

S. 4444, S. 4633, S. 4643, S. 4705, S. 4998

HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS

UNITED STATES SENATE

ONE HUNDRED EIGHTEENTH CONGRESS

SECOND SESSION

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SEPTEMBER 25, 2024
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WEDNESDAY, SEPTEMBER 25, 2024

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

The Committee met, pursuant to notice, at 2:49 p.m. in room 628, Dirksen Senate Office Building, Hon. Brian Schatz, Chairman of the Committee, presiding.

**OPENING STATEMENT OF HON. BRIAN SCHATZ,
U.S. SENATOR FROM HAWAII**

The CHAIRMAN. Good afternoon. During today's legislative hearing, we will consider five bills: S. 4444, Crow Revenue Act; S. 4633, Northeastern Arizona Indian Water Rights Settlement Act of 2024; S. 4643, Zuni Indian Tribe Water Rights Settlement Act of 2024; S. 4705, Yavapai Apache Nation Water Rights Settlement Act; and S. 4998, the Navajo Nation Rio San José Stream System Water Rights Settlement Act of 2024.

S. 4444 was introduced by Senator Daines. This bill would transfer subsurface mineral interests located within the Crow Tribe's reservation and currently held by a private owner, the Hope Family Trust, to the Crow Tribe, and transfer the Hope Family Trust Federal surface land and subsurface mineral rights on BLM lands in the Bull Mountains located outside of the Crow Tribe's reservation.

S. 4633 was introduced by Senators Kelly and Sinema. This bill would resolve the water rights claims of the Navajo Nation, Hopi Tribe and San Juan Southern Paiute Tribe in the Colorado River Basin in Arizona, authorize \$5 billion in mandatory funding to implement the settlement and create a 5,400-acre reservation for the San Juan Southern Paiute Tribe in Arizona.

S. 4643 was introduced by Senators Heinrich and Luján. The bill would resolve the Zuni Tribe's water rights claims in the Zuni River Basin in New Mexico, authorize \$685 million in mandatory funding for its implementation, and provide for the protection of Zuni Salt Lake, a place with great spiritual and cultural significance to the tribe by placing approximately 4,800 acres of land surrounding the lake into trust and withdrawing additional Federal lands from future development.

S. 4705 was introduced by Senators Kelly and Sinema. The bill would resolve the Yavapai Apache Nation Water Rights Claims in the Verde River watershed in Arizona, which is part of the lower basin of the Colorado River, authorize \$1 billion in mandatory

funding to implement the agreement, and authorize a land exchange in Arizona between the Yavapai Apache and the U.S. Forest Service.

Lastly, S. 4998, Senator Heinrich and Senator Luján's bill, would resolve the Navajo Nation's water claims in the Rio San José Basin in New Mexico, authorize nearly \$224 million in mandatory funding to implement the settlement, and authorize the expansion of the Navajo-Gallup Water Supply Project to serve Navajo communities in the Rio San José Basin that are outside of its current service area.

Before I turn to Vice Chair Murkowski for her opening statement, I would like to extend a welcome and thank our witnesses for joining us today. I look forward to your testimony and to our discussion.

Vice Chair Murkowski?

**STATEMENT OF HON. LISA MURKOWSKI,
U.S. SENATOR FROM ALASKA**

Senator MURKOWSKI. Thank you, Mr. Chairman. I appreciate the hearing on these important bills. I am going to be brief again.

Each of these bills would address longstanding water and lands issues while also promoting tribal self-determination in water resources, housing, and tribal energy sovereignty. I want to commend and thank the parties; I know you have put a lot of work behind each of these respective matters and I appreciate the work and the effort that has gone into that.

Starting first with S. 4633, this settlement bill would resolve decades of litigation that has locked up the water rights of the Navajo Nation, the Hope Tribe and the Southern San Juan Paiute Tribe to the Colorado River. If enacted, this bill would authorize the construction of a drinking water delivery system to provide piped water to hundreds of Native homes for the first time ever. This is significant.

I must say that I am concerned about a big price tag, over \$5 billion. But I look forward to hearing more about the settlement and how that money will be spent at the hearing.

Finally, I want to mention S. 4444, the Crow Revenue Act. This bill is modeled on the Northern Cheyenne Lands Act from 2014 that we enacted into law from this Committee. It would authorize the transfer of Federal coal in the Bull Mountains Mine to the Hope Family and in exchange, require the Hope Family to transfer their coal rights within the boundaries of the Crow Reservation to the Crow Tribe. This exchange is predicated on the Hope Family entering into a revenue sharing agreement with the Crow Tribe. These revenues would help the tribe offset the loss of royalties that have been caused by the closure of the mine.

The Crow Tribe is located in the Power Basin, the largest coal-producing region in the Country. It has long depended on coal-mining royalties and tax revenue to fund essential tribal government services for its neighbors, including care for the elders.

I know that there are some who are concerned that this would continue coal production. But we are talking about the Crow Tribe, which has a sovereign right to develop its economic assets. So I am

looking forward to hearing the views of our panelists today on this issue and these water settlement bills that are before us.

Again, I really want to recognize the longstanding efforts of so many who have gone into it. I know it is not easy, and I commend you.

The CHAIRMAN. We have a number of opening statements and members wishing to introduce the testifiers, just so you know the run of show according to my script. We will start with Senator Luján, then Daines, then Heinrich, then Kelly, then Cortez Masto. I am not sure exactly why, Catherine, you are the last, but it will be all right.

Senator Luján?

**STATEMENT OF HON. BEN RAY LUJÁN,
U.S. SENATOR FROM NEW MEXICO**

Senator LUJÁN. Thank you, Chair Schatz, and Vice Chair Murkowski, for holding this important legislative hearing today, especially given the unprecedented efforts by tribes to have Congress ratify their Indian water rights settlements after years, sometimes many decades, prayers, and negotiations.

I have the honor today of introducing Governor Kucate, of the Zuni Pueblo. Governor, thank you for all of your leadership in helping to advance the Zuni Indian Tribal Water Rights Settlement Act of 2024 this Congress. The Governor has served in this position since 2023, and he is also the Secretary of the All Pueblo Council of Governors, which represents the 20 Pueblo Nations of New Mexico and Texas.

The Governor was previously a member of the tribal council for over 18 years and served two terms as the chairman of the advisory council and historic preservation. Prior, the Governor served in different roles, including working with the Zuni radio station, its housing authority and dedicated himself to Zuni language revitalization efforts.

The Governor has dedicated his career to protecting the Zuni way of life, its people and I am glad that he is here today to testify on behalf of this historic bill that I co-lead with Senator Heinrich, which will protect Zuni's water rights in the Zuni River and its sacred Salt Lake.

Governor, I welcome you and I thank you for your steadfast leadership on this effort and so many others.

Mr. Chairman, thank you, and I yield.

The CHAIRMAN. Thank you very much.

Senator Daines?

**STATEMENT OF HON. STEVE DAINES,
U.S. SENATOR FROM MONTANA**

Senator DAINES. Chairman Schatz, thank you, and Vice Chair Murkowski.

I am proud to be able to introduce Chairman Frank White Clay of the Crow Nation. I have memories going back to grade school, Longfellow in Bozeman, when the Old Coyotes lived about three doors down. And Barney, Rachel's dad, was a Crow code talker. I had no idea that we would be sitting here someday, me as a Senator, you as the chairman, having this conversation about Indian

Country and the Crow Tribe, but it is an honor to have you here, sir. Thank you.

The chairman has been a fierce proponent of tribal sovereignty and self-determination. This year alone, the chairman and I have worked extensively to craft and push forward the Crow Tribe Water Rights Settlement Amendments Act, which passed the Committee just last week, then the Crow Revenue Act, which we will be hearing more about today.

Chairman Schatz, thank you for your help in getting this hearing set up for today.

As I am sure the chairman will tell us all shortly, the Crow Revenue Act is critical for the Crow Tribe. This bill couldn't come really at a more important time. With the recent closure of the Apsalooke mine, the Crow Tribe will be able to supplement the loss of that revenue with the new revenues in this bill. This is a win for the Crow Tribe, it is a win for our local communities, and it is also a win for the State.

Which is why I am proud to say that we have tremendous local support. Statewide, elected officials as well as the affected counties, and as the chairman of the Crow Tribe will say it soon, I will not speak for you, you speak very well for yourself, Mr. Chairman, I think you are going to hear that from the Crow Tribe as well.

I am excited to hear more from Chairman White Clay. Thanks for making the long journey back to D.C. to represent your people here in Washington.

The CHAIRMAN. Senator Heinrich?

**STATEMENT OF HON. MARTIN HEINRICH,
U.S. SENATOR FROM NEW MEXICO**

Senator HEINRICH. Thank you, Chairman Schatz and Vice Chair Murkowski. I want to start by thank you both for considering the Indian Buffalo Management Act a few minutes ago. That legislation will further support growth of tribal bison herds. I am very grateful for the Committee's support.

Turning to the hearing agenda, I want to thank you for holding this hearing on the Zuni Indian Tribe Water Rights Settlement Act, and the Navajo Nation Rio San José Stream System Water Rights Settlement Act of 2024. That is a mouthful. But two incredibly important bills to the future of water for New Mexico's tribes.

I am pleased to welcome the Governor of Zuni Pueblo, Arden Kucate, who is here today to provide testimony on the Zuni Water Rights Settlement Act. The Zuni people have been stewards of the Zuni River Basin for millennia. Their traditional agricultural practices and careful stewardship of water sustained the tribe over thousands of years.

Unfortunately, the United States has failed to protect Zuni's water rights, and has allowed their water to be diverted to other purposes. Overuse of water in the Zuni Basin has caused the Zuni people to suffer from a lack of water for their community, their businesses, and their traditional agricultural practices. This injustice continues today.

Without reliable access to clean water, it is difficult for Zuni to attract new businesses that create jobs and revenues for the tribe. This legislation would not only fully settle Zuni's water rights

claims in the Zuni River Basin. It would also provide funding for several key water infrastructure projects.

It is an opportunity for the United States to make the Zuni Tribe whole for the water that they have always been entitled to. It will support Zuni's traditional irrigation practice, their people and their future business development in a manner that builds resilience in the face of a drying climate.

This piece of legislation would also protect the Zuni Salt Lake, a sacred place of great cultural significance to the Zuni Tribe and others in the region.

I am also very happy to welcome the President of the Navajo Nation, Dr. Buu Nygren, who is here to provide testimony for the Navajo Nation Rio San José Stream System Water Rights Settlement Act. This legislation would settle the water rights of the Navajo Nation in the Rio San José Basin. It is the final step in an adjudication process that began more than 40 years ago. In that time, we have seen aridification of the Southwest further strain water resources for tribes, including the Navajo Nation, that don't have the resources to fully use their water rights.

This settlement is an important step toward giving the Navajo Nation an equal voice amongst water users in the southwest. Today, there are more than 200 Navajo households within the Rio San José and Rio Puerco Basins without access to running water. These households instead have to rely on hauling water.

The lack of reliable drinking water systems in these communities contributed to the widespread health impacts of the Covid-19 pandemic on the Navajo Nation, which took the lives of far too many. I am committed to working with the Navajo Nation to build a future where they have full access to their water rights and this access to water will facilitate the preservation of Navajo culture and tradition.

Both of these pieces of legislation would implement settlement agreements that have been carefully negotiated between the tribes, the State of New Mexico, neighboring water users, and the United States. I want to thank all of the parties for their tireless work in reaching settlements for these basins, and of course, my colleague, Senator Luján, who is co-sponsoring these settlements along with me.

The failure of the United States to work with tribal governments to ensure that they could use the water that they have always owned, as reverberated through generations. And it has a direct impact on the well-being of tribal members today. It is time we make this right for Zuni and for the Navajo Nation. I want to say thank you to the entire Committee for your consideration today.

I yield back my time.

The CHAIRMAN. Thank you very much.
Senator Tester?

**STATEMENT OF HON. JON TESTER,
U.S. SENATOR FROM MONTANA**

Senator TESTER. Thank you, Mr. Chairman. I want to take this opportunity to welcome Frank White Clay. Frank, we appreciate your being here again. He is back fighting for the Crow people.

I want to point something out. We all on this Committee work with Native American tribes all the time. The Crows have had their challenges with past administrations. But Frank has stepped up in a big, big way, cleaned up what I think was an incredible mess, and has the tribe going in the right direction. Frank, we appreciate your leadership.

The CHAIRMAN. Thank you, Senator Tester.
Senator Cortez Masto?

**STATEMENT OF HON. CATHERINE CORTEZ MASTO,
U.S. SENATOR FROM NEVADA**

Senator CORTEZ MASTO. Thank you, Chairman Schatz and Vice Chair Murkowski, for holding this hearing today on these important bills before the Committee.

I do want to talk a little about S. 4633, the Northeastern Arizona Indian Water Rights Settlement Act of 2024. This is an important bill. I support it. I agree that it is past time we reach fair and equitable resolutions to some of the longstanding water management issues in the southwest. It is important we get the details right.

But I do believe we need to ensure there is collaboration with stakeholders across the Colorado River Basin. I have a letter for the record, Mr. Chairman, from the Southern Nevada Water Authority in my State which also supports this legislation. But because of the intricacies and nuances resulting from the inter-basin and interstate nature of the Colorado River with the tribal lands, it believes that collaboration is key. That is all we are looking for, is to avoid any unintended consequences and to remain consistent with the compact in the Colorado River.

SNWA is respectfully proposing that Congress, the basin State, and the tribes work together on technical modifications to S. 4633. That is what I will be looking for. So I would like to submit this letter for the record.

The CHAIRMAN. Without objection, so ordered.

Senator CORTEZ MASTO. Thank you.

I am committed to working with everyone to get this done. So I appreciate the tireless effort that has been put into it, and I know what that is like. So please include us at the table to make sure that this bill passes.

Thank you.

The CHAIRMAN. Thank you very much.
Senator Kelly?

**STATEMENT OF HON. MARK KELLY,
U.S. SENATOR FROM ARIZONA**

Senator KELLY. Thank you, Mr. Chairman. I would like to thank you and the Vice Chair for including the Northeastern Arizona Indian Water Rights Settlement Act at the Yavapai Apache Nation Water Rights Settlement Act in today's hearing. It is my honor to introduce Navajo President Buu Nygren, Hopi Chairman Timothy Nuvangyaoma, Yavapai Apache Nation Chairwoman Tanya Lewis, and San Juan Southern Paiute Tribe Vice President, Johnny Lehi.

President Nygren was elected to serve as the tenth Navajo Nation president in November of 2022. President Nygren has a doctorate from the University of Southern California. He has been in-

volved closely with leading the Navajo Nation through the negotiation of the Northeastern Arizona Water Rights Settlement.

Chairman Nuvangyaoma has led the Hopi Council since his election as chairman in 2018. He served as a tireless advocate for the Hopi, and has been instrumental in negotiations that enable the Northeastern Arizona Water Rights Settlement to come together.

Chairwoman Lewis is an important voice in the Verde Valley. Before her election as chairwoman, she served as Vice Chair and has been on the council since 2010. She has been personally involved in working with parties across the Verde Valley to come to consensus and develop a settlement that is designed for the future.

Vice President Lehi, Jr. currently serves as the Vice President of the San Juan Southern Paiute Tribe. He was first elected to the council in May of 2022, and served as President prior to his current role. Vice President Lehi is serving on the council in the footsteps of his father, Johnny Lehi, Sr., who served on the tribal council when the council was originally recognized in December of 1989.

President Nygren, Chairman Nuvangyaoma, and Vice President Lehi, I want to commend you for your commitment to your communities. The fact that you have all come together after decades and multiple attempts at a settlement is truly historic. You and your teams should be recognized for the dedication to this large and complex settlement.

The Northeastern Arizona Indian Water Rights Settlement act will bring safe and reliable drinking water to your tribal communities in Arizona, establishing a homeland for the San Juan Southern Paiute Tribe. It is important to note that on the Navajo Nation, approximately 30 percent of homes do not have access to safe and reliable drinking water.

This settlement is an enormous step forward for securing your tribe's water future and providing certainty for Arizona and the entire Colorado River Basin. Without the settlement, a cloud of uncertainty will remain over tribal water claims in the Colorado River Basin, and tens of thousands of tribal members will continue to struggle to meet their basic needs.

Chairwoman Lewis, I want to thank you and everyone who has been a part of the Yavapai Apache Nation settlement process for your dedication. The nation and the parties have worked hard over 15 years to complete the settlement.

Working with the Bureau of Reclamation, the parties evaluated numerous water sources and potential infrastructure options to achieve a reliable and sustainable water supply to meet the nation's current and future permanent tribal homeland needs.

Ultimately, the deliberative C.C. Cragin water through the Cragin Verde pipeline is the best option. The settlement protects local groundwater aquifers from over-pumping and thereby preserves these resources that are needed to meet the nation's water demands under its settlement budget. By reducing the capture of groundwater that feeds the Verde River, it also protects base flow that supports the Verde River.

So this settlement helps to ensure Arizona's water future both in the valley and downstream. I urge my colleagues to support both of these important bills as they move through the Committee process.

Again, Chairman Schatz and Vice Chair Murkowski, I want to thank you for holding today's hearing on these two important and historic bills.

The CHAIRMAN. Finally, we are pleased to welcome again to the Committee probably the most frequent of frequent flyers, the Assistant Secretary of the Interior, Bryan Newland.

Before we begin, I want to remind our witnesses that your full written testimony will be made part of the official hearing record. So we would just ask you to try to confine your remarks to five minutes or fewer, so that we have time for questions.

Assistant Secretary Newland, please proceed with your testimony.

STATEMENT OF HON. BRYAN NEWLAND, ASSISTANT SECRETARY, INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR

Mr. NEWLAND. Thank you, Mr. Chairman. I am trying to rack up those miles.

Aanii boozhoo, good afternoon, Chairman Schatz, Vice Chair Murkowski, members of the Committee. I am pleased to be here on behalf of the Department of the Interior to present our testimony on a number of Indian water rights settlement bills, as well as the Crow Revenue Act today.

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. Water is essential to meeting this obligation.

S. 4633, 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. The settlement authorizes \$5 billion for essential water development and delivery projects. It would establish a homeland for the San Juan Southern Paiute Tribe and it 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. It would be an historic milestone in our Nation's efforts to ensure access to water for Native people in their homelands, and it would benefit so many others in this drought-stricken region.

The department supports the goals and purposes of S. 4633. Our written statement highlights some of the important issues that still need to be addressed in the legislative language to ensure this settlement can be successfully implemented. That includes working with Congress to ensure there is enough funding to support the projects in the settlement.

But I want to be clear on the bigger picture. We are closer than we have ever been before in reaching a final settlement here. We are prepared to work with the sponsors, with the tribes and other parties to address those issues, so we can fulfill our trust obligations to these tribes and have the settlement enacted in this Congress.

The Yavapai Apache Nation Water Rights Settlement Act, S. 4705, authorizes more than \$1 billion to build and maintain essen-

tial water infrastructure for the tribe. The settlement would provide the nation with confirmed rights of 4,600 acre-feet per year of water, promote water conservation, and protect the flow of the Verde River. S. 4705 also includes a land exchange with the Forest Service to lands that are contiguous with the Middle Verde Reservation.

The department supports the goals of this bill and we recognize that further discussions need to be had regarding the cost and size and scope of this project.

S. 4998, in combination with S. 595, would settle all tribal rights in the Rio San José Basin, bringing stability to the basin for all water users. S. 4998 would provide funding to allow the Navajo Nation to plan water infrastructure for current and long-term water needs of its people and the department supports this bill.

The Department of the Interior is also pleased to support S. 4643, the Zuni Indian Tribe Water Rights Settlement Act. This bill follows decades of litigation and is the product of more than a decade of good faith negotiations. S. 4643 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 own decision. Rather than committing the Zuni Tribe or the United States to construct specific projects, the bill would allow the tribe to make decisions regarding when, where, and how to develop water infrastructure on its lands.

S. 4444 would convey approximately 4,600 acres of the Hope Family Trust Mineral Estate located within the boundaries of the Crow Reservation to the Crow Tribe. It would also convey approximately 4,500 acres of mineral estate and approximately 940 acres of surface estate managed by the BLM to the Hope Family Trust.

The bill requires that the Crow Tribe notify the Secretary when the tribe and the Hope Family Trust have agreed on a formula for revenue sharing from development of the minerals conveyed to the tribe, should they be developed at a later date. The department supports this bill's goals of consolidating tribal ownership of resources on the reservation and also providing an additional source of revenue for the Crow Tribe.

We would like to work with the sponsor on some modifications that we believe would improve this bill.

Thank you again, Mr. Chairman, for the opportunity to provide the department's views on these water bills and the Crow Revenue Act. I look forward to answering any questions you may have.

[The prepared statement of Mr. Newland follows:]

PREPARED STATEMENT OF HON. BRYAN NEWLAND, ASSISTANT SECRETARY, INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR

Chairman Schatz, Vice Chairman Murkowski, and members of the Committee. My name is Bryan Newland, and I am the Assistant Secretary for Indian Affairs at the Department of the Interior (Department). Thank you for the opportunity to present testimony on the following bills concerning Indian water rights settlements and S. 4444, the Crow Revenue Act.

Indian Water Rights Settlements Bills

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.

S. 4633, Northeastern Arizona Indian Water Rights Settlement Act of 2024

S. 4633, 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 S. 4633 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 400,000 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. S. 4633 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 percent 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

S. 4633 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.

S. 4633 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, S. 4633 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, S. 4633 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, S. 4633 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, S. 4633 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.

S. 4633 would also address water rights for allotments in various ways. With respect to the 11 Hopi allotments at Moenkopi, S. 4633 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.

S. 4633 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. S. 4633 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, S. 4633 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. S. 4633 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, S. 4633 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.

S. 4633 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 S. 4633 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"). S. 4633 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.

S. 4633 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 S. 4633 currently uncertain given the authorization for appropriation of "such sums as are necessary."

S. 4633 would establish three trust funds: Navajo Nation Trust Fund, Hopi Tribe Trust Fund, and San Juan Southern Paiute Tribe Trust Fund. S. 4633 would establish a \$2,746,700,000 trust fund for the Navajo Nation. Of this amount, \$2,369,200,000 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.

S. 4633 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.

S. 4633 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 S. 4633

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 diligently working with the Tribes and settlement parties to address outstanding issues in S. 4633 as currently drafted. The Department, the Tribes and the settlement parties have made progress on the Federal issues identified below and are effectively working towards an amendment in the nature of a substitute before markup on this bill. The parties have made significant progress with S. 4633 and the Department believes this settlement is on a trajectory to completion this term.

Federal Contribution

S. 4633 establishes an Implementation Fund to be used by the Secretary, acting through the Bureau of Reclamation, to plan, design, and construct the Pipeline. S. 4633 provides \$1.715 billion in mandatory appropriations for this purpose. If the

Pipeline cannot be completed for \$1.715 billion, S. 4633 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 S. 4633 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 S. 4633 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, as S. 4633 is currently drafted, whether the trust funds would be used for this purpose is uncertain.

Operations Agreements

S. 4633 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 Secretarially approved operations agreement for operation of the Pipeline. However, as drafted, S. 4633 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. S. 4633 is ambiguous as to who determines whether it is "necessary" for the Navajo Nation to amend its code. The Department recommends that S. 4633 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, S. 4633 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.

S. 4633 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 mainstem 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 ap-

plicable 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.

HR 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 HR 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

S. 4633 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 S. 4633, the Department is working closely with the Navajo Nation on technical modifications 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 S. 4633 provides that the amounts of energy needed to deliver water to the Tribes shall be acquired by the Tribes. As drafted, S. 4633 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 continues to work with the Tribes to address this issue.

Limited Waiver of Sovereign Immunity

Section 18 of S. 4633 includes waivers of the sovereign immunity of the United States that the Administration believes are overbroad and could trigger unnecessary and expensive litigation. The settlement agreement and S. 4633 provide enforceable assurances that both the Tribes and the United States as trustee for the Tribes will comply with the waivers that they are providing for off-Reservation water use by non-Indians. The sovereign immunity waivers in Section 18 with respect to non-parties to the settlement agreement would not further the purposes of the settlement or contribute to its finality.

Miscellaneous

While this testimony highlights the most pressing of the Department's concerns with S. 4633, it is important to note that Departmental review of S. 4633 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 S. 4633 and supports nearly all of the key terms in this legislation.

The Department will continue to 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.

S. 4643, Zuni Indian Tribe Water Rights Settlement Act of 2024

S. 4643 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.

S. 4643 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.

S. 4643 would ratify and confirm the Zuni Tribe's water rights to approximately 24,809 acrefeet 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).

S. 4643 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, S. 4643 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, waterrelated 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. S. 4643 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 S. 4643 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 S. 4643

The Department of the Interior is pleased to support S. 4643. This bill is the result of decades of litigation and over a decade of good-faith negotiations. S. 4643 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.

S. 4705, Yavapai-Apache Nation Water Rights Settlement Act of 2024

S. 4705, 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 S. 4705 and is committed to working with the Nation and the Committee to resolve the Department’s concerns with S. 4705 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, nearly half 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

S. 4705 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.

S. 4705 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 S. 4705 would require the Secretary to plan, design, and construct the Túńlíníhoh Water Infrastructure Project (Project), consisting of the Cragin-Verde Pipeline Project (Pipeline) and the Yavapai-Apache Nation Drinking Water System Project (Drinking Water System). S. 4705 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, S. 4705 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 and significantly expanded land base to be added to the Reservation by S. 4705. 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. S. 4705 would allow for the Nation to plan, design, and construct the drinking water system pursuant to the Indian Self-Determination and Education Assistance Act.

S. 4705 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, S. 4705 authorizes the appropriation of such sums as necessary for the OM&R of the Project until the date of substantial completion.

S. 4705 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 S. 4705, 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.

S. 4705 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, S. 4705 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 S. 4705

The Department supports the goals of S. 4705 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, S. 4705. We are continuing to work with the Nation and the settlement parties on issues of Federal concern. As information is provided by the Nation and the settlement parties, the Department is analyzing it and engaging in discussions with the Nation and settlement parties.

In particular, the Department has concerns with S. 4705’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 infrastructurebased 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. For instance, the Department is concerned that S. 4705 includes overbroad sovereign immunity waivers that could trigger unnecessary and expensive litigation. The waivers of sovereign immunity with respect to non-parties to the settlement agreement would not further the purposes of the settlement or contribute to its finality. We look 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 S. 4705 requires other technical changes.

* * *

In sum, the Department supports the goals of S. 4705 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.

S. 4998, Navajo Nation Rio San José Stream System Water Rights Settlement Act of 2024

S. 4998, 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 more than 400,000 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 re-

spect to all those claims. Legislation (S. 595) is currently pending to resolve the water rights claims of Acoma and Laguna in the Rio San José basin. If both S. 595 and S. 4998 are enacted, all Tribal water rights claims in the Rio San José basin would be resolved. S. 4998 would also approve a conditional settlement of Navajo Nation claims in the Rio Puerco basin.

S. 4998 would ratify and confirm the Navajo Nation's water rights to approximately 2,355 acrefeet 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.

S. 4998 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 S. 4998 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 ongoing adjudication of the Rio San José basin. S. 4998 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 S. 4998. This bill in combination with S. 595 would settle all Tribal rights in the Rio San José Basin, bringing stability to the basin for all water users. S. 4998 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.

S. 4444, Crow Revenue Act

S. 4444 involves the conveyance of surface and mineral estate in Montana involving the Bureau of Land Management (BLM), the Crow Tribe of Montana, and a private party. The bill requires, within 60 days of enactment, the relinquishment of the Federal coal lease associated with Signal Peak Energy's Bull Mountains Mine near Roundup, Montana; the conveyance by the Joe and Barbara Hope Mineral Trust (Hope Family Trust) of approximately 4,660 acres of private mineral estate located within the boundaries of the Crow Indian Reservation in Bighorn County, Montana, to the Crow Tribe of Montana; and the conveyance of approximately 4,530 acres of mineral estate and approximately 940 acres of surface estate managed by the BLM in Musselshell County, Montana (the Bull Mountains Tracts), to the Hope Family Trust.

In addition, the bill states that the mineral estate conveyed by the Hope Family Trust to the Crow Tribe shall not be subject to state or local taxation and shall be held in trust by the United States for the benefit of the Tribe, upon the Tribe's request. Finally, S. 4444 requires that the Crow Tribe notify the Secretary of the Inte-

rior when the Tribe and the Hope Family Trust have agreed on a formula for revenue sharing from development of the minerals conveyed to the Tribe, should they be developed at a later date.

Analysis

Under President Biden's and Secretary Haaland's leadership, the Department is committed to strengthening the government-to-government relationship with Tribal Nations. We believe that Tribal sovereignty and self-governance, as well as honoring the Federal trust and treaty responsibility to Tribal Nations, must be the cornerstones of Federal Indian policy. In addition, the Department is committed to managing public lands and minerals to protect the treaty, trust, religious, subsistence, and cultural interests of Federally recognized Tribes, consistent with our mission and applicable Federal law. By placing lands into trust status through the Department, Tribes are able to reacquire lands within or near their reservations, establish a land base, and clarify jurisdiction over their territories and lands including mineral estates.

The Department supports the bill's goals of addressing inholdings within the boundaries of the Crow Indian Reservation and providing an additional source of revenue for the Crow Tribe. We would like to work with the Sponsor on several modifications to improve the bill. First, we recommend that the conveyances be subject to valid existing rights, as is standard, to ensure that they do not inadvertently result in Federal takings issues under the Fifth Amendment. In addition, we suggest that language be added to the bill that expressly states that the parcels to be conveyed are withdrawn from location, entry, and patent under the U.S. mining laws as of the date of enactment. Including a withdrawal provision for parcels will ensure that no new mining claims are located between enactment and finalization of the conveyances.

The Department also notes that it is unclear whether the Sponsor intends for the required Federal coal lease relinquishment to be consistent with the BLM's coal leasing regulations. For example, under the lease provision referenced in section 3(a)(1) of the bill, the lease relinquishment would be required to follow all applicable regulations. This means that, if enacted, a lease relinquishment cannot occur until the lessee has met all financial obligations associated with the lease, all profitable portions of the leased coal deposit have been mined, and all required reclamation has been completed successfully, as determined by the BLM and the Montana Department of Environmental Quality. As currently drafted, the BLM would be unable to relinquish the lease as directed within the timeframe provided by the bill.

We would like to work with the Sponsor to ensure that the parcels to be conveyed under the bill are of equal value; to provide sufficient time to comply with any applicable laws; and to ensure that public access to nearby BLM-managed public lands is maintained after the conveyance.

The Department would also like to work with the Sponsor to clarify the provision regarding revenue sharing between the Tribe and the Hope Family Trust. As currently drafted, the bill does not appear to specifically require that a revenue sharing agreement be developed. In addition, based on local media coverage associated with the bill, it appears that the Sponsor may have intended for the revenue sharing agreement to cover the mineral estate conveyed to the Hope Family Trust, not the mineral estate conveyed to the Crow Tribe. The Department recommends that the Sponsor amend the bill to address these issues to provide certainty to the Crow Tribe.

We also recommend technical amendments to clarify various terms and exempt the United States from any responsibility for future reclamation efforts associated with the Bull Mountain Tracts, as they would be conveyed into private ownership. The Department looks forward to working with the Sponsor on such modifications as the bill moves forward through Congress.

The CHAIRMAN. Thank you very much.

Chairman White Clay, welcome. Please proceed with your testimony.

STATEMENT OF HON. FRANK WHITE CLAY, CHAIRMAN, CROW NATION

Mr. WHITE CLAY. Thank you, honorable Chairman and honorable members of the Committee. Thank you for having us.

I am Frank White Clay. I am the Chairman of the Crow Nation. I am here today to express our full support for S. 4444, the Crow

Revenue Act. The legislation addresses crucial land management issues, generates opportunities for economic growth, and reaffirms the sovereignty of the Crow Tribe by consolidating our ownership of ancestral lands. This bill provides an equitable resolution to longstanding land and resource management challenges on the Crow Reservation and strengthens our future as a Tribe.

The Crow Revenue Act would transfer approximately 4,660 acres of private subsurface inholdings, known as the Hope Family Tracts, on the Crow Reservation to the Crow Tribe. In exchange, the tribe would transfer 4,530 acres of Federal subsurface and 940 acres of Federal surface interests in Musselshell County, referred to as the Bull Mountains Tracts.

A key provision of the bill requires that the Crow Tribe and the Hope Family enter into a revenue sharing agreement for any development of the Bull Mountains Tracts. This would provide a crucial revenue stream for the Crow Tribe as we seek to revitalize our economy.

This bill mirrors the bipartisan Northern Cheyenne Lands Act of 2014, which successfully addressed similar issues for the Northern Cheyenne Tribe. S. 4444 offers the same pragmatic solution: it resolves private inholdings on our reservation while creating much-needed economic opportunities for the Tribe and ensuring certainty for development in Musselshell County.

The legislation mandates a three-party land exchange involving the Crow Tribe, the Hope Family Trust, and the United States government. The Secretary of the Interior is required to convey approximately 4,530 acres of Federal subsurface and 940 acres of Federal surface interests at Bull Mountains to the Hope Family Trust. In exchange, the Hope Family Trust will convey 4,660 acres of subsurface within the boundaries of the Crow Reservation to the Crow Tribe.

Upon request by the tribe, the Secretary is directed to take these lands into trust for the benefit of the Crow Tribe. The land exchange will allow the Tribe to consolidate our ownership and control of lands within the reservation, a crucial step in managing and developing our natural resources.

The legislation provides the potential for a critical revenue stream for the Crow Tribe if the Bull Mountains Tracts are developed. With the expedited closure of the Apsualooke Mine on the Crow Reservation, which provided substantial royalties to the tribe, these revenues would help mitigate the economic impact and support the tribe's financial stability.

The Crow Tribe has always depended on our lands and natural resources for survival. Over centuries, the tribe has made supreme sacrifices to reclaim and maintain our homeland. Since the Treaty of 1851 and 1886, the tribe's land base has been continuously reduced, from over 38 million acres spanning Montana and Wyoming to just 2.3 million acres today.

This bill addresses a central element of our struggle: consolidating our land base and securing our right to manage and benefit from our resources. As a result of these land losses, the tribe faces significant economic challenges, including limited access to employment and development opportunities on the reservation.

The transfer of 4,660 acres of subsurface on the Crow Reservation to the tribe is critical to allowing us to exercise full control over future development.

The tribe has also been denied access to Federal grants and incentives due to invalid debts being referred to the Treasury Offset Program, also known as the “Do Not Pay” list. This prevented the Crow Tribe from benefiting from many new programs created and funded during the Covid-19 pandemic which it was otherwise eligible for. Fortunately, our administration was able to clear this issue with the help of our Montana delegates, however, we will not be able to retroactively receive these awards.

Restoring our economic independence through land and resource management will help mitigate these lost funds and strengthen the tribe’s future by providing much needed resources to help develop an economy.

The Crow Revenue Act is not just a land exchange; it is an investment in the future of the Crow Tribe. I urge the Committee and the Senate to support this critical legislation, which will help the Crow Tribe overcome longstanding challenges and build a brighter future for my people.

Thank you.

[The prepared statement of Mr. White Clay follows:]

PREPARED STATEMENT OF HON. FRANK WHITE CLAY, CHAIRMAN, CROW NATION

Introduction

Chairman and members of the Committee, I am Frank White Clay, Chairman of the Crow Nation. I am here today to express our full support for S. 4444, the Crow Revenue Act. This legislation addresses crucial land management issues, generates opportunities for economic growth, and reaffirms the sovereignty of the Crow Tribe by consolidating our ownership of ancestral lands. This bill provides an equitable resolution to long-standing land and resource management challenges on the Crow Reservation and strengthens our future as a Tribe.

Background on the Crow Revenue Act

The Crow Revenue Act would transfer approximately 4,660 acres of private subsurface inholdings, known as the Hope Family Tracts, on the Crow Reservation to the Crow Tribe of Montana. In exchange, the Tribe would transfer 4,530 acres of federal subsurface and 940 acres of federal surface interests in Musselshell County, Montana—referred to as the Bull Mountains Tracts. A key provision of the bill requires that the Crow Tribe and the Hope Family enter into a Revenue Sharing Agreement for any development of the Bull Mountains Tracts. This would provide a crucial revenue stream for the Crow Tribe as we seek to revitalize our economy.

This bill mirrors the bipartisan Northern Cheyenne Lands Act of 2014, which successfully addressed similar issues for the Northern Cheyenne Tribe. S. 4444 offers the same pragmatic solution: it resolves private inholdings on our Reservation while creating much-needed economic opportunities for the Tribe and ensuring certainty for development in Musselshell County.

Three-Party Land Exchange

The legislation mandates a three-party land exchange involving the Crow Tribe, the Hope Family Trust, and the United States government:

- The Secretary of the Interior is required to convey approximately 4,530 acres of federal subsurface and 940 acres of federal surface interests at Bull Mountains to the Hope Family Trust.
- In exchange, the Hope Family Trust will convey 4,660 acres of subsurface within the boundaries of the Crow Reservation to the Crow Tribe. Upon request by the Tribe, the Secretary is directed to take these lands into trust for the benefit of the Crow Tribe.

- This land exchange will allow the Tribe to consolidate our ownership and control of lands within the Reservation, a crucial step in managing and developing our natural resources.

Economic and Cultural Significance

This legislation provides the potential for a critical revenue stream for the Crow Tribe if the Bull Mountains Tracts are developed. With the expedited closure of the Apsáalooke Mine on the Crow Reservation, which provided substantial royalties to the Tribe, these revenues would help mitigate the economic impact and support the Tribe's financial stability.

The Crow Tribe has always depended on our lands and natural resources for survival. Over the centuries, the Tribe has made supreme sacrifices to reclaim and maintain our homeland. Since the Treaty of 1851 and 1886, the Tribe's land base has been continuously reduced—from over 38 million acres spanning Montana and Wyoming to just 2.3 million acres today.

This bill addresses a central element of our struggle: consolidating our land base and securing our right to manage and benefit from our resources.

As a result of these land losses, the Tribe currently faces significant economic challenges, including limited access to employment and development opportunities on the Reservation. Non-tribal owners control large portions of surface and subsurface holdings within the Reservation, which further limits the Tribe's ability to manage and benefit from our natural resources.

The transfer of 4,660 acres of subsurface on the Crow Reservation to the Tribe is critical to allowing us to exercise full control over future development. This consolidation of ownership, combined with the ability to generate revenues from the Bull Mountains Tracts, represents an opportunity for the Tribe to address our severe economic and social challenges.

The Tribe has also been denied access to federal grants and incentives due to invalid debts being referred to the Treasury Offset Program, also known as the "Do Not Pay" list. This prevented the Crow Tribe from benefiting from many new programs created and funded during the COVID-19 pandemic which it was otherwise eligible for. Fortunately, my Administration was able to clear this issue up, however we will not be able to retroactively receive these awards.

Restoring our economic independence through land and resource management will help mitigate these lost funds and strengthen the Tribe's future by providing much needed resources to help develop an economy.

Conclusion

The Crow Revenue Act is not just a land exchange; it is an investment in the future of the Crow Tribe. It enables us to consolidate our ownership of our ancestral lands, secure much-needed revenue, and regain a measure of economic independence. I urge the Committee and the Senate to support this critical legislation, which will help the Crow Tribe overcome long-standing challenges and build a brighter future for our people.

Thank you for your consideration of this important legislation.

The CHAIRMAN. Thank you very much, Chairman White Clay.

President Nygren, nice to see you again. Please proceed with your testimony.

STATEMENT OF HON. BUU NYGREN, PRESIDENT, NAVAJO NATION

Dr. NYGREN. Yá'át'ééh, Chairman Schatz, Vice Chairwoman Murkowski, and members of the Committee. I am Dr. Buu Nygren, Navajo Nation President. I am joined today by Navajo Nation Council Speaker Crystalyne Curley, Chairman Timothy Nuvangyaoma of the Hopi Tribe and Vice President Johnny Lehi, as well as the San Juan Southern Paiute Tribe.

Thank you for the opportunity to testify in support of S. 4633, S. 4998. Thank you to Senators Kelly and Sinema who were here earlier for sponsoring S. 4633, Senators Heinrich and Luján, who were here earlier as well, for sponsoring S. 4998. Your collective

leadership in securing a safe, certain and stable water supply for the nation will be felt for generations.

The Navajo Nation is the largest indigenous nation in the Country. We provide critical governmental services to over 400,000 tribal members. Half of these members reside on our sovereign territory, which is roughly the size of West Virginia, spans Arizona, New Mexico, and Utah. Roughly one-third of Navajo Nation households lack running water, and that is how I grew up, without running water.

Thousands of our people continue to haul water over 30 miles round trip on unpaved dirt roads, washboard roads, to meet the daily water demands. Hauling water is incredibly expensive. Families that haul water on the Navajo reservation spend the equivalent of \$43,000 per acre foot compared with \$600 per acre foot for a typical suburban water user in the region.

This water is among the most expensive in the Country for a population that is among the poorest. Congress must act to end the water crisis on the Navajo Nation.

First, I will speak on S. 4633, which will ratify a historic water rights settlement among the Navajo Nation, the 38 other parties, including the Hopi Tribe and the San Juan Southern Paiute Tribe, the United States, and the State of Arizona. It will put to rest decades of expensive litigation and will bring certainty to users throughout the Colorado River Basin.

Once confirmed by Congress, the settlement agreement will ratify and confirm the tribe's respective water rights, including our rights to the Arizona Upper Basin and Lower Basin Colorado River. It will also invest in needed water infrastructure that will deliver safe and reliable drinking water to the three settling tribes. Because of the unique geography and hydrology of the Navajo Nation, our reservation spans the Upper Basin and the Lower Basin of the Colorado River.

In order to effectively provide the water to the Navajo communities, the nation needs the ability to move our Colorado River water between the basins. This legislation authorizes the movement of the water as Congress has done before.

I understand that certain Upper Basin States have concerns with where Navajo can use its water. Navajo is cooperatively working with the States to find a path forward.

Navajo is also working with the U.S. to address issues raised in its testimony. We have made great progress.

Next, I would like to turn to S. 4998, which authorizes a settlement that resolves the nation's water rights it claims in the Rio San José Basin and addresses our claims in the Rio Puerco Basin. This agreement ends four decades of litigation and will bring needed water to some of the driest basins in New Mexico.

This bill complements the Acoma and the Laguna Settlement for the Rio San José that is authorized in S. 595. These water rights settlement agreements provide a comprehensive settlement of tribal claims in the Rio San José Basin. The Navajo Nation will use settlement funding to import water to the Rio San José and Rio Puerco Basin. These water imports will help water users to manage depleted surface and groundwater.

Passage of this settlement will make a real difference in the lives of many people in our Eastern Navajo communities. It will provide a path forward toward water security for the people living in these basins, including the Pueblo Laguna and Acoma.

These settlements are an important priority for my administration. I understand the challenges associated with hauling water because I did it until I was 19 years old. It is expensive, physically demanding and incredibly time-consuming to haul water. It is absolutely unacceptable in 2024 that more than one-third of our people, including our children and our elders do not have running water.

Therefore, I respectfully urge the Committee to swiftly pass these bills to ensure that our children will have access to what the rest of this Country takes for granted, a safe and reliable water supply. These settlements represent a hope for a better and brighter future for my people.

Thank you, and I welcome your questions.

[The prepared statement of Dr. Nygren follows:]

PREPARED STATEMENT OF HON. BUU NYGREN, PRESIDENT, NAVAJO NATION

Yá'át'ééh, Chairman Schatz, Vice Chairwoman Murkowski, and members of the Committee. My name is Dr. Buu Nygren and I am the President of the Navajo Nation (the "Nation"). Thank you for the opportunity to testify in support of the Northeastern Arizona Indian Water Rights Settlement Act, S. 4633, which will secure a sustainable water supply for the Navajo Nation, the Hopi Tribe, and the San Juan Southern Paiute Tribe (collectively, the "Tribes"). This settlement will resolve the most significant outstanding water claims in the State of Arizona. Thank you also to Senators Kelly and Sinema 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 federal and non-federal parties that have worked so hard to make this settlement a reality.

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 sovereign territory spans the states of Arizona, New Mexico, and Utah. There is an urgent need for access to safe, clean drinking water remains largely unmet for the Navajo people. Approximately one-third of Navajo families still lack 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, S. 4633 addresses these needs by investing significantly in desperately needed water delivery infrastructure projects on the Navajo Nation that will bring safe and reliable clean 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 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 lost 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 were 30.3 per 100,000, our preliminary data from the Navajo Nation Epidemiology Center shows that the COVID-19-associated death rate among our people was over 800 per 100,000. Our people were disproportionately impacted by the COVID pandemic and continue to experience high rates of morbidity and mortality from infectious diseases. This is in part due to the lack of access to clean water on the Nation. It's difficult to wash your hands without running water, and a recent Navajo Nation Health Survey confirmed that the lack of piped water in homes is a key factor contributing to poor health across the Nation. 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

Over 30 percent of Navajo households lack running water and must rely on hauling it, which significantly affects both the quantity and quality of water available to these households. Families that haul water sometimes must rely on non-potable

water sources such as livestock wells to meet their daily household water needs, including drinking water. 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 from the closest available water source 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 Nation 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 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, families that 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 S. 4633 will not eliminate water hauling altogether, it will deliver a source of potable water that is of higher quality, more reliable, and closer to homes.

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 remains a significant funding gap to meet the basic needs of our people. S. 4633 will largely address these funding deficiencies.

II. Key Components of the Settlement

S. 4633 authorizes, ratifies, and confirms a 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, the Arizona State Land Department, Salt River Project, Arizona Public Service, Central Arizona Water Conservation District, Bar T Bar Ranch, local irrigation districts and ranchers located within the Little Colorado River watershed, and the Cities of Winslow, Flagstaff, Holbrook, Taylor, Snowflake, Show Low, Eagar, Springerville, and St. Johns. The Settlement Agreement reflects decades of settlement negotiations among these parties. The 25th Navajo Nation Council unanimously approved the Settlement Agreement on May 23, 2024. That same week it was unanimously approved by the councils for the Hopi Tribe and the San Juan Southern Paiute Tribe. The legislation, once enacted by Congress, will settle the Navajo Nation’s claims to the Little Colorado River, the Gila River, and the Upper and Lower Basins of the Colorado River. It will also address the Nation’s claims 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 our people’s health and living standards, and ensure that our homeland and our people thrive now and into the future.

A. Water Claims Resolved

The Settlement Agreement, once confirmed by Congress through enactment of S. 4633 and House companion bill H.R. 8940, 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

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, available at *Strategy Document* (frontiernet.net).

³*Id.*

⁴*Id.* There are 325,851 gallons in an acre foot.

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 aquifer (the “N-Aquifer”) and the Coconino 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 of 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 percent and a municipal per capita water demand of 130 gallons per capita per day. S. 4633 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, S. 4633 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—\$29.8 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 potable 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 potable water to Kinlichee, Ganado, Cornfields, Lower Greasewood, Jeddito, and Steamboat.
- The Black Mesa Project that will develop and expand public water systems to deliver potable water to Black Mesa, Forest Lake, Pinon, and Shonto.
- The Four-Corners Project that will develop and expand public water systems to deliver potable water to Chinle, Many Farms, Rock Point, Round Rock, Sweetwater, Teec Nos Pos, and Tsaile/Wheatfields/Blackrock.
- The Kayenta Area Project that will develop and expand public water systems to deliver potable water to Chilchinbeto, Kayenta, Dennehotso, Mexican Water, and Oljato.
- The Lupton Area Project that will develop and expand public water systems to deliver potable 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 potable water to Fort Defiance, Red Lake, and Saint Michaels, with an intertie to the Ganado Area Project.

- The Local Upper Basin Water Projects, 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, S. 4633 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, including replacement and development of livestock wells and impoundments;
- The Navajo Nation 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 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 the Settlement 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 Lease Colorado River Water

The Navajo Nation is uniquely located in both the Upper Basin and the Lower Basin of the Colorado River. In order to efficiently provide water to Navajo communities it must move 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 Navajo Nation's ability to move water depends on Congressional action and S. 4633 authorizes such movement of water. 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 and high population/high growth communities like Cameron and Tuba City. There is a lack of viable options for the 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 S. 4633 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 hinder the Navajo Nation from being able to obtain the full value of the water that it negotiated.

The Upper Colorado River Basin states have raised certain questions regarding these provisions. The Navajo Nation, the United States, and the Basin states are having productive conversations and are working diligently to resolve any outstanding issues. I believe all Basin states are committed to the goal of addressing critical water needs on the Navajo Reservation irrespective of which basin a particular Navajo community is located in. As a result, the Navajo Nation is optimistic that we can resolve these issues.

III. Value of the Settlement

This historic settlement is a critical 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. Ratification of the Settlement Agreement will avoid protracted and costly 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, rather than fighting over this limited and critical water resource.

Additionally, S. 4633 will fund important unfunded federal programmatic responsibilities by using S. 4633 infrastructure development monies to fund federal programmatic responsibilities. It will also secure and deliver a clean water supply to the Navajo Nation that will save the federal government money that would otherwise be spent treating infectious diseases on the Navajo Reservation. For example, the Indian Health Service (IHS) estimates each dollar invested in water and sewer infrastructure could yield savings of \$1.18 in avoided direct healthcare costs for these diseases.⁵ The projects contemplated in the Settlement Agreement and funded in S. 4633 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 with a secure and safe water supply.⁶

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/](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.

IV. Conclusion

S. 4633 is historic legislation. When history is written, the 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 same health and prosperity as 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. Enactment of this legislation and ultimate implementation of the Settlement Agreement as conformed to be consistent with this legislation 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.

Thank you. Ahéhee’.

ADDITIONAL TESTIMONY

S. 4998—A bill to approve the settlement of water rights claims of the Navajo Nation in the Rio San Jose Stream System in the State of New Mexico, and for other purposes.

I appreciate this opportunity to share with you the Nation’s strong support for S. 4998, which would approve a settlement of the water rights of the Nation in the Rio San José Stream System. I also wish to convey the gratitude of the Nation to Senators Heinrich and Lujá for their commitment to improving the lives of the Navajo People and for their leadership in sponsoring this important legislation.

S. 4998 would authorize the Secretary of the Interior to execute, on behalf of the United States, a settlement agreement to quantify the 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 unanimously approved the Navajo Nation Rio San José Settlement Agreement (the “Navajo Nation Settlement Agreement”) on May 23, 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 that it promises, including water imports, the water supply situation will become significantly 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 authorized by S. 4998 is a counterpart to the Pueblos’ Local Settlement Agreement addressing the water rights claims of the Pueblos of Acoma and Laguna in the same geographic area, which has authorizing legislation pending in S. 595. The Navajo Nation Settlement Agreement is written as an addendum to the Pueblos’ Local Settlement Agreement. If implemented, these fully compatible water rights settlement agreements 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. Tóg Ba’áadii (Female River—the Rio Grande), born from one of our sacred mountains, is one of the four sacred rivers that sets 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 southward through New Mexico, Texas, and five 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. Nine chapter communities are located in the Rio San José Basin (Baca/Prewitt, Casamero Lake, Crownpoint, Littlewater, Mariano Lake, Ramah, Smith Lake, Thoreau, Tóhajiilee) and seven chapter communities are located in the Rio Puerco Basin (Tóhajiilee, Torreon, 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 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 an agreement on other key issues. The Navajo Nation's rights remained to be negotiated. In the 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, the Association of Community Ditches of the Rio San José, and 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 the 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 Allottees in the Rio San José Stream System or the Rio Puerco Basin. Water rights for allotments will be separately adjudicated from the Navajo Nation's 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. The legislation also establishes a trust fund 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 the basins. First, the Rio San José Regional Water Supply Project will import water from the San Juan River through the Navajo Gallup Water Supply Project. S. 4998 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 the 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 also the other water users in the basins struggling with water shortages.

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 Tóhajiilee 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 towards 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 for 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 of Navajo life. Tóç éí iiná até, (with water, there is life), and it is elemental to Hózhóogo Oodaál (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 Hózhóóji (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 the swift passage of this legislation.

The CHAIRMAN. Thank you very much.

We will now welcome virtually the Honorable Timothy Nuvangyaoma, the Chairman of the Hope Tribe in Arizona.

Mr. Chairman?

STATEMENT OF HON. TIMOTHY L. NUVANGYAOMA, CHAIRMAN, HOPI TRIBE

Mr. NUVANGYAOMA. Chairman Schatz, Vice Chair Murkowski and members of the Committee, thank you for the opportunity to

testify and privilege to testify today in support of S. 4633, the Northeastern Arizona Indian Water Rights Settlement Act.

My name is Timothy Nuvangyaoma and I have the honor of serving as the chairman of the Hopi Tribe. I want to apologize to the Committee for not being there today in person with you all, but I am recovering from surgery and unable to travel at the moment. I thank the Committee for allowing me to participate virtually.

I am Tobacco Clan, from the Village of Musungnuvi. I do not carry today's message alone, so I do want to recognize Vice Chairman Craig Andrews and the members of the Hopi Tribal Council who are strong advocates for our Hopi people.

I also want to thank Senator Kelly, Senator Sinema, and the entire Arizona delegation for their work on this important legislation. This 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. However, 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.

Hisatsinom, our ancestors, have resided in northeastern Arizona since time immemorial. Upon emergence into this world, our people encountered the deity who I will refer to in English as the Original Caretaker, who gave us blessings to live on the land. The Caretaker required our ancestors to follow in his path as humble farmers and to respect the land.

Since our ancient time, we have remained in Hopitutskwa, our traditional homeland, where we still reside today. Untold generations of [phrase in Native tongue] have lived on this land, preserving and conserving our water. When the United States created the Hopi Reservation, they cut us off from much of our Hopitutskwa. The United States landlocked and waterlocked us completely, surrounded us with the Navajo Reservation.

The Hopi Reservation stands separated from many of our traditional water resources. 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 stewards of this land. Our culture, tradition, and religion are tied to this place. We cannot and will not leave.

Fortunately, this settlement act will ensure that my people have water for 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 to act as stewards for Hopitutskwa.

It will provide the Hopi Tribe, Navajo Nation, and San Juan Southern Paiute with reliable water. It will construct the iiná bá—paa tuwaqat'si pipeline to serve the tribes. It will provide us with reliable Upper Basin water. It will ensure that groundwater is managed appropriately. It will create multiple trust funds for the tribe 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 running 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 Hopi's reality. My good friend and Hopi tribal Vice Chairman Andrews hauls his own water today to provide for his home. This settlement will fix that for his family and the many others living without running water.

[Phrase in Native tongue], water is sacred. [Phrase in Native tongue], water is our life.

I appreciate the opportunity to be here today virtually, and I do welcome any questions that you may have. Thank you for giving me this time.

[The prepared statement of Mr. Nuvangyaoma follows:]

PREPARED STATEMENT OF HON. TIMOTHY L. NUVANGYAOMA, CHAIRMAN, HOPI TRIBE

Chairman Schatz, Vice Chairman Murkowski, and members of the Senate Committee on Indian Affairs, my name is Timothy Nuvangyaoma and I serve as Chairman of the Hopi Tribe. Thank you for the opportunity to testify on behalf of the Hopi Tribe and its members in support of S. 4633, the "Northeastern Arizona Indian Water Rights Settlement Act of 2024." I also want to thank our Arizona Senators Kelly and Sinema, who jointly introduced this bill in the Senate, as well as Representative Ciscomani for introducing this historic bipartisan bill in the House, and Representatives Stanton, Crane, Schweikert, Grijalva, and Gallego for joining as co-sponsors.

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

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

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 eleven (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 S. 4633 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 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 acrefeet 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).

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 Masayesta 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).

- 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; o 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
 - 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.

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.”

- \$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 sixteen 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 twelve main Hopi villages on the Hopi Reservation to determine detailed household water use behavior. According to the survey, 18 percent of the people who lived in homes in villages were not connected to a public water supply. Of those people, 84 percent accessed water through public taps or neighbors with connections to the public system with the remaining 16 percent 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. I live in one of the oldest continuously inhabited communities in the United States, the Village of Mishongnovi. Many homes in Mishongnovi do 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 towards 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 soci-

ology/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 towards 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 Ph.D. 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 “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

⁴ Curriculum Vitae available at <https://profiles.ucr.edu/api/CvAttachment/7034812>.

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.

The CHAIRMAN. Thank you very much, Mr. Chairman.

Now we are happy to welcome and introduce the Honorable Johnny Lehi, Jr., Vice President of the San Juan Southern Paiute Tribe in Arizona. Welcome.

**STATEMENT OF HON. JOHNNY LEHI, JR., VICE PRESIDENT,
SAN JUAN SOUTHERN PAIUTE TRIBE**

Mr. LEHI. [Greeting in Native tongue.] I want to thank Chairman Schatz and Vice Chair Murkowski for allowing us to testify today about Senate Bill 4633. I would also like to thank Senator Kelly and Senator Sinema for their unwavering support in moving this bill forward.

My name is Johnny Lehi Jr., and I am the Vice President of the San Juan Southern Paiute Tribe. For the Paiute Tribe, this bill is about so much more than just water. Not only does this historic bill resolve water rights for three tribes and represent the efforts of 39 parties, for the Paiutes, it is the resolution to several decades of living as strangers in our own homeland. It provides our members with water, and it ratifies a 24-year-old treaty to establish and recognize the San Juan Southern Paiute Tribe Reservation.

I have lived in Hidden Springs my entire life. It is a small community of San Juan Southern Paiute tribal members located near Tuba City, Arizona. Importantly, Hidden Springs sits within the boundaries of the Navajo Reservation.

My family has been in this area for generations. Growing up, it was always difficult to understand why the Paiutes have been living in the same area for so long, and yet don't have an exclusive reservation and are considered outsiders in our own homeland. We are hopeful that Senate Bill 4633 will rectify this unfortunate reality.

The San Juan Southern Paiute Tribe is a small tribe located in Northern Arizona and Southern Utah, within the boundaries of the Navajo Reservation. Most people don't know that a large part of the Navajo Reservation was actually set aside by Congress for the Navajo, Hopi, and the San Juan Southern Paiute Tribes in 1934.

While the Paiute Tribe has shared this territory with the Navajo Nation for more than 160 years, our tribe was in this area long before the relocation of, or encroachment from other tribes.

As the only federally recognized tribe in Arizona without an exclusive reservation, we are unable to take advantage of basic services like funding opportunities that would provide our tribal members with livable homes, running water and electricity, all because we are a tribe without a homeland. Generations of San Juan Southern Paiute Tribe have come and gone without ever seeing the creation of our exclusive homeland. The mental and emotional impact of being a landless, homeless tribe is something I wouldn't wish upon anyone.

Senate Bill 4633 will absolutely change things for my tribe. You have heard about the water rights included in the legislation, and you will hear more about the pipeline project and the ability to provide people with safe, reliable drinking water. The water rights and the pipeline are crucial to all three tribes.

For my tribe, S. 4633 will ratify a treaty between the San Juan Southern Paiute Tribe and the Navajo Nation that our tribe has waited more than 24 years to see become a reality. This treaty will create the San Juan Southern Paiute Reservation, made up of 5,100 acre in a southern area near Tuba City, Arizona, and an additional 300 acres in southern Utah. All of this land is currently located within the Navajo Reservation.

Senate Bill 4633 not only ratifies the treaty that creates our reservation, but it also provides for the water we need to make our reservation a true homeland for our people. The funding provided by S. 4633 will help create the infrastructure necessary to serve our tribal members.

A tribe without land is a tribe without a future. Land is what allows tribes to develop economic opportunities, generate revenue, and continue to pass down our way of life to our children and our children's children.

My kids are starting to ask me the same questions I struggled with when I was young: why don't we have a reservation? Why can't our people get running water or graze animals? Now, thanks to S. 4633, I have positive and hopeful answers for them that include the real possibility of someday soon providing my people, including my children, with the opportunity to build a future on the reservation.

With your help, this treaty, this promise, that the Navajo Nation and the San Juan Southern Paiute Tribe made to each other 24 years ago, can finally be ratified. Please support Senate Bill 4633 and help my people claim our small place in this world.

Thank you, Senator.

[The prepared statement of Mr. Lehi follows:]

PREPARED STATEMENT OF HON. JOHNNY LEHI, JR., VICE PRESIDENT, SAN JUAN
SOUTHERN PAIUTE TRIBE

Hello in Paiute

I want to thank Chairman Schatz and Ranking Member Murkowski for allowing us to come and testify today about Senate Bill 4633. I would also like to thank Senator Kelly and Senator Sinema for their unwavering support in moving this bill forward.

My name is Johnny Lehi Jr, and I am the Vice President of the San Juan Southern Paiute Tribe. For the Paiute Tribe, this bill is about so much more than water. Not only does this historic bill resolve the water rights of three tribes and represent the efforts of 39 parties—for the Paiutes, it is the resolution to several decades of living as strangers in our own lands. It provides our members with water, and it ratifies a 24-year-old treaty to establish and recognize the San Juan Southern Paiute Reservation.

I have lived in Hidden Springs my entire life. It is a small community of San Juan Southern Paiute Tribal Members located near Tuba City, Arizona. Importantly, Hidden Springs sits within the boundaries of the Navajo Reservation. My family has been in this area for generations. Growing up it was always difficult to understand why the Paiutes have been living in the same area for so long, and yet don't have an exclusive reservation and are considered outsiders in our own homeland. We are hopeful that Senate Bill 4633 will rectify this unfortunate reality.

The San Juan Southern Paiute Tribe is a small tribe located in Northern Arizona and Southern Utah, within the boundaries of the Navajo Reservation. Most people

don't know that a large part of the "Navajo Reservation," was actually set aside by Congress for the Navajo, Hopi, and the San Juan Southern Paiute Tribes in 1934. While the Paiute Tribe has shared this territory with the Navajo Nation for more than 160 years, our Tribe was in this area long before the relocation of, or encroachment from other tribes.

As the only federally recognized tribe in Arizona without an exclusive reservation, we are unable to take advantage of basic services like funding opportunities that would provide our Tribal Members with livable homes, running water and electricity. All because we are a Tribe without a land base.

Generations of San Juan Southern Paiute have come and gone without ever seeing the creation of our exclusive homeland. The mental and emotional impact of being a landless, homeless Tribe is something I wouldn't wish on anyone.

Senate Bill 4633 will absolutely change things for my Tribe. You've heard about the water rights included in this legislation, and you'll hear more about the pipeline project and the ability to provide people with safe reliable drinking water. The water rights and the pipeline are crucial to all three tribes. For my Tribe, S. 4633 will ratify a treaty between the San Juan Southern Paiute Tribe and the Navajo Nation that our Tribe has waited more than 24 years to see become a reality. This treaty will create the San Juan Southern Paiute Reservation, made up of a 5,100-acre Southern area near Tuba City, Arizona, and an additional 300-acre Northern Area near Navajo Mountain in Utah. All of this land is currently located within the Navajo Reservation.

Senate Bill 4633 not only ratifies the treaty and creates our reservation, but it also provides for the water we need to make our reservation a true homeland for our people. The funding provided by S. 4633 will help create the infrastructure necessary to serve our Tribal Members. We will be able to provide permanent housing, sanitation, water and electricity. These are necessities that most living off-reservation take for granted, but that my people have learned to live without, and we have lived harder lives because of it.

A tribe without land is a tribe without a future. Land is what allows tribes to develop economic opportunities, generate revenue, and continue to pass down our way of life to our children and our children's children.

My kids are starting to ask me the same questions I struggled with when I was young. Why don't we have a reservation? Why can't our people get running water or graze animals or have a homesite lease? Now, thanks to S. 4633, I have positive and hopeful answers for them that include the real possibility of someday soon providing my people, including my children, with the opportunity to build a future on the reservation.

With your help, this Treaty—this promise—that the Navajo Nation and the San Juan Southern Paiute Tribe made to each other 24 years ago, can finally be ratified. Please support Senate Bill 4633 and help my people claim our small place in this world.

The CHAIRMAN. Thank you very much, Mr. Vice President.

Now we are pleased to introduce and welcome the Honorable Arden Kucate, the Governor of the Zuni Tribe in Zuni, New Mexico.

STATEMENT OF HON. ARDEN KUCATE, GOVERNOR, ZUNI TRIBE

Mr. KUCATE. Good afternoon. My sincere thanks to you, Chairman Schatz, and Ranking Member Murkowski, for holding this hearing and giving me the opportunity to testify. I also want to thank Senators Heinrich and Luján for their co-sponsorship of our water settlement bill.

Zuni's reservation is the largest of New Mexico's 19 pueblos, containing almost 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 utilizing an irrigation technique that we are famous for, waffle gardens.

Our adaptive irrigation techniques and careful stewardship of our water and lands allowed us to irrigate thousands of acres of land. Not surprisingly, our prayers and traditions focus on the importance of water and agriculture to our existence.

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 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. Consequently, the Zuni River, once a perennial stream running through the heart of our village is now a mere trickle.

Unfortunately, instead of taking action to stop these upstream diversions by 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 our sacred spring, desecrating the original home of our Salt Mother. The dam failed in its first year.

Other dams and reservoirs that followed in the wake of Black Rock's failure were also poorly engineered and not maintained, and they effectively ended our traditional farming practices, practices that had been successful for generations.

Today, our five irrigation units are largely useless and need to be re-engineered and rebuilt. The pending settlement will allow us to rehabilitate our five irrigation units in a manner suited to climatic conditions as well as our traditional irrigation practices. It will provide us with funds to replace our aged municipal water system, including the water treatment facility capable of addressing the high levels of contaminants occurring in our groundwater, and construct a modern wastewater treatment facility that will allow us to reuse our water instead of allowing it to evaporate in outdated sewage lagoons.

For Zuni to sustain and grow, we must have modern safe and reliable drinking water and wastewater services. The settlement will provide funds for livestock watering facilities and community water hauling stations. It will also provide funds to restore the Zuni Rio River and Rio Nutria channels to support water flows, including for ecological and traditional purposes. The Rio Nutria is the last place on the planet where the endangered bluehead sucker can be found.

In addition to resolving the tribe's water rights in the Zuni River Basin, the settlement legislation will ensure the continuation of protections for the sacred Zuni Salt Lake and the surrounding sanctuary, and provide for transfers to the tribe, in trust, of approximately nine sections of BLM land surrounding the lake.

The Zuni Lake is located approximately 60 miles south of Zuni 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. For centuries, our people have

conducted pilgrimages to the lake to pray and gather salt for ceremonial and domestic uses. The lake and surrounding caldera are the defining geographic feature in this otherwise desolate part of New Mexico.

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 the new chapter for our tribe, allowing us to protect and sustainably develop our community's limited water resources, to restore traditional agriculture, to facilitate much-needed economic development, and to protect cultural resources that are integral to our beliefs and traditions. It will also allow us to adapt to the growing impacts of climate change.

Thank you very much.

[The prepared statement of Mr. Kucate follows:]

PREPARED STATEMENT OF HON. ARDEN KUCATE, GOVERNOR, ZUNI TRIBE

Good afternoon Chairman Schatz, Vice Chair Murkowski, and Honorable Members of the Committee. On behalf of the Tribe, I want to extend my sincere thanks to you for scheduling this hearing. And I want to express my gratitude to Senators Lujan and Heinrich for their support and leadership in introducing S. 4643.

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 vast ancestral lands. 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 some 10,000 members and their families.

Centuries 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. Known as the "Father of Pueblos," our agricultural practices were so successful that we had reserves to sell to the US army and others.

We developed improvements and clever techniques to control and divert water onto our lands, utilizing natural features and topography, and adapting our techniques to changing conditions. 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 and overgrazing in the Zuni Mountains compounded our water supply woes, causing severe erosion and clogging our waterways with silt. The final dagger was the construction by the BIA of Black Rock Dam in 1908, immediately upstream of our village, which I describe below. 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) and ended river flows within our village—flows that our ancestors depended upon for activities of daily life, including the growing of crops, and remain central to our religious practices. Black Rock Dam failed in its first year, leaving a path of devastation downstream. (See Attachments 7 & 8).

*Attachments 1–12 have been retained in the Committee files.

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. 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, while the government encouraged a return to decentralized farming, federal construction of these dams and reservoirs destroyed Zuni's ability to use traditional farming methods that had been successful for generations. Today, our five irrigation units, and the diversion structures and reservoirs serving them, are sediment-laden and largely useless, and need to be re-engineered and rebuilt. Zuni currently has 48 miles of open ditches and 20 miles of buried pipeline that previously served our irrigation units. The Bureau of Reclamation, in a study completed in December 2022, found that all 68 miles of conveyances, valves, turnouts and other related infrastructure were in poor condition. (See Attachments 9 & 10 showing an example of the exposed and cracked concrete pipeline conveyance system).

Upstream, off-reservation groundwater pumping has also caused significant 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. As part of the settlement, while our neighbors will be permitted to drill new wells for domestic and stock purposes, the State of New Mexico has instituted measures prohibiting new large groundwater withdrawals near our Reservation, and the parties have agreed to undertake a monitoring program to assist these efforts.

In addition to our irrigation infrastructure needing to be overhauled, our domestic water system is in dire need of rehabilitation. We are dependent on two wells located over 10 miles from our village, both of which have poor water quality. The EPA has notified Zuni that contaminate levels in these wells exceed safe drinking water standards. And our continued reliance on them jeopardizes several sacred springs in the area that have experienced major drawdowns in recent years.

While we are proudly 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. Our community needs new economic opportunities, and 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 will comprehensively resolve all of Zuni's water rights claims in the Zuni River basin, both surface and ground water. The Settlement Agreement provides Zuni surface water rights sufficient for irrigation and livestock, including the filling of reservoirs and impoundments, and groundwater rights sufficient for current and future domestic, commercial, and municipal needs. The Agreement also recognizes Zuni's right to continue its traditional irrigation practices.

The settlement will provide the Tribe with critically-needed funding for various water-related projects including: (1) a much needed replacement of the Tribes aged municipal water system 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, and to support habitat for several endangered species, including the critically endangered Zuni bluehead sucker; (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, S. 4643 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 main village, in an area that is primarily used for grazing and hunting (Attachment 1 shows the location of the Lake.). The Lake and Sanctuary

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.

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.

The Lake itself is a unique, naturally occurring saline lake, maintained by a delicate balance of surface water and groundwater (See Attachments 11 & 12 for pictures of it and the surrounding caldera). 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 S.4643 will protect. These protections reflect those already included in the BLM management plan for the area, but the legislation 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 private land within the acquisition area, and we have been in communication with the land owner with the mutual goal of working out a land exchange with the BLM that will help preserve the Salt Lake, and provide the land owner with title to certain other BLM lands on which the land owner has corrals and other improvements.

The adjudication to determine the Tribe's water rights in the Zuni River basin has been ongoing for over 25 years, clouding the rights and interests of basin residents and straining relationships. Needless to say, the ratification of the Settlement Agreement by Congress is of enormous importance to my community and its future. While protecting all existing water uses by our non-Zuni neighbors, the settlement 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, as well as our sacred Salt Lake and Sanctuary. I want to recognize New Mexico State Engineer's office for its work on this settlement, and for the open and cooperative manner in which its technical and legal staff negotiated and worked with us. We ask the United States to join us in this effort, on behalf of my community and the generations to come.

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 Committee to support Senate passage of this legislation, which is critical to our future.

The CHAIRMAN. Thank you very much.

We are pleased to also welcome the Honorable Tanya Lewis, the Chairwoman of the Yavapai Apache Nation in Camp Verde, Arizona. Welcome.

STATEMENT OF HON. TANYA LEWIS, CHAIRWOMAN, YAVAPAI APACHE NATION

Ms. LEWIS. Thank you. [Greeting in Native tongue.] My name is Tanya Lewis. I am the Chairwoman for the Yavapai Apache Nation. Thank you for the opportunity to testify.

I would also like to express my gratitude to Senator Kelly and also Senator Sinema for introducing and co-sponsoring S. 4705, and for their steadfast advocacy for our tribe and our water settlement.

As I speak to you today, I stand on the shoulders of my ancestors and Tú ńlíníchoh, the Verde River, a living being in the center of our cultural and religious way of life. The passage of this legisla-

tion is vital for us to secure a future of clean water and permanent homeland for the Yavepé and Dilzhé'é people.

My people have called the Verde Valley home since the beginning of time. And it is time for us to access the water guaranteed in our treaty with the United States. S. 4705 fulfills this long overdue promise by providing a secure water supply for our reservation, and preserving our groundwater resources.

The settlement will also help protect the Verde River, ensuring that Arizona's last free-flowing river continues to thrive for future generations. In the face of Arizona's ongoing drought, we must take concrete and generational actions to meet our community's long-term needs. Like our counterparts in metro Phoenix who benefit from historic Federal reclamation investments, we too must have access to modern water infrastructure, to use and protect our reserved water rights under this settlement.

To grasp the importance of this settlement, one must understand my nation's history and our deep-rooted relationship with the Verde River and the Verde Valley. Our ancestral homelands cover over 16,000 square miles across central Arizona. When gold was discovered in the 1800s, a rush of settlers claimed our land, used our water, and decimated the wildlife we relied on. It ultimately escalated into a larger conflict known as the Apache wars.

Intent on ending the conflict, President Grant established the Camp Verde Indian Reservation in 1871. It 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 hand-dug in 1874 is still in operation today as the Cottonwood Ditch.

However, our prosperity was short-lived. Due to pressure from settlers to open the Camp Verde Reservation, on February 27, 1875, 1,476 of our people, young and old, pregnant and infirm, were force-marched 180 miles through the Mazatzal Mountains in the dead of winter to the San Carlos Reservation, where efforts were made to try and persuade the Federal agent in charge to take a route around the mountains using wagons and horses. He responded, "They are Indians, let the beggars walk." More than 100 of our people died on that treacherous journey.

Shortly after, President Grant terminated the Camp Verde Reservation, allowing non-Indians to build their lives and communities using the land, water, and other resources that were once guaranteed to my people. President Grant did not terminate our water rights to the Verde River. However, the United States permitted others to use our water and in doing so, the State of Arizona prospered while my people suffered.

By 1890, with the end of the Apache Wars, my ancestors began their return home to the Verde Valley, mostly on foot. However, upon returning, we found no established reservation or land base of any kind. In 1909, with the assistance of our Indian agent, we purchased back just over 18 acres along the Verde River.

Since then, we have acquired more land for our reservation, but we still lack sufficient lands to meet the housing needs of our membership. Many of our tribal members live off the reservation and are scattered throughout the Verde Valley. We hope to add 3,206 acres to our reservation through an administrative land exchange

with the Forest Service, which we have worked on for many years. This expansion is essential for providing housing for our growing membership and fostering economic development.

Without a new water resources, we cannot meet our community's current or future needs, as our local groundwater supplies are diminishing in both quantity and quality. This poses a serious threat to my people's health. Like all communities, we must secure the water necessary for our growth and prosperity. This legislation will finally grant us what the United States promised us in the 1852 Apache Treaty.

On behalf of the Yavapai Apache Nation and our ancestors, [phrase in Native tongue] for this opportunity.

[The prepared statement of Ms. Lewis follows:]

PREPARED STATEMENT OF HON. TANYA LEWIS, CHAIRWOMAN, YAVAPAI APACHE NATION

Good afternoon, my name is Tanya Lewis, I am the Chairwoman of the Yavapai-Apache Nation. I want to thank the Committee 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 S.4705, 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. I include with this written testimony a number of letters of support from State stakeholders and environmental organizations that we request be included in the record of this hearing.

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 noncontiguous 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 and our local aquifers.

To the Yavepé (Yavapai) the Verde River is known as *Hatayakehela* ("big river"), and to the *Dilzhé'é* (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 *Yavepe* and *Dilzhé'é* 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 and around the Verde Valley, including the City of Sedona, the City of Cottonwood, the Town of Camp Verde, and the Town of Clarkdale. In short, the continued reliable flow and health of the Verde River and its tributaries (and the groundwater sources that sustain these systems) is crucial to the Nation's present and future livelihood in its per-

manent 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 avoiding 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 a healthy flowing 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. I will also discuss the importance of this settlement as a means to finally fulfill the United States' obligation to secure the permanent homeland for my people, including a reliable and permanent source of water that all people need to have secure economic future. After this, I will provide a summary of the Settlement Agreement and S. 4705.

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 then that our homeland would 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 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 percent 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 successful farms and ranches, the United States was convinced to open up our remaining lands to non-Indian settlement by forcibly removing our people from the Camp Verde Reservation and imprisoning us 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 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 us years to make our way home. Along the way, many of my ancestors worked on the Federal dams, like Bartlett Dam and 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 to secure appropriations from Congress in 1909 to 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 percent of our former 1871 Camp Verde Reservation and 0.0017 percent 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.

The United States’ Obligation to Secure Sufficient Water for a Permanent Homeland for the Yavapai-Apache Nation

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. Our waiting list for Tribal housing, now at more than 170 families, only continues to grow, but we have run out of land to construct tribal housing or other tribal governmental facilities. 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 sustained local economy that are necessary attributes of a permanent tribal homeland.

The Nation has a right to have the water it needs to secure a permanent homeland for our people, including water for economic development, housing, cultural uses, and other purposes. See *In re General Adjudication of all Rights to use Water in the Gila River System and Source*, 35 P. 3rd 68 (AZ. 2001) (setting forth the factors for quantifying federal reserved water rights for Arizona Indian tribes under Winters). Based on this standard, the Tribe filed water rights claims in Arizona’s general stream adjudication to the Verde River and its systems and sources totaling 11,628 acre-feet per year (AFY) (in addition to a claim for a non-consumptive instream flow right in the Verde River).

In 2011, the Nation and the settling parties agreed to a water budget for the Nation of 6,888.50 AFY, which is included in the Settlement Agreement. In addition, in the Settlement Agreement, the parties agreed to protect the instream flow of the Verde River, which is necessary to protect the Tribe’s cultural and religious uses of the Verde River and to protect other key downstream Federal and other interest in the Verde River that rely on a healthy flowing Verde River, including (1) the National Wild and Scenic River (NWSR) segment of the Verde River that was designated by Congress due to its outstanding scenery and remarkable values under the Arizona Wilderness Act of 1984 (P.L. 98-406); (2) the Fort McDowell Yavapai Nation and the Salt River Pima Maricopa Indian Community who divert and use

Verde River water sources as part of their Congressionally approved water rights settlements; and (3) the Salt River Project and metropolitan Phoenix that rely on surface water sources from the Verde River to meet a significant portion of their water supply needs.

The Yavapai-Apache Nation has a right to prosper and thrive in our restored homeland. We also have the right to self-determination and self-sufficiency. To be sure, our ancestors recognized the abundance and opportunity that the Verde Valley could provide when they returned home with nothing and, through sheer persistence, began the process of restoring our lands and rebuilding our community. But our community is growing, and the Tribe needs to grow with it. This is why we have invested our own dollars to complete an administrative land exchange with the U.S. Forest Service. Once complete, the land exchange will add an additional 3,088 acres of land to our Reservation—land that was shamefully, if not unlawfully, taken from us in the first place. The land exchange lands, coupled with 209 acres of Nation owned fee lands, will be added to the Reservation as part of the Settlement Act. These lands will serve as an anchor for our economic and community development well into the future, ensuring that my people will always have the economic revenue and housing we need to grow and thrive in our homeland. To do this, however, we must have the water to which we are entitled under the *Winters* doctrine, the Apache Treaty of 1852, and the United States' trust responsibility to the Nation.

The Settlement achieves this goal by, among other things, importing a renewable water supply from the C.C. Cragin Dam and Reservoir to the Reservation to offset groundwater pumping from the local aquifer, and by supporting the Nation's ability to capture wastewater and treat it to a high level for use on the Nation's farming operations in lieu of the farm's sole option of pumping raw groundwater. The Settlement is therefore critical to finally achieve a sustainable water future for the Nation. Currently, the sole source of potable water in the Verde Valley is local groundwater. However, groundwater pumping throughout the Verde River Watershed has increased exponentially over the last 75 years, particularly in the Verde Valley, which is home to multiple communities, including the Nation, the Town of Camp Verde, the Town of Clarkdale, the City of Cottonwood, and multiple unincorporated communities like Cornville and Rimrock.

As pressure on local aquifers has increased over the last decades, the availability and quality of local groundwater resources has diminished, in some cases frighteningly so. For example, increased pumping on and around the Nation's Middle Verde District of the Reservation has mobilized arsenic and other heavy metals that are naturally present in the local aquifer. As a result, the Nation and our neighboring communities have had to install expensive arsenic treatment systems to ensure that the water we pump is safe to drink. In some cases, arsenic concentrations are so high that treatment will not work. In fact, our utility department has had no choice but to shut down an existing well serving our Tunlii housing development due to untreatable levels of arsenic contamination. This places the Nation in a difficult and costly position, because the more we pump local groundwater supplies the greater the chance we will encounter high levels of arsenic and other heavy metals that will render our wells unusable as a source of potable water for our people. The same is true for our local neighboring communities.

In addition to arsenic and other heavy metals, our local water sources have also been contaminated by bacteria and other organic contaminants due to failing septic systems. Stomach cancer is one of the primary cancer types in our community, and sadly Yavapai County has one of the highest rates of cancer mortality in the State of Arizona. It has long been proven that access to safe and clean drinking water improves overall health and life expectancies—in short water is life. Thus, the Nation's access to the delivery of up to 4,610 AFY of C.C. Cragin water under the Settlement is critical if we are to improve the health status of our people. Our people should not have to die younger and at higher rates simply because we do not have access to safe water supplies.

This is another reason 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, while also ensuring that the water we drink does not threaten our life expectancy. Moreover, with this renewable water supply, we can limit future groundwater pumping that depletes flows in the Verde River which is a key source of our cultural health and spiritual wellness.

For our Nation to thrive, we must have a livable tribal homeland for our community, and for that to happen, we need to have necessary water supplies to meet our 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 United States once promised us under the 1852 Apache Treaty.

History of Settlement Negotiations

The journey to reach today's hearing has been long and arduous for our Nation. I want to acknowledge all 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, all 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 our original 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 depleted 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 in cooperation with 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 (and only) way to both secure a renewable water supply for the current and future needs of our people and 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.

Elements of the Settlement

Let me now summarize the principal elements of the comprehensive water rights Settlement Agreement ratified by S. 4705:

- The Settlement Agreement is a comprehensive settlement of all 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 River 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.

- S. 4705 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 nliínichoh* Water Infrastructure Project.”
- The Settlement Agreement and S. 4705 provides a pathway for local Verde Valley communities to also secure a renewable water supply from C.C. Cragin for their citizens, including for many of our Tribal members who live in these communities. This will be accomplished by allowing the *Tú nliínichoh* 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 S. 4705, the Nation will replace its long-outdated wastewater treatment system of facultative sewer lagoons with a modern wastewater 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 support future irrigation with renewable water supplies in lieu of new groundwater pumping.
- S. 4705 would authorize the completion of 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.
- S. 4705 directs the Secretary of the Interior to take certain lands into trust that the Nation currently holds in fee, including the soon to be exchanged land exchange lands (which are subject to a pending lands to trust application filed with the Bureau of Indian Affairs). All of these land will be made part of the Nation’s Reservation under the Act.
- 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 S. 4705 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 *Dilzhé’é* 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 also have access to renewable water resources and modern water infrastructure.

The *Yavepé* and *Dilzhé’é* 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.

Additional testimony

These additional comments are provided to respectfully clarify certain statements in the written testimony provided by the Honorable Bryan Newland, Assistant Secretary for Indian Affairs, regarding the Yavapai-Apache Nation Water Rights Settlement Act of 2024 (S. 4705).

1. The Nation's Settlement is Not a Last-Minute Settlement and Has Been Carefully Negotiated with Highly Skilled Negotiating Parties Including the Salt River Project and the Appointed Federal Negotiation Team

Settlement negotiations among the Nation and the Salt River Project (SRP) began in 2009. In 2011, a Federal Negotiation Team was appointed for the Nation, and in that same year, the Nation, SRP, and the State of Arizona agreed (with the participation of the Federal Negotiation Team) to a water budget of 5,991 acre-feet per year (AFY) in depletion (which equals 6,888 AFY in diversion) for the Nation's Settlement.

In early 2021 and throughout 2022, the Nation, SRP, and the Federal Negotiation Team engaged in monthly negotiation meetings to identify and resolve outstanding issues. Notably, the water budget for the Settlement that was agreed upon by the Settling Parties in 2011 did not change and was never an issue.

In 2022, the Bureau of Reclamation commissioned and funded a Value Planning Study (VPS) to determine the best alternative for securing the water sources necessary to satisfy the Nation's water budget. The VPS Study was completed in July 2023.

Immediately after the completion of the VPS in July 2023, the Settling Parties and the Bureau of Reclamation Value Planning Team held multiple meetings and agreed that the Cragin-Verde Pipeline Project was the best alternative to provide the necessary water supply to complete the Settlement. The Bureau of Reclamation's Value Planning Team subsequently undertook additional work to prepare a cost estimate for the Cragin-Verde Pipeline Project which was provided to the Settling Parties in January 2024.

In November 2023, before providing the cost-estimate for the Project, the Value Planning Team, along with representatives of the Salt River Project and the Nation, visually inspected the location of the C.C. Cragin Reservoir outlet works for the pipeline and traveled the entire 60-mile length of the pipeline route to determine if any additional factors would require consideration for the cost estimate.

The Nation also commissioned a review of the Value Planning Team's cost estimate by RMCI, a nationwide contractor with experience in constructing large infrastructure projects and pipelines of this type. RMCI concluded that the Value Planning Team's cost estimates were reasonable and properly estimated. RMCI's review was provided to the Federal Team in support of the reasonableness of the Value Planning Team's cost estimate in July 2024.

2. The 3,297 acres of Land to be Added to the Existing Reservation is Being Completed as Part of an Administrative Land Exchange and Fee to Trust Process

The Nation's efforts to restore its Reservation began decades before the Settlement was negotiated and the restoration of the 3,297 acres of land to the Reservation is not dependent on the Settlement. For several years, the Nation has been engaged in an administrative land exchange with the USDA Forest Service which is expected to conclude in the next 60 days with the conveyance of Forest Service lands that are contiguous to the Reservation, to the Nation, in exchange for the conveyance of fee lands owned by the Nation to the Forest Service. This exchange is a priority for the Forest Service at the national level. Shortly after completing the land exchange, the Bureau of Indian Affairs (BIA) is expected to take the exchanged lands into trust (3,088 acres) and add them to the Reservation. An Environmental Assessment for the land exchange and lands into trust process has been completed and the issuance of a final record of decision is pending.

In addition, the Nation is currently scheduled to file a separate land into trust application with the BIA for the remainder of the land that it owns in fee (209 acres) that is, or will become, contiguous to the Reservation after the land exchange is completed. The total of all lands (Exchange Lands and Lands to Trust) that will soon be added to the Reservation is 3,297 acres.

In an abundance of caution, however, because the addition of the 3,297 acres is tied to the rights and obligations of the Parties in the Settlement Agreement, and because the addition of this land to the Reservation is critical to meet the permanent tribal homeland needs of the Nation, the Settlement Act serves as a “backstop” to ensure that the 3,297 acres of lands will ultimately be added to the Reservation. In this way, the Parties can ensure that (a) the Nation’s water settlement budget will be available for use on all of the Nation’s Reservation lands as intended by the Settling Parties; and (b) the Nation’s waiver of rights and damages under the Settlement will also extend to these lands, once added to the Reservation.

3. The Nation’s Water Settlement Budget is Reasonable

The Nation’s total Water Budget for Settlement, which is 5,991 AFY in depletion and 6,888 AFY in diversion, will be met from multiple water sources:

- 865 AFY (depletion) and 1,594 AFY (diversion) from historic ditch and irrigation water rights to the Verde River;
- 516 AFY (depletion) and 684 AFY (diversion) from well pumping; and
- 4,610 AFY (depletion) and 4610 AFY (diversion) from water that will be delivered from C.C. Cragin Reservoir, of which 1,200 AFY is the Nation’s Central Arizona Project (CAP) allocation delivered by exchange through C.C. Cragin Reservoir.

As discussed at length in previous reports, the actions of the United States in the 1870’s to forcibly remove the Yavapai-Apache Nation from the Verde Valley and terminate the original 1871 Reservation decimated the Nation and its People. While the Nation was able to return to the Verde Valley in the 20th Century and restore some of its Reservation lands within its homeland, the Nation is still in a recovery process for its lands and economy. This is why the addition of the 3,297 acres to the Nation’s existing 1,809 acre Reservation is long overdue and critically needed.

When the Nation filed its amended water rights claim in the Gila River Adjudication in January 2023, it could only legally claim water for its existing 1,809 acre Reservation, although the Nation was aware that once its Reservation was increased in size to 5,106 acres, as discussed above, the Nation would amend its claim to assert additional federal reserved water rights for these new Reservation lands.¹ Importantly, the Nation’s January 2023 claim had to prioritize uses across its very small land base because the current 1,809 acre Reservation cannot accommodate the Nation’s growing population and economic development needs.

The Nation’s claim of 11,629 AFY for its existing 1,809 acre Reservation was heavily constrained with regard to its domestic, commercial, municipal and light industrial (DCMI) uses (which claimed 920 AFY) because the existing Reservation lands could not accommodate all of the Nation’s required permanent tribal homeland uses simultaneously—which is precisely why the addition of the 3,297 acres to the Reservation is so important.

Agriculture also plays an important role in the identity and sustainability of the Nation. While the Nation could have claimed DCMI uses for its existing agricultural lands, this was inconsistent with the Nation’s prioritization of agricultural uses for its homeland, and the Nation simply could not sacrifice its agricultural lands to claim additional DCMI uses over irrigation uses. As a result, the Nation’s claim for its existing 1,809 acre Reservation includes 10,183 AFY for irrigation uses.

However, as part of a compromise in this Settlement, the Nation has agreed to settle for far less water (6,888 AFY) than its current claim in the Gila River Adjudication (11,629 AFY). The delivery of water from C.C. Cragin Dam and Reservoir to the Nation for use on a 5,106 acre Reservation, coupled with increasing access to Class A+ effluent produced from these new uses of C.C. Cragin water, will enable the Nation to support new housing, economic development, and other DCMI uses, while simultaneously reducing our water budget for irrigation, since effluent will be used to support the Nation’s farming operations. At the same time, the expanded Reservation will finally provide room for the Nation’s young and growing population and for critically needed economic development that is required to ensure tribal self-sufficiency and self-determination. At full build out in our permanent tribal homeland, our DCMI uses for the entire Reservation are expected to be 4,610 AFY.

The Settling Parties have agreed with the uses of C.C. Cragin water discussed above. They also agree the Nation must have the right to use its Settlement water

¹The Settlement Agreement expressly acknowledges that the Nation may amend its water rights claim in the Adjudication. See Settlement Agreement at Subparagraph 14.6.3 (“Nothing in this Subparagraph shall prohibit the YAN or the United States acting as trustee for the YAN from filing or amending claims in the Gila River Adjudication Proceedings, consistent with this Agreement.”)

on the newly expanded 5,106 acre Reservation (as well as on any future lands that may be added into trust for the Nation in the future). This is consistent with the United States' trust responsibility to the Nation, and it represents a giant step forward for the Nation on our long road to recovery from the historic genocidal actions of the United States.

4. The Upsizing of the Cragin-Verde Pipeline Project for 1,639 AFY for Verde Valley Communities is Authorized by the Act, but the Project Would Not be Upsized if the Communities Did Not Contract for the Water by December 31, 2029

With rapid growth in the Verde Valley, the opportunity to contract for additional water to be delivered from C.C. Cragin Dam and Reservoir represents an opportunity for Verde Valley communities to reduce pressure on the Verde River and local groundwater aquifers that will protect federal resources, including the Nation's water rights, the downstream wild & scenic Verde River designations, federal instream flow rights, and the federal reclamation projects that provide water for two downstream federally recognized Indian tribes and millions of water users in the Phoenix metropolitan area.

Offering the Verde Valley communities an opportunity to contract for water from C.C. Cragin Dam & Reservoir is not a new approach. In the Arizona Water Settlements Act (AWSA),² northern Gila County communities were provided the opportunity to contract for C.C. Cragin water and were not required to make a commitment for that water in advance of that settlement. In this Settlement, the Cragin-Verde Pipeline will only be built once, meaning that choices about this generational investment in our regional water supply must be forward thinking. The Settlement Act provides a deadline to the Verde Valley Communities of December 31, 2029, to formally commit to a share of C.C. Cragin Reservoir water.³ The Settlement Act would not require the upsizing of the pipeline if the communities do not contract for the delivery of this water.

The CHAIRMAN. Thank you very much for your powerful testimony. It is a reminder of the dark history of the Federal Government's policy of extermination and then assimilation.

Before my time, with my two predecessors, Dan Inouye and Dan Akaka, Congress passed and the President signed the Apology Resolution, which apologized officially for the illegal overthrow of the Hawaiian monarchy. I know what I say doesn't have the same weight as a bill passing Congress and being ratified and signed by the President, but the Vice Chair and I were talking about what the Navy did in southeast Alaska and elsewhere.

So for whatever it is worth, I apologize on behalf of the Federal Government. Now, the work in front of us is to improve the material condition of Native communities across the Country, and we will endeavor to do that. But I didn't want to let this moment pass without acknowledging the deep, deep immoral injustice imposed by the Federal Government. Thank you for that.

My first question is for Chairman White Clay. You testified that this bill is important to your tribe's economic development plans. I very much want to respect that. My question is just how the profit will be seen.

As written, the bill mentions a revenue sharing agreement, but does not actually require one. In the legislative business, we are very careful to notice the difference between may versus shall. Is that satisfactory to the tribe?

Mr. WHITE CLAY. Yes, just to end here on the bigger picture, we have seen a 95 percent reduction in revenue from the Apsualooke Mine to today. So yes, the question there is, we do have an agree-

² See P.L. 108-451, Section 213(f)(3)(B).

³ See S. 4705, Section 114(a).

ment, a material agreement with the Hope on revenue sharing through Signal Peaks, through the three-part agreement on there.

The CHAIRMAN. Okay. And the revenue sharing agreement is between the tribe and the Hope family for the Hope Family Trust Tracts, but not the Bull Mountains tracts. It is my understanding that the Hope Family Tracts are unlikely to be mined. If the bill is changed to the Bull Mountains Tracts, do you know how much revenue the tribe can expect?

Mr. WHITE CLAY. Current projections, the tribe is expected to receive at a minimum \$100 million with the agreement being \$10 million a year for 10 years.

The CHAIRMAN. This is the same profit that you would get from the Hope Tracts?

Mr. WHITE CLAY. This is, yes, this is what is in the same profit. The Hope Tracts will more than likely not be developed on the reservation because all mining in Montana, like we are seeing currently with the Columbus Mine and other mines that are being shut down throughout, that no new development on the reservation will be taking place. But under the Bull Mountains Mine export of the coal tonnage, that is where the Crow Tribe would benefit.

The CHAIRMAN. Okay.

Secretary Newland, as the trustee here, or the representative for the trustee, can you talk to me about this revenue sharing provision as it is currently written and whether you have any recommendations here?

Mr. NEWLAND. Thank you, Mr. Chairman. As it is currently drafted in the bill, it speaks to the Hope Family Tract within the reservation. So the language as currently drafted contemplates an agreement for revenue sharing for resources that would be held in trust for the Crow Tribe. So as trustee, my question is why there would be an agreement with a third party for the development of resources that belong to the tribe within the reservation.

The CHAIRMAN. Thank you.

My final question on this one is, according to the Montana Department of State Lands, the Bull Mountains Tract contains tribal cultural resources, including vision quest sites, rock art sites, and burial and traditional use areas for multiple tribes. Is that your understanding of the site?

Mr. WHITE CLAY. Yes, currently with our personal tippie, with the Crow Tribe's tippie program, we are being very much involved on these sites. Previously, what happens on the Crow Reservation, what happens with other mining agreements is that they give a third-party contractor as their cultural person on deck.

Right now, our tribe is in in the current process of reburying a buffalo site that was upended by Westmoreland. It was approved by a third-party non-tribal cultural reservation officer, the company.

So with this current site, it will be a Crow tribal preservation officer from the Crow Tribe to be able to sign off on these cultural sites.

The CHAIRMAN. Okay, thank you very much, Mr. Chairman. Thank you for being here.

Secretary Newland, are DOI's 1990 criteria and procedures for the Indian Water Rights Settlement still relevant? Let me just put

that another way. Are they still useful to evaluate whether DOI should support the settlements being contemplated today?

Mr. NEWLAND. Thank you, Mr. Chairman. Most tribes that we have heard from would say no. Those criteria and procedures are rooted in a notion of protecting the department from liability. And that is from tribes, and that is not where our policy is now. Our policy is more toward not viewing tribes as legal adversaries, but as our partners and as trustee.

The CHAIRMAN. So in my final time, what do we need to do to fix that?

Mr. NEWLAND. I think the way to approach the settlements is to view it as, what is our obligation to make sure that Indian people can live in their homelands.

The CHAIRMAN. That is the principle, but how do we do it? Is it a rule change? Is it a process? Is it circular, like a memorandum? Do you need a law? How do we do this?

Mr. NEWLAND. The criteria and procedures are a policy of the department that was published. So that exists right now, those standards, within the department.

The CHAIRMAN. But it would be within the department's power to change that?

Mr. NEWLAND. Yes.

The CHAIRMAN. Thank you.

Vice Chair Murkowski?

Senator MURKOWSKI. Thank you, Mr. Chairman.

Chairman White Clay, thank you for your testimony; thank you all for your testimony today. Let me start with you. This follows on the Chairman's question here about the intent to require a revenue sharing agreement between the tribe and the private landowner not being entirely specific here. Would you be open to making amendments to the bill to make that intent clear in terms of the revenue sharing agreement?

Mr. WHITE CLAY. Yes, of course. I would be open to making any amendments on these bills, to make it more solidifying to where the tribe would benefit, also to make it more clear to the Committee as we move forward to try to get this passed through.

Senator DAINES. Mr. Chairman, could I ask to just make a point here to clear this up?

The CHAIRMAN. Sure.

Senator DAINES. It is germane to this discussion. There was a draft here, in the bill. It referenced the wrong subsection in the revenue sharing agreement. I have an amendment drafted to correct that error.

The intent and purpose of the bill is to facilitate a revenue sharing agreement between the tribe and the Hope Family for the minerals developed at the mine. We will work to get this sorted. It was a drafting error. It gets corrected; we have the amendment on it. I just want to kind of put that to rest now, because I know there are some questions on it.

Senator MURKOWSKI. I appreciate the response to that. Thank you, and thank you, Chairman.

Secretary Newland, let me ask you about S. 4633 and S. 4705, the settlement acts. Again, I really appreciate the efforts that so many have gone to to get to this place. But the Committee did re-

ceive a letter from the water commissioners from the State of Wyoming and the State of Utah opposing the bill. I am going to add that letter to the record and would ask for a UC on that.

I recognize that the concerns may be technical and the department is very familiar with them. We had an opportunity to speak to President Nygren earlier today about this, and there are ongoing efforts to address some of the concerns.

What is the department's interpretation of the objections that are raised by the water commissioners from Wyoming and Utah? And just as I heard from the president here about their efforts to continue these discussions, are you also working with the tribes and the bill sponsors and the water commissioners to try to find a path forward on this?

If you can just address where we are with that.

Mr. NEWLAND. Sure, thank you, Madam Vice Chair.

I am aware that the tribes have been working with their counterparts from some of the Upper Basin States, and the department has been supportive of those conversations. We continue to advocate for a consensus based approach across the basin, given the enormous challenges that folks face all across the Upper and Lower Basins.

So this negotiation is ongoing, as laid out in the department's testimony. There are some things that we still have to address yet, and I think we are working toward that. We have made progress, even since the last time these bills came up on the House side. So we are going to continue to work with everybody who is interested to make sure there is a consensus based approach to resolving the Colorado River Upper and Lower Basin issues.

Senator MURKOWSKI. I am one who believes when we have everybody here, you have good faith efforts that have been underway to try to advance them, we want to encourage you to find those solutions. Because as smart as we are on all of these issues, it is your lands, it is your people, it is the water that we are talking about. I think the better solution is going to be that negotiated solution, that you can come to us for that final adoption. So I would just encourage you in that.

I would also like to ask about the concerns that the department raised about the budgets in these settlement acts. In the written testimony, you note that both bills may not properly provide appropriations for covering potential cost overruns for these projects.

Can you describe for us the concerns that you might have, what you think the cost estimates might actually be for both of these projects, if you know it? And again, are you working with the tribes and the bills' sponsors to address these?

Mr. NEWLAND. I am sorry, Vice Chair, this is the Northeastern Arizona and what was the second bill?

Senator MURKOWSKI. Northeastern and the Yavapai Apache.

Mr. NEWLAND. I don't want to misspeak by giving you a wrong number. So I would be happy to follow up on those.

But again, we are working in both cases with all of the tribes. These are very challenging areas geographically to build some of this infrastructure, and we recognize that. So we are doing our best to address them. I can follow up and get you the numbers you are looking for.

Senator MURKOWSKI. And again, just encouragement with working with the tribes and the bills' sponsors and the Committee to address some of the concerns that you have outlined in your testimony there. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

Senator Tester?

Senator TESTER. I want to start by thanking you, Chairman Schatz, and Vice Chair Murkowski for having the hearing today. Thank you all for your testimony. A special thank you to Chairman White Clay from the Crow Reservation in Montana.

Chairman White Clay has displayed tremendous leadership on issues that are important to his tribe over the years. He has worked to build up the tribe's youth program and had incredible results in a short period of time. He is to be congratulated on that. He is also a champion for clean drinking water.

And if there is one message that is here by all the people, it is that water is life. There is no doubt about that. Just last week, we were able to pass our bipartisan Crow Water Settlement Amendments Act in the Committee, which is a huge deal for the Crow Tribe, because it wants to deliver clean water to its communities.

And I appreciate that Chairman White Clay has been clear that this water bill is a priority, and I look forward to getting it passed before the end of the year. You can remind me of that.

Today, the Committee is learning about a revenue shortage that is facing the Crow Tribe. I want to be clear from the get-go; I am committed to helping the tribe address this revenue challenge. One approach that is being developed as a potential solution is this Crow Revenue Act that we are taking up today.

I want to make sure, though, that the Crow Tribe doesn't end up on the short end of the stick. The Crow Revenue Act could potentially provide the tribe with additional revenue, badly needed additional revenue, over the next few years by transferring land and mineral rights between a private entity and the Federal Government.

I am a strong defender of public lands, and I have always said that the best land management comes from the folks when they work together and they collaborate and come up with ideas and solutions on the ground. That is why I am glad to see so many Montanans submitted comments for the record today and I look forward to reviewing them in the coming weeks.

I am also glad we have an opportunity to ask some questions, because this is a complex bill that affects revenue for a number of entities and it affects our public lands. So for you, Chairman, I appreciate your comments in your opening statement. One issue that keeps coming up is a concern about the revenue sharing component of this legislation. It is something that Chairman Schatz talked about.

And maybe your amendment takes care of it, Steve, I don't know. But I know your intent for supporting this legislation is to help the tribe bridge the gap and the shortfalls that you have been facing.

However, I am hearing concerns that the bill as written doesn't have strong enough guarantees that the tribe will benefit finan-

cially. I am sure that you have heard from folks as well. I heard it from one of the folks sitting behind you this morning.

Could you address those concerns?

Mr. WHITE CLAY. Thank you, Senator Tester, for that, and also for helping us with our water amendments.

Senator TESTER. You bet.

Mr. WHITE CLAY. That has been another thing that I have been cleaning up. We have had that since 2010, and I am happy to be able to pick up the ball and finish that project out.

With this bill coming out, that helps with our revenue sharing, we talked about it earlier, we heard about the missing and murdered. My reservation is ground zero for the missing and murdered, you see all the documentaries.

That is why I have been pushing so hard to be able to get a revenue replacement from the Apsaalooke Mine, because like I said before in my testimony here, we weren't a part of any of the Federal funding that came down on invalid debts that were given to the Crow Tribe, based on the Do Not Pay list.

It was very hurtful for the tribe during that time to be able to receive those grants, because all these services, all the funds, all the search and rescues and everything that comes out, we had 68 this year, comes on the back of our general fund, which is now super in danger of being completely depleted from our revenue from the closure of our mine.

So finding a replacement to do all these services was very much on my agenda. Because we are going to hit a cliff right now, we are going to fall off a cliff. The Crow Tribe is going to fall off a cliff, where we previously had \$12 million coming in with only \$1 million for projected revenues for the next year, which means the next year we are going to have to find out how I am going to pay for elders, search and rescue, clean water, getting all these other services out to the tribes.

But as we all know, the devil is in the details on these things where the tribe can benefit. I have a lot of folks that are working on this bill to tighten it up and get in amendments between the three different parties, and also with Senator Daines' amendment to tighten up all the finances, to make sure the tribe benefits from them.

But like we said before, time is of the essence on this, because the projected revenue is the next couple of weeks.

Thank you.

Senator TESTER. Thanks, Mr. Chairman.

The CHAIRMAN. Senator Daines.

Senator DAINES. Thank you. By the way, kudos to my colleagues and the staff for catching this error. Without having that fixed in Section 3, from (a)(2) to (a)(3), there is a disconnect in revenue. It is a technical error that addresses the whole revenue share piece. We will get that fixed with this technical change.

Look, this is a crucial piece of legislation, as the chairman just alluded to. Talk about falling off a cliff from a revenue point; as I have been battling with the Crows and for the Crow Tribe for many, many years, making sure you all can develop your resources. This is about sovereignty and self-determination for your land.

This is widely supported by the local communities and Montana officials. As you can see behind me, the Crow Revenue Act is supported by the Crow Tribe, that is the most important support we have, the Crow Tribe. The city of Roundup, Montana, Musselshell County, Yellowstone County, Big Horn County, the Montana Association of Oil, Gas, and Coal Counties, six local and State law makers, Governor Gianforte, Congressman Zinke, Congressman Rosendale, the Montana Superintendent of Construction, Elsie Arntzen, and many more.

Chairman Schatz, I ask unanimous consent to add to the record all the letters of support we have received.

The CHAIRMAN. Without objection, so ordered.

Senator DAINES. Thank you. This bill is a win-win for Montana, for the communities, and most importantly, for the Crow Tribe and the Crow people. It is simple. The Crow Revenue Act is going to swap private inholdings on the Crow Reservation for Federal minerals near Roundup, Montana. In exchange, the Crow Tribe would receive a share of the revenues from these minerals developed near Roundup.

Montana can't afford to lose the jobs at the Bull Mountains Mine. Let me be clear. Without the passage of the Crow Revenue Act, the Bull Mountains Mine near Roundup will begin to close down at the beginning of 2025. Let that sink in for a moment. Hundreds of jobs are on the line if this Committee and this Congress does not pass this bill.

After the recent announcement of 700 mine jobs lost there to Stillwater Mine, that is just south of Big Timber in Columbus, Montana, we can't afford another mass layoff of Montana miners. That is palladium. There are just a few places in the world that produce palladium, and one of them is Russia. It is Russian dumping of imports, cheap imports, that are causing the huge problems we are seeing right now at this Montana mine.

Unfortunately, we are in this position because this Administration has refused to complete the Bull Mountains Mine permit, pure and simple. Had the Administration done their job and completed the needed permits in July like they were supposed to, we wouldn't be here talking about needing to do this bill. But they have purposely dragged their feet so this mine will close.

We are not going to let that happen. I urge my colleagues to join me in ensuring that these jobs and the revenue for the communities, for the Crow Tribe, can continue on.

Chairman White Clay, could you explain to the Committee how this bill benefits the Crow Tribe and why it is needed and why it is needed now?

Mr. WHITE CLAY. Thank you, Senator Daines. We have 952 elders that depend on our revenue from our Apsualooke Mine. That is 952, 67 and older. We also have all of our social service programs. Altogether, just in the Crow Tribe, 421 jobs.

Senator DAINES. Say that again? How many jobs?

Mr. WHITE CLAY. Four hundred and twenty-one jobs.

Senator DAINES. How do these jobs compare in terms of pay and benefits to other jobs?

Mr. WHITE CLAY. They are at a higher rate for pay within the area of Montana. But that also, to my local community, Arden, that

also kind of supplements to that community, which the dollar turns over in there. Also, the Crow tribal government, those are the Crow tribal government jobs. And so altogether, in the whole area, it is going to affect close to 600 jobs. It is going to affect 952 elders, 67 and older, which we provide an elder benefit every year.

Senator Tester alluded to where I have cleaned up a lot of issues from my predecessor. I have cleaned up so much and spent so many resources on cleaning up all the previous mistakes. We have done five years' worth of audits in my four years from previous years. We have done single audits, we have got off the Do Not Pay list, where 137 tribes are on that Do Not Pay list.

One tribe got out without paying a penny, which we have spent resources to get out of that and to be able to receive Federal grants on that, which also includes foster care, social services, health care, tribal benefits, diabetes programs, all of the encompassing social programs of the reservation are contingent upon this. It wouldn't have been a problem if we had a long-term plan on the closure of our one customer in Minnesota, Xcel Energy. They expedited the closure of that mine, which gave us the cliff that we are falling off today.

Senator DAINES. Could you dispel some of the rumors that this bill does not support the tribe or this exchange will hurt the tribe? We have the chairman of the Crow Tribe. There are rumors swirling about this. I want you to set the record straight.

Mr. WHITE CLAY. Yes. As we are in national politics, we are also in tribal politics. This is my election year. As bad as national politics get, Crow Tribe politics are cutthroat.

[Laughter.]

Mr. WHITE CLAY. The rumors that some of the candidates, they are puppets, they are pawns, everybody else through social media and everything else says that the Crow Tribe will not benefit from this and that it is basically a scheme, that the Crow Tribe is doing this to benefit the Signal Peak, which some of them, and I am saying the ones that do know, that we have rejection from Signal Peak on the funding that will come to the tribe, a revenue agreement.

We have been meeting regularly for the past year with Hope Family, we have been meeting with all the parties involved and also with our current mine partner that is closing now, Westmoreland. We have their projections.

But all in all, to me it is a win. We are receiving historic lands. Our lands are very much, we have a high number of non-tribal ownership. It has been my administrator's duty to try to consolidate these tribal lands and to bring those lands back into tribal inventory and ownership. This will start that. But also, it gives us a 10-year plan to keep our head above water and to create and to diversify our economy.

This isn't just the only thing that Crow Tribe is doing. We also, with that amendment that is coming through, we are building a hydro dam project to bring renewable energy to the reservation. We are bringing out solar projects, we are bringing out wind projects, all these other things that are being and diversifying that.

But we need to use this project to get out of the business of coal. We are working on that.

Senator DAINES. Chairman, thanks for that very strong answer. I have a quick question for Secretary Newland, and it is simply this. In your testimony, you said you “support the bill’s goals of addressing inholdings within the boundaries of the Crow Indian Reservation and providing an additional source of revenue for the Crow Tribe.”

My question for you, Secretary Newland, will you commit to working with myself and Chairman White Clay to strengthen the bill and get it to the President’s desk?

The CHAIRMAN. And Chairman Schatz.

Senator DAINES. And especially Chairman Schatz.

Mr. NEWLAND. Thank you, Senator. We have outlined the department’s concerns in the bill and the nature, I think highlighting a path forward to addressing those concerns. We would be happy to work with the Committee and the tribe as we have on the Do Not Pay list and other things to talk through those changes that need to be made.

Senator DAINES. I want to thank you; I know that put a smile on Chairman White Clay’s face. I can see it. Thank you.

The CHAIRMAN. Senator Luján.

Senator LUJÁN. Thank you very much, Mr. Chairman.

President Nygren, the Northeastern Arizona Indian Water Rights Settlement Act of 2024 amends the Navajo San Juan Settlement by allowing the new pipeline in Arizona to connect into the Navajo Gallup water supply projects, San Juan lateral, which is within the boundaries of the State of New Mexico, once it is completed.

Approximately how many acre-feet per year do you anticipate will be diverted through Navajo-Gallup infrastructure?

Dr. NYGREN. Thank you, Senator. Approximately 18,411 will be diverted across to Arizona.

Senator LUJÁN. Testimony submitted by the State of New Mexico voices support for S. 4633’s goals, but also highlights the challenges of leveraging infrastructure in New Mexico to complete the water settlement in Arizona.

President Nygren, I know that you and your staff have been working closely with the State of New Mexico to find legislative language that will work for all parties. Will you continue to work with the Navajo-Gallup parties, including the State of New Mexico, to ensure that the proposed storage in S. 4633 will not adversely impact New Mexico water users, which includes water users within the Northern Agency in the State’s boundaries, the Eastern Agency, and the Fort Defiance Agency within the State of New Mexico’s boundaries?

Dr. NYGREN. Thank you, Senator. We are going to continue to have those good discussions that we have been having at the State of New Mexico, so that those concerns are addressed and those dialogues have been going well for us. So thank you, Senator.

Senator LUJÁN. Mr. Chair, Mr. President, can I interpret that as a resounding yes?

Dr. NYGREN. Yes.

Senator LUJÁN. I appreciate that.

Assistant Secretary Newland, as we are considering this new infrastructure project in Arizona, we are at the same time trying to

finish its companion which is in New Mexico, a piece of legislation I was proud to carry back in 2009. What concerns does Interior have, if any, about the connection of the Arizona and New Mexico infrastructure projects and resources available to complete them?

Mr. NEWLAND. Thank you, Senator. I think just speaking more broadly, we are focused on ensuring that while we are enacting water settlements and authorizing appropriations that we are meeting our commitment to work with Congress to secure those appropriations to fund these projects.

Senator LUJÁN. I appreciate that very much. That is going to be so important to them as we move through this process as well. I appreciate that.

Governor Kucate, can you share with us how this legislation will improve the tribe's water security for tribal water users? Will this be primarily for agricultural, domestic, or municipal use?

Mr. KUCATE. To underscore your question, this settlement will really help the people of Zuni to replace our aged municipal water system and also looking at water treatment facility that is capable of addressing the high levels of contaminants that we are currently going to in terms of making sure that we have upgraded water supply. Then also to be able to construct a modern wastewater treatment facility that will allow us to re-use our water instead of allowing it to evaporate it into outdated sewage lagoons.

So basically, this is something that is really very significant in terms of the settlement itself, and likewise in terms of the protection for the Zuni Salt Lake area. This is a very unique, sacred area, like nowhere else, where our sacred Salt Mother's home is. So those are the critical areas that we are really looking at to make sure we are going to focus our interests in those areas of development.

And also to make sure that we have the ability to rehabilitate our five irrigation units in a manner that is suited to climate conditions that are very, very detrimental to our traditional irrigation practices. When I was a child, I grew up along the Zuni River and the Rio Nutria, which was very abundant with families growing agriculture. I think my people really deserve to have that brought back to their way of life in terms of our traditional ways of survival.

Senator LUJÁN. I appreciate that, Governor.

Assistant Secretary Newland, S. 4998 complements S. 595 by ratifying an addendum to the Rio San José Settlement Agreement. If both are enacted, all tribal water rights in the Rio San José Basin would be resolved.

What would resolving the water rights mean for the three tribes and for the United States as the trustee if we can get this done?

Mr. NEWLAND. It would bring water to people who need it. And it would reduce or eliminate a lot of the contentious claims and disputes that have existed over that water in the first place. So I think it is a net benefit for everybody who has an interest.

Senator LUJÁN. I appreciate that, Mr. Chairman, Vice Chair. Thank you so much for this important hearing.

This is just another reminder of water that was stolen and diverted and taken. It takes money, but I certainly hope that with all of these we can find a path forward to find the language nec-

essary to correct them and get these all done. I just appreciate your attention with water settlements as well and look forward to doing everything I can to work with you and your teams to find resolution to these by the end of the year.

Thank you both. I yield.

The CHAIRMAN. Thank you very much, Senator Luján. We appreciate your leadership on water settlements and all of these issues for Indian Country across the Country, but also obviously in your home State of New Mexico.

If there are no more questions for our witnesses, members may also submit follow-up written questions for the record. The hearing record will be open for four weeks. I want to thank all of the witnesses for their time and their testimony today.

This hearing is adjourned.

[Whereupon, at 4:19 p.m., the hearing was adjourned.]

A P P E N D I X

PREPARED STATEMENT OF ELIZABETH K. ANDERSON, P.E., NEW MEXICO STATE
ENGINEER

Mr. Chairman Schatz, Vice Chair Murkowski, Congressman Lujan, and members of the Committee, I am Elizabeth K. Anderson, P.E., New Mexico State Engineer. 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 S. 4633, the 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 Navajo Nation, the Hopi Tribe and the San Juan Southern Paiute Tribe in Arizona referenced in S. 4633. New Mexico has participated in recent discussions with the Navajo Nation and other parties regarding amendments to S. 4633 that will be necessary to ensure New Mexico's interests can be protected. Details related to New Mexico's position regarding S. 4633 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. Most of New Mexico's Upper Basin apportionment in the San Juan River Basin is dedicated towards 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 S. 4633 to eliminate the possibility that the Arizona 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 S. 4633 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. S. 4633 calls for storing the Navajo Nation's water in those two reservoirs in New Mexico and New Mexico is proposing amendments to avoid adverse impacts to existing New Mexico water users who benefit from storage in those reservoirs. New Mexico is also proposing amendments to ensure that any evaporation or transit losses associated with diversion and storage of water in New Mexico for use by the Navajo Nation in Arizona would be accounted for against Arizona's apportionment.

D. Examples of 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 could affect New Mexico water uses.
- Adding language to protect New Mexico's Compact apportionment and ensure further development of that apportionment is not adversely affected by implementation of the Arizona and Utah settlements.
- 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

The State of New Mexico supports S. 4633 with the inclusion of the amendments as referenced in this testimony and as may be further developed in coordination with the Navajo Nation, the United States, the other Colorado River Basin States and other parties to the Arizona settlement. New Mexico appreciates the opportunity to provide this testimony and coordinate with the Committee on this bill as it moves forward.

Additional statement

Mr. Chairman Schatz, Vice Chair Murkowski, Congressman Lujan, and members of the Committee, I am Elizabeth K. Anderson, P.E., New Mexico 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 Senate Bill 4998, 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 S. 595, 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 S. 4998 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 S. 4998 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 \$223,271,000. 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 Schatz, Vice Chair Murkowski, and members of the Committee, the State of New Mexico asks you to support S. 4998. 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.

PREPARED STATEMENT OF BRENDA BURMAN, GENERAL MANAGER, CENTRAL ARIZONA WATER CONSERVATION DISTRICT

Chairman Schatz, Vice Chairman Murkowski, and members of the Committee, 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 S. 4633 "Northeastern Arizona Indian Water Rights Settlement of 2024" through this statement for the record. For the reasons I will discuss below, CAWCD supports S. 4633.

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, and 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 water 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. It also maximizes economic opportunities for the Tribes 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 percent 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 S. 4633. CAWCD urges Congress to approve S. 4633 this session to end decades of litigation, provide certainty to tribal and non-tribal water users throughout Arizona, and provide reliable drinking water supplies across the Tribes’ reservations. Thank you for your consideration.

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

Chairman Schatz, Vice Chairman Murkowski, and Committee Members:

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 18,088 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).

Under the terms of the Settlement Agreement, 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

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.

Reservations anywhere in the Upper or Lower Basins 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 via the San Juan River 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 in the Little Colorado River Watershed (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 allowing: (1) the Tribes and the United States acting as trustee for the Tribes, the Navajo Allottees and the Hopi Allottees to 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 (2) the Navajo Nation and the United States acting as trustee for the Navajo Nation to be joined in actions involving the interpretation or enforcement of the Settlement Agreement and the Act brought by landowners and water users in the Gila River Watershed.

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 in federal funding primarily for the construction, operation, maintenance and replacement of various water projects on the three Reservations, including the *iiná bá-paa tuwaqat'si* 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 extends two sections from the Navajo Reservation's boundary and Buffer Zone 2 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 causes 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 causes 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 Basins 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.

(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 and Lower Basins 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 located in the Lower Basin 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 from Lake Powell.

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.

(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 Basins 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, each within the boundaries of the Navajo Reservation. The settlement provisions apply exclusively 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 "Southern Area" 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 "Southern Area" 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 in Arizona.

(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 in Congressional funding for the settlement. The majority of the funding will be deposited into accounts 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 iina ba-paa tuwaqat'si pipeline is estimated to cost \$1.7 billion and will be designed and constructed to bring Colorado River water from Lake Powell to the Navajo Reservation, the Hopi Reservation, and the San Juan Southern Paiute Southern Area.

(2) Several Navajo Nation-specific water projects have been included in the Settlement Agreement and Act totaling approximately \$2.4 billion for the delivery of Colorado River water, Little Colorado River water and groundwater to communities on the Navajo Nation Reservation.

(3) \$390 million is allocated for the Hopi Arsenic Mitigation Project and Hopi Slide Rock Project.

(4) \$28 million 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 and \$1.5 million 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, \$30 million, and \$300,000 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.

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

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 and provide water management benefits for both Tribes and the State.

Arizona's experience with tribal water leasing for more than four decades has demonstrated that it provides substantial benefits to the tribes that lease their Colorado River water as well as the lessees. Multiple Arizona Indian tribes with Congressionally approved water rights settlements are currently leasing some of their Colorado River supplies delivered through the Central Arizona Project (CAP) to water users within the Lower Basin of the State pursuant to express Congressional authority. Leasing this water has provided significant economic benefits to the tribes. It also has provided an important water supply to the non-tribal entities leasing the water, including major municipalities and industries within central Arizona.

Allowing the Navajo Nation and the Hopi Tribe to lease their Colorado River water in both the Lower and Upper Basins of the State will provide similar benefits to the two Tribes as well as the State. This is especially true with respect to the Navajo and Hopi Tribes' ability to lease their high priority Upper Basin water in the State's Lower Basin due to the significant need for additional water supplies in central Arizona and the limited leasing opportunities to communities and industry in the Upper Basin area of the State. Revenues from these leases will enable economic development on the Tribes' Reservations and strengthen the Tribes' financial security—long-standing goals of all Indian water rights settlements. The leases will also provide an important source of revenue for the development of additional water infrastructure on the Tribes' Reservations.

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 consistent with the Law of the River and as Arizona's Lower Basin Colorado River 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 prior to the settlement completion date contemplated by the Tribes. Typically, these delivery 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 Arizona's Upper and Lower Basin Colorado River entitlement by the Tribes and the lease, exchange and storage of the water by third parties and the Tribes anywhere 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 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. Arizona's 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 Agreement's restrictions on groundwater withdrawals in Buffer Zones 1 and 2 adjacent to the exterior boundary of the Navajo Nation Reservation will help 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 Tribes' 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 many households on the three Reservations that are without that basic water service. For the Navajo Nation and Hopi Tribe, the settlement will also open the door to significant economic opportunities 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 in Arizona and Utah.

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 temporary use of water in water-challenged areas of the State.

X. Conclusion

The State of Arizona strongly supports S. 4633, 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.

PREPARED STATEMENT OF HON. BECKY DAGGETT, MAYOR, CITY OF FLAGSTAFF

Chairman Schatz, Vice Chairwoman Murkowski, Members of the Committee and distinguished guests, thank you for the opportunity to provide testimony supporting S. 4633, the Northeastern Arizona Indian Water Rights Settlement Act of 2024 (NAIWRSA) 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 S. 4633, especially because NAIWRSA is a long-overdue achievement for our Tribal neighbors and because 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 S. 4633, 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, S. 4633 would confirm certain surface water rights and groundwater rights for the Tribes and for non-federal parties, including Flagstaff. Significantly, the NAIWRSA settlement agreement references Flagstaff's Regional Water Supply Project at Red Gap Ranch ("Regional Water Supply Project") which will provide additional benefits to regional stakeholders, and in particular, the Navajo Nation, the Hopi Tribe, and the Arizona State Land Department.

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, S. 4633 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. Flagstaff fully supports federal funding for the Tribal water supply projects. Hauling water is not a viable option for anyone, and inadequate infrastructure among our Tribal Partners must change for the better. Flagstaff supports S. 4633 because it will ensure the success of the needed water supply projects identified by our Tribal Partners for their respective reservations, and end litigation.

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.

Flagstaff engages in water conservation practices and commits to continue to do so for the benefit our Tribal Partners and other stakeholders. 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 shorjall that will occur in the future. Water efficiency prolongs

water sources but does not create new water on which Flagstaff or our Tribal Partners can continue to rely on for future growth.

Additional water supplies are critically needed by both Flagstaff and our Tribal Partners for water resiliency and water security purposes due to climate variables and wildfires in the region. The extended drought and local wildfires have severely impacted our Tribal neighbors and 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 and watershed erosion. In 2022 this became a reality for Flagstaff when a fire damaged a portion of Flagstaff's water infrastructure, rendering nearly 20 percent of the available water supply inaccessible until the water-line could be repaired. The City's infrastructure remains at critical risk to these frequent wildfires, and watershed erosion following a fire further degrades the water quality in the Lake Mary Reservoirs.

Significantly, the Agreement 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. Drought also heavily impacts our Tribal Partners. The Regional Water Supply Project would provide additional water and water redundancy to the southwestern Navajo Nation reservation, Hopi Tribal lands along the Interstate 40 corridor, Arizona State Lands, and secure Flagstaff's water supplies. The Regional Water Supply Project would serve to further mitigate the risk of drought, wildfire, and watershed degradation in the region for our Tribal neighbors, the City and other stakeholders. The versatility of the Regional Water Supply Project will bring opportunities along the Interstate 40 corridor among lands within the Navajo Nation, and also lands owned by the Hopi Tribe and Arizona State Land Department. The regional nature of the project would afford long-term water security for our Tribal Partners and 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 up to 19,003 acre-feet per year or more. 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. These municipal wells were drilled to provide water to the City and other stakeholders from the Regional Water Supply Project. To date, the City has invested over \$15,000,000 in drilling municipal water supply wells, developing the Project design and acquiring rights-of-way and entitlements. 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, our Tribal stakeholders and Arizona State lands.

It is important to understand that water quality is generally poor, and water quality varies in each well throughout the regional aquifers, including the City's wells at Red Gap Ranch. Thus, for Flagstaff and for the feasibility of the Regional Water Supply Project, 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. Given the unique hydrologic conditions of the regional aquifers, it is vital to the City that the waivers for injury to water due to the movement of salinity be maintained, especially as it relates to the operation of wells to provide better quality water to stakeholders from 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 Project can deliver 16,000 acre-feet of water. Paragraph 12.0 of the Agreement allows the Navajo Nation to have access to better quality water from 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 Navajo Nation, the Hopi Tribe, Arizona State Land Department, Ari-

zona Department of Transportation or others wanting access to the Regional Water Supply Project. 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 S. 4633, the Navajo Nation and Hopi Tribe would have access to these critical water and energy resources.

When Flagstaff acquired Red Gap Ranch for the purpose of developing its future municipal water supply and to provide water resiliency and water security for its residents, it did so with 71 percent (71 percent) voter approval. Since then, Flagstaff has invested over \$15,000,000 in furthering the Regional Water Supply Project and continues to invest in its development by conducting engineering feasibility studies, design plans, alignment modifications, cultural and archaeological review, hydrology studies, including the drilling of no less than 10 wells at Red Gap Ranch for municipal use that are recognized as Existing Wells under S. 4633. A non-federal, Phase II engineering 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.

The City is cognizant of the significant \$5 Billion request to fund the Tribal water supply projects in NAIWRSA and that the City's additional request for funding the Regional Water Supply Project may not be available through NAIWRSA at this time. The City strongly supports the recognition and funding of our Tribal Partners' water supply projects so that those long-overdue projects can be realized through NAIWRSA. It is also necessary to further the development of the Regional Water Supply Project, and Flagstaff is seeking authorization of the Regional Water Supply Project, but without funding in NAIWRSA. Therefore, the City requests an amendment to S. 4633 that reflects the following:

- (A) In accordance with the NAIWSA Agreement and the general description of the Red Gap Ranch Regional Water Supply Project, the Secretary is authorized to complete a feasibility study and Record of Decision as scoped in a Bureau of Reclamation appraisal study.
- (B) The cost to complete (A) shall not be included in this Act.
- (C) The feasibility study and record of decision shall be completed within four (4) years of enactment of this legislation.
- (D) The feasibility study shall be conducted in accordance with all applicable federal laws, directives and standards.
- (E) The Red Gap Ranch Regional Water Supply Project is authorized contingent on a determination of the feasibility study and Record of Decision.
- (F) The construction of (E) shall be in accordance with all applicable federal laws, directives and standards, and subject to cost sharing among the stakeholders as described in a subsequent Act.

The Red Gap Ranch Regional Water Supply Project can supply precious water to Tribal stakeholders and other key parties in this settlement. Flagstaff's investment in the non-federal feasibility study and design based on the Interstate 40 alignment has put the Regional Water Supply Project substantially advanced in the design of other projects, and immediately ready for a federal appraisal level and feasibility study if authorized in NAIWRSA. 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 Interstate 40 Corridor.

Flagstaff has initiated outreach 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. Although the City is not seeking funding through NAIWRSA, Flagstaff has committed to cost-share an allocation of future federal funding which would eventually come from federal legislation required to develop the Regional Water Supply Project. Jacobs, the City's engineering firm, has already conducted significant design work and estimated costs for the Regional Water Supply Project. Jacobs estimates the cost for the Regional Water Supply Project with a reverse osmosis treatment facility to be \$575 million. Jacobs estimates the cost for the utility-scale solar generation facility to power the Regional Water Supply Project to be \$33 million. The City notes that the Bureau of Reclamation federal feasibility study will develop a comprehensive project plan and cost estimate as required for federal funding in a Record of Decision. The estimated cost for the Bureau of Reclamation feasibility study is \$30 million, of

which \$15 million would need to be appropriated for a 50 percent/50 percent federal and local cost-share.

In conclusion, we ask that the Committee add the critically important authorization of the Red Gap Regional Water Supply Project to S. 4633 during the mark-up of this legislation to initiate the necessary steps needed to bring water to our Tribal Partners and other stakeholders in the region. This request from the City should clarify its intent not to burden the \$5 Billion federal funding request necessary to realize the Tribes' water supply projects. Flagstaff's firm position is that the Tribes' water supply projects are needed and long overdue. Additionally, the City's request to amend S. 4633 to authorize feasibility and the Regional Water Supply Project in NAIWRSA is imperative at this time, given the critical timing and need to deliver real and supplemental water supplies for the City, our Tribal Partners and other stakeholders in the region.

The City strongly supports our Tribal Partners and other parties in a unified effort to move S. 4633 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.

PREPARED STATEMENT OF LESLIE A. MEYERS, ASSOCIATE GENERAL MANAGER/CHIEF WATER RESOURCES AND SERVICES EXECUTIVE, SALT RIVER VALLEY WATER USERS' ASSOCIATION/SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT

Chairman Schatz, Vice Chairman Murkowski, and members of the Committee, Thank you for the opportunity to submit testimony in support of S. 4633, 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, 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 ground-water 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.

S. 4633 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 S. 4633

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 S. 4633 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 S. 4633 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

S. 4633 also includes funding for at least ten other water delivery projects for tribal communities. The funding would make possible the construction of groundwater 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

S. 4633 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 commu-

nities in Yavapai County, Arizona, through the proposed Cragin-Verde Pipeline Project from any challenge. This project, which would be authorized by S. 4633, 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 S. 4633 to authorize and fund the settlement.

Additional statement

Thank you for the opportunity to submit testimony in support of S. 4705, 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). S. 4705 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 S. 4705 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 notfor-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 forced to march 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-beconstructed 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.

PREPARED STATEMENT OF THE SAN JUAN WATER COMMISSION

The San Juan Water Commission ("Commission"), represented by its Chair, Steve Lanier, appreciates the opportunity to present this testimony to the esteemed Committee concerning S. 4633/H.R. 8940 (hereafter, "S. 4633" or "Legislation"), the Northeastern Arizona Indian Water Rights Settlement Act of 2024 ("Arizona Settlement"). The Commission held a special meeting on September 23, 2024, and voted unanimously to file this testimony. The Commission fully supports efforts to resolve the water rights claims of Native American Nations and Tribes to waters of the Colorado River system. Such settlements, including S. 4633, resolve significant uncertainty concerning water use and development in the water-short Upper and Lower Colorado River Basins. Settlements also help to prevent additional decades of costly litigation. However, such Legislation must be carefully crafted to ensure it does not overturn more than 100 years of the Law of the River or interfere with a state's administration of its apportionment of Colorado River water. For these reasons, the Commission proposes the adoption of protective language in S. 4633 to comport with the Law of the River and to protect New Mexico's allocation of its share of water from the Upper Colorado River Basin. The Commission also supports the amendments proposed by the New Mexico Interstate Stream Commission.

Introduction to the San Juan Water Commission, New Mexico, and Purposes of This Testimony

Created in 1986, the San Juan Water Commission supplies raw surface water for municipal purposes to most of the residents of San Juan County, which is located in the Four Corners region of New Mexico. The surface water comes from the San Juan River, the Animas River, and other Colorado River tributaries located in the San Juan River Basin in New Mexico. San Juan County has approximately 125,000 residents, including many members of Native American Nations and Tribes. The Commission itself is comprised of five members representing the communities in the County—the cities of Aztec, Bloomfield and Farmington, a rural water users association comprised of eight rural water suppliers, and the County of San Juan itself.

The Commission is a partner with the Navajo Nation, the Southern Ute Indian Tribe, the Ute Mountain Ute Indian Tribe, and others in the Animas-La Plata Project, which includes an offstream reservoir (Lake Nighthorse) located outside of Durango, Colorado. The Commission joined its partners to lobby Congress to pass the Colorado Ute Settlement Act Amendments of 2000, P.L. 106-554, that authorized a downsized Animas-La Plata Project to provide municipal water supplies in Colorado and New Mexico and to settle the water rights claims of the Southern Ute Indian Tribe and the Ute Mountain Ute Tribe in Colorado.

The Commission continues to strongly support the fair and equitable settlement of Native American water claims. However, the Legislation currently before this

Committee must be amended to prevent serious harm to the Commission's members and all states of the Upper Colorado River Basin. Neither New Mexico nor the other Upper Colorado River Basin states were involved in the Arizona Settlement, which, as written, will adversely impact the Law of the River and the existing rights of the four Upper Colorado River Basin states. To resolve the concerns identified in this testimony, the Commission urges the Committee to delay consideration of S. 4633 so the complicated issues addressed here can be resolved through negotiations among the parties to the Arizona Settlement, the Upper Colorado River Basin States, and Congress. In the alternative, the Commission encourages the Committee to ensure the following:

- A. The Legislation does not authorize the diversion and storage of water in New Mexico for use in another state without approval from the New Mexico Interstate Stream Commission and the issuance of permits by the New Mexico Office of the State Engineer;
- B. New Mexico maintains control over the administration of water rights in New Mexico, including the diversion and storage of water in the San Juan River Basin;
- C. The Secretary of the Interior ("Secretary") is required to obtain permits from the New Mexico Office of the State Engineer for the diversion and storage of water in the San Juan River Basin in New Mexico and the delivery of such water to another state;
- D. No Upper Colorado River Basin water can be used in the Lower Colorado River Basin without the approval of the Upper Colorado River Commission; and
- E. River flows for endangered species, including the San Juan River Basin Recovery Implementation Program, are protected.

The Commission also requests that the Committee amend the Legislation as proposed in sections 2 through 4 of this testimony, including the more specific proposals of the New Mexico Interstate Stream Commission to add a new section 6(g) and to amend section 17 of the Legislation concerning Colorado River accounting.

Specific Commission Concerns About S. 4633

1. Adverse Impacts on New Mexico/Upper Colorado River Basin

General Considerations

Under the Law of the River, the water of the Colorado River system is apportioned between the Upper Colorado River Basin and the Lower Colorado River Basin, between the United States and Mexico, and among the Basin states. New Mexico is one of four Upper Colorado River Basin states, and it currently uses only about half of its apportionment of Upper Colorado River Basin water. Significantly, even if New Mexico had the resources to further develop its apportionment, there is a lack of wet water in the system to fully supply the state's apportionment. For all practical purposes, the wet water available in the San Juan River Basin already is allocated to supply current and existing demands: state adjudicated water rights, the Animas-La Plata Project, water storage and/or delivery contracts with the Bureau of Reclamation, and flow requirements to protect endangered species. Further, water availability is expected to decline in the future as a result of ongoing climate change.

S. 4633 allocates most of Arizona's entitlement to Upper Colorado River Basin water to the Navajo Nation. It also grants water storage rights in New Mexico that fail to take into account the actual hydrology of the river system and pre-existing demands on the system to the detriment of water users in New Mexico, including the Commission. In particular, the Commission is concerned that the Arizona Settlement will allow the Secretary to preferentially store and then deliver water to Arizona for use in the Upper and Lower Colorado River Basins at the expense of several projects that supply water to Northwest New Mexico. Specifically, the Commission is concerned about the water supply for the Animas-La Plata Project, the Commission's and La Plata Conservancy District's rights under New Mexico Office of the State Engineer (OSE) File Nos. 2883-B, 2883-C, 2883-D, and 2883-E, all adjudicated water rights in the San Juan River Basin in New Mexico, river flows for endangered species, and even the Navajo Nation's rights under its San Juan River Basin adjudication settlement with New Mexico.

The permits held by the Commission and the La Plata Conservancy District are significant and represent the only water that is available for future demands in San Juan County. Here are the amounts of diversionary and consumptive use water in the permits in "acre feet per year" ("AFY") held by the Commission ("SJWC" below)

and the La Plata Conservancy District (“LPCD”). One AFY will serve three to four households for a year.

Entity	Permit	Diversiory Amount	Consumptive Use Amount
SJWC	2883-B	20,800AFY	10,400AFY
SJWC	2883-C	10,000AFY	6,300AFY
SJWC (from LPCD)	2883-E	330AFY	208AFY
LPCD	2883-D	1,560AFY	780AFY
LPCD	2883-E	110AFY	69AFY
TOTAL		32,800AFY	17,757 AFY

Under the Navajo Nation’s water rights settlement with the State of New Mexico (and the resulting adjudication decrees), the Navajo Nation received approximately 40 percent of the state’s apportionment of Upper Colorado River Basin water. If there is not enough wet water in the San Juan River Basin to supply pre-existing projects and rights, support New Mexico’s full development of its apportionment, and fulfill the Arizona Settlement, the water needed for the Navajo Nation under the Arizona Settlement could only come from the Navajo Nation’s apportionment of Upper Colorado River Basin water under its settlement with New Mexico. New Mexico was not invited to the Arizona Settlement negotiations, and the Commission has two major questions: What legal authority do the parties to the Arizona Settlement have to impose adverse obligations on the State of New Mexico? What authority does Congress have to do so in contravention of pre-existing federal obligations to this state and the Upper Colorado River Commission?

In order to protect the interests of the Commission and other water users in New Mexico, no Arizona Settlement water should be diverted and stored in New Mexico for use in another state without approval from the State of New Mexico, acting through its Interstate Stream Commission, and the issuance of proper permits by the Office of the State Engineer. New Mexico must maintain control over the administration of New Mexico water rights without interference from the federal government. Further, Congress should not authorize any use of Upper Colorado River Basin water in the Lower Colorado River Basin without the approval of the Upper Colorado River Commission.

Use of Upper Basin Water in the Lower Basin

The Arizona Settlement allocates 44,700 AFY of Arizona’s Upper Colorado River Basin water (“Upper Basin Water”) to the Navajo Nation. [Sec. 6(a)(1)(A)(ii) (at 53:23–54:2)] It also allocates 2,300 AFY of Upper Basin Water to the Hopi Tribe. [Sec. 6(a)(2)(A)(ii) (at 55:11–14)] The water may be delivered to and used by the Nation, the Tribe, or their lessees and exchange partners, anywhere in Arizona, whether in the Upper Colorado River Basin or the Lower Colorado River Basin. [Sec. 6(b)(1)(A) (at 56:1–6); Sec. 6(c)(1) (at 62:3–63:5); Sec. 6(c)(4) (at 65:23–66:16); Sec. 7(a)(1) (at 78:18–79:2); Sec. 7(a)(2) (at 79:3–10); Sec. 7(b)(2)(A) (at 80:11–21); Sec. 7(b)(2)(B) (at 80:22–81:6)] It also may be transported through the Central Arizona Project system for storage or use. [Sec. 6(b)(1)(D) (at 57:23–58:11); Sec. 7(f) (at 84:17–85:9)] Water leases may have terms lasting up to 100 years, and there is no limit on the length of the term for water exchanges. [Sec. 7(b)(2)(C) (at 81:7–16)] All Upper Basin Water leased by the Navajo Nation or the Hopi Tribe and diverted from the Upper Basin shall be counted as Upper Basin water, even if it is used in the Lower Basin. [Sec. 17(a)(5) (at 189:20–190:2)]

Under these provisions, Upper Colorado River Basin Water could ultimately be leased to cities like Phoenix, allowing development of Arizona’s Upper Colorado River Basin Water through use in the Lower Colorado River Basin, while development by other Upper Colorado River Basin states lags—or effectively is extinguished—because of a lack of wet water to support further development and because of legal constraints in those states against delivery of Upper Basin water to the Lower Basin. Arizona, through the Arizona Settlement, is unfairly authorized to “leapfrog” over other Upper Colorado River Basin states in the development of its allocation of water from the Upper Colorado River Basin.

Arguably, the Arizona Settlement amends the Colorado River Compact and the Upper Colorado River Basin Compact without appropriate approval from the other signatories to those Compacts, whose interests may be adversely impacted. If Congress or the Secretary overstep their authority, decades of litigation could ensue. The concerns of New Mexico and other Upper Colorado River Basin states must be addressed in the Arizona Settlement to avoid such litigation.

Storage of Navajo Nation Water in New Mexico

The Arizona Settlement authorizes the diversion and storage in New Mexico of the Navajo Nation's Upper Basin Water (44,700 AFY), Cibola Water (up to 100 AFY), and Fourth Priority Water (3,500 AFY). The water may be stored in New Mexico in Navajo Reservoir or the Frank Chee Willetta, Sr. Reservoir and must be transported for use in Arizona. [Sec. 6(b)(2)(A) (at 58:13–22); Sec. 6(b)(3)(A)(i-ii) (at 60:10–23); Sec. 6(f)(1)(B) (at 72:22–73:3)]

All contracts to store water in the New Mexico reservoirs “shall identify—(i) the place of storage of the water; (ii) the mechanisms for delivery of the water; and (iii) each point of diversion under the applicable contract.” [Sec. 6(b)(4)(A) (at 61:9–19)]. The Secretary shall enter into water delivery contracts with the Navajo Nation for the delivery of the Upper Basin Water, Cibola Water and Fourth Priority Water that (i) identify the points of diversion in New Mexico and one or more storage locations in New Mexico, (ii) authorize use at any location within Arizona, and (iii) authorize delivery to the Navajo Nation's lessees and exchange partners in both the Upper Basin and the Lower Basin in Arizona. [Sec. 6(c)(1) (at 62:3–63:5); Sec. 6(c)(2) (at 63:24–64:23); Sec. 6(c)(3) (at 65:1–22)]

The Secretary is not the water master in the Upper Colorado River Basin, so consultation with and approval by the Upper Colorado River Basin states should be required, through the Upper Colorado River Commission. Further, the Secretary has no authority to administer water in New Mexico, so the Secretary must acquire appropriate permits from the Office of the State Engineer for the diversion and storage of additional water in the two New Mexico reservoirs, Navajo and Frank Chee Willetto, Sr. Historically, the Secretary has obtained such permits from the state, which are necessary to ensure that any new diversions and reservoir storage do not adversely impact the rights of existing permittees. Provisions of an Indian water rights settlement in Arizona must not give the Navajo Nation priority to divert, store, and deliver water over existing rights in New Mexico. There is no language in the Arizona Settlement prohibiting the Secretary from giving such priority preference.

Neither the settling parties nor Congress have authority to give such *carte blanche* to the Secretary. Storage of such significant amounts of water in New Mexico reservoirs, along with the terms of the delivery contracts (including authorization of the use of water in the Lower Colorado River Basin) will disadvantage New Mexico and the other Upper Colorado River Basin states and contravene not only state water law, but also the Law of the River that has been negotiated among the states and approved by Congress for more than 100 years. Water storage in New Mexico, without the approval of the state and the issuance of proper permits from the Office of the State Engineer, will interfere with New Mexico's ability to administer its own water rights, prevent the use of any available storage space in the reservoirs by New Mexico water users, and impair the state's ability to put its own water to beneficial use.

Further, adverse impacts on the San Juan River Basin Recovery Implementation Program (discussed in section 3 below) may harm the interests of the Commission and the La Plata Conservancy District in the Animas-La Plata Project and their water rights under OSE File Nos. 2883–B, 2883–C, 2883–D, and 2883–E. In particular, the Commission has limited storage in Lake Nighthorse because storage modeling for the Animas-La Plata Project was based on the availability of water for direct river diversion in New Mexico. Additional water diversions for storage in New Mexico reservoirs likely will restrict the Commission's ability to access all of its Animas-La Plata Project water, as well as its rights to water under OSE File Nos. 2883–C and 2883–E. The Commission already has entered into contracts with third parties for use of its water, which it might be unable to meet if the Arizona Settlement is adopted by Congress in its current form. The Commission's concern regarding whether the La Plata Conservancy District can use its water in OSE File Nos. 2883–D and 2883–E comes from the fact that the Commission advanced the capital costs for the La Plata Conservancy District to pay for its portion of the Animas-La Plata Project, and the only way the Commission will ever be repaid is through the La Plata Conservancy District's leasing of its water in those files.

In addition, as already discussed, the Arizona Settlement provisions requiring water storage and water delivery contracts to authorize water delivery and use in the Lower Colorado River Basin represent a misappropriation of Upper Colorado River Basin water. Such use should not be authorized without consultation with, and approval from, the Upper Colorado River Commission and each of the Upper Basin states.

2. *Secretarial Overreach*

For the reasons already discussed concerning the use of Upper Colorado River Basin water in the Lower Colorado River Basin and the storage of Arizona water in New Mexico, the Arizona Settlement improperly authorizes broad Secretarial overreach into water administration in the San Juan River Basin. Administration of the Basin must remain in the hands of the New Mexico Office of the State Engineer. The San Juan River is adjudicated and heavily regulated, and there is practically no wet water available for storage and delivery for the uses contemplated by the Arizona Settlement. The Secretary has no legal authority to authorize the diversion and storage of water in New Mexico and its delivery to another state—only the New Mexico Office of the State Engineer has such authority. The Committee should remove all language purporting to give the Secretary authority over water administration in New Mexico.

The Arizona Settlement provides protections to the State of Arizona that must also be provided to the State of New Mexico. The following language from the Arizona Settlement could be used as a template to add protections for pre-existing projects in New Mexico by substituting a list of those projects in lieu of the reference to “the Central Arizona Project”:

A. “In the event that a water delivery contract will result in the delivery of Upper Basin Colorado River Water to the Lower Basin . . . the Secretary shall confer with the State prior to executing that water delivery contract with respect to—(A) the impact of the water deliveries on the availability of Upper Basin . . . Colorado River Water within the State; (B) the annual accounting conducted by the Bureau for the water on the Colorado River apportionments of the State in the Upper Basin . . . ; and (C) as appropriate, the impact of the water deliveries on the operations of the Central Arizona Project.” [Sec. 6(d)(5) (at 69:1–16)]

B. “A water delivery contract shall not prejudice the interests of the State, or serve as precedent against the State, in any litigation relating to the apportionment, diversion, storage, or Use of water from the Colorado River System.” [Sec. 6(d)(7) (at 70:1–5)]

3. *Endangered Species/Environmental Laws*

San Juan River Basin Recovery Implementation Program

The Arizona Settlement states: “In implementing the Settlement Agreement . . . and this Act, the Secretary shall comply with all applicable provisions of—(A) the Endangered Species Act of 1973; (B) the National Environmental Policy Act of 1969, including the implementing regulations of that Act; and (C) all other Federal environmental laws and regulations.” [Sec. 4(c)(1) (at 39:21–40:7) (internal citations omitted)] There must be guarantees contained in the language of S. 4633 that will protect flows for endangered species.

San Juan River flows essentially are regulated by the San Juan River Basin Recovery Implementation Program (RIP) for two endangered fish. The RIP was identified as a reasonable and prudent alternative in the 1991 biological opinion for the Animas-La Plata Project and was established in 1992 through a cooperative agreement. The Navajo Nation and the Bureau of Reclamation are signatories.

The RIP protects the Commission’s interests in the Animas-La Plata Project, as well as those of the La Plata Conservancy District and the Navajo Nation. In particular, as already noted, most of the Commission’s Project water will be provided through river diversions rather than storage. The same is true for the Navajo Nation, which has a relatively small amount of storage in Lake Nighthorse. Having river flows for the endangered species protects the Commission’s Animas-La Plata storage and river diversion rights. So long as the RIP requires endangered species flows to remain in the channel all the way to Lake Powell, those flows cannot be used to supply water for the Arizona Settlement.

National Environmental Policy Act

The Arizona Settlement states: “The execution of the Settlement Agreement by the Secretary . . . shall not constitute a major Federal action for purposes of the National Environmental Policy Act of 1969” [Sec. 4(e) (at 41:1–5)] Because the Arizona Settlement authorizes storage of Arizona water in New Mexico for delivery to Arizona, which may have adverse consequences on existing reservoir operations and the RIP, Section 4(e) should be removed and NEPA compliance mandated. New Mexico may have more of an opportunity to protect its interests via the NEPA process.

4. Support for New Mexico Interstate Stream Commission Amendments

The Commission supports the New Mexico Interstate Stream Commission's proposed Section 6(g) and requests that specific reference be made to protecting New Mexico State Engineer File Nos. 2883-B, 2883-C, 2883-D and 2883-E. The Commission also supports the New Mexico Interstate Stream Commission's proposed changes to section 17 concerning Colorado River accounting.

Concluding Remarks

The San Juan Water Commission has been—and continues to be—a strong supporter of amicable settlement of the water rights claims of the Navajo Nation in Arizona, as proposed by S. 4633. However, that settlement must be modified to protect the Law of the River, to protect New Mexico's legal right to administer water within the state, and to protect the existing, established water rights of current and future New Mexico citizens in San Juan County.

PREPARED STATEMENT OF BECKY MITCHELL, GOVERNOR'S REPRESENTATIVE;
COMMISSIONER, UPPER COLORADO RIVER COMMISSION

Colorado supports the efforts to achieve a fair, equitable, and final settlement of all the claims to water in Arizona for the Navajo Nation, Hopi Tribe, and the San Juan Paiute Tribe. However, Colorado remains focused on the security and certainty of its interests in the Colorado River and the protection of the management, administration, and use of its share of the Colorado River as delineated in the Colorado River Compact, (45 Stat. 1057) (1922 Compact) and the Upper Colorado River Basin Compact, (63 Stat. 31) (1948 Compact). As detailed below, there are a number of specific issues on which Colorado seeks to resolve before supporting this legislation. Colorado is committed to working collaboratively to address these issues.

Our testimony is directed specifically at Sections 6, 7, and 17, of S. 4633, referred to as "Northeastern Arizona Indian Water Rights Settlement Act of 2024" ("Legislation").

Legislation impacts on 1922 and 1948 Compacts

Arizona receives most of its Colorado River water from the Lower Basin's apportionment under the 1922 Compact. However, under the 1948 Compact, Arizona is also entitled to a fixed annual apportionment of 50,000 acre-feet for the portion of Arizona that is in the Upper Basin. The Legislation calls for the allocation of 44,700-acre feet of this water to be allocated to the Navajo Nation and 2,300 acre-feet allocated to the Hopi Tribe to go towards the settlement of all the Navajo Nation and Hopi Tribe water rights claims in Arizona. § 6(a)(1)(A)(ii), (2)(A)(ii).

Colorado's overarching concern is based on language in the Legislation, which allows for inter-basin transfers of water apportioned to the Upper Basin for storage and uses off Navajo Nation and Hopi Tribe Reservation lands in the Lower Basin and authorizes exchanges of Lower Basin water for storage and use in the Upper Basin, which conflicts with key elements of the Law of the Colorado River.

More specifically, the 1922 Compact divides the Colorado River drainage area into two sub-basins: an Upper Basin (Colorado, New Mexico, Utah, and Wyoming), and a Lower Basin (Arizona, California, and Nevada) (Article II (f) and (g)). The apportionment under Article III(a) of the 1922 Compact provides each sub-basin the right to 7.5-million-acre feet per year for "exclusive beneficial consumptive use," and further requires in Article VIII that "[a]ll other rights to the beneficial use of the waters of the Colorado River System shall be satisfied solely from the water apportioned to the Basin in which they are situated." Article VII requires that nothing in the 1922 Compact shall be construed as affecting the obligations of the United States of America to the Indian Tribes. Taken together, these Articles establish limitations on inter-basin transfers between the Upper and the Lower basins, and for the storage and use of that water off Tribal Reservation lands.

The Legislation also raises concerns under the 1948 Compact. The 1948 Compact protects and apportions Upper Basin consumptive uses among Colorado, New Mexico, Utah, and Wyoming of the Upper Basin's Colorado River Compact apportionment of 7.5-million-acre feet. The Legislation provides for storage of Navajo Nation Upper Basin water in Navajo Reservoir. Navajo Reservoir is one of several reservoirs in the Upper Basin authorized in the 1956 Colorado River Storage Project Act as part of the system of reservoirs in the Upper Basin to allow the Upper Basin to satisfy its rights and obligations under the 1922 and 1948 Compacts.

The Legislation is problematic as drafted because it requires that water be credited against Upper Basin water in the year it is stored. § 6(b)(2)(A), (B). This provision does not account for the 1948 Compact's Article VI's definition of consumptive

uses as “man-made depletions of the virgin flow at Lee Ferry.” The water to be transferred under this Legislation would pass Lee Ferry and no depletion would occur in the Upper Basin. It is unclear how this water will be accounted for in compliance with the 1948 Compact, the Boulder Canyon Project Act and the decree in *Arizona v. California*, as the water is not able to be credited as a depletion of the Upper Basin. Additional clarity from the parties to the settlement on how this accounting would occur would be valuable for the Committee to consider.

The Legislation also allows the Navajo Nation and Hopi Tribe Upper Basin water to be leased, exchanged, or transferred, anywhere in the State of Arizona. See e.g. § 6(b)(3) and § 7(a)(1)-(3). It also allows this Upper Basin water to be transported through the Central Arizona Project system for storage or use and off Navajo Nation or Hopi Tribe Reservation lands. § 6(b)(1)(D). The Legislation also allows for the use of Upper Basin tributaries and infrastructure to store, transport, and deliver Upper and Lower Basin water from the Upper Basin above Lake Powell to the Lower Basin. § 6(f)(3). There is no authorization for these provisions in the 1922 Compact or the 1948 Compact.

Amendments Requested

Colorado fully supports the Tribes in their efforts to use or store the water from the Upper Basin identified in the Legislation exclusively on Navajo Nation and Hopi Tribe Reservation lands. Colorado requests, however, that certain amendments be made to the Legislation to comply with the Law of the River. Specifically, Colorado requests amendments to the Legislation to limit the storage and/or use of Arizona’s Upper Basin water in the Lower Basin exclusively to Navajo Nation and Hopi Tribe Reservation lands; that the provisions related to credit account for limitations in the 1948 Compact; and that there be no exchanges, credit, or accounting of Lower Basin water in or through Upper Basin reservoirs or Upper Basin tributaries. The Upper and Lower Basin States, including Colorado, are working with the settling parties to collaboratively resolve these pending issues in the bill’s language.

If these concerns are addressed, Colorado will support the Legislation.

Thank you for the opportunity to provide these comments on S. 4633.

APSÁALOOKÉ ALLOTTEES ALLIANCE
July 11, 2024

RE: LETTER OF OPPOSITION TO SENATE BILL 4444

Dear Senators Schatz and Murkowski:

The Apsáalooké Allottees Alliance is an Indigenous, non-profit advocacy organization dedicated to helping and educating individual Apsáalooké trust allotment landowners, including all aspects of allotted land and water rights issues. We reside on the Crow Reservation in southern Montana. We are no strangers to those who seek to take advantage of our lands and waters, offering much in return and delivering nothing. We fear that the “Crow Revenue Act” (S. 4444 from Senator Steve Daines) is more of the same. According to our Crow Constitution, our chairman, Frank White Clay, cannot act on his own. He must take this major decision to the Crow General Council. Anything of this magnitude must to go the Council where it would normally be subject to a referendum vote.

Some Montana politicians are calling S. 4444 a “commonsense solution” and claim it will bring new revenue to our people. This is not the case. A close reading of the bill text reveals that the federal government will give the Hope Family 4,530 acres of subsurface mineral interests and 940 acres in surface interests next to a currently operating and profitable coal mine in the Bull Mountains. In exchange, the Hope Family will convey to the Tribe only its mineral interests (4,660 acres of mineral rights) as to which there is no nearby coal mining taking place and there is not likely to be any in the future. In addition, if the Crow Nation were ever to pursue the development of the Bighorn County tracts, we would have to enter into a revenue agreement “if those mineral interests are developed at a later date.” Senator Daines’ Fact Sheet describing the details of S. 4444 misstates this provision of the bill. The statement in the Fact Sheet that Sec. 3 of the bill “requires the Hope Family and the Crow Tribe to enter into a revenue sharing agreement[s] for the development of any mineral interests in the Bull Mountain Tracts,” is wrong. The relevant provision in the bill states:

(d) REVENUE SHARING AGREEMENT.—The Tribe shall notify the Secretary, in writing, that the Tribe and the Hope Family Trust have agreed on a formula for sharing revenue from development of the mineral interests described in subsection (a)(2) if those mineral interests are developed at a later date.

Contrary to a statement in Senator Daines' Fact Sheet, Sec. 3(a)(2) of the bill refers to the Hope Family Tracts, not the Bull Mountain Tracts. The Bull Mountain Tracts are likely to be mined for coal, while the Hope Family Tracts are not. Rather than requiring the Hope Family Trust to share revenue with the Crow Tribe from the Bull Mountain Tracts, the bill requires the Tribe to share revenue from the Hope Family Tracts (in the unlikely event they were ever mined for coal) with the Hope Family Trust, despite the fact that 100 percent of the mineral rights beneath the Hope Family Tracts are to be held in trust by the United States for the Crow Tribe. Thus, the Hope Family Trust would receive 100 percent of the royalties from the Bull Mountain Tracts, as well as an unspecified share of royalties from the 100 percent tribally owned Hope Family Tracts. Sec. 3(d) of the bill, "Revenue Sharing Agreement," creates a burden on the mineral rights the Tribe would receive in favor of the Hope Family Trust. The Tribe would be required to negotiate with the Hope Family Trust to gratuitously give it a share of the coal Apsaalooke Allottees Alliance is incorporated in the State of Montana as a non-profit organization, is IRS-approved exempt from federal income tax under Internal Revenue Code (IRC) Section 501(c)(3). Donor contributions are tax-deductible under IRC Section 170. AAA Tax ID: 93-3196068. royalties from the those lands before those lands could be mined. There is no justification for this, and it can only be characterized as outrageous.

It is also important to note that the Bull Mountain Tracts are currently leased by the United States for coal mining, with royalties payable to the United States. The net result of this legislation would be to give valuable mineral rights and coal royalties otherwise payable to the United States to the Hope Family Trust. There is no justification for gratuitously enriching the Hope Family Trust at the expense of the United States, in return for the Tribe receiving mineral rights of little real value.

Our people have been promised more than is delivered time and time again. The Crow do not need another beautifully wrapped birthday present, only to open it and find it is empty inside. The Crow People have great need for revenue, infrastructure, and investments on Tribal and Allotted land. This bill provides none of these things.

We have worked hard to protect our culture, our land, our water, and our people. S.4444 is an injustice reminiscent of so many in our history and Native history in this country. It would be yet another grave injustice to allow this bill to pass. Please vote no on this bill.

Sincerely,

MICHAEL HILL, PRESIDENT

BOARD OF COUNTY COMMISSIONERS—BIG HORN COUNTY
May 28, 2024

Dear Senator Daines,

Regarding the Crow Revenue Act, we would like to offer our support for this legislation. The transfer of the 4,660 acres of private subsurface inholding on the Crow Reservation to the Crow Tribe of Montana in exchange for 4,530 acres of federal subsurface and 940 acres of federal surface interest in Musselshell County, MT along with the Revenue Sharing Agreement in the Bull Mountains Tracts will ensure the Tribe receives much needed revenue from mineral production that would otherwise be lost. This will also ensure a sustainable economic benefit to Big Horn County, MT.

We thank you for your leadership in addressing this matter and we appreciate your commitment to economic growth in Big Horn County and for all Montanans.

Sincerely,

LARRY VANDERSLOOT, PRESIDING OFFICER; GEORGE REAL BIRD III, MEMBER;
LAWRENCE BIG HAIR, MEMBER

BULL MOUNTAIN LAND ALLIANCE (BMLA), NORTHERN PLAINS RESOURCE
COUNCIL (NPRC), WESTERN ORGANIZATION OF RESOURCE COUNCILS (WORC)
September 20, 2024

Dear Senator Schatz,

On behalf of Bull Mountain Land Alliance (BMLA), Northern Plains Resource Council (NPRC), Western Organization of Resource Councils (WORC), and our thousands of members throughout Montana and the Intermountain West, we write to express our strong opposition to S. 4444 (Crow Revenue Act) introduced by Senator Steve Daines.

S. 4444 seeks to benefit Signal Peak Energy, LLC, (SPE) a bad corporate actor and bad neighbor in Montana, at the expense of impacted local communities, ranchers, Montana taxpayers, and the environment. This bill would seriously undermine or cancel an ongoing Office of Surface Mining Reclamation and Enforcement (OSMRE) environmental impact study of the mine's local impacts. This review could result in responsible safeguards that protect neighboring landowners, wildlife, and water resources.

Our organizations are deeply concerned about impacts to the Crow Tribe and Crow people from the potential closure of the Absaloka Mine on the Crow Reservation. We strongly support the federal government providing meaningful support to the Tribe to account for lost revenues, lost jobs, and economic distress. But the anticipated benefits of S. 4444 to the Crow Tribe are speculative—Crow tribal members have gone on record opposing the bill, contending that the revenue sharing claims are deeply misleading and saying it would be a “grave injustice to allow this bill to pass.” Meanwhile, S. 4444 purports to benefit one community by posing unacceptable impacts to another community—the people and ranchers in the Bull Mountains of Montana—by eliminating a much-needed environmental review of the significant impacts of a federal coal lease on local water resources, which serve as the lifeblood of local residents and generational ranches.

For these reasons and others outlined below, we strongly urge the Senate Indian Affairs Committee to oppose S. 4444:

1. Signal Peak, LLC Is a Bad Neighbor

Since the Bull Mountains Mine re-started and expanded mining operations in 2009, Signal Peak Energy's actions have shown a disdain for the law and a motivation to further its own interests at the expense of the people who live and work in the Bull Mountains. Over the years, Signal Peak has used callous tactics to directly and indirectly force generational ranchers off their land. The Bull Mountains have been a crucial summer range for cattle because of their proximity to perched groundwater aquifers and springs. Unfortunately, since mining began, ranchers and landowners have seen extensive subsidence which has torn apart the landscape and impacted the hydrological system in the region resulting in ranchers reconsidering or moving their ranching operations to survive. Signal Peak has gone as far as to cancel the grazing lease of a rancher on the corporation's land and has sued people who ranch above the mine in multiple cases. Signal Peak's motivation to push ranchers off the land seems very clear: the corporation seeks to avoid assessing and addressing the harms it has caused to springs, aquifers, and wells. S. 4444 effectively condones a corporate actor that is known for violating the law and harming the people who live in Musselshell County and Yellowstone County. S.4444 allows Signal Peak to bypass the only process that requires the federal government to review the mine's impacts and provides an opportunity to address those impacts.

Signal Peak is also currently on federal probation with the Department of Justice after criminal convictions for willfully lying to federal mine regulators about workplace injuries and for illegally dumping toxic mine waste into an area that was intended to provide replacement water to local people harmed by the mine.¹ The company has also violated the law by not complying with the obligation to collect and analyze water sources weekly which has led to an “irreversible loss of monitoring data.”² They have also incurred over 1,700 violations, according to the Mine Safety and Health Administration (MSHA).³

Signal Peak is also known for avoiding paying taxes that would benefit the State of Montana and the local county. By avoiding millions of dollars in tax obligations through exhaustive lobbying efforts at the Montana legislature, Signal Peak has evaded its responsibility to support the local community.⁴

¹Judgment, *United States v. Signal Peak Energy, LLC*, No. 21–CR–79 (Jan. 31, 2022); Offer of Proof, *United States v. Signal Peak Energy, LLC*, No. 21–CR–79 (Oct. 5, 2021).

²DEQ, Notice of Noncompliance (Aug. 22, 2019).

³Mine Safety and Health Administration, Mine Data Retrieval System, <https://www.msha.gov/data-and-reports/mine-data-retrieval-system>.

⁴Mike Dennison, Tax Break for Roundup-area Coal Mine Stuffed into Bill in Final Days, *Billings Gazette* (Apr. 28, 2011), available at https://billingsgazette.com/news/state-and-regional/montana/tax-break-for-roundup-area-coal-mine-stuffed-into-bill-in-final-days/article_995244c5-f8f7-5087-9d50-da3a5e057ebb.html; Mike Dennison, Tax Break for Roundup-area Coal Mine Stuffed into Bill in Final Days, *Billings Gazette* (Apr. 28, 2011), available at https://billingsgazette.com/news/stateandregional/montana/musselshell-county-turns-down-coal-mine-tax-break/article_52aa5180-1215-11e0-9c79-001cc4c03286.html. The bottom line is that S. 4444 is a raw deal for ranchers, local landowners, the environment, taxpayers, and the rule of law.

2. Signal Peak's Operations at the Bull Mountains Mine Have Not Been Subject to an Environmental Impact Statement (EIS)

If S. 4444 is enacted, the critical EIS that is being prepared for the extensive AM3 expansion of the Bull Mountains Mine would be evaded, because the minerals would become private rather than federal. For decades, the landowners and ranchers in the Bull Mountains region have been organizing and advocating for a full analysis, through an EIS, of the impacts the mine has on the environment and the local community. If Signal Peak continues expanding the mine, it should only be after a proper and thorough analysis of the environmental impacts is completed. Shifting these federally-owned minerals into the hands of a wealthy private family (the Hope Family Trust) will sidestep federal oversight of the mine, which appears to be the primary goal of S. 4444. Given Signal Peak's repeated violations of environmental and safety laws, federal oversight should be increased rather than sabotaged through convoluted legislation.

Local communities do not know what information the EIS will ultimately yield, but the future of the mine should be determined only after considering all information possible. Local ranchers have experienced dried-up springs and wells and cracks opening in their pastures due to subsidence caused by undermining, and have sought for years to have a thorough EIS completed in order to better understand the impacts of expanded mining on their livelihoods.

SPE heavily lobbied the Bureau of Land Management (BLM) over a decade ago to ensure that only an Environmental Assessment (EA) was done on the mine's original lease, which limited the scope of analysis and left the local community with more questions than answers.⁵ This prevented regulators from taking a hard look at the environmental and community harms that this mine has and will continue to perpetuate. Subsequent expansions and permit amendments at the Bull Mountains Mine have continuously recycled this same Environmental Assessment with only minor updates, and a comprehensive and more substantive evaluation of impacts has never been conducted. Since the mine opened, ranchers and landowners have seen the consequences of this lack of analysis first hand: water resources being devastated, rises in air pollution, subsidence and surface cracks on critical ranching and grazing land. A close look at the harm that will result from longwall mining of federal coal is not only a federal requirement but is also crucial in preserving the livelihoods of local communities.

3. Loss of Public Land and Access

The swap engineered by S. 4444 includes the transfer of nearly 1,000 acres of federal surface land to the Hope Family Trust. This transfer would close off access to an important and beloved section of public land in an area where public land and the access that comes with it is in short supply. This particular property provides some of the only access points in the area where Musselshell and Yellowstone County residents can hunt turkey, deer, and elk—an important local pastime.

4. Financial Impacts of S. 4444 and Valuation of Bull Mountains Coal

S. 4444 fails to meet a basic and critical tenet of mineral swaps, which is a value-for-value trade. The federal coal in the Bull Mountains is of much higher value than the coal owned by the Hope Family Trust, which is unlikely to be mined and of much lower value.

The bill and proposed swap also provide a significant potential windfall for one private family, the Hope Family, who own the coal on the Crow Reservation that would be swapped with the federal coal in the Bull Mountains. Meanwhile, while the bill sponsor purports significant financial benefit to the Crow Tribe and community, those financial benefits have been called into question. On July 27, members of the Crow Tribe's Apsaalooke Allottees Alliance wrote that while some politicians claim S.444 "will bring new revenue to our people," "this is not the case." Quoting:

Reading the bill reveals that the federal government will give the Hope family 4,530 acres of mineral interests and 940 acres in surface interests next to an operating and profitable coal mine in the Bull Mountains.

In exchange, the Hope family will convey to the Tribe its 4,660 acres of mineral interests under productive ag land on the Crow Reservation with little likelihood of future mines nearby. If the Crow Nation were to pursue development of the Bighorn County tracts, we would have to enter a revenue agreement "if those mineral interests are developed at a later date."

⁵ BLM Meeting Notes (Mar. 2009).

The bill vaguely refers to a revenue sharing agreement but does not require it. Meanwhile, the only guaranteed benefit to the Crow is the acquisition of Hope Family Trust's minerals, which are unlikely to ever be mined.

Montana taxpayers would also take a seven-figure hit annually. In an analysis of S. 4444 prepared for this committee, the Montana Department of Revenue estimates that "the State will lose approximately \$1.2 million in revenue per year between 2024 and 2028" or \$6.2 million in total across those years due to lost mineral royalties. The local counties that benefit most from receiving a portion of these federal royalties, Musselshell and Yellowstone Counties, would lose an estimated, combined \$1.7 million in revenue over the same time period. This means less money for local schools, emergency services, and infrastructure.

5. Lack of Public Participation

Neither Senator Daines nor anyone from his office consulted with landowners adjacent to or above the mine associated before introducing these two bills. This is a grave oversight due to the direct impact that these bills have on landowners who rely on the land and water resources to ranch and maintain their livelihood. Senator Daines missed a critical step during the formation and introduction of this legislation by not consulting with impacted landowners who would be directly affected by the bills.

Unfortunately, this has been a recurring issue over the 15 years of Signal Peak's operation in the Bull Mountains—ranchers and landowners have been left out of the decisionmaking process at almost every step due to Signal Peak's abuse of the minor permit revision process. Hundreds of minor permit revisions have been made to Signal Peak's permit without any public participation process or opportunities for public input. Permit revisions deemed "minor" do not require any public notice—even to affected or surrounding landowners—and do not involve opportunities to provide public comment or input through another mechanism. Statute requires permit revisions impacting water resources to be categorized as "major"—which does mandate public notice and participation. However, Signal Peak has repeatedly made revisions to its permit that impact water resources or otherwise should be deemed "major" through the flawed and less transparent minor permit revision process. In one example, Signal Peak sought a minor permit revision to remove a natural spring-fed well which was a source of water that a local rancher relied on to water for over 200 cows.⁶ The Montana Department of Environmental Quality granted that permit revision, and left local landowners scrambling for sustainable water sources.

The bottom line is that S. 4444 seeks to undermine a federal National Environmental Policy Act (NEPA) process that would allow for transparency, a thorough study of the environmental impacts, and the public to comment and have a voice in the process.

Our organizations and members appreciate your attention to these bills and urge the Committee to prioritize communities and the environment over the desires of a bad corporate actor by opposing this legislation. We thank you for your time and consideration.

Sincerely,

TOM BARATTA, CHAIR, BULL MOUNTAIN LAND ALLIANCE
EDWARD BARTA, CHAIR, NORTHERN PLAINS RESOURCE COUNCIL
SARAH HUNKINS, DC REPRESENTATIVE, WESTERN ORGANIZATION OF RESOURCE COUNCILS

Dear Senate Committee,

Please vote no on this bad bill supporting a bad company—Signal Peak Mining. Do something to really support the Crow Tribe economic situation, and not rely on dirty coal.

Thank you,

CARLA ABRAMS, MISSOULA MT

It is truly disgusting that Senator Daines would betray his constituents in order to favor so corrupt a corporation as Signal Peak. Please reject bills, S. 4444, as I hope S. 4431, and S. 4432 will also be rejected.

⁶<https://dailymontanain.com/2022/09/04/charters-last-stand-ranchers-signal-peak-may-prove-that-coal-and-cows-cant-coexist/>

To allow this very bad actor of a corporation to continue to exploit Montana's coal (which needs to stay in the ground), especially now that solar and wind are cheaper than coal, is totally unacceptable.

It is grossly irresponsible to propose legislation to evade environmental review of this effort, and it is contemptible to name it as if it would actually benefit the Crow Nation. See: <https://dailymontanan.com/2024/08/05/daines-coal-bill-land-swap-is-misleading/>

Sincerely,

C. M. WOODCOCK, BOZEMAN MT

Dear Senators:

I live in Montana and I urge you to act against S. 4444. This misleadingly titled Act will NOT help the Crow individually or as a Nation. That is CLEAR from the language of the Bill itself. It WILL allow Signal Peak to expand the Bull Mountain Mine without completing the Court ordered environmental review.

Signal Peak has been a "Bad Actor" in the past and should be held accountable for damage it has done to Montana ranches and our Climate. Signal Peak NEEDS to fix the mess it has already made at the mine BEFORE it can continue its mining operations.

Respectfully Submitted,

CHARLES W. KUETHER, GREAT FALLS, MONTANA

I urge that S. 4444 be soundly defeated. It gives a private corporation control over public land, a pure give-away, against the benefit of the people of Montana. It claims to benefit the Crow, but does not.

Please vote NO on this bill.

CINDY WILLIAMS, PROCTOR, MT

Dear Committee:

I urge you to strongly oppose S. 4444, which would allow a private entity in Montana, Signal Peak Energy, to take ownership of public land and publicly owned coal. Signal Peak Energy is a flagrant bad actor with previous links to Vladimir Putin, as well as a history of bribery, embezzlement, drug trafficking and worker injuries. The US Attorney's office called the mine a "den of thievery" due to its rampant disregard for laws. The mine's owners have paid over \$1.1 billion in penalties and fines in the last few years. This company has caused severe damage to nearby ranches, including loss of water resources for ranching operations and wildlife and large, dangerous cracks in the landscape. Signal Peak received millions in tax abatements from local governments even though it has made more than \$1 billion over the last several years. Signal Peak should provide some of this historic revenue to local governments and the Crow Nation.

CLAIRE REICHERT BAIZ C/O GREG REICHERT, GREAT FALLS MT

8/29/2024

RE: S. 4444—CROW REVENUE ACT

Dear Senator Daines,

We request you withdraw S. 4444, the Crow Revenue Act. This bill has dangerous implications for Musselshell County's land, air, water, and local revenue. Research from the Montana Department of Revenue demonstrates this bill would result in an annual loss of \$1.2 million dollars, 25 percent of which goes directly to Musselshell County. Because the land will be transferred from federal lands which pay royalties, we will no longer see these dollars benefit our state and Musselshell County to support our schools, roads, bridges, emergency services, and more. Moreover, when dollars are transferred out of the public, it's often the community members who live and work left to pay the bill.

This bill is not the answer. Please withdraw your bill, S. 4444, immediately.

Sincerely:

Dustin Ogden, Billings, MT
David Lehnerr, Red Lodge, MT
Susan Thomas, Livingston, MT
Jonah Barta, Bozeman, MT

Susan Thomas, Livingston, MT
Stephanie C. Fox, Bloomfield, CT
Melanie Chischilly, Texarkana, TX
Chris Lane, Missoula, MT
Bart Hovis, Manchester, MO
Toni Patterson, Hamilton, MT
Blaise Brockman, Arcadia, CA
Judy Staigmiller, Bozeman, MT
Elyette Weinstein, Olympia, WA
April Martin, Busby, MT
Mildred Whalen, Great Falls, MT
Wanda Latendresse, Billings, MT
Mike Stevenson, Clancy, MT
Bob Antonick, Helena, MT
Barbara Aas, Bozeman, MT
Karen Brashears, Chicago, IL
Georgia Braithwaite, Cottonwood, AZ
Thom Luffin, Olympia, WA
John Schaefer, Mars, PA
Lila Randolph-Poore, Red Lodge, MT
Dorie Green, Bozeman, MT
Rebecca Lande, Frenchtown, MT
Annick Smith, Bonner, MT
Kirk Panasuk, Bainville, MT
Sandra Subotnick, Billings, MT
Ron Matelich, Bozeman, MT
John Boschert, Billings, MT
Sydney Weydemeyer, Missoula, MT
Gregory Esteve, Lake Wales, FL
Jim Taylor, Missoula, MT
Kathie Daviau, Billings, MT
Jill Davies, Victor, MT
Roderick Maclean, Bozeman, MT
Jan Modjeski, Murrells Inlet, SC
Douglas Sedon, Jefferson, MD
John Dunkum, Missoula, MT
Toni Semple, Livingston, MT
Kelly Baraby, Jefferson City, MT
Rob Seltzer, Malibu, CA
Jonathan Kaufmann, Grass Range, MT
Jeremy Hehn, Billings, MT
Karen Morris, Miles City, MT
Paul Hawks, Melville, MT
Mark Blandford, Amarillo, TX
Norman Bishop, Bozeman, MT
Jl Angell, Rescue, CA
Steven Grout, Great Falls, MT
Bill Walker, Billings, MT
Kathy Grieves, Peoria, AZ
Eric Nelson, Missoula, MT
Cindy Newman, Great Falls, MT
Gordon Whirry, Great Falls, MT
Jeff Dibenedetto, Red Lodge, MT
Nancy Welch, Billings, MT
Richard Mousel, Great Falls, MT
Blaine Jensen, Missoula, MT
Gary Matson, Milltown, MT
Billy Angus, Hamilton, MT
Michael Carroll, Great Falls, MT
James Eller, Sun River, MT
Colleen Wulf, Billings, MT
Jacob Mortensen, Missoula, MT
Rick Kerr, Choteau, MT
Connie Loveland, Laguna Hills, CA
Susan Logan, Red Lodge, MT
Carol Weinstein, New York, NY
Alan Hilden, Billings, MT
Robert Freistadt, Helena, MT

Tim Bergstrom, Billings, MT
Gayle Joslin, Helena, MT
Roy O'connor, Missoula, MT
Brian Butler, Billings, MT
Jean Boone, Billings, MT
Colonel Meyer, North Port, FL
Diana Saxon, Salem, OR
Robert W. Skinner, Billings, MT
Colleen Hinds, Heron, MT
Mary Clark, Helena, MT
Sandra Paris, Arlee, MT
Jim Barngrover, Helena, MT
Randy Setter, Anaconda, MT
David Easterling, Missoula, MT
Gumus Ozkok, Crownsville, MD
Charles Arnold, Manchester, NH
Corine Lindhorst, Great Falls, MT
Bruce Bender, Missoula, MT
Susan McClure, Bozeman, MT
Mike Hamilton, Havre, MT
Glenda Bradshaw, Helena, MT
Jody Gibson, Des Moines, IA
Virginia Bratton, Bozeman, MT
Ralph Bocchetti, Fontana, CA
Wendy Kamm, Fort Benton, MT
Robert Mackin, Billings, MT
Terry Dokken, Missoula, MT
Mark Nicholson, Billings, MT
Carole Clark, Great Falls, MT
Priscilla Bell, Laurel, MT
Mary Sedwick, Ennis, MT
Jim Heckel, Great Falls, MT
Michelle Boydston-Mulholland, Billings, MT
Katherine Nilson, Billings, MT
John Taylor, Missoula, MT
Phyllis K Munson, Anaconda, MT
Henry Nilson, Billings, MT
Elizabeth Erpelding-Garratt, St Augustine, FL
Susan Delles, Rogue River, OR
Steven Gores, Helena, MT
Randall Greene, Shepherd, MT
Jon Drindak, Billings, MT
Jason Crawford, Lancaster, PA
Nancy Krekeler, Red Lodge, MT
Debbie Oliver, Billings, MT
Marilyn Hill, Big Sky, MT
Cathy Holmes, Lewistown, MT
Dana Bleckinger, Yachats, OR
Robertus Wortelboer, Emigrant, MT
Margie Nelson, Billings, MT
John Halverson, Billings, MT
Bo Baggs, Port Arthur, TX
Colleen Skinner, Billings, MT
Molly Pearson, Great Falls, MT
Barbara Gulick, Billings, MT
Janet Childress, Helena, MT
Susann Beug, Red Lodge, MT,
Steven Fain, Hamilton, MT
Nancy Kessler, Livingston, MT
Jani Sena, Helena, MT
Mary Moore, Great Falls, MT
Rachel Corley, Frenchtown, MT
Stanley Bruce, Billings, MT
Liz Fife, Washington, DC
Art Hanson, Lansing, MI
Mac Donofrio, Hamilton, MT
Dana Huschle, Bozeman, MT
Stan Bayley, Billings, MT

Amy Vanderbilt, Kalispell, MT
Mark Fix, Miles City, MT
Pam Kemmick, Billings, MT
Mike O'connell, Bozeman, MT
Katherine Ball, Bozeman, MT
Russ Bossard, Roundup, MT
Garold Lazarowski, Seeley Lake, MT
Heather Sheffield, Livingston, MT
Brenna Herron, Libby, MT
Michael Helling, Victor, MT
Rachel Stansberry, Lewistown, MT
Margaret Kingsland, Missoula, MT
Jenny Sowell, Bozeman, MT
Kenneth Younger, Bozeman, MT
Gail And John Richardson, Bozeman, MT
Janice Munzke-Deal, Bozeman, MT
Hal Schmid, Missoula, MT
Steve McArthur, Missoula, MT
Neil Harrington, Helena, MT
Marilyn Trenfield, St. Ignatius, MT
Dan Dinstel, Alzada, MT
Erik Brown, Helena, MT
Thomas Barrett, Bozeman, MT
Ruth Swenson, Helena, MT
Kristin Aus, Glendive, MT
Nancy Cobble, Montana City, MT
Mark Payne, Bozeman, MT
Michael Hathaway, Missoula, MT
Archie Thomas, Corvallis, MT
Addison Sessions, Billings, MT,
Angela James, Great Falls, MT
Tammy Dalling, Gardiner, MT
Jim Sennett, Lewistown, MT
Tracy Mikesell, Huson, MT
Karen Mclean, Helena, MT
Liz Stone, Three Forks, MT
Jamie Jackson, Three Forks, MT
Dan Smith, Billings, MT
Richard Clawson, Billings, MT
Joanne Gores, Helena, MT
Richard Spellman, Livingston, MT
Frances Goff, Pasadena, CA
Todd Cochran, Missoula, MT
Mary Dubois, Bozeman, MT
Janet Lyon, Missoula, MT
Teresa Beutel, Congers, NY
Lisa Ventura, Billings, MT
Mark Polakoff, Red Lodge, MT
Corey Schade, Loch Arbour, NJ
Debbie Endres, Livingston, MT
Katherine Heffernan, Missoula, MT
Julie Chapman, Huson, MT
Kathleen Gessaman, Great Falls, MT
Charles Kuether, Great Falls, MT
Philip Richmond, Roundup, MT
Bp Casbara, Hamilton, MT
Marsha Sullivan, Roundup, MT
Joane Bayer, Canyon Creek, MT
John Smillie, Billings, MT
John Obrien, Butte, MT
Stern David, Cody, WY
Joel Vignere, Lakeside, MT
Daniel Knapp, Clarkston, WA
Jeri Miller, Kalispell, MT
Bob Leppo, Shell Beach, CA
Kathleen Gould, Billings, MT

9/24/2024

I do not support this bill. It is terrible for the environment, climate change impacts and will not do anything for the Crow people and generating revenue for them.

Please do not support Senate bill 4444.

Montana needs to retain all environmental standards as fought for and court ordered.

Regards,

COLLEEN ELDRED

SUPPORT FOR S. 4444 THE CROW REVENUE ACT

Local Counties and Cities

The City of Roundup
 Musselshell County Commission
 Yellowstone County Commission
 Big Horn County Commission
 Montana Association of Oil, Gas, & Coal Counties

Statewide Elected Officials

Governor Greg Gianforte
 Congressman Ryan Zinke
 Congressman Matt Rosendale
 Superintendent Elsie Arntzen

Local Elected Officials

Senator Barry Usher (SD-20)
 Senator Jason Small (SD-21)
 Representative Gary Parry (HD-39)
 Representative Greg Oblander (HD-40)
 Representative Gayle Lammers (HD-41)
 Representative Kerri Seekins-Crowe (HD-43)
 City of Billings Mayor Bill Cole

Principle Stakeholders

The Crow Tribe of Indians
 The Hope Family Mineral Trust
 Signal Peak Energy, LLC

“The Crow Tribe of Indians proudly supports this legislation”—Chairman Frank White Clay

“On behalf of the City of Roundup, we are in full support of Steve Daines and his Crow Revenue Act”—Roundup Mayor Sandra Jones

Distinguished Committee Members,

I am a member of the Crow Tribe, and I am writing to express my opposition to S. 4444, the so-called “Crow Revenue Act.” The Crow People have been systematically left out of this process, and it remains unclear how its passage would benefit the Tribe. We are facing financial and economic hardships that require meaningful investment and attention from our elected officials, but this bill does not prioritize the wellbeing and economic resilience of our community.

Tribal Chairman Frank White Clay has endorsed this legislation without consulting the Crow Tribe Legislature. In doing so, he has undermined the constitutional rights of our people and cut us out from engaging with this legislative process. He has purported that the passage of the Crow Revenue Act would yield \$100 million in revenue for the Tribe over the next ten years and return thousands of acres of land to the Crow. A close read of the bill itself clarifies that the swap would only trade subsurface mineral rights to the Tribe, and the only revenue afforded to us would be in the form of an undetermined “revenue sharing agreement” with the Hope Family Trust. However, this agreement would only be realized if the coal were developed at a later date. These coal assets are located beneath productive agricultural lands and nowhere near an operational mine—when would we ever see the revenue that this coal is supposed to provide us?

Chairman White Clay has emphasized that our tribe needs economic investment and revival, and that this should not be politicized—and I agree. Our leaders should invest meaningfully in our communities, and not use us as political pawns in a

scheme that clearly seeks to benefit corporate actors like Signal Peak Energy in their pursuit to expand their Bull Mountains Mine. Even if the Crow Revenue Act did allocate revenue for the tribe, our economic future should not be tied to an industry that has been declining for decades. We cannot afford to kick this can further down the road, and our leaders must meaningfully prioritize the resilience of our economic future.

I urge that you not support the Crow Revenue Act.

DAVID R BLAINE, HARDIN, MT

9/25/2024

My name is David Rockwell, and I live in Dixon, Montana. I am a fourth-generation Montanan, my wife is a fifth-generation Montanan. We are strongly opposed to Senator Daines' bill S. 4444, which would benefit a corrupt company with a history of bribery, embezzlement, and worker injuries. The company has paid over 1.1 billion in penalties and fines, just in the last few years. The bill will not benefit the Crow Tribe, which shows just how deceptive and cynical Senator Daines is being with respect to this bill. Please kill this terrible piece of legislation.

Thank you.

DAVID ROCKWELL, DIXON, MT

9/24/2024

To Senate Committee on Indian Affairs:

I urge you to vote against Senate Bill 4444. We must stop propping up corrupt business.

Signal Peak Energy is a flagrant bad actor with previous links to Vladimir Putin, as well as a history of bribery, embezzlement, drug trafficking and worker injuries. The US Attorney's office called the mine a "den of thievery" due to its rampant disregard for laws. The mine's owners have paid over \$1.1 billion in penalties and fines in the last few years. Our government should not be getting in bed with a corporation that has committed these crimes, let alone the damage it's caused to nearby ranches, including loss of water resources for ranching operations and wildlife and large, dangerous damage to the landscape.

Signal Peak has received millions of dollars in tax abatements from local governments even though it has made more than \$1 billion over the last several years. The company should provide some of this historic revenue to local governments and the Crow Nation that could assist with building a local economy that doesn't rely solely on dirty and dangerous coal mining.

- The Aps alooké Allottees Alliance has publicly shared that S. 4444 will not benefit the Crow due to the language of the bill itself.
- Signal Peak should be providing some of its revenue to assist with building a local and Tribal economies that don't rely solely on coal mining.
- Signal Peak is a bad actor and should be held accountable for the damage it's done to Montana ranches and the climate.
- Signal Peak should have to complete the court-ordered Environmental Impact Statement before any additional mining can occur.
- Signal Peak should have to follow the law, fix the mess it's already made at the mine, and provide ranchers and wildlife with lost water resources before it can continue its mining operations.

As a 4th generation Montana resident, I implore you to act responsibly. . . for the people, including our children and grandchildren.

Sincerely,

DENISE P. TRIPP-LORAN, MISSOULA, MT

MONTANA WILDLIFE FEDERATION
September 17, 2024

Dear Chairman Sen. Schatz, Vice-Chairman Sen. Murkowski, and distinguished members:

The Montana Wildlife Federation is Montana's oldest and largest wildlife conservation organization. Our roots trace back to 1936 when hunters, anglers, and other conservationists joined landowners to address the loss of Montana's natural lands, healthy waters, and abundant wildlife.

We are writing to express our opposition to S. 4431, S. 4432, and S. 4444. We are deeply concerned about how these bills would impact responsible protections for Montana's wildlife and the natural resources they depend on. Currently, an Environmental Impact Study (EIS) is underway for Signal Peak Energy's underground coal mine, Bull Mountains Mine #1. This EIS would provide essential analysis of how mining activity would impact habitat and water resources for game that our members hunt including turkey, deer, and elk. The bills mentioned above would either weaken or omit that EIS, leaving Montana hunters without the information needed to ensure the health and vitality of existing wildlife populations.

We are especially concerned that these protections and analysis would be undermined given Signal Peak Energy's prior criminal convictions for environmental degradation. If anything, this corporation's actions demand greater scrutiny rather than weakened oversight.

S. 4444 is of particular concern given it would transfer public lands into the private hands of a single wealthy family. These public lands provide some of the only access in the Bull Mountains where our members and supporters hunt and recreate. S. 4444 would virtually eliminate hunting and recreation access in one of the few areas close to Montana's largest urban center, Billings.

Many of our members hunt on these public parcels. Loss of public access to this area is not simply contrary to our mission and values, it is personal.

Lastly, Montana's Department of Revenue has estimated that S. 4444 would cost Montana \$1.2 million in revenue, per year, between 2024 and 2028 that would result from royalties. 25 percent of that revenue would be lost in Musselshell County, a rural community that depends on these funds to maintain the roads and infrastructure our members rely on for hunting and outdoor recreation.

Simply put, these bills do not serve the interest of Montana's hunters and public land users. If passed, these bills would undermine the conservation values that the Montana Wildlife Federation was founded on and continues to advance. In fact, these bills seem to only advance the interests of a corporation with a history of criminal activity and a single wealthy family. We urge all members to vote against passage of S. 4431, S. 4432, and S. 4444.

Thank you for taking the time to consider our perspective.

Sincerely,

CHRIS SERVHEEN, PH.D., BOARD CHAIRMAN AND PRESIDENT
FRANK SZOLLOSI, EXECUTIVE DIRECTOR

CENTER FOR BIOLOGICAL DIVERSITY; CITIZENS COAL COUNCIL; EARTHJUSTICE;
MONTANA CHAPTER OF THE SIERRA CLUB; MONTANA ENVIRONMENTAL
INFORMATION CENTER; MONTANA HEALTH PROFESSIONALS FOR A HEALTHY
CLIMATE; PARK COUNTY ENVIRONMENTAL COUNCIL; SIERRA CLUB; WESTERN
ENVIRONMENTAL LAW CENTER; 350 MONTANA
July 25, 2024

RE: LETTER OF OPPOSITION TO SENATE BILL 4444

Dear Senators:

On behalf of the undersigned organizations and our millions of members, we write to express our strong opposition to S. 4444 (A bill to take certain mineral interests into trust for the benefit of the Crow Tribe in Montana, and for other purposes) introduced by Senator Steve Daines. We ask you to oppose this bill for the reasons discussed below.

Senate Bill 4444 seeks to benefit a single mining company with a criminal reputation—Signal Peak Energy, LLC—at the expense of ranchers, communities, the environment, the climate, the public, the rule of law, and our national environmental policy—and it provides no actual benefit to the Crow Tribe.

I. The Bill Provides No Revenue to the Crow Tribe

Despite claims that the purported "Crow Revenue Act" will provide much-needed revenue to the Crow Tribe, the language of S. 4444 does no such thing. The bill proposes to give a private family 4,530 acres of valuable public subsurface minerals and 940 acres of critical public lands, including a crucial public access point to these public lands. The Joe and Barbara Hope Mineral Trust (Hope Family) would receive these coveted public lands as well as lucrative publicly owned minerals. In exchange, the Hope Family would give the Crow Tribe 4,660 acres of subsurface minerals on lands it holds within the boundary of the Crow Reservation, but no surface rights. The minerals located on the reservation are not adjacent to an existing mining operation and will not be developed. In short, the public gives up 4,670 acres of minerals and public lands and the Crow Tribe gets virtually nothing.

While proponents of the bill claim it would provide much-needed revenue to the Crow Nation from the mineral rights at Signal Peak Energy's Bull Mountain mine, a simple reading of § 3 (d) *Revenue Sharing Agreement*, shows there is no validity to this claim. First, the bill gives the Crow Tribe the right to negotiate a revenue sharing agreement with the Hope Family for revenue from the tracts described in § 3 (a)(2). These are the tracts that the Crow would receive from the Hope Family. The Hope Family's minerals are not located near any existing mine or infrastructure; they are under highly productive farmland. Due to its remote location and a declining coal market, these minerals are extremely unlikely to ever be developed, and therefore it is extremely unlikely that the Crow will ever receive any revenue from these tracts. Furthermore, the Crow should not have to negotiate with the Hope Family for revenue from the tracts the Hope Family is giving to the Tribe, especially when the Hope Family would acquire minerals at an already operating coal mine with existing infrastructure and will immediately benefit from the exchange. The language in the bill as written provides no revenue to the Tribe.

Second, even if S. 4444's "Revenue Sharing Agreement" in § 3 (d) of the bill were amended to provide for potential revenue sharing for the Bull Mountains Tracts, the bill still provides no guaranteed revenue to the Tribe. As written, the language in § 3 (d) does not condition or otherwise encumber the mineral transfer, but only provides that the Tribe will notify the Secretary of Interior, after the bill is passed, that a deal has been reached. The Tribe may, or may not, be able to reach an agreement with the Hope Family on how the revenue from the mineral estate will be shared. In fact, the bill does not require the Hope Family to negotiate at all. It does not establish any percentage of revenue that will be shared. It does not provide a deadline by which the Hope Family must reach agreement with the Tribe. In short, it provides the Tribe with an empty promise and no legal guarantee that it would derive revenue from the agreement. Under this bill, it is highly unlikely there will be any revenue for the Tribe from either the Bull Mountains Tracts or the Hope Family Tracts.

If S. 4444 becomes law, the public will lose critical public land, public access, and public minerals. The Tribe will gain nothing of value. The Hope Family will make out like a bandit, and Signal Peak Energy will—once again—avoid having to conduct a meaningful environmental review for the Bull Mountain Mine.

II. Signal Peak's Operations at the Bull Mountains Mine Have Not Been Subject to an Environmental Impact Statement

Senate Bill 4444 seeks to permit—without any environmental scrutiny—large-scale and extremely destructive underground longwall mining of federal coal at the Bull Mountains Mine by giving public resources to a private family foundation. This mining of federal coal was halted because the operation had not been subject to an environmental impact statement under the National Environmental Policy Act (NEPA) and because the mine's operations are destroying water resources in the Bull Mountains that ranchers depend on for their livelihoods.

The Ninth Circuit Court of Appeals reversed the U.S. Office of Surface Mining's determination that only insignificant impacts would result from a 7,000-acre expansion of the Bull Mountains Mine, containing 176 million tons of coal. *350 Montana v. Haaland*, 50 F.4th 1254 (9th Cir. 2022). The Court explained that "the coal from this project is expected to generate more GHG emissions than the single largest source of GHG emissions in the United States." *Id.* at 1259.

On remand from the Ninth Circuit, the District of Montana determined that the mining plan allowing Signal Peak to mine federal coal should be vacated because the environmental impacts of the mine expansion have not been disclosed in an EIS. *350 Montana v. Haaland*, No. CV 19-12-M-DWM, 2023 WL 1927307, at *5 (D. Mont. Feb. 10, 2023). The court noted how the mine has harmed local ranchers by damaging the water they depend upon:

Signal Peak's subsistence mining has harmed local ranching interests by creating fissures in the ranchland. Additionally, Signal Peak's mining operation causes damage to local ranchers' water resources, including in one instance, damaging working water wells. Local ranchers fear that Signal Peak's longwalls have already caused potentially irreversible damage to ranching in the Bull Mountains.

Id.

Demonstrating the utter failure by regulators to take a hard look at the environmental harm caused by the massive mine, multiple tribunals—including federal and state adjudicators—have concluded that environmental impacts of air pollution, greenhouse gas emissions, and harm to water have not been lawfully studied and disclosed to the public. *Mont. Env't Info. Ctr. v. U.S. Office of Surface Mining*, 274

F. Supp. 3d 1074 (D. Mont. 2017) (climate impacts); *In re Bull Mountains Mine*, No. BER 2013–07 SM (Mont. Bd. Env't Rev. Jan. 14, 2016) (hydrology impacts). This ongoing failure—which S. 4444 would only exacerbate—has resulted in real harm to landowners and the environment. The Bull Mountains Mine is one of the largest underground coal mines in the United States. It's one of the largest sources of greenhouse gas emission in the United States. Its mining operations have devastated water resources in the Bull Mountains, which have severely harmed family ranches in the area. A close look at the harm that will result from longwall mining of federal coal is precisely what is needed, for ranchers, for communities, for the public, and for the environment. The leap-without-looking approach of S. 4444 is a recipe for unmitigated disaster.

Importantly, Signal Peak Energy is not blameless in the inadequacies of the prior environmental reviews of its mine. On the contrary, Signal Peak is largely responsible for the inadequate environmental review of its mine. The company successfully lobbied the U.S. Bureau of Land Management (BLM) to forego preparation of an EIS for its federal coal lease for the mine in 2009.¹ At the time, BLM warned Signal Peak that if its environmental assessment (EA) proved inadequate, it would just result in a delay in approval of the mine. Signal Peak expressly told BLM that it recognized the risk and wanted to move forward without an EIS. Since then, Signal Peak has aggressively lobbied both federal and state regulators to curtail their environmental reviews of its mine, which in turn resulted in multiple decisions overturning those reviews. *Mont. Env't Info. Ctr. v. U.S. Office of Surface Mining*, 274 F. Supp. 3d 1074 (D. Mont. 2017) (climate impacts, air impacts, rail impacts); *In re Bull Mountains Mine*, No. BER 2013–07 SM (Mont. Bd. Env't Rev. Jan. 14, 2016) (hydrology impacts).

Ultimately, Signal Peak is the architect of its own predicament. Having pressured regulators to curtail their environmental reviews of its massive mine, Signal Peak should not be given a free pass to mine without any environmental review. That is not good public policy, and it is not just.

If S. 4444 is enacted, the critical EIS that is being prepared for the massive AM3 expansion of the Bull Mountains Mine would become moot and unnecessary. And sixteen years after large scale longwall mining began in the Bull Mountains, the public would still be without an EIS disclosing the impacts of the operation.

III. Signal Peak Is a Bad Neighbor and a Bad Corporate Actor

Senate Bill 4444 seeks to provide a special dispensation to a corporate actor that is on criminal probation and that has been both a bad neighbor to residents of the Bull Mountains and people of Montana. Since the Bull Mountains Mine began operations in 2008, the company has directly or indirectly forced multiple ranchers off the land and out of the Bull Mountains. Ranchers have run sustainable cattle operations in the Bull Mountains for generations. The Bulls provide important summer range for cattle because of the relative abundance of water from perched groundwater aquifers and springs in the range and the high-quality forage in the mountain meadows and pastures. The Bull Mountains Mine, however, has caused extensive subsidence in the Bull Mountains, which has torn the landscape and, in numerous cases, dewatered springs and wells. This damage to the land along with the strongarm tactics of Signal Peak (SLAPP suits, bullying, and harassment) caused at least one longtime ranch family to sell its operations. In another instance, Signal Peak cancelled the lease of a rancher on Signal Peak's land, forcing the rancher to end his ranching operations.

By forcing ranchers out of the Bull Mountains, Signal Peak has been able to avoid assessing harm to springs and wells. This is certainly due in part to the fact that state regulators, Montana DEQ, have not required Signal Peak to reclaim damaged water resources if the waters are not being used for ranching. Accordingly, recently Signal Peak cancelled the grazing lease of another family ranch and has sought to force the family from its own land for the express reason that Signal Peak did not want to continue to reclaim damaged water supplies.

Signal Peak has sued multiple people who ranch above the mine and is currently in active litigation with other ranch operations. The company is simply a bad actor and a bad neighbor. The law should not condone corporate actors who ignore the law and crush everyday Americans who cross their paths.

Signal Peak has also aggressively avoided paying taxes that benefit the State of Montana and local communities. The company has obtained millions of dollars in tax breaks from the Montana legislature, despite opposition from Musselshell County Commissioners who explained that county services had already been “cut to the

¹BLM Meeting Notes (Mar. 2009).

bone.”² Just this year, while earning windfall profits from record coal prices, Signal Peak applied for and received an additional \$2 million abatement from local taxes.³

Senate Bill 4444 confuses the best interests of Signal Peak Energy with the best interests of the public. Signal Peak’s actions show a company that acts aggressively to further its own interests, at the expense of the people who live and work in the Bull Mountains, the people who live in Musselshell County and Yellowstone County, and the people of Montana and beyond who are impacted by the environmental degradation and harm from its mine.

Notably, Signal Peak Energy does not need the federal coal that is the subject of S. 4444 to operate. State regulators have approved an expansion of the mine onto new state and private lands that will permit the company to operate through 2024, and Signal Peak is pursuing another expansion onto other non-federal lands that will further extend operations well into 2025.

IV. Signal Peak Energy Is a Mining Company with a Criminal History

Signal Peak Energy—the company that is undermining the ranches and communities of the Bull Mountains in central Montana and seeks to benefit from S. 4444—is currently on federal criminal probation for willfully lying to federal mine regulators about serious injuries to workers and for willfully dumping toxic mine waste into an area intended to supply replacement water for people harmed by the mine.⁴

In addition to its current criminal probation, Signal Peak, its former executives, and its owners have an arm-length rap sheet of criminal activity and non-compliance with environmental and worker safety laws. The company’s lawlessness was chronicled in the New York Times: *A Faked Kidnapping and Cocaine: A Montana Mine’s Descent Into Chaos—The New York Times* ([nytimes.com](https://www.nytimes.com)). An assistant U.S. Attorney for Montana has called the mine a “den of thievery.”⁵

In the past five years, Signal Peak, its executives, and employees have been convicted or pled guilty to embezzlement, money laundering, drug trafficking, and illegal gun possession.⁶

Signal Peak’s one-third owner, FirstEnergy Corp., is also currently on federal criminal probation (pursuant to a deferred prosecution agreement) for what the U.S. Attorney for the Southern District of Ohio has called “likely the largest bribery and money-laundering scheme ever in the state of Ohio.”⁷ In its deferred prosecution agreement, FirstEnergy admitted spending over \$60 million to bribe legislators and energy regulators to roll back the state’s clean energy law and subsidize its power

²Mike Dennison, *Tax Break for Roundup-area Coal Mine Stuffed into Bill in Final Days*, Billings Gazette (Apr. 28, 2011) available at https://billingsgazette.com/news/state-and-regional/montana/taxbreak-for-roundup-area-coal-mine-stuffed-into-bill-in-final-days/article_995244c5-f6f7-5087-9d50-da3a5e057ebb.html; Mike Dennison, *Tax Break for Roundup-area Coal Mine Stuffed into Bill in Final Days*, Billings Gazette (Apr. 28, 2011), available at https://billingsgazette.com/news/stateandregional/montana/musselshell-county-turns-down-coal-mine-taxbreak/article_52aa5180-1215-11e0-9c79-001cc4c03286.html.

³Amy Nile, *Yellowstone County Oks Multi-million Dollar Tax Break for Coal Mine Near Roundup*, Billings Gazette (Apr. 2, 2024), https://billingsgazette.com/news/local/business/roundup-coal-minegets-taxbreak/article_11b70974-f137-11ee-88a9-6bb8058b0019.html.

⁴Judgment, *United States v. Signal Peak Energy, LLC*, No. 21–CR–79 (Jan. 31, 2022); Offer of Proof, *United States v. Signal Peak Energy, LLC*, No. 21–CR–79 (Oct. 5, 2021).

⁵Phoebe Tollefson, *Ex-mine Exec Stole \$20M from Signal Peak, Former Mine CEO also Involved*, Billings Gazette (June 23, 2020), https://billingsgazette.com/news/state-and-regional/crime-and-courts/ex-mine-execstole-20m-from-signal-peak-former-mine-ceo-also-involved/article_1f3726cd-51f1-5a6c-ba53-4085cae364e2.html.

⁶See, e.g., Amended Judgment, *United States v. Price*, No. CR 18–85 (D. Mont. Dec. 23, 2020) (wire fraud, money laundering, false statements); Judgment, *United States v. Ruble*, No. CR 19–60 (D. Mont. Oct. 29, 2019) (wire fraud); Judgment, *United States v. Musgrave*, No. CR 19–159 (D. Mont. June 22, 2022) (conspiracy to commit false statements in mine records); Judgment, *United States v. Luciano*, No. CR 19–86 (D. Mont. Oct. 23, 2020) (possession with intent to distribute cocaine); Judgment, *United States v. Irwin*, No. CR 19–47 (D. Mont. Feb. 10, 2020) (felon in possession of firearms). see also Charles Boothe, *Another Pleads Guilty in Larry Price Jr. Laundering Scheme*, Bluefield Daily Telegraph (July 5, 2020), available at https://www.bdtonline.com/news/another-pleads-guilty-in-larry-price-jr-launderingscheme/article_6b0d0268-be63-11ea-aab7-434ad1aa61d7.html (detailing scheme and prosecutions); *Von Saher v. Norton Simon Museum of Art at Pasadena*, 592 F.3d 954, 960 (9th Cir. 2010) (court may take judicial notice of newspaper articles as evidence of public discussion, without definitively establishing truth of facts in articles).

⁷Marty Schladen, *Ohio House Speaker, Four Others Arrested Amid Massive Dark-Money Pay-to-Play Allegations*, Ohio Capital Journal (July 21, 2020), available at <https://ohiocapitaljournal.com/2020/07/21/ohio-house-speaker-four-others-arrested-amid-massive-dark-money-pay-to-play-allegations/>; see also Johnson, *How a \$60 Million Bribery Scandal Helped Ohio Pass the ‘Worst Energy Policy in the Country,’* Grist (Jan. 26, 2022), available at <https://grist.org/politics/how-a-60-million-bribery-scandal-helped-ohio-pass-the-worst-energy-policy-in-the-country/>.

plants.⁸ Indicative of the magnitude of its criminal conduct, FirstEnergy agreed to pay a fine of \$230 million for its actions.⁹ The indictments related to FirstEnergy and its sprawling bribery scheme have continued unabated into 2024.¹⁰

Signal Peak's second one-third owner, Wayne M. Boich, was involved in the FirstEnergy scandal, providing the seed funding for one of the dark money organizations at the center of the Ohio scandal, though Boich has not yet been indicted for his involvement.¹¹

Signal Peak's final one-third owner, Gunvor Group Ltd., an international commodities trader registered in Cyprus, pled guilty in U.S. federal court in March 2024 to violating the Foreign Corrupt Practices Act in a scheme to bribe officials in Ecuador to obtain oil in that country.¹² As part of its criminal sentence, the company was ordered to pay a criminal penalty of approximately \$661 million dollars.¹³ One reason for the staggering fine was Gunvor's history of criminal bribery of government officials to obtain fossil fuels. In 2019, Gunvor agreed to a fine of \$95 million by Swiss prosecutors for bribery and corruption to obtain access to petroleum reserves in Congo.¹⁴ Equally troubling, the United States State Department and Treasury have both previously stated that Gunvor has been connected to Vladimir Putin. State Department cables "relayed allegations that Gunvor 'is just a front for 'massive corruption.'" ¹⁵ Energy expert Matthieu Auzanneau has similarly written: "If we are to believe an old rumor, denied but nevertheless spread through the heart of American diplomacy (and then via Wikileaks), . . . the Russian president [Putin] took a cut from each barrel exported from Russia, through the Swiss trading company Gunvor, which was once headed by a former KGB colleague."¹⁶ News reports suggest that Gunvor may be further helping Russian crude oil reach world markets, despite U.S. sanctions over the Russian invasion of Ukraine.¹⁷

Signal Peak has also repeatedly violated its environmental obligations at the Bull Mountains Mine. Most notably, the company has repeatedly violated those obligations that require it to collect or analyze data required to show compliance with the law.

In August 2019, Montana DEQ issued a notice of non-compliance and order of abatement to Signal Peak for "willfully violat[ing] the law by intentionally not complying with. . . weekly spring monitoring requirements" causing an "irreversible loss of monitoring data."¹⁸ The Montana Department of Environmental Quality (DEQ) acknowledges Signal Peak's "history of monitoring violations in general."¹⁹ Signal Peak's failure to monitor has allowed the company to evade reclamation of water resources potentially damaged by the mine. Recently, consultants of Signal Peak admitted that they had never complied with the mine's rigorous permit requirements for assessing whether mining had impacted springs.²⁰ In the past year,

⁸Deferred Prosecution Agreement attach. A at 1–43, *United States v. FirstEnergy Corp.*, 21–CR–86 (S.D. Ohio July 22, 2021).

⁹*Id.*

¹⁰*E.g.*, AP, *Fired FirstEnergy Execs Indicted in \$60M Ohio Bribery Scheme*, EnergyWire (Feb. 13, 2024), available at <https://subscriber.politicopro.com/article/eenews/2024/02/13/fired-firstenergy-execs-indicted-in-60m-ohio-bribery-scheme-00140969>.

¹¹Deferred Prosecution Agreement attach. A at 25, 30, 39, 41, *United States v. FirstEnergy Corp.*, 21–CR–86 (S.D. Ohio July 22, 2021) (detailing involvement of "CEO of Company C" in scheme, including as source of seed money for "Dark Money Group"). The press identified Boich as the "CEO of Company C." Randy Ludlow, *Householder Case: "Company C" CEO Wayne Boich Gave Cash to HB 6 'Dark Money' Groups*, Columbus Dispatch (Aug. 5, 2020), available at <https://www.dispatch.com/story/news/politics/state/2020/08/05/householder-case-lsquo-company-csquo-ceo7wayne-boich-gave-cash-to-hb-6-lsquodark-moneyrsgroups/112806486/>.

¹²Judgment, *United States v. Gunvor*, No. 24–CR–85 (Apr. 3, 2024).

¹³*Id.*

¹⁴Julia Payne, *Gunvor Must Pay \$95 Million for Congo Oil Corruption: Swiss Prosecutors*, Reuters (Oct. 17, 2019), available at <https://www.reuters.com/article/us-gunvor-grp-congo-corruptionidUSKBN1WW0Z9>.

¹⁵Christopher Matthews and Andrew Grossman, *U.S. Money-Laundering Probe Touches Putin's Inner Circle*, Wall Street Journal (Nov. 5, 2014).

¹⁶Matthieu Auzanneau, *Oil, Power, and War: A Dark History 527* (2018); see also Public Eye, *Gunvor in Congo* (2017) (detailing connections between Gunvor and Putin and noting that, while Gunvor has publicly "kept denying having any connection with the Kremlin," Gunvor representatives were simultaneously "using this very same connection to persuade the Congolese authorities to engage in dealings with them").

¹⁷Julia Simon, *Despite U.S. Sanctions, Oil Traders Help Russian Oil Reach Global Markets*, NPR (Apr. 22, 2022).

¹⁸DEQ, Notice of Noncompliance (Aug. 22, 2019).

¹⁹*Id.*

²⁰Transcript at 769, 786–87, 893, *In re Bull Mountains Mine*, No. BER 2016–07 (Mont. Bd. of Env't Rev. August 21, 2020).

Signal Peak has violated pollution limits under the federal Clean Water Act 156 times, including at least one instance of significant noncompliance.²¹ DEQ has sent five violation letters to Signal Peak in the past year alone.²²

Signal Peak has an abysmal record of mine safety. In addition to lying to mine safety regulators about work-place injuries, since the mine opened in 2010, it has incurred at least 1700 violations, according to the Mine Safety and Health Administration (MSHA).²³ Of these violations, approximately 180 were considered significant and substantial violations.

In short, Signal Peak Energy, its executives, and its owners have demonstrated an utter contempt for the law in their operations at the Bull Mountains Mine and elsewhere. They have also demonstrated a contempt for the environment and their workers. They should not be rewarded by further exempting them from the law pursuant to the provisions of S. 4444.

Senate Bill 4444 is a sweetheart deal for Signal Peak Energy and its criminal owners. It is a sweetheart deal for the Hope Family. But the bill is a raw deal for the ranchers, communities, the environment, the climate, the public, and the rule of law and it would provide no benefit to the Crow Tribe. While it elevates Signal Peak to act above the law, it undermines the national environmental policy of NEPA and will permit Signal Peak to undermine the Bull Mountains. We strongly recommend that you oppose the bill.

Our groups thank you for your attention to these important issues and look forward to working with the Committee to protect the integrity of the law and those who depend on it. We appreciate your consideration of our recommendations.

Sincerely,

ANNE HEDGES, MONTANA ENVIRONMENTAL INFORMATION CENTER
 JEREMY NICHOLS, CENTER FOR BIOLOGICAL DIVERSITY
 AIMEE ERICKSON, CITIZENS COAL COUNCIL
 SHILOH HERNANDEZ, EARTHJUSTICE
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 ERICA LIGHTHISER, PARK COUNTY ENVIRONMENTAL COUNCIL
 MIKE SCOTT, SIERRA CLUB
 MELISSA HORNBEIN, WESTERN ENVIRONMENTAL LAW CENTER
 JEFF SMITH, 350 MONTANA

Ladies and Gentlemen:

Ranching over a longwall mine is like sharing a tent with a camel, and you and the camel are shut in together. The camel is much larger than you, so you have to adjust your movement to his whether you like it or not. My camel was named Signal Peak Energy. Despite my owning the tent long before his arrival, he was immediately the dominant tenant in our relationship. Even though the social responsibilities for taxes, etc. were mine, control of the tent was his.

As you'll read, the result of this unpleasant relationship was repeated damage to my land, loss and damage to water sources, loss of access to my own property, damaged roads, legal harassment, and a constant feeling of unease and fear of what damage might happen next. Eventually, the impacts from this mine became a significant part of my decision to sell most of my beloved ranchlands.

This forced relationship began in 1990, when the coal prospecting predecessors to Signal Peak first wanted surface access to do various preparations for a future mine. Agreements had to be negotiated—damages for roads used, monitoring wells drilled, and access at all hours of the day and night. Some things were never mentioned until they happened, and then were not explained very well. It was clear early on that underground coal mines don't make good neighbors, at least not this one. Little did I know how bad it would get.

In 1990, The Bureau of Land Management negotiated a coal-for-land trade with the prospectors who were touting their design to open a mine. BLM did an Environmental Impact Statement (EIS) on this proposal, but when we local landowners questioned what would happen to our water if this mine came about, we were told that our concerns were premature until a mining permit was granted.

²¹ EPA, Enforcement and Compliance History Online, https://echo.epa.gov/trends/loadingtool/reports/effluentexceedances?permit_id=MT0028983.

²² EPA, Enforcement and Compliance History Online, <https://echo.epa.gov/detailed-facilityreport?fid=110017361335>.

²³ Mine Safety and Health Administration, Mine Data Retrieval System, <https://www.msha.gov/data-and-reports/minedata-retrieval-system>.

By 1992, the prospectors had secured a coal mining permit from the State of Montana which approved a very different mine plan than the one they are currently pursuing. The State of Montana did a mine EIS for the permit at the time, which was insufficient. Work done by the State of the Montana in the environmental area was generally not very good quality, as Montana's history of superfund sites and environmental disasters indicates. After the permit was secured, the original permittee began a search high and low to get a bidder for the permit. It was not a popular product, but they finally found a guy in Tennessee, John M. Baugues, to take it over.

The mine limped along, mining where the previous small miner had mined, but in the meantime, the mine personnel were running about on our ranch.

In 1998, the State of Montana revoked John M. Baugues' Mountain Inc. mine permit for a "pattern of violations." The water monitoring ceased, and the casing for the monitoring wells was removed and left to lie on the prairie.

While we had peace until 2003, the money guys on the other side were busy hunting up suckers to resurrect the revoked mining permit. When the 2003 Montana Legislature came up, they were in Helena with a bill to resurrect the mine permit based on environmental work more than a decade old. The idea was that resurrecting the permit, rather than applying for a new one would be so much cheaper, and it was. The Bill was sent to the Agriculture Committee, because the Energy Committee was too busy that session. The Ag Committee had no idea what was going on. The only parties there to testify were myself and the would-be miners. The legislature resurrected the permit subject to approval by the federal Office of Surface Mining (OSM).

OSM coughed out an approval eventually. This set the unfortunate precedent that a permanent revocation is never permanent.

Back came all the monitors, monitoring wells, and road uses. The first immediate impact was degradation of our roads, given they were poorly designed for the mine's uses. Given the challenges that already face rural roads, this was both a significant inconvenience and, at times, a risk to local safety.

Signal Peak mined by press release from 2003 until August 2008. They finally got First Energy of Ohio and the Boich Family of Ohio to put up the money to buy a longwall machine and build a 33 mile railroad to ship the coal to Broadview, Montana.

The mine president would stop by to visit every now and then. He asked my husband, Don, what he could do for us. Don very sweetly said they could just go away. The mine president looked very surprised and a little hurt. Sadly they didn't just go away.

Signal Peak began mining after getting their machine in and the railroad constructed. They mined Panel 1, and began Panel 2, arriving on our land with a bang on November 30, 2010. I had just arrived home from getting my shoulder replaced. Thirty minutes later the mine president called, much disturbed.

At the beginning of Panel 2, the first on our land, the earth had cracked open two hundred feet down to the coal and the miners. He was in desperate fear of an explosion from spontaneous combustion. He could barely utter the words "SponCom" in his panic. (SponCom is a computer program that assesses the potential for spontaneous combustion in coal.) He needed to put a road across a roadless area to the base of Dunn Mountain immediately and begin hauling nitrogen in to pump into the mine to keep it from exploding. The unspoken implication was that if I didn't give permission and anything awful happened, it would be my fault. The result was a massive distraction on our ranch for months.

A formerly roadless area became an industrial zone with 24/7 nitrogen in huge tanker trucks, with bright lights and a complete man camp and diesel storage area beginning December 1, 2010 and remaining until the middle of February of 2011. The road and the man camp have never been reclaimed, and the scar on the face of Dunn Mountain, from which they clawed the topsoil and vegetation, has been "reclaimed" but with little success.

The way the mine was set up, each longwall panel began on my land as the machine began to work its way back to the mains. The damage was most severe over the set up rooms. Frequently the land cover was low, but even when the cover was thicker, the damage seemed to be severe with large cracks on each one.

The mine repaired the biggest cracks, but the effects on my ranch water did not appear until Panel 4. The first spring, Turtle Pond, kept its water, but has never looked prosperous since undermining. The next spring up the drainage on Panel 4 was Bull Spring. It lost water immediately. I waited to complain until 2016, hoping it would appear "opportunisticly." It did not.

In 2016, Signal Peak reworked Bull Spring. Our original piping was broken when it was undermined. The current owners of my property do not think it has been

fixed. Our rigid piping was replaced with flexible black plastic. I think the gate roads in that area may not be collapsing very fast, or the new pipe could be locking with trapped air in high places.

Panel 5 took out our main road up to the high pastures, and our access was blocked for several months. For a family ranching operation, loss of access to grazing lands can compromise one's livelihood.

At about this time Signal Peak filed a slap suit against me and my neighbor to the north, along with a subpoena duces tecum, (*i.e.* bring all one's papers on a certain subject). It was unclear if they wanted me to go back 30 years or what. On top of all the other stressors due to mining impacts, that lawsuit wrecked my peace of mind the entire spring season. A sheriff came out to serve papers on me, and one of my dogs kept him pinned in his car for a while. I can't say that I was sorry. The mine's lawyers would set a date for a hearing on the subpoena, and then cancel it the day before the hearing. They did that twice.

The mine lost the legal battle in district court in Yellowstone County. The mine appealed to the Montana Supreme Court and lost there as well.

I had tried to be reasonably accommodating, but I couldn't swallow everything they tried to promote. There was a new mine president, and he wanted total acquiescence. One of the worst things about that subpoena was that I had to go through my husband's day books and the ones that I had started keeping when his health began to decline to meet the demands of the lawsuit. The documents I turned over included some from the week of my husband's death in October 2014, the year our first waters were undermined. That was very painful to relive, especially for a lawsuit that felt designed more for harassment than clarity.

During my husband's health decline and after his death, I was supervising an employee on a daily basis and trying to keep the ranch work afloat. I did that for four more years. Between the problems from the mine and the general workload of the ranch, I was trying to figure out what to do.

In late summer of 2018, I suffered a personal hip injury, and that was the last straw. Had I not been dealing with the mine issues, I might have been able to hand on, but the stress and worry of that made continuing untenable.

I spent the year of 2019 dealing to sell the ranch. Even with a willing buyer, making a deal on something like that is more like turning a battle cruiser than a rowboat. The deal was completed December 18, 2019; it would have been my husband's 86th birthday.

I saw the best days of ranching in the Bulls. We had water and grass. The natural water of the springs protected us from the vagaries of depending on dams entirely, or the mechanical efficacy of wells. The year after I sold, the mountain spring drainage was completely dried up by Panel 8. I cannot express to you how infinitely sad that is for that wet drainage to be gone.

Now there are two storage tanks that have to have human intervention for anything to get a drink. There is no guarantee that calves can reach the water when they come in to drink. The tank that my father put in slid downhill 3 feet when it was undermined, and the water is no longer level, so there is now less of it in the tank. Montana Department of Environmental Quality only requires the mine to haul water for livestock when they are in the pasture. Nothing else is supposed to drink the water that the mine hauls, and there is no other water.

A subsided ranch is no place for an old lady. When one stops a pickup on a subsided panel, one has to be very careful not to catch the front of one's foot on a rough bump or step over a crack and have the back edge next to the crack give way and tip one over backward. In other words, it is not safe to go out alone. It seems like every time one stops the pickup, there is a crack or a place to trip. People have driven their pickups into larger cracks that cannot be seen if the grass is tall.

My place in the Bull Mountains was the place of my heart, and it breaks my heart to see what Signal Peak's longwall has done to the land there. Coal has broken up our small community of ranchers and broken the land as well. Water is life, but coal has taken our life.

ELLEN PFISTER, SHEPHERD, MONTANA

AUGUST 29, 2024

Dear Chair Schatz and Ranking Member Murkowski:

We strongly object to S. 4444, sponsored by Senator Steve Daines. This bill would have a profound impact on our climate, allowing a single, coal mining company with a history of corruption to receive a sweetheart deal and evade crucial and court-ordered environmental review.

The Signal Peak Coal Mine in eastern Montana has sought approval for a massive expansion of its underground operations since 2012. If it is successful, it would become the largest underground coal mine in the nation, with annual climate-damaging emissions that would be larger than any single point-source in the nation—all while evading a crucial environmental review that would force consideration and disclosure of these impacts as well as impacts to critical water resources in the area.

The climate impacts of this mine expansion cannot be overstated. In 2022, the 9th Circuit Court of Appeals found that the Office of Surface Mining violated the National Environmental Policy Act in approving a cursory environmental assessment for the mine expansion. The court faulted OSM for failing to consider the climate impacts from burning the coal despite the fact that the “expansion is expected to result in the emissions of 190 million tons of greenhouse gases.” The court went on to find that “for each year of its operation, the coal from this project is expected to generate more GHG emissions than the single largest source of GHG emissions in the United States.” It found that OSM was “obscuring and grossly understating the magnitude of the Mine Expansion’s emissions relative to other domestic sources of GHGs.” *350 Mont. v. Haaland*, 50 F.4th at 1259

Despite the court’s acknowledgement of the devastating climate implications of this mine, this bill attempts to evade the legal obligations of OSM and the mine to analyze the impacts of the mine expansion, disclose those impacts to the public, accept public comment on the EIS, and consider alternatives to the proposed expansion. A mine that seeks to be the largest underground coal mine by annual production in the United States should not be allowed to escape environmental review and public involvement when the climate impacts will be so profound.

We urge the Senate Committee on Indian Affairs to vote no on S. 4444, in order to protect the climate as well as present and future generations from unmitigated greenhouse gas emissions. The enduring, expensive and profound harm caused by the climate crisis extends beyond Montana’s borders and will have a lasting detrimental effect on our nation and our world. It is time to slow the emissions of greenhouse gas pollution, not pave the way for increased coal production that could set a dangerous precedent and leave lasting harm. We urge you to vote no.

Sincerely,

DERF JOHNSON, MONTANA ENVIRONMENTAL INFORMATION CENTER
JEFF SMITH, 350 MONTANA
BONNIE HICKEY, BRIDGER BOWL SKI AREA
SHARON PATTON-GRIFFIN, CITIZENS FOR CLEAN ENERGY
WINONA RACHED, FAMILIES FOR A LIVABLE CLIMATE
SARAH STANDS, PARK COUNTY ENVIRONMENTAL COUNCIL
FRANK SZOLLOSI, MONTANA WILDLIFE FEDERATION
CARYN MISKE, MONTANA CHAPTER OF THE SIERRA CLUB
KIERSTEN IWAI, FORWARD MONTANA

SEP 25, 2024

My name is Georgene Grace Crow, I am an enrolled Crow from the Mighty Few district. I am totally against this act. The chairman should have come forth to the Crow people and had us make a vote on it. Which wasn’t even addressed until someone has a voice. We the people of the great Crow nation are against this Act!!!!

GEORGENE GRACE YELLOWMULE CROW

SEPTEMBER 25, 2024

Hello Senate Committee,

Signal Peak Energy is criminal as such the US Government should not be in the business of supporting this unethical operation by voting for S. 4444. Other reasons to oppose this legislation include:

- The Apsáalooké Allottees Alliance has publicly shared that S. 4444 will not benefit the Crow due to the language of the bill itself.
- Signal Peak should be providing some of its revenue to assist with building a local and Tribal economies that don’t rely solely on coal mining.
- Signal Peak is a bad actor and should be held accountable for the damage it’s done to Montana ranches and the climate.
- Signal Peak should have to complete the court-ordered Environmental Impact Statement before any additional mining can occur.

- Signal Peak should have to follow the law, fix the mess it's already made at the mine, and provide ranchers and wildlife with lost water resources before it can continue its mining operations.

Thank you for opposing S. 4444 and demonstrating opposition to criminal behavior.

HANNAH HERNANDEZ, HERON, MT

JOE AND BARBARA HOPE MINERAL TRUST
May 23, 2024

RE: LETTER OF SUPPORT FOR THE CROW REVENUE ACT

Dear Senator Daines,

On behalf of the Joe and Barbara Hope Mineral Trust, I am writing to express our full support for the Crow Revenue Act. Our family has been ranching on the Crow Reservation for nearly a century, fostering strong collaborative relationships with our tribal neighbors over the years. We believe this Act not only resolves land ownership issues but also strengthens the historical ties and shared efforts between us and the Crow Tribe.

Additionally, the legislation provides essential revenue to the Crow Tribe and ensures stability for the Bull Mountains Mine and surrounding communities. We commend your dedication to our community and appreciate your efforts in crafting legislation that benefits the state of Montana.

In conclusion, we strongly endorse your initiative to enact this crucial piece of legislation for southeastern Montana and believe it will have a lasting positive impact on our region.

Sincerely,

JOSEPH A. HOPE, TRUSTEE

SEPTEMBER 24, 2024

S. 4444 is a giveaway of public land to a private entity and is therefore corrupt. The Crow tribe has declared that it will give them no benefits. Any votes for this bill violate the sovereignty of the Crow Nation and are themselves corrupt actions against the Crow.

HOWARD CHRISTIANSEN

Sur/Madame:

I am totally against this bill which does not appear to help the Crow Nation and which would appropriate public land for private use! How bold of you Sen. Daines!

JANE BORISH

Members of the Senate Committee on Indian Affairs,

I urge you to vote "NO" on S. 4444. In spite of its title it is NOT a bill that would benefit the Crow tribe with revenue, due to the language in the bill. But crucially, it would unfairly provide a sweetheart deal to Signal Peak, a company proven to be a bad actor by repeatedly failing to follow public safety and environmental laws. Signal Peak should be required to compensate the Crow tribe and neighboring ranchers for damage already done to their water supply, and should be required to clean up its mess before any land swap deal is even considered. And even then it should have to fund the oversight needed to ensure it follows the laws in the future.

Thank you for considering my concerns.

JOE LOOS, MISSOULA, MT

I ask the Committee to vote no on this bill.

Thank you.

KASEY FELDER, LAUREL, MT

As a Montanan, I urge you to vote NO on S. 4444. This bill benefits Signal Peak Energy, a bad actor corporation with a history of embezzlement, worker injuries, and ties to Vladimir Putin. The bill does NOT benefit the Crow tribe.

KATHY HEFFERNAN, MISSOULA, MT

Dear Senate Committee on Indian Affairs,

I'm writing to express my great alarm and concern regarding Senate Bill 4444, introduced by Senator Daines of Montana. I'm also from Montana, and I want to express my great concern about this bill's actual intentions. First, please know that Signal Peak is not respected in Montana because of the environmental and social problems they have caused. (For example, an unintended and highly toxic coal ash heap near Crow Agency is polluting the nearby community, kids in a daycare near it are breathing the dust that comes from it, and everyone knows it is full of heavy metals and other carcinogens. Similarly, Signal Peak was responsible for the destruction of culturally significant archaeological sites because it did not put out the money to ensure such sites were protected when it mined on the reservation.) Signal Peak has a long, dirty track record in Montana, misusing federal funds they should have spent on clean-up or social infrastructure. The Crow Nation doesn't "need" this kind of "help" any more that they need an infestation of cockroaches.

S. 4444 is environmental racism in action—nothing more, nothing less. The company and Senator Daines see our Indian reservations as energy colonies to be exploited, regardless of the consequences for the Apsaalooke people or the environment. We Montanans—white, Crow, or otherwise—are not fooled for one instance by Daines' true intentions. We oppose S. 4444, S. 4431, and S. 4432 on the grounds that these are giveaways to a "bad actor" company by a less-than-genuine senator to the destruction of a people who are already reaping the negative fallout of Signal Peak's previous destruction on the Crow Reservation and elsewhere in Montana.

Thank you for this opportunity to comment.

Sincerely,

Laura Ferguson, Helena, MT

Respectfully,

This bill is frankly ridiculous on its face as a swap or any kind of reasonable deal for the Crow tribe, the US government (taxpayers) or any other entity other than the Hope Family trust. I would have hoped that this kind of bald face stealing from indigenous members of society would have ended in the middle of the last century. Mr Daines should be ashamed for his part in this attempted larceny. Please vote no on S. 4444.

Thank You,

Lee Calhoun, Whitefish MT

Please oppose S. 4444.

As a resident in Missoula, I now that Signal Peak Energy is a flagrant bad actor with previous links to Vladimir Putin, as well as a history of bribery, embezzlement, drug trafficking and worker injuries. The US Attorney's office called the mine a "den of thievery" due to its rampant disregard for laws. The mine's owners have paid over \$1.1 billion in penalties and fines in the last few years. Our government should not be getting in bed with a corporation that has committed these crimes, let alone the severe damage it's caused to nearby ranches, including loss of water resources for ranching operations and wildlife and large, dangerous cracks in the landscape.

Signal Peak has received millions of dollars in tax abatements from local governments even though it has made more than \$1 billion over the last several years. The company should provide some of this historic revenue to local governments and the Crow Nation that could assist with building a local economy that doesn't rely solely on dirty and dangerous coal mining.

- The Apsaalooké Allottees Alliance has publicly shared that S. 4444 will not benefit the Crow due to the language of the bill itself.
- Signal Peak should be providing some of its revenue to assist with building a local and Tribal economies that don't rely solely on coal mining.
- Signal Peak is a bad actor and should be held accountable for the damage it's done to Montana ranches and the climate.
- Signal Peak should have to complete the court-ordered Environmental Impact Statement before any additional mining can occur.
- Signal Peak should have to follow the law, fix the mess it's already made at the mine, and provide ranchers and wildlife with lost water resources before it can continue its mining operations.

Thank you,

LYNN TENNEFOSS

Dear Senate Committee on Indian Affairs,

I find proposed Senate Bill 4444 misleading and urge you not to support it. From what I have read Sen. Daines has proposed a bill that would allow a private entity to take ownership of public land and publicly owned coal that Signal Peak wants to mine (S. 4444). This bill is misleadingly titled the "Crow Revenue Act," even though it will not result in revenue for the Crow.

Thank you for considering my comments.

Sincerely,

MARK PAYNE, BOZEMAN, MT

Dear Senate Indian Affairs Committee,

I oppose S. 4444. This bill proposes to give access of public lands to a bad actor private entity, Signal Peak. This is a firm that has committed environmental crimes and has not been held accountable. I also understand that a false claim of benefit to the Crow Nation is included in the suite of bills concerning this action in Montana. We do not need sweetheart deals.

Thank you for your work,

MARY LAPORTE, MISSOULA, MONTANA

Signal Peak Energy is a flagrant bad actor with previous links to Vladimir Putin, as well as a history of bribery, embezzlement, drug trafficking and worker injuries. The US Attorney's office called the mine a "den of thievery" due to its rampant disregard for laws. The mine's owners have paid over \$1.1 billion in penalties and fines in the last few years. Our government should not be getting in bed with a corporation that has committed these crimes, let alone the severe damage it's caused to nearby ranches, including loss of water resources for ranching operations and wildlife and large, dangerous cracks in the landscape.

Signal Peak has received millions of dollars in tax abatements from local governments even though it has made more than \$1 billion over the last several years. The company should provide some of this historic revenue to local governments and the Crow Nation that could assist with building a local economy that doesn't rely solely on dirty and dangerous coal mining.

Montana doesn't need this, shame on Senator Daines for trying to push this senate bill.

Sincerely,

MARY MELANIE MOORE

Dear Committee Members,

Please vote against S. 4444. This bill is bad public policy and is designed to enrich a company that the US Attorney has described as a "den of thievery" due to its rampant disregard for laws and the interests and welfare of the local agricultural/ranching community.

Thank you.

MICHAEL KING, HELENA, MT

Distinguished committee members,

I am writing to express my opposition to Sen. Steve Daines' proposed legislation, S. 4444 as a Roundup, Montana resident. I served as a Musselshell County Commissioner from 2015 to 2020 and was disheartened by Signal Peak Energy's aggressive lobbying to evade its tax obligations. The footprint of a corporation like Signal Peak in a small rural community like ours cannot be overstated. As a public servant, I found this company's unwillingness to pay its fair share to maintain the local infrastructure it relied upon—and negatively impacted—very disturbing. I was even more disturbed by Signal Peak's multiple criminal violations and the damage its mining activity has done to our land and fragile water resources.

Over the years, I have come to see Signal Peak as a bad neighbor unwilling to meet even the lowest standards of responsible corporate behavior. S. 4444 seems designed to reward this bad behavior. This bill's clear aim is to allow Signal Peak to

evade laws that require an honest analysis of the mine's impact on our land and water.

Water is a resource that will define our future, and conflicts over it are on the horizon. In Montana, extractive industries have repeatedly taken our natural resources, leaving taxpayers to cover the costs of environmental damage. The Bull Mountains are no different—mining has already scarred the land and water springs have dried up.

For decades, the people of Musselshell County have waited for a proper Environmental Impact Statement (EIS) to assess the full effects of mining. This essential review must be completed to understand the long-term consequences. Without it, we risk further harm to our land and water—vital resources for today and future generations.

Beyond the loss of proper environmental analysis, S. 4444 would also privatize public lands that locals rely on for hunting, recreation, and connection to the beauty of the Bull Mountains. As we look ahead, we need a diverse, resilient economy that doesn't depend solely on coal. Clean, abundant water and recreational opportunities are key to that vision.

While I understand the financial challenges Musselshell County faces, my community deserves better than continued dependence on the mine's revenue. Montana's history shows us that laws should protect the people and the environment, not corporate profits.

S. 4444, as written, undermines environmental protections and gives away public lands. It should not be brought to a vote. Let's protect our land, water, and future, and ensure Musselshell County's economy is built on sustainability—not short-term, narrow mining interests.

NICOLE BORNER, ROUNDUP, MT

As a Montanan, I urge you to vote against S. 4444, the Crow Revenue Act, which benefits Signal Peak Energy and the Hope family and does a disservice to the Crow Nation in Montana. Unlike its title S. 4444 would not produce revenue for the Crow Nation. While S. 4444 provides the public minerals and surface rights (Bull Mountains Tracts) to the Hope Family, the Crow Nation would receive mineral tracts on the Hope Family lands which are unlikely to be mined for coal. In S. 4444, the Hope Family Trust would receive 100 percent of the royalties from the Bull Mountain tracts plus an unnamed share of royalties from the 100 percent tribally owned Hope Family tracts. Thus, the winner would be the Hope Family Trust and ultimately, the loser would be the Crow Nation.

Currently, the Bull Mountain Tracts are leased by the United States for coal mining, with royalties payable to the United States. However, S. 4444 would give valuable mineral and surface rights and coal royalties that should be payable to the United States and instead providing them to the Hope Family Trust. Please stand up for the interests of the U.S. taxpayers and the peoples of the Crow Nation by voting against S. 4444.

PATTI STEINMULLER, BOZEMAN, MT

Dear Senate Committee on Indian Affairs,

I do not support S. 4444 as it would allow a private entity to take ownership of public land and publicly owned coal. Signal Peak is a bad actor who needs to clean up the mess they have already made. Our public lands need to stay public and in a way beneficial to all citizens.

Please reject this bill to protect our environment and avoid another environmental disaster.

Sincerely,

PEGGY MAHLE

I don't support this bill that exists only to prop up a corrupt coal company.

Signal Peak has received millions of dollars in tax abatements from local governments even though it has made more than \$1 billion over the last several years. The company should provide some of this historic revenue to local governments and the Crow Nation that could assist with building a local economy that doesn't rely solely on dirty and dangerous coal mining.

- The Apsáalooké Allottees Alliance has publicly shared that S.4444 will not benefit the Crow due to the language of the bill itself.

- Signal Peak should be providing some of its revenue to assist with building a local and Tribal economies that don't rely solely on coal mining.
- Signal Peak is a bad actor and should be held accountable for the damage it's done to Montana ranches and the climate.
- Signal Peak should have to complete the court-ordered Environmental Impact Statement before any additional mining can occur.
- Signal Peak should have to follow the law, fix the mess it's already made at the mine, and provide ranchers and wildlife with lost water resources before it can continue its mining operations.

Sincerely,

ROBIN VOGLER, BIGFORK, MT

I am writing to submit comments on S. 4444.

Signal Peak Energy is a flagrant bad actor with previous links to Vladimir Putin, as well as a history of bribery, embezzlement, drug trafficking and worker injuries. The US Attorney's office called the mine a "den of thievery" due to its rampant disregard for laws. The mine's owners have paid over \$1.1 billion in penalties and fines in the last few years. Our government should not be getting in bed with a corporation that has committed these crimes, let alone the severe damage it's caused to nearby ranches, including loss of water resources for ranching operations and wildlife and large, dangerous cracks in the landscape.

Signal Peak has received millions of dollars in tax abatements from local governments even though it has made more than \$1 billion over the last several years. The company should provide some of this historic revenue to local governments and the Crow Nation that could assist with building a local economy that doesn't rely solely on dirty and dangerous coal mining.

Here are some talking points that may be helpful:

- The Apsáalooké Allottees Alliance has publicly shared that S.4444 will not benefit the Crow due to the language of the bill itself.
- Signal Peak should be providing some of its revenue to assist with building a local and Tribal economies that don't rely solely on coal mining.
- Signal Peak is a bad actor and should be held accountable for the damage it's done to Montana ranches and the climate.
- Signal Peak should have to complete the court-ordered Environmental Impact Statement before any additional mining can occur.
- Signal Peak should have to follow the law, fix the mess it's already made at the mine, and provide ranchers and wildlife with lost water resources before it can continue its mining operations.

Thank you for this opportunity to comment..

Sincerely,

RUTH SWENSON, HELENA, MT

Dear Committee Members,

I am concerned about this bill for several reasons, and I hope you will call out the inaccuracies and misleading content regarding this bill's true intentions to give Signal Peak preferential treatment over that of the environment and Montana constituents most directly involved.

- The Apsáalooké Allottees Alliance has publicly shared that S.4444 will not benefit the Crow due to the language of the bill itself.
- Signal Peak should be providing some of its revenue to assist with building a local and Tribal economies that don't rely solely on coal mining.
- Signal Peak is a bad actor and should be held accountable for the damage it's done to Montana ranches and the climate.
- Signal Peak should have to complete the court-ordered Environmental Impact Statement before any additional mining can occur.
- Signal Peak should have to follow the law, fix the mess it's already made at the mine, and provide ranchers and wildlife with lost water resources before it can continue its mining operations.

Thank you,

GEOFF SHOWERS, RESIDENT OF MT

This bill is moving Montana in the wrong direction! Do not support.
Thanks,

STEVE MCARTHUR

Dear Senators,

S. 4444 is a bad bill which props up a failing coal company and does great harm to the environment in my beloved state. It is time to move away from coal altogether. This is a hand out to one of the worse actors in the industry.

Sincerely,

SUE DICKENSON, GREAT FALLS, MT

Please vote NO on this bill.

SUSAN CUSHMAN, CONDON, MT

This bill will not provide revenue to the Crow people as the name implies. Instead, it will reward a bad actor with a sweetheart deal.

TERRY DOKKEN, MISSOULA, MT

Senators,

As former chair of Bull Mountain Land Alliance, I can speak for 40 families threatened by Sen. Daines sham Crow Revenue Act. This act deprives the Federal government of \$10.65m in coal lease payments for 35 million tons of coal while providing no certain benefit to the Crow people. What it does do is provide a way for Signal Peak Energy (SPE), operator of an underground coal mine, to sidestep a legal ruling requiring SPE to obtain an Environmental Impact Statement prior to exploiting Federal coal in the Bull Mountains.

SPE has been operating in the Bull Mountains without an EIS for 14 years, dewatering springs and wetlands both within and beyond their permit boundary and creating dangerous subsidence features threatening the livelihoods of ranchers and the homes of residents. Without an EIS identifying all the likely impacts of longwall mining in the Bull Mountains SPE can continue to deny responsibility for the destruction it is inflicting on the residents, the wildlife and the environment.

Now Senator Daines, without consulting any of the local landowners, seeks to help SPE continue expanding and avoid an EIS altogether by turning Federal coal into private coal through the introduction of his spurious Crow Revenue Act. Daines coal trade is not with the Crow tribe at all but with the Hope Family Trust (HFT) and provides only that at some future unspecified date the HFT and the Crow tribe will negotiate a revenue sharing agreement.

Because Senator Daines has structured this Act as an equal exchange he had to include in the trade to the Hope Family Trust 940 acres of BLM public land, some of which is the only public land directly accessible to the public in this part of the Bull Mountains.

I urge you on behalf of Montanans directly affected to reject this subterfuge.

PATRICK THIELE, ROUNDUP, MT

To committee members,

My name is Tom Baratta, and I own property just outside the permit boundary of Signal Peak Energy's Bull Mountains Mine #1. Over the years Signal Peak has been involved with numerous illegal activities, ignored labor laws, and has been criminally convicted and fined for environmental and safety violations. They have failed to complete adequate water monitoring and have somehow "lost" other monitoring information. They have intimidated and harassed local ranch owners with litigation resulting in at least two ranches to sellout.

Signal Peak uses the most environmentally damaging method for extracting coal. The practice of long wall mining has dewatered at least 13 springs in the area, damaged riparian areas and caused extensive subsidence cracks in areas that have been undercut by mining. It has been impossible to work with the mine and Montana Department of Environmental Quality to mitigate or reclaim the damage mining activity has caused. We as landowners need a proper Environmental Impact State-

ment (EIS) conducted so that we have baseline data to help determine any damages caused by mining activity. Too often Signal Peak has evaded responsibility for damages to privately owned land and water, and this is EIS can ensure we hold them responsible for repair and reclamation.

S. 4444 would only benefit the out-of-state owners of Signal Peak, a company already on criminal probation with the U.S. Department of Justice. S.4444 would allow continued violations of the law and reward the corporation's non-compliant stance regarding responsible analysis of mining impacts.

Signal Peak avoided its responsibility to perform an EIS in 2009, successfully lobbying to be able to do a much less rigorous Environmental Analysis (EA). The EA that was conducted is highly flawed based on inadequate and outdated research. This bill is intended to allow Signal Peak to again avoid complying with National Environmental Policy Act rules requiring an EIS be conducted prior to permitting.

Without an EIS, we homeowners and ranchers run great risk of losing our life investments and way of life. We need a completed EIS to know when material damage is done to our land as a result of mining activity. We know from our history with Signal Peak that we cannot trust them to take responsibility for their actions and work with the landowner to repair and reclaim damage done by the mine.

Please apply the law equally and justly in determining your position on this bill. Do not allow a criminally-convicted corporation to steal from Montanans and cause damage to hardworking ranchers and landowners.

Thank you,

TOM BARATTA, ROUNDUP, MT

CROW TRIBE OF INDIANS
May 23, 2024

Dear Senator Daines:

On behalf of the Crow Tribe of Indians, I would like to express our support of The Crow Revenue Act. As you are aware, this legislation fixes Long-standing inholdings on our Reservation and provides our tribe with much needed revenue.

The transfer of approximately 4,660 acres of private subsurface inholding on the Crow Reservation to the Crow Tribe of Montana in exchange for 4,530 acres of federal subsurface and 940 acres of federal surface interest in Musselshell County, MT along with the Revenue Sharing Agreement in the Bull Mountains Tracts will ensure the Tribe receives much needed revenue from mineral production that would otherwise be lost. This transfer will ensure a sustainable source of income for the Crow Tribe, employees of the Bull Mountains Mine in Musselshell County, and energy for the Nation. We strongly believe this transfer is a benefit for all parties involved, the State of Montana, and the country.

The Crow Tribe of Indians proudly supports this Legislation and thanks you for your leadership in crafting legislation that will positively impact so many.

Sincerely,

HON. FRANK WHITE CLAY, CHAIRMAN

SEPTEMBER 18, 2024

RE: NORTHEASTERN ARIZONA INDIAN WATER RIGHTS SETTLEMENT ACT OF
2024—S. 4633, H.R. 8940

Dear Chair Schatz and Vice Chair Murkowski:

The undersigned Governors' Representatives on Colorado River matters for the states of Wyoming and Utah write in support of the efforts of the settling parties to comprehensively resolve the Colorado River water rights claims of Navajo Nation, the Hopi Tribe, and the San Juan Southern Paiute Tribe in Arizona through negotiated settlements. The settlement to be authorized by the Northeastern Arizona Indian Water Rights Settlement Act of 2024 (H.R. 8940/S. 4633) will resolve decades of litigation and uncertainty for the Tribes and help provide needed water and water infrastructure to Tribal communities. However, the proposed settlement also raises significant issues which may affect each of our states' rights and interests to Colorado River water, and those issues have not yet been resolved.¹

¹We each submitted testimony to the House Committee on Natural Resources, Subcommittee on Water, Wildlife and Fisheries on H.R. 8940, Northeastern Arizona Indian Water Rights Settlement Act. Our testimony provides general descriptions of our concerns and so we provide each

Continued

In an attempt to resolve our concerns and avoid negative unintended consequences, beginning in August 2024, representatives from our states have met on several occasions with the Tribes and the states of Arizona, Colorado, New Mexico, Nevada, and California. Although the meetings have been productive, we have been unable in that brief time to resolve the extremely complex and difficult issues this legislation presents. There simply has not been enough time to resolve our outstanding concerns.

We remain committed to working collectively with the Tribes and the other Colorado River Basin States to identify solutions that are consistent with the Colorado River Compacts and state and federal law, and which will ultimately benefit the Colorado River Basin as a whole. However, we need more time to develop appropriate and durable solutions, and to explore the opportunity for a consensus approach among the Basin States. Accordingly, we respectfully request that the Senate Committee on Indian Affairs postpone the September 25, 2024, hearing on S. 4633/H.R. 8940.

Other States were invited to join this letter. One state was not able to join at the time of this correspondence given the time constraints and importance of coordination among the State and their Tribal Nations

Regards, Regards,

GENE SHAWCROFT, COLORADO RIVER COMMISSIONER, STATE OF UTAH
BRANDON GEBHART, COLORADO RIVER COMMISSIONER, STATE OF WYOMING

OFFICE OF THE GOVERNOR, STATE OF MONTANA

June 11, 2024

Dear Senator Daines,

The Bull Mountains Mine is a critical economic driver in Musselshell and Yellowstone Counties, and I applaud your efforts to protect the livelihoods of the hundreds of employees against the regulatory attacks of the federal government. I want to express my support for each of your bills addressing the imminent federal threat to the Bull Mountains Mine.

The *Crow Revenue Act* is a win-win for Montana. The bill would empower and support the Crow Tribe and, at the same time, protect the workers and families that rely on the Bull Mountains Mine. Senate Bills 4431 and 4432 are laudable proposals aimed at neutralizing the delay tactics of the Department of the Interior. For too long, the permits for the Bull Mountains Mine have been held in regulatory limbo, with no action for months and in violation of a court ordered timeline. The Office of Surface Mining should not be allowed to indefinitely delay permitting processes without reason.

The Bull Mountains Mine not only provides jobs and economic life to the communities of Roundup, Billings, and the surrounding area, it provides our allies in Asia with reliable energy supplies. Japan, Korea, and Taiwan all receive coal from Montana. It is important for the global energy security of our allies that the United States continue to provide reliable fuel to these countries.

I urge your colleagues in the U.S. Senate to join you in supporting these bills of vital importance not only to Montana, but to the country and our allies abroad.

Sincerely,

GREG GIANFORTE, GOVERNOR

MONTANA ASSOCIATION OF OIL, GAS, & COAL COUNTIES

May 28, 2024

Members of the 118th Congress,

On behalf of the Montana Association of Oil, Gas, and Coal Counties—an association of 33 county commissions that supports and promotes the development of Montana's abundant oil, gas, and coal resources. I am writing to urge you to support the *Crow Revenue Act* introduced by Senator Steve Daines.

The 4,660 acres of private subsurface inholdings that the Act would exchange for the 4,530 acres of federal subsurface and 940 acres of federal surface interests stands to benefit all parties involved, while providing a path forward for the Bull Mountains Mine in Musselshell County.

The Bull Mountains Mine directly employs approximately 260 workers in Musselshell and Yellowstone Counties, and indirectly impacts hundreds more. If the

here as attachments for your reference (The information referred to has been retained in the Committee files).

Bull Mountains Mine is forced to close due to the lack of a timely permit approval process, hundreds will be left without work—sending an economic shock through the local economy.

But individuals employed by the mine will not be the only ones that suffer if a solution is not passed to allow production to continue at the Bull Mountains Mine. If action is not taken, the schools, local governments, and critical community services that are supported through revenue generated by the Mine will also be in jeopardy.

In just the past three years, Signal Peak has paid over \$211 million in taxes to the state, Yellowstone, and Musselshell counties. This revenue funds Montana's public education system, provides funding to local governments for critical public safety services, and supports much needed infrastructure improvements. In short, there is not a corner of our state that does not benefit from the Bull Mountains Mine, the high-wage careers it supports, and the tax revenue it provides.

The Montana Association of Oil, Gas, and Coal Counties strongly supports Senator Daines' *Crow Revenue Act*, the certainty it will provide for the communities that rely on the Bull Mountains Mine, as well as the revenue and economic opportunity it will provide to the Crow Tribe.

We encourage your strong support of this common-sense solution.

Respectfully,

SHELBY DEMARS, EXECUTIVE DIRECTOR

OFFICE OF PUBLIC INSTRUCTION, STATE OF MONTANA
September 23, 2024

RE: CROW REVENUE ACT SUPPORT

Dear Senator Daines:

As Superintendent of Public Instruction for the State of Montana and the senior commissioner of the Montana Land Board, I wish to convey my full support for the Crow Revenue Act. The exchange of subsurface mineral properties outlined in the Act will provide revenues to the Crow Tribe and assure substantial job creation with the Bull Mountain Mine.

Revenues to the State Trust Lands will flow to Montana's students as continued mine development delivers extraction royalties associated with its subsurface interests within the operation. During Fiscal Year 2023, coal royalties from state trust lands generated over \$46 million, which flow into Montana public schools.

The enhancement of the local and regional communities will continue to be realized with longterm job creation and its accompanying contributions.

The Crow Revenue Act is a win-win for all involved and I proudly support its passage.

Sincerely,

ELSIE ARNTZEN, MONTANA STATE SUPERINTENDENT

MONTANA STATE SENATE
June 6, 2024

Members of the 118th Congress,

We urge you to support the Crow Revenue Act introduced by Senator Steve Daines. The proposed land swap is a needed win-win-win for our corner of the country.

By exchanging 4,660 acres of private subsurface holdings for 4,530 acres of federal subsurface and 940 acres of federal surface interests, Congress can ensure the continuation of good-paying jobs, economic development for the Crow Nation, and crucial tax revenue for schools.

Hundreds of workers in Yellowstone and Musselshell Counties depend on the Bull Mountains Mine for the paychecks that support their families. The Act will keep these Montanans employed, preserving local rural communities.

The Act would provide a mechanism for the Crow Tribe to bring in new revenue. After hundreds of years of Congress harming and ignoring Indian Country, this proposal is one small, yet important, step in the right direction toward economic opportunity and local empowerment for Native communities in South-Central Montana.

Finally, Montanans are facing unprecedented property taxes. While many factors have led to Montana's broken property tax situation, a major contributing factor has been the decline of natural resource development in the Treasure State shifting greater burden onto residential homeowners. The Crow Revenue Act will help main-

tain or reduce property taxes for homeowners struggling with rapidly increasing costs of living.

In short, Senator Daines’s proposal is a rare opportunity for Congress to make a big positive impact without spending additional money that the federal government doesn’t have.

As the local lawmakers representing the impacted area, we urge you to support the *Crow Revenue Act*.

SENATOR BARRY USHER, SENATE DISTRICT 20, YELLOWSTONE & MUSSELSHELL
COUNTIES
REPRESENTATIVE GARY PARRY, HOUSE DISTRICT 39, COLSTRIP, MONTANA
REPRESENTATIVE GAYLE LAMMERS, HOUSE DISTRICT 41, HARDIN, MONTANA
SENATOR JASON SMALL, SENATE DISTRICT 21, BUSBY, MONTANA
REPRESENTATIVE GREG OBLANDER, HOUSE DISTRICT 40, SHEPHERD, MONTANA

MUSSELSHELL COUNTY
June 21, 2024

Dear Senator Daines,

We sincerely appreciate all your office’s efforts to provide “certainty for the Bull Mountains Mine in Musselshell County” by sponsoring this act to allow the Signal Peak mine to continue its operations over the next decade. As you are aware, the Coal Mine’s continued operations is a significant revenue source for Musselshell County, as well as a primary source of employment for many Musselshell County residents. The mine is vital for maintaining Musselshell County’s government services and continued economic growth. The mine’s continued operation is crucial to allow Musselshell County time to transition from coal over the next decade.

We look forward to continue working with your office, in the hopes that Musselshell County’s overall revenue from the Signal Peak mine is not reduced as a result of this act.

Sincerely,

MICHAEL TURLEY, COMMISSION CHAIRMAN
ROBERT PANCRATZ, VICE CHAIR

MONTANA HOUSE OF REPRESENTATIVES
June 11, 2024

Members of the 118th Congress,

It is imperative that you support the Crow Revenue Act introduced by Senator Steve Daines. The solution put forth in the legislation will benefit all parties involved including:

- 260 workers and their families from Musselshell and Yellowstone Counties
- 100s more businesses and workers that are dependent on the Bull Mountains Mine’s operation
- Schools, local governments, critical community services supported through the mine’s revenue
- The State of Montana that received \$211 million in taxes the past couple of years from the mine’s operation.
- The Crow Tribe that will benefit from the revenue and economic opportunity.

In short, this bill fixes long-standing inholdings on the Crow Reservation while also providing much needed revenue to the Crow Tribe and certainty for the Bull Mountains Mine in Musselshell County.

This legislation is good for the local communities, the Crow Tribe, and the State of Montana.

Please support Senator Daines. Please support Montana.

Respectfully submitted,

REPRESENTATIVE KERRI SEEKINS-CROWE, HOUSE DISTRICT 43

CITY OF ROUNDUP
May 24, 2024

To whom it may concern,

On behalf of the City of Roundup we are in full support of Steve Daines and his *Crow Revenue Act*.

This act would transfer approximately 4,660 acres of private subsurface inholdings (Hope Family Tracts) on the Crow Reservation to the Crow Tribe of Montana in exchange for 4,530 acres of federal subsurface and 940 acres of federal surface interests in Musselshell County, MT (Bull Mountains Tracts). Further the bill would require that the Crow Tribe and the Hope Family enter into a Revenue Sharing Agreement for any interests developed in the Bull Mountains Tracts.

Similar to the bipartisan *Northern Cheyenne Lands Act* signed into law in 2014 that supported the Northern Cheyenne Tribe, this simple bill fixes long standing inholdings on the Crow Reservation while also providing much needed revenue to the Crow Tribe and certainty for the Bull Mountains Mine in Musselshell County.

The City of Roundup fully supports this bill to be passed in its entirety

Respectfully Submitted

SANDRA JONES, MAYOR

SIGNAL PEAK ENERGY, LLC
May 23, 2024

Dear Senator Daines,

Signal Peak Energy, LLC (“SPE”) writes in strong support of the Crow Revenue Act (“the Act”), which seeks to convey mineral interests to be held in trust for the benefit of the Crow Tribe of Montana (“the Crow”). As the current lessee of the federal mineral leases that are needlessly held up in litigation, SPE supports the proposed legislation and recognizes its positive economic impacts regarding federal and tribal mineral rights in Montana.

The Act would enable the Crow to access mineral interests previously held by the Hope Family Trust, allowing for greater tribal control of land-based resources within the reservation. In exchange, the United States will convey to the Hope Family Trust its mineral interests and surface land in the Bull Mountains, relinquishing the federal leases held by SPE. SPE acknowledges the economic benefits that this will provide the Crow and commends the Act’s role in supporting tribal economic development opportunities, while also ensuring that the HopeFamily Trust is fairly compensated.

The Act will directly promote the economic welfare and sovereignty of the Crow. SPE recognizes that these benefits outweigh the cancellation of the federal leases it currently holds in the Bull Mountains and fully supports the Crow Revenue Act.

Thank you for your sponsorship of this legislation. SPE greatly appreciates your continued commitment to economic growth for all Montanans.

Sincerely,

PARKER J. PHIPPS, PRESIDENT/CEO

YELLOWSTONE COUNTY BOARD OF COUNTY COMMISSIONERS
May 28, 2024

To Whom It May Concern:

On behalf of the Yellowstone County Board of County Commissioners, we are writing to express our support for the Crow Revenue Act introduced by Senator Daines.

The enacting of the legislation would be of great benefit to both Yellowstone County and Musselshell County, allowing the Crow Tribe to trade tribal land for federal land in the Bull Mountains. This trade allows Signal Peak Energy, LLC to access privately owned land for their coal mining operation and give royalties to the Crow Tribe.

Signal Peak employs over 250 employees and provides work to many contractors in our state. Aside from gross proceeds collected and distributed, this legislation provides for the continuance of these good-paying jobs in our area while helping our country maintain energy independence.

We thank you for your consideration of this important legislation and look forward to its adoption.

Sincerely,

JOHN OSTLUND, CHAIRMAN
 MARK MORSE, MEMBER
 DONALD W. JONES, MEMBER

STATE OF ARIZONA
 September 20, 2024

RE: NORTHEASTERN ARIZONA INDIAN WATER RIGHTS SETTLEMENT ACT OF 2024
 (S. 4633)

Dear Chairman Schatz and Vice Chairwoman Murkowski:

I am pleased to express my strong support for S. 4633, the Northeastern Arizona Indian Water Rights Settlement Act of 2024. This important legislation approves and authorizes a comprehensive settlement of the water rights claims of the Navajo Nation, Hopi Tribe and San Juan Southern Paiute Tribe in Arizona. Settling the outstanding tribal water rights claims in Arizona is a priority for the State, and enactment of this legislation is a critical step in achieving that goal.

The three Tribes have some of the largest outstanding tribal water rights claims in Arizona, including claims to the Colorado River, in-state surface water and groundwater. The settlement of these claims will end decades of conflict and litigation, provide certainty to the Tribes and other water users regarding their water rights, and ensure reliable, secure and safe water supplies for the three Tribes.

Many homes on the three Reservations lack access to clean running water, a basic human necessity. The settlement will help alleviate this situation by providing the Tribes with rights to reliable and sustainable water supplies, and by providing funding for the construction and operation of much needed infrastructure projects to treat and deliver the water to communities on the three Reservations. Enactment of the legislation by Congress will therefore contribute to the process of ensuring that all Arizonans have access to clean running water in their homes and protect against future public health crises.

The historic and generational impact of this settlement cannot be overstated, for its significance in securing a sustainable water supply, supporting the establishment of tribal homelands, and affirming the sovereignty of these tribal nations.

This settlement is the result of the tireless efforts of the three Tribes, the State of Arizona, municipalities and numerous water users and communities in the state. I would like to thank all the parties for their hard work on the settlement, Senator Kelly and Senator Sinema for their sponsorship, and the Senate Committee for hearing this legislation which is of such great importance to the State of Arizona.

Sincerely,

HON. KATIE HOBBS, GOVERNOR

SOUTHERN NEVADA WATER AUTHORITY
 August 20, 2024

Dear Senator Cortez Masto and Congresswoman Lee:

On behalf of the Southern Nevada Water Authority (SNW A), I write to express support for the *Northeastern Arizona Indian Water Rights Settlement Act of 2024 (H.R. 8940/S. 4633)*. *This settlement act will resolve decades of litigation and provide the Navajo Nation, Hopi Tribe, and San Juan Southern Paiute Tribe with reliable water rights and infrastructure that will improve domestic and economic conditions for their members. As this legislation moves through the Committees that you each sit on—the Senate Indian Affairs Committee and the House Natural Resources Committee—SNWA requests that you consider our comments and suggestions outlined in this letter.*

As you know, the Colorado River Compact of 1922 (Compact) operates on the fundamental provision that divides rights and obligations based on an Upper Basin and Lower Basin. However, the Navajo Nation's reservation spreads through three Colorado River Basin States (Basin States)—Utah, New Mexico, and Arizona—and straddles the Upper and Lower Basins, adding an additional layer of complexity. The *Northeastern Arizona Indian Water Rights Settlement Act of 2024* would allocate Colorado River Water to the Navajo Nation and the Hopi Tribe, including Lower Basin and Upper Basin water. The agreement would allow the Navajo Nation and Hopi Tribe to use these allocations of Colorado River water on their Reservations and lease water in both the Upper and Lower Basins in the State of Arizona. Given the intricacies and nuances resulting from the inter-Basin and interstate nature of the Tribal lands, collaboration will be key. To avoid negative unintended consequences and to remain consistent with the Compact, SNW A respectfully proposes

that Congress, the Basin States, and the Tribes work together on technical modifications to H.R. 8940/S. 4633 in a manner similar to the process used in 2009 for the *Northwestern New Mexico Rural Water Projects Act*, P.L. 111–11 (the “Navajo-Gallup Project”). In drafting that legislation, the Governors’ Representatives on Colorado River Operations for all seven Basin States collaborated and submitted “recommended modifications” on how the Navajo-Gallup Project could be improved by incorporating aspects of the Compact, delineating conditions for use of Colorado River water in Arizona, and establishing accounting procedures—including how flows at Lee Ferry would be calculated.

Although the dynamics of H.R. 8940/S. 4633 are unique and perhaps more complex than those of the Navajo-Gallup Project, the *Northwestern New Mexico Rural Water Projects Act* demonstrated that a careful and deliberate assessment of how to account for water use, consistent with the Compact (articles III(c) III(d) in particular), was necessary. That is why SNWA recommends collaboration between lawmakers and stakeholders, to ensure that H.R. 8940/S. 4633 addresses where the water can be used, how that use is allocated to Arizona’s, apportionments under articles III(a) and (b) of the Compact, and how such uses should be considered in the context of calculating flows at Lee Ferry.

SNWA has reviewed the written testimony of other Basin States, and while there are numerous areas of agreement, two issues raised in the written testimony must be addressed. First, SNWA strongly believes that the inter-Basin flexibility afforded to the Navajo Nation and the Hopi Tribe in this legislation should be considered a unique exception, rather than a new precedent. H.R. 8940/S.4633 indicates that, in Arizona, the Tribes may use Upper Basin water in the Lower Basin, and Lower Basin water in the Upper Basin. As described above, the boundaries of the sovereign Navajo Nation stretch into three Basin States and include significant portions of the Upper Basin and Lower Basin, placing the Navajo Nation in a unique position requiring unique needs. Nevada is opposed to using *Northeastern Arizona Indian Water Rights Settlement Act of 2024* as a vehicle that gives other Basin States and Tribes the same flexibility. Instead, the ability to use Upper Basin apportionments in Lower Basin areas of a State should be addressed through Project-specific legislation.

Second, SNWA is opposed to an accounting standard that would attempt to ascertain the consumptive use of the Navajo Nation or Hopi Tribe and then speculate on the amount of water not fully consumed, with the aim of crediting purported un-consumed volumes against the Upper Basin States’ obligations at Lee Ferry under article III(d). This approach appears to be unmoored from actual water volumes, as there does not appear to be any mechanism for ensuring that any un-consumed water actually constitutes return flows to the main stem. As, with the Navajo-Gallup Project, the federal government, Basin States, and Tribes should work cooperatively to establish a reliable and equitable accounting methodology.

Thank you for your consideration.

Sincerely,

JOHN J. ENTSMINGER, GENERAL MANAGER

AZTEC LAND AND CATTLE COMPANY, LIMITED

September 16, 2024

RE: S. 4633—NORTHEASTERN ARIZONA WATER RIGHTS SETTLEMENT ACT

Dear Senator Kelly,

As President of the Aztec Land and Cattle Company, Limited, and Manager of its affiliated Aztec Land Company, LLC, I thank you for sponsoring the Northeastern Arizona Indian Water Rights Settlement Act. Our company, with its long-standing presence and extensive land holdings in northeastern Arizona, has been actively involved in the negotiations and discussions leading up to this settlement. The Act will resolve decades of litigation and provide water security to northeastern Arizona.

The Aztec Land and Cattle Company, a true icon in the state, was established in 1884. It made its mark by purchasing a million acres in northern Arizona from the Atlantic & Pacific Railroad. The company’s rich history includes importing about 32,000 head of cattle from Texas for its ranching operations in Arizona, with the cattle brand being the Hashknife. The legends about its cowboys in the Hashknife Outfit are still told.

After selling its cattle in 1905 because of drought and low market prices, the Aztec Land and Cattle Company embarked on a program of leasing its grazing land to local cattle ranchers—a program that continues to this day. Many of the company’s current grazing lessees are direct descendants of its original lessees. Today,

Aztec and its affiliates own approximately 240,000 acres in Navajo County, Arizona, and 320,000 acres of mineral rights (some without surface ownership) in Navajo and Coconino Counties. It is the second largest private landowner in Arizona and holds one of the few remaining large-scale tracts of rural private land available for development in the state. Aztec Land and Cattle Company's rural land ownership is extremely valuable for developing and preserving agricultural and open space values.

In 2012, Snowflake, Taylor, and Navajo County received devastating news. The Catalyst Paper mill was closing, causing job losses, tax revenue losses, and the closure of the Apache Railway. An investor planned to rip the rail system apart and sell it for scrap.

Partnering with MPS Eggs, Aztec saved the railroad. Apache Railway is a Class III short-line railroad running for 55 miles off the BNSF Railway's transcontinental mainline near Holbrook, Arizona. The Apache Railway serves much of Aztec's land, providing access to both national and international markets. Thanks to Aztec and MPS's efforts, it has operated continuously since its incorporation in 1917. As hub for rail car repair and storage the Apache now operates near the old paper plant, providing jobs and tax revenue.

Driven with concern for the community, its experience and business ingenuity, and sheer determination, the Aztec Land and Cattle Company also reacquired Dry Lake Farm—a portion of the Papermill property that Aztec had owned before selling in 1960 to the Papermill—for continued farming. Dry Lake Farm has water rights to Phoenix Park Wash and numerous wells in a closed basin. The farm is used for livestock pasture, forage, and stockwatering and has produced crops for over 130 years.

With its history and economic diversity in agribusiness, real estate development, commerce, and transportation, Aztec Land and Cattle Company has a broad understanding of the serious issues facing northern Arizona. Water security and ongoing water litigation with the Navajo, Hopi, and San Juan Southern Paiute tribes are at the top of the list.

Like others in the region, the Aztec Land and Cattle Company has faced enormously expensive and seemingly unending water litigation for several decades. This litigation stems from the complex and long-standing water rights disputes with the Navajo, Hopi, and San Juan Southern Paiute tribes. Without a settlement of these tribal claims, that litigation will likely continue for years, posing a significant threat to the region's water security and economic stability. The rising costs of ongoing trials and an uncertain water supply can potentially drive northern Arizona's farms and communities out of business.

The Northeastern Arizona Indian Water Rights Settlement Act will finally end the decades of litigation by resolving the water rights claims of the Navajo Nation, the Hopi Tribe, and the San Juan Southern Paiute Tribe. Approval of the settlement will not only provide water certainty to the Tribes and water users near tribal lands but also ensure the sustainability of local agriculture, businesses, and communities. The settlement agreement includes several essential commitments by the Tribes, which have agreed to not object to certain off-reservation uses of surface water and groundwater. There will be no Tribal objections to existing surface water diversions and off-reservation storage and reservoir systems. As drought continues, Aztec Land and Cattle Company and others will need to rely more on groundwater—and the Tribes will waive objections to most groundwater pumping.

The Northeastern Arizona Indian Water Rights Settlement Agreement, when enacted, will provide \$5 billion for water projects (mostly drinking water) for the Tribes. We recognize that \$5 billion is a lot of money but we believe that it is important to provide drinking water to Tribal residents. In contrast, we strongly oppose any efforts by non-Indian parties such as the City of Flagstaff to use this legislation to obtain funding for non-tribal purposes. There should be no additions to the legislation.

The agreements in the Act are not just about the present but about securing a future for northeastern Arizona. They will lift the ugly cloud of ceaseless litigation and worries about water rights, helping stakeholders plan for their futures. The settlement is a win-win situation, providing water certainty to the Tribes and water users near tribal lands, while also ensuring the sustainability of local agriculture, businesses, and communities.

For the past 30 years, parties like the Aztec Land and Cattle Company have been trying to settle with the Tribes. Now, the Northeastern Arizona Indian Water Rights Settlement Act presents a rare, once-in-a-lifetime opportunity to resolve these issues. Your continued support is crucial and urgently needed.

Sincerely,

STEPHEN M. BROPHY, PRESIDENT

BAR T BAR RANCH, INC.
September 16, 2024

RE: S. 4633—NORTHEASTERN ARIZONA WATER RIGHTS SETTLEMENT ACT

Dear Senator Kelly,

On behalf of the Bar T Bar Ranch, Inc. (and its affiliates Bar T Bar Ranch Company, LLP, Meteor Crater Enterprises, Inc., and Crater Ranch, LLC), I am writing to thank you for sponsoring the Northeastern Arizona Indian Water Rights Settlement Act. This Act is not just a legal matter but a crucial lifeline for our operations and the future of our community, especially in the face of pressing water rights issues.

Bar T Bar Ranch, a family-owned and operated Arizona agribusiness, is a testament to the enduring spirit of ranching. Established in 1924 by the Chilson family, it has upheld a legacy of ranching excellence and land stewardship. This commitment to ethical care and management, balanced with a pursuit of increased profitability, improved communication, and enhanced product quality, has earned Bar T Bar a place of respect and admiration in the industry.

The Bar T Bar Ranch is not just a business; it's a way of life. With a sprawling 300,000-acre winter range and a picturesque summer headquarters, the ranch is home to a thriving cattle operation, producing high-quality feeder cattle, commercial bred replacement heifers, registered bulls, and beef for consumers. This dedication to excellence has earned Bar T Bar recognition, including the prestigious 2016 Range Managers of the Year award.

The ranch actively participates in the Diablo Trust, a collaborative landmanagement team that protects open spaces and healthy habitats. Experts predict that 40 percent of family farms and ranches, or over 370 million acres of land, will be sold and converted to housing, shopping centers, and industrial uses. Should this happen, developments will undoubtedly transfer valuable water from watersheds and wildlife to serve municipal and industrial uses. Diablo Trust is working to keep ranch lands in our region intact through conservation, collaboration, and scientific research so there will always be "a West."

A reliable water supply is critical for Bar T Bar Ranch. Drought over the past few years has been challenging. Litigation over tribal water rights has also been a burden, significantly straining the farming and ranching industry's resources.

Bar T Bar and the Chilson family have faced expensive and seemingly unending water litigation for almost 50 years. Without a settlement of tribal claims, that litigation will likely continue for many more years.

The Northeastern Arizona Indian Water Rights Settlement Act will finally end the decades of litigation. This historic Act will approve an agreement among the principal stakeholders in northeastern Arizona, finally resolving the water right claims of the Navajo Nation, the Hopi Tribe, and the San Juan Southern Paiute Tribe. Approval of the settlement will not only provide water certainty both to the Tribes and to the water users near tribal lands, including Bar T Bar Ranch and its affiliate operations, but will also secure a prosperous future for our shared community.

The Northeastern Arizona Indian Water Rights Settlement Agreement, when enacted, will provide \$5 billion for water projects (mostly drinking water) for the Tribes. We recognize that \$5 billion is a lot of money but we believe that it is important to provide drinking water to Tribal residents. In contrast, we strongly oppose any efforts by non-Indian parties such as the City of Flagstaff to use this legislation to obtain funding for non-tribal purposes. There should be no additions to the legislation.

The settlement agreement, in addition to resolving the litigation, includes commitments by the Tribes to not object to certain off-reservation uses of surface water and groundwater. This means that Bar T Bar's Hay, Tremaine and Soldier Lakes (to which the public has an interest) and even small off-reservation reservoirs, like the private stockponds necessary for ranch and wildlife management, will not be challenged by the Tribes. These commitments are not just about the present, but about securing a future for the farming and ranching industry in northeastern Arizona, a future that is crucial to our collective prosperity and the sustainability of our region.

Bar T Bar Ranch is a testament to the enduring spirit of ranching, where tradition and innovation converge to create a sustainable and prosperous future. We invite you to join us in this endeavor by supporting the passage of the Northeastern

Arizona Indian Water Rights Settlement Act. Your support is crucial in turning our positive vision for Arizona's future into a reality.

Please come visit our ranch sometime.

Sincerely,

JUDITH E. (CHILSON) PROSSER, PRESIDENT

TOWN OF EAGAR
September 16, 2024

RE: S. 4633—NORTHEASTERN ARIZONA WATER RIGHTS SETTLEMENT ACT

Dear Senator Kelly,

As mayor of the Town of Eagar, I want to thank you for sponsoring the Northeastern Arizona Indian Water Rights Settlement Act. Your continued support is critical in this historic settlement.

Nestled at the base of the White Mountains in northeastern Arizona, Eagar is a hub for outdoor enthusiasts and a haven for those seeking a small-town atmosphere. With a rich history dating back to the late 1800s, the town, originally named "Union," was once a central point for several homesteads. Today, it pays homage to its roots by bearing the name of the original homesteading family. Eagar's appeal extends beyond its history, offering visitors and residents various recreational activities throughout the year, from winter skiing to fall foliage. Its low crime rate, pristine mountain environment, and proximity to major transportation routes make it attractive for individuals and businesses.

While natural resources remain a part of Eagar's identity, the town has diversified its economy. Power plants and tourism now form a significant part of the employment base, complemented by ranching, retail, and forestry. Eagar's unique blend of history, recreation, and economic diversity makes it a compelling case study in sustainable growth for rural communities.

Water is a crucial resource for Eagar, with a municipal well system serving the needs of its residents and visitors. The surrounding reservoirs and creeks support local irrigation interests and are critical to ensuring the continued vitality of the region's agricultural activities. These waterways also offer public access, enhancing the town's recreational appeal and highlighting the interconnectedness of water resources and community well-being.

As to its water rights, Eagar has faced an expensive challenge—ongoing litigation involving the adverse water rights claims of the Navajo Nation, the Hopi Tribe, and the San Juan Southern Paiute Tribe. This water lawsuit, which has been ongoing for about 50 years, has been a significant drain on the town's resources and has hindered its ability to plan for a secure water future. Where Roads Hit The Trails. Despite efforts to settle it in the past, a resolution has remained elusive, making the proposed Northeastern Arizona Indian Water Rights Settlement Act all the more crucial.

The proposed Northeastern Arizona Indian Water Rights Settlement Act is the result of years of negotiations. It will finally resolve the Tribes' water rights claims. This resolution will not only mark the end of the contentious and costly litigation with the Tribes but also provide water certainty to both the Tribes and the communities like Eagar that are near Tribal lands.

The Northeastern Arizona Indian Water Rights Settlement Agreement, when enacted, will provide \$5 billion for water projects (mostly drinking water) for the Tribes. We recognize that \$5 billion is a lot of money but we believe that it is important to provide drinking water to Tribal residents. In contrast, we strongly oppose any efforts by non-Indian parties such as the City of Flagstaff to use this legislation to obtain funding for non-tribal purposes. There should be no additions to the legislation.

In the settlement, the Navajo, Hopi, and San Juan Southern Paiute Tribes agree that they will not object to certain off-reservation water uses, such as groundwater pumping, existing surface water diversions, and water storage reservoirs. In return, the passage of the Act will provide the Tribes with water from various sources, including Colorado River water. This provision is a significant step towards addressing the water needs of the Tribes, reducing competition among the Tribes and off-reservation communities for scarce water resources.

The Town of Eagar urges you to continue supporting the Northeastern Arizona Indian Water Rights Settlement Act. We thank you for your efforts.

Sincerely,

HON. GUY PHELPS, MAYOR

CITY OF HOLBROOK, ARIZONA
September 16, 2024

RE: S. 4633—NORTHEASTERN ARIZONA WATER RIGHTS SETTLEMENT ACT

Dear Senator Kelly,

As Mayor of Holbrook, and on behalf of the City's council and citizens, I thank you for sponsoring the Northeastern Arizona Indian Water Rights Settlement Act. "What began as a town too tough for women and churches, is now too good to miss," we write on our website. We think the settlement act is too good to miss, too. This Act holds the potential to bring about a significant change for communities like the City of Holbrook, providing us with a much-needed assurance about our water rights and enabling us to plan for future growth.

Back in 1870, Northeastern Arizona was isolated and barren, with the only fertile land situated along the Little Colorado River. At the junction of the Little Colorado and the Rio Puerco was Horsehead Crossing, a vital river crossing for those traveling north and south. By 1876, Horsehead Crossing had become an essential stage-coach crossing, boasting a general store, saloon, stage station, and corrals amidst a grove of old cottonwood trees. In 1881, the Atlantic & Pacific Railroad chose this settlement as a railhead for supply wagons headed south to Fort Apache, building a train depot about two miles west of the crossing. Holbrook, named after the railroad's chief engineer, Henry Holbrook, who oversaw the construction of this section of the rail line, then emerged around the new depot.

Today, Holbrook is the county seat of Navajo County, located in eastern Arizona along the banks of the Little Colorado River. It serves as a convergence point for Interstate AO (old Route 66), U.S. Highway 180, and State Highway 77. With a population of approximately 5,000, Holbrook's economy primarily relies on public administration, construction, accommodation, and food services.

Given its location on important commercial routes, the future of Holbrook's economy is promising, but the City needs a reliable water supply. Like other municipalities in Northeastern Arizona, the City has shouldered an enormous financial burden in water rights litigation that has spanned almost 50 years. The bulk of the litigation concerns the adverse claims of the Navajo Nation, the Hopi Tribe, and the San Juan Southern Paiute Tribe.

The proposed Northeastern Arizona Indian Water Rights Settlement Act is the result of years of negotiations and discussions among the principal non-Indian stakeholders in Northeastern Arizona and the Tribes. It will finally resolve the water rights claims of the Tribes, which have been a source of contention and litigation for decades. Approval of the settlement will mark the end of this long-standing issue, providing water certainty both to the Tribes and to the communities near Tribal lands, paving the way for a more sustainable and prosperous future for northeastern Arizona.

The benefits of the settlement extend beyond Holbrook. Nearby communities, including those near the Navajo, Hopi, and San Juan Southern Paiute reservations, will also experience positive changes. These off-reservation communities, which have long-standing relationships with the Tribes, have been adversely affected by the water rights litigation, straining resources and hindering potential development for many years. The settlement, by resolving these issues, will pave the way for these communities to flourish.

The Northeastern Arizona Indian Water Rights Settlement Agreement, when enacted, will provide \$5 billion for water projects (mostly drinking water) for the Tribes. We recognize that \$5 billion is a lot of money but we believe that it is important to provide drinking water to Tribal residents. In contrast, we strongly oppose any efforts by non-Indian parties such as the City of Flagstaff to use this legislation to obtain funding for non-tribal purposes. There should be no additions to the legislation.

The settlement agreement includes, among other things, the Tribes' commitments not to object to certain off-reservation uses of water, such as groundwater pumping, existing surface water diversions, and water storage reservoirs. In return, passage of the Act will provide the Tribes with water from various sources, including Colorado River water, thereby reducing competition among the Tribes and offreservation communities for scarce water resources in the area.

The City of Holbrook urges you to continue supporting the Northeastern Arizona Indian Water Rights Settlement Act.

Sincerely,

HON. KATHLEEN SMITH, MAYOR

CITY OF SHOW LOW
September 16, 2024

RE: S. 4633—NORTHEASTERN ARIZONA WATER RIGHTS SETTLEMENT ACT

Dear Senator Kelly,

On behalf of the City of Show Low, I want to thank you for sponsoring the North-eastern Arizona Indian Water Rights Settlement Act.

Show Low, established in 1870, has blossomed into the largest city in north-eastern Arizona's White Mountains. It serves as the region's business and marketing center, boasting an array of shopping centers, charming restaurants, and warm hospitality. Its elevation and surrounding forests and lakes provide a refreshing escape from the scorching summer heat, attracting tourists seeking respite. Equipped with a hospital, airport, community college, and numerous public schools, Show Low offers essential amenities and resources. The upcoming Amazon distribution warehouse promises to boost employment opportunities for the City's steadily growing population.

Legend has it that Show Low's unique name originated from a high-stakes poker game between Corydon E. Cooley and Marion Clark, partners in a vast 100,000-acre ranch. Both vied for control of the ranch, so they decided to settle the matter over a game of cards. After hours and hours of stalemate, Clark declared, "If you can show low, you win." Cooley triumphantly revealed the deuce of clubs, the lowest possible card, securing his victory. Today, Show Low's main street, aptly named "Deuce of Clubs," commemorates this tale.

Show Low has been an active participant in the water rights settlement negotiations with the Navajo Nation, the Hopi Tribe, and the San Juan Southern Paiute Tribe since 1994. These talks, part of the almost 50-year litigation known as "the Little Colorado River adjudication," involve the Tribes' adverse claims to water rights to the river and its tributaries. Show Low Creek and Silver Creek, which are tributaries to the Little Colorado River, supply irrigation, stockwatering, and municipal water to Show Low and the surrounding communities. They fill the reservoirs in the Show Low System: Show Low Lake, Rainbow Lake, Upper Rainbow Lake, Scotts Reservoir, and Woodland Lake. These lakes, which are manmade reservoirs used to store and release irrigation water, have become highly-valued recreation and wildlife assets in the area.

In 2002, an intense wildfire called the Rodeo-Chediski Fire came dangerously close to Show Low, triggering a city-wide evacuation. Fortunately, firefighters managed to contain the blaze near the City limits, leaving Show Low unscathed. The lakes played an important role in fire suppression, allowing tankers to quickly fill. Given the threat of wildfire throughout the Southwest, it is possible that these lakes will play a role in fire suppression again.

Preserving Show Low's rights to Show Low Creek, Silver Creek, and the reservoirs is crucial.

The proposed Northeastern Arizona Indian Water Rights Settlement Act, the result of years of negotiations and discussions, will finally resolve the Tribes' water rights claims. This resolution will not only mark the end of the contentious and expensive litigation with the Tribes but also provide water certainty to both the Tribes and the communities near Tribal lands, including Show Low and the surrounding areas. This means a secure and sustainable water supply for our growing population and businesses, ensuring our continued prosperity.

Show Low believes settlements are far more productive and less costly to taxpayers than litigation. We have seen this firsthand with the successful resolution of the White Mountain Apache Tribe Water Rights Quantification Act of 2010 (as recently updated in Public Law No. 117-342), which has brought years of conflict to an end.

The Northeastern Arizona Indian Water Rights Settlement Agreement, when enacted, will provide \$5 billion for water projects (mostly drinking water) for the Tribes. We recognize that \$5 billion is a lot of money but we believe that it is important to provide drinking water to Tribal residents. In contrast, we strongly oppose any efforts by non-Indian parties such as the City of Flagstaff to use this legislation to obtain funding for non-tribal purposes. There should be no additions to the legislation.

In this settlement, the Navajo, Hopi, and San Juan Southern Paiute Tribes agree that they will not object to certain off-reservation water uses, such as groundwater pumping, existing surface water diversions, and water storage reservoirs. In return, passage of the Act will provide the Tribes with water from various sources, includ-

ing Colorado River water. This provision is a significant step towards addressing the water needs of the Tribes, reducing competition among the Tribes and off-reservation communities for scarce water resources, and promoting a more equitable distribution of water rights.

The City of Show Low urges you to continue to support the Northeastern Arizona Indian Water Rights Settlement Act. This historic Act, which will benefit both Northeastern Arizona and the Tribes, is a testament to our shared commitment to building strong communities on and off Tribal lands.

Sincerely,

CONNIE KAKAVAS, VICE MAYOR

SHOW LOW/PINETOP-WOODLAND IRRIGATION COMPANY, INC.
September 16, 2024

RE: S. 4633—NORTHEASTERN ARIZONA WATER RIGHTS SETTLEMENT ACT

Dear Senator Kelly,

On behalf of the Show Low/Pinetop-Woodland Irrigation Company, I want to thank you for sponsoring the Northeastern Arizona Indian Water Rights Settlement Act.

In the 1880s, settlers homesteaded a remote, forested area in northeastern Arizona. Since then, the area has attracted an increasing number of full and part-time residents. The old homestead areas are now known as the town of Pinetop-Lakeside and the city of Show Low.

The original settlers worked cooperatively to get water to their orchards, pastures and farms and, to do so, created a series of irrigation companies, such as the Show Low Irrigation Company, the Woodland Irrigation Company, and the Pinetop Irrigation Company. Over the years, these irrigation companies changed names. They also changed their corporate structures, eventually merging into one entity: the Show Low/Pinetop-Woodland Irrigation Company, a non-profit irrigation water company.

Woodland Lake, Rainbow Lake, Lower Rainbow Lake, Scotts Reservoir, and Show Low Lake are all manmade reservoirs that are part of the irrigation storage and delivery system operated by the Irrigation Company. The reservoirs store water from Show Low Creek and its tributaries. The stored water is released to irrigate approximately 1,000 acres of land owned by people in the Pinetop-Lakeside and Show Low areas. The system infrastructure not only transports irrigation water but is also critical to the region's flood control.

Although the reservoirs serve primarily as irrigation storage facilities, they are also integral to tourism in Pinetop-Lakeside and Show Low, where hiking, camping, picnicking, boating, and other activities are popular with visitors. Agreements with the forest service, the state of Arizona, and local municipalities such as Pinetop-Lakeside allow public access and recreation at the reservoirs.

Wildfire is a pervasive summer threat in the Pinetop-Lakeside and Show Low areas. The reservoirs are important fire suppression assets.

The storage and irrigation facilities operated by the Irrigation Company are valuable to the company's water users. They are also vital to the tourism and natural beauty characteristic of Pinetop-Lakeside and Show Low.

The Irrigation Company has registered numerous water rights claims in its name on behalf of its shareholders. For almost 50 years, the Irrigation Company has defended these rights in a water trial called "the Little Colorado River adjudication." The bulk of this decades-long adjudication proceeding revolves around the adverse claims of the Navajo Nation, the Hopi Tribe, and the San Juan Southern Paiute Tribe. Litigation is expensive, and it is difficult for the Irrigation Company to continue with never-ending litigation. The Irrigation Company believes settlement, rather than protracted litigation, is the best way to resolve conflicting water claims.

The proposed Northeastern Arizona Indian Water Rights Settlement Act follows years of negotiations and discussions among the principal non-Indian stakeholders in Northeastern Arizona and the Tribes. The Irrigation Company has been an active participant in negotiations since 1994. The resulting Northeastern Arizona Indian Water Rights Settlement Act that we ask you to support will finally resolve the water rights claims of the Tribes, which have been a source of contention and litigation in the Little Colorado River watershed for too long. Approval of the settlement will mark the end of this long-standing issue, providing water certainty both to the Tribes and to the communities near Tribal lands. It will save non-profits like us the cost of litigation, which is difficult to sustain. Ending the litigation and providing water security will pave the way for northeastern Arizona's more sustainable and prosperous future, a future that benefits both the Tribes and the communities.

The Northeastern Arizona Indian Water Rights Settlement Agreement, when enacted, will provide \$5 billion for water projects (mostly drinking water) for the Tribes. We recognize that \$5 billion is a lot of money but we believe that it is important to provide drinking water to Tribal residents. In contrast, we strongly oppose any efforts by non-Indian parties to use this legislation to obtain funding for non-tribal purposes. There should be no additions to the legislation.

The settlement agreement addresses important issues. For example, the Navajo, Hopi, and San Juan Southern Paiute Tribes agree to not object to certain off-reservation uses of water, such as groundwater pumping, existing surface water diversions, and water storage reservoirs. In return, passage of the Act will provide the Tribes with water from various sources, including Colorado River water, thereby reducing competition among the Tribes and off-reservation communities for scarce water resources. These commitments are a significant step towards ensuring the region's fair and sustainable distribution of water resources.

The Show Low/Pinetop-Woodland Irrigation Company urges you to continue supporting the Northeastern Arizona Indian Water Rights Settlement. Your continued support is crucial in this historic Act that is critical for building and maintaining solid communities on and off Tribal lands.

Sincerely,

C. TRENT ADAMS SECRETARY

SILVER CREEK IRRIGATION DISTRICT
September 16, 2024

RE: S. 4633—NORTHEASTERN ARIZONA WATER RIGHTS SETTLEMENT ACT

Dear Senator Kelly,

On behalf of the Silver Creek Irrigation District, I want to thank you for sponsoring the Northeastern Arizona Indian Water Rights Settlement Act.

The Silver Creek Irrigation District traces its roots back to 1873 when James Stinson settled the area now called Snowflake and who, two years later, claimed all of the waters of Silver Creek and its tributaries for agriculture and livestock. After a few years, the Snowflake & Taylor Agriculture Company—now known as the Silver Creek Irrigation District—was formed in 1896.

Today, the District is a significant force in Navajo County, not only serving farms and ranches but also playing a crucial role in preventing potential natural disasters. The District operates six major storage facilities, including White Mountain Lake, Mexican Lake, Little Mormon Lake, Ortega Lake, and Millet Swale. Some of these are operated in tandem with the Silver Creek Flood Control District to mitigate the risk of spring and monsoon flooding, when the Silver Creek and its tributaries fill with mountain runoff and race into the Silver Creek drainage area. These reservoirs are vital in regulating and controlling these waters, thereby ensuring the safety of the region. The main function of the reservoirs, however, is to store water that the District delivers to 2,500 acres of irrigated land in and around Shumway, Snowflake and Taylor.

Public recreation, wildlife, and fire suppression needs are also served by the District's reservoirs. A residential community has formed around White Mountain Lake, where property owners have access to the water.

Farmers, ranchers, and the local communities of Snowflake, Taylor, Shumway, and White Mountain Lake depend on the District's irrigation water and flood safety management. These communities and enterprises might not see the behind-the-scenes work that the District has done over the past 50 years to protect its water rights in a water trial called "the Little Colorado River adjudication."

The bulk of this decades-long adjudication proceeding revolves around the adverse claims of the Navajo Nation, the Hopi Tribe, and the San Juan Southern Paiute Tribe. Litigation is expensive, and it is challenging for the District to continue to pay for never-ending litigation. The Irrigation Company believes settlement, rather than protracted litigation, is the best way to resolve conflicting water claims.

Since 1994, the District has participated in settlement discussions with the Tribes. The proposed Northeastern Arizona Indian Water Rights Settlement Act follows these many years of negotiations. The settlement will finally resolve the Tribes' water rights claims, marking the end of the litigation and providing water certainty both to the Tribes and to the communities near Tribal lands.

The Northeastern Arizona Indian Water Rights Settlement Agreement, when enacted, will provide \$5 billion for water projects (mostly drinking water) for the Tribes. We recognize that \$5 billion is a lot of money but we believe that it is important to provide drinking water to Tribal residents. In contrast, we strongly oppose

any efforts by non-Indian parties to use this legislation to obtain funding for non-tribal purposes. There should be no additions to the legislation.

The settlement embraces agreements that are critical to the Silver Creek Irrigation District. For instance, the Navajo, Hopi, and San Juan Southern Paiute Tribes agree that they will not object to certain off-reservation uses of water, such as groundwater pumping, existing surface water diversions, and water storage reservoirs. In return, passage of the Act will provide the Tribes with water from various other sources, including Colorado River water, thereby reducing competition among the Tribes and offreservation communities for scarce water resources.

The Silver Creek Irrigation District urges you to continue supporting the Northeastern Arizona Indian Water Rights Settlement Act. This historic Act will benefit Northeastern Arizona and the Tribes, and its passage is vital for building strong communities on and off Tribal lands.

Sincerely,

VANCE MUDER, PRESIDENT

TOWN OF TAYLOR, ARIZONA
September 16, 2024

RE: S. 4633—NORTHEASTERN ARIZONA WATER RIGHTS SETTLEMENT ACT

Dear Senator Kelly:

As mayor of one of Arizona's fastest-growing rural communities, I want to express our gratitude on behalf of our council and community members for sponsoring the Northeastern Arizona Indian Water Rights Settlement Act.

With its rich history and family-oriented culture, Taylor and its neighboring town, Snowflake, have seen explosive growth over the past few years. With its potential to deliver significant change, the Act can ignite a new era of prosperity for communities like ours. It provides much-needed assurance about our water rights, enabling us to plan confidently for future growth.

Taylor is on the bank of Silver Creek, a 45-mile stream that is a tributary to the Little Colorado River. Since its establishment in 1878, our community and in particular, our farms and ranches, have relied on Silver Creek.

Taylor has been a party to litigation known as "the Little Colorado River adjudication" for almost 50 years. The adjudication concerns the adverse claims of the Navajo Nation, the Hopi Tribe, and the San Juan Southern Paiute Tribe. The state superior court manages the adjudication proceedings by watershed. The Silver Creek watershed was chosen as the first to go to trial in the adjudication proceedings, creating an enormous and unsustainable expense for Taylor and its neighboring water users. Litigation in the Silver Creek watershed was temporarily stayed in 1994 when settlement negotiations with the Navajo and Hopi began. The court has reopened litigation, and if the Act is not supported, it will extend the financial burden of individuals, towns, cities, and water providers in the region for years to come.

The proposed Northeastern Arizona Indian Water Rights Settlement Act follows years of negotiations and discussions among the principal non-Indian stakeholders in Northeastern Arizona and the Tribes. It will finally resolve the water rights claims of the Tribes, which have been a source of contention and litigation for too long. Approval of the settlement will mark the end of this long-standing issue, providing water certainty both to the Tribes and to the communities near Tribal lands. It will also save small communities like Taylor the unbearable cost of litigation expenses. Ending the litigation and providing water security will pave the way for a more sustainable and prosperous future for northeastern Arizona.

The Northeastern Arizona Indian Water Rights Settlement Agreement, when enacted, will provide \$5 billion for water projects (mostly drinking water) for the Tribes. We recognize that \$5 billion is a lot of money but we believe that it is important to provide drinking water to Tribal residents. In contrast, we strongly oppose any efforts by non-Indian parties such as the City of Flagstaff to use this legislation to obtain funding for non-tribal purposes. There should be no additions to the legislation.

The settlement agreement includes, among other things, the Navajo, Hopi, and San Juan Southern Paiute Tribes' commitments not to object to certain off-reservation uses of water, such as groundwater pumping, existing surface water diversions, and water storage reservoirs. In return, passage of the Act will provide the Tribes with water from various sources, including Colorado River water, thereby reducing competition among the Tribes and off-reservation communities for scarce water resources. These commitments are a significant step towards ensuring the region's fair and sustainable distribution of water resources.

The Town of Taylor urges you to continue supporting the Northeastern Arizona Indian Water Rights Settlement Act.

Sincerely,

HON. SHAWN PALMER, MAYOR

CITY OF WINSLOW, ARIZONA
September 16, 2024

RE: H.R. 8940—THE NORTHEASTERN ARIZONA INDIAN WATER RIGHTS
SETTLEMENT ACT

Dear Senator Kelly:

On behalf of the City of Winslow, its council and residents, I want to express our gratitude for sponsoring the Northeastern Arizona Indian Water Rights Settlement Act.

The City of Winslow incorporated in 1900, but its origins trace back to 1880 when it served as a key railroad stop along the Atlantic and Pacific Railroad line. The City then became a popular stop along Route 66, earning Winslow its mention in the Eagles' song "Take it Easy." Beyond its pop culture appeal, Winslow boasts beautiful natural landscapes, including the nearby Meteor Crater, the best-preserved impact site on Earth. Now accessible by Interstate 40, Winslow's economy is transitioning from its historical reliance on Route 66 tourism and railroad transportation to warehousing, distribution centers and manufacturing facilities. The Winslow Industrial and Commerce Park is an example of public-private business innovation, with the potential to create a significant number of jobs and attract substantial investment.

The future of Winslow's economy is promising, but the City needs a legally reliable water supply.

For almost 50 years, Winslow and others in northeastern Arizona have defended their water rights in what is known as "the Little Colorado River adjudication," a court case involving the adverse claims of the Navajo, Hopi and San Juan Southern Paiute Tribes. Winslow has also actively participated in efforts to reach a settlement in the adjudication proceedings.

The Northeastern Arizona Indian Water Rights Settlement Act is the result of years of negotiations and settlement discussions among the principal stakeholders in northeastern Arizona and the Tribes. It will finally resolve the water rights claims of the Tribes, which have been a source of contention and litigation. Approval of the settlement will mark the end of this long-standing issue, providing water certainty both to the Tribes and to the communities near tribal lands, paving the way for a more sustainable and prosperous future for northeastern Arizona.

The benefits of the settlement extend beyond Winslow. Nearby communities, including those near the Navajo, Hopi, and San Juan Southern Paiute reservations, will also experience positive changes. These off-reservation communities, which have long-standing relationships with the Tribes, have been adversely affected by the water rights litigation, straining resources and hindering potential development for many years. The settlement will resolve these issues.

The Northeastern Arizona Indian Water Rights Settlement Agreement, when enacted, will provide \$5 billion for water projects (mostly drinking water) for the Tribes. We recognize that \$5 billion is a lot of money but we believe that it is important to provide drinking water to Tribal residents. In contrast, we strongly oppose any efforts by non-Indian parties such as the City of Flagstaff to use this legislation to obtain funding for non-tribal purposes. There should be no additions to the legislation.

The settlement agreement includes, among other things, the Tribes' commitments not to object to certain off-reservation uses of water, such as groundwater pumping, existing surface water diversions, and enjoyment of reservoirs such as the popular Clear Creek Reservoir near Winslow. In return, passage of the Act will provide the Tribes with water from various sources, including Colorado River water, thereby reducing competition among the Tribes and offreservation communities for scarce water resources in the area.

The City of Winslow urges you to continue supporting the Northeastern Arizona Indian Water Rights Settlement Act. By lending your support to the Northeastern Arizona Indian Water Rights Settlement Act, you are contributing to the end of nearly 50 years of litigation and helping Arizona achieve the most significant water rights settlement in the history of the United States. This historic act will benefit northeastern Arizona, and its passage is vital for building strong communities on and off tribal lands.

Sincerely,

HON. ROBERTA "BIRDIE" CANO, MAYOR

FLYING M RANCH LLLP
September 17, 2024

RE: S. 4633—NORTHEASTERN ARIZONA WATER RIGHTS SETTLEMENT ACT

Dear Senator Kelly,

As partners in the Flying M Ranch, we are writing to thank you for sponsoring the Northeastern Arizona Indian Water Rights Settlement Act. This Act is not just a legal matter but a crucial lifeline for our operations and the future of our community, especially in the face of pressing water rights issues.

The Flying M Ranch, a family legacy since 1914, stands as a testament to sustainable ranching in northeastern Arizona. Encompassing 93,000 acres in northern Arizona's Coconino County, this working ranch is home to 900 cattle and is deeply committed to environmental stewardship. The Metzger family, owners of the Flying M Ranch, champion holistic range management practices, utilizing electric fences to promote pasture regeneration and to maintain the delicate balance of the ecosystem.

Without water, the Ranch cannot operate and the surrounding national and state public lands will suffer. Flying M Ranch has two lakes and almost 100 earthen ponds that are used by cattle and wildlife. The lakes include Morton Reservoir and Kinnikinick Lake, both not only important to the Ranch, but public recreation facilities and forest management resources for the State of Arizona and the Coconino National Forest.

The Flying M Ranch is more than just a cattle operation; it's a vital partner in the Diablo Trust. This innovative collaboration, founded over 30 years ago, unites ranchers, conservationists, and agencies in a shared mission to preserve the region's unique landscape. Through scientific research, monitoring, and collaborative land management, the Diablo Trust works tirelessly to ensure the health of grasslands, restore wildlife populations, and educate the public about the importance of working lands in the Southwest. The Flying M Ranch, with its rich history and commitment to sustainability, exemplifies the positive impact that ranching can have on both the environment and the community.

An environmental and practical challenge that Flying M Ranch has struggled with over the past few years is relentless drought. On top of that, it has faced expensive and seemingly unending water litigation for almost 50 years. Without a settlement of tribal claims, that litigation will likely continue for many more years.

The Northeastern Arizona Indian Water Rights Settlement Act will finally end the decades of litigation. This historic Act will approve an agreement among the principal stakeholders in northeastern Arizona, finally resolving the water right claims of the Navajo Nation, the Hopi Tribe, and the San Juan Southern Paiute Tribe. Approval of the settlement will not only provide water certainty both to the Tribes and to the water users near tribal lands, including Flying M Ranch, but will also secure a prosperous future for our shared community.

The Northeastern Arizona Indian Water Rights Settlement Agreement, when enacted, will provide \$5 billion for water projects (mostly drinking water) for the Tribes. We recognize that \$5 billion is a lot of money but we believe that it is important to provide drinking water to Tribal residents. In contrast, we strongly oppose any efforts by non-Indian parties such as the City of Flagstaff to use this legislation to obtain funding for non-tribal purposes. There should be no additions to the legislation.

In addition to resolving the litigation, the settlement agreement includes commitments by the Tribes to not object to certain off-reservation uses of surface water and groundwater. This means that Flying M Ranch's lakes and stockponds necessary for ranch and wildlife management will not be challenged by the Tribes. As drought continues, ranches such as the Flying M may need to rely more on groundwater—and the Tribes will waive objections to our groundwater pumping.

The agreements in the Act are not just about the present, but about securing a future for the farming and ranching industry in northeastern Arizona, a future that is crucial to our collective prosperity and the sustainability of our region.

Your continued support is needed to end the ongoing litigation and water insecurity issues in northeastern Arizona. We thank you for considering our comments and welcome you to visit our ranch sometime.

Sincerely,

DIANA M. KESSLER; KIT METZGER

FOREST LAKES DOMESTIC WATER IMPROVEMENT DISTRICT

September 17, 2024

RE: S. 4633—NORTHEASTERN ARIZONA WATER RIGHTS SETTLEMENT ACT

Dear Senator Kelly:

As Treasurer of the Forest Lakes Domestic Water Improvement District Board, I want to express our gratitude for sponsoring the Northeastern Arizona Indian Water Rights Settlement Act.

The District serves Forest Lakes, a small unincorporated community in Coconino County. Forest Lakes is primarily a seasonal community where retirees and tourists visit to enjoy the cooler summer weather in the Mogollon Rim and the nearby recreational lakes, streams, and hiking trails. The District provides water to the community with a groundwater well system.

Despite our small size and the seasonal nature of our customers' needs, the District is facing significant challenges in protecting our water rights. A portion of our service area falls within the Little Colorado River watershed which lies within Arizona's 2nd Congressional District. The magnitude of impending water rights issues cannot be overstated.

The District (and its predecessor organizations) has been embroiled in a legal battle known as "the Little Colorado River adjudication" for nearly half a century. The bulk of this decades-long adjudication proceeding revolves around the adverse claims of the Navajo Nation, the Hopi Tribe, and the San Juan Southern Paiute Tribe. The prolonged nature of this litigation underscores the pressing need for resolution.

The proposed Northeastern Arizona Indian Water Rights Settlement Act follows years of negotiations and discussions among the principal non-Indian stakeholders in Northeastern Arizona and the Tribes. It will finally resolve the water rights claims of the Tribes, which have been a source of contention and litigation in the Little Colorado River watershed for too long. Approval of the settlement will mark the end of this long-standing issue, providing water certainty both to the Tribes and to the communities near Tribal lands. It will also save small water providers like us the unsustainable cost of litigation. Ending the litigation and providing water security will pave the way for a more sustainable and prosperous future for northeastern Arizona.

The Northeastern Arizona Indian Water Rights Settlement Agreement, when enacted, will provide \$5 billion for water projects (mostly drinking water) for the Tribes. We recognize that \$5 billion is a lot of money but we believe that it is important to provide drinking water to Tribal residents. In contrast, we strongly oppose any efforts by non-Indian parties such as the City of Flagstaff to use this legislation to obtain funding for non-tribal purposes. There should be no additions to the legislation.

The settlement agreement includes, among other things, the Navajo, Hopi, and San Juan Southern Paiute Tribes' commitments not to object to certain off-reservation uses of water, such as groundwater pumping, existing surface water diversions, and water storage reservoirs. In return, passage of the Act will provide the Tribes with water from various sources, including Colorado River water, thereby reducing competition among the Tribes and off-reservation communities for scarce water resources. These commitments are a major step towards ensuring the region's fair and sustainable distribution of water resources.

The Forest Lakes Domestic Water Improvement District urges you to continue supporting the Northeastern Arizona Indian Water Rights Settlement Act. This historic Act, which will benefit Northeastern Arizona and the Tribes, is crucial for building strong communities on and off Tribal lands. By supporting this Act, you are not only contributing to the well-being and prosperity of our community and the Tribes but also positively impacting our shared future. Your support will bring about tangible benefits for all involved.

Please visit Forest Lakes sometime and we'll show you our water system.

Sincerely,

JOE TAYLOR, TREASURER OF THE BOARD OF DIRECTORS

GROVER'S HILL IRRIGATION DISTRICT

September 17, 2024

Re: S. 4633—Northeastern Arizona Water Rights Settlement Act

Dear Senator Kelly,

As Secretary/Treasurer of the Grover's Hill Irrigation District's Board of Directors, I want to thank you for sponsoring the Northeastern Arizona Indian Water Rights Settlement Act.

Once known as the Lyman Water Company, Grover's Hill Irrigation District delivers irrigation water to landowners in and around St. Johns via more than 16 miles of ditches and pipelines from Lyman Lake, a manmade irrigation storage reservoir built on the Little Colorado River in 1911. With its shoreline managed by Arizona State Parks, Lyman Lake is a critical water source for farmers and homeowners in Apache County and a popular recreational destination for tourists visiting the area.

Apache County faces challenges unique to other areas of the state. Surface water is fully appropriated, meaning groundwater is the only "new" water source. Economically, the county is among the nation's most impoverished counties and ranked third nationally for food insecurity—primarily because so much of its land is public or tribal. Faced with these obstacles, irrigation water providers such as Grover's Hill Irrigation District place great value on the surface water and groundwater to which they are legally entitled. Its water deliveries are a lifeline to District member farmers, businesses, and homeowners who are the county's economic backbone.

The District has been a party to water adjudication proceedings since the 1970s. Adverse tribal water claims are the bulk of the litigation. An advocate for settlements instead of protracted, expensive litigation, the District helped negotiate the Zuni Indian Tribe Water Rights Settlement Act of 2003, PL 108-34, 117 Stat. 782 (June 23, 2003), to which it is a party. In 2010, the White Mountain Apache Tribe's claims were settled. The remaining Indian water claims in the adjudication are those of the Navajo Nation, the Hopi Tribe, and the San Juan Southern Paiute Tribe. The District has been in settlement negotiations with them since 1994.

The Northeastern Arizona Indian Water Rights Settlement Act will approve a historic settlement among the principal stakeholders in Northeastern Arizona. This Act, after thirty years of settlement efforts, will finally resolve the remaining Indian water rights claims and end decades of litigation. Your support for this Act is crucial in bringing about this significant change.

Water and money are scarce here in Apache County, but the passage of the Act can bring much-needed relief. As a public body serving local taxpayers and property owners, the Grover's Hill Irrigation District is confident that the Act is in the best interest of its members and Northeastern Arizona as a whole. By providing water certainty to tribal and non-tribal water users, the Act will pave the way for significant economic development throughout the region. It will also alleviate the strain on resources caused by litigation of tribal water rights, a burden that has hindered communities in the area for too long. The Act will also provide the Tribes with water from various sources, including Colorado River water, thereby reducing competition among the Tribes and off-reservation communities for scarce water resources in the area.

The Northeastern Arizona Indian Water Rights Settlement Agreement, when enacted, will provide \$5 billion for water projects (mostly drinking water) for the Tribes. We recognize that \$5 billion is a lot of money but we believe that it is important to provide drinking water to Tribal residents. In contrast, we strongly oppose any efforts by non-Indian parties such as the City of Flagstaff to use this legislation to obtain funding for non-tribal purposes. There should be no additions to the legislation.

On behalf of the Grover's Hill Irrigation District, I strongly urge you to continue to support the Northeastern Arizona Indian Water Rights Settlement Act. This historic Act greatly benefits Northeastern Arizona, and its passage is vital for building strong communities on and off tribal lands.

Sincerely,

TREHARNE PLATT, SECRETARY/TREASURER

J ALBERT BROWN RANCHES, INC.
September 17, 2024

RE: S. 4633—NORTHEASTERN ARIZONA WATER RIGHTS SETTLEMENT ACT

Dear Senator Kelly:

As president and manager of J. Albert Brown Ranches, Inc., I thank you for sponsoring the Northeastern Arizona Indian Water Rights Settlement Act.

There's a saying in Arizona's ranching community: You need more lawyers than ranch hands to stay in business. With at least half of our family licensed to practice law, there's a stark reality to that quip. For most of their careers, our family's law-

yers have grappled with the ongoing water litigation that J. Albert Brown Ranches and its neighbors face.

The litigation involves the Navajo Nation, the Hopi Tribe, and the San Juan Southern Paiute Tribe, all of which have claims to water rights that are adverse to non-Indian water users in the Little Colorado River watershed. Since 1994, our Ranch and attorneys have been in the negotiations and discussions leading up to a potential settlement of the Tribal claims. We are hopeful that if passed, the Act will not only resolve decades of litigation but also provide water security for all of us—whether Indian or non-Indian—in northeastern Arizona.

For some background, J. Albert Brown Ranch is a working cattle ranch in Apache County. Started over 100 years ago by Joseph Albert Brown and his wife, Elda Whiting Brown, the family-owned and operated Ranch is in its 5th generation of the Brown family. My grandfather, Jack A. Brown, served in the Arizona State Legislature for 36 years and was known as the “cowboy legislator.”

The Ranch spans about 85,000 acres of land, which includes federal and state leases and deeded acreage. Water supply throughout the range comes from various sources, including springs, wells, and stockponds. The water supply is critical for ranch operations, wildlife, wildfire suppression and rangeland health. Ongoing drought has been a significant challenge over the past several years, making access to the Ranch’s water sources more critical than ever. Like others in the region, the Ranch may need to rely more on groundwater than springs and natural drainage if the drought continues.

Drought is not the only challenge. For several decades, J. Albert Brown Ranches has faced enormously expensive and seemingly unending water litigation. As I mentioned, this litigation stems from the complex and long-standing water rights disputes with the Tribes. Without a settlement of these Tribal claims, the litigation will likely continue for years, posing a significant threat to the region’s water security and economic stability.

The approval of the Northeastern Arizona Indian Water Rights Settlement Act is crucial. It will not only provide water certainty to the Tribes and water users near tribal lands but also ensure the sustainability of local agriculture, businesses, and communities. The settlement agreement includes several essential commitments by the Tribes, which have agreed to not object to certain off-reservation uses of surface water and groundwater. There will be no Tribal objections to existing surface water diversions and off-reservation storage and reservoir systems. The Tribes will waive objections to our groundwater pumping.

The Northeastern Arizona Indian Water Rights Settlement Agreement, when enacted, will provide \$5 billion for water projects (mostly drinking water) for the Tribes. We recognize that \$5 billion is a lot of money but we believe that it is important to provide drinking water to Tribal residents. In contrast, we strongly oppose any efforts by non-Indian parties to use this legislation to obtain funding for non-tribal purposes. There should be no additions to the legislation.

The agreements in the Act are not just about the present but about securing a future for northeastern Arizona. They will end ceaseless litigation and worries about water rights, helping stakeholders plan for their futures. The settlement is a win-win situation, providing water certainty to the Tribes and water users near Tribal lands, and ensuring the sustainability of local agriculture, businesses, and communities. This future is within our reach with your support.

J. Albert Brown Ranches is an example of how Arizona’s families contribute to the local economy, provide public service, and maintain values important to our communities. We deeply value your support and hope you will continue to join our family in advocating for this urgently needed settlement. We are located in the heart of Apache County. Please come visit sometime.

Sincerely,

JACKSON BROWN, PRESIDENT/MANAGER

LAKESIDE IRRIGATION COMPANY, INC.

September 17, 2024

RE: S. 4633—NORTHEASTERN ARIZONA WATER RIGHTS SETTLEMENT ACT

Dear Senator Kelly:

On behalf of the Lakeside Irrigation Company, I want to thank you for sponsoring the Northeastern Arizona Indian Water Rights Settlement Act.

The Lakeside Irrigation Company is a small water company that has been serving farms and homes in the Lakeside area since 1898 and probably earlier. Started by pioneers who settled the region, the company pipes water from Adair Springs for two miles for delivery to about fifty shareholder property owners in Lakeside.

Despite being a small water company, we play a crucial role in the lives of our shareholders, who rely on us to provide water for their farms, orchards, and gardens. Our journey has not been without challenges, including reduced output from the springs due to ongoing drought, the need to convert open ditches to pipelines to conserve water, and the ongoing battle to defend our right to use the water that we have relied on for over 125 years.

For nearly half a century, Lakeside Irrigation Company has had to contend with a water trial known as “the Little Colorado River adjudication.” The bulk of this decades-long adjudication proceeding revolves around the adverse claims of the Navajo Nation, the Hopi Tribe, and the San Juan Southern Paiute Tribe. Litigation is expensive, and it is difficult for the Lakeside Irrigation Company to continue with never-ending litigation. Like other stakeholders in the watershed, the Lakeside Irrigation Company has always believed that settlement, rather than protracted litigation, is the best way to resolve conflicting water claims.

The proposed Northeastern Arizona Indian Water Rights Settlement Act follows years of negotiations and discussions among the principal non-Indian stakeholders in Northeastern Arizona and the Tribes, including the active participation of the Lakeside Irrigation Company. It will finally resolve the water rights claims of the Tribes, which have been a source of contention and litigation in the Little Colorado River watershed for too long. Approval of the settlement will mark the end of this long-standing issue, providing water certainty both to the Tribes and to the communities near Tribal lands. It will also save small water providers like us the cost of litigation, which is difficult to sustain. Ending the litigation and providing water security will pave the way for a more sustainable and prosperous future for northeastern Arizona.

The Northeastern Arizona Indian Water Rights Settlement Agreement, when enacted, will provide \$5 billion for water projects (mostly drinking water) for the Tribes. We recognize that \$5 billion is a lot of money but we believe that it is important to provide drinking water to Tribal residents. In contrast, we strongly oppose any efforts by non-Indian parties such as the City of Flagstaff to use this legislation to obtain funding for non-tribal purposes. There should be no additions to the legislation.

The settlement agreement includes, among other things, the Navajo, Hopi, and San Juan Southern Paiute Tribes’ commitments not to object to certain off-reservation uses of water, such as groundwater pumping, existing surface water diversions, including capturing spring water, and water storage reservoirs. In return, passage of the Act will provide the Tribes with water from various sources, including Colorado River water, thereby reducing competition among the Tribes and off-reservation communities for scarce water resources. These commitments are a significant step towards ensuring the region’s fair and sustainable distribution of water resources.

The Lakeside Irrigation Company urges you to continue supporting the Northeastern Arizona Indian Water Rights Settlement Act. This historic Act, which will benefit Northeastern Arizona and the Tribes, is crucial for building strong communities on and off Tribal lands. By supporting this Act, you are not only contributing to the well-being and prosperity of our community and the Tribes but also positively impacting our shared future. Your support will bring about tangible benefits such as increased water security, reduced litigation costs, and improved relations among all stakeholders. These are just a few examples of the many positive outcomes this Act will bring.

Please visit us sometime.

Sincerely,

JEROME HUERTA, SECRETARY

TOWN OF SNOWFLAKE, ARIZONA
September 17, 2024

Dear Senator Kelly:

On behalf of the citizens of the Town of Snowflake, I want to thank you for sponsoring the Northeastern Arizona Indian Water Rights Settlement Act.

Snowflake is a bridge between the past and the future. Visit us, and you’ll see a peaceful pastoral community dotted with historic homes open for tours. Founded in 1878 by Mormon pioneers Erastus Snow and William Jordan Flake, the town is in Navajo County, near Silver Creek. While Snowflake honors its pioneer heritage with events like Pioneer Days, it is also a town embracing the future. It has become a hub for renewable energy projects, including wind farms and a biomass power plant. A 40-acre greenhouse facility, Copperstate Farms, adds to the town’s eco-

conomic diversity. With infrastructure like the Apache Railway, which connects to the BNSF mainline, and the abundant Coconino Aquifer, Snowflake expects continued growth and development. The town's commitment to progress while preserving its rich history makes it a truly unique and attractive place to live and visit.

Like the Town of Taylor that borders it, Snowflake has for the past few decades been a party to litigation known as "the Little Colorado River adjudication." The adjudication concerns the adverse claims of the Navajo Nation, the Hopi Tribe, and the San Juan Southern Paiute Tribe. The Silver Creek watershed, of which Snowflake is a part, was chosen as the first to go to trial in the Little Colorado River adjudication proceedings, creating an enormous expense for Snowflake and its neighboring water users. Litigation in the Silver Creek watershed was temporarily stayed in 1994 when settlement negotiations with the Navajo and Hopi began. The court has reopened litigation, and if the Act is not supported, it will extend the financial burden of individuals, towns, cities, and water providers in the region for years to come.

The proposed Northeastern Arizona Indian Water Rights Settlement Act, the result of years of negotiations and discussions, will finally resolve the water rights claims of the Tribes. These claims, a source of court proceedings for too long, will mark the end of the litigation with the Tribes, providing water certainty both to the Tribes and to the communities near Tribal lands. It will also save small communities like Snowflake from the relentless, financially choking cost of litigation expenses. Together, water security and freedom from the adjudication brighten the future of northeastern Arizona, bringing a sense of relief and hope to our community.

The Northeastern Arizona Indian Water Rights Settlement Agreement, when enacted, will provide \$5 billion for water projects (mostly drinking water) for the Tribes. We recognize that \$5 billion is a lot of money but we believe that it is important to provide drinking water to Tribal residents. In contrast, we strongly oppose any efforts by non-Indian parties such as the City of Flagstaff to use this legislation to obtain funding for non-tribal purposes. There should be no additions to the legislation.

In the settlement, the Navajo, Hopi, and San Juan Southern Paiute Tribes agree that they will not object to certain off-reservation uses of water, such as groundwater pumping, existing surface water diversions, and water storage reservoirs. In return, passage of the Act will provide the Tribes with water from various sources, including Colorado River water, thereby reducing competition among the Tribes and off-reservation communities for scarce water resources. These commitments are not just a step, they are a significant stride towards ensuring the region's fair and sustainable distribution of water resources, underlining the importance of your support in this crucial issue.

The Town of Snowflake urges you to continue to support the Northeastern Arizona Indian Water Rights Settlement Act. This historic Act, which will benefit both Northeastern Arizona and the Tribes, is a testament to our shared commitment to building strong communities on and off Tribal lands.

Sincerely,

HON. BYRON LEWIS, MAYOR

TOWN OF SPRINGERVILLE, ARIZONA
September 17, 2024

RE: S. 4633—NORTHEASTERN ARIZONA WATER RIGHTS SETTLEMENT ACT

Dear Senator Kelly:

As mayor of the Town of Springerville, I thank you on behalf of myself and the Town Council for sponsoring the much-needed Northeastern Arizona Indian Water Rights Settlement Act. This critical legislation will solve problems that have faced communities like Springerville for decades.

Dubbed "The Gateway to the White Mountains," Springerville is a hidden gem in northeastern Arizona. Founded in 1879 and incorporated in 1948, this town of 2,000 residents offers a unique blend of small-town charm and diverse economic drivers. Visitors and businesses alike are drawn to its stunning four-season climate, ranging from crisp 20-degree winters ideal for skiing at nearby Sunrise Park Resort to sunny 90-degree summers perfect for exploring the Apache-Sitgreaves National Forest. Springerville boasts excellent infrastructure, including a full-service hospital, K-12 schools, a community college, and a municipal airport, making it an attractive location for families, entrepreneurs, and tourists.

Springerville has been grappling with a costly and protracted legal battle: a nearly 50-year-old lawsuit over competing water rights claims involving the Navajo Nation, the Hopi Tribe, and the San Juan Southern Paiute Tribe. This ongoing litigation

tion has drained the town's resources and cast a shadow over its ability to secure a sustainable water future. While past attempts at resolution have faltered, the proposed Northeastern Arizona Indian Water Rights Settlement Act offers hope.

The proposed Act, a culmination of years of negotiations, holds the promise of finally resolving the Tribes' water rights claims. Its enactment will not only bring an end to the divisive and costly litigation but also provide a much-needed sense of water security for the Tribes and neighboring communities like Springerville. This, in turn, will usher in a new era of stability and prosperity.

The Northeastern Arizona Indian Water Rights Settlement Agreement, when enacted, will provide \$5 billion for water projects (mostly drinking water) for the Tribes. We recognize that \$5 billion is a lot of money but we believe that it is important to provide drinking water to Tribal residents. In contrast, we strongly oppose any efforts by non-Indian parties such as the City of Flagstaff to use this legislation to obtain funding for non-tribal purposes. There should be no additions to the legislation.

Under the settlement terms, the Navajo, Hopi, and San Juan Southern Paiute Tribes agree to refrain from objecting to specific off-reservation water uses, including groundwater pumping, existing surface water diversions, and water storage reservoirs. In exchange, the passage of the Act will provide the Tribes with water from various sources, notably Colorado River water. This provision is crucial to satisfying the Tribes' water needs and alleviating competition for limited resources among the Tribes and nearby non-Indian communities.

The Town of Springerville urges your continued support for the Northeastern Arizona Indian Water Rights Settlement Act. Thank you for your assistance.

Sincerely,

HON. SHELLY REIDHEAD, MAYOR

CITY OF ST. JOHNS, ARIZONA
September 17, 2024

RE: S. 4633—NORTHEASTERN ARIZONA WATER RIGHTS SETTLEMENT ACT

Dear Senator Kelly:

On behalf of the City of St. Johns, I want to thank you for sponsoring the Northeastern Arizona Indian Water Rights Settlement Act.

St. Johns is the Apache County seat, but perhaps more important to its residents, it is a close-knit community of friendly neighbors, once known as *El Vadito* (Little River Crossing) by Spanish explorers, has a rich history that we are proud of. The City was founded as a farming community on the banks of the Little Colorado River, serving as a vital stop on the route from Phoenix to Albuquerque. Today, St. Johns continues to honor its agricultural heritage while embracing modernity with two major power plants and other businesses.

St. Johns is a gateway to Arizona's spectacular natural wonders. Within an hour's drive, visitors can explore Native American reservations, ancient archaeological sites, the Petrified Forest National Park, and the unique Painted Desert. Nearby Lyman Lake State Park offers plenty of boating, fishing, and camping opportunities for outdoor enthusiasts.

Little Colorado River water is essential to St. Johns. River water is impounded at Lyman Dam and then delivered by the St. Johns Irrigation Company and the Grover's Hill Irrigation District to farms and homes in the City limits. These two entities hold water rights under the Norviel Decree issued by the Apache County Superior Court in 1918. Additionally, St. Johns relies on groundwater for its municipal potable water supply.

With virtually every drop of upper Little Colorado River surface water appropriated, water is a vital resource for St. Johns and its people. Like other municipalities in Northeastern Arizona, the City has shouldered an enormous financial burden in water rights litigation that has spanned almost 50 years. The bulk of the litigation concerns the adverse claims of the Navajo Nation, the Hopi Tribe, and the San Juan Southern Paiute Tribe.

The proposed Northeastern Arizona Indian Water Rights Settlement Act follows years of negotiations and discussions among the principal non-Indian stakeholders in Northeastern Arizona and the Tribes. It will finally resolve the Tribes' water rights claims, which have been a source of contention and litigation for decades. Approval of the settlement will mark the end of this long-standing issue, providing water certainty both to the Tribes and to the communities near Tribal lands, paving the way for a more sustainable and prosperous future for northeastern Arizona.

The settlement's benefits extend beyond the St. Johns city limits. Nearby communities, including those near the Navajo, Hopi, and San Juan Southern Paiute res-

ervations, will also experience positive changes. These off-reservation communities, which have long-standing relationships with the Tribes, have been adversely affected by the water rights litigation, straining resources and hindering potential development for many years. By resolving these issues, the settlement will pave the way for these communities to flourish.

The Northeastern Arizona Indian Water Rights Settlement Agreement, when enacted, will provide \$5 billion for water projects (mostly drinking water) for the Tribes. We recognize that \$5 billion is a lot of money but we believe that it is important to provide drinking water to Tribal residents. In contrast, we strongly oppose any efforts by non-Indian parties such as the City of Flagstaff to use this legislation to obtain funding for non-tribal purposes. There should be no additions to the legislation.

The settlement agreement includes the Tribes' commitments not to object to certain off-reservation water uses, such as groundwater pumping, existing surface water diversions, and water storage reservoirs. In return, passage of the Act will provide the Tribes with water from various sources, including Colorado River water, thereby reducing competition among the Tribes and off-reservation communities for scarce water resources in the area.

The City of St. Johns thanks you for your support to the Northeastern Arizona Indian Water Rights Settlement Act. This historic Act will benefit Northeastern Arizona, and its passage is vital for building strong communities on and off Tribal lands.

Please stop by. We're a friendly place, and we will enjoy visiting you.

Sincerely,

HON. SPENCE UDALL, MAYOR

STATE OF ARIZONA
September 20, 2024

RE: NORTHEASTERN ARIZONA INDIAN WATER RIGHTS SETTLEMENT ACT OF 2024
(S. 4633)

Dear Chairman Schatz and Vice Chairwoman Murkowski:

I am pleased to express my strong support for S. 4633, the Northeastern Arizona Indian Water Rights Settlement Act of 2024. This important legislation approves and authorizes a comprehensive settlement of the water rights claims of the Navajo Nation, Hopi Tribe and San Juan Southern Paiute Tribe in Arizona. Settling the outstanding tribal water rights claims in Arizona is a priority for the State, and enactment of this legislation is a critical step in achieving that goal.

The three Tribes have some of the largest outstanding tribal water rights claims in Arizona, including claims to the Colorado River, in-state surface water and groundwater. The settlement of these claims will end decades of conflict and litigation, provide certainty to the Tribes and other water users regarding their water rights, and ensure reliable, secure and safe water supplies for the three Tribes.

Many homes on the three Reservations lack access to clean running water, a basic human necessity. The settlement will help alleviate this situation by providing the Tribes with rights to reliable and sustainable water supplies, and by providing funding for the construction and operation of much needed infrastructure projects to treat and deliver the water to communities on the three Reservations. Enactment of the legislation by Congress will therefore contribute to the process of ensuring that all Arizonans have access to clean running water in their homes and protect against future public health crises.

The historic and generational impact of this settlement cannot be overstated, for its significance in securing a sustainable water supply, supporting the establishment of tribal homelands, and affirming the sovereignty of these tribal nations.

This settlement is the result of the tireless efforts of the three Tribes, the State of Arizona, municipalities and numerous water users and communities in the state. I would like to thank all the parties for their hard work on the settlement, Senator Kelly and Senator Sinema for their sponsorship, and the Senate Committee for hearing this legislation which is of such great importance to the State of Arizona.

Sincerely,

HON. KATIE HOBBS, GOVERNOR

THE NAVAJO NATION
May 24, 2024

RE: CMY-26-24 AN ACTION RELATING TO RESOURCES AND DEVELOPMENT, BUDGET AND FINANCE, AND NAABIK'ÍYÁTI' COMMITTEES AND THE NAVAJO NATION COUNCIL; APPROVING THE NORTHEASTERN ARIZONA INDIAN WATER RIGHTS SETTLEMENT AGREEMENT; APPROVING A LIMITED WAIVER OF SOVEREIGN IMMUNITY TO ALLOW THE NAVAJO NATION TO BE JOINED AS A PARTY IN CERTAIN ACTIONS; CONSENTING AND CONDITIONALLY APPROVING ASSOCIATED RIGHTS-OF-WAY AND WAIVING ASSOCIATED TAXES REQUIRES UNDER NAVAJO LAW; REQUESTING WAIVERS OF SECTIONS CONTAINED IN 25 C.F.R. PART 169; AND APPROVING A SIDE AGREEMENT CONCERNING C-AQUIFER PUMPING

Dear Honorable Delegates of the 25th Navajo Nation Council,

This is a historic resolution. It approves the water rights settlement agreement for the all of the Navajo Nation's water rights within Arizona and is a comprehensive settlement that includes the Hopi Tribe and the San Juan Southern Paiute Tribe.

The Navajo Nation stands in unanimity on securing water rights for the Navajo Nation. The Navajo Nation Council voted unanimously to approve this settlement as part of consent agenda that included the Rio San José Stream System water rights settlement as well. I am proud to sign this resolution into law within twenty-four hours of its passage. The Hopi Tribal Council passed its approving resolution on May 20, 2024, with a vote of 15 in favor and 0 opposed and the San Juan Southern Paiute Tribe approved the settlement on May 24, 2024, with a vote of 6 in favor, 0 opposed, and 1 abstention.

This settlement has been years in the making. Formal discussions started in 1994 and various attempts have been made to reach this settlement. We have never been this close. Importantly, this current effort is tribally lead.

The settlement secures enforceable water rights and includes a substantial funding request of Congress. Importantly, it calls for the need to address some Law of the Colorado River matters that currently prevent the Navajo Nation from diverting and moving water where it is needed on the Navajo Nation.

As we know, the next step is to work with our Congressional Delegation and all members of Congress in passing the necessary legislation to authorize the United States Department of the Interior to sign the agreement, provide the necessary funding, and address the Law of the Colorado River matters. I am confident that our Congressional Delegation understands the historic nature of this settlement and will work with us to obtain quick passage of federal legislation. If any changes are made to the settlement the Navajo Nation Waters Rights Commission is delegated the authority to make necessary technical and conforming changes to the settlement agreement. The settlement agreement would then go to the Attorney General and the President to execute the conformed settlement agreement.

While we have another road to go down, today is a historic achievement. I look forward to standing in unanimity with the Navajo Nation Council on future endeavors to meet the needs of the Navajo People.

Sincerely,

DR. BUU NYGREN, PRESIDENT

CITY OF FLAGSTAFF
June 4, 2024

RE: LETTER OF SUPPORT FOR PROPOSED NORTHEASTERN ARIZONA INDIAN WATER RIGHTS SETTLEMENT ACT OF 2024

Dear Senators Sinema and Kelly, and Representatives Crane, Schweikert, Gallego, Stanton, Biggs, Ciscomani, Grijalva, Lesko and Gosar:

As Mayor of the City of Flagstaff, I strongly support the Northeastern Arizona Indian Water Rights Settlement Act ("Act"). On June 3, 2024, City Attorney, Sterling Solomon, along with representatives of other parties to the settlement negotiations, executed a joint letter in support of the Northeastern Arizona Indian Water Rights Settlement Agreement and the proposed legislation. Naturally, the Flagstaff City Council must still conduct a final review of the Settlement Agreement with exhibits, as well as the proposed legislation, and make an independent decision at a

future date. However, in the meantime, I want to share the City's strong support in advancing the proposed settlement legislation.

As you know, there is a critical need for regional water supply projects in Northeastern Arizona, not only for the Navajo Nation, the Hopi Tribe and the San Juan Southern Paiute Tribe, but also for the City of Flagstaff. With over 80,000 residents and more than 6 million visitors each year, Flagstaff continues to manage water wisely through conservation and maintains one of the lowest per person water usage rates in the State. Even with these laudable efforts, the reality of climate variability, wildfires and reduced local groundwater supplies, requires the City to address its pressing water resiliency and water security needs by developing its municipal water supply at Red Gap Ranch, a city-owned property located about 35-miles east of Flagstaff along Interstate 40.

Red Gap Ranch was acquired by the City with 71 percent voter approval in 2004. Since then, the City has invested millions of dollars in designing and developing this Regional Pipeline Project including drilling wells and conducting two detailed feasibility analysis reports with Jacobs Engineering. This Project is designed to deliver 16,000 acre-feet of water per year for the City's municipal needs, with the ability to provide water to customers such as the Navajo Nation, the Hopi Tribe, the Arizona State Land Department (ASLD) and others at various Arizona Department of Transportation (ADOT) connection points at intersections along the Interstate 40 corridor. These locations are currently being designed by Jacobs Engineering in cooperation with ADOT, and with anticipated further input from the ASLD, the Navajo Nation and the Hopi Tribe.

Although not identified in the Act, the Red Gap Ranch Regional Pipeline Project is specifically referenced in the Northeastern Arizona Water Rights Settlement Agreement. Indeed, under the Settlement Agreement, the Navajo Nation may connect to the Regional Pipeline Project to serve additional Navajo Lands at Twin Arrows, near Winona, or at locations that would support supplemental needs in the southwestern area of the Navajo Reservation or at Leupp. Also, under the Settlement Agreement, the Arizona State Land Department and the City will coordinate regarding future pumping on State Lands near Red Gap Ranch.

The City strongly supports federal funding for the requested water supply projects identified by the Navajo Nation, the Hopi Tribe and the San Juan Southern Paiute in the Act. These Tribal water supply projects are critically needed on their respective reservations and are long overdue. Economically viable Tribal communities depend on reliable water supplies. In addition to the Tribal water supply projects, it is imperative that Congress supports federal funding to complete the Red Gap Ranch Regional Pipeline Project. This Regional Pipeline Project is virtually shovel-ready, can be constructed within five (5) years, and the City is willing to meet the cost-share requirements. This Regional Pipeline Project will provide water security for Flagstaff and will benefit other regional participants like the Navajo Nation, the Hopi Tribe, the Arizona State Land Department and other communities in Coconino County.

For details about the Red Gap Ranch Regional Pipeline Project, the status of its development and requested funding, please feel free to contact me directly.

Sincerely,

HON. BECKY DAGGETT, MAYOR

AMERICAN RIVERS
July 16, 2024

RE: SUPPORT OF THE YAVAPAI APACHE NATION SETTling ITS WATER RIGHTS
IN THE STATE OF ARIZONA

Dear Chairman Westerman, Ranking Member Grijalva, and Members of the Committee,

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, D.C. 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/CEO

BUSINESS FOR WATER STEWARDSHIP

Dear Arizona Delegation and Members of Congress:

On behalf of Business for Water Stewardship and signees, we submit this letter in full support of the Yavapai-Apache Nation Water Rights Settlement Act of 2024 (Settlement Act). We are grateful for the leadership of the Arizona Delegation on this critical issue, and we respectfully request that Congress swiftly enact this historic legislation.

The Settlement Act ratifies and funds the recently completed Yavapai-Apache Nation Water Rights Settlement Agreement, which resolves the Nation's water rights claims, brings additional, sustainable water supplies to the Verde Valley, protects local groundwater supplies, and helps keep the Verde River flowing.

The Verde River is one of the last free flowing rivers in the Southwestern U.S., and it is a unique global treasure that has been central to local cultures, economies, community health and identity. However, flows in the river have steadily declined in recent decades due to groundwater pumping and a drying climate. A primary goal of the Nation's Settlement is to help maintain flows in the Verde River for the benefit of the Nation, neighboring communities, water users, and all who rely on a healthy flowing Verde River.

We acknowledge the steadfast leadership of Chairwoman Lewis, the Nation's Tribal Council, Elders, and staff, and all those who came before to achieve this truly historic agreement that will help safeguard the water, future of the Nation, neighboring communities, and all who depend on water provided by a flowing Verde River.

We respectfully ask Congress to take the next step: Enact the Yavapai-Apache Nation Water Rights Settlement Act.

ADDITIONAL LETTER

Dear Chairman Schatz:

This letter is submitted on behalf of Business for Water Stewardship to supplement the hearing record for the Legislative Hearing and Business Meeting held on September 25, 2024, in order to express our concerns with the comments made by Assistant Secretary Newland on behalf of the Department of the Interior (Interior) about the Yavapai-Apache Nation Water Rights Settlement Act of 2024 (S. 4705).

Business for Water Stewardship is a marquee program of the Bonneville Environmental Foundation (BEF) and works hand-in-hand with businesses to advance solutions necessary to sustain the well-being of our communities, economies and rivers. Arizona is a focus of our work, and we work with businesses globally to fund water resilience projects and support environmental water stewardship, planning and policy.

Business for Water Stewardship has a strong partnership with the Yavapai-Apache Nation (Nation) focused on water conservation, protecting local groundwater sources and the health and vitality of the Verde River, which is a remarkable ribbon of life and one of Arizona's last free-flowing rivers. We also support the Nation's decades-long effort to achieve a fair and equitable water rights settlement, which S. 4705 will confirm. To this end, we appreciated Interior's testimony noting that it "strongly supports the resolution of Indian water rights claims through negotiated settlements." We also agree that Indian water settlements, in addition to providing Tribes with safe and reliable water supplies, "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." Indeed, this is precisely what the Yavapai-Apache Nation Water Rights Settlement will accomplish when enacted.

Given our understanding of the history of the Nation's settlement efforts, however, we were confused by Interior's written testimony to this Committee about the

Settlement, particularly Interior's suggestion that (a) the Settlement is the product of only recent negotiations conducted on an expedited timeline; (b) the water to be delivered from the C.C. Cragin Dam and Reservoir for treatment on the Reservation "greatly exceeds" the Nation's projected water demands for domestic, commercial, municipal, and industrial (DCMI) uses; and (c) "upsizing" the Cragin-Verde pipeline to provide imported water to Verde Valley Communities that opt into receiving water from the C.C. Cragin Dam and Reservoir by the statutory deadline should not be supported. Accordingly, Business for Water Stewardship is writing here to respectfully supplement the record in response to Interior's testimony and provide you with our on the ground knowledge of the Nation's settlement.

It is well known and documented that the Yavapai-Apache Nation has been working with the Salt River Project, the State of Arizona, and local communities to negotiate a water rights settlement since at least 2011. To suggest the Nation's settlement is the product of only recent negotiations conducted on an expedited timeline is misinformed.

In 2023, the Nation filed an amended claim in Arizona's Gila River General Stream Adjudication asserting water rights for 11,629 acre-feet per year (AFY) for its existing 1,809 acre Reservation. In the Settlement, however, the Nation agreed to a compromise water budget of no more than 6,888 AFY of water (5,991 AFY in net depletion) to provide for its permanent tribal homeland. Moreover, the Nation will complete an administrative land exchange with the U.S. Forest Service this year, which will restore significant lands to the Reservation that are contiguous to the Nation's Middle Verde District in Camp Verde. The notice of Interior's intent to place these lands into trust has already been issued and the NEPA process is complete. Ultimately, the Nation agreed in the Settlement to serve both its existing and new Reservation lands (totaling 5,106 acres) with its original water settlement budget of 6,888 AFY, including for all existing and future DCMI and other uses on these lands, forever.

The Nation's Reservation (as expanded) will provide important future commercial and economic development opportunities for the Nation and needed goods, services, and jobs for the Verde Valley region. For the Nation to be truly self-sufficient, it must engage in economic development on its new lands to support its Tribal members, maintain its culture, and develop long overdue housing for its people.

To do this, the Nation, like all communities, must have a reliable water supply. We appreciate that the Nation, as part of its Settlement, plans to develop these lands using a sustainable water approach which includes limited groundwater pumping, the use of imported water from the C.C. Cragin Dam and Reservoir, and the development of reclaimed water sources. Therefore, we were confused to see testimony from officials in Washington suggesting that the water to be delivered to the Nation under the Settlement "far exceeds" the Nation's on Reservation water needs for its permanent tribal homeland. This conclusion is contrary to our on the ground knowledge of the facts.

We are also confused by Interior's decision to not support an upsized Cragin-Verde pipeline under S. 4705. Under the Act, local Verde Valley communities will have until December 31, 2029, to undertake the necessary planning steps needed to decide whether it is appropriate for their community to opt into an upsized version of the Cragin-Verde Pipeline under S. 4705. If the Verde Valley communities do not opt in by the deadline, the pipeline will not be upsized, and federal funds will only be authorized and appropriated by Congress to develop a project for the on-Reservation needs of the Nation under the Settlement.

The Nation's settlement is a generational opportunity for the Yavapai and Apache people and for the region as a whole. But the Cragin-Verde Pipeline can only be constructed once, and it cannot be upsized later should Interior realize that its calculus on the pipeline is wrong. In taking this position, Interior may have failed to consider the multitude of federal benefits that can be achieved with an upsized pipeline, including reducing pressure on declining local aquifers and conserving groundwater resources that directly support: (a) the downstream segment of the Verde River designated as a National Wild and Scenic River under the Arizona Wilderness Act of 1984 (P.L. 98-406); (b) two other downstream federally recognized Indian Tribes that rely on the Verde River to help meet their settled water rights (Fort McDowell Yavapai Nation and Salt River Pima-Maricopa Indian Community); and (c) inflows to Bureau of Reclamation's Bartlett Dam and Reservoir, that provides a critical and significant source of water for the fifth largest metropolitan area in the United States (Phoenix).

The Cragin-Verde Pipeline Project was ultimately determined by the Nation, the State of Arizona, the Salt River Project, Reclamation, and the other settling parties to be the best alternative to deliver water to the Nation for Settlement. The enactment of S. 4705 will confirm a long overdue Indian water rights settlement for the

Yavapai-Apache Nation while also providing water certainty to the entire Verde Valley and the United States' federal interests in a sustainable water supply and Verde River. We urge you to enact S. 4705 expeditiously. Business for Water Stewardship appreciates the opportunity to submit these supplemental comments for the record.

Sincerely,

TODD REEVE, CEO, BONNEVILLE ENVIRONMENTAL FOUNDATION; FOUNDER,
BUSINESS FOR WATER STEWARDSHIP

TOWN OF CAMP VERDE
August 23, 2024

RE: REQUEST FOR HEARING ON THE YAVAPAI-APACHE NATION WATER RIGHTS
SETTLEMENT ACT OF 2024 (S.4705)

Dear Chairman Schatz and Vice-Chairman Murkowski:

On behalf of the Town of Camp Verde (Town), I respectfully request the Senate Committee on Indian Affairs hold a hearing on the Yavapai-Apache Nation Water Rights Settlement Act of 2024 (S. 4705) (Settlement) as soon as practical.

The Yavapai-Apache Nation and Town are neighbors in the Verde Valley. The Town's land and water future are closely intertwined with those of the Nation. Our Town and the Nation enjoy a cooperative, respectful, and constructive government-to-government relationship with shared goals and objectives. To this end, the Town has worked closely with the Nation for many years to complete a mutually beneficial Settlement that will help achieve water security for the Town and the Nation, while also benefitting the health and vitality of the Verde River and the Verde Valley region as a whole.

I thank you for your leadership on Indian water rights settlements generally and we hope you will promptly hold a hearing on this Settlement. We appreciate your attention to this request.

Respectfully,

STEVE WENE, ATTORNEY

TOWN OF CLARKDALE
August 26, 2023

Re: Request for Hearing on the Yavapai-Apache Nation Water Rights Settlement Act of 2024 (S. 4705)

Dear Chairman Schatz and Vice Chairman Murkowski:

On behalf of the Town of Clarkdale, we are writing to respectfully request that the Senate Committee on Indian Affairs hold a hearing on the Yavapai-Apache Nation Water Rights Settlement Act of 2024 (S. 4705) at its earliest convenience.

The Yavapai-Apache Nation is one of our neighbors in the Verde Valley and has two neighborhoods within the Clarkdale Town limits. The Town's lands and water future are closely intertwined with those of the Nation. Our Town enjoys a cooperative, mutually respectful, and beneficial government-to-government relationship with the Nation on these shared goals and objectives. To this end, we have worked closely with the Nation for many years to complete a mutually beneficial water rights Settlement Agreement that will help achieve water security for the Town and the Nation, while also benefitting the health and vitality of the Verde River and the Verde Valley region as a whole.

On behalf of the Town of Clarkdale, we thank you for your leadership on Indian water rights settlements, and we hope you will promptly hold a hearing on the Yavapai-Apache Nation Water Rights Settlement Act of 2024 (S. 4705). We appreciate your attention to this request.

Sincerely,

SUSAN GUTHRIE, APR, CM-ICMA, MPA TOWN MANAGER

GREATER VERDE VALLEY CHAMBER OF COMMERCE
October 14, 2024

Dear Chairman Schatz:

This letter is submitted on behalf of the Greater Verde Valley Chamber of Commerce to supplement the hearing record for the Legislative Hearing and Business Meeting held on September 25, 2024, in order to express our concerns with the com-

ments made by Assistant Secretary Newland on behalf of the Department of the Interior (Interior) about the Yavapai-Apache Nation Water Rights Settlement Act of 2024 (S. 4705).

The Greater Verde Valley Chamber of Commerce has a strong partnership with the Yavapai-Apache Nation (Nation) focused on water conservation, protecting local groundwater sources and the health and vitality of the Verde River, which is a remarkable ribbon of life and one of Arizona's last free-flowing rivers. We also support the Nation's decades-long effort to achieve a fair and equitable water rights settlement, which S. 4705 will confirm. To this end, we appreciated Interior's testimony noting that it "strongly supports the resolution of Indian water rights claims through negotiated settlements." We also agree that Indian water settlements, in addition to providing Tribes with safe and reliable water supplies, "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." Indeed, this is precisely what the Yavapai-Apache Nation Water Rights Settlement will accomplish when enacted.

Given our understanding of the history of the Nation's settlement efforts, however, we were confused by Interior's written testimony to this Committee about the Settlement, particularly Interior's suggestion that (a) the Settlement is the product of only recent negotiations conducted on an expedited timeline; (b) the water to be delivered from the C.C. Cragin Dam and Reservoir for treatment on the Reservation "greatly exceeds" the Nation's projected water demands for domestic, commercial, municipal, and industrial (DCMI) uses; and (c) "upsizing" the Cragin-Verde pipeline to provide imported water to Verde Valley Communities that opt into receiving water from the C.C. Cragin Dam and Reservoir by the statutory deadline should not be supported. Accordingly, the Greater Verde Valley Chamber of Commerce is writing here to respectfully supplement the record in response to Interior's testimony and provide you with our on-the-ground knowledge of the Nation's settlement.

It is well known and documented that the Yavapai-Apache Nation has been working with the Salt River Project, the State of Arizona, and local communities to negotiate a water rights settlement since at least 2011. To suggest the Nation's settlement is the product of only recent negotiations conducted on an expedited timeline is misinformed.

In 2023, the Nation filed an amended claim in Arizona's Gila River General Stream Adjudication asserting water rights for 11,629 acre-feet per year (AFY) for its existing 1,809 acre Reservation. In the Settlement, however, the Nation agreed to a compromise water budget of no more than 6,888 AFY of water (5,991 AFY in net depletion) to provide for its permanent tribal homeland. Moreover, the Nation will complete an administrative land exchange with the U.S. Forest Service this year, which will restore significant lands to the Reservation that are contiguous to the Nation's Middle Verde District in Camp Verde. The notice of Interior's intent to place these lands into trust has already been issued and the NEPA process is complete. Ultimately, the Nation agreed in the Settlement to serve both its existing and new Reservation lands (totaling 5,106 acres) with its original water settlement budget of 6,888 AFY, including for all existing and future DCMI and other uses on these lands, forever.

The Nation's Reservation (as expanded) will provide important future commercial and economic development opportunities for the Nation and needed goods, services, and jobs for the Verde Valley region. For the Nation to be truly self-sufficient, it must engage in economic development on its new lands to support its Tribal members, maintain its culture, and develop long overdue housing for its people.

To do this, the Nation, like all communities, must have a reliable water supply. We appreciate that the Nation, as part of its Settlement, plans to develop these lands using a sustainable water approach which includes limited groundwater pumping, the use of imported water from the C.C. Cragin Dam and Reservoir, and the development of reclaimed water sources. Therefore, we were confused to see testimony from officials in Washington suggesting that the water to be delivered to the Nation under the Settlement "far exceeds" the Nation's on-Reservation water needs for its permanent tribal homeland. This conclusion is contrary to our on-the-ground knowledge of the facts.

We are also confused by Interior's decision to not support an upsized Cragin-Verde pipeline under S. 4705. Under the Act, local Verde Valley communities will have until December 31, 2029, to undertake the necessary planning steps needed to decide whether it is appropriate for their community to opt into an upsized version of the Cragin-Verde Pipeline under S. 4705. If the Verde Valley communities do not opt in by the deadline, the pipeline will not be upsized, and federal funds will only be authorized and appropriated by Congress to develop a project for the on-Reservation needs of the Nation under the Settlement.

The Nation's settlement is a generational opportunity for the Yavapai and Apache people and for the region as a whole. But the Cragin-Verde Pipeline can only be constructed once, and it cannot be upsized later should Interior realize that its calculus on the pipeline is wrong. In taking this position, Interior may have failed to consider the multitude of federal benefits that can be achieved with an upsized pipeline, including reducing pressure on declining local aquifers and conserving groundwater resources that directly support: (a) the downstream segment of the Verde River designated as a National Wild and Scenic River under the Arizona Wilderness Act of 1984 (P.L. 98-406); (b) two other downstream federally recognized Indian Tribes that rely on the Verde River to help meet their settled water rights (Fort McDowell Yavapai Nation and Salt River Pima-Maricopa Indian Community); and (c) inflows to Bureau of Reclamation's Bartlett Dam and Reservoir, that provides a critical and significant source of water for the fifth largest metropolitan area in the United States (Phoenix).

The Cragin-Verde Pipeline Project was ultimately determined by the Nation, the State of Arizona, the Salt River Project, Reclamation, and the other settling parties to be the best alternative to deliver water to the Nation for Settlement. The enactment of S. 4705 will confirm a long overdue Indian water rights settlement for the Yavapai-Apache Nation while also providing water certainty to the entire Verde Valley and the United States' federal interests in a sustainable water supply and Verde River. We urge you to enact S. 4705 expeditiously.

Sincerely,

CHRISTIAN OLIVA DEL RIO, IOM, PRESIDENT/CEO

EDF ACTION
July 29, 2024

RE: SUPPORT FOR THE YAVAPAI-APACHE NATION WATER RIGHTS SETTLEMENT
ACT OF 2024, H.R. 8949

Dear Arizona Delegation and Members of Congress:

On behalf of Environmental Defense Action Fund (EDF Action) and over 90,000 EDF Action members and activists living across the State of Arizona, we submit this letter in full support of the Yavapai-Apache Nation Water Rights Settlement Act of 2024 (Settlement Act). We are grateful for the leadership of the Arizona Delegation on this critical issue, and we respectfully request that Congress swiftly enact this historic legislation.

EDF Action works with many stakeholders, Tribes, communities, governments, and other groups on water issues throughout Arizona, serving the public interest in pursuit of water security for all people, now and into the future. We have partnered with Yavapai-Apache Nation (the Nation), local governments, and community groups in the Verde watershed for over a decade. Much of our focus is ensuring rural communities, who often face critical water needs and tend to be overlooked, enjoy stable and healthy water supplies as a foundation for self-determination, community health and well-being, and prosperity. The Settlement Act represents a historic leap forward toward these goals.

The Settlement Act ratifies and funds the recently completed Yavapai-Apache Nation Water Rights Settlement Agreement, which resolves the Nation's water rights claims, brings additional, sustainable water supplies to the Verde Valley, protects local groundwater supplies, and helps keep the Verde River flowing. The Settlement Act will also finalize a land exchange (if it is not completed through the administrative process by the time the Act is passed) that supports the Nation in securing a permanent Tribal homeland that will meet the needs of a growing population and economy.

The Verde River is one of the last free flowing rivers left in the Southwestern U.S., it is a unique global treasure that has been central to local cultures, economies, community health and identity, and ways of life, since time immemorial. However, flows in the river have steadily declined in recent decades due to groundwater pumping and a drying climate. A primary goal of the Nation's Settlement is to help maintain flows in the Verde River for the benefit of the Nation, neighboring communities, federal partners including for the designated National Wild and Scenic River segment downstream of the Nation, and all who rely on a healthy flowing Verde River.

In testimony before Congress on July 24, 2024, Yavapai-Apache Nation Chairwoman Tanya Lewis stated: "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 Yavapai and Dilzhe'e 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. . . 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.”

We acknowledge the steadfast leadership of Chairwoman Lewis, the Nation’s Tribal Council, Elders, and staff, and all those who came before, on the road to achieve this truly special, historic agreement that will help safeguard the water future of the Nation, neighboring communities, and all who depend on a healthy, flowing Verde River.

We respectfully ask Congress to take the next step: Enact the Yavapai-Apache Nation Water Rights Settlement Act.

Additional Letter

Dear Chairman Schatz and Vice Chair Murkowski:

Environmental Defense Action Fund (EDF Action) submits this letter to supplement the hearing record for the Legislative Hearing and Business Meeting held on September 25, 2024, in order to express our concerns with the comments made by the Assistant Secretary Newland on behalf of the Department of the Interior (Interior) about the Yavapai-Apache Nation Water Rights Settlement Act of 2024 (S. 4705). We continue to urge the Committee to advance this critical legislation this year.

EDF Action, with over 90,000 members and activists in the state of Arizona, works with many stakeholders, Tribes, communities, governments, and other groups on water issues throughout the state, serving the public interest in pursuit of water security for all people, now and into the future. We have partnered with Yavapai-Apache Nation (the Nation), local governments, and community groups in the Verde watershed for over a decade. Much of our focus is ensuring rural communities, who often face critical water needs and tend to be overlooked, enjoy stable and healthy water supplies as a foundation for self-determination, community health and well-being, and prosperity. S.4705 represents a historic leap forward toward these goals.

Our strong partnership with the Nation is focused on protecting local groundwater sources and the health and vitality of the Verde River, an irreplaceable ribbon of life and one of southwest’s last free-flowing rivers. We support the Nation’s decades-long effort to achieve a fair and equitable water rights settlement—which S. 4705 will confirm. To this end, we appreciated Interior’s testimony noting that it “strongly supports the resolution of Indian water rights claims through negotiated settlements.” We also agree that settlements, in addition to providing a pathway for Tribes to secure safe and reliable water supplies, “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.” This is precisely what the Yavapai-Apache Nation Water Rights Settlement will accomplish when enacted.

Given our longstanding partnership and interest in the history of the Nation’s settlement efforts, we were however disappointed with Interior’s written testimony to this Committee about the Yavapai-Apache Nation Water Rights Settlement, particularly Interior’s suggestions that: (1) the Settlement is the product of only recent negotiation efforts conducted on an expedited timeline; (2) the water to be delivered from the C.C. Cragin Dam and Reservoir for treatment on the Reservation “greatly exceeds” the Nation’s projected water demands for domestic, commercial, municipal, and industrial (DCMI) uses; and (3) “Upsizing” the Cragin-Verde pipeline to provide imported water those Verde Valley Communities that opt into receiving water from the C.C. Cragin Dam and Reservoir by the statutory deadline should not be supported. Accordingly, EDF Action is writing here to respectfully supplement the record in response to Interior’s testimony to provide you with our on the ground knowledge of the Nation’s settlement.

It is well documented in the Verde Valley that the Yavapai-Apache Nation has been working with the Salt River Project, the State of Arizona, and local communities to negotiate a water rights settlement since at least 2011. It is clear from the long and robust record, that the Nation’s settlement efforts have been underway for many years, and the historic settlement is the product of those efforts.

In 2023, the Nation filed an amended claim in Arizona’s Gila River General Stream Adjudication asserting water rights for 11,629 acre-feet per year (AFY) for their existing 1,809 acre Reservation. In Settlement, however, the Nation agreed to a compromise water budget of no more than 6,888 AFY of water (5,991 AFY in net depletion) to provide for its permanent tribal homeland. Moreover, the Nation will complete an administrative land exchange with the U.S. Forest Service this year, which will restore significant lands to the Reservation that are contiguous to the

Nation's Middle Verde District in Camp Verde. The notice of Interior's intent to place these lands into trust has already been issued and the NEPA process is complete.

Ultimately, the Nation agreed in Settlement to serve both its existing and new Reservation lands (totaling 5,106 acres) with its original water settlement budget of 6,888 AFY, including for all existing and future DCMI and other uses on these lands, forever.

The Nation's Reservation, as expanded, will provide important future commercial and economic development opportunities for the Nation and needed goods, services, and jobs for the Verde Valley region. This is particularly so given the Nation's acquisition of previously undevelopable Forest Service lands within the boundaries of Camp Verde and the proximity of these lands to Interstate I-17 and the 260 Highway, which are major transportation corridors. For the Nation to be truly self-sufficient, it must engage in economic development on its new lands, to support its Tribal members, maintain its culture, and develop long overdue housing for its people.

To do this, the Nation, like all communities, must have a reliable water supply. We appreciate that the Nation, as part of its Settlement, plans to develop these lands using a sustainable water approach which includes limited groundwater pumping, the use of imported water from the C.C. Cragin Dam and Reservoir, and the development of reclaimed water sources. We appreciate how, through Settlement, the Nation has, and will continue to, determine their own water supply needs. We were therefore disappointed to see a misconception in testimony to this Committee that the water to be delivered to the Nation under the Settlement "far exceeds" the Nation's on Reservation water needs for its permanent Tribal homeland. The innovative and sustainable water supply approach negotiated by the Nation and parties in the Settlement is necessary to securing a reliable water supply today and into the future.

Regarding the Cragin-Verde pipeline, there will be ample opportunity and time to consider its ultimate size. Local Verde Valley communities will have until December 31, 2029, to decide whether it is appropriate for their community to opt into an upsized version of the Cragin-Verde Pipeline under S. 4705. And of course, if the Verde Valley communities do not opt in by the deadline, the pipeline will not be upsized, and federal funds will only be authorized and appropriated by Congress to develop a project for the on Reservation needs of the Nation under the Settlement. The Cragin-Verde Pipeline can only be constructed once—it cannot be upsized later. The Nation's settlement—including the Cragin-Verde pipeline under S.4705—is a generational opportunity for the Yavapai and Apache people, for the region, and for the entire state.

There are a multitude of federal benefits that can be achieved with an upsized pipeline, including reducing pressure on local aquifers and conserving groundwater sources that support the Verde River benefiting, among other things: (a) the downstream segment of the Verde River designated as a National Wild and Scenic River under the Arizona Wilderness Act of 1984 (P.L. 98-406); (b) two other downstream federally recognized Tribes that rely on the Verde River to help meet their settled water rights (Fort McDowell Yavapai Nation and Salt River Pima-Maricopa Indian Community); and (c) inflows to Bureau of Reclamation's Bartlett Dam and Reservoir, an important source of water for the Phoenix metropolitan area.

The Cragin-Verde Pipeline Project was ultimately determined by the Nation, the State of Arizona, the Salt River Project, the Bureau of Reclamation, and the other settling parties to be the best alternative to deliver water to the Nation for Settlement. The enactment of S.4705 will finally confirm a long over-due and needed water rights settlement for the Yavapai-Apache Nation, providing water certainty to the entire Verde Valley and the United States' federal interests in a sustainable Verde River.

We acknowledge the steadfast leadership of Chairwoman Lewis, the Nation's Tribal Council, Elders, and staff, and all those who came before, on the road to achieve this truly special, historic agreement that will help safeguard the Nation's water future, as well as water security for neighboring communities, and all who depend on a healthy, flowing Verde River. We strongly support the Nation's sovereignty and self-determination.

We urge you to enact S. 4705 without delay. EDF Action appreciates the opportunity to submit these supplemental comments for the record. If there are any questions, please feel free to contact me.

Sincerely,

CHRIS KUZDAS, PH.D., ARIZONA WATER PROGRAM DIRECTOR

FRIENDS OF THE VERDE RIVER
October 15, 2024

Dear Chairman Schatz:

This letter is submitted on behalf of Friends of the Verde River to supplement the hearing record for the Legislative Hearing and Business Meeting held on September 25, 2024, in order to express our concerns with the comments made by the Assistant Secretary Newland on behalf of the Department of the Interior (Interior) about the Yavapai-Apache Nation Water Rights Settlement Act of 2024 (S. 4705).

Friends of the Verde River is a nonprofit 501(c)(3) organization located in the Verde Valley that implements on-the-ground projects, facilitates regional coordination, and informs statewide policy from a local perspective. Our objective is to work collaboratively for a healthy, flowing Verde River system.

Friends of the Verde River has a strong partnership with the Yavapai-Apache Nation (Nation) focused on protecting local groundwater sources and the health and vitality of the Verde River, which is remarkable ribbon of life and one of Arizona's last free-flowing rivers. We also support the Nation's decades-long effort to achieve a fair and equitable water rights settlement, which S. 4705 will confirm. To this end, we appreciated Interior's testimony noting that it "strongly supports the resolution of Indian water rights claims through negotiated settlements." We also agree that Indian water settlements, in addition to providing Tribes with safe and reliable water supplies, "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." Indeed, this is precisely what the Yavapai-Apache Nation Water Rights Settlement will accomplish when enacted.

Given understanding of the history of the Nation's settlement efforts, however, we were disappointed with Interior's written testimony to this Committee about the Settlement, particularly Interior's suggestion that (a) the Settlement is the product of only recent negotiations efforts conducted on an expedited timeline; (b) the water to be delivered from the C.C. Cragin Dam and Reservoir for treatment on the Reservation "greatly exceeds" the Nation's projected water demands for domestic, commercial, municipal, and industrial (DCMI) uses; and (c) "upsizing" the Cragin-Verde pipeline to provide imported water those Verde Valley Communities that opt into receiving water from the C.C. Cragin Dam and Reservoir by the statutory deadline should not be supported. Accordingly, Friends of the Verde River is writing here to respectfully supplement the record in response to Interior's testimony to provide you with our on the ground knowledge of the Nation's settlement.

First, it is well known and documented in the Verde Valley that the Yavapai-Apache Nation has been working with the Salt River Project, the State of Arizona, and local communities to negotiate a water rights settlement since at least 2011. To suggest the Nation's settlement is the product of only recent negotiations conducted on an expedited timeline is grossly misinformed.

Second, in 2023, the Nation filed an amended claim in Arizona's Gila River General Stream Adjudication asserting water rights for 11,629 acre-feet per year (AFY) for its existing 1,809-acre Reservation. In Settlement, however, the Nation agreed to a compromise water budget of no more than 6,888 AFY of water (5,991 AFY in net depletion) to provide for its permanent tribal homeland. Moreover, the Nation will complete an administrative land exchange with the U.S. Forest Service this year, which will restore significant lands to the Reservation that are contiguous to the Nation's Middle Verde District in Camp Verde. The notice of Interior's intent to place these lands into trust has already been issued and the NEPA process is complete. Ultimately, the Nation agreed in Settlement to serve both its existing and new Reservation lands (totaling 5,106 acres) with its original water settlement budget of 6,888 AFY, including for all existing and future DCMI and other uses on these lands, forever.

The Nation's Reservation (as expanded) will provide important future commercial and economic development opportunities for the Nation and needed goods, services, and jobs for the Verde Valley region. This is particularly so given the Nation's acquisition of previously undevelopable Forest Service lands within the boundaries of Camp Verde and the proximity of these lands to Interstate I-17 and the 260 Highway, which are major transportation corridors. For the Nation to be truly self-sufficient, it must engage in economic development on its new lands, to support its Tribal members, maintain its culture, and develop long overdue housing for its people.

To do this, the Nation, like all communities, must have a reliable water supply. We appreciate that the Nation, as part of its Settlement, plans to develop these

lands using a sustainable water approach which includes limited groundwater pumping, the use of imported water from the C.C. Cragin Dam and Reservoir, and the development of reclaimed water sources. We were therefore quite perplexed to see officials in Washington, DC testify from afar that the water to be delivered to the Nation under the Settlement “far exceeds” the Nation’s on Reservation water needs for its permanent tribal homeland. This conclusion is not supported by anything we are aware of, and it is contrary to our on the ground knowledge of the facts.

Finally, we respectfully disagree with Interior’s decision to not support an upsized Cragin-Verde pipeline under S. 4705. Under the Act, local Verde Valley communities will have until December 31, 2029, to undertake the necessary planning steps needed to decide whether it is appropriate for their community to opt into an upsized version of the Cragin-Verde Pipeline under S. 4705. And of course, if the Verde Valley communities do not opt in by the deadline, the pipeline will not be upsized, and federal funds will only be authorized and appropriated by Congress to develop a project for the on Reservation needs of the Nation under the Settlement.

The Nation’s settlement is a generational opportunity for the Yavapai and Apache people and for the region as a whole. But the Cragin-Verde Pipeline can only be constructed once, and it cannot be upsized later should Interior realize that its calculus on the pipeline is wrong. In taking this position, Interior may have failed to consider the multitude of federal benefits that can be achieved with an upsized pipeline, including reducing pressure on local aquifers and conserving groundwater sources that support the Verde River benefiting, among other things: (a) the downstream segment of the Verde River designated as a National Wild and Scenic River under the Arizona Wilderness Act of 1984 (P.L. 98–406); (b) two other downstream federally recognized Indian Tribes that rely on the Verde River to help meet their settled water rights (Fort McDowell Yavapai Nation and Salt River Pima-Maricopa Indian Community); and (c) inflows to Bureau of Reclamation’s Bartlett Dam and Reservoir, that serves as a significant source of water for metropolitan Phoenix.

The Cragin-Verde Pipeline Project was ultimately determined by the Nation, the State of Arizona, the Salt River Project, Reclamation, and the other settling parties to be the best alternative to deliver water to the Nation for Settlement. The enactment of S. 4705 will finally confirm a long over-due Indian water rights settlement for the Yavapai-Apache Nation while also providing water certainty to the entire Verde Valley and the United States’ federal interests in a sustainable Verde River. We urge you to enact S. 4705 expeditiously.

The Friends of the Verde River appreciates the opportunity to submit these supplemental comments for the record.

Sincerely,

W. DAVID GRESSLY, EXECUTIVE DIRECTOR

STATE OF ARIZONA
August 23, 2024

RE: YAVAPAI-APACHE NATION WATER RIGHTS SETTLEMENT ACT OF 2024 (S. 4705)

Dear Chairman Schatz and Vice Chairman Murkowski:

I am writing to express my support for S. 4705, the Yavapai-Apache Nation Water Rights Settlement Act of 2024, and to respectfully request for a hearing to be held by the U.S. Senate Committee on Indian Affairs in September, or as soon as possible.

This critical legislation approves and authorizes a comprehensive settlement of the water rights claims of the Yavapai-Apache Nation in Arizona. Securing this settlement is a priority for the State of Arizona because it provides members of the Yavapai-Apache Nation with reliable and sustainable water supplies, which in turn helps secure their permanent homeland. It is also a priority for the State of Arizona because the settlement provides certainty to non-tribal water users regarding the available water supplies in Arizona, enhances the preservation of the Verde River, and supports our policy to preserve groundwater.

I would like to thank the Senate Committee on Indian Affairs for considering the legislation, Senator Kelly for introducing this important bill, and Senator Sinema for cosponsoring it. This legislation will have a generational impact on the Yavapai-Apache Nation and the State of Arizona, and I appreciate your consideration of this request to hold a hearing on the bill in the coming weeks.

Sincerely,

KATIE HOBBS, GOVERNOR

GREATER VERDE VALLEY CHAMBER OF COMMERCE

Dear Arizona Delegation and Members of Congress:

On behalf of the Greater Verde Valley Chamber of Commerce and signees, we submit this letter in full support of the Yavapai-Apache Nation Water Rights Settlement Act of 2024 (Settlement Act). We are grateful for the leadership of the Arizona Delegation on this critical issue, and we respectfully request that Congress swiftly enact this historic legislation.

The Settlement Act ratifies and funds the recently completed Yavapai-Apache Nation Water Rights Settlement Agreement, which resolves the Nation's water rights claims, brings additional, sustainable water supplies to the Verde Valley, protects local groundwater supplies, and helps keep the Verde River flowing.

The Verde River is one of the last free flowing rivers in the Southwestern U.S., and it is a unique global treasure that has been central to local cultures, economies, community health and identity. However, flows in the river have steadily declined in recent decades due to groundwater pumping and a drying climate. A primary goal of the Nation's Settlement is to help maintain flows in the Verde River for the benefit of the Nation, neighboring communities, water users, and all who rely on a healthy flowing Verde River.

We acknowledge the steadfast leadership of Chairwoman Lewis, the Nation's Tribal Council, Elders, and staff, and all those who came before to achieve this truly historic agreement that will help safeguard the water, future of the Nation, neighboring communities, and all who depend on water provided by a flowing Verde River.

We respectfully ask Congress to take the next step: Enact the Yavapai-Apache Nation Water Rights Settlement Act.

Sincerely,

CHRISTIAN OLIVA DEL RIO, IOM, PRESIDENT/CEO

NATIONAL AUDUBON SOCIETY
*September 9, 2024*RE: SUPPORT FOR THE YAVAPAI-APACHE NATION WATER RIGHTS SETTLEMENT
ACT OF 2024

Dear Arizona Congressional Delegation:

The National Audubon Society (Audubon) protects birds, and the places they need, today and tomorrow. It is with great enthusiasm that we write on behalf of Audubon in support of the Yavapai-Apache Nation's water rights settlement and pending legislation, the Yavapai-Apache Nation Water Rights Settlement Act of 2024.

The Yavapai-Apache Nation and other parties in Arizona have come to a historic agreement with the settlement now before Congress. Not only will this settlement—when passed by Congress and signed by the President—ensure a reliable and sustainable water supply for the Yavapai-Apache Nation in north central Arizona's iconic "Verde Valley," it will preserve the Verde River and its precious habitat by reducing reliance on groundwater.

Audubon's focus on birds means we also prioritize the protection of the habitat they need. Within the Verde Valley, we have identified four Important Bird Areas, all of which rely on healthy groundwater levels to sustain flowing rivers and streams and the rich plant life and wildlife they support. This settlement will also help sustain a portion of the Verde River downstream of the Yavapai-Apache Nation that was designated as a Wild and Scenic River by Congress in 1984.

The settlement is the result of innovative and creative thinking from the Yavapai-Apache Nation, Salt River Project, the Town of Camp Verde, the Town of Cottonwood, the Town of Clarkdale, and others. The settlement includes building a 60-mile water pipeline from C.C. Cragin Reservoir on the Mogollon Rim, north of Payson, increasing the capture of wastewater into sewer systems, boosting the use of reclaimed water, and the potential for regional water planning and collaboration among nearby municipalities and the Yavapai-Apache Nation.

Audubon Southwest, our regional office in Arizona and New Mexico, is also part of the Water for Arizona Coalition. In 2022, Water for Arizona outlined a vision for how to improve Arizona's water outlook, called the Arizona Water Security Plan. One of the six key tenets is: Continue to support Tribes in resolving Tribal water issues. This settlement is a key milestone as Arizona works to improve its overall water security.

It is long past due for the Yavapai-Apache Nation to have secure and reliable water supplies, and this settlement is a monumental step forward for their growing community. We urge you to support the passage of the settlement and the provision of approximately \$1 billion to ensure the project is brought to completion.

Thank you for your consideration of this water rights settlement for the Yavapai-Apache Nation.

Sincerely,

JULIE HILL-GABRIEL, VICE PRESIDENT, WATER CONSERVATION
JONATHAN HAYES, VICE PRESIDENT/EXECUTIVE DIRECTOR, AUDUBON
SOUTHWEST

THE NATURE CONSERVANCY IN ARIZONA
July 19, 2024

Dear Ms. Trujillo, Mr. Newland and Mr. Palumbo,

On behalf of The Nature Conservancy, please accept this letter of support for the Yavapai-Apache Nation Tribal Water Settlement Act of 2024 which has a hearing in House Natural Resources on Tuesday of next week. The Nature Conservancy has worked for decades with local partners in the Verde River basin, including the Yavapai-Apache Nation, to protect water quality and quantity, and preserve ecologically important places while keeping healthy working landscapes in production.

After decades of negotiation, the Yavapai-Apache Nation has reached agreement with the Salt River Project, the State of Arizona, local communities, and others to achieve a final resolution of the Nation's longstanding water rights claims. Unlike other Indian reservations, the Yavapai-Apache Nation's Reservation is made up of several non-contiguous land areas that are intertwined geographically and economically with our neighboring off-reservation communities. For this reason, when the Verde Valley thrives, the Yavapai-Apache Nation thrives. This resolution has been executed in a way that brings both renewable water supplies to the Verde Valley and helps keep the Verde River flowing as one of Arizona's few remaining perennial rivers.

The central pillar of this settlement is a once-in-a-lifetime opportunity to construct a pipeline to deliver water from the C.C. Cragin Reservoir on the Mogollon Rim to the Yavapai-Apache Nation, where it will be treated to drinking water standards for distribution on the Reservation, and potentially, to local off-reservation communities under specific circumstances spelled out in the draft legislation. Building the Cragin-Verde pipeline will finally provide water security for the Nation by delivering a renewable water supply to the Verde Valley, thereby reducing reliance on groundwater resources. This same pipeline will also protect flows in the Verde River, which is a cultural resource for the Yavapai-Apache Nation and an economic driver for the entire Verde Valley.

The Nature Conservancy values the Yavapai-Apache Nation's commitment to water security for not only their tribal community, but the entire Verde Valley. We fully support the Yavapai-Apache Nation Tribal Water Settlement Act of 2024 and look forward to the Department's support as well.

Additional Letter

Senators Brian Schatz and Lisa Murkowski,

This letter is submitted on behalf of The Nature Conservancy of Arizona to supplement the hearing record for the Legislative Hearing and Business Meeting held on September 25, 2024, surrounding the Yavapai-Apache Nation Water Rights Settlement Act of 2024 (S. 4705).

The Nature Conservancy, a global nonprofit, non-governmental organization working to "protect the lands and waters on which all life depends" in over 75 nations. The Nature Conservancy in Arizona, a chapter of The Nature Conservancy, has worked for decades with local partners in the Verde River basin, including the Yavapai-Apache Nation, to protect water quality and quantity, and preserve ecologically important places while keeping healthy working landscapes in production.

The Nature Conservancy in Arizona has a strong partnership with the Yavapai-Apache Nation (Nation) focused on protecting local groundwater sources and the health and vitality of the Verde River, which is remarkable ribbon of life and one of Arizona's last free-flowing rivers. We also support the Nation's decades-long effort to achieve a fair and equitable water rights settlement, which S. 4705 will confirm. To this end, we appreciated Interior's testimony noting that it "strongly supports the resolution of Indian water rights claims through negotiated settlements." We also agree that Indian water settlements, in addition to providing Tribes with safe and reliable water supplies, "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.” Indeed, this is precisely what the Yavapai-Apache Nation Water Rights Settlement will accomplish when enacted. We would like to clarify several points we noted during the hearing.

First, the Yavapai-Apache Nation has been working with the Salt River Project, the State of Arizona, and local communities to negotiate a water rights settlement since 2011.

Second, in 2023, the Nation filed an amended claim in Arizona’s Gila River General Stream Adjudication asserting water rights for 11,629 acre-feet per year (AFY) for its existing 1,809 acre Reservation. In Settlement, however, the Nation agreed to a compromise water budget of no more than 6,888 AFY of water (5,991 AFY in net depletion) to provide for its permanent tribal homeland. Moreover, the Nation will complete an administrative land exchange with the U.S. Forest Service this year, which will restore significant lands to the Reservation that are contiguous to the Nation’s Middle Verde District in Camp Verde. The notice of Interior’s intent to place these lands into trust has already been issued and the NEPA process is complete. Ultimately, the Nation agreed in Settlement to serve both its existing and new Reservation lands (totaling 5,106 acres) with its original water settlement budget of 6,888 AFY, including for all existing and future DCMI and other uses on these lands, forever.

The Nation’s Reservation (as expanded) will provide important future commercial and economic development opportunities for the Nation and needed goods, services, and jobs for the Verde Valley region. This is particularly so given the Nation’s acquisition of previously undevelopable Forest Service lands within the boundaries of Camp Verde and the proximity of these lands to Interstate I-17 and the 260 Highway, which are major transportation corridors. For the Nation to be truly self-sufficient, it must engage in economic development on its new lands, to support its Tribal members, maintain its culture, and develop long overdue housing for its people.

To do this, the Nation, like all communities, must have a reliable water supply. We appreciate that the Nation, as part of its Settlement, plans to develop these lands using a sustainable water source which includes limited groundwater pumping, the use of imported water from the C.C. Cragin Dam and Reservoir, and the development of reclaimed water sources. We do not agree with testimony you received that water to the Nation under the Settlement “far exceeds” the Nation’s on Reservation water needs for its permanent tribal homeland.

Finally, the Conservancy supports an upsized Cragin-Verde pipeline as envisioned in S. 4705. Under the Act, local Verde Valley communities will have until December 31, 2029, to undertake the necessary planning steps needed to decide whether it is appropriate for their community to opt into an upsized version of the Cragin-Verde Pipeline. If the Verde Valley communities do not opt in by the deadline, the pipeline will not be upsized, and federal funds will only be authorized and appropriated by Congress to develop a project for the on Reservation needs of the Nation under the Settlement. The flexibility for the size of the pipeline allows time for communities to make the right decisions for their residents while utilizing planning tools.

The Nation’s settlement is a generational opportunity for the Yavapai and Apache people and for the region as a whole. But the Cragin-Verde Pipeline should only be constructed once, and it cannot be upsized later. Consideration must be given to the multitude of federal benefits that can be achieved with an upsized pipeline, including reducing pressure on local aquifers and conserving groundwater sources that support the Verde River benefiting, among other things: (a) the downstream segment of the Verde River designated as a National Wild and Scenic River under the Arizona Wilderness Act of 1984 (P.L. 98-406); (b) two other downstream federally recognized Indian Tribes that rely on the Verde River to help meet their settled water rights (Fort McDowell Yavapai Nation and Salt River Pima-Maricopa Indian Community); and (c) inflows to Bureau of Reclamation’s Bartlett Dam and Reservoir, that serves as a significant source of water for metropolitan Phoenix.

The Cragin-Verde Pipeline Project was ultimately determined by the Nation, the State of Arizona, the Salt River Project, Reclamation, and the other settling parties to be the best alternative to deliver water to the Nation for Settlement. Passing S. 4705 will finally confirm a long over-due and needed Indian water rights settlement for the Yavapai-Apache Nation, providing water certainty to the entire Verde Valley and the United States’ federal interests in a sustainable Verde River. We urge you to pass S. 4705 expeditiously.

The Nature Conservancy in Arizona appreciates the opportunity to submit these supplemental comments for the record.

Sincerely,

DANIEL STELLAR, STATE DIRECTOR

SALT RIVER PROJECT (SRP)
August 23, 2024

Dear Chairman Schatz and Vice Chairman Murkowski:

On behalf of Salt River Project (SRP), I am writing to share our strong support for S. 4705, the *Yavapai-Apache Nation Indian Water Rights Settlement Act of 2024*, and to request that you hold a legislative hearing on the bill when the Senate returns to Washington next month.

A hearing before the Senate Committee on Indian Affairs (Committee) is the first step toward passage of S. 4705, legislation introduced by Arizona Senators Mark Kelly and Kyrsten Sinema, that would resolve the Yavapai-Apache Nation's ("Nation") water rights and provides access to a renewable supply of water for the Nation. Resolving these claims constitutes a monumental step forward in providing certainty regarding available water supplies not just for the Nation, but for users in the Verde Valley, as well as downstream users of Verde River water in the Phoenix Metropolitan area. This settlement is the culmination of decades of work to resolve the Nation's water rights and is a win-win solution for all parties involved, as well as the Verde River. SRP is thankful for the dedication of Senators Kelly and Sinema to deliver this legislation, which will ultimately secure a renewable supply of water for the Nation.

SRP, comprised of the Salt River Valley Water Users' Association and the Salt River Project Agricultural Improvement and Power District, is the Phoenix metropolitan area's largest supplier of raw water, delivering more than 800,000 acre-feet annually to municipal, urban and agricultural water users. SRP has a long history of actively working with Native American communities throughout the state to address concerns about water supplies, identify alternative supply options to meet demands, and collaborate on programs to resolve water resource conflicts.

SRP strongly supports S. 4705 and looks forward to the Committee's next steps. We are thankful for Chairman Schatz and Vice Chairman Murkowski's leadership on the Senate Committee on Indian Affairs, and attention to this bill as well as to the Yavapai-Apache Nation.

Sincerely,

LESLIE A. MEYERS, SRP ASSOCIATE GENERAL MANAGER/CHIEF WATER
RESOURCES AND SERVICES EXECUTIVECAMP VERDE AZ
October 15, 2024

Dear Chairman Schatz and Vice Chair Murkowski:

My name is Tony Gioia. I am the former Mayor of the Town of Camp Verde AZ, a former Town councilman, first Chairman of the Yavapai County Water Advisory Committee, former member of the State of Arizona Gila River Water Adjudication Judge's Steering Committee, former Vice President Verde River Basin Partnership, one of the founders of Friends of the Verde River, and longtime advocate for the Verde River. I am submitting this letter to supplement the hearing record for the Legislative Hearing and Business Meeting held on September 25, 2024, to express my concerns with the comments made by the Assistant Secretary Newland on behalf of the Department of the Interior (Interior) about the Yavapai-Apache Nation Water Rights Settlement Act of 2024 (S. 4705).

First, I want to make clear that Camp Verde and communities throughout the Verde Valley have a strong partnership with the Yavapai-Apache Nation (Nation), including in our shared efforts to protect local groundwater sources and the health and vitality of the Verde River, which remains a remarkable ribbon of life and one of Arizona's last free-flowing rivers. I am also pleased to support the Nation's decades-long effort to achieve a fair and equitable water rights settlement, which S. 4705 will confirm. To this end, I strongly agree with Interior's testimony that Indian water settlements, in addition to providing Tribes with safe and reliable water supplies, "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." Indeed, this is precisely what the Yavapai-Apache Nation Water Rights Settlement will accomplish when enacted.

Given my understanding of the history of the Nation's settlement efforts and first-hand knowledge of the Verde Valley and Verde River, I was disappointed, however, with much of Interior's written testimony on the Nation's Settlement, particularly

Interior's suggestion that (a) the Settlement is the product of only recent negotiations efforts conducted on an expedited timeline; (b) the water to be delivered from the C.C. Cragin Dam and Reservoir for treatment on the Reservation "greatly exceeds" the Nation's projected water demands for domestic, commercial, municipal, and industrial (DCMI) uses; and (c) "upsizing" the Cragin-Verde pipeline to provide imported water those Verde Valley Communities that opt into receiving water from the C.C. Cragin Dam and Reservoir by the statutory deadline should not be supported. Accordingly, I am writing here to respectfully supplement the record in response to Interior's testimony to provide you with my on the ground knowledge of the Nation's settlement.

First, it is well known and documented in the Verde Valley that the Yavapai-Apache Nation has been working with the Salt River Project, the State of Arizona, the United States, and local communities to negotiate a water rights settlement since at least 2011. For myself, I have been involved with the Nations water rights effort since 2008. To suggest the Nation's settlement is the product of only recent negotiations conducted on an expedited timeline is grossly misinformed.

Second, in 2023, the Nation filed an amended claim in Arizona's Gila River General Stream Adjudication asserting water rights for 11,629 acre-feet per year (AFY) for its existing 1,809 acre Reservation. In Settlement, however, the Nation agreed to a compromise water budget of no more than 6,888 AFY of water (5,991 AFY in net depletion) to provide for its permanent tribal homeland. Moreover, the Nation is about to complete an administrative land exchange with the U.S. Forest Service which will add significant lands to the Reservation that are contiguous to the Nation's Middle Verde District in Camp Verde. The notice of Interior's intent to place these lands into trust has already been issued and the appraisal and NEPA process is complete. Ultimately, the Nation agreed in Settlement to serve both its existing and expanded Reservation lands (totaling 5,106 acres) with its original water settlement budget of 6,888 AFY, including for all existing and future DCMI and other uses on these lands, forever.

The Nation's Reservation (as expanded) will provide important future commercial and economic development opportunities for the Nation and needed goods, services, and jobs for the Verde Valley region. This is particularly so given the Nation's acquisition of previously undevelopable Forest Service lands within the boundaries of Camp Verde and the proximity of these lands to Interstate I-17 and the 260 Highway, which are major transportation corridors. For the Nation to be truly self-sufficient, it must engage in economic development on its new lands, to support its Tribal members, maintain its culture, and develop long overdue housing for its people.

To do this, the Nation, like all communities, must have a reliable water supply. I appreciate that the Nation, as part of its Settlement, plans to develop these lands using a sustainable water approach which includes limited groundwater pumping, the use of imported water from the C.C. Cragin Dam and Reservoir, and the development of reclaimed water sources. I was therefor perplexed to see officials in Washington, DC testify from afar that the water to be delivered to the Nation under the Settlement "far exceeds" the Nation's on Reservation water needs for its permanent tribal homeland. This conclusion is unsupported and contrary to my on the ground knowledge of the facts.

Finally, I respectfully disagree with Interior's decision to not support an upsized Cragin-Verde pipeline under S. 4705. Under the Act, local Verde Valley communities will have until December 31, 2029, to undertake the necessary planning steps needed to decide whether it is appropriate for their community to opt into an upsized version of the Cragin-Verde Pipeline under S. 4705. And of course, if the Verde Valley communities do not opt in by the deadline, the pipeline will not be upsized, and federal funds will only be authorized and appropriated by Congress to develop a project for the on Reservation needs of the Nation under the Settlement.

The Nation's settlement is a generational opportunity for the Yavapai and Apache people and for our region as a whole. But the Cragin-Verde Pipeline can only be constructed once, and it cannot be upsized later should Interior realize that its calculus on the pipeline is wrong. It also appears that Interior has not considered the multitude of federal benefits that can be achieved with an upsized pipeline, including reducing pressure on local aquifers and conserving groundwater sources that support the Verde River benefiting, among other things: (a) the downstream segment of the Verde River designated as a National Wild and Scenic River under the Arizona Wilderness Act of 1984 (P.L. 98-406); (b) two other downstream federally recognized Indian Tribes that rely on the Verde River to help meet their settled water rights (Fort McDowell Yavapai Nation and Salt River Pima-Maricopa Indian Community); and (c) inflows to Bureau of Reclamation's Bartlett Dam and Reservoir, that serves as a significant source of water for metropolitan Phoenix and other Valley of the Sun cities.

The Cragin-Verde Pipeline Project was ultimately determined by the Nation, the State of Arizona, the Salt River Project, Reclamation, and the other settling parties to be the best alternative to deliver water to the Nation for Settlement. The enactment of S. 4705 will finally confirm a long over-due Indian water rights settlement for the Yavapai-Apache Nation while also providing water certainty to the entire Verde Valley and the United States' federal interests in a sustainable Verde River. I urge you to enact S. 4705 expeditiously.

I appreciate the opportunity to submit these supplemental comments for the record. If there are any questions, please feel free to contact me.

Sincerely,

HON. TONY GIOIA

TOWN OF CAMP VERDE
October 16, 2024

Dear Chairman Schatz:

This letter is submitted by the Town of Camp Verde, Arizona (hereinafter "Camp Verde") to supplement the hearing record for the Legislative Hearing and Business Meeting held on September 25, 2024, and to express concerns with the comments made by the Assistant Secretary Newland on behalf of the Department of the Interior (Interior) about the Yavapai-Apache Nation Water Rights Settlement Act of 2024 (S. 4705).

Camp Verde enjoys a great relationship with our neighbor, the Yavapai-Apache Nation. One area of longstanding collaboration between our community and the Nation involves our mutual efforts to protect local aquifers as well as the health and vitality of the Verde River, which flows through the heart of our communities. As a party to the Yavapai-Apache Nation Water Rights Settlement (Settlement) to be confirmed by S. 4705, Camp Verde and the Nation have negotiated mutually acceptable terms for Settlement that, among other things, will help preserve our local aquifers, protect the Verde River, and help address water certainty for Camp Verde for many years to come. To this end, we were heartened to see that Interior "strongly supports the resolution of Indian water rights claims through negotiated settlements." We also agree that Indian water settlements, in addition to providing tribes with safe and reliable water supplies, "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." Indeed, this is precisely what the Yavapai-Apache Nation Water Rights Settlement will accomplish when enacted.

Given our first-hand knowledge of the history of the settlement negotiations and the terms of the Settlement, we were disappointed with Interior's written testimony to this Committee about the Yavapai-Apache Nation Water Rights Settlement, particularly its suggestion that (a) the Settlement is the product of only recent negotiations efforts conducted on an expedited timeline; (b) the water to be delivered from the C.C. Cragin Dam and Reservoir for treatment on the Reservation "greatly exceeds" the Nation's projected water demands for domestic, commercial, municipal, and industrial (DCMI) uses; and (c) "upsizing" the Cragin-Verde pipeline to provide imported water to Verde Valley Communities that opt into receiving water from the C.C. Cragin Dam and Reservoir by the statutory deadline should not be supported. Accordingly, Camp Verde is writing here to respectfully supplement the record in response to Interior's testimony to provide you with our on the ground knowledge of the Settlement.

First, it is well known and documented in the Verde Valley that the Yavapai-Apache Nation has been working with the Salt River Project, the State of Arizona, and local communities to negotiate a water rights settlement since at least 2011. Over the years, the Nation's leaders and attorneys have met with representatives of my community numerous times to discuss the settlement, hear concerns, and ultimately negotiate the final terms of settlement. To suggest the Nation's settlement is the product of only recent negotiations conducted on an expedited time line is misinformed.

Second, it is our understanding that, in 2023, the Nation filed an amended claim in Arizona's Gila River General Stream Adjudication asserting water rights for 11,629 acre-feet per year (AFY) for its existing 1,809 acre Reservation. In Settlement, however, the Nation agreed to a compromised water budget of no more than 6,888 AFY of water from surface and groundwater sources (5,991 AFY in net depletion) for its permanent tribal homeland. Moreover, the Nation Will complete an administrative land exchange with the U.S. Forest Service this year, which will restore significant lands to the Reservation that are contiguous to the Nation's Middle

Verde District in Camp Verde. The notice of Interior's intent to place these lands into trust has already been issued and the NEPA process is complete. Ultimately, the Nation agreed in Settlement to serve both its existing and new Reservation lands (totaling 5,106 acres) with its original water settlement budget of 6,888 AFY, including for all existing and future DCMI and other uses on these lands.

The Nation's Reservation is uniquely situated to support the future commercial and economic development needs of our region, particularly given the Nation's acquisition of previously undevelopable Forest Service lands within the boundaries of Camp Verde and the close proximity of these lands to Interstate I-17 and Arizona's State Route 260, which are major transportation corridors. We therefore anticipate that a great deal of economic growth and job creation for our region will occur on the Nation's lands—but for this to occur, the Nation needs a reliable water supply. The Nation's actions to significantly decrease their water budget as part of this settlement shows their commitment to negotiating in this process. Camp Verde was therefore perplexed with Interior's testimony that the water to be delivered to the Nation under the Settlement "far exceeds" the Nation's on Reservation water needs for its permanent tribal homeland. We are not aware of any facts that support this conclusion.

Finally, we respectfully disagree with Interior's decision to not support an upsized Cragin-Verde pipeline under S. 4705. Under the Act, local Verde Valley communities, including Camp Verde, will have until December 31, 2029, to undertake the necessary planning steps needed to decide whether it is appropriate for our community to opt into an upsized version of the Cragin-Verde Pipeline under S. 4705. As proposed, it is our understanding that, if the Verde Valley communities do not opt in by the deadline, the pipeline will not be upsized and federal funds will only be authorized and appropriated by Congress to develop a project for the on Reservation needs of the Nation.

The Nation's settlement is a generational opportunity for the Yavapai and Apache people and for our region as a whole. The Cragin-Verde Pipeline can only be constructed once and it cannot be upsized later, should Interior realize that its calculus on the pipeline is wrong. It also appears that Interior has failed to consider the multitude of federal benefits to be achieved with an upsized pipeline, including reducing pressure on local aquifers which we share with the Nation, and conserving groundwater sources that support the Verde River, thereby benefiting (a) the downstream segment of the Verde River designated as a National Wild and Scenic River under the Arizona Wilderness Act of 1984 (P.L. 98-406); (b) two other downstream federally recognized Indian Tribes that rely on the Verde River to help meet their settled water rights (Fort McDowell Yavapai Nation and Salt River Pima-Maricopa Indian Community); and (c) inflows to Bureau of Reclamation's Bartlett Dam and Reservoir, that serves as a significant source of water for metropolitan Phoenix.

The enactment of S. 4705 will finally confirm a long over-due and needed Indian water rights settlement for the Yavapai-Apache Nation that will also provide water certainty to our community, the entire Verde Valley, and the United States' federal interests. The Town of Camp Verde appreciates the opportunity to submit comments for the record which address some of Interior's statements to this Committee. If there are any questions, please feel free to contact me.

Sincerely,

HON. DEE JENKINS, MAYOR

TOWN OF CLARKDALE
October 11, 2024

Dear Chairman Schatz:

This letter is submitted by the Town of Clarkdale, Arizona to supplement the hearing record for the Legislative Hearing and Business Meeting held on Sept. 25, 2024, to express our concerns with the comments made by the Assistant Secretary Newland on behalf of the Department of the Interior (Interior) about the Yavapai-Apache Nation Water Rights Settlement Act of 2024 (S. 4705).

The Town of Clarkdale enjoys a great relationship with our neighbor, the Yavapai-Apache Nation. One area of longstanding collaboration between our community and the Nation involves our mutual efforts to protect local aquifers as well as the health and vitality of the Verde River, which flows through the heart of our communities. As a party to the Yavapai-Apache Nation Water Rights Settlement (Settlement) to be confirmed by S. 4705, the Town of Clarkdale and the Nation have negotiated mutually acceptable terms for Settlement that, among other things, will help preserve our local aquifers, protect the Verde River, and provide water certainty for the Town of Clarkdale for many years to come. To this end, we were

heartened to see that Interior “strongly supports the resolution of Indian water rights claims through negotiated settlements.” We also agree that Indian water settlements, in addition to providing tribes with safe and reliable water supplies, “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.” Indeed, this is precisely what the Yavapai-Apache Nation Water Rights Settlement will accomplish when enacted.

Given our first-hand knowledge of the history of the settlement negotiations and the terms of the Settlement, we were disappointed with Interior’s written testimony to this Committee about the Yavapai-Apache Nation Water Rights Settlement, particularly its suggestion that (a) the Settlement is the product of only recent negotiations efforts conducted on an expedited timeline; (b) the water to be delivered from the C.C. Cragin Dam and Reservoir for treatment on the Reservation “greatly exceeds” the Nation’s projected water demands for domestic, commercial, municipal, and industrial (DCMI) uses; and (c) “upsizing” the Cragin-Verde pipeline to provide imported water Verde Valley Communities that opt into receiving water from the C.C. Cragin Dam and Reservoir by the statutory deadline should not be supported. Accordingly, Town of Clarkdale is writing here to respectfully supplement the record in response to Interior’s testimony to provide you with our on the ground knowledge of the Settlement.

First, it is well known and documented in the Verde Valley that the Yavapai-Apache Nation has been working with the Salt River Project, the State of Arizona, and local communities to negotiate a water rights settlement since at least 2011. Over the years, the Nation’s leaders and attorneys have met with representatives of my community numerous times over many years to discuss the settlement, hear concerns, and ultimately negotiate the final terms of settlement. To suggest the Nation’s settlement is the product of only recent negotiations conducted on an expedited time line is grossly misinformed.

Second, in 2023, the Nation filed an amended claim in Arizona’s Gila River General Stream Adjudication asserting water rights for 11,629 acre-feet per year (AFY) for its existing 1,809 acre Reservation. In Settlement, however, the Nation agreed to a compromised water budget of no more than 6,888 AFY of water from surface and groundwater sources (5,991 AFY in net depletion) for its permanent tribal homeland. Moreover, the Nation will complete an administrative land exchange with the U.S. Forest Service this year, which will restore significant lands to the Reservation that are contiguous to the Nation’s Middle Verde District in Camp Verde. The notice of Interior’s intent to place these lands into trust has already been issued and the NEPA process is complete. Ultimately, the Nation agreed in Settlement to serve both its existing and new Reservation lands (totaling 5,106 acres) with its original water settlement budget of 6,888 AFY, including for all existing and future DCMI and other uses on these lands.

The Nation’s Reservation is uniquely situated to support the future commercial and economic development needs of our region, particularly given the Nation’s acquisition of previously undevelopable Forest Service lands within the boundaries of Camp Verde and the close proximity of these lands to Interstate I-17 and the 260 Highway, which are major transportation corridors. We therefore anticipate that a great deal of economic growth and job creation for our region will occur on the Nation’s lands—but for this to occur, the Nation needs a reliable water supply. The Town of Clarkdale was therefore quite perplexed with Interior’s testimony and to see that officials in Washington, DC have decided from afar that the water to be delivered to the Nation under the Settlement “far exceeds” the Nation’s on Reservation water needs for its permanent tribal homeland. This conclusion is not supported by anything we are aware of, and it is contrary to our on the ground knowledge of the facts.

Finally, we respectfully disagree with Interior’s decision to not support an upsized Cragin-Verde pipeline under S. 4705. Under the Act, local Verde Valley communities, including the Town of Clarkdale, will have until Dec. 31, 2029, to undertake the necessary planning steps needed to decide whether it is appropriate for our community to opt into an upsized version of the Cragin-Verde Pipeline under S. 4705. And of course, if the Verde Valley communities do not opt in by the deadline, the pipeline will not be upsized and federal funds will only be authorized and appropriated by Congress to develop a project for the on Reservation needs of the Nation.

The Nation’s settlement is a generational opportunity for the Yavapai and Apache people and for our region as a whole. The Cragin-Verde Pipeline can only be constructed once and it cannot be upsized later, should Interior realize that its calculus on the pipeline is wrong. It also appears that Interior has wholly failed to consider the multitude of federal benefits to be achieved with an upsized pipeline, including reducing pressure on local aquifers which we share with the Nation, and conserving

groundwater sources that support the Verde River, thereby benefiting (a) the downstream segment of the Verde River designated as a National Wild and Scenic River under the Arizona Wilderness Act of 1984 (P.L. 98-406); (b) two other downstream federally recognized Indian Tribes that rely on the Verde River to help meet their settled water rights (Fort McDowell Yavapai Nation and Salt River Pima-Maricopa Indian Community); and (c) inflows to Bureau of Reclamation's Bartlett Dam and Reservoir, that serves as a significant source of water for metropolitan Phoenix.

As part of settlement negotiations, we are aware of Reclamation's detailed efforts to evaluate the design and costs of the Cragin-Verde Pipeline Project, which were ultimately accepted by the Nation, the State of Arizona, SRP, Reclamation, and the parties as the best alternative to deliver water to the Nation for Settlement. Reclamation's cost estimates have also been reviewed and determined to be reasonable by an independent third-party contractor. Quite simply, the Cragin-Verde Pipeline project makes sense, and it is supported by detailed cost estimates and evaluations conducted by Reclamation and reviewed by independent experts.

The enactment of S. 4705 will finally confirm a long over-due and needed Indian water rights settlement for the Yavapai-Apache Nation that will also provide water certainty to our community, the entire Verde Valley, and the United States' federal interests. The Town of Clarkdale appreciates the opportunity to submit comments for the record which address some of Interior's statements to this Committee. If there are any questions, please feel free to contact me.

Sincerely,

HON. SUSAN GUTHRIE J., TOWN MANAGER

YAVAPAI COUNTY BOARD OF SUPERVISORS
October 15, 2024

Dear Chairman Schatz:

My name is James Gregory. I am the Yavapai County Supervisor for District 2 and a resident of Yavapai County for over 40 years. I am submitting this letter to supplement the hearing record for the Legislative Hearing and Business Meeting held on September 25, 2024, to express concerns with the comments made by the Assistant Secretary Newland on behalf of the Department of the Interior (Interior) about the Yavapai-Apache Nation Water Rights Settlement Act of 2024 (S. 4705).

Yavapai-County enjoys a great relationship with the Yavapai-Apache Nation. One area of longstanding collaboration between the County and the Nation involves our mutual efforts to protect local aquifers as well as the health and vitality of the Verde River, which flows through the heart of many of our communities, including District 2.

As a County Supervisor for District 2 and as the former Chairman of Yavapai-County Board of Supervisors, I have consistently supported the Nation's decades-long effort to achieve a fair and equitable water rights settlement, which S. 4705 will confirm. To this end, I appreciated Interior's testimony noting that it "strongly supports the resolution of Indian water rights claims through negotiated settlements." I also agree that Indian water settlements, in addition to providing Tribes with safe and reliable water supplies, "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." Indeed, this is precisely what the Yavapai-Apache Nation Water Rights Settlement will accomplish when enacted.

Given my understanding of the history of the Nation's settlement efforts, however, I was disappointed with Interior's written testimony about the Settlement, particularly Interior's suggestion that (a) the Settlement is the product of only recent negotiations efforts conducted on an expedited timeline; (b) the water to be delivered from the C.C. Cragin Dam and Reservoir for treatment on the Reservation "greatly exceeds" the Nation's projected water demands for domestic, commercial, municipal, and industrial (DCMI) uses; and (c) "upsizing" the Cragin Verde pipeline to provide imported water those Verde Valley Communities that opt into receiving water from the C.C. Cragin Dam and Reservoir by the statutory deadline should not be supported. Accordingly, I am writing here to respectfully supplement the record in response to Interior's testimony to provide you with my on the ground knowledge of the Nation's settlement.

First, it is well known and documented in the Verde Valley that the Yavapai-Apache Nation has been working with the Salt River Project, the federal government, the State of Arizona, and local communities to negotiate a water rights settlement since at least 2011. To suggest the Nation's settlement is the product of only recent negotiations conducted on an expedited timeline is grossly misinformed.

Second, in 2023, the Nation filed an amended claim in Arizona's Gila River General Stream Adjudication asserting water rights for 11,629 acre-feet per year (AFY) for its existing 1,809-acre Reservation. In Settlement, however, the Nation agreed to a compromise water budget of no more than 6,888 AFY of water (5,991 AFY in net depletion) to provide for its permanent tribal homeland. Moreover, the Nation will complete an administrative land exchange with the U.S. Forest Service this year, which will restore significant lands to the Reservation that are contiguous to the Nation's Middle Verde District in Camp Verde. The notice of Interior's intent to place these lands into trust has already been issued and the NEPA process is complete. Ultimately, the Nation agreed in its Settlement to serve both its existing and increased Reservation lands (totaling 5,106 acres) with its original water settlement budget of 6,888 AFY, including for all existing and future DCMI and other uses on these lands, forever.

The Nation's Reservation (as expanded) will provide important future commercial and economic development opportunities for the Nation and needed goods, services, and jobs for the Verde Valley region. This is particularly so given the Nation's acquisition of previously undevelopable Forest Service lands within the boundaries of Camp Verde and the proximity of these lands to Interstate I-17 and the 260 Highway, which are major transportation corridors. For the Nation to be truly self-sufficient, it must engage in economic development on its new lands to support its Tribal members, maintain its culture, and develop long overdue housing for its people.

To do this, the Nation, like all communities, must have a reliable water supply. I appreciate that the Nation, as part of its Settlement, plans to develop these lands using a sustainable water approach which includes limited groundwater pumping, the use of imported water from the C.C. Cragin Dam and Reservoir, and the development of reclaimed water sources. I was therefore perplexed to see officials in Washington, DC testify from afar that the water to be delivered to the Nation under the Settlement "far exceeds" the Nation's on Reservation water needs for its permanent tribal homeland. This conclusion is not supported by anything I am aware of, and it is contrary to my on the ground knowledge of the facts.

Finally, I respectfully disagree with Interior's decision to not support an upsized Cragin-Verde pipeline under S. 4705. Under the Act, local Verde Valley communities will have until December 31, 2029, to undertake the necessary planning steps needed to decide whether it is appropriate for their community to opt into an upsized version of the Cragin-Verde Pipeline under S. 4705. And of course, if the Verde Valley communities do not opt in by the deadline, the pipeline will not be upsized, and federal funds will only be authorized and appropriated by Congress to develop a project for the on Reservation needs of the Nation under the Settlement.

The Nation's settlement is a generational opportunity for the Yavapai and Apache people and for our region as a whole. But the Cragin-Verde Pipeline can only be constructed once, and it cannot be upsized later should Interior realize that its calculus on the pipeline is wrong. In taking this position on an upsized pipeline, Interior may have failed to consider the multitude of federal benefits that can be achieved with an upsized pipeline, including reducing pressure on local aquifers and conserving groundwater sources that support the Verde River benefiting, among other things: (a) the downstream segment of the Verde River designated as a National Wild and Scenic River under the Arizona Wilderness Act of 1984 (P.L. 98-406); (b) two other downstream federally recognized Indian Tribes that rely on the Verde River to help meet their settled water rights (Fort McDowell Yavapai Nation and Salt River Pima-Maricopa Indian Community); and (c) inflows to Bureau of Reclamation's Batlle Dam and Reservoir, that serves as a significant source of water for metropolitan Phoenix.

The Cragin-Verde Pipeline Project was ultimately determined by the Nation, the State of Arizona, the Salt River Project, Reclamation, and the other settling parties to be the best alternative to deliver water to the Nation for Settlement. The enactment of S. 4705 will finally confirm a long over-due Indian water rights settlement for the Yavapai-Apache Nation while also providing water certainty to the entire Verde Valley and the United States' federal interests in a sustainable Verde River. I urge you to enact S. 4705 expeditiously.

I appreciate the opportunity to submit these supplemental comments for the record. If there are any questions, please feel free to contact me.

Thank you,

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. BRIAN SCHATZ TO
HON. JOHNNY LEHI, JR.

Question 1. In addition to creating a homeland for your Tribe after decades of uncertainty, what other benefits and resources would be unlocked for San Juan Southern Paiute from having land placed into trust on its behalf, as well as water rights associated with those lands?

Answer. The Settlement Act offers a long-awaited resolution to the Paiute Tribe's decades-long pursuit of justice. By providing a permanent land base and water rights, this legislation addresses historical inequities and ensures a future where the Tribe can thrive as a sovereign nation. In order to understand the significance of this settlement and answer the question posed by Chairman Schatz, a brief overview of the Tribe's history and the challenges it has faced in securing its rightful homeland is required.

I. Brief Overview

A. History of the San Juan Southern Paiute Tribe

The Paiute Tribe is a culturally and politically autonomous Native American tribe, with members residing in two distinct regions: northern Arizona and southern Utah. The Tribe's original territory was annexed into the Navajo Reservation through Executive Orders in 1884 and 1933, driven by the substantial increase in Navajo Tribal Members and their territorial expansion. These annexations had severe consequences for the Paiute Tribe, as it gradually lost its aboriginal territory, legitimizing the increasing Navajo encroachment.

Today, the Paiute Tribe is surrounded by the Navajo Nation but remains recognized as part of the Southern Paiute Nation by the Navajo and other Southern Paiute Tribes in Arizona, southern Utah, and southeastern Nevada. The two areas currently inhabited by Paiute Tribal Members are approximately 90 miles apart. The southern settlement, known as Atatsiv or "Sands," refers to the sandy, spring-fed farmland plateau northwest of Tuba City.¹ The northern settlement, Kaivyaxarur or "the Mountain Place," is located around Navajo Mountain, with homes and grazing areas primarily north and northeast of the mountain.²

In 1907, the Assistant Secretary of the Interior established an exclusive reservation for the Paiutes, known as the "Paiute Strip," stretching from the 110th parallel in Monument Valley west to the Colorado River.³ However, in 1922, under pressure from White lobbyists seeking opportunities for mineral exploration, the federal government returned the Paiute Strip to the public domain.⁴ By 1933, after no minerals were found, the land was annexed to the Navajo Nation, despite Paiute Tribal Members still residing in the area.

Despite these challenges, the Paiute Tribe continued to live and farm in their traditional areas. Federal neglect from the 1930s to the early 1980s deepened the Tribe's hardships and struggles with poverty. However, this lack of attention inadvertently contributed to the preservation of the Paiute language and cultural traditions.⁵

B. Efforts to Secure Land and Water

The Tribe has spent half a century asserting its rights and interests in its aboriginal land and the associated water. This Settlement Act is a result of the culmination of efforts made by the Tribe's past leaders and elders, some of whom have left this world without seeing this achievement. We owe them our gratitude and our recognition.

¹PAMELA BUNT, ATATSIVWU UMANAKWAT KAIVYAXARURUVATUXW, FROM THE SANDS TO THE MOUNTAIN: ETHNOHISTORY AND ETHNOGRAPHY OF THE SAN JUAN SOUTHERN PAIUTE TRIBE 284 (1987).

²*Id.* at 1.

³*Id.* at 8, 96.

⁴See ALBERT FALL, THE SECRETARY OF INTERIOR'S APPROVAL OF THE RETURN THE PAIUTE RESERVATION TO PUBLIC DOMAIN, 304 (July 17, 1922) (on file with the National Archives, Record Group 75, Central Classified Files, Western Navajo Agency, File 17605-1922); see also Letter to Paradise Oil (June 4) (on file with the National Archives, Record Group 75, Central Classified Files, Western Navajo Agency, File 42622-192.1).

⁵See PROPOSED FINDINGS FOR FEDERAL ACKNOWLEDGMENT, *infra* note 6, at 32-33.

1. The Navajo-Hopi-San Juan Southern Paiute Land Disputes

In 1934, Congress “permanently [withdrew] from all forms of entry or disposal” approximately 8.2 million acres of land, known as the “1934 Act Lands,” for “the benefit of the Navajo and such other Indians as may already be located thereon” (the “1934 Act”). The 1934 Act Lands were incorporated into what became recognized as the “Navajo Reservation,” sparking decades of disputes among the Navajo Nation, the Hopi Tribe, and the Paiute Tribe.

In 1974, Congress enacted legislation permitting the Federal District Court to partition lands between the Navajo Nation and the Hopi Tribe and to address claims by other Native groups regarding rights and interests in the 1934 Act Lands. This led to decades of litigation over tribal interests in the 1934 Act Lands between the Navajo Nation and Hopi Tribe, culminating in the 1982 case *Masayesva v. Zah* in the Arizona District Court. Our Tribe moved to intervene in the litigation, countering arguments that it was not a “tribe” and therefore lacked standing to participate. During this time, the Tribe worked diligently to obtain federal recognition, which was granted by the Bureau of Indian Affairs on December 11, 1989.⁶

The Arizona District Court ultimately held that the Paiute Tribe qualified as the “such other Indians as may already be located thereon” under the 1934 Act. The court further held that the 1934 Act “conveyed an equitable property interest” to the Paiute Tribe in approximately 26,000 acres of land within the Navajo Reservation’s boundaries.⁷ While the District Court issued a final judgment recognizing the Paiute Tribe’s property interest, it concluded that it could not partition the land between the Navajo Nation and the Paiute Tribe because Congress did not specifically authorize it to do so.

Although this land recognition marked the first win in our Tribe’s fight to reclaim part of our aboriginal territory, the lack of a formal partition meant that our Tribe’s struggle for an exclusive homeland continued.

2. The San Juan Southern Paiute Tribe and Navajo Nation Land Treaty of 2000

To resolve the land dispute and dismiss the appeal pending in the 9th Circuit, the Paiute Tribe and the Navajo Nation negotiated a land treaty, which was finalized and executed in 2000 (the “Treaty”). The Treaty set aside two parcels of land within the Navajo Reservation to be held in trust by the United States exclusively for the Paiute Tribe (the “Treaty Lands”).⁸ The Treaty establishes a homeland for the Paiute Tribe and resolves the long-standing *Masayesva v. Zah* litigation between the Paiute Tribe and the Navajo Nation, addressing the extent of the Paiute Tribe’s interest in the 1934 Act Lands. Through the Treaty, the Paiute Tribe and the Navajo Nation expressed their “desire to establish harmony between the two nations for all future generations.”⁹

Although the Treaty was signed over 20 years ago, it has yet to be ratified by Congress, leaving the Tribe in a state of uncertainty. Without ratification, the Paiute Tribe has been unable to fully assert its sovereignty or develop the infrastructure necessary to support its people.

3. History of S. 4633

The Settlement Act, also referred to as S. 4633 in the Senate and H.R. 8940 in the House, is a landmark piece of legislation designed to resolve long-standing water rights disputes among the Navajo Nation, the Hopi Tribe, and the Paiute Tribe. The Settlement Act represents the culmination of decades of litigation and negotiation, particularly within the context of H.R. 8940 and the Little Colorado River Adjudication.

a. HR. 2461 and the Little Colorado Adjudication

Prior to the Treaty, the Navajo Nation and Paiute Tribe had both filed Statements of Claimant in the Little Colorado River Adjudication, claiming rights to use water in the Treaty Lands. The Paiute Tribe’s claim was submitted with the United

⁶See Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs, 83 Fed. Reg. 34,863, 34,866 (July 23, 2018); Notice of Final Determination that the San Juan Southern Paiute Tribe Exists as an Indian Tribe, 54 Fed. Reg. 51,502 (Dec. 15, 1989); see also, U.S. DEPT. OF THE INTERIOR, OFFICE OF FED. ACKNOWLEDGMENT, NO. SJP-V001-D004, SUMMARY UNDER THE CRITERIA AND EVIDENCE FOR PROPOSED FINDINGS FOR FEDERAL ACKNOWLEDGMENT OF THE SAN JUAN SOUTHERN PAIUTE TRIBE (1987) [hereinafter PROPOSED FINDINGS FOR FEDERAL ACKNOWLEDGEMENT] (available upon request).

⁷*Masayesva v. Zah*, 794 F. Supp. 899,929 (D. Ariz.1992), appeal filed, Sept. 3, 1993 (No. 93-15216).

⁸See Treaty, Navajo Nation-San Juan Southern Paiute Tribe, Mar. 18, 2000; Addendum to Treaty, Navajo Nation-San Juan Southern Paiute Tribe, May 7, 2004.

⁹*Id.* at Article I.

States' report titled "Report of Water Claims by the United States of America for the San Juan Southern Paiute Tribe, December 1991." On November 22, 1994, the United States filed the United States' Statement of Amended Claims, which included the Paiute Tribe in the claims asserted by the United States on behalf of Indian tribes in the Adjudication. The United States submitted a corresponding report titled "Report of Amended Water Claims by the United States of America for the Indian Lands in the Little Colorado River Basin, November 22, 1994," which included specific details regarding the water rights claims of the Paiute Tribe. During the 1990s, the United States, Navajo Nation, Hopi Tribe, Paiute Tribe, and non-Indian parties undertook efforts to negotiate a water rights settlement for the entire region. However, these early settlement efforts were unsuccessful, and the litigation continued.

As part of a contested case initiated in 2016 for the Navajo Nation in the Little Colorado River Adjudication, the Navajo Nation claimed rights to the water located beneath the Treaty Lands it agreed to partition to the Paiute Tribe, as well as water in areas in where the Paiute Tribe currently shares a joint interest with the Navajo Nation. In response, the Paiute Tribe was forced to object to the Navajo Nation's water claims in order to protect its joint and undivided interest in the water rights for the 26,000 acres of 1934 Act Lands.

The Tribe's assertion of rights in the Little Colorado River Adjudication did not stop the Tribe's efforts to have the Treaty ratified. On August 24, 2022, after several requests, the Navajo Nation sent a letter to Congressman O'Halleran confirming the Navajo Nation's ongoing support of the Treaty Legislation. It was only when Congressman Crane succeeded in representing the District that the Tribe's efforts finally began to pay off. Congressman Crane championed our Tribe's tireless attempts to have the Treaty ratified. On April 3, 2023, Congressman Crane introduced H.R. 2461, "the San Juan Southern Paiute Tribal Homelands Act of 2023." The sole purpose of H.R. 2461 was to ratify the Treaty and create the San Juan Southern Paiute Reservation.

In the months following the introduction of H.R. 2461, the Tribe continued to work towards its passage. On June 7, 2023, Johnny Lehi, Jr. testified before the United States Subcommittee on Indian and Insular Affairs in support of H.R. 2461. The Tribe subsequently received comments regarding the provisions for water rights in H.R. 2461, noting that while the Treaty provided for a quit claim of those rights, it did not quantify them.

Congressman Crane's support in assisting the Tribe to establish its exclusive reservation has surpassed the efforts of any previous representative and we cannot thank him enough. Without the inclusion of H.R. 2461 in the Settlement Act, S. 4633 and H.R. 8940 would likely not exist.

b. The Tribe's Inclusion in the Settlement Act Negotiations

In or around October 2023, the Tribe learned that the Navajo Nation, the Hopi Tribe, and the Arizona State parties in the Little Colorado River Adjudication had renewed settlement negotiations of the Hopi Tribe and Navajo Nation's water rights in the Lower Colorado River Basin. The Tribe was informed that it would need to formally request to participate in these negotiations. On December 14, 2023, the Tribe submitted its formal request, and on January 23, 2024, the Tribe was welcomed into the settlement negotiations. At that time, it was suggested that the ratification of the Treaty be incorporated into the negotiated settlement.

The Tribe spent the next four months engaged in daily meetings to negotiate and draft the Northeastern Arizona Indian Water Rights Settlement Agreement. Significant time was needed to review prior drafts and underlying documents, as well as to revise, draft, and negotiate the Tribe's rights with the other parties. The goal was to have the Settlement Act introduced before Congress this year. Entering these negotiations at such a late stage was a monumental task for the Tribe, but I am proud to say that we accomplished it.

II. Benefits and Resources Unlocked By Land In Trust and Water Rights

The Settlement Act is far more than just a legislative act; it represents a landmark moment in the long and often arduous journey of the Paiute Tribe toward justice and restoration. For a Tribe that has endured displacement, resource deprivation, and jurisdictional limbo for generations, S. 4633 offers not only tangible resources but also an opportunity to restore sovereignty, preserve cultural identity, and build a sustainable future. It establishes a homeland, secures water rights, and creates the legal and financial framework necessary to ensure that the Paiute people can thrive in the years to come.

The most immediate and profound benefit of S. 4633 is the creation of a permanent homeland. For decades, the Paiute Tribe has existed as a landless people, confined to scattered settlements within the Navajo Nation's expansive reservation.

Without a defined land base, the Tribe lacked the ability to establish governance, provide critical services, or create a space for cultural and communal gathering. This state of limbo undermined the Tribe's sovereignty and deprived its members of a sense of belonging and permanence. The establishment of a reservation through S. 4633 finally provides the Paiute people with a place to call "home." This land is more than just acreage; it is a symbol of the Tribe's resilience and serves as the foundation for its self-determined future. A reservation allows the Tribe to govern itself, enforce its laws, and implement policies that reflect its values and priorities, making self-determination a reality rather than an aspiration.

Beyond governance, the reservation will serve as a cultural anchor for the Tribe. Over the years, the Paiute people have faced immense pressure to assimilate into surrounding communities, risking the erosion of their language, traditions, and spiritual practices. By creating a defined and protected homeland, S. 4633 ensures that the Tribe has a dedicated space to preserve and celebrate its heritage. The land will host sacred ceremonies, language revitalization programs, and cultural education initiatives that reconnect younger generations to their ancestors' ways of life. It will be a place where elders can share their wisdom and stories with youth, ensuring that the Paiute identity remains strong for generations to come.

In addition to its cultural and symbolic significance, the reservation will address critical infrastructure and service gaps that have long plagued the Tribe. For decades, Paiute communities have struggled with inadequate access to clean water, electricity, and sanitation—basic services that most Americans take for granted. The trust land designation and water rights allocation under S. 4633 provide the legal and financial tools necessary to close these gaps, ensuring that the Tribe can access the resources needed to thrive. The legislation also funds the construction of critical infrastructure, such as water delivery systems and housing, ensuring that Tribal Members have access to safe living conditions and a sustainable quality of life. The *iiná bá-paa tuwaqat'si* pipeline, a centerpiece of the settlement, will deliver clean, reliable water to the Paiute reservation, ending the water insecurity that has hindered the Tribe's development. For the first time, the Paiute people will be able to build homes, schools, healthcare facilities, and community centers on land they own and control. This will create a solid foundation for improved public health and education outcomes, fostering a brighter future for the Tribe.

The economic benefits realized by S. 4633 cannot be overstated. With a permanent land base and secured water rights, the Tribe will be able to develop enterprises that generate revenue and create jobs for its members. Without a reservation, the Tribe's economic development has been significantly hindered. There are also a myriad of federal programs outside the Bureau of Indian Affairs and Indian Health Services that support the work of Indian tribes through grants and other forms of business development assistance. These programs often require a tribe to have an exclusive land base, and with the passage of S. 4633, the Tribe will gain access to apply for these grants and funding opportunities. For example, passage of the legislation will allow the Tribe to improve the road leading into the Southern Area community of Hidden Springs, which is washed out during rainstorms. With a land base, the Tribe will have jurisdiction over the area and can use funding, previously unavailable, to repair the road and make it safer for their children to cross on their way to the bus stop.

The Paiute Tribal Members will finally have the right to build permanent housing when S. 4633 moves forward. For years, the Tribe has been restricted by both the Bennett Freeze and Navajo law, preventing the development of permanent homes for Paiute Tribal Members, despite being on their aboriginal homeland. Although the Tribe has acquired small fee lands, development on these lands has been limited, and the Tribe lacks the autonomy over them that a reservation provides. While other tribes have had access to housing funds, the Tribe has been unable to use these resources without its own exclusive reservation. Taking the San Juan Southern Paiute Reservation into trust will allow the Tribe to develop those 5,400-acres into a flourishing community for the Paiute people. All of this requires a reservation and an adequate water supply, both of which S. 4633 provides to the Tribe.

Agriculture, which has always been a vital part of Paiute culture, can now flourish with access to water for irrigation. Additionally, the reservation's proximity to scenic areas and cultural landmarks presents opportunities for eco-tourism and heritage-based ventures that showcase the Paiute way of life. These enterprises not only provide economic benefits but also foster cultural pride and engagement. Furthermore, the infrastructure projects funded by the settlement, along with other existing programs available only to reservations—such as housing construction, pipeline installation, and community development—will create immediate employment opportunities for Tribal Members, helping to reduce poverty and unemployment within the community.

Equally important is the environmental stewardship enabled by S. 4633. The Paiute people have always maintained a deep spiritual connection to the land and water, viewing themselves as caretakers rather than owners. With control over their resources, the Tribe can implement sustainable practices that protect the environment while meeting the needs of their people. The secured water rights allow for careful management of groundwater, springs, and other resources, ensuring that these vital assets are not depleted or contaminated. The Tribe can also undertake reforestation, habitat restoration, and other conservation projects that preserve the biodiversity of their homeland and combat the effects of climate change.

While the tangible benefits of S. 4633 are undeniably significant, the emotional and psychological impact on the Paiute people is just as profound. For generations, the Tribe has lived with the trauma of displacement and marginalization. The establishment of a reservation and the recognition of water rights represent a long-overdue acknowledgment of the injustices they have endured. This legislation is a step toward healing, offering the Paiute people a chance to reclaim their identity and rebuild their community with dignity. For elders who have spent their lives fighting for this moment, it is the fulfillment of a dream and a testament to their resilience. For younger generations, it is not just a promise of stability and opportunity—it is a chance to grow up with pride in their heritage and hope for a brighter future.

Finally, the benefits of S. 4633 extend beyond the Paiute Tribe itself. By resolving longstanding land and water disputes, the legislation fosters harmony between the Paiute Tribe and its neighbors, including the Navajo Nation and the Hopi Tribe. Collaborative water management and regional economic partnerships will strengthen relationships and promote shared prosperity, creating a ripple effect of stability and growth throughout northeastern Arizona.

III. Conclusion

The Settlement Act, S. 4633, is a profound and long-overdue act of justice for the San Juan Southern Paiute Tribe. It is not merely about transferring land or securing water rights; it is about restoring dignity, sovereignty, and opportunity to a people who have endured generations of displacement and systemic neglect. By establishing a permanent homeland, securing vital water resources, and providing the legal and financial framework for self-determination, S. 4633 allows the Tribe to reclaim its rightful place as stewards of its ancestral lands and architects of its future.

This legislation marks the beginning of a new chapter for the Paiute people—a chapter defined by cultural revitalization, economic empowerment, and environmental stewardship. The benefits it unlocks extend far beyond material resources; it provides a foundation for the Tribe to heal, thrive, and preserve its identity for future generations. Moreover, the collaborative spirit of S. 4633 sets a powerful example for resolving disputes and fostering harmony between Tribal nations and their neighbors.

For the Paiute people, S. 4633 represents the culmination of decades of struggle, resilience, and advocacy. It is a testament to their enduring spirit and an acknowledgment of the injustices they have faced. For the United States, it is an opportunity to reaffirm its commitment to upholding its trust responsibilities and promoting equity for Indigenous communities. In passing this legislation, Congress ensures that the Paiute people are no longer outsiders in their own land, but rightful custodians of a future built on justice, hope, and self-determination.

On behalf of the San Juan Southern Paiute Tribe, we once again thank the Subcommittee for its attention and interest in this historic legislation. We remain available to answer any questions or concerns that may arise.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. BRIAN SCHATZ TO HON. TANYA LEWIS

Question 1. In its testimony, the Department of the Interior noted concerns with the size of the proposed Tú nliínichoh Water Infrastructure Project (Project), with capacities of the Cragin-Verde Pipeline Project pipeline and the Yavapai-Apache Nation Drinking Water System far exceeding expected demand, as documented in the Gila River Adjudication. Is the size of the Project largely based on the projected water needs of the Yavapai Apache Nation, the surrounding non-Indian communities, or both? Are these needs based on farming, municipal, wastewater, or domestic use?

Answer. Under the Yavapai-Apache Nation Water Rights Settlement dated June 26, 2024 (Settlement), the Project is based on the projected water needs of the Nation for the Yavapai-Apache Reservation (Reservation). The Project and Drinking

Water System are neither oversized for the Nation's expected water demands for its Reservation nor unsupported by the Nation's claims in the Gila River Adjudication under federal law.

While Section 114 of the Act provides an opportunity to upsize the Project pipeline to deliver up to 1,639.74 acre-feet per year (AFY) of additional water for Verde Valley Communities if contracted for by December 31, 2029, *see* Answer to Question 3, *infra.*, as a baseline, the Project and corresponding Yavapai-Apache Nation Drinking Water System (Drinking Water System) is sized under the Settlement to deliver and treat 4,610 AFY¹ of water from the C.C. Cragin Dam and Reservoir (Cragin Reservoir) for use on the Reservation from the following water sources:

Yan Cragin Water—2,910 AFY (average)
 SRP Water—500 AFY (average)
 YAN CAP Water (by exchange through Cragin Reservoir)—1,200 AFY
TOTAL: 4,610 AFY

Of these sources, the Settlement requires that the 3,410 AFY of appropriable surface water to be delivered from the Cragin Reservoir (YAN Cragin Water and SRP Water) must be used exclusively on the Reservation, while the Nation is entitled (as in other Arizona Indian water rights settlements),² to temporarily lease some or all of its 1,200 AFY of the YAN Central Arizona Project (CAP) Water exchanged through the Cragin Reservoir to off-Reservation entities, until such time as the Nation requires this water source to meet its on-Reservation permanent Tribal homeland needs.

Because of the policies of the United States that removed the Yavapai and Apache people from their original 900 square mile reservation in 1875, the Nation's current Reservation totals no more than 1,809 acres of land. However, because of a land exchange the Nation recently completed with the USDA Forest Service and the pending addition of certain contiguous fee owned lands, by or upon the passage of the Act, the Nation's Reservation will total 5,106 acres of land.

For the Nation to be self-sufficient and engage in Indian self-determination as contemplated by the U.S. Supreme Court in *Winters*,³ it must have sufficient water to construct community housing and engage in the types of economic development that can generate tribal revenues to support governmental services, enhance the lives of community members and their families, and protect the culture and lifeways of the Nation. Accordingly, the water demands of the 5,106 acre Reservation were carefully evaluated by the Nation, the settling parties, the Bureau of Reclamation (Reclamation), and the Nation's technical experts, and it was determined that the Project and Drinking Water System must have the capacity to deliver and treat up to 4,610 AFY of water to meet the existing and future needs of the Reservation as a permanent Tribal homeland under the *Winters* Doctrine.

The Nation's 4,610 AFY of long-term water demand was confirmed by the Drinking Water Infrastructure Plan Report prepared by Carollo Engineers, Inc., dated July 2024 (Carollo Report) and the Memorandum summarizing Land Use and Water Projections, also prepared by Carollo Engineers, Inc., dated August 15, 2024 (Carollo Memo). In its Report (as summarized in the Carollo Memo), Carollo Engineers used a standard land use planning approach used in the industry to calculate the Nation's domestic, commercial, municipal, industrial (DCMI) water demands for the Reservation consistent with *Gila V and Winters*.⁴ This included conducting a com-

¹The total amount of YAN Cragin Water (2,910.26 AFY/26.45 percent) and SRP Water (500 AFY/4.55 percent) is based on a percentage of storage capacity in Cragin Reservoir and an annual calculated "not to exceed" average. In any given year, YAN Cragin Water could deliver up to 3,394.06 AFY and up to 583.86 AFY of SRP Water. However, for purposes of simplifying these Answers, a total annual delivery amount of 4,610 is used.

²*See, e.g.*, Ak Chin Community Water Rights Settlement Act of 1984, Pub. L. No. 98-520, 98 Stat. 2698 (as amended by the Act of Oct. 24, 1992, Pub. L. No. 102-497, §10, 106 Stat. 3255, 3258 and the Act of Oct. 10, 2000, Pub. L. No. 106-285, 114 Stat. 878, 878-79); Salt River Pima-Maricopa Indian Community Water Rights Settlement Act of 1988, Pub. L. No. 100-512, 102 Stat. 2549; Gila River Indian Community Water Rights Settlement Act of 2004, Title II, Arizona Water Settlement Act, Pub. L. No. No. 108-451, 118 Stat. 3478 (2004).

³*Winters v. United States*, 207 U.S. 564 (1908); *see also In re Gen. Adjudication of All Rights to Use Water in the Gila River Sys. & Source*, 35 P.3d 68, 79 (Ariz. 2001) (*Gila V*) (establishing the factors to be used in Arizona to quantify federal reserved water rights for Indian tribes under *Winters*).

⁴The land use planning approach is a valid means to demonstrate tribal water requirements under the *Winters* Doctrine in the Gila River Adjudication. *See, e.g., Gila V*, 35 P.3d at 79 (approving the use of land use plans or other land use planning approaches to quantify water rights so long as the approach used considers "actual and proposed uses", and "recommendations of feasibility" to establish "the amount of water necessary to accomplish the homeland purpose.").

Continued

plete analysis of all existing meter data and water demands by DCMI use, and a calculation of reasonably foreseeable future DCMI demands for the expanded Reservation at full build out. Both the Carollo Report and the Carollo Memo were provided to the Department of the Interior (Interior) prior to the hearing.

The suggestion in Question 1 and in Interior's testimony that the settling parties' decision to size the Project and the Drinking Water System at a capacity to deliver 4,610 AFY of water to the Nation's expanded Reservation "far exceeds" the Nation's expected water demand "as documented in the Gila River Adjudication" misunderstands both the Nation's filing in the Gila River Adjudication and the terms of the Settlement.

The Nation filed an amended water rights claim in the Gila River Adjudication on January 6, 2023 (Amended Claim). In its Amended Claim, the Nation asserted water rights under the federal reserved water rights doctrine and *Winters* for DCMI, irrigation, and other uses totaling 11,629 AFY in diversion requirements for its then existing 1,809-acre Reservation. However, under the Settlement, the Nation must have sufficient water to serve its much larger and expanded Reservation that will total 5,106 acres of land no later than by the enactment of the Act.⁵ Because the Nation could only assert water rights in the Gila River Adjudication for its smaller Reservation land base that was in existence on the date of the filing of the claim (1,809 acres), Interior's reliance on the Amended Claim to document the capacity needed for the Project and Drinking Water System for the expanded Reservation of 5,106 acres in Settlement is misplaced.

Moreover, as part of the Nation's compromise in Settlement, the Nation agreed to a significantly reduced water budget compared to its 2023 Amended Claim, and agreed to use its reduced water budget to meet all DCMI, irrigation, and other water needs for both the existing and expanded Reservation.⁶ Specifically, under the Settlement, the Total Maximum Annual Diversion Amount for all on Reservation uses is 6,888.50 AFY (5,991 AFY in depletion), which is far less than the Nation's 2023 Amended Claim. See Settlement, Paragraph 4.0.

Question 1a. Are these needs calculated based on irrigatable acres of reservation land or on population?

Answer. The capacity of the Project and associated Drinking Water System is sized to deliver and treat 4,610 AFY of water from the Cragin Reservoir to support the Nation's long-term "permanent tribal homeland" DCMI needs on the expanded Reservation. Agricultural irrigation from local ditches and other historic sources accounts for approximately 2,199 AFY of the Nation's water budget under the Settlement. The Nation also expects to expand its irrigated land base in the future by using highly treated reclaimed water produced from the Nation's capture and treatment of wastewater from its expanded DCMI uses on the existing and expanded Reservation. But to be clear, the Project and Drinking Water System were sized to deliver water to meet the Nation's on-Reservation DCMI uses, they were not sized to deliver water for direct agricultural irrigation (though it could be used for this purpose under the Settlement if deemed feasible by the Nation).⁷

The Nation's anticipated population was a factor in the Nation's DCMI calculations, just as it was in the Nation's 2023 claim filed in the Gila River Adjudication. However, while the Arizona Supreme Court made clear in *Gila V* that a tribe's present and projected future population should be considered when examining Trib-

In fact, the Arizona Supreme Court justified its decision to use a land use planning approach for quantify tribal water rights (in part) by noting that this approach had already been used to justify Indian water rights settlements in Arizona, including in the Fort McDowell Yavapai Nation's 1990 Indian water rights settlement. *Id.*

⁵The Nation has a pending fee to trust application with the Bureau of Indian Affairs (BIA) that will add the contiguous USDA Forest Service lands to the Middle Verde and Montezuma Districts of the Reservation. In addition, the Act would also add a number of additional fee held parcels to the Reservation.

⁶The Nation's Amended Claim prioritized current and future irrigation uses on its existing 1,809-acre Reservation consistent with the Nation's farming practices, its desire to protect and preserve arable farmlands from development, and its need to avoid residential or commercial development in the flood plain of the Verde River. Because of the Nation's small Reservation land base, this resulted in a limited claim for on Reservation DCMI uses. However, the Nation's DCMI demands will substantially increase with the expanded Reservation as documented in the Carollo Report. These expanded DCMI uses are necessary to finally meet the long overdue housing and economic development needs of the Reservation as a true permanent tribal homeland.

⁷In *Gila V*, 35 P.3d at 79, the Arizona Supreme Court rejected the exclusive use of the practically irrigated acre (PIA) standard for quantifying tribal claims in the Gila River Adjudication and instead adopted a "multi-faceted approach", *Id.* at 79, that is intended to take into consideration the unique "geography, topography, and natural resources" of each of Arizona's federally recognized Indian tribes. *Id.* at 80.

al water rights claims under *Winters*, the Court also cautioned that population should “never be the only factor” considered. *Gila V*, 35 P.3d at 76.⁸

Question 2. It is unusual for non-Indian parties to participate in an Indian water rights settlement without contributing state or local funding as part of the share of capital costs for any infrastructure serving non-Indian water users. Why does S. 4705 lack a requirement for the state or local county to contribute in this way?

Answer. Unlike reservations in many other states, none of the Indian reservations in Arizona are checkerboarded with interspersed non-Indian owned lands within their exterior boundaries. Consequently, nearly all prior Indian water right settlements in Arizona have focused on providing water resources and facilities to deliver and use water on the reservations at issue. Aside from the leasing of some limited tribal settlement water for use off a reservation, none of the settlement water or federal funding provided by the Arizona settlements has been made available to off-reservation individuals or communities. The one exception to this is the rehabilitation and improvement of the San Carlos Indian Irrigation Project (SCIIP) which was authorized by the federal legislation approving the Gila River Indian Community Water Rights Settlement in 2004. In approximately 1934, Congress authorized SCIIP to construct Coolidge dam and an associated irrigation delivery system on the Gila River in Central Arizona to provide irrigation water to Gila River reservation lands, as well as to an equivalent amount of non-Indian lands off the reservation. The Gila River Indian Community settlement legislation authorized the rehabilitation of both the on-and off-reservation portions of SCIIP from federal funds deposited in the Lower Colorado River Basin Development Fund, without any local contribution.

Similarly, Congress has authorized settlements in other states and provided funds for projects that benefit non-Indian parties without requiring local contribution from the non-Indian beneficiaries. For example, the Consolidated Salish, Kalispell, and Kootenai of the Flathead Reservation Water Rights Settlement includes funding for improvements to dams, canals, and other infrastructure in the Flathead Indian Irrigation Project that benefit all water users in the area, the majority of whom are non-Indian, without those users being required to financially contribute to the settlement. The Gros Ventre and Assiniboine Tribes of the Fort Belknap Indian Community Water Rights Settlement also provided funds to improve the efficiency of the U.S. Bureau of Reclamation Milk River Project, which furnishes irrigation to large areas of non-tribal land. Those funds were provided without requiring contribution from the local parties benefiting from those improvements.

Further, examining only financial contributions to this Settlement misses the mark. The non-Indian parties will contribute valuable infrastructure and water resources that are critical to Settlement. As noted in response to Question 1, *supra*, non-Indian water users are contributing significant water resources to the Settlement. The State parties are contributing an average of 3,410 AFY of water stored in Cragin Reservoir toward the Settlement that would not otherwise be available to the Nation. That contribution is of enormous worth, both economically and in terms of the Nation’s long-term growth and viability. Under the terms of the Settlement, the Salt River Project is also making available annual water storage in the existing Cragin Reservoir. The United States is only required to expend 0.2 percent of the Project Fund to secure this storage infrastructure.⁹

In addition, the Salt River Project is making additional water stored in Cragin Reservoir available to allow the Nation to utilize its existing CAP allocation. Under the Settlement, the Salt River Project and Nation will execute an agreement that allows the Nation to exchange its CAP allocation for water stored in Cragin Reservoir. Without an exchange, the Nation cannot make use of its CAP allocation on the Reservation because there is no mechanism for delivering CAP water to the Reservation. Under the Settlement, the Nation will be able to access and use its CAP allocation on the Reservation or make it available for lease to Verde Valley Communities to reduce their reliance on groundwater. Both options provide substantial financial and water resource benefits to the Nation.

Section 114(a) of the Act also provides an opportunity to upsize the Project pipeline to deliver up to 1,639.74 AFY of water from the Cragin Reservoir to Verde Valley Communities, if those communities enter into binding contracts for such water

⁸The approval of the Nation Settlement is governed by the standards set forth in *Gila V*, which is binding precedent in the Gila River Adjudication in Arizona.

⁹As described in the response to Question 1, the Salt River Project will make an annual allocation of 4,610 AF of capacity in Cragin Reservoir available to the Nation, while requiring that the United States only reimburse the Salt River Project for incurred capital and OM&R costs proportional to the Nation’s allocation. These reimbursed costs are presently \$1,590,789 which is 0.2 percent of the current Project Fund (\$731,059,000).

by December 31, 2029. Any Verde Valley Communities contracting for water through the Project would be obligated to pay their proportionate share of the ongoing operations, maintenance, and replacement costs (OM&R) of the Project. Importantly, such proportional contributions would directly decrease the cost to the Nation associated with the delivery of water through the Project. If those communities elect to contract for the full amount of additional water and lease the Nation's 1,200 AFY CAP allocation, the Nation's annual OM&R costs would be reduced by at least 45 percent.¹⁰ The value the additional capacity would provide to the Nation thus outweighs the incremental costs associated with upsizing the pipeline. The estimated incremental cost of constructing a pipeline that could be used by both the Nation and Verde Valley Communities is approximately \$80 million. Increasing pipeline capacity by approximately 73 percent would only increase the pipeline cost by 12 percent.¹¹ Given the generational nature of the Settlement, such offset potentially dwarfs the incremental costs associated with upsizing the Project pipeline to accommodate deliveries to the Verde Valley Communities.

Delivery of water to participating Verde Valley Communities would also reduce those communities' reliance on groundwater pumping that negatively impacts the Verde River and the Nation. The Verde River is an essential part of the culture and lifeways of the Nation. Unsustainable groundwater pumping to meet growth in the Verde Valley threatens the health of the Verde River. Replacing groundwater pumping with sustainable surface water from the Cragin Reservoir protects the river, the Nation's instream flow rights, and the Nation's cultural and religious lifeways.

Any Verde Valley community that elects to contract for the delivery of surface water from the Cragin Reservoir through the Project will necessarily incur major infrastructure and treatment costs to transport that water from the delivery point at the Reservation to their own community. Requiring Verde Valley Communities that wish to avail themselves of the additional water made available under the Settlement to shoulder the incremental costs associated with upsizing the Project pipeline would almost certainly preclude those communities from participation. As a result, the communities would not replace their current reliance on groundwater pumping with a sustainable, but much more costly, long-term surface water source. Without participation by one or more Verde Valley Communities, the long-term costs to the Nation associated with the OM&R of the Project will be substantially higher. As a result, the Nation believes that it is in the interest of the Nation and the Verde Valley region to provide an opportunity to the Verde Valley Communities to contract for water from Cragin Reservoir.

Question 3. In your testimony, you note that many non-Tribal communities in the Verde Valley provide drinking water to the Yavapai Apache Reservation lands (at Camp Verde, Middle Verde, and Clarkdale Districts), and part of the settlement provides for their access to a secure water supply from the C.C. Cragin Dam and Reservoir. How much of the Project design, scope, and costs in S. 4705 will go toward serving Indian water users on the Reservation, compared to local non-Tribal communities off the Reservation?

Answer. As noted in response to Question 1, *supra.*, the water supplies to be delivered by the Project under the Settlement and Act will be used to provide the Nation with a secure water supply for its Reservation. In fact, all appropriable surface water sources delivered from the Cragin Reservoir to meet the Nation's 4,610 AFY DCMI demand must be used on the Reservation. This can be accomplished in two different ways under the Settlement. First, through the direct delivery of Cragin Reservoir water to the Nation for treatment in its Drinking Water System and distribution to on-Reservation uses, or second, by an "exchange" which requires that the Nation deliver treated water from its Drinking Water System to the Town of Camp Verde in exchange for Camp Verde's delivery of an equal amount of potable water to the Nation for use on the Middle Verde or Camp Verde Districts of the Reservation.

The Clarkdale District of the Reservation is located some distance away from the Project's delivery infrastructure and the Drinking Water System. The Settlement therefore anticipates that the Town of Clarkdale will continue to provide water service to the Clarkdale District from its municipal water sources, though all deliveries of water to the Nation's Clarkdale District are counted against the Nation's water budget under the Settlement.

¹⁰Verde Valley Communities' Cragin Water (1,639.74 AFY) + Nation's CAP allocation (1,200 AFY) = 2,840 AFY. Dividing that amount by the total average annual capacity of the Cragin-Verde Pipeline (6,250 AFY) = 45 percent. This percentage increases to 55 percent with full reservoir conditions and maximum deliveries.

¹¹"Value Planning Study Phase II: Yavapai-Apache Nation Indian Water Rights Settlement" Cragin to Middle Verde Direct Supply—Cost Update, February 8, 2024.

Question 3a. How many acre-feet per year will go toward Indian water users on the Reservation compared to local non-Tribal communities off the Reservation?

As noted in response to Questions 1, *supra.*, no water allocated to the Nation under the Settlement will “go toward local non-Tribal communities off the Reservation.” Unless the Verde Valley Communities elect to enter into a long-term contract with the Salt River Project prior to December 31, 2029 for additional water made available by the Salt River Project in Cragin Reservoir, and as explained in response to Question 3(a) above, all water delivered through the Project (except the Nation’s CAP allocation which can be temporarily leased) will be used on the Reservation for tribal purposes. If one or more Verde Valley Community does enter into a contract to receive water from Cragin Reservoir prior to the 2029 deadline, those communities would receive a portion of up to 1,639 AFY of additional water made available by the Salt River Project in the Cragin Reservoir. That water would be in addition to the water in Cragin Reservoir that would be provided to the Nation under the Settlement or in exchange for the Nation’s existing CAP allocation.

Question 4. The Department of the Interior raised concerns about basing pipeline costs on a Value Planning Study that it prepared with input from the Yavapai Nation and the Salt River Project. Does the Yavapai Apache Nation plan to work with Interior on a more accurate and complete estimate of the pipeline and Project costs going forward, so that such an estimate is appropriately reflected in S. 4705?

Answer. The Nation has been in settlement negotiations with the settling parties and representatives from the Department of the Interior since 2011. The Nation has also worked in lockstep with the Department of the Interior for two years to develop an accurate and complete cost estimate for the Project through the Value Planning Study (VPS) process and through Carollo’s preparation of the Drinking Water Infrastructure Plan Report that was also funded by Interior. In 2022, Reclamation commissioned and funded the VPS to determine the best water source alternatives for the Settlement and to provide a detailed cost estimate for the delivery of these water sources to fill out the Nation’s water settlement budget. The VPS Study was completed in July 2023 with the full participation of Reclamation and other Interior representatives on the Federal Negotiation Team.

Immediately after the completion of the VPS in July 2023, the Settling Parties and Reclamation’s Value Planning Team held multiple meetings and agreed that delivery of water from the Cragin Reservoir via the Project was the best, and likely only, alternative to provide the necessary water supply to complete the Settlement.

In November 2023, Reclamation’s Value Planning Team, along with technical representatives from the Salt River Project and the Nation, visually inspected the location of the Cragin Reservoir outlet works and traveled the entire 60-mile length of the Project’s pipeline route to examine the geology, topography, and other features of the route and identify any other factors that should be considered for the cost estimate. Thereafter, Reclamation’s Value Planning Team undertook additional work to prepare a detailed cost estimate for the Project that incorporated this information, including contingencies. The final cost estimate was provided to Interior and the settling parties in January 2024.

The Nation subsequently commissioned a review of the Value Planning Team’s cost estimate by RMCI, a nationwide contractor with experience in constructing large infrastructure projects and pipelines of this type. RMCI concluded that the Value Planning Team’s cost estimate was reasonable and properly estimated. RMCI’s review and opinion was also provided to Interior in support of the reasonableness of the cost estimate in July 2024.

Once the Project and Drinking Water System is authorized by Congress, Interior (with the assistance of the Nation) will engage in detailed engineering and design work for both the Project and Drinking Water System and it will perform an environmental review under the National Environmental Policy Act and other requirements of law. This approach is both technically appropriate and necessary to ensure that Interior will meet its federal trust responsibility to secure the Nation a permanent supply of water for its homeland.

For over 100 years, the United States has invested countless dollars and resources constructing and maintaining large water infrastructure projects on the Verde River, including Bartlett and Horseshoe Reservoirs. These federal reclamation projects have provided a steady and reliable water supply to metropolitan Phoenix since the turn of the century, ushering in a wave of development and prosperity for non-Indians throughout the region. Meanwhile, the Yavapai-Apache Nation still lacks a legally certain and reliable water supply for the Reservation and the Yavapai and Apache people.

Had the United States made a similar investment to meet the needs of the Nation when it authorized construction of the massive federal infrastructure projects on the Verde River and elsewhere throughout the State of Arizona, there is no doubt this

infrastructure would have cost the United States much less money. Unfortunately, that was not the case. Now the United States must do what it should have done more than 100 years ago—authorize and fund the Project and Drinking Water System that will finally provide the Nation with a reliable and secure water supply and resolve many years of water uncertainty for the Nation and other water users in the Verde River Watershed. It has been stated many times, this infrastructure does not get less expensive if we wait.

As noted above, the United States determined, and the Nation agreed, that the only way to meet the long-term water needs of the Nation is to construct the necessary infrastructure to import water under the Settlement from Cragin Reservoir for use by the Nation on its expanded Reservation. This is why the Nation jointly worked with Interior to develop the details of the VPS and the final cost estimates. While the Nation understands Interior's concern that it is difficult to guarantee the ultimate cost of the Project and Drinking Water System, this is true for any large-scale infrastructure project, regardless of the level of planning and cost estimates developed in advance of construction. These concerns also do not provide a sufficient justification for the United States to step away from its responsibility to the Yavapai and Apache people, who are finally on the verge of achieving an Indian water rights settlement that will provide a reliable long-term water supply for after more than a century of neglect.

Finally, it is important to understand that the Gila River Adjudication is currently scheduled to begin the adjudication phase of the Nation's water rights sometime beginning after issuance of the Hydrographic Survey Report in September 2028. At this time, the Nation, the United States as trustee for the Nation, and the settling parties will have little choice but to devote their resources to litigation as opposed to settlement. Should the Nation be required to first perform an appraisal level study or engage in other protected engineering or cost related studies before Congress can consider approving the Settlement and corresponding Pipeline and Drinking Water System, it is unlikely there will be a settlement of the Nation's water rights at all—and the Nation, the United States as its trustee, and the parties will have missed a generational opportunity to finally secure a reliable water supply for the Yavapai and Apache people, protect the Verde River, and fulfill the United States' trust and treaty obligations to the Nation. This should not be the final result of so many years of detailed planning and good faith negotiation and compromise by so many.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. BRIAN SCHATZ TO
HON. TIMOTHY L. NUVANGYAOMA

Question 1. With enactment of S. 4633, how many of the estimated 18 percent of Hopi households in villages without access to piped public water supply would gain access from the proposed Project?

Answer. With the enactment of S. 4633 and completion of the iiná bá-paa tuwaqat'si pipeline and new groundwater and local water infrastructure projects funded by the Hopi Tribe Water Settlement Trust Fund, all of the Hopi households in villages without access to a piped public water supply should have the opportunity to gain access. A funding shortfall could arise from the Tribe's obligation to contribute to potential iiná bá-paa tuwaqat'si pipeline cost overruns from the Hopi Tribe Water Settlement Trust Fund. The Tribe is confident, however, that the flexibility built into section 8 of S. 4633 gives the Tribe the ability to manage and absorb any such cost overruns without compromising the Tribe's ability to provide all Hopi households in villages with access to a piped public water supply.

Question 2. How many Hopi households that are currently supplied by the Tribe's public water systems would have their access improved, repaired, or replaced with enactment of S. 4633?

Answer. All Hopi households, including those currently served by public water systems, are in critical need of improved water infrastructure and access. With the enactment of S. 4633 and completion of the iiná bá-paa tuwaqat'si pipeline and new groundwater and local infrastructure projects funded by the Hopi Tribe Water Settlement Trust Fund, all Hopi households that are currently supplied by the Tribe's public water systems would have their access improved, repaired, or replaced.

Question 3. In your testimony, you note the poor state of the Hopi Tribe's current public water infrastructure, including its inability to meet current water demands and inadequate fire protection needs. What is the scope of the public water infrastructure on the Hopi Reservation that would be replaced or repaired with enactment of S. 4633?

Answer. Substantially all of the public water infrastructure on the Hopi Reservation must be replaced or repaired as soon as possible. The Hopi Tribe anticipates that the Hopi Tribe Water Settlement Trust Fund provided by S. 4633 will be sufficient to fund all of the necessary replacements and repairs. A funding shortfall could arise from the Tribe's obligation to contribute to potential iiná bá-paa tuwaqat'si pipeline cost overruns from the Hopi Tribe Water Settlement Trust Fund. The Tribe is confident, however, that the flexibility built into section 8 of S. 4633 gives the Tribe the ability to manage and absorb any such cost overruns without compromising the Tribe's ability to fund all necessary replacements or repairs of public water infrastructure.

There are sixteen existing public water systems on the Hopi Reservation, most of which were constructed between the 1950s and the 1990s and are now old, undersized, inefficient, and inadequate to meet even present Hopi needs, much less future needs. For example, many of the systems' supply wells are over fifty years old and approaching the end of their useful life and while some villages have fire hydrants, they cannot be used for fire suppression. These are just some of the problems Hopi face on a daily basis.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. BRIAN SCHATZ TO
HON. BRYAN NEWLAND

Question 1. S. 4633 authorizes the Navajo Nation, which has water rights in both the Upper and Lower Basins, to lease and exchange its water across basins in a period when Upper and Lower Basin states are working to negotiate new Colorado River 2026 management guidelines. Interior must balance its role as both steward of water resources and as trustee to ensure Tribes can use their water rights in their homelands. How is Interior working to balance these priorities in S. 4633, especially with respect to the role it played in water settlement agreement negotiations for the Northeastern Arizona Indian Water Rights Settlement Agreement and the role it plays in water allocation and management under the 1922 Colorado River Compact?

Answer. The Department is involved in on-going discussions among the Colorado River Basin States (Basin States), the Navajo Nation, the Hopi Tribe, and the San Juan Southern Paiute Tribe in an effort to reach consensus on how the Tribal rights proposed in S.4633 can be accomplished in conjunction with the rights of the Basin States under existing law including the 1922 Colorado River Compact.

Question 2. S. 4633 also authorizes an intertribal treaty addendum to transfer of roughly 5,400 acres of land within the Navajo Nation, currently held in trust by Interior for the Navajo Nation, to be held in trust by Interior for the San Juan Southern Paiute. How will Interior implement this transfer?

Question 2a. Does an intertribal transfer of trust land have a precedent at Interior using its land into trust administrative process?

Answer. The 2000 Treaty between the Navajo Nation and the San Juan Southern Paiute Tribe, which requires ratification by Congress, is unique, and the Department is unaware of any similar trust-to-trust precedent. S. 4633 calls for the trust transfer to be processed as a mandatory transfer rather than a discretionary administrative transfer. The Treaty and S. 4633 require the Bureau of Land Management (BLM) to complete a legal survey of the two parcels to be transferred from the Navajo Reservation to the newly established San Juan Southern Paiute Reservation. The survey would produce a legal description for the trust-to-trust land transfer document which can be recorded in the Trust Asset and Accounting Management System (TAAMS) maintained by the Bureau of Indian Affairs (BIA).

Question 3. The Department of the Interior cited concerns with the Project costs associated with S. 4705, including insufficient time to review Yavapai Apache Nation's July 9, 2024 Drinking Water System cost basis plans. What is the status of the Department's review of these plans?

Answer. The Department has held numerous meetings with the Yavapai-Apache Nation to discuss concerns with S.4705, including the reliability of the cost estimates contained in the bill. Additional meetings are planned.

Question 3a. Does the Department have concerns about these plans, specifically the possible underestimation of the cost of the Drinking Water System in S. 4705? Are these concerns similar to those that Interior expressed on the cost of the Pipeline in S. 4705?

Answer. The Department has concerns about estimates for both the Drinking Water System and the Pipeline. The Department has consistently testified that de-

sign costs based on preliminary or appraisal level studies, as is the case here, should not be used as a basis for congressional authorization of projects.

Question 4. It is unusual for non-Indian parties to participate in an Indian water rights settlement without contributing state or local funding as part of the share of capital costs for any infrastructure serving non-Indian water users. Why does S. 4705 lack a requirement for the state or local county to contribute in this way?

Answer. S. 4705 was drafted by the parties and does not reflect the views of the Department. As reflected in the Department's testimony on S. 4705, the Department does not support providing this substantial benefit without appropriate contributions from the non-Indian parties.

Question 4a. What was Interior's role in helping the parties negotiate this specific term in the settlement agreement?

Answer. This specific term in S. 4705 is unusual and was drafted by the parties late in negotiations. A Federal Negotiation Team participated in the negotiations and expressed concern over the lack of financial contributions by non-Federal parties benefiting from the settlement. Federal Negotiation Teams do not have the authority to approve any terms of a settlement.

Question 5. Together, S. 4633, S. 4643, S. 4705, and S. 4998 authorize nearly \$7 billion in mandatory funding to pay for those Indian water rights settlements, plus "such sums" in some cases for certain expenses. The \$2.5 billion set aside for the Indian Water Rights Settlement Completion Fund in the Bipartisan Infrastructure Law is not available for these pending settlements. As a result, enacted settlements that are authorized to receive mandatory funds, such as Hualapai, have nonetheless requested discretionary funds for Fiscal Year 2025 in the President's Budget Request in the absence of available mandatory funds. If these pending settlement bills are enacted without additional appropriations or authorized funding for the Indian Water Rights Settlement Completion Fund, what funds are available at Interior and Treasury to pay for them?

Answer. Without the mandatory funding called for in each settlement, funding would be addressed through the annual discretionary budget process.

Question 6. In the 118th Congress, several calls from Congress have required a "pay-for" for Indian water rights settlements, regardless of whether they authorize mandatory or discretionary funding for fund-based or project-based settlements. Is there precedent to have a mandatory or discretionary pay-for or offset for the cost of implementing settlement agreements in previously enacted Indian water rights settlements?

Answer. The Department is not aware of any precedent for discretionary pay-for or offset in previously enacted Indian water rights settlements.

Question 6a. Is Interior aware or tracking new or developing legal claims in basins where Indian water rights have not yet been adjudicated or settled? If yes, identify these basins and whether such basins are located in prior appropriation or riparian states.

Answer. The United States and Tribes are involved in general stream adjudications and other litigation involving Indian water rights throughout the western United States. The Department will evaluate potential new cases or seek to file claims as appropriate as new adjudications are initiated.

Question 7. In addition to the four settlement bills considered at the September 25 hearing, this Committee has considered eight others in the 118th Congress—each important and unique, and critical to those Tribes' wellbeing and water security. How important is it for Congress to finalize these settlements, particularly in light of the ongoing and worsening mega drought?

Answer. At the center of the United States' trust and treaty obligations is the responsibility to ensure that Indian Tribes have the right to continue to exist in their homelands. Without water, no Tribal community can survive much less thrive. Water is a sacred and valuable resource for Tribal Nations and long-standing water crises continues to undermine public health and economic development in Indian Country. The Indian water settlements that the Department has fully supported and are currently pending before Congress will ensure that the Tribes have safe, reliable water supplies; improved environment and health; enhanced economic growth opportunities all the while promoting Tribal sovereignty and self-sufficiency and advancing the United States' trust relationship with Tribes. As drought intensifies in the Western United States and the cost of water infrastructure increases on a yearly basis, delay in securing water rights and funding to put that water to use poses even more harm to Tribal Nations who have so long suffered with lack of water infrastructure most American citizens take for granted. These wrongs must be rectified now.

Question 7a. As water becomes a scarcer resource, does Interior have an estimate of how much it costs U.S. taxpayers to wait, delay, or refuse to enact Indian water rights settlements?

Answer. Predicting future drought and the impacts of climate change are difficult due to the variety of factors involved. There is no single figure on Indian water rights settlement projects' cost escalations as they are unique in nature and have their own local cost trends. In general, the cost of Indian water right settlements has significantly increased over time due to (a) water scarcity, (b) general inflationary pressures, (c) inflationary pressures for heavy civil works projects, and (d) inflationary pressures for remote projects. In regard to water scarcity, the availability of water is heavily dependent on individual settlements, as water sources are depleted during the long-term trend towards aridification, but is likely to increase the cost of settlements both due to the increased cost of infrastructure as well as the value of the water itself.

Question 8. At the September 25th hearing, Chairman Whiteclay confirmed knowledge of Tribal cultural resources and sites in the Bull Mountains that could be impacted by mining activities. Generally, how does DOI balance interests in development of natural resources with protection of Tribal cultural resources, including sacred sites, on Tribal trust lands? For example, would an EIS or other NEPA review be a factor to consider when striking this balance?

Answer. The Department of the Interior (DOI) is unwavering in its commitment to a thoughtful and balanced approach. This approach harmonizes natural resource development with the vital protection of Tribal cultural resources. Our strategy is multifaceted, encompassing thorough consultations, comprehensive environmental and cultural resource reviews, and adherence to legal protections.

DOI prioritizes meaningful consultation with Tribal governments and communities. Recognizing the inherent sovereignty of Tribal nations, DOI engages in government-to-government dialogues that not only empower Tribes but also ensure they play a significant role in decisions impacting their lands and resources. Their input is crucial in shaping our strategies and decisions.

Compliance with the National Environmental Policy Act (NEPA) and the National Historic Preservation Act (NHPA) is indispensable in project planning. These critical laws evaluate potential impacts on the environment and cultural resources, allowing DOI to identify essential mitigation measures to minimize adverse effects. Strict adherence to these laws ensures that our approach fosters informed decision-making that honors Tribal interests.

Ultimately, the DOI is dedicated to achieving an equitable balance that honors Tribal rights and cultural preservation. We are committed to considering and actively promoting the economic benefits that Tribes can gain through responsible and respectful resource management.

Question 8a. How would Interior balance competing interests from several Tribes if more than one has a claim to the area?

Answer. DOI would evaluate competing Tribal claims. DOI would facilitate open and inclusive discussions among the Tribes to understand each Tribe's claims, cultural significance, and use of the area. DOI would assess claims based on legal precedents, treaties, and any relevant legislation. DOI may employ mediators to help the Tribes negotiate terms that could lead to shared use/benefits or co-management of the area, fostering collaboration rather than conflict.

Question 9. The Montana Department of Revenue estimates that approximately \$1.145 billion in income tax revenue would be lost in Montana between 2024 and 2028 if S. 4444 is enacted. Does Interior (or its federal partners) have its own estimates of projected federal revenue loss associated with enactment of S. 4444?

Answer. Based on the amount of recoverable coal that the BLM estimates remains in the Bull Mountains Tracts, approximately \$132 million in Federal royalty obligations would be foregone if the bill were enacted and the lands transferred out of Federal management. Under the Mineral Leasing Act, half of that amount (approximately \$66 million) would have gone to the State of Montana. Therefore, the anticipated Federal revenue loss would be approximately \$66 million.

Question 10. The Bull Mountain Tracts managed by the Bureau of Land Management in Montana are currently a federal asset. If S. 4444 is enacted, will an EIS be required to develop these tracts for coal mining?

Answer. If the bill were enacted, the Federal coal lease would be relinquished and the Bull Mountains Tracts would be conveyed out of Federal management. Because the development of these lands for coal mining would no longer be a major Federal action, an analysis under the National Environmental Policy Act would not be required.

Question 10a. Without an EIS, how would potential impacts to water quality or quantity in the area be measured/estimated? For impacts to Tribal cultural resources and sacred sites? For impacts to outdoor recreation and hunting?

Answer. As noted in the response to Question 10(a), once the Federal coal lease is relinquished and the Bull Mountains Tracts conveyed out of Federal management, an analysis under the National Environmental Policy Act would not be required. However, the development of these lands for coal mining would be subject to the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Montana has an approved regulatory program under SMCRA and would be responsible for ensuring that any coal mining was fully compliant with the requirements of its approved program, including minimizing the disturbances to the quality and quantity of water in surface and ground water systems and fish, wildlife, and related environmental values. Other applicable Federal or state laws may also apply to the development of the coal tracts.

Question 11. If enacted, S. 4444 would authorize transfer of certain federal parcels in the Bull Mountains to the Hope Family Trust, which plans to partner with Signal Peak Energy, LLC to mine coal resources in the tracts' mineral estate. Given Signal Peak's public record of environmental, workplace, and firearms, drug, bribery, and embezzlement violations, and its probationary status stemming from criminal and civil proceedings involving the U.S. Department of Justice and the Securities and Exchange Commission, does Interior's role as trustee of public and Tribal lands affect its position on the proposed land transfer in S.4444?

Answer. The Department supports the bill's goals of addressing inholdings within the boundaries of the Crow Indian Reservation and providing an additional source of revenue for the Crow Tribe.

Question 12. The mineral swap proposed in S. 4444 does not specify whether it is an acre-for-acre or value-for-value exchange. Is this lack of specificity a concern?

Answer. The Department does not consider S. 4444—as currently drafted—to be a land exchange in the traditional sense. The bill requires, within 60 days: (1) the relinquishment of a Federal coal lease; (2) the conveyance of surface acreage and mineral estate associated with this Federal coal lease out of Federal management to a private party; and (3) the conveyance of private mineral estate within the boundaries of the Crow Reservation to the Crow Tribe of Montana. It is currently unclear whether the parcels to be conveyed are of equal value. As stated in our testimony, the Department would like to work with the Sponsor to ensure that these parcels are of equal value.

Question 12a. Does Interior uphold a standard for (Tribal or other) land exchanges to ensure there is an approximate acre-for-acre or value-for-value exchange?

Answer. The Department has previously supported land exchanges to consolidate ownership of scattered tracts for more efficient management and to acquire environmentally sensitive areas while transferring public lands into non-Federal ownership for local needs. In each of these cases, the Department has recommended that the proposed land exchange be of equal value to ensure that the American taxpayer received a fair return.

Question 13. According to your written testimony, private landowners own the surface rights above the Hope Family subsurface mineral rights. If S. 4444 is enacted, how could access and development occur given status of the split estate?

Answer. It is an established legal precedent that, in such situations, the mineral estate is the "dominant estate," meaning that the surface owner may not deny the mineral owner (or agents of the mineral owner) reasonable surface access to develop minerals. Reasonableness is understood to include actions that satisfy the surface owner's entitlement to compensation and other considerations.

Question 14. Chairman White Clay testified that he believes the Crow Tribe would benefit from the export of the coal tonnage from mining in the Bull Mountains. Where would the coal mined from the Bull Mountain Tracts be exported to? How much of the mined coal would be retained for domestic use?

Answer. According to online information¹ posted by Signal Peak's coal marketing affiliate, "[n]early 100 percent of Signal Peak's current production is being exported by Global Coal Sales via Westshore Terminals in British Columbia to end-users for the production of electricity." The lessee may market coal extracted from the Bull Mountain tracts through the same marketing channels.

Question 15. The State of Montana recently approved Signal Peak Energy, LLC's amendment (AM6) to its surface mining permit (C1993017) for expansion of mining

¹"About Global Coal Sales Group, LLC." *Global Coal Sales Group, LLC*, November 15, 2024, <https://globalcoalsales.com/>

activities within and outside current Bull Mountain Mine No. 1. What is the impact of this amendment to Signal Peak's mining operations, *i.e.*, does it extend the life of the mine? If so, for how long? Does this extension affect any urgency to enact S. 4444?

Answer. The Montana Department of Environmental Quality (DEQ) has an approved regulatory program in accordance with the Surface Mining Control and Reclamation Act of 1977 and is the primary regulatory authority responsible for the permitting, inspection, and enforcement of coal mining in Montana. AM6 did not include any Federal coal. As such, Montana DEQ is the best point of contact for information about AM6.

Question 15a. Should the AM6 amendment be a consideration in any revenue sharing agreement contemplated in S. 4444?

Answer. The Bull Mountain Tracts are not held in trust or restricted status, nor would mineral revenue generated from these tracts and shared with the Tribe as contemplated in Section 3, Paragraph (d) of S. 4444 be deemed trust revenue. Further, S. 4444 does not include parameters for the revenue sharing agreement, therefore the Department does not have enough information to comment.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. BRIAN SCHATZ TO
HON. BUU NYGREN

Question 1. If both S. 4633 and S. 4998 are enacted, would the Navajo Nation's water rights be resolved in every basin on Navajo Nation lands where it has claims? Or does the addition of additional trust lands introduce the possibility of additional water rights claims on new reservation lands?

Answer. The Navajo Nation has additional water claims in two tributaries to the Little Colorado River in New Mexico: the Zuni River Basin, and the Rio Puerco Basin (which flows through the City of Gallup). The Zuni River Basin claims are being addressed through that general stream adjudication which includes the Zuni Pueblo. The Zuni Pueblo has reached a settlement agreement with the State of New Mexico. The Navajo Nation is working on a similar agreement.

The Rio Puerco claims, although not quantified, will not be significant because the municipal water demands will be served by the Navajo Gallup Water Supply Project. In the Rio Grande Basin, S. 4998 includes provisions to quantify Navajo Nation claims for the Rio San Jose and Rio Puerco basins. Water claims in the Rio Salado Basin remain to be quantified.

Water rights for new trust lands, in most cases, will be dealt with at the time of acquisition based on existing uses on such acquired lands, and not involve additional claims to be settled.

Question 2. If enacted, S. 4633 would authorize one of the largest water infrastructure projects in history for an Indian water rights settlement. Together with the infrastructure already authorized for the Navajo Nation's Navajo-Utah Water Rights Settlement Act of 2019 and the Navajo-San Juan Water Rights Settlement ratified by the Northwestern New Mexico Rural Water Projects Act of 2009, these facilities will require long-term operations, maintenance, and repair in order to successfully treat, store, and deliver water to Navajo and non-Navajo communities across the Navajo Nation. Those operations, maintenance, and repair costs will be the Navajo Nation's responsibility. What is the Navajo Nation's plan to sign up enough water users to ensure the long-term sustainability of the infrastructure contemplated in S. 4633, and to the infrastructure that it will connect to that was authorized in prior settlements in adjacent basins?

Answer. Water is a necessary condition for economic development and prosperity. Without water, nothing can happen: no homes, no businesses, no livelihoods. These settlement projects need to be implemented with the anticipation of future economic development and future livelihoods.

In most areas municipal groundwater will be developed first. These "groundwater islands" will grow, and will have developed far greater water use by the time the surface water arrives. For instance, in the Gallup Area the Gallup Regional System is already connecting to the local Navajo Tribal Utility Authority (NTUA) public water systems and they are mining groundwater during the short term. By the time water from the San Juan River shows up in 2029 these growing communities will already be connected to the regional system, and they will switch over to the sustainable San Juan River surface water supply.

The Navajo Nation is keenly aware of the gap between the cost of the operation, maintenance, and repair (OM&R) for these proposed water projects, and of the limited ability of the Navajo Nation water users to pay for this OM&R. The Navajo Nation has taken multiple steps to address this problem.

The recent authorities include OM&R trust funds. These trust funds will help with the OM&R for ten to fifteen years at which time the number of water users will increase which reduces the unit cost of the water delivered. During these years, the local economy and number of livelihoods will increase allowing customers to be better able to carry a greater share of the OM&R burden.

These authorities are adding new customers (and the potential for thousands of new customers) to the current service area of the Navajo Gallup Water Supply Project (NGWSP). And the new authorities include funding for NGWSP waterline connections to the supply points of the NTUA public water systems. These connections ensure that the NGWSP supply will be where the customers are. These authorities also allow for deferred construction of facilities so that they can be deferred until the water demands are in place which will reduce the unit cost of the water. The authority also includes the ability to supply renewable energy to the water projects which will further reduce the operating costs.

In addition, the Navajo Nation directs a part of the gross receipts tax collected from the construction of water projects to the Navajo Tribal Utility Authority OM&R Trust Fund. The Navajo Nation has already contributed its own financial resources into these OM&R funds to help ensure that there are OM&R resources for all of the water facilities being constructed today. Overall, providing customers with reliable water supply is predicted to stimulate more economic growth and bring families back to the Navajo Nation, where they will form the customer base that is needed to make this water infrastructure self-sustaining.

Question 2a. How will the Navajo Nation manage its water rights across various basins and settlement agreements?

Answer. The Navajo Nation Department of Water Resources (DWR) is well equipped to handle this challenge. DWR manages Navajo Nation water resources for the benefit of present and future generations, and its expert staff works on implementation of our various settlement agreements. All of these water projects will be metered. The diversion from Colorado River sources will be measured and reported to the appropriate state authority for administrative purposes. And water conveyed to any community, whether it is in the Upper Basin or the Lower Basin, will also be metered. The accounting will be straightforward.

Question 2b. How will the Navajo Nation work with other partners, including states and Tribes, to negotiate and manage water leases, exchanges, and transfers between basins or off reservation?

Answer. The Navajo Nation will manage its leases, exchanges, and transfers within the authorities provided by the settlement legislation and in a cooperative manner.

Question 2c. Does it have a plan for doing so based on climate, groundwater, and surface water projections for the foreseeable future?

Answer. The Navajo Nation Department of Water Resources is committed to providing reliable water supplies, and continues to study climate projections to develop strategies for better water management. These settlement water projects are based on using surface water and groundwater conjunctively. The Navajo Nation understands that in the future Department of Interior water contracts will be subject to the water available to the Colorado River Storage Projects, and that any single supply source may at times be at risk due to changes in climate patterns.

As one response, the Navajo Nation will continue to develop municipal water from the Coconino Aquifer and the Navajo Aquifer. Conjunctive systems are better able to spread the hydrologic risk. For that reason, the original NGWSP authority included a Conjunctive Groundwater Component. During periods of drought groundwater pumping will be increased. When surface water is abundant, surface water will be used. And in the future, surface water may be recharged into the local aquifers as part of Aquifer Storage and Recovery (ASR) projects. Under the Settlement Agreement approved by S. 4633, ASR wells will be developed to ensure reliable supplies for the Kayenta NTUA system and others. The Navajo Nation and the USGS are investigating the application of aquifer storage and recovery in other areas on the Navajo Nation.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. BEN RAY LUJÁN TO
HON. BRYAN NEWLAND

Question 1. Assistant Secretary Newland, what changes to S. 4633 does Interior believe are necessary to increase the San Juan Lateral pipeline's capacity and the Navajo-Gallup service areas in Arizona?

Answer. Several changes are needed to S. 4633 to allow the Navajo-Gallup Water Supply Project (NGWSP) to serve additional Navajo chapters in Arizona that need clean drinking water. First, S. 4633 should include language expanding the NGWSP's service area to allow for delivery of water to several Navajo chapters in Arizona. Additionally, S. 4633 should increase NGWSP's authorized capacity by up to 12,000 acre-feet per year to serve these Navajo chapters in Arizona. Finally, S. 4633 should include authorization to convey Navajo Nation Upper Basin Colorado River Water into Arizona through the NGWSP.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. BEN RAY LUJÁN TO
HON. BUU NYGREN

Question. President Nygren, concerning S. 4633 Northeast Arizona Water Rights Settlement Act, has the Navajo Nation given Upper and Lower Basin states the ability to come to an agreement on how water accounting in S. 4633 will work, especially for any inter-basin transfers?

Answer. The Navajo Nation is committed to working with all seven Colorado River Basin states to come to an agreement on accounting. On November 12, 2024, the Basin States met to work through issues related to accounting and management of water rights under S. 4633. The Nation and the seven Basin States continue to meet regularly and are working to reaching consensus. The Navajo Nation appreciates the commitment of the states of the Upper and Lower Basin to work on these issues with us.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. BRIAN SCHATZ TO
HON. FRANK WHITE CLAY

Question 1. You testified that transfer of the Hope Family subsurface rights to the Tribe will consolidate ownership and control lands within the Tribe's reservation. Does the Crow Tribe own the surface rights to the acreage to be transferred? If not, please explain how control of a split estate will assist the Tribe in both consolidating and controlling these lands.

Answer. The Tribe does not own the surface rights on the Hope Family subsurface rights but in Montana the subsurface rights are the dominant estate allowing the Tribe to develop the minerals without consent of the subservient surface estate owner.

Question 2. You testified that there were "421 jobs" at the Crow Tribe. It is unclear from your testimony what this jobs number relates to. Is 421 the number of people currently employed by the Tribe government-wide? Is it the number of people that Signal Peak Energy, LLC currently employs, and if so, how many of these employees are Tribal members or live in Montana? Alternatively, is this the number of people that could be employed if S. 4444 is enacted? Or another explanation? Please clarify your statement for the record.

Answer. 421 jobs in the number of individuals (Tribal members) that the Tribe employs with its general fund that is supported by coal royalties such as those that will be derived from the Signal Peak Mine.

Question 2a. How many citizens of the Crow Tribe will lose their jobs once the Absaloka Mine is closed?

Answer. The approximate number of employees employed by the Tribe's general fund that will lose their jobs is 375. The rest will need to be reassigned to other federal purposes to continue their employment.

Question 2b. How many citizens of the Crow Tribe could be employed by Signal Peak Energy, LLC if the Bull Mountains Mine No. 1 is permitted to expand to the Bull Mountain Tracts currently managed by the BLM, particularly given its proximity from the reservation?

Answer. There are a handful of tribal members that employed by Singal Peak but the Tribe is hopeful that some of the laid off coal miners will be able to obtain employment from Signal Peak.

Question 3. You testified the Tribe that the transfer of approximately 4,660 acres of subsurface interests within the Crow Tribe reservation is critical to the Tribe's ability to exercise full control over future development. You also testified that it is unlikely that the Tribe will mine the Hope Family Tracts. What development of these subsurface interests on the Hope Family Tracts is possible?

Answer. Should coal become a viable energy source again, the Hope Family Tracts could be mined since the estate is dominant. The tribe is actively pursuing alternative uses for its coal in a prudent manner.

Question 4. You testified that, until recently, the Tribe was on the federal “Do Not Pay” list and this impacted your Tribe’s ability to access funding through the CARES Act and the Consolidated Appropriations Act of 2021. The Inflation Reduction Act and the Infrastructure Investment and Jobs Act have later deadlines. Now that the Crow Tribe is no longer on the “Do Not Pay” list, has the Tribe applied for (or does it intend to apply for) federal funding opportunities under these laws?

Answer. While the Tribe actively applies for grant funding available to it. Most of the funding under CARES and the Consolidated Appropriations Act of 2021 have already passed and there is no ability for the Tribe to make up for the funding opportunities that it missed due to being wrongfully placed on the “Do Not Pay” list.

Question 5. Senator Daines noted that the intent and purpose of S. 4444 is to facilitate a revenue sharing agreement between the Tribe and the Hope Family for minerals developed at the mine in the Bull Mountains operated by Signal Peak Energy, LLC, and cited to the relevant provision in the introduced text as “clerical error” during the September 25th hearing. Even if the introduced text is corrected, why does the Tribe need a revenue sharing agreement with the Hope Family at all? Why is there not simply an agreement between the Tribe and Signal Peak?

Answer. The Hope Family will own the minerals that Signal Peak will mine, therefore, it is necessary to enter into an agreement with them to ensure the Tribe receives the royalties from the Bull Mountain Tracts. The Tribe, Hope Family, and Signal Peak have arranged for Singal Peak to compensate the Tribe directly.

Question 6. Does approval of Signal Peak Energy, LLC’s amendment (AM6) to its surface mining permit (C1993017) for expansion of mining activities within and outside current Bull Mountain Mine No. 1 have any effect on the agreement contemplated in S. 4444?

Answer. To the best of the Tribe’s understanding this permit will not effect S. 4444, and Signal Peak will begin mining the Bull Mountain tracts upon implementation of the Act.

Question 7. Please share a copy of the revenue projections that the Tribe will gain from its partnership with Signal Peak Energy, LLC that you referenced in your testimony before the Committee on September 25, 2024.

Answer. The approximate gain to the Tribe starts at \$100 million over 10 years with an increase for coal prices in the market.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARK KELLY TO
HON. BRYAN NEWLAND

Question 1. As I understand it, the appropriate method for determining the amount of water a Tribe in Arizona is entitled to is the amount of water necessary for the Tribe to have a permanent homeland, is this correct?

Answer. In an adjudication of Indian water rights, the United States follows a practice of asserting maximum credible claims. Such claims are often based on a homeland purpose.

Question 1a. Relatedly, this means the amount of water necessary for economic development, community development, irrigation, cultural uses, residential uses, and recreational uses, correct?

Answer. A homeland purpose claim may include all of these uses.

Question 2. Is it correct that if S. 4705 is enacted the Yavapai-Apache Nation will be settling for any water right claims that it might have forever?

Answer. The goal of S. 4 705 and all Indian Water Rights Settlements is finality.

Question 2a. This means that the Nation has to plan for beyond fifty years, but in fact for at least the next seven generations if it wants to secure its people a future in the homeland that the United States’ sought to take away from them?

Answer. The United States supports quantification of federal reserved water rights that take into consideration past, present, and future uses.

Question 3. Regarding the Nation’s claim in the Gila River Adjudication, isn’t it correct that the Nation filed documented claims for 11,628 AFY of water?

Answer. The Nation filed claims for 11,628 AFY for water use on its existing Reservation and the Dinah Hood Allotment. The United States as trustee filed claims for 4,492 AFY for the Reservation and an additional 327 AFY for the Dinah Hood Allotment. These claims were filed based on the water rights of the Nation’s trust lands as they existed on January 5, 2023, the date of the claims filing.

Question 3a. Isn’t it also correct that once the Nation completes its pending administrative land exchange with the US Forest Service and additional lands into

trust processes, that it will increase its Reservation size from 1,809 acres to a total Reservation size of 5,106 acres?

Answer. That is the understanding of the Department.

Question 3b. Isn't the Nation entitled to update its water rights claims to include claims for the expanded Reservation?

Answer. The Nation may update its water rights claims in the Gila River Adjudication once it acquires fee title to property. The United States would expect to file updated claims for the property if it is thereafter taken into trust. The United States would need to initiate a claims study process to determine appropriate claims for the added lands.

Question 4. Regarding the negotiation for the Nation's claim in the amount of 6,888.50 AFY, isn't it correct that the United States participated through its Federal Negotiation Team in these negotiations since 2011, and that the United States was aware of the negotiated water budget since 2011?

Answer. The settlement "water budget" discussed during the negotiation process was based on sources of water available on the Nation's existing trust lands. It was not based on the sources located off those lands nor was it based on the Nation's recently-acquired lands from the Forest Service. A Federal Negotiation Team participated in the negotiations. Federal Negotiation Teams do not have the authority to approve any terms of a settlement. The Federal approval process includes approval by the Department's Working Group on Indian Water Settlements (Working Group) and approval by the Office of Management and Budget (OMB).

Question 4a. If the United States had a concern with the Nation's water settlement budget, why didn't the United States raise these concerns during the last 13 years?

Answer. The lengthy negotiations leading to the settlement to be approved by S. 4705 were contentious with numerous starts and stops. It was only in 2024 that the parties reached an agreement that was taken before the Working Group for consideration.

Question 5. Isn't it also correct that the United States and the parties determined the only viable source to secure the necessary water to fill out the Nation's settlement budget was from the C.C. Cragin Dam and Reservoir?

Answer. The Department conducted a Value Planning (VP) Study to consider options to satisfy the Nation's stated goal of supplying 5,991 acre-feet of water to its trust lands. The VP study considered numerous alternatives including use of the C.C. Cragin Dam and Reservoir. VP studies are often used to determine a broad range of ideas or options (alternatives and considerations/options) that best meet the project goals stated by the parties. A VP study is not a decision document and is only a guidance document that will be used by the parties to further settlement negotiations by focusing in greater detail on project options and potential sources for settlement.

Question 6. Regarding the increasing the pipeline of the C.C. Cragin pipeline project to provide water to the Verde Valley community, is it not correct that any increase in the project capacity does not happen unless a Verde Valley community agrees to take the water by December 31, 2029?

Answer. S. 4705 speaks for itself.

Question 7. Is it correct that there are numerous federal interests in protecting the instream flow of the Verde River, including of downstream Tribal interests of two settled Indian Tribes, as well as the Wild and Scenic designation of the Verde River?

Answer. The goal of an Indian water rights settlement is to assure that Tribes receive equivalent benefits for rights, which they, and the United States as trustee, may release as part of a settlement; Tribes realize value from confirmed water rights resulting from a settlement; and a settlement contains 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.

Question 8. How does the United States intend to protect the flow of the Verde River if it cannot stop the communities from pumping the groundwater, a critical element of the flow of the Verde River?

Answer. The United States did not file in-stream flow claims to the Verde River on behalf of the Yavapai-Apache Nation. S. 4705 would not prevent non-Indian Verde River communities from pumping groundwater. Instead, S. 4705 would allow such groundwater pumping to increase.

Question 9. Isn't it correct that providing the Verde Valley Communities the opportunity for surface water would be one way to protect the federal interests in the Verde River?

Answer. Importing water supplies to replace use of existing and future surface and groundwater supplies could preserve the Verde River and local aquifers. However, this protection could also be accomplished through appropriate water management practices by the State of Arizona. It is not appropriate to require the United States to bear the entire cost of an imported water supply that may preserve the Verde River.

Question 10. How long will it take the Department of the Interior to complete the pending lands to trust process (151 process) for the Forest Service land exchange lands that the Tribe expects to receive via the administrative land exchange into trust?

Answer. It is anticipated that this acquisition will take approximately three months to complete.

Question 11. Is it correct the National Environmental Policy Act (NEPA) process needed to take the land exchange lands into trust was done simultaneously with the Forest Service land exchange process and that this process is complete, pending the issuance of a final Record of Decision?

Answer. Yes.

Question 12. Is it correct that the administrative lands into trust process under Part 151 is available to the Nation to take into trust the additional 208 acres of fee land that the Nation owns that is or will become contiguous to the Reservation once the Forest Service exchange lands are taken into trust?

Answer. Yes.

Question 13. Isn't it correct that the when the land exchange lands (3,088 acres) and the additional fee to trust land (209 acres) are taken into trust, 3,297 acres of land will then be in trust and part of the Nation's Reservation by the enforceability date of this settlement?

Answer. S. 4705 speaks for itself.

Question 14. Is it the United States' position that a Nation whose land base was destroyed because of the United States' policy that the Nation can never expand its land base?

Answer. No.

Question 15. Is it the United States' position that if a Nation does acquire land it cannot plan to include it as a part of its permanent homeland?

Answer. No.

Question 16. Is it the Department of Interior's position that while it supports restoration of Tribal homelands, it does not support securing a Tribe sufficient water necessary to make a permanent homeland?

Answer. No.