognize water rights in the Rio Puerco basin as well. The Navajo Nation Council approved the Navajo Nation Rio San José Settlement Agreement (the "Navajo Nation Settlement Agreement") unanimously in May 2024. The Rio San José Basin is one of the driest basins in New Mexico, and the last 150 years have seen significant non-Indian development result in depletion of surface and groundwater. Without congressional action to authorize this settlement, and the legal protections and infrastructure development, including water imports, that it promises, the water supply situation will become more dire. The Navajo Nation Settlement Agreement provides a path forward that will protect the flow that remains in the Rio San José and provide the Navajo Nation with funding that would enable us to import water to serve Navajo Chapters in the Rio San José and Rio Puerco Basins.

The Navajo Nation Settlement Agreement authorized by H.R. 8945 is the Navajo Nation counterpart to the agreement settling the water rights claims of the Pueblos of Acoma and Laguna (titled the "Local Settlement Agreement"), which has authorizing legislation pending as H.R. 1304. The same parties who worked on the settlement for these Pueblos came together to develop an agreement that resolves the Navajo Nation's claims in the same geographic area covered by the Pueblos' Local Settlement Agreement. The Navajo Nation Settlement Agreement is written as an Addendum to the Local Settlement Agreement. These fully compatible water rights settlement agreements, if they are implemented, provide a comprehensive settlement of tribal claims in the Rio San José Stream System.

I. Geography and History of the Negotiations Leading to Settlement

The area covered by the settlement is in the Eastern part of the Navajo Nation, within the Rio Grande Basin. *Tó Ba'áadii* (Female River—the Rio Grande), born from one of our sacred mountains, is one of the four sacred rivers that set the boundaries for Dinétah (Navajoland) and is a protector for the Navajo People. The Rio Grande is a binational stream system, with its headwaters in Colorado. It flows down toward New Mexico, Texas, and 5 states in Mexico, all within a 335,000 square mile watershed. The Rio San José, located in west-central New Mexico and west of Albuquerque, is a tributary of the Rio Puerco, which flows into the Rio Grande. Approximately 41,000 acres of land are held in trust for the Navajo Nation within the Rio San José basin and 35,500 acres of land are held in trust within the Rio Puerco basin. Nine chapter communities are located in the Rio San José Basin (Baca/Prewitt, Casamero Lake, Crownpoint, Littlewater, Mariano Lake, Ramah, Smith Lake, Thoreau, Tóhajiile) and seven chapter communities are located in the Rio Puerco Basin (Tóhajiilee, Torreón, Ojo Encino, Pueblo Pintado, Whitehorse Lake, Counselor, and Littlewater). Approximately 7,500 Navajo Nation citizens live in these two basins. Two Pueblos, Acoma and Laguna, are also located in this area.

The Navajo Nation Settlement Agreement is the product of approximately 40 years of litigation and decades of negotiations. The Rio San José general stream adjudication, known as *New Mexico ex rel. Martinez v. Kerr-McGee Corp.*, still pending in the Thirteenth Judicial District Court for the State of New Mexico, was initiated in 1983. The Navajo statement of claims was filed in 1987. Negotiations regarding a potential settlement of the claims of the Navajo Nation and Pueblos' claims in the Rio San José basin were kickstarted in 1993, when the United States established teams to negotiate comprehensive settlements of the tribal claims. More intense settlement discussions were held starting in 2014. The Pueblos of Acoma and Laguna, the State of New Mexico, and non-Indian water users signed what they titled the Local Settlement Agreement in 2022, setting out the water rights to be quantified for the two Pueblos in the Rio San José Basin and reaching agreement on other key issues. The Navajo Nation's rights remained to be negotiated. In spring of 2024, after working together for over a year, an agreement on the Navajo Nation's rights was reached. The parties to the Navajo Nation agreement include the same parties to the Local Settlement Agreement: the Pueblos of Acoma and Laguna, the State of New Mexico, the city of Grants, the city of Milan, and the Association of Community Ditches of the Rio San José as well as member acequias. This agreement on the Navajo Nation's water rights in the Rio San José Stream System is written as an addendum to the Local Settlement Agreement, to which the Navajo Nation is now a party.

II. Key Provisions of the Settlement

This Act fairly and finally settles the claims of the Navajo Nation, and the United States acting as the trustee for the Navajo Nation, in the general stream adjudication of the Rio San José Stream System entitled *State of New Mexico, ex rel. State*

Engineer v. Kerr-McGee, et al. The Act further recognizes water rights of the Navajo Nation in the Rio Puerco Basin and limits future claims for the Nation's water rights in that basin. The settlement does not quantify or affect any water right, or any claim or entitlement to water, of an Allottee in the Rio San José Stream System or the Rio Puerco Basin. Water rights for allotments will be separately adjudicated from the Navajo Nation water rights.

As in the Pueblos' settlement, in exchange for significant funding for needed water infrastructure, the Navajo Nation agrees to make no priority calls against non-Indian uses under existing water rights. The Nation further agrees to not impair other users in the development and use of groundwater on Navajo lands.

The legislation establishes a trust fund for the Navajo Nation consisting of \$200,271,000 for the Navajo Nation Rio San José Settlement Trust Fund to be used for water infrastructure development, acquiring water supplies, Navajo Nation's Water Rights management and administration, watershed protection and enhancement, support of agriculture, water-related Nation community welfare and economic development, and settlement implementation costs. \$15,000,000 of this amount is to be made available upon appropriation for feasibility studies, planning, engineering, and design and related regulatory and pre-construction compliance work for water infrastructure, as well as for installing groundwater wells on Nation lands to meet immediate domestic, commercial, municipal, and industrial needs. Another trust fund is established in the amount of \$23,000,000 for the Navajo Nation Operations and Maintenance Account, to be used for operation, maintenance, and replacement of the Nation's water infrastructure.

Under the Navajo Nation Settlement Agreement, the Nation's water rights will be administered on Nation lands under the Navajo Nation Water Code. The Navajo Nation permit processes will include protections for protestants, including the opportunity to appeal Navajo permitting decisions to state court. The Navajo Nation Settlement Agreement further provides that the acequias will receive an additional \$3,000,000 from the State of New Mexico for specified water infrastructure improvements and water acquisition and management-related costs above the amount provided under the Pueblos' Local Settlement Agreement, with a provision allowing the acequias to seek additional state funding if necessary. The concept is that the hydrologic benefits of improvements made by the acequias should mitigate impacts of Navajo and Pueblo water development.

III. Planned Water Imports and Value of the Settlement

An important aspect of this settlement is that the Navajo Nation intends to use part of the funding that would be provided in its trust fund for costs related to two separate projects that will import water to help address the water shortfalls in this basin. First, the Rio San José Regional Water Supply Project will import water from the San Juan River through the Navajo Gallup Water Supply Project. H.R. 8945 includes authorization language to enable the Navajo Gallup Water Supply Project to service the Rio San José basin and to provide for coordination with the Bureau of Reclamation in design of the connector. The main water transmission line from Crownpoint is proposed to be along Highway 371 to Thoreau, with connections from the main water transmission line to the water supply points of the local Navajo Tribal Utility Authority (NTUA) public water systems. Value Planning is ongoing to determine if an alternative NGWSP alignment through the city of Gallup and Iyanbito is more cost-effective. The most cost-effective route will be adopted. Second, the Nation intends to use trust fund expenditures to import water from the Middle Rio Grande basin to the Rio Puerco basin. The Tóhajiilee Waterline Phase 1 is under construction, but lacks a permanent water supply. Securing a permanent water supply to use in this waterline is the highest Rio Puerco Basin settlement priority. The waterline alignment begins at the westernmost tank operated by the Albuquerque Bernalillo County Water Authority, and it ends at the systems supply point at Tóhajiilee Well #2. Together, the Tóhajiilee Waterline Phase 1 and the Rio San José Regional Water Supply Project will bring a much-needed, dependable, and high-quality water supply to Navajo chapters in the Rio Puerco and Rio San José basins.

An additional benefit of the water imports will be to take pressure off of groundwater and surface water supplies of the Rio San José and Rio Puerco basins. The Settlement Agreement authorizes these imports into these basins and calls on the Navajo Nation to make them a priority in order to conserve the scarce water resources of these basins. Water imports are one of the most effective ways to mitigate the impacts of groundwater pumping. The imported water will help to enable more sustainable management of the supplies in these basins, to the benefit not only of the Navajo Nation but the other water users in the basin struggling with water shortages.

I want to address this Subcommittee's concern with ensuring that these water rights settlements are a good value to the American taxpayer. At a total cost to the United States of \$223,271,000, this settlement is set up to provide excellent value by building off of the investments already made in the Navajo Gallup Water Supply Project and Tóhajílee Waterline Phase 1. The Navajo Nation, and the United States as trustee for the Nation, is waiving all claims to water rights within the Rio San José Stream System that the Navajo Nation or the United States acting as trustee for the Nation could assert in any proceeding beyond the rights that are recognized in the Navajo Nation Settlement Agreement, and the Nation waives other claims against the United States and other parties to the settlement, as set forth in the Navajo Nation Settlement Agreement and this legislation. The settlement funding will also cover federal programmatic responsibilities for health care and water infrastructure. Obtaining access to safe and adequate water supplies will further save the federal government money that would otherwise go toward treating diseases, some of which are a direct result of not having access to clean and safe drinking water. Overall, this agreement saves significant resources of the United States and all the parties to the settlement that would otherwise go into costly and divisive litigation. Instead of fighting over this scarce resource, the Navajo Nation will obtain funding to use for infrastructure to ameliorate water supply and management challenges.

IV. Conclusion

In conclusion, I want to say a few words about the importance of water to my people. Since Navajo creation, water has served as a fundamental element to Navajo life. *Tó béi da' iiná*, (with water, there is life), and it is elemental to *Hózhóogo Oodáál* (the Navajo Way of Life). We pray and make offerings for rain to fill our rivers so our animals, crops, land, and people can grow and thrive. In the *Hózhóoji* (Blessingway Ceremony), we cleanse our bodies with water and wash our hair to restore harmony to our lives. Many Navajo People are connected to water through our clan names. The spiritual aspect of water is intertwined with the economic and social value of water as a basic need for any community. This settlement of additional aspects of the Navajo Nation's water rights claims in New Mexico will ensure that a meaningful water source will be available and accessible to the Navajo People living in the Rio San José and Rio Puerco basins in the near term and for generations to come. This settlement represents a win-win outcome for all parties, including the Navajo Nation, the non-Navajo water users, the State of New Mexico and the United States. I therefore respectfully urge the Committee to support swift passage of this legislation.

Mr. BENTZ. Thank you. I now recognize Governor Vicente for 5 minutes.

STATEMENT OF THE HON. RANDALL VICENTE, GOVERNOR, PUEBLO OF ACOMA, ACOMA, NEW MEXICO

Mr. VICENTE. [Speaking Native language.] Chairman Bentz, Ranking Member Huffman, Congresswoman Leger Fernández, Congresswoman Stansbury, and members of the Subcommittee, I am Governor Vicente from the pueblo of Acoma. With me is Second Lieutenant Governor Martinez of Laguna Pueblo, our partner in the Rio San Jose settlement.

We are honored to have with us Governor Madalena from Jemez Pueblo and Governor Shije of Zia Pueblo, signatories to the San Rio Jemez settlement. Each of our pueblos has submitted written testimony for the record. We are here with the full support of our non-Indian neighbors and the state of New Mexico. We urge swift action on H.R. 1304, Federal legislation authorizing our respective water settlements in the Rio San Jose and the Rio Jemez.

We are ancient peoples. Our spirituality is intimately tied to the land and water since time immemorial. Acoma and Laguna have lived along the Rio San Jose, as Jemez and Zia have lived along

the Rio Jemez. Our spiritual beliefs, songs, and cultural ways are inextricably intertwined with those rivers and the lands around them. We built homes, raised families, grew crops, and thrived along these rivers.

As you consider H.R. 1304, please bear in mind that our negotiated settlements reflect the values, beliefs, and principles, and that these settlements are crucial to preserve and continue our traditions for future generations.

Enactment of H.R. 1304 will secure the water needed to sustain our people into the future and provide us with desperately-needed resources to access and use that water to sustain our pueblos. It will also protect Indian water uses and provide greater certainty for all parties.

For Acoma and Laguna, upstream diversions on the mainstream Rio San Jose began in the 19th century, depriving both pueblos of surface water in the 20th century. Other groups came to the Rio San Jose Valley and began to exploit the groundwater, first the railroads, then the city of Grants, and in the 1950s uranium mining and mills. And in the 1980s, a regional coal-fired power plant.

Groundwater aquifers and the springs supported by the aquifers are severely depleted. New large users pumped so much groundwater that the water stopped spilling over the Ojo del Gallo spring, and reduced the flow from the spring's major sources of water for the Rio San Jose. The base stream flow of the Rio San Jose has been reduced by over 90 percent where it reaches the pueblos. The spring's flow has declined from 14 cubic feet per second to 1.8 cubic feet per second. Without adequate water recharge to the aquifers, we have no reliable fresh water freshwater supply.

The Rio San Jose settlement provides for installation of groundwater wells on pueblo lands to meet immediate water needs and for infrastructure needed to bring water to the pueblo lands from the last remaining unused water in the stream system. For the Jemez and Zia pueblos, upstream, non-Indian water use has severely compromised the pueblos' access to adequate water and sustain their farms.

Water shortages have been severe for decades since 1986. Jemez, Zia, and neighboring acequias have been forced to operate under a difficult irrigation rotation agreement because of scarce water supplies in the Rio Jemez. Federal legislation authorizing water settlement will enable development of a water augmentation project that is crucial to avoid conflicts between the pueblos and non-Indian water users over access to increasingly scarce surface water, and to protect and strengthen relationships among the community of water users in the Rio Jemez Basin.

Our four pueblos have been engaged in litigation to protect our water. And with water rights for more than 40 years, in 2022, we reached settlements negotiated with all local parties: the state of New Mexico, other tribes, neighboring towns, and community acequias and ditches. We signed these agreements over 2 years ago. With every passing day, more damage is done to the water supply on which our pueblos and non-Indian communities depend. We desperately need Congress to authorize these settlements so we can begin to address the dire water shortages.

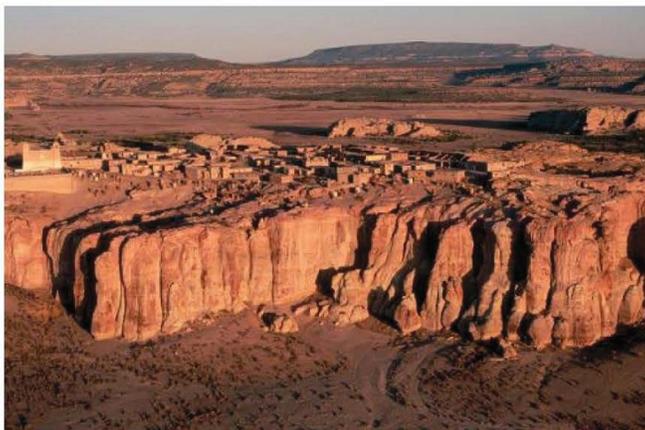
Acoma, Laguna, Jemez, and Zia urge the Committee to act favorably on H.R. 1304 as quickly as possible, and champion passage of our bill in the 118th Congress. We thank you for holding this hearing and for your time today. [Speaking Native language.]

[The prepared statement of Mr. Vicente follows:]

PREPARED STATEMENT OF RANDALL VICENTE, GOVERNOR, PUEBLO OF ACOMA
ON H.R. 1304

Acoma Pueblo (“Acoma” or “Pueblo”) strongly supports H.R. 1304, legislation to approve the settlement of the Pueblo’s water rights claims. The Pueblo believes it will not only be able to survive, but also thrive, along with its neighbors, with the passage of this legislation. This legislation is the culmination of decades of work to address critical water shortages for all water users in the basin, an area that’s one of the most water-short places in the State of New Mexico, if not the nation. This bill addresses the claims made by the United States on behalf of the Pueblos of Acoma and Laguna in *State ex rel. State Engineer v. Kerr-McGee, et al.*, a basin-wide adjudication of surface and groundwater rights in the Rio San José Stream System.¹ In the course of negotiations with other water users, the Pueblo of Acoma also negotiated its water rights in the adjoining Rio Salado Basin to the south, and the Pueblo of Laguna negotiated its water rights in the Rio Puerco Basin to the east. It provides a level of certainty for all users in a time of growing water scarcity.

THE PUEBLO OF ACOMA



Sky City, Acoma the ancestral village and ceremonial heart of the Pueblo of Acoma.

The Rio San José Stream System has been the primary source of water for the Pueblo of Acoma for centuries, well before the arrival of the first Europeans to this region. You may be aware that Acoma is one of the oldest continuously inhabited communities in the United States, if not North America. Acoma is located in the high deserts of the southwestern United States. Water has always been the limiting resource. The average yearly rainfall 7 inches. The streams, aquifers, and springs that once fed the Rio San José, the life blood of our communities and our agrarian way of life, has been decimated over the last 150 years due to the actions and the failures of the federal government. Today Acoma faces extreme water shortages.

The Acoma People settled at places along the Rio San José. Our spiritual beliefs, songs and cultural ways reflect the landscape. We are an ancient people. We have rituals that are hundreds, if not a thousand years old, ceremonies that date back to our beginning. We came into this world with a plan. We came with all that was necessary for us to survive. We emerged into this world accompanied by our Deities along with all living things and when we emerged, we began our journey in search

¹This adjudication involves all surface and groundwater users in the system.

of a place that would become a part of who we are, a place prepared, a place that would reflect our worldview, *Haak'u*, “the place prepared.” That place is Acoma.

Our spirituality is intimately tied to the land and water. We define ourselves according to geologic formations, water sources and visible sightings.² Our faith is tied to the springs, valleys, mountains, and mesas that reflect the expanse of who we are as Acoma People and that includes the Rio San Jose. The Rio San Jose once flowed rich with wildlife. We built homes, raised families, grew crops, and lived off our river. Children in our villages played, fished, and swam in the deep flowing waters. We used the water to farm and irrigate our fields—in fact, whole farming communities grew up along Rio San Jose. Corn fields, alfalfa fields, and orchards were a common sight on both banks.



BIA 1918 Planting Report for Acomita: “Increased acreage of wheat. Three miles of ditch built by Indians 80 acres additional in cultivation” Acres cultivated 1,625 acres: Alfalfa 122, Beans 14, Corn 720, Garden truck 40, Oats 4, Orchard 20, Wheat 705.”

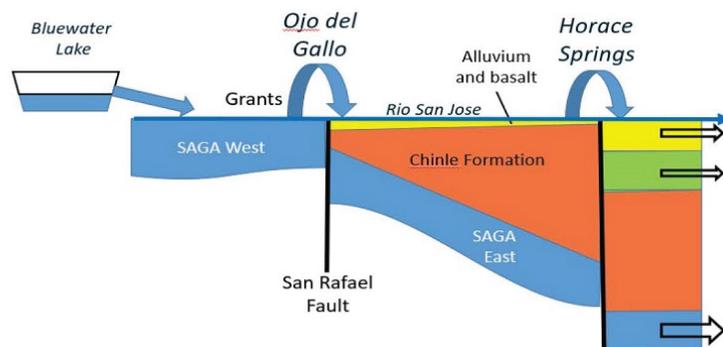
BIA 1926 Crop Report for Acomita: 2,000 bs of apples & peaches of very good quality”

Religious leaders have long attached ceremonial significance to the river as it weaves its way across our homelands. While these ceremonial uses have been threatened over the past 150 years due to low flows in the river, Acoma is not asserting any monetary liability associated with any temporary loss for these uses which remain a vital part of Acoma culture today, and Acoma’s right to continue those uses cannot be extinguished through any kind of monetary payment.

THE HYDROLOGY OF THE RIO SAN JOSÉ STREAM SYSTEM

The Rio San José Stream System in the absence of human activity is a fragile, dynamic ecosystem in an arid high desert environment. Water begins its journey to the river as winter snow on the Zuni and San Mateo mountains, the latter of which includes Mount Taylor, a cultural property of Acoma and Laguna Pueblos and the Navajo Nation. Snowmelt and summer monsoon rains feed both surface water and groundwater aquifers. A network of faults related to volcanism around Mt. Taylor adds complexity to the hydrology of the basin.² The faults send groundwater to the surface forming springs such as Ojo del Gallo and Horace Springs. Today the primary aquifer to provide surface flow across Acoma is the San Andres-Glorieta Aquifer. West of Ojo del Gallo it is near the surface, just below the alluvium. At the fault, it constricts water flow and plunges 2,000 feet underground. Its significant flows produced Ojo del Gallo and fed the alluvial aquifer of the Rio San Jose. Just downstream the bedrock constricts, producing Horace Springs on the western boundary of the Acoma Pueblo Grant. Other aquifers higher on Mount Taylor are also fed by snowmelt and monsoon rains. These aquifers discharged into the stream system as well, creating the surface water flows in tributaries such as Rinconada Creek that then fed the Rio San José as it flowed across Acoma and Laguna Pueblos. These other aquifers no longer discharge appreciable amounts of water into the stream system.

²This has been documented in Dittert and Bibo, Topographic Features of the Pueblo of Acoma Land Claim 1952.



Schematic Presentation of Hydrology of Stream System before human activity except Bluewater Lake

ACOMA WATER USE PRIOR TO U.S. SOVEREIGNTY

Prior to United States' sovereignty in the region, the Rio San José supplied enough water for the Pueblos of Acoma and Laguna to not only survive, but to thrive. There is a wealth of archaeological evidence that Acoma has been irrigating its lands for at least 1,000 years. During times of low flow, Acoma employed walk-in wells to reach alluvial groundwater that was used to for domestic needs and to hand water gardens, and also directed modest ephemeral surface flows to crops that needed it. The first written record to describe Pueblo irrigation in New Mexico describes Acoma Pueblo irrigating from the Rio San José in 1583.³ While there were small communities established by Spain or Mexico that could interfere with Pueblo uses on one of the smaller tributaries of the Rio San José, there were no mainstem upstream users prior to United States acquisition of the territory.⁴ In *State ex rel. State Engineer v. Kerr-McGee, et al.*, the Court found as follows:

Here, the undisputed evidence is that the Lagunas and Acomas had possession, occupancy, and beneficial use of land and water prior to the arrival of Europeans in the mid-16th Century. Indian title to the land was recognized and confirmed by the Spanish Crown and, similarly, the validity of Indian title was recognized by the Mexican Government. Neither Spain nor Mexico sought to divest the Acomas or Lagunas of any right, title or interest to the Pueblo lands.) *State ex rel. State Engineer v. Kerr-McGee Corporation, et al.*, Special Master's Report and Recommendations, November 5, 1992. p. 40.

On the basis of the record in this proceeding, the Acomas and the Lagunas did indeed, acquire aboriginal title. An aboriginal title is superior to that of any third person[.]” *Id.* pp. 43-44.⁵

When this matter was before the New Mexico Court of Appeals, that court confirmed these findings that Acoma still retained its time immemorial water rights to all lands within the Pueblo of Acoma Grant as approved by Congress pursuant to

³Hammond, George P. and Agapito Rey, Expedition into New Mexico Made by Antonio de Espejo, 1582 to 1583, Vol. 1 of the Quivera Society Publications, Los Angeles: 1929 at p. 87, See, also Herbert Eugene Bolton, ed. Spanish Exploration in the Southwest, 1542-1706, New York: Scribner's Sons, 1916, pp. 182-183. Cutter, Charles, Water Use in the Rio San Jose Watershed: Acoma, Report prepared for U.S. Dept. of Justice, Oct. 1, 2003, p.4.

⁴The Cubero Land Grant was established in the Mexican period (1833) to the north of the Pueblo of Acoma. *Report to Congress—the Treaty of Guadalupe-Hidalgo—Definition and List of Community Land Grants in New Mexico*, U.S. General Accounting Office (2001) p.9. The community ditch or acequia for Cubero Land Grant is a party to the settlement.

⁵The District Court adopted the Special Master's recommendation that the Pueblos have aboriginal water rights that were not extinguished by Spain or Mexico. *New Mexico ex rel. Martinez v. Kerr-McGee Corp.*, Nos. CB-83-190-CV and CB-83-220-CV (consolidated) (N.M. 13 Jud. Dist.) *Order and Judgment Adopting Special Master's Report and Recommendations and Denying Motions for Reconsideration* (May 18, 1993). This holding was not appealed to the New Mexico Court of Appeals. See *State ex rel. Martinez v. Kerr-McGee Corp.*, 898 P.2d 1256, 120 NM 118, 127 (N.M. Ct. App. 1995) *cert den'd* 120 N.M. 68, 898 P.2d 120 (1995).

the 1858 Act.⁶ The United States, the State of New Mexico, Acoma and the parties to the settlement agree that Acoma's aboriginal water right was sufficient water to irrigate 1,870 acres of land and recognize the Pueblo's right to uses for uses.⁷

DESTRUCTION OF THE WATER SUPPLY

THE CREATION OF FORT WINGATE BY THE UNITED STATES IN 1862

Today the primary sources of water in the Rio San José are very few. Spring flow is discharged from the San Andres-Glorieta aquifer. That aquifer and the aquifers that form Mt. Taylor have been mined so that most have gone dry. Only one spring, known as Horace Springs, contributes to the Rio San José so that a dwindling trickle slowly flows across the Pueblo. Now, the flow from the spring has dropped to as low as 1.8 cubic feet per second ("cfs") or 1,304 afy and rarely reaches 3 cfs, or 2,173.34 afy. Historically the Rio San José's flows at Horace Springs were much greater—14 cfs, or 10,142.27 afy. For the Ojo del Gallo parciales on the acequia south of Grants, no water has flowed from Ojo del Gallo spring for decades. Also, due to climate change and long-term drought, snow melt is significantly reduced, limiting flows into Bluewater Lake and the river. Less snow melt contributes to reduced water levels in streams and aquifers.

In 1862, The U.S. Army established Fort Wingate on Acoma aboriginal lands, the Fort diverted Ojo del Gallo spring flow that provided approximately one-third to one-half of the surface water supply to Acoma. After the Fort was moved west near Gallup, New Mexico, the U.S. did not return the spring flow to the Rio San José, or prevent others from using it, despite knowledge that the Pueblo relied on the flows. It was known to be one of the most productive springs in the region. Even without those flows, Horace Springs was still producing 10 cfs or 7,244.47 afy, about half the pre-U.S. flow.

ALLOWANCE OF BLUEWATER DAM AND THE BLUEWATER-TOLTEC IRRIGATION DISTRICT WITHOUT ENFORCEMENT OF PUEBLO SENIOR WATER RIGHTS

In the late 1890's homesteaders upstream from Acoma attempted to dam Bluewater Creek, a major tributary of the Rio San José. By the 1920s, backers of the dam created the Bluewater Dam ("Dam") and Bluewater-Toltec Irrigation District ("BTID") that cut off significant upstream flows, even though the flow would never be enough to supply all of the land within the BTID. The dam washed out but was re-built and significantly enlarged in 1927. Originally meant to service 2,000 acres of land for irrigation it grew to a proposed 10,627 acres .

Acoma and Laguna Pueblos complained to the U.S. that the enlarged Dam would interfere with their water rights and asked the U.S. to stop the construction. In response to Pueblo concerns, the U.S. brought suit in 1921 to cancel easements for the Dam site.⁸ But rather than protecting the Pueblos by vigorously litigating the case, the U.S. failed to prosecute the case; the lawsuit was dismissed in 1923 for non-prosecution.⁹ The Pueblos were assured by various U.S. officials that there

⁶*Id.* In the Act of July 22, 1854, 10 Stat. 308, Congress established the Office of the Surveyor General of New Mexico, Kansas, and Nebraska. The Act directed the Surveyor General to report on lands held under Mexican law, with particular reference to Pueblos' holdings. Congress confirmed Acoma's aboriginal title to lands and waters in the Confirmation Act of 1858, Act of December 22, 1858, ch. 5, 11 Stat. 374.

⁷1,870 acres, consisting of 1,275 acres with points of diversion from the Rio San Jose mainstem; 265 acres with points of diversion from Rinconada Canyon, 163 acres with points of diversion from San Jose Canyon and 167 acres with points of diversion from the Acoma Grant south of main stem. These figures are a compromise. Data produced by United States, and Pueblo experts show that Acoma likely irrigated 2,500—2,700 acres in the Rio San José Valley. Keller-Bliesner Water Use Survey 2003, Prepared for U.S. Dept. of Justice (2,542.35 acres irrigated); Natural Resources Consulting Engineers, Inc., Summary of Past and Present Water Uses of Acoma Pueblo—New Mexico State Engineer v. Kerr McGee, 2005, p. 4 (2715.6 acres irrigated).

⁸*See United States v. Bluewater Land and Irrigation Company, et. al.* No. 805 Equity (D. Ct. N.M.).

⁹Kelly, Lawrence C., "History of the Pueblo Lands Board, 1922–1933, With Special Emphasis on Water Rights in the Northern Pueblos," 4-6 ("In 1920 Hanna prepared and filed ejectment suits against the non-Indian claimants on five Pueblos, and took one of them, *United States v. Pedro Garcia*, as a test case before the federal district judge, Colin Neblett. Neblett heard the testimony and arguments but had not rendered a decision when the case was withdrawn at the request of U.S. Attorney General Harry Dougherty and Secretary of the Interior Albert B. Fall in the fall of 1921.")

would be no damage; that the Dam would have little or no effect on their water supply.¹⁰ The enlarged Dam at Bluewater was allowed to go forward by the U.S.¹¹

When BTID farmers could not get water from the Dam to irrigate up to 5,488 acres, they turned to groundwater after the introduction of the submersible pump in the 1950s, receiving authorization from the N.M. State Engineer to drill wells. Those wells tapped the San Andres-Glorieta aquifer. This siphoned off water that would have flowed as surface water in the Rio San José across the Pueblo. Over time, Rio San José flow at Horace Springs decreased to 5–6 cfs.

The United States, while aware that the Dam was interfering with Pueblo water use, did nothing despite repeated Pueblo objections. Attorneys for the Pueblo appointed by the U.S. initially believed Dam proponents who disclaimed any effect on Pueblo water or tried to placate the Pueblo with the notion that federal legislation, what eventually became the Pueblo Lands Act of 1924, would resolve the problem. In the 1930s, the Bureau of Indian Affairs (“BIA”) suggested that the U.S. purchase lands in BTID to free up water for the Pueblos. This was rejected by BIA leadership. After the U.S. requested a release of stored water from the Dam for the Pueblos in the 1940s, it took no action to actually enforce the Pueblos’ right to water when BTID declined the request, although BTID was on notice that the U.S. would not look favorably on a denial of water to the Pueblos. The U.S. may have been upset with BTID, but it did nothing.

The Bluewater-Toltec Irrigation District after 1927 Dam and Expansion

The U.S. did nothing to stop drilling of supplemental wells that tapped the San Andres-Glorieta Aquifer, the source of the lion’s share of surface water through the Pueblo. Acoma strongly objected to this groundwater pumping and that was duly noted by William Brophy, Special Attorney for the Pueblos. On March 30, 1949, Governor Julian Chino of Acoma wrote to the BIA stating that the Pueblo was worried about the water situation in the Rio San José: “It is getting low; not enough to irrigate farms because on Bluewater area wells are being drilled. What can be done to help us?”. In May of 1949, the Superintendent of the BIA United Pueblos Agency wrote to Brophy about Acoma’s concerns.

Some time ago I sent a memorandum to Mr. Boldt about the concern of the Acoma Pueblo about the underground water in the vicinity of Acoma. . . . I have discussed this problem of trying to control the drilling of wells, etc. in the Bluewater area with several people, but somehow I can’t get anything definite as to what I should do to try to control it.¹²

The U.S. response was to express concern but do nothing to defend the Pueblo’s right to water. Handwriting and commiseration do not water crops needed for survival.

Even when Congress enacted the Pueblo Lands Act in 1924 to enable the replacement of Pueblo land and water due to the past failure of the U.S. to protect Pueblo rights, no action was taken to replace what Acoma had lost through these trespasses

¹⁰See Nov. 5 1923 Letter from Commissioner Chas. H. Burke to Mr. Harmon P. Marble, Supt. Southern Pueblos Agency, (“Correspondence has been had with Col. Twitchell . . . regarding reconstruction of a dam above Bluewater. . . . With the view of placing these interests on notice that the United States will look with disfavor upon any action taken by them interfering with the water rights of the Indians of the Pueblos of Acoma and Laguna, and that, if necessary, adjustment will be made through the courts, you are directed to notify these people to this effect. There is a possibility that the reconstruction of this dam will not encroach upon the water rights of these Pueblos but such action is deemed advisable so as to prevent in future any assertion on the part of these interests, in the event infringement actually takes place, that the United States permitted the reconstruction of the dam without in any way voicing its disapproval.”); see also Oct. 24, 1923 Letter from R.E. Twitchell, Special Assistance to the Attorney General, US Department of Justice to Hon Chas. H. Burke, Commissioner of Indian Affairs (“[r]elative to the rebuilding of a dam above Blue Water . . . Mr. W.M. Reed, chief engineer of the reclamation service, together with Mr. Robinson, supervising engineer, were in my office and we discussed briefly the question of whether there would be any encroachment upon the water rights of Acoma and Laguna owing to the construction of this project. I was much gratified to hear from Mr. Reed that in his judgment it was more than likely that the construction of the project would result in increasing the supply of water for these Indians rather than diminishing it . . .”); see also Oct. 2, 1923 letter from Special Assistant to the Attorney General (Twitchell) to Mr. H.F. Robinson, Supervising Engineer quoting a letter from Captain Reid in which he states, “I do not think there is the slightest possibility that this irrigation project will affect the Indians’ using the stream below at all. If any effect results from this, I think it will be a beneficial one . . . [.]” Captain Reid was a strong advocate for the project.

¹¹See *Pueblo de Acoma v. United States*, 18 Ind. Cl. Comm. 154, 175 (1967).

¹²General Superintendent to William A. Brophy, Special Atty for the Pueblo Indians and Erite T. Hagberg, November 29, 1949.

to its water rights.¹³ Yet reports of the Pueblo Lands Board pursuant to the 1924 Act alerted the U.S. Attorney General to the trespasses occurring on Pueblos' water rights, and the need for action to protect against such trespasses. For example, one of the Board's reports on the Pueblo of San Ildefonso stated:

Fifth—That it is the duty of the United States as guardian of these Pueblo Indians, to assert and define these principles and to take such action, legal or otherwise, as will prevent the use of the waters of these streams by other than Indians to any greater extent than is consistent with such principles so announced. . . .

[W]e believe that the matter of the Indians' water priorities should be brought to an issue by the Government as soon as possible. What might be done, it would seem is to determine definitely how much water the Indians need to properly irrigate the lands they now have under irrigation, or would cultivate if they had the water for it, then see to it that the ditches serving these lands are in proper condition; then serve notice on all non-Indian users above any of these Indian lands that they are entitled to no water, except such surplus as there may be after the Indians' needs are sufficiently provided for. This would probably necessitate Government ditch riders with power to see to it that the Government's orders are enforced. If such orders were resisted, the matter could then be tested out by adequate court action and that might reasonably be expected to result in definite arrangements whereby all the water (or so much of it as might be required) should be allowed to flow to Indian lands for defined periods.¹⁴

Despite this clear 1929 directive, the U.S. did not act to restore Acoma's water rights until 1982 when the U.S. belatedly filed an action against the BTID for trespass to the water rights of Acoma and Laguna Pueblos, see *United States v. Bluewater-Toltec Irrigation Dist.*, 530 F.Supp. 1434 (D.N.M. 1984) ("Bluewater-Toltec"). The U.S. sought declaratory relief for both the priority and quantity of Acoma's and Laguna Pueblos' water rights, as well as damages and a permanent injunction against BTID and its members.¹⁵ After several procedural disputes, the federal court case was dismissed so the Pueblos' water rights would be quantified in the state court adjudication.¹⁶ The Court was careful to dismiss without prejudice so trespass claims asserted against the BTID and other non-Indian water users could be determined after the Tribal water rights were quantified.¹⁷ This ruling preserved the damages claims based on trespass to Pueblo water rights. Therefore, the trespass claims that were made in the federal court action will only be resolved

¹³The Pueblo Lands Act of 1924 (Act of June 7, 1924, 43 Stat. 636, Ch. 331) created the Pueblo Lands Board which was tasked with reporting on land and water use on Pueblo lands by non-Indians. The Board believed that absent loss of land, the right to water was not lost and need not be replaced, just enforced. See, Report No. 2 for Pueblo of San Ildefonso. In 1931, congressional hearings were held on the operations of the Pueblo Lands Board. *Survey of Conditions of the Indians in the United States, Hearings Before Subcommittee on Indian Affairs, U.S. Senate, Pueblo Lands Board, Part 20*, United States Printing Office, 1932. No compensation was awarded for trespass to water rights absent loss of land. Acoma did not lose any land, so no compensation was awarded for its loss of the use of water due to upstream. See Act of May 31, 1933, 48 Stat. 108.

¹⁴*Survey of Conditions of the Indians in the United States, Hearings Before Subcommittee on Indian Affairs, U.S. Senate, Pueblo Lands Board, Part 20*, United States Printing Office, 1932, 10977-78.

¹⁵The complaint explicitly stated that it did "not seek a general stream adjudication to determine the full extent of the Pueblos' rights to the use of the Rio San Jose, its tributaries and the underlying groundwater basin." *United States v. Bluewater-Toltec Irr. Dist.*, 580 F.Supp. 1434 at 1427-38 (D.N.M. 1984); *aff'd* 806 F.2d 986 (10th Cir. 1986).

¹⁶The court holds that the state court actions are sufficiently comprehensive to withstand the United States' motion to dismiss based on a failure to name all claimants and Indian sovereign immunity. There is a want of federal jurisdiction, however, over the removed action. But even if removal jurisdiction could be sustained on a federal question theory, the removal of these state court actions would be defective because all defendants did not join in the removal petitions. After a review of this water litigation, the court concludes that the federal action should be deferred in favor of a general adjudication of the Rio San Jose in state court." 580 F.Supp at 1437.

¹⁷"That general adjudication will have a profound effect on the nature and extent of any claims made by the United States. A general adjudication involving some 1600 claimants will take years to complete. It serves no good purpose for this unfocused federal trespass action to linger while the general adjudication proceeds. Once the general adjudication is completed, or it there should be "a significant change in circumstances," the United States may resort to federal court." 580 F.Supp at 1447.

through this legislation. If the settlement agreement is not authorized through this legislation, these claims remain to be resolved.

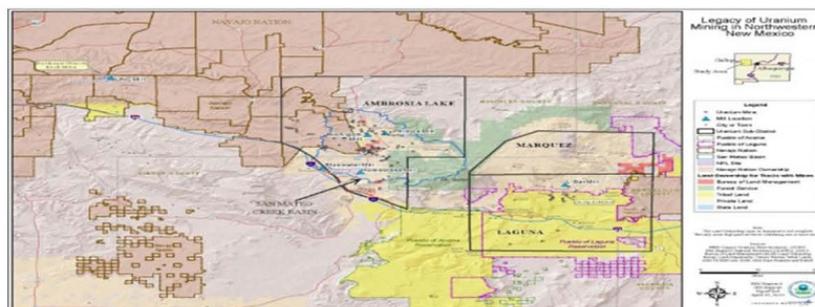
Today, 40 years after filing the trespass action, and more than 90 years after the construction of the Dam, the U.S. has not acted to limit the use of surface or groundwater by BTID or other users so as to provide the Pueblos with an adequate water supply.¹⁸



Ojo del Gallo, 1950s, after depleted due to upstream pumping of San Andres Glorieta Aquifer beginning in 1940s. This spring went dry by 1960.

From 1952 Dittert and Bibo "Topographic Features of the Acoma Land Claim (submitted to Indian Claims Commission in Pueblo de Acoma v. United States, Docket 266).

THE URANIUM BOOM—1950 to 2019



The search for uranium has been the only United States government-induced, government maintained, government-controlled mining boom in this nation's experience . . . For the ore pouring from the mines of the western deserts and mesas there is but one important purchaser—the Atomic Energy Commission; but one prime destination—the weapons arsenal of the United States; and but one price—that established by the government.¹⁹

When the detonation of the first atomic bomb lit up the New Mexico desert, it set off an arms race now referred to as the "cold war." At the start of the cold war,

¹⁸Acoma's 1951 petition for compensation for land and water before the Indian Claims Commission (*Pueblo de Acoma v. United States of America*, Docket 266, 18 Ind. Cl. Comm. 154 (1967)) did not resolve the question of United States liability with respect to Acoma's depleted water supply due to the Bluewater dam. See, Order Amending Findings of Fact and Opinion, 19 Ind. Cl. Comm., 152, May 2, 1968. The settlement of that litigation did not affect Acoma claims to water to irrigate its grant lands. See *State ex rel. Martinez v. Kerr-McGee Corp.*, 898 P.2d 1256, 120 NM 118, 127 (N.M. Ct. App. 1995) cert den'd 120 N.M. 68, 898 P.2d 120 (1995).

¹⁹Lang, Herbert, "Uranium Mining and the AEC: The Birth Pangs of a New Industry," *Business History Review*, Vol. 36, No. 3 (Autumn 1962), p. 325.

the U.S. created and fueled demand for enriched uranium to supply a nuclear weapons program. One of the richest uranium bearing rock in the U.S. is the Grants Mineral belt, located in the Rio San Jose Stream System. The effect on the Stream System was profound.

Groundwater depletions expanded beyond reason in the Atomic Age. Uranium mining and milling began at the instigation of, and with the complete backing of the U.S., the only purchaser of the processed uranium.²⁰ The uranium was located in the same rock formations where water was stored—aquifers—and that water supplied perennial springs within the Basin, many of which contributed to Rio San José flows.²¹ These aquifers, and those located above them, were dewatered by the mining companies to create mineshafts and to facilitate removal of the uranium, thereby depleting spring flow contributions to the Rio San José. The mining companies were not even required by the U.S. to put the water that was removed from the aquifers into the Rio San José. The water was discharged to an adjoining river basin. In 1980 the N.M. State Engineer estimated that some 40,000 to 50,000 acre feet of water a year were being discharged into the adjoining river basin due to dewatering.²² Water, along with uranium was being mined at an exorbitant rate.

The mined ore had to be made into usable uranium—yellow cake. This was done at mills located on lands overlying the alluvial aquifer in the Stream System. Uranium mills were upstream from Acoma: Bluewater Disposal, now known as the ARCO site northwest of Grants, Rio Algom (formerly Kerr-McGee and Quivira) and Phillips-United Nuclear Corporation in the Ambrosia Lake area and one operated by Homestake-Barrick a short distance north of Grants. Milling facilities also used large amounts of groundwater.²³

With the growth of this federally created and subsidized mining economy, the upstream village of Grants, with a 1940 population of 1,347²⁴ exploded to over 10,000 people in the 1960s.²⁵ It relied on the increasingly stressed groundwater without any protest by the U.S. The population of Grants peaked at 11,439 in the 1980s.²⁶ Following the collapse of the uranium industry when the U.S. removed its price supports, the population began to fall and in 2018 was less than 9,000 people.²⁷

Another off-shoot of the uranium boom was the location of the Plains-Escalante Generation Station (“PEGS”) in the headwater area of the Rio San Jose. Originally conceived to power the uranium boom and associated population growth, the electric company purchased water rights from the farmers in the BTID and those on the Ojo del Gallo Ditch who had supplemental groundwater wells to supply most of its water requirements. This dewatered the irrigation district through acquisition and transfer of multiple agricultural water rights. These rights that were historically used only during the growing season, with significant return flows downstream became a use that consumed 100% of the water transferred.²⁸ Plains Electric and its successor, Tri-State Generation and Transmission Association, Inc. (“Tri-State”), claim to have used up to 4,272.13 afy.²⁹

²⁰ Alvarez, Robert, “Uranium and the Acoma Pueblo,” February 17, 2020, Appendix “Purchases of Uranium by the Atomic Energy Commission.”

²¹ “In San Juan, McKinley and Valencia [Cibola] counties, the host rock for much of the uranium ore is the Westwater Canyon Member of the Morrison Formation. The Westwater Canyon Member is also a principal aquifer in the area. Gottlieb, Gail, “New Mexico’s Mine Dewatering Act: The Search for Rehoboth”, 20 Nat. Resources J. 653, 1980 (October 10, 1979). Note that Cibola County was created out of Valencia County in 1981.

²² Id., citing S.E. Reynolds, Statement of Mine Dewatering presented to the Interim Legislative Committee on Energy and Environment of the New Mexico Legislature (Nov. 29, 1979) at 1.

²³ The Bluewater Milling site claims use of 4,000 afy of water, Rio Algom claims use of 9,000 afy and the Homestake Mill site claims use of 1,300 afy. Homestake acquired the water rights from irrigators in the BTID and transferred the place of use to the mill site. See, generally, Records of the N.M. Office of the State Engineer.

²⁴ R.H. Sears, “Appraisal Report of the Acoma Pueblo Land, State of New Mexico As of 1901–1936”, Prepared for the United States Department of Justice (1970) at pp. 81-82

²⁵ See <https://population.us/nm/grants/> (citing US Census data).

²⁶ Id.

²⁷ Id.

²⁸ The steam generated by the plant was used by a paper mill. It is not at all clear that in approving the transfer of these irrigation-based water rights to an industrial use, the State Engineer actually considered that agricultural rights are uses for only the growing season and do not consume all water diverted while these industrial uses are totally consumptive and are used throughout the year.

²⁹ N.M. Office of the State Engineer, *Final Inspection Report of Beneficial Use of Underground Waters*, File No. B-7 (1-19-2000); File No. B-87-B-S-2,4,5,6 (1-9-94), File No. 13-5-F, B-44, B-45-X (1-10-89); File Nos. B-17, B-18, -19 and B-20 (3-4-86).

Again, the U.S. did not limit this large industrial use to protect Pueblo uses. Indeed, the approach of the U.S. after an initial challenge was to reserve these issues for the adjudication of the Basin—the litigation that is settled with this legislation—rather than pursue an appeal of permits issued by the N.M. State Engineer.³⁰ Tri-State closed PEGS in 2019, and a potential sale or lease to another energy company for hydrogen production has been proposed. The new company will likely assert the right to mine large amounts of water from the Rio San Jose alluvial aquifer and the San Andres-Glorieta Aquifer.³¹

The uranium boom did not just increase depletion of the Rio San José Stream System. Uranium mining and milling operations generated liquid wastes, or effluent. Decades of uranium milling activity contaminated groundwater in alluvial and other shallow aquifers.³² According to the U.S. Environmental Protection Agency (“EPA”) few of the legacy mines have undergone reclamation.³³ The mills either impounded their effluents, or tailings, in unlined evaporation ponds, injected both treated and untreated effluent into local groundwater aquifers, or released effluent into San Mateo Creek. Tailing seepage has contaminated the Rio San Jose alluvial system and the bedrock San Andres-Glorieta aquifer with molybdenum, selenium, and uranium.

Cleanup of contamination uses extensive water resources. Homestake-Barrick Mining Company (HMC), licensed by the Atomic Energy Commission, and now licensed by the U.S. Nuclear Regulatory Commission (No. SUA-1471), operated two uranium mills from approximately 1958–1990. Approximately 22 million tons of ore were milled at the site.³⁴ This milling activity led to groundwater use and contamination of the alluvial and nearby aquifers. The mill site was declared a Superfund Site by the EPA and has been in reclamation since 1990, following the demolition of the mill. Now, 30 years later, the contamination plumes from the Atlantic Richfield Company mill tailing site and that at the HMC site are converging.³⁵ Cleanup of the HMC site has not been wholly successful.³⁶ Nearly 4.5 billion gallons of contaminated water have been removed and 540 million gallons of treated water have injected into the aquifer.³⁷ Acoma submitted multiple protests to HMC’s applications to drill supplemental wells, on the grounds that there is insufficient unappropriated water available to satisfy Homestake’s request, yet the applications were approved.³⁸ According to EPA reports, 5,855,488,029 gallons of water, or 48,658.72 acre-feet of water were pumped from the alluvial aquifer from 1978–2014 at this one site. According to reports, water levels in three wells in the San Andres-

³⁰ Monson, Peter C. U.S. Department of Justice, letter dated April 29, 1986 to Arturo Ortega and Harold A. Ranquist, counsel for Pueblo of Acoma.

³¹ See <https://nmpoliticalreport.com/2021/04/20/the-retired-escalante-power-plant-may-be-converted-into-a-hydrogen-plant/>.

³² The discovery of large subsurface uranium deposits within the Jurassic Westwater Canyon Member of the Morrison Formation at Ambrosia Lake resulted in the establishment of two-thirds of the active uranium mines in New Mexico within the Ambrosia Lake Mining Sub-District by 1980. See U.S. Environmental Protection Agency, *Administrative Settlement Agreement and Order on Consent for the San Mateo Creek Basin Legacy Mines Sites, Dec. 3, 2019*. Ambrosia Lake is in the northwestern portion of the Rio San Jose Basin and the adjoining San Juan Basin.

³³ As noted on the website, approximately 50% of the abandoned mines have not yet been located. The New Mexico Mines and Minerals Department website contains a map which vividly depicts the extent of uranium mining in the Rio San José Stream System upstream from the Pueblo of Acoma (available at <https://www.arcgis.com/apps/dashboards/91f296cb3ea24f689329eb5075ec3bb7>).

³⁴ EPA Third Five-Year Review Report, Homestake Mining Company Superfund Site, (EPA ID: NMD007860935) Cibola County, New Mexico.

³⁵ U.S. DOE Legacy Management Report: *Evaluating the Influence of High-Production Pumping Wells on Impacted Groundwater at the Bluewater, NM Disposal Site* (August 2020).

³⁶ See generally, Pueblo of Acoma Protest to Applications by Homestake Mining Company to Change Well Location No. B-28-S-323 and to Drill Supplemental Wells in the Bluewater Underground Water Basin No. B-28-S-386 through B-28-S-429.

³⁷ 5/9/2019, Homestake Mining Co., Superfund Site Profile, Superfund Site Information

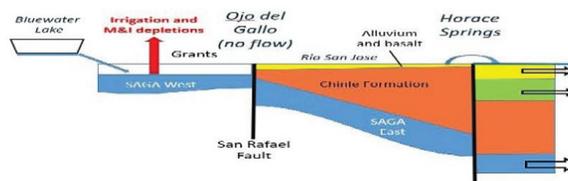
³⁸ Pueblo of Acoma Protest to Applications by Homestake Mining Company to Change Well Location No. B-28-S-323 and to Drill Supplemental Wells in the Bluewater Underground Water Basin No. B-28-S-386 through B-28-S-429. (“Groundwater cannot be treated exactly like surface water because once appropriations exceed the natural recharge in an aquifer, it is being mined. It cannot be treated as a reoccurring resource. Based on the drop in flow from Ojo Del Gallo at San Rafael, which is historically related to depletion of the San Andres-Glorieta aquifer, this aquifer is already being mined to meet present uses, threatening senior water users. Supplementing Homestake’s use will result in a greater possibility that water will be insufficient to meet the needs of the holders of senior water rights.”)

³⁹ Kathy Helms, “Official: Dilution Helps Reduce Uranium Mill Contamination”, Gallup Independent, May 5–6, 2018.

Glorieta east of the San Rafael Fault where the aquifer is 2,000 feet below the surface, have declined by 46 feet since 1998.^{39,40}

Today, the groundwater in the Rio San Jose Basin has been and continues to be mined without replacement. Withdrawals far exceed recharge. It is no longer a renewable supply that can be sustained into the future, and absent restriction of all non-Pueblo uses, will never be replaced. Experts agree that even if the U.S. enjoined upstream users, the water supply is so depleted that it would take decades for sufficient water to reach the Pueblos to meet minimal needs.

Over Appropriation & Depletion: Decreased Flows



Schematic of existing hydrology of the Rio San Jose Stream System

THIS LEGISLATION GIVES ACOMA A VERY DIFFERENT WATER FUTURE

H.R. 1304 will provide alternative water supplies available to the Pueblo, forgoing enforcement of the Pueblo's senior priority in time of shortage. Acoma will be required to give up the full senior priority that normally attaches to time immemorial rights in times of shortage. This is a loss to Acoma, but the ability to get wet water is a trade-off that Acoma is willing to make. Damages attributable to the U.S.' acts and failures to act on behalf of Acoma alone equal almost \$500 million.⁴¹ The greatest part of these damages goes to the cost of locating and bringing a wet water supply to the Pueblo that does not affect all the other water users in the Stream System. The promise of the 1924 Pueblo Lands Act to replace water lost water will be met. H.R. 1304 provides funding for feasibility studies to determine if water in the only presently unused aquifer in the Stream System can be sufficiently treated and transported to the Pueblo to provide a water supply equal only to what it consumptively used for irrigation in the past, the 1,870 historically irrigated acres. Even if this is not feasible, the same level of funding is required to locate, treat and maximize whatever sources can be found in the Stream System. It also provides funding for improvements to the water delivery systems of all users, Milan and Grants, and the Acequias at State expense, so that the present diminished water supply can be conserved and used more efficiently for all.

WITHOUT THIS LEGISLATION, THERE WILL BE ECONOMIC AND SOCIAL COSTS FOR THE UNITED STATES AND ALL WATER USERS IN THE STREAM SYSTEM

In the absence of settlement, the U.S. and the Pueblos will continue in court to quantify all of the Pueblo's water rights and enforce the Pueblo's full senior priority in times of shortage in the Rio San Jose Basin and in the Rio Salado. While that is going forward, the available water supply is being depleted beyond that necessary to sustain the Pueblo, much less other users in the Basin. As water supply is depleted, the costs, both social and economic, of enforcing the Pueblos' senior priority water rights increase significantly. 100 years ago, the U.S. Attorney General was told that it was necessary to take action to protect the Pueblos' ability to use their water. The U.S. failed to act for a very long time, and now the cost of pro-

⁴⁰ Homestake is now proposing to the National Remedy Review Board that the remediation effort be halted as complete remediation is characterized as unfeasible. See, National Remedy Review Board on EPA's Proposed Plan for Homestake Mining Company Superfund Site, CERCLA #NMD007860935. The Pueblo of Acoma opposes any determination that remediation should be excused.

⁴¹ The trespass damages and replacement costs were determined by Industrial Economics Incorporated, *Economic Damages to the Pueblo of Acoma Resulting from U.S. Actions and Failure to Prosecute Water Rights*, November 2020, The report has been shared with Congressional Staff and the United States. The replacement costs were updated as of April 25, 2022 based upon settlement agreement terms.

tecting and enforcing Acoma's ancient water right is much greater. H.R. 1304 brings something of much greater value to the Rio San Jose Stream System. It allows for full participation in water management decisions by all parties that must rely on this very scarce water supply. This is a water future that Acoma and its neighbors desperately need and support whole-heartedly.

Mr. BENTZ. Thank you. I thank the witnesses for their testimony, and will now recognize Members for 5 minutes each for questions. We will begin with Ms. Leger Fernández for 5 minutes.

Ms. LEGER FERNÁNDEZ. Thank you so very much, Mr. Chairman, and thank each of you for your testimony, once again highlighting the importance of working out collaboratively with your neighbors these water rights settlements, and the manner in which they actually allow you to exist on your reservations, that without water, it is both sacred, it is life, but it is also a lifeline to your own historic past.

Thank you, Chairwoman, for the history of what your people have gone through.

I would like to begin asking a question about the cost of litigation and the risk there versus the settlements, because it is expensive. Let's face it, \$12 billion is a lot of money. But these are a lot of settlements, and there are a lot of water rights that are being given up. And the question is, is this a fair deal? Is this a good deal for the United States?

Mr. Palumbo, could you kind of touch on that briefly of whether you think this is a fair deal, a good deal for the United States, and why, versus going through litigation?

Mr. PALUMBO. Thank you very much, Congresswoman. I am happy to answer that question.

A couple of matters with respect to costs. All of the bills in front of us today that I am speaking to we have analyzed fully with respect to litigation risk, litigation costs, versus settling a negotiated settlement. And we believe this is in the best interests of all the parties to proceed with a negotiated settlement.

More importantly are the benefits brought by a negotiated settlement to these Tribal Nations, these sovereign Nations are providing real wet water delivered to the reservation for the beneficial use for tribal members on their homeland. If we went down a litigation route, that would not necessarily happen. In fact, often in litigation wet water does not get delivered to the reservation, does not get put to beneficial use, does not bring equity to the situation with tribes across the American West.

So, we believe in the best interest fiscally and the best interest from an equity perspective, and that is why we support these settlements.

Ms. LEGER FERNÁNDEZ. And this is meeting our trust responsibility to the tribes to take the actions we are taking today.

I would also like to recognize Governor Madalena from the Jemez Pueblo; Lieutenant Governor Martinez from Laguna; Governor Shije from the Zia Pueblo, as well as the Gallup Mayor Bonaguidi. We didn't have enough room at the table. I know that, for example, Governor Vicente, oh, and Governor, thank you very much, are here to speak to these issues.

Governor Vicente, can you tell us a bit about the similarities? I know you have sat at the table with Laguna, you share the same water. But there are similarities of what you have been doing with Jemez and Zia, right? You have been working things out with your neighbors. And indeed, working things out on litigation that has been going on forever.

I was a brand new attorney 30 years ago when I had to litigate an appeal as to whether Laguna had lost all of its water rights. And I can't tell you how happy I am to be sitting here today with a bill that says we will settle these water rights. Imagine. I am not young, so that was a long time ago, and that case had been going on 10 years before that, and it was acrimonious. And now, you have worked it out. Can you just give us a quick snippet about what it is like to work out these difficult issues with people that you have also been litigating with, but they are also your neighbors?

Mr. VICENTE. Thank you for the question, Congresswoman Leger Fernández.

This was a very hard decision for Acoma. In the end, it is better to have adequate wet water than paper rights without a water supply. Experts tell us that, even if our senior priority was enforced, it would be decades before water reached Acoma because the stream system has suffered so much damage. The primary aquifer that fed the Rio San Jose had been severely depleted and contaminated. With each passing day, the limited, inadequate water supply to meet our seniority priority water rights evaporates.

Necessity required us to look at other means to provide water to our community. Collaborating with our neighbors to provide a water future for all required Acoma to give up its priority.

Ms. LEGER FERNÁNDEZ. Thank you.

And President Nygren, can you tell us why it is so important that we actually act quickly on the bill to extend the deadline for the Gallup Navajo pipeline?

What does that mean in terms of people actually being able to have water in their homes?

Dr. NYGREN. Thank you, Congresswoman Leger Fernández and the Subcommittee, as well as Chairman.

What is important about the Navajo Gallup water supply is that time is of the essence because I know the deadline is the end of this year, and we are trying to extend the deadline and, at the same time, really try to make up for some of the cost adjustments over the past several years for inflation, for the different types of designs that had to go into the new modern water treatment plants.

Again, this is a settlement from 2009, and then bringing it up to par of 2024 through 2029 is very critical because we have thousands and thousands of people that depend on this water delivery.

At the same time, you have the city of Gallup, who is also waiting on a permanent water supply. And also to really avoid tapping into groundwater supply, as well, to relieve some of that stress to move the communities forward. So, those are some of the critical things that we have to address.

Ms. LEGER FERNÁNDEZ. Thank you, President. I know you are here on four bills, which is a lot, but we don't have time to go into

that. My time has expired. And thank you, Navajo, for doing all that work on all of these water settlements.

I yield back.

Mr. BENTZ. Thank you. Congresswoman Stansbury is recognized for 5 minutes.

Ms. STANSBURY. Thank you, Mr. Chairman. And I just want to start by saying welcome to all of our tribal leaders, our council members, President, Governor, Chairwoman, Vice Chairman. Thank you for being with us. And thank you to all of you who traveled so many miles to be here today.

And I also want to say thank you to Chairman Bentz and to Chairman Westerman for holding this hearing, because we know that we can't advance these settlements without your support, and also to the staff who help make this possible. And, of course, to our fearless leader, Congresswoman Leger Fernández, and Chairman Grijalva, who have been leading the way for so many generations and years on this work.

In New Mexico, we say water is life. It also is culture, it is language. It is who we are. It is sacred. It is what sustains our communities. It is what sustains our farms. It is what sustains our bodies. It is what sustains our spirits, and it is what sustains our economies. And since time immemorial, our Tribal Nations and our Pueblo Nations have used those sacred waters to sustain themselves in all of those ways. Yet, the United States has failed to protect and to live up to our treaty and our tribal trust responsibilities to our Tribal Nations.

So, these bills are really about making good on those responsibilities, hopefully in some way righting the wrongs of the past, and really looking to the future of what comes next for our tribal communities.

And, Mr. Chairman, I would love to use the remainder of my time to give our tribal leaders who have traveled so far here today to each share about what do these settlements mean for your communities going forward, and why is it crucial that we pass them this year? Starting with Mr. Vice Chairman and going down the line.

Mr. ANDREWS. Thank you, Congresswoman Stansbury. That is, for me, a very simple question, because it has been way too long for our Tribe, our people to have a water infrastructure into areas that we have not. And as I stated earlier, I am one of the statistics, I am one of the people that are still having to haul water to my home.

There are several villages, or one for a very good example is our village of Orayvi, which is still inhabited, one of the oldest inhabited villages in the north continent. They are having problems with having to get water into their villages, as well.

But where we have water systems, water system infrastructure is antiquated. It has been a patchwork for many, many years by Indian Health Service. So, sporadically, when funds come in, different materials, of course, come in. And for that reason, there is patchwork in other areas where it should be a continuous infrastructure in the ground where it is a lot more feasible.

Ms. STANSBURY. Sorry, just one moment, Mr. Chairman.

Mr. Chairman, would you allow us the grace to give each of the tribal leaders a moment to answer? I know we are running short—

Mr. BENTZ. No, I will not, but you have your minute and 14 seconds. But I have been giving everybody an extra minute, so you will have 6 minutes. So, you can see yourself another 2 minutes.

Ms. STANSBURY. OK. Well, it is not for me, Mr. Chairman. It is for our tribal leaders who have traveled thousands of miles to be here today.

[Laughter.]

Mr. BENTZ. I am sorry, Ms. Stansbury. Your time is just like everyone else's.

Ms. STANSBURY. I understand.

Mr. BENTZ. It is not their time, it is your time, so continue. You have 2 minutes.

Mr. ANDREWS. OK.

Mr. BENTZ. Go.

Ms. STANSBURY. With all due respect, I thank you, Mr. Chairman.

Mr. ANDREWS. I believe I am about finished, so thank you for that question.

Ms. STANSBURY. Thank you.

Chairwoman?

Ms. LEWIS. Thank you, Congresswoman Stansbury, for this opportunity.

It is really important to the Yavapai-Apache Nation as you read through H.R. 8949, that we are looking to water is life, water is sacred, as everything you have touched on, it is correct for Native American people. Our common ground has been to let this river continue to flow because it not only helps the Verde River, the Verde Valley, it helps all of us downstream from us. And we do support that.

We are good stewards to the land. We are a good stewards to the water. It is very important, and also to be conservative, to be responsible, and to save from the pumping, and bring in the Cragin Pipeline into the Yavapai-Apache Nation with the drinking water facility, as well.

Ms. STANSBURY. Thank you, Madam Chairwoman.

Ms. LEWIS. Thank you.

Ms. STANSBURY. And we have 45 seconds for President and Governor.

Dr. NYGREN. Thank you so much. I think one of the things I want to say is thank you to the Committee here. With having a future with water, and to be able to plan for the future, it makes it easier for the Navajo Nation, Tribal Nations to continue to plan for the future so that we can make sure that we plan for economic development, for self-sufficiency, to build their own economies so that we can continue to uplift ourselves. And the only way to do that is to have a certain amount of water that we can plan for. So, thank you.

Mr. VICENTE. Thank you, Congresswoman Stansbury.

H.R. 1304 gives Acoma the financial resources to tap the last remaining unused water in the Rio San Jose stream system and put it to use. At the same time, it provides funding for infrastruc-

ture projects to greatly improve water use efficiently for all users in the system.

Ms. STANSBURY. Thank you, Governor, and thank you, Mr. Chairman, I appreciate it.

Mr. BENTZ. Thank you. The Chair recognizes Congressman Gallego for 5 minutes.

Mr. GALLEGO. Thank you, Mr. Chair.

Good afternoon and thank you to our witnesses for joining us today. A special thanks to those who traveled from my home state of Arizona to be here: President Nygren, Chairman Lewis, and Vice Chairman Andrews. It is great to have you here leading on issues of such high importance to our state.

Arizona has been a leader in water policy for decades, and tribes are critical partners in responsible, equitable water usage. As we develop new approaches to water conservation and management in the coming years, tribes' senior water rights must be represented, respected, and maintained. The settlements we are discussing today are an important step in making that happen.

The products of years of conversation, these water settlements are historic. I am honored to be a co-sponsor of both the Northeastern Arizona Indian Water Rights Settlement and the Yavapai-Apache Nation Water Rights Settlement Act. These types of productive, forward-thinking policies are exactly why I joined the Natural Resources Committee in the first place, and why I am proud to serve on both the Water, Wildlife and Fisheries Subcommittee and the Indian and Insular Affairs Subcommittee. I have been proud to lead congressional efforts to keep Arizona's water in Arizona, including pushing for cutting-edge technologies, promoting clean water on tribal land, and fighting exploitation of water resources, and more.

The bills in this hearing will work towards many of those same goals, and I am proud to support them. To highlight these important bills, I do have questions.

President Nygren, you mentioned in your testimony that approximately 30 percent of homes on the Navajo Nation do not have running water. Can you tell us a bit more about the water supply challenges on the Navajo Nation, including the economic and health burden it places on the Navajo people?

Dr. NYGREN. Thank you, Congressman Gallego, and I want to say thank you so much for everything that you do.

When it comes to the 30 percent of our people that live without running water, they travel miles and miles in a day and some of them are on monthly fixed incomes, but they really are stewards of the land so they continue to be there so that they can be proud of where they come from. But at the same time, one of the things that I have been trying to strive for the Navajo people is self-sufficiency, building a strong economy so that we can continue to have our own jobs, have our own employment, and really boost the economy of the Navajo Nation.

But in order to have more hotels, more retail, to increase tourism on the Navajo Nation we need that water supply so that people can continue to be proud to live on the Navajo Nation. And that is one of the things that when this water settlement does get passed by Congress, that not only is Navajo Nation going to benefit

economically, but the state of Arizona will continue to push some of those things forward so that we can uplift ourselves as a Nation, as the state of Arizona, and Tribal Nations.

As mentioned earlier, all the communities have signed on to this northeastern Arizona water rights settlement. Flagstaff, Show Low, the ranchers, the Nation, the Southern Paiute, the Hopi were unified behind this because we really want to make sure that we are unified so that we can build a better future for all of us because we share that area together. Thank you.

Mr. GALLEGO. Thank you, and you certainly are correct. You cannot get a better essence of pride until you visit the Navajo Nation. And since I have been going there for 19 years, I am glad that we are going to be able to finally get this done.

I also have to recognize, because if not, I will get jeered by my former classmate from college behind you, Ethel Branch, who is currently the Attorney General for the Navajo Nation, too. So, yes, she was a way better student than I was.

[Laughter.]

Mr. GALLEGO. And then Chairwoman Lewis, thank you again also for allowing me to visit your Nation and really taking me actually down to the river that is your sacred river a couple of weeks ago, and showing me in person why this matters. Can you explain how the construction of the Cragin-Verde Pipeline would impact the water security and economic well-being of the Yavapai-Apache Nation?

Ms. LEWIS. Thank you, Congressman Gallego, for your question, and thank you for your leadership and your service, I appreciate that.

Yes, it will benefit the Yavapai-Apache Nation in multiple ways. As shared previously, we would like to ensure that the Verde River continues to flow. We do not want it to dry up. That is our life, that is our culture, that is our religion, and that is what takes care of all of us.

Mr. GALLEGO. And Chairman, when you and I were there, you said some of the cultural events that happen. Can you give us a couple of examples for people to understand what actually happens there that is important to the life of an everyday person from your Tribal Nation?

Ms. LEWIS. Yes, absolutely. When our young ladies become women, we do a ceremony at Na'ii'ees, which is an Apache ceremony that our young maidens participate in, conduct. It is a way in which we are grown. And we do this along the river. It tests us in every possible way: the family, the young gal. And it shows her and teaches her to become a strong young woman.

Along the river, the importance of the river is specifically because we use baskets, we use the foods, we use the medicines, we use the trees, and the natural habitat that grow and live along the river. That is what provides for the people of the Yavapai-Apache Nation that we use in these ceremonies that are conducted by our young women and their families. So, it is important that we continue to feed it and it provide life. It provides life to the young maiden and brings her up into a young woman to provide for her family, and teaches her discipline, teaches her to be strong, and

teaches her in every possible way as she continues to grow, should she choose to have a family.

Mr. GALLEGO. Thank you, Mr. Chairman, I yield back.

Mr. BENTZ. I recognize Ms. Leger Fernández for——

Ms. LEGER FERNÁNDEZ. Ten seconds?

Mr. BENTZ. Yes, exactly.

Ms. LEGER FERNÁNDEZ. Mr. Chairman, I ask unanimous consent to enter into the record testimony from Taos Pueblo Governor Romero. They were intended to testify today, but were unable to make it.

Mr. BENTZ. Without objection.

[The prepared statement of Mr. Romero follows:]

PREPARED STATEMENT OF FRED L. ROMERO, GOVERNOR OF THE PUEBLO OF TAOS
ON H.R. 6599

Good afternoon Chairman Bentz, Ranking Member Huffman and members of the Committee. My name is Fred Romero and I am the Governor of Taos Pueblo.

I am here today to discuss H.R. 6599, the “Technical Corrections to the North-western New Mexico Rural Water Projects Act, Taos Pueblo Indian Water Rights Settlement Act, and Aamodt Litigation Settlement Act”. My testimony addresses Section 3, entitled “Authorization of Payment of Adjusted Interest on the Taos Pueblo Water Development Fund,” and Section 5(a) entitled “Section 509 of the Claims Resolution Act of 2010.”

1. Taos Pueblo

Taos Pueblo, *Tau-Tah*, the place of the Red Willows, is located in North-Central New Mexico. Our people, *Tauh tah Dainah*, have lived in the Taos Valley since time immemorial, and as the first users of the Valley’s water resources, constructed irrigation systems still in use today.

We have over 2,700 enrolled members. Our land base is approximately 111,372 acres, including farmlands and range lands in the Taos Valley and mountains with peaks reaching nearly 13,000 feet. Our Pueblo lands include a culturally important and hydrologically unique wetland that supports herbs, plants, clays, bison and other wildlife, and waterfowl essential to our traditional and ceremonial way of life. This wetland is known as the Taos Pueblo Buffalo Pasture.

Taos Pueblo is a National Historic Landmark and was designated a World Heritage Site in recognition of our enduring living culture.

2. The Taos Pueblo Indian Water Rights Settlement Act, Title V of the Claims Resolution Act of 2010 (P.L. 111-291)

In 2010, Congress enacted the Claims Resolution Act (P.L. 111–291), including Title V, the Taos Pueblo Indian Water Rights Settlement Act (“Settlement Act”). The Settlement Act recognized Taos Pueblo’s extensive water rights and authorized and approved the settlement negotiated among Taos Pueblo and other parties to the adjudication of the waters of the Taos Valley. The adjudication, entitled *State of New Mexico ex rel. State Engineer v. Abeyta and State of New Mexico ex rel. State Engineer v. Arrellano*, was filed in the United States District Court for the District of New Mexico in 1969. The adjudication includes three tributaries of the Rio Grande in northern New Mexico, namely the Rio Pueblo, Rio Lucero and Rio Hondo, or in our Tiwa language, the *Tuatah Bah-ah-nah*, *Bah bah til Bah ah nah*, and *Toohoo Bah ah nah*. Our Blue Lake Wilderness Area is a major part of the watershed for the streams in the adjudication.

The settlement was the product of decades of litigation and negotiation. It ends centuries of disputes between the Pueblo and our non-Indian neighbors. The Settlement Act authorized \$36 million in federal funding, with a State of New Mexico cost contribution in addition to this amount, for a number of “Mutual-Benefit Projects” tailored to resolve complicated disputes over specific water issues.

Section 505(a) of the Settlement Act also established the Taos Pueblo Water Development Fund to pay or reimburse costs incurred by the Pueblo for:

1. acquiring water rights;
2. planning, permitting, designing, engineering, constructing, reconstructing, replacing, rehabilitating, operating, or repairing water production, treatment

- or delivery infrastructure, on-farm improvements, or wastewater infrastructure;
3. restoring, preserving and protecting the Buffalo Pasture, including planning, permitting, designing, engineering, constructing, operating, managing and replacing the Buffalo Pasture Recharge Project;
 4. administering the Pueblo's water rights acquisition program and water management and administration system; and
 5. watershed protection and enhancement, support of agriculture, water related Pueblo community welfare and economic development, and costs related to the negotiation, authorization, and implementation of the Settlement Agreement.

The Settlement Act authorized \$50 million in a mandatory appropriation to the Taos Pueblo Water Development Fund and authorized appropriations of an additional \$38 million, as adjusted by such amounts as may be required due to increases since April 1, 2007, in construction costs, as indicated by engineering cost indices.

The settlement became final and enforceable on October 7, 2016 when the Secretary of the Interior published her finding in the Federal Register that all conditions precedent to enforceability had been fulfilled.

3. Pre-Enforcement Date Investment Prohibition

Typically, Federal Indian water rights settlement legislation authorizes Tribal settlement funds to be invested during the period of time from when the funds are deposited until they can be utilized on the settlement enforcement date. Yet our Settlement Act, and other affected Indian water rights settlement legislation enacted in 2009 and 2010, was unusual in that its directive to the Secretary to invest the Taos Pueblo Water Development Fund specified "*upon the Enforcement Date*," instead of upon the deposit date. Section 505(c), **Title V of the Claims Resolution Act of 2010** (P.L. 111-291). The result was the loss of millions of dollars in potential investment earning that could otherwise have accrued during the nearly six years between enactment and the Enforcement Date. But for the words "upon the Enforcement Date," those six years worth of investment earnings could have been available for implementation of our settlement.

4. Sections 3 and S(a) of H.R. 6599, "Authorization of Payment of Adjusted Interest on the Taos Pueblo Water Development Fund"

Section 3 of H.R. 6599 provides a technical correction to recover these lost investment earnings through an authorization to appropriate \$7,794,297.52 to the Taos Pueblo Water Development Fund. This technical correction will facilitate implementation of the settlement and will have substantial, tangible benefits to Taos Pueblo. The appropriations authorized by the technical correction will be subject to the authorized uses specified in Section 505(a) of the Settlement Act, such as water rights management and administration, surface water irrigation infrastructure improvements, and restoration of the Taos Pueblo Buffalo Pasture wetland.

Section 5(a) of H.R. 6599 makes clear that nothing in the legislation affects the previous satisfaction of the conditions precedent in Section 509(f)(2) of the Settlement Act, or affects the validity of the Secretarial finding published in the Federal Register on October 7, 2016, pursuant to Section 509(f)(1) of the Settlement Act, that such conditions precedent were fully satisfied.

Taos Pueblo is in full support of this legislation. We believe the Department of Interior supports Section 3 of H.R. 6599 based on our conversations with them during the development of this bill and in light of testimony for the Department of the Interior before the Senate Committee on Indian Affairs in support of a similar technical amendment for the Shoshone-Paiute Tribes' settlement legislation. In that testimony, Assistant Secretary of Indian Affairs Bryan Newland noted that "prohibiting investment until an enforceability date is reached is not common in Indian water rights settlements," and "as a matter of equity, [the Department] would support similar legislation to resolve this same issue in the four other Indian water rights settlements approved by Congress in 2009 and 2010." Our Taos Pueblo settlement is one of the settlements.¹

¹See S. Rept. 118-80—TECHNICAL CORRECTION TO THE SHOSHONE-PAIUTE TRIBES OF THE DUCK VALLEY RESERVATION WATER RIGHTS SETTLEMENT ACT OF 2023, S.Rept. 118-80, 118th Cong. (2024), at 3, notes 7 and 8, <https://www.congress.gov/congressional-report/118th-congress/senate-report/80/1>.

5. Conclusion

H.R. 6599 would correct an injustice in our original water settlement legislation and would provide funding to help put our water rights to use for the Taos Pueblo people. We ask that you support this technical correction amendment and move the bill expeditiously.

Thank you for the opportunity to testify. I'm happy to answer any questions from the Committee.

Mr. BENTZ. The Chair recognizes himself for 5 minutes.

Mr. Palumbo, I have a question regarding operation and maintenance. But before I get to that, the challenge, I suppose, in all these negotiations is whether or not there is enough water, particularly where so much time has passed since the *Winters* case, and so many third parties, non-Indian parties, have filed under state water rights frameworks, and now generations have passed. And in some interesting way, if that is the right word, you have multi-generation, non-Indian folk relying upon water rights, and then tribal folks wondering why the Federal Government hasn't gotten busy and done its job to sort out their *Winters* rights.

So, you, the Bureau of Reclamation, are stuck in the position of trying to help sort this out. In your opinion, as you look at these various settlement agreements, is there enough water?

And I know it is a broad question, and there are 12 agreements. There are lots of agreements. Give me your general take on it.

Mr. PALUMBO. Thank you, Chairman Bentz. Fundamentally, the answer is yes.

As part of the settlement process, there are three distinct teams that are established: an assessment team, a negotiation team, and an implementation team. Those earlier teams, part of the responsibilities they have is to determine if there is enough water to meet the demands of the settlement that might go into negotiation. There are studies that are conducted by the Bureau of Reclamation, as well as USGS and other scientific agencies to determine that enough water is available.

Also, as part of the settlement process in the negotiation, should lower priority water that might be at risk of not being available at any certain time, it is incumbent upon the United States to communicate that clearly as a good negotiator and in good faith that there is some water that might be of lower priority that might not be available in certain years, and that is part of the negotiation process.

But fundamentally, assessing if that water is available is incumbent upon us. And yes, we do do that. And yes, I am comfortable with the 12 settlements in front of us here this morning and afternoon that it is available.

Mr. BENTZ. Maybe another way of putting it is to say that when it is not available, that money is used to paper over the shortage. Is that a correct statement?

Mr. PALUMBO. Can you repeat that? I am sorry.

Mr. BENTZ. Maybe another way of saying it, if their water is not available, money is used, United States money, is used to paper over the shortage. Is that a correct statement?

Mr. PALUMBO. I would say, as part of the negotiation, if there were low-priority water, part of the settlement, that some consideration for lower-priority water versus higher-priority—

Mr. BENTZ. What I am doing is giving you an opening to say, as water diminishes, because that appears to be the case as it becomes drier, the cost of these settlements goes up. That is where I am really going with this question.

Mr. PALUMBO. Oh, correct.

Mr. BENTZ. Is that true?

Mr. PALUMBO. That is true. When water becomes more scarce, the dollar per acre-foot, so to speak, goes up for capital, and the O&M, and the whole delivered project.

Mr. BENTZ. Right. So, one of the reasons that we should be moving forward with these agreements is that they become more expensive the longer we wait. Is that a correct statement?

Mr. PALUMBO. That is a correct statement for a number of reasons. The one you identified—

Mr. BENTZ. Right. Well, other than the ever-increasing cost of infrastructure, what else? Less water? That is where I am really going with this.

Mr. PALUMBO. Yes. As the climate changes, aridification progresses, there is less water available, time is—

Mr. BENTZ. Well, how about an over-estimation of how much water there actually was?

For example, the Colorado. Now, all of a sudden, we suddenly realize it is not there. Is the government going to be picking up the cost of that miscalculation somewhere inside these agreements?

Mr. PALUMBO. Yes. Fundamentally, it is a cost of negotiating now based on what we believed 100 years ago might be available, for example, in the Colorado River. It is not materializing, so the need to work with a smaller amount of water just inherently, from a supply and demand perspective—

Mr. BENTZ. Let's hop ahead. Forgive me for cutting you off, but I have another question for you.

The O&M costs that go with the infrastructure that is going to be contemplated and ultimately constructed, do you, as an agency, try to figure out how they are going to be paid? Because the idea is that they would not be included in the money generated by the Federal Government handed to anyone in the tribal parts of these agreements.

Mr. PALUMBO. Yes. As part of many water rights settlements, economic development plans are part of that assessment. And we have determined whether or not a period of time of O&M offset is warranted in these particular cases. We did just determine for a period of time until the customer base can grow large enough to pay for the O&M costs of the project, so that is why these trust funds were part of the settlements to defray for a period of time the costs—

Mr. BENTZ. I understand, and I appreciate that. It would be helpful if you would provide us with the Department's estimate of what the increasing cost might be each year. It doesn't have to be precise. Maybe a general statement so that we have it available as we are encouraging the Members of Congress to join us in trying to reach a support for these settlement agreements.

So, I want to thank everybody for being here and taking the time to join us today. And these agreements, I have a long-term understanding of how they work, and how much incredible effort has been put in to try to put them together, I really do. And I really, really appreciate all of you being here to try to help move this forward.

With that, I thank all of you for your testimony and the Members for the questions. The members of the Committee may have some additional questions for the witnesses, and we will ask you to respond to these in writing. Under Committee Rule 3, members of the Committee must submit questions to the Subcommittee Clerk by 5 p.m. Eastern Time on Friday, July 26. The hearing record will be held open for 10 business days for these responses.

Without objection, the Subcommittee stands adjourned.

[Whereupon, at 1:35 p.m., the Subcommittee was adjourned.]

[ADDITIONAL MATERIALS SUBMITTED FOR THE RECORD]

PREPARED STATEMENT OF MARK MANOUKIAN, ST. MARY REHABILITATION WORKING
GROUP
ON H.R. 7240

My name is Mark Manoukian. I live near Malta Montana and irrigate alfalfa and grass hay with water from the St. Mary project and the Milk River. Without water from the St. Mary project, the Milk River would run dry 6 out of 10 years. I support passage of H.R. 7240 to repair the St. Mary project.

Since 2003, I have been a member of and in 2014 became the Co-Chair of the St. Mary Rehabilitation Working Group. This 15-citizen member group comprises municipalities, irrigators, recreationist, and members of the Fort Belknap and Blackfeet Tribes. This group was formed to raise awareness of the potential loss of the Federal Irrigation System managed by the Bureau of Reclamation. We have known since 2003 it was in emanate danger of catastrophic failure. Our main goal was to "Address the needs of the St. Mary project before it suffers a catastrophic failure".

The water I and 700 other family farms use travels from Glacier Park through a 29-mile canal, which contains the St. Mary siphons and Halls Coulee siphons. On June 17, 2024 the St. Mary siphon system failed and water transfers to Fresno Reservoir halted. Water from Fresno Reservoir provides drinking water to 18,000 people in Havre, Chinook and Harlem, and irrigation water to 140,000 acres. We have the ability to feed more than 1,00,000 people annually with this water.

As a member of the working group for 21 years I was keenly aware of the damage that a broken siphon could do. This siphon failure deposited more than 100,000 cubic yards of dirt from erosion from the 8-foot pipe discharging 300 cubic feet per second of water into the St. Mary River.

H.R. 7240 not only settles the Federal part of the Fort Belknap Tribal Water Compact; it will provide needed funding to fix the 110-year-old St. Mary project.

One thing that is overlooked in the recent disaster is that through the 1921 Order, which is the document that splits the water between the US and Canada on the St. Mary River, the legal right of the US is to divert 850 cubic feet per second during the irrigations season. In 2003, when we started the working group, due to loss of canal capacity, through degradation, the project was only able to divert 700 cubic feet per second. Today, this degraded system is only capable of transferring 600 cubic feet per second. Through our own neglect, St. Mary Canada receives 250 cubic feet per second during the diversion season of US water. This is enough water to irrigate 20,000 acres in Montana annually.

Our cost share on this Federal Project is 75% for irrigators and the Bureau of Reclamation contributes 25%. With a Safety of Dams repair currently on Fresno Reservoir and the loss of the siphons, irrigation cost for the 700 family farms is estimated to increase \$1.5 and \$5.41 per acre respectively, for less water. Water is not estimated to be available until August of 2025. The loss of production will impact 20,000 head of cattle. Some farms may not be able to overcome these mounting costs.

H.R. 7240 funding will be a game changer in providing much needed repairs to the St. Mary system and modernizing our irrigation project so we can use our legal entitled US water amount, 850 cubic feet per second. Without immediate repairs to this 110-year-old system, the communities of Havre, Chinook and Harlem will literally have no potable water and 140,000 acres will be turned into to dryland farm ground.

I recommend passage of H.R. 7240 and thank the committee for this time to testify on this important water project.

QUESTIONS SUBMITTED FOR THE RECORD TO MARKO MANOUKIAN, CO-CHAIR, ST.
MARY REHABILITATION WORKING GROUP

Questions Submitted by Representative Rosendale

Question 1. You have spent over 20 years working to provide these necessary upgrades to the St. Mary system.

1a) What did that process look like, and why has it taken so long to get these necessary fixes?

Answer. For the first 15 years we met monthly and sent appropriations request to Congress, but most of the time Continuing Resolutions prevented funding. On September 1, 2006 the Senate Energy and Natural Resource Committee held a field hearing in Havre Montana. <https://www.energy.senate.gov/hearings/2006/9/hearing-87F595CE-90A3-4243-8F72-00EFCE80BFDE>. No federal action came from any of these efforts. H.R. 7240 is the best chance for funding rehabilitation of the St. Mary/Milk River project.

1b) What will the local economic impact be if this bill passes and the St. Mary Canal receives the improvements included in this bill?

Answer. We could modernize the St. Mary project, increasing our water flow 30% to our legal right of 850 cubic feet per second. The 18,000 people living in Havre, Chinook, Harley and Fort Belknap would not have to ration water.

Question 2. This bill's main intention is to help settle Fort Belknap's water rights. How does the St. Mary system come into play with these rights and claims?

Answer. Page 31 of the State of Montana compact with the Fort Belknap Tribe it states that the flow of water from the St. Mary project "is essential to the permanent success of the compact". On page 33 the compact further states if the St. Mary project suffer permanent or long-term loss "the Parties may seek a remedy in court . . ." effectively negating the compact.

Question 3. How has the recent failure at the St. Mary Canal affected the local communities that rely on this system for their water needs?

Answer. Right now, we will only irrigate half, 70,000 of the 140,000 acres due to the siphon collapse for a second irrigation in 2024. It is proposed that in 2025 we will have possibly a two-week irrigation season in June. It takes 40 days to irrigate the Milk River project once, so essentially no water in 2025. I have livestock, both cattle and sheep. With the irrigation shortage and loss of production in 2024 and in 2025, I plan to purchase hay from dryland farmers for fall of 2025. Many of the 700 family farms may not be able to overcome the production losses and added cost.

3a) The Bureau of Reclamation estimates that this system will not be up and running again until the fall of 2025. What is the impact of this on the communities affected?

Answer. It literally means that the 18,000 people in the towns of Havre, Chinook, Harlem, and Fort Belknap Agency may not have domestic water in the spring and summer of 2025. Production from the 140,000 acres will be close to Zero.

3b) Is there anywhere else the local communities can turn to meet their water needs?

Answer. The towns have no alternate source of flowing water or well water to access for domestic use. Currently, Haver has a ban on non-essential water use and noted it is due to the siphon collapse on the St. Mary project <https://www.ci.havre.mt.us/>. The Milk River basin is closed, so drilling and irrigation wells is prohibited.

3c) Where will your community turn if the Milk River runs dry, as you mentioned happens 6 out of every 10 years?

Answer. From Havre to Nashua, communities will shrink and businesses and schools will disappear.

Question 4. As it currently stands, the local communities are responsible for \$34 million, with \$26 million of that amount being interest-bearing, for the repairs to the St. Mary Canal. How will this financial burden affect the local communities?

Answer. As I mentioned in my testimony, the cost of the siphon repair will be \$5.41 per acre. The terms of the contract are not finalized by the state, but this cost will be for 30 to 50 years. For no water in the first year. It is not economically sustainable. This funding does not address the canals degradation. We must address this to restore our legal right to water, 850 cubic feet per second, and that cost more money, maybe \$150 million. So, the passage of H.R. 7240 is critical.

Submissions for the Record by Rep. Bentz

Colorado River Authority of Utah
Salt Lake City, UT

August 6, 2024

Hon. Cliff Bentz, Chairman
Hon. Jen Kiggans, Vice Chair
House Committee on Natural Resources
Subcommittee on Water, Wildlife and Fisheries
1324 Longworth House Office Building
Washington, DC 20515

Re: Testimony of the State of Utah on H.R. 8940, Northeastern Arizona Indian Water Rights Settlement Act

Dear Chairman Bentz, Vice-Chair Kiggans and Members of the Committee:

My name is Gene Shawcroft, and I serve as the Utah Colorado River Commissioner. In this capacity, I am the Utah Governor's representative on matters involving the Colorado River. Utah supports the efforts of the settling parties to resolve the water rights claims of the Navajo Nation, the Hopi Tribe, and the San Juan Southern Paiute Tribe through negotiated settlements. The State successfully negotiated its own settlement with the Navajo Nation in 2015, which was authorized by Congress and signed into law by the President in 2021 (Navajo-Utah Water Rights Settlement, PL 116-260). Currently, Utah and the Nation are working closely on the implementation of the Navajo-Utah Settlement. Notwithstanding our support for a full and equitable resolution of the claims of these three sovereign Tribes, Utah has several concerns regarding H.R. 8940, *Northeastern Arizona Indian Water Rights Settlement Act*, which was heard by the Subcommittee on Water, Wildlife and Fisheries on July 23, 2024. Accordingly, we request your consideration of our testimony.

I. San Juan Southern Paiute Tribe Lands and Associated Water Rights

A key aspect of H.R. 8940 is the proposed establishment of a reservation for the San Juan Southern Paiute Tribe. Utah is generally supportive of the establishment of a reservation for the San Juan Southern Paiute Tribe pursuant to the Treaty between the Tribe and the Navajo Nation. Furthermore, it is the policy of the State to support negotiation of federally reserved water right claims and to oppose any designation of public lands that does not quantify associated federally reserved water rights claims.¹ Nevertheless, the State believes the establishment of the reservation as described in H.R. 8940 may have significant implications for Utah. As currently proposed, the San Juan Southern Paiute reservation would contain two distinct, non-contiguous parcels of land within the Navajo Nation identified as the "Northern Area" and the "Southern Area." While not explicit in H.R. 8940, the legislation references a map² showing that the Northern Area of the proposed reservation is comprised of lands wholly within Utah. Utah is concerned that the portion of the proposed reservation in Utah may affect existing interests in land and water rights as well as other resources in the state.

Perhaps as a result of the exclusion of explicit references within H.R. 8940 to Utah lands within the proposed reservation, the legislation provides scant detail regarding water rights on the Northern Portion of the proposed reservation. By contrast, H.R. 8940 goes into great detail on water rights for the Southern Area of the proposed San Juan Southern Paiute Reservation in Arizona. Specifically, H.R. 8940 fails to identify whether the Northern Area of the reservation in Utah would be entitled to water rights, particularly federally reserved water rights, or whether that portion of the reservation would receive water service from the Navajo Nation under the Navajo-Utah Settlement or from another entity.

¹ Utah Code § 73-1-21(1)(c).

² San Juan Southern Paiute Northern Area at Exhibit 3.1.146 of the Settlement Agreement. See H.R. 8940 at Sec. 3(82).

While H.R. 8940 appears to attempt to limit its effect to water rights within Arizona, Utah believes there is substantial ambiguity surrounding water rights in Utah. The state of Utah is neither a party to the settlement nor has the state been involved in discussions on the establishment of the Tribe's reservation. Therefore, prior to further Committee consideration of H.R. 8940, Utah would seek additional clarity on the Northern Area of the proposed new reservation. Specifically, Utah requests additional information on the potential for water rights claims by the Tribe in the state and possible implications of the establishment of the reservation for existing water rights, interests in land and other public resources in Utah.

II. Utah State Engineer Jurisdiction

H.R. 8940 contemplates the diversion of Navajo Nation (Navajo) and Hopi Tribe (Hopi) Upper Basin Colorado River Water (Upper Basin water) in Utah and New Mexico for use in Arizona that derives from Arizona's allocation under the 1948 Upper Colorado River Basin Compact (1948 Compact). However,

H.R. 8940 does not require approval by either state for such diversions. Any diversion of water in Utah is subject to the regulation by the Utah State Engineer, who has exclusive jurisdiction over the use, diversion, and distribution of water in the state.³ Moreover, pursuant to the 1948 Compact, any use of Upper Basin water "shall not interfere with the right or power of any signatory state to regulate within its boundaries the appropriation, use and control of water."⁴ Accordingly, we request that H.R. 8940 be amended to clarify that it does not preempt Utah law governing the regulation of water use or contravene the 1948 Compact.

III. Accounting

H.R. 8940 requires accounting for the delivery and use of both Upper Basin and Lower Basin Colorado River water. However, the legislation does not require accounting for Upper Basin water that is not fully consumptively used by the Navajo or Hopi. In order to comply with the terms of the 1922 Colorado River Compact,⁵ it is Utah's position that any portion of the Upper Basin allocation that is not fully consumptively used by either Tribe must be accounted for as though it had passed Lee Ferry.

Moreover, H.R. 8940 states that any storage of Upper Basin water in New Mexico reservoirs shall be credited against Upper Basin water in the year in which the diversions for storage in the reservoirs occur. It is not clear whether or how Upper Basin water stored in New Mexico reservoirs pursuant to H.R. 8940 will be accounted for when that water passes Lee Ferry. Clarification of these accounting issues is fundamental to Utah's position on H.R. 8940.

IV. Proposed Place of Use of Upper Basin water

H.R. 8940 expressly authorizes the consumptive use of Upper Basin water by the settling Tribes at any location within Arizona. Utah supports this provision as it has been our longstanding position that any Colorado River Basin state may use its allocation of Colorado River water at any location within the geographic boundaries of its state. We are concerned, however, that this language may create the inference that the right to use Colorado River water anywhere within a particular state is limited to the settling Tribes. We therefore request additional language in the legislation confirming that any Colorado River Basin state may use its Colorado River allocation within the geographic boundaries of that state.

V. Secretarial Distribution of Upper Basin water

H.R. 8940 provides for contracts between the Secretary of Interior (Secretary) and the Navajo and Hopi for the storage and delivery of both Upper and Lower Basin water. The legislation further requires that such contracts identify mechanisms for delivery of the water. Neither the Secretary nor the Tribes have the authority to distribute water within Utah. Rather, that authority resides exclusively with the Utah State Engineer. Moreover, H.R. 8940 requires that water delivery contracts for Navajo Upper Basin water shall identify one or more points of diversion in Utah. Once again, any diversion of Upper Basin water in Utah for use in Arizona is subject to the jurisdiction and approval of the Utah State Engineer.

³ See Utah Code § 73-2-1.

⁴ Article XV(b), Upper Colorado River Basin Compact.

⁵ Article III(a), Colorado River Compact.

In summary, the state of Utah supports the efforts to secure a fair, equitable, and final settlement of the claims to water in Arizona for the Navajo, Hopi, and San Juan Southern Paiute Tribes. However, before we can support the settlement embodied in H.R. 8940, the state requests additional consultation on the issues we raise herein. We welcome an opportunity to work collectively with the state of Arizona, the Tribes and the other settling parties to identify solutions that are consistent with state and federal law and that will ultimately benefit the Colorado River Basin as a whole.

Very truly yours,

GENE SHAWCROFT, P.E.,
Colorado River Commissioner
State of Utah

Submissions for the Record by Rep. Grijalva

Statement for the Record

**Becky Daggett, Mayor
City of Flagstaff**

on H.R. 8940, Northeastern Arizona Indian Water Rights Settlement Act of 2024

Chairman Westerman, Ranking Member Grijalva, Members of the Committee and distinguished guests, thank you for the opportunity to provide testimony supporting H.R. 8940, the Northeastern Arizona Indian Water Rights Settlement Act of 2024 (NAIW RSA) for the settlement of water rights claims of the Navajo Nation, the Hopi Tribe, and the San Juan Southern Paiute Tribe, and for other purposes. The City of Flagstaff (“Flagstaff”) is honored and excited to support the H.R. 8940, especially given that the City is home to many Tribal members.

Flagstaff and various other parties are actively engaged in multiple court cases styled, *In Re: The General Adjudication of All Rights to Use Water in the Little Colorado River General Adjudication*, CV 6417 (“Adjudication”); and *In re: Hopi Reservation HSR*, Contested Case No. CV 6417-203; and *In re: Navajo Nation*, Contested Case No. CV 6417-300. Through H.R. 8940, this historic settlement agreement would resolve protracted and expensive litigation over the Tribes’ water rights claims among the Navajo Nation, the Hopi Tribe, the San Juan Southern Paiute Tribe, the United States acting as trustee for the Tribes, Flagstaff, Salt River Project, as well as other towns and communities and private parties in the Little Colorado River Adjudication. Likewise, H.R. 8940 would confirm certain surface water rights and groundwater rights for non-federal parties, including Flagstaff at Red Gap Ranch.

The Northeastern Arizona Indian Water Rights Settlement Agreement (the “Agreement”) dated as of May 9th, 2024, was unanimously approved by the Hopi Tribe on May 20, 2024, and the Navajo Nation and the San Juan Southern Paiute each unanimously approved the Agreement on May 23, 2024. Flagstaff determined it is in the best interests to enter into the Agreement to end protracted and costly litigation related to these water rights claims and unanimously approved the Agreement on July 2, 2024.

If approved by Congress, H.R. 8940 will provide funding for long-overdue water supply projects for the Navajo Nation, the Hopi Tribe, and the San Juan Southern Paiute. Flagstaff knows all too well that access to potable water in the region is very costly because of distance, challenging geology and depth to water, and naturally occurring poor water quality. Federal funding for water supply projects is fundamental to ensuring the stability of our Tribal communities and the region. Hauling water is not a viable option for anyone, and inadequate infrastructure among our Tribal Partners must change for the better. Flagstaff supports H.R. 8940 because it will not only end litigation, it will also ensure the success of the needed water supply projects identified by our Tribal Partners for their respective reservations.

When settlement negotiations first began in the mid-1990s, Flagstaff’s population was less than 50,000. As the largest community in Northern Arizona, Flagstaff’s population is approaching 80,000 residents and hosts more than six million visitors each year. Flagstaff provides core services to its citizens, and water is among them. Over the past 100 years, Flagstaff has actively engaged in providing reliable and sustainable water supplies to meet current and future demands. While growing, Flagstaff has reduced its water usage rate from 186 gallons per person to day to less than 90 gallons per person, per day. Flagstaff consistently receives awards for its laudable water management and reuse efforts, including EPA WaterSense awards, the Wyland Foundation National Mayor’s Challenge for Water Conservation, and Gold status from the Alliance for Water Efficiency Utility Leadership Board.

Conservation and reuse of water, while commendable and necessary, cannot reasonably meet Flagstaff’s core services of providing reliable and sustainable supplies for future demands. Every year Flagstaff continues to improve its water efficiency and continues to implement and explore water reuse alternatives. Through water reuse alone, Flagstaff was able to cut its potable water use by 20 percent. The City remains an advocate for expanding reuse opportunities through potable reuse alternatives as demonstrated through its Council-adopted policy on reuse, community engagement, and participation in state-wide initiatives. While the Arizona regulatory rules that prescribe how potable reuse options are being

developed, water reuse for Flagstaff does not resolve the shortfall that will occur in the future. Water efficiency prolongs water sources but does not create new water on which Flagstaff can continue to rely on for future growth.

Additional water supplies are critically needed due to climate variables, wildfires, water resiliency and water security for the region. The extended drought and local wildfires have severely impacted Flagstaff's ability to rely on local surface water supplies to meet existing demands. Currently, 76 percent of Flagstaff's water supply is located outside Flagstaff's service area on heavily forested USFS lands that are at high risk to wildfires. In 2022 this became a reality for Flagstaff when a fire damaged a portion of Flagstaff's water supply, rendering it inaccessible until the waterline could be repaired.

Significantly, H.R. 8940 also recognizes Flagstaff's Regional Water Supply Project at Red Gap Ranch ("Regional Water Supply Project"), its existing wells and provides for points of access to the Regional Water Supply Project. Flagstaff purchased Red Gap Ranch in 2005 to secure a longer-term water future after drought triggered a city-wide water emergency the previous year. The Regional Water Supply Project would provide redundancy to the southwestern Navajo Nation and Flagstaff's water supplies, further mitigating the risk of drought, wildfire, and watershed degradation of Flagstaff's water resources. The versatility of the Regional Water Supply Project will bring opportunities along the I-40 corridor among lands within the Navajo Nation, and also lands owned by the Hopi Tribe. The regional nature of the project would afford long-term water security for the greater Flagstaff area in the decades to come.

Flagstaff signed the Agreement with the understanding that Paragraph 9.0 of the Agreement establishes two Buffer Zones; of which the vast majority of Red Gap Ranch is located, and only one parcel of Red Gap Ranch fee land is located outside of these Buffer Zones. Paragraph 9.0 of the Agreement further provides for the right to use groundwater from Existing Wells in the two Buffer Zones. Existing wells located in Buffer Zone 1 and 2 as of the Effective Date will be catalogued by the Arizona Department of Water Resources based on the capacity of the well or well casing sizes provided in Table 1 of subparagraph 9.4.1. In Buffer Zone 1 on Red Gap Ranch the City owns eleven (11) Existing Wells with a total pumping capacity of 2,912 acre-feet per year and in Buffer Zone 2 Flagstaff owns sixteen (16) Existing Wells with the total pumping capacity of no less than 15,803 acre-feet per year and up to 19,003 acre-feet per year. Paragraph 9.0 of the Agreement also allows for the replacement of Existing Wells and for the drilling of New Wells, subject to certain requirements. There are no restrictions on withdrawals of groundwater from Existing Wells, or New Wells drilled outside the Buffer Zones. Importantly, key waivers were negotiated to limit future claims based on injury to water due to the movement of salinity and naturally-occurring contaminants in the aquifers from groundwater pumping. As part of Paragraph 9.0 of the Agreement, the Arizona State Land Department agrees to coordinate with Flagstaff regarding the drilling of wells on ASLD parcels in and around Red Gap Ranch for the benefit of the Regional Water Supply Project.

The Regional Water Supply Project is a critical component of Flagstaff's future water supply and necessary for the Flagstaff's water resiliency and water security needs. The Regional Water Supply Project is also an important component of the Agreement because Paragraph 12.0 allows the Navajo Nation to have access to the Regional Water Supply Project by entering into Water Supply Contracts with Flagstaff as described in the Agreement. Nothing in the Agreement prohibits Flagstaff from entering into Water Supply Contracts with the Hopi Tribe, ASLD, ADOT or others wanting access to the Regional Water Supply Project.

The 35-mile alignment of the Regional Water Supply Project from Red Gap Ranch will follow Interstate-40 within the ADOT Right-of-Way, and then continue along county and Forest Service roads to reach Flagstaff. The Regional Water Supply Project can deliver 16,000 acre-feet of water. Importantly, the Regional Water Supply Project can be accessed by the Navajo Nation, the Hopi Tribe, the Arizona State Land Department, and others at the ADOT interchanges along the I-40 corridor or at other mutually beneficial locations. Flagstaff is also exploring an integrated approach to the Regional Water Supply Project, including the installation of solar power generators to help achieve Flagstaff's carbon neutrality vision. Through H.R. 8940, the Navajo Nation and Hopi Tribe would have access to these critical water and energy sources.

Flagstaff acquired Red Gap Ranch, located approximately 35 miles east of the City, for the purpose of developing its future municipal water supply and to provide water resiliency and water security for its residents, with 71 percent voter approval. Flagstaff has invested millions in the Regional Water Supply Project to date and continues to invest in its development by conducting engineering feasibility studies,

design plans, hydrology studies, including the drilling of no less than 10 wells at Red Gap Ranch for municipal use that are also recognized as part of H.R. 8940. The Regional Water Supply Project will be critical to Flagstaff's future as there will likely be a reduction to snowpack and recharge to Flagstaff's wellfields and would provide for resiliency from catastrophic forest fires, and the security of a long-term water supply.

A Phase II Feasibility Study for the Regional Water Supply Project has been released and was discussed at Flagstaff's Water Commission meeting on July 18, 2024. Flagstaff continues to identify, in coordination with the Arizona Department of Transportation, and with further anticipated input from regional participants including the Navajo Nation, the Hopi Tribe and the Arizona State Land Department, various Points of Access to the Regional Water Supply Project at ADOT intersections along the Interstate 40 corridor, or at other mutually beneficial locations.

To further the development of the Regional Water Supply Project, Flagstaff is seeking funding on a cost-share basis. Although parties may express concern about adding funding to the legislation for the Regional Water Supply Project from Red Gap Ranch, it would be logical to include such funding in the Congressional approval based on the benefits that this truly Regional Water Supply Project brings.

The Red Gap Ranch Regional Water Supply Project is nearly shovel ready and can supply precious water to key parties in this settlement. Flagstaff's investment in the feasibility study and design based on the I-40 alignment has put the Regional Water Supply Project substantially advanced in the design of other projects. This is important because the Regional Water Supply Project from Red Gap Ranch will also provide for economic development opportunities for the Navajo Nation, the Hopi Tribe and the State of Arizona (ASLD and ADOT) along the I-40 Corridor.

It is anticipated the Regional Water Supply Project could be built in three segments at a total cost of \$575 million. Flagstaff has initiated outreach as part of the Phase III Feasibility Study to the U.S. Bureau of Reclamation to engage the Navajo Nation, Hopi Tribe, Arizona State Land Department and other stakeholders in a development planning process for the Regional Water Supply Project. Flagstaff has committed to cost-share an allocation of federal funding required to develop the Regional Water Supply Project. Funding for the Regional Water Supply Project will benefit the water supply of key parties in the region.

In conclusion, we ask that the Committee add the critically important Red Gap Regional Water Supply Project to H.R. 8940 during the mark-up of this legislation to bring needed water to key parties in the region. To be clear, this request from the City is not in competition with funding among the Tribe's water supply projects, and should not be construed as such. The Tribe's water supply projects are needed and long-overdue. Rather, the City's request is for funding a complimentary Regional Water Supply Project that will deliver real and supplemental water supplies needed in the region.

The City strongly supports our Tribal Partners and other parties in a unified effort to move H.R. 8940 forward as it will finally resolve long, drawn out and expensive litigation while providing important solutions that will secure our Tribal Partners and cities in Northeastern Arizona with indispensable future water supplies.

As Mayor of Flagstaff, I thank you for the opportunity to provide this testimony in support of this legislation.

Submissions for the Record by Rep. Hageman

**State Engineer's Office
Cheyenne, Wyoming**

July 22, 2024

Hon. Cliff Bentz, Chairman
Hon. Jared Huffman, Ranking Member
House Natural Resources Committee
Subcommittee on Water, Wildlife and Fisheries
1324 Longworth House Office Building
Washington, DC 20515

Hon. Harriet Hageman
Representative, State of Wyoming

Re: House Natural Resources Subcommittee on Water, Wildlife and Fisheries July 23, 2024, Legislative Hearing on Northeastern Arizona Indian Water Rights Settlement Act of 2024 (H.R. 8940)

Dear Representatives Bentz, Huffman, and Hageman:

My name is Brandon Gebhart, and I am the Wyoming State Engineer and the Wyoming Governor's representative regarding the Colorado River. I am writing on behalf of the State of Wyoming to express some of Wyoming's concerns regarding the Northeastern Arizona Indian Water Rights Settlement Act of 2024 (H.R. 8940). Wyoming supports the efforts of Arizona, the Navajo Nation, the Hopi Tribe, the San Juan Southern Paiute Tribe, and the United States to comprehensively settle the water rights claims of those Tribes. However, various provisions of H.R. 8940 raise significant legal and technical concerns which will impact Wyoming and the other Basin States¹ which rely on the Colorado River, and which must be resolved prior to approval of the settlement.

Tribal water right settlements are extremely complex and difficult undertakings. The settlement offered by H.R. 8940 is certainly no exception. In fact, the typical complexities and difficulties are amplified due to the settlement's direct relation to elements of the "Law of the River." The nexus between the proposed settlement and the Law of the River, and the uncertainty about how provisions of the settlement will operate under the Law of the River, form the bulk of Wyoming's concerns.

The Law of the River is a complex legal framework negotiated, litigated, and developed over the last one hundred years. It apportions the beneficial consumptive use of water from the Colorado River system between the Upper and Lower Basins, among the seven Basin States, and between the United States and Mexico. The Law of the River also establishes the States' legal obligations, rights, and interests in the Colorado River Basin. The Basin States, including Wyoming, rely on the certainty of the Law of the River to effectuate and protect those obligations, rights, and interests, and to supply water to millions of people and millions of acres in the Colorado River Basin under various hydrologic conditions.

Each Basin State, including Wyoming, is affected by, and has been closely involved in, the development of the Law of the River. They have negotiated interstate compacts, litigated over the management and allocation of Colorado River water, and helped develop federal laws and regulations concerning the Colorado River system. The Basin States have also helped negotiate a water treaty with Mexico, implemented drought mitigation and salinity control measures in the Basin, and carried out environmental programs to recover endangered species endemic to the Basin. Every aspect of Colorado River water management, allocation, and operation affects the Basin States' interests.

¹The Colorado River and its tributaries supply water to the Upper Division States of Colorado, New Mexico, Utah, and Wyoming, and the Lower Division States of Arizona, California, and Nevada. Collectively, the Basin States.

The foundation of the Law of the River is the 1922 Colorado River Compact. The 1922 Compact divides the water of the Colorado River System between the Upper Basin and the Lower Basin. It apportions the “exclusive beneficial consumptive use” of water to each Basin, and clearly separates the two Basins to accomplish its purposes. Dividing the whole basin into two halves provides the fundamental framework for much of the law which has followed, and plays a significant role effectuating and protecting the Basin States’ obligations, rights, and interests.

The clear line of separation between the two Basins does not follow state lines. The large majority of Arizona lies within the Lower Basin. Arizona has a separate, exclusive right to use Colorado River water within that portion. But a portion of Arizona’s northeast corner lies within the Upper Basin. Within that northeast corner, Arizona has the exclusive right to use the 50,000 acre-feet of water per year apportioned to it under the 1948 Upper Colorado River Basin Compact.

The settlement proposed by H.R. 8940 blurs the clear line of separation between the two Basins and will therefore impact the Basin States’ obligations, rights, and interests. It provides for the ability to use water apportioned to the Upper Basin within the Lower Basin. The primary reason driving this outcome is simple—a large portion of the affected Tribal reservations lie within the Lower Basin portion of Arizona. But the proposed settlement goes even further. It would also allow Upper Basin apportioned water to be used outside of the affected Tribal reservations within the Lower Basin portion of Arizona, for lease and exchange, delivered through non-tribal facilities to non-tribal uses. This marketing authorization ensures almost immediate use and the following immediate impacts. Even further, the proposed settlement provides for the delivery and accounting of Upper Basin water within the Lower Basin portion of Arizona water without first attempting to resolve the significant legal and technical issues the unprecedented proposal clearly, and predictably, raises. These concerns must be resolved, if possible, to avoid impacting Wyoming’s obligations, rights, and interests under the Law of the River.

Unless properly limited, the unprecedented proposed settlement also promises to produce unintended consequences. There have been multiple proposals throughout the years which attempted to blur the line which separates the Upper and Lower Basins. The Basin States, except in unique circumstances with clearly defined and agreed upon limitations,² have ultimately rejected those proposals. Many such proposals still exist, and those who speculate in water would welcome a dismantling of the protections provided to the Basin States’ rights and interests and their existing water uses. The circumstances associated with the settlement proposed by H.R. 8940 are undoubtedly unique, as are other circumstances in the Basin. But the proposed settlement, to the extent it impacts the obligations, rights, and interests of the Basin States, should be approved only if it can be adequately limited by provisions developed through a consensus of the Basin States.

In addition to the Law of the River concerns identified above, the proposed settlement also raises a concern which is fundamental to western water law. It appears to grant the Secretary of the Interior, or the Tribes, unprecedented authority over state water resources. The proposed settlement appears to grant the Secretary of the Interior broad authority over water courses in Colorado, New Mexico, and Utah, including the authority to transport and store the settlement water in those states.³ It also appears to grant authority for the diversion of the settlement water in New Mexico and Utah.⁴ Colorado, New Mexico, and Utah are not parties to the settlement, and it does not appear they have agreed to those settlement provisions. Unlike the situation in the Lower Basin, the Secretary of the Interior is not the water master in the Upper Basin. By its terms, the provisions of 1948 Upper Colorado River Basin Compact, which apportions the settlement water to Arizona, cannot interfere with the right of any state “to regulate within its boundaries the appropriation, use and control of water[.]”⁵ Additionally, beginning more than one hundred years ago, Congress has deferred to state water law as embodied in Section 8 of the Reclamation Act, Section 10 of the Federal Power Act, Section 101(g) and 101(b) of the Clean Water Act, and a myriad of other federal statutes. Any weakening of the deference to state water law would be inconsistent with over a century of cooperative federalism and a threat to water rights and water rights

² See Section 10603 of the Northwestern New Mexico Rural Water Projects Act, Public Law 111-11, March 30, 2009, 123 Stat. 1383.

³ For example, Section 6(f) of H.R. 8940.

⁴ For example, Section 6(b)(3)(a)(i) of H.R. 8940.

⁵ Article XV(b), Upper Colorado River Basin Compact.

administration in all western states. Wyoming strongly opposes any weakening of this long-standing federal deference to state water law.

Wyoming supports the efforts to complete the Tribal water rights settlement embodied in H.R. 8940. But, for the reasons outlined above, Wyoming cannot support H.R. 8940 as written. The complicated issues related to the Law of the River can only be resolved through consensus agreement of all the Basin States. Wyoming is willing and ready to work with the Basin States, the Tribes, congressional staffers, and Members of Congress to explore solutions which adequately address those issues.

With best regards,

BRANDON GEBHART, P.E.,
Wyoming State Engineer

Submissions for the Record by Rep. Schweikert

Statement for the Record

Leslie A. Meyers

Associate General Manager and Chief Water Resources
and Services Executive

Salt River Valley Water Users' Association and Salt River Project
Agricultural Improvement and Power District

H.R. 8949, The Yavapai-Apache Nation Water Rights Settlement Act of 2024

Chairman Bentz, Ranking Member Huffman, and members of the Subcommittee:

Thank you for the opportunity to submit testimony in support of H.R. 8949, the Yavapai-Apache Nation Water Rights Settlement Act of 2024. My name is Leslie A. Meyers. I am the Associate General Manager and Chief Water Resources and Services Executive at Salt River Project ("SRP"), the oldest multi-purpose federal reclamation project, serving the Phoenix, Arizona metropolitan area.

The Yavapai-Apache Nation Water Rights Settlement Agreement provides for the importation of water from C.C. Cragin Dam and Reservoir, a water pipeline and water treatment system, an in-stream flow right for the Verde River and the confirmation of the Nation's existing rights, local underground water, and an existing allocation from the Central Arizona Project ("CAP"). H.R. 8949 would authorize the settlement, provide funding for water infrastructure necessary to implement the settlement, and set aside the water supplies for use by the Nation and potentially other communities in Yavapai County.

SRP proudly supports the passage of H.R. 8949 to make the settlement a reality.

History of Salt River Project

The Secretary of the Interior ("Secretary") authorized the construction of the Salt River Federal Reclamation Project as one of the first projects under the Reclamation Act of 1902. The Salt River Valley Water Users' Association, an Arizona Territorial corporation, was organized in 1903 by landowners in the Salt River Valley to contract with the federal government for the building of Theodore Roosevelt Dam on the Salt River, located some 80 miles northeast of Phoenix. In exchange for pledging their land as collateral for the federal loans to construct Roosevelt Dam, which loans have long since been fully repaid, landowners in the Salt River Valley received the right to water stored behind the dam.

In 1905, in connection with the formation of the Association, a lawsuit entitled *Hurley v. Abbott, et al.*, was filed in the District Court of the Territory of Arizona. The purpose of this lawsuit was to determine the priority and ownership of water rights in the Salt River Valley to the natural flow of the Salt and Verde rivers and to provide for their orderly administration. The decree entered by Judge Edward Kent in 1910 adjudicated those water rights, provided water supply certainty to existing water users and, in addition, paved the way for the construction of additional water storage reservoirs by SRP on the Salt and Verde Rivers in Central Arizona.

Today, SRP operates six dams and reservoirs on the Salt and Verde Rivers in the Gila River Basin, one dam and reservoir on East Clear Creek in the Little Colorado River Basin, and 1,300 miles of canals, laterals, ditches and pipelines to deliver water to approximately 400 square miles of land in the greater Phoenix area. The dam and reservoir system can store approximately 2.3 million acre-feet of water runoff from the Salt and Verde River and East Clear creek systems, making SRP the largest raw water provider in the Phoenix Metropolitan area. SRP holds the rights to water stored in these reservoirs, and for the downstream uses they supply, pursuant to the state law doctrine of prior appropriation, as well as federal law. SRP is also the third largest not-for-profit community based public power utility in the country, providing reliable, affordable, and sustainable electricity to nearly 3 million people in Arizona. SRP has a diverse energy portfolio that includes nuclear, solar and wind, natural gas, battery storage, coal, geothermal and hydropower.

C.C. Cragin Dam and Reservoir ("C.C. Cragin Reservoir") is an important feature of the Salt River Federal Reclamation Project. Located approximately 25 miles north of the Town of Payson, C.C. Cragin Reservoir stores water from a 71-square-mile watershed on East Clear Creek, a tributary to the Little Colorado River. SRP acquired C.C. Cragin Reservoir from Phelps Dodge Corporation as part of the Gila River Indian Community Water Rights Settlement. Title II of the Arizona Water

Settlements Act, P.L. 108-451, specifies that up to 3,500 acre-feet of the water stored in Cragin Reservoir will be made available for municipal and domestic uses in northern Gila County at no cost to SRP or the Bureau of Reclamation. Water from C.C. Cragin Reservoir is crucial to meet the municipal demands of the Town of Payson and other nearby communities, who previously relied solely upon the area's meager groundwater resources.

The Yavapai-Apache Nation Water Rights Settlement Agreement Secures the Nation's Future and Brings Renewable Water Resources to the Verde Valley, Reducing Reliance Upon Groundwater.

The Yavapai-Apache Nation is a federally recognized Native American tribe consisting of two distinct tribal cultures, each with their own traditions and languages: the Yavapai people and the Apache people. Together, their aboriginal homeland spans more than 16,000 square miles in the heart of central Arizona. The history of the Yavapai and Apache peoples tragically resulted in their people being force-marched to the San Carlos Apache Indian Reservation in 1875, where they were confined for the next 25 years. After their imprisonment ended, the people who called the Verde River their homeland returned to the Verde Valley and, with the assistance of the United States, formed the foundations of the Yavapai Apache Nation that remains today, demonstrating their resilience and deep connection to their homeland and the Verde River.

The resolution of the Yavapai-Apache Nation's water rights claims broadly benefits both the tribal communities receiving water and funding, and water users throughout the Verde Valley. The Nation's settlement will bring water certainty to their community and provide an avenue for stable, renewable water supplies and strong, cooperative water stewardship tools in the Verde Valley. The new supplies will also reduce the dependency of the Nation and invested local communities on groundwater—promoting aquifer health and reducing impacts on the flows of the Verde River.

Resolving the Nation's claims also constitutes a monumental step forward in providing certainty regarding available water supplies for users in the Verde Valley, as well as downstream users of Verde River water in the Phoenix metropolitan area. The Gila River Adjudication includes over 7,000 water rights claimants within the Verde River Watershed alone. The Nation's claims to Verde River water have been a significant concern to municipalities and landowners in the Verde Valley, where water resources are increasingly scarce. In securing this settlement, the Nation agrees to waive its claims in the Adjudication, and to participate in those proceedings narrowly. The settlement is the culmination of decades of work to resolve the Nation's water rights and is a win-win solution for the Nation, the other parties involved, and the Verde River.

Settlement Details

Water Infrastructure

Legislation to enact the settlement will authorize and fund the construction of a 60-mile pipeline from C.C. Cragin Reservoir to the Verde Valley ("Pipeline Project"), delivering water to the Nation and providing a pathway for local communities to secure a renewable water supply for their water portfolios which would assist with sustaining the Nation's instream flow rights and the Verde River. SRP would operate the pipeline as part of the Salt River Federal Reclamation Project. Neighboring communities participating in the Pipeline Project would bear their proportionate share of the pipeline's operation and maintenance expenses, thereby reducing the Nation's proportionate share of these costs. The legislation also would facilitate the buildout of the Nation's treatment and drinking water system, which could also be utilized by entities receiving C.C. Cragin Reservoir water. The infrastructure will unlock water resiliency opportunities for a diverse range of stakeholders. The legislation also amends Title II of the Arizona Water Settlements Act, P.L. 108-451, to make water from C.C. Cragin Reservoir available for municipal and domestic use by communities in Yavapai County to reduce reliance on groundwater, assist in reducing the cost of water delivery to the YAN, and provide a renewable water supply to the Verde Valley.

Nation's Water Sources

Water sources that make up the Nation's water budget, which are defined in the settlement, encompass a diverse portfolio to meet the Nation's present and future needs. Those sources include:

1. Water supplies from C.C. Cragin Reservoir delivered through the to-be-constructed Pipeline Project;
2. The Nation's existing rights to Verde River water from the OK Ditch, Verde Ditch, and pursuant to the Daley Decree for irrigation and watering of livestock;
3. A right to instream flows of the Verde River on the Reservation for religious and cultural uses;
4. Limited underground water for use by the Nation; and
5. Access to the Nation's existing allocation of CAP Indian Priority Water.

Gila Adjudication Considerations

The Gila River General Stream Adjudication has now reached half a century in duration; absent a settlement, a final resolution of the Nation's water rights in the Adjudication proceedings would take many years more, at great expense to the Nation and others in the Verde Valley, prolong water supply uncertainty in the Verde Valley, and hinder the long-term economic well-being of the Nation, the settlement parties, local communities, and water users throughout the watershed. As a mutually beneficial alternative, the Nation through this settlement will waive its outstanding claims for water rights and damages to water rights in the Gila River Adjudication when the settlement becomes enforceable in exchange for the delivery of water from C.C. Cragin Reservoir and other rights decreed in the settlement. The Nation then only participates in the Adjudication proceedings relating to injury to its water rights.

Thank you for your consideration of these views as we work to bring this important settlement to pass.

**American Rivers
Washington, DC**

July 23, 2024

Hon. Cliff Bentz, Chairman
Hon. Jared Huffman, Ranking Member
House Natural Resources Committee
Subcommittee on Water, Wildlife and Fisheries
1324 Longworth House Office Building
Washington, DC 20515

Re: Support of H.R. 8949, Yavapai Apache Nation Settling its Water Rights in the State of Arizona

Dear Chairman Bentz, Ranking Member Huffman, and Members of the Subcommittee:

American Rivers is pleased to submit a letter of support to the House Natural Resources Committee for the Yavapai Apache Nation's (YAN) proposed water settlement. American Rivers and YAN have developed a deep and supportive relationship through collaboration on the conservation of the Verde River in central Arizona. We support the Nation's need and right, as a sovereign, to negotiate a permanent water settlement with the State of Arizona and the United States. Indeed, this is necessary in order to provide for a "permanent homeland" for the Nation.

Since 1973, American Rivers has protected wild rivers, restored damaged rivers, and conserved clean water for people and nature. With headquarters in Washington, DC, and 355,000 supporters, members, and volunteers across the country, we are the most trusted and influential river conservation organization in the United States, delivering solutions for a better future. On behalf of AR, I would like to thank Chairman Bruce Westerman and Ranking Member Raul Grijalva for your leadership to conserve rivers, improve clean water access, and safeguard public drinking water supplies now and into the future.

Native Nations are key partners in this shared work, and YAN in particular is a valued and trusted partner of American Rivers. In addition to our desire for the Nation to have all of the resources that it needs in order to flourish into the future, we appreciate the steps that it took in order to protect the Verde River and local groundwater in the details of its proposed water settlement. This exemplifies the forward-thinking nature of the Nation and its long-standing relationship to water in an arid region.

Thank you for your consideration of our testimony.

Sincerely,

TOM KIERNAN,
President and CEO

