

# Committee on Resources

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STATEMENT OF THE HONORABLE

JANET NAPOLITANO

GOVERNOR OF THE STATE OF ARIZONA

BEFORE

THE SUBCOMMITTEE ON WATER AND POWER

HOUSE COMMITTEE ON RESOURCES

On

H.R. 885

ARIZONA WATER SETTLEMENTS ACT OF 2003

OCTOBER 2, 2003

CHAIRMAN CALVERT, AND MEMBERS OF THE SUBCOMMITTEE:

Good morning, and thank you for the opportunity to present the views of the State of Arizona on H.R. 885, the Arizona Water Settlements Act of 2003.

It is now time for Congress to confirm the agreements reached after many years of intense negotiations and compromise. With passage of H.R. 885, and implementation of the settlements, Arizona will embark on a new age of water resource planning, usage, and cooperation.

The legislation encompasses multiple Titles to resolve many longstanding water disputes in Arizona. Additionally, it provides benefits to New Mexico. Each Title addresses a particular settlement agreement, and provides the congressional authorization and funding needed to implement the settlement. Many times in the past, Congress has been faced with enacting legislation to authorize settlements that have not been finalized. I am pleased to inform the Committee members that the three settlement agreements to be "authorized, ratified, and confirmed" by act of Congress have been executed by the State of Arizona, the tribes, and nearly all of the non-Indian parties, except the Secretary of the Interior. The Secretary requires congressional authorization prior to signing the settlements. There is no question that the parties intend to settle the issues, and in fact many of the parties are carrying out their government functions as if the settlements were already final.

This legislation is vitally important to the future of Arizona, in economic terms, in meeting water management goals, and in furthering our relations with our tribal citizens. H.R. 885 will provide the mechanisms to resolve two major tribal water settlements immediately, and will provide the United States and non-Indian parties additional tools to resolve water rights claims of other Arizona tribes. It establishes a means for acquiring water and funding for future tribal water rights settlements.

Let me provide some highlights of each Title and why each is so important to all the people of Arizona.

#### Title I: Central Arizona Project Settlement

Since statehood in 1912, Arizonans have dreamed of bringing Colorado River water to the cities and farms of central Arizona. It was the great Senator Carl Hayden's dream. The recently deceased John Rhodes, former House minority leader, claimed passage of legislation to authorize the Central Arizona Project (CAP) as his greatest achievement in his 30 years in Congress. The CAP authorization became a reality in 1968 and by 1985 the CAP was delivering Colorado River water to farms and communities, as a replacement for groundwater. It continues to be our lifeblood, allowing many Arizonans to weather the drought conditions of eight of the last nine years. We continue to enhance the use of CAP, and this legislation furthers the State's water management goals utilizing the CAP.

Title I is consistent with and in furtherance of the intent of the stipulated settlement approved by the U.S. District Court of the litigation between the United States and the Central Arizona Water Conservation District (CAWCD) over the amount of repayment for the CAP. This Title also resolves other non-contract issues between the United States and the non-Indian CAP water users. Further, Title I provides the means to acquire the water supplies and funding necessary for the settlements in the other Titles of H.R. 885, and for future tribal water settlements.

Final division of the Colorado River water for the CAP between the state users and the federal users is important to the State. With this legislation, approximately 47% of the CAP will be dedicated for use by Arizona Indian tribes. The rest has been or will be allocated among the many Arizona non-Indian municipal, industrial, and agricultural users. As part of Title I, 65,647 acre-feet of CAP high priority rights will be reallocated to Arizona cities, towns, and water companies for municipal and industrial use. This reallocation has been pending for years after an extensive public process by the Arizona Department of Water Resources.

To acquire water for tribal water settlements, Title I provides a mechanism for agricultural interests to relinquish their CAP subcontracts in return for debt relief from section 9(d) of the Reclamation Project Act of 1939 totaling \$158 million (shared by the federal government and state interests). Additionally, Title I provides for waivers of water rights claims by certain Indian tribes, and regulatory relief from the Reclamation Reform Act (RRA). It is important to the State that the water for tribal settlements, over and above that contributed by the parties, be acquired water from willing rightholders and not water taken by the federal government. Early tribal settlements were based on this concept, but in the 1990s the Secretary and Congress allocated water for settlements despite concerns raised by the State. We hope that the provisions of Title I can be a precedent for settlements throughout the country.

The 1982 Reclamation Reform Act (RRA) has prevented the State from making full use of the CAP, which was designed to replace existing groundwater use for agriculture. Some lands are not eligible to receive CAP water due to RRA and are instead still irrigated with groundwater. Additionally, the administrative costs of implementing RRA in Arizona outweigh any perceived benefits to the government. The relinquishing districts would then be able to purchase CAP water over the next 30 years from year-to-year agriculture pools at an affordable price. RRA relief for the agricultural districts within the CAP service area, as provided in Title I, furthers implementation of the Arizona Groundwater Code, and our effort to preserve our depleted groundwater supply for future generations.

The water acquired pursuant to the CAP agricultural subcontract relinquishments will be used in the water budgets for the Gila River Indian Community settlement in Title II, for the Tohono O'odham Nation settlement amendments in Title III, and provide the Secretary of the Interior with additional water for future Arizona tribal water settlements, for a total of 197,500 acre-feet of water. Up to an additional 96,295 acre-feet will be provided for the State to hold in trust for a period of time and then reallocate to municipal and industrial water users in Arizona.

Title I also authorizes an agreement between Arizona and the Secretary to share in the "firming" of 60,648 acre-feet of the tribal CAP water to make it a more reliable water source for tribes to use for municipal and industrial purposes. Firming is the process of storing water underground today to be used when the dedicated surface water supply is lacking due to shortages. The State is obligated to firm 15,000 acre-feet for the Gila River Indian Community Water Rights Settlement, and another 8,724 acre-feet for future

Arizona Indian tribal settlements. Through the Arizona Water Banking Authority we have begun a process to identify the best ways to meet this obligation, and to examine whether additional state law authorizations are needed, as well as funding options.

Arizona has been concerned in the past about proposals to market water out of state, in derogation of the Law of the River, the Indian non-intercourse acts, and other applicable laws. The Law of the River includes several U.S. Supreme Court decisions, two multi-state compacts, and numerous acts of Congress concerning the use of the Colorado River. We believe that uses of the Colorado River must be consistent with this body of law.

Title I clearly prohibits the direct or indirect marketing of CAP outside the boundaries of the State of Arizona. However, it would not impact the existing interstate banking agreements with California and Nevada through the Arizona Water Banking Authority. Nor would it affect any exchange necessary for the New Mexico Unit of the CAP as authorized in 1968. The State has been negotiating with the State of New Mexico over proposed changes to confirm that New Mexico can develop the CAP New Mexico Unit as envisioned in the 1968 Act.

Funding of tribal water settlements has been a problem in the past. Tribes are asked to give up potential large paper water rights in return for a reasonable water budget and the ability to make use of the water. Use of water involves development funds for on-reservation projects. As you know, the appropriations process is difficult and may continue to be so in the future.

Title I outlines the intended uses for the Lower Colorado River Basin Fund (Fund) over the next 40 years. The Fund consists of payments by the non-Indian CAP water users and power revenues of the CAP. These sources will continue to flow into the Fund until the CAP is fully repaid. Under Title I, the revenues in the Fund are redirected to be used to reduce the cost of delivery of water to tribal water users, to finance current and future tribal water settlements and to finance CAP distribution systems on tribal lands. It is important to note that this funding is for the long-range water and economic development needs of Indian tribes.

Other issues resolved in Title I include clarifying that CAP contracts, whether tribal or non-Indian, are for permanent service within the meaning of the Boulder Canyon Project Act and for a term of service of 100 years. It also resolves the long-standing dispute between the Secretary and CAWCD about how shortages will be shared by users of the CAP.

The provisions of Title I have been memorialized in the Arizona Water Settlement Agreement (Agreement), among the CAWCD, the Director of the Arizona Department of Water Resources, and the Secretary of the Interior. CAWCD and the Director signed the Agreement last year, but the Secretary will need to complete the National Environmental Policy Act process before signing. Finishing the Agreement will further the stipulated settlement of the repayment litigation in U.S. District Court, which could not be completed without passage of H.R.885.

## Title II: Gila River Indian Community Water Rights Settlement

Coronado visited the Pima Indians of what is now central Arizona in 1540. There the conquistador bought grains from lush tribal fields along the Gila River. The current Gila River Indian Community (Community), made up of two tribes, the Pima and the Maricopa, are the descendents of those Indians visited so long ago by Spanish explorers and missionaries. These tribes assisted the U.S. Cavalry in the Indian wars, sold grain to American settlers, and its members have volunteered to serve in many overseas conflicts. One such member was Ira Hayes who helped raise the United States flag over Iwo Jima.

With a history of farming they have fought in the courts for decades for their water rights. Over the last two decades negotiations have been held. In the last year we finally succeeded in reaching a settlement. Title II would authorize the Secretary to sign the Gila River Indian Community Water Rights Settlement and provide the ways and means needed to make it a reality.

The State participated in this settlement in many roles, that of facilitator, water rights holder, and protector of state policies and interests. Additionally, the State attempted to make the settlement acceptable for small water users unable to represent themselves in the negotiations. After enactment of the congressional settlement legislation, Arizona must address and enact changes to Arizona law consistent with the

settlement to bind all citizens to the settlement, now and in the future. A State does not commit lightly to changing its laws, but in this case it will not only address issues presented by the settlement, but also serve the water management goals of the State. To this end the Arizona Department of Water Resources, the Arizona Game and Fish Commission and the Arizona State Land Department represented the State in negotiations. I will outline the State's policy considerations.

A major goal of any Indian water rights settlement is finality. Title II confirms an overall final water budget for the Gila River Indian Community and provides strict accounting of that budget, funding to allow utilization of the water, and broad waivers of claims by the Community and the United States as trustee to pending and future court claims to water rights.

In the General Stream Adjudication of the Gila River and its sources, the Community and the United States claim between 1.5 million and 2 million acre-feet of water from all sources. The Gila River bisects the Community, which has proven uses of Gila River and groundwater since before recorded history. It is not a matter of whether the Community is entitled to water; it is a question of how much.

In the settlement, the Community has agreed to an overall water budget of 653,500 acre-feet annually, calculated on a rolling average over 10 years. The sources of the water are Gila River water, Salt/Verde River water, groundwater, exchanged reclaimed water, and Central Arizona Project (CAP) water. Well over one-half of the proposed water budget is currently under the legal control of the Community. It has a CAP contract for 173,100 acre-feet, a time-immemorial right to over 200,000 acre-feet Gila River water under the Globe Equity decree (125,000 acre-feet of reliable water in the tribal water budget), 5,900 acre-feet of Salt/Verde River water under the Haggard Decree, and the sovereign right to pump their own groundwater outside of State regulation. Part of this settlement is recognition of rights already held and used by the Community, with methods to improve those existing uses. Attached to my statement is an outline of the Community settlement water budget.

The primary source of additional water for the Community's water budget is CAP, with some contributed Salt/Verde River water and exchanged reclaimed water. Some parties contribute CAP water, but the largest block is from the CAP subcontract relinquishment pool established under Title I, approximately 102,000 acre-feet of lower priority water used for agriculture. The final piece to the water budget came from creative thinking by the Phoenix area cities. The cities of Mesa and Chandler will exchange highly treated reclaimed water with the Community for Community CAP water on a 5 to 4 ratio. This creative thinking solves several water management issues and benefits Indians and non-Indians. In fact, the two cities have already entered into the agreements necessary to make the exchange, beginning the construction process prior to enactment of this legislation. The Community and the United States are prohibited from seeking water above the proposed water budget.

In exchange for this water budget and funding to make use of the budget, the Community and the United States are granting broad waivers to all the citizens of Arizona of past, present, and future court actions on water rights, subject to some retention of rights to enforce the benefits of the settlement. Arizona insisted that this be a final settlement of the Community's claims to water.

A benefit to settlements is to make partners out of combatants. An example of this, to be confirmed in the settlement, is the relationship between the Gila River Indian Community and the San Carlos Irrigation and Drainage District (SCIDD). SCIDD and the Community share in the San Carlos Indian Irrigation Project run by the Bureau of Indian Affairs. Sharing water of a project operated by an under-funded federal agency has strained the relationship. Through the settlement, SCIDD and the Community will enter into a new relationship, dividing the project features and taking over responsibility for operating their own systems. The settlement also provides funding to rehabilitate the existing unlined system to make better use of limited water supplies. SCIDD and the Community now share common goals and work together as a team. This is but one example of how this settlement is making neighbors out of antagonists.

I will, at this point, list the parties to separate agreements (settlement, exchange, lease, or otherwise) that are part of the overall Community settlement confirmed by H.R. 885. The parties are:

The Salt River Project;

Phelps Dodge Corporation;

The irrigation districts and many towns and cities in the Upper Gila River Valley and the San Pedro River,

including New Mexico rightholders;  
Arlington Canal Company and the Buckeye Irrigation Company;  
Maricopa-Stanfield Irrigation and Drainage District;  
Central Arizona Irrigation and Drainage District;  
San Carlos Irrigation and Drainage District;  
The Cities of Mesa and Chandler;  
Arizona Game and Fish Commission;  
Phoenix area cities with leasing arrangements.

Some of these separate agreements further the water management goals of the State. For example, the ability of various cities to lease high-priority CAP water from the Community for 100 years is important in meeting Assured Water Supply requirements under state law for new subdivisions. The reclaimed water exchange agreements between the cities and the Community provide the Community with a reliable source of water for agriculture, and assist the cities in making full reuse of treated effluent.

The Upper Gila Valley settlements provide many benefits. Not only do the settlements end long-standing contentious litigation before the Globe Equity Court, between the large irrigation districts and the Community, but also provide a basis for future settlements. The irrigation districts have agreed to permanently reduce irrigation acreage for the benefit of the Community, and if there were a future settlement with the San Carlos Apaches, the districts would permanently reduce additional irrigation acreage. The irrigation districts have also agreed to a cap on combined diversions and groundwater pumping; real reductions in water use, to the benefit of the river's health, the Community, and the San Carlos Apache Tribe.

In past Indian settlements, States have been asked to make financial contributions to settlements. In previous Arizona Indian tribal water settlements, the State has provided an appropriation to the tribal development fund. The State's contribution to the Community settlement is structured differently. First, the State believes that the CAP water that is being relinquished is a state contribution. It was originally part of the non-Indian allocations of the CAP. We have agreed to this division of water in Title I and urge its use for the Community's settlement. The financial aspect for the State in this settlement may be large as time goes by, but it does not include any contribution to the Community development. Instead the State has agreed to firm up to 15,000 acre-feet of low priority CAP water. Title I outlines this commitment but leaves the details to a future agreement with the Secretary about firming of tribal supplies Through the Arizona Water Banking Authority we are in the process of analyzing how this will be accomplished. It may involve millions of dollars to bank an amount necessary to firm the water to municipal and industrial delivery priority.

One of the separate agreements involves protection of groundwater in the areas south of the Gila River Indian Reservation. By changes to state law, the State will limit the use of groundwater in specific areas adjacent to the reservation to help protect tribal groundwater. To further ensure that the restrictions benefit the aquifer for the Community, the State will authorize and supply a water replenishment bank. The settlement outlines the goals of the replenishment bank but leaves implementation up to the Arizona Legislature. By enacting state legislation we will bind all future water users in that protected area to the settlement. This replenishment bank may involve millions of dollars.

Water uses in other areas within the Gila watershed are also of concern to the Community, including groundwater users along the San Pedro River and the Upper Gila River. The water budget makes assumptions about the present flow of the Gila and San Pedro rivers. The State has proposed that present uses on those streams should be allowed to continue and the Community has agreed. The settlement proposes a "safe harbor" provision for these current uses that the Community, SCIDD and the United States would not challenge. To limit future uses, the State has agreed to propose changes in state law that prohibit the construction of new dams and the development of new irrigation uses within the San Pedro River and the Upper Gila River basins. When enacted the State assumes an ongoing enforcement responsibility. At this time we do not have an estimate of this future financial commitment.

To summarize: the State contributions involve several changes in state law to accomplish the goals of the

settlement; obligate the State to ongoing enforcement provisions, and necessitate large underground water storage expenditures for firming of tribal water and for the replenishment bank.

This settlement encompasses many good things for many entities within Arizona. I have touched only on those of particular importance as State policy considerations. However, I must comment on one more provision. In Title II, and in Title III, the legislation outlines procedures for the Gila River Indian Community and the Tohono O'odham Nation to have lands placed into trust.

It is important to remember that 28 percent of Arizona's total land base consists of various Indian Reservations, with much more land held in trust for benefit of tribes or individual Indians, or in fee by tribes. We are proud of our tribal governments and have improved our ability to work with them on a government-to-government basis, especially on health, education, and gaming issues. However, there are many consequences to state and local non-Indian authorities when lands are added to reservations, or taken into trust. For many years the State has taken the position that only Congress has the authority to make new reservations or additions to existing reservations, pursuant to congressional directives found in 25 U.S.C. 211. Some tribes and the Secretary of the Interior disagree with our legal analysis. To circumvent future litigation on this issue we, along with other Arizona interests including the congressional delegation, have urged that the settling tribes agree to a clarification of this issue concerning their reservations.

Title II confirms that new additions to the reservation, or the placing of lands into trust status for the benefit of the Community, will only be accomplished by specific acts of Congress. Congress enacted the Zuni Indian Tribe Water Settlement Act earlier this year with similar provisions. We strongly support retention of this provision in Title II, as well as in Title III.

In summary, the Gila River Indian Community Tribal Water Settlement provides many benefits to all Arizonans, and the State has committed itself to changes in state law and future use of resources to effect the benefit of the settlement for the Community.

#### Title III: Amendments to the Southern Arizona Water Rights Settlement Act of 1982

In 1982, Congress enacted the Southern Arizona Water Rights Settlement Act (SAWRSA) to resolve the tribal claims against non-Indian water users in the Upper Santa Cruz Basin by the Tohono O'odham Nation (Nation), then known as the Papago Tribe, pending in the case U.S. v. Tucson. The 1982 SAWRSA called for a water budget of 66,000 acre-feet of delivered water, a 10,000 acre-feet limit on groundwater pumping by the Nation, a \$15 million development trust fund, and a cooperative fund to pay for the delivery of surface water.

Portions of the settlement have been completed, including the construction of a major portion of the distribution system to use the Nation's original CAP allocation. The Nation, the State, and the local entities have performed their required tasks under the 1982 Act. This included state entities' financial contributions of \$5.25 million, Tucson's contribution of 28,200 acre-feet of effluent and tribal waivers of claims to water rights.

However, issues about the distribution of the tribal benefits arose before final dismissal of U.S. v. Tucson. At the same time, questions were raised about the source of a portion of the tribal water budget, and opposition formed to the building of a new farm on unbroken desert lands. Title III of H.R. 885 would amend the 1982 Act to address these issues, provide a better method for dismissal of the pending lawsuits, and modernize the authorized uses of water by the Nation to be more consistent with those allowed under state law. It also confirms the settlement agreement among the Nation, the State of Arizona, Asarco, an international mining company, and Farmers Investments Companies (FICO). I recently signed the settlement agreement, as have all parties except the Secretary of the Interior, who is awaiting congressional authorization.

To begin the more recent negotiations with all parties to the settlement, an agreement was reached between the Nation and the Indian allottees, whose allotment lands are within the basin, about the use of the settlement benefits. It is a tribute to the tribal parties that they have worked out internal differences, and now are ready to finish the settlement. The State acted as a party to the final settlement and facilitated the negotiations.

Title III clarifies all the issues that delayed implementation. First, it identifies the source of the additional settlement water. The Nation has an original CAP allocation of 37,800 acre-feet, but SAWRSA provided for an additional 28,200 acre-feet of unidentified settlement water. Under Title I of H.R. 885, CAP agricultural water is made available to the Secretary for Indian water settlements, and it is from this pool of relinquished contracts that the Nation will receive its full settlement budget. Title I directs that the Secretary will have the responsibility to firm the 28,200 acre-feet of settlement water. The State offered up to \$3 million in appropriations or services to assist the Secretary in that obligation. It should be noted that the State had already appropriated a contribution to the Cooperative Fund as required under the 1982 Act, and this \$3 million is an additional contribution.

The settlement better defines the nature of the 10,000 acre-foot limit on pumping rights. The 1982 congressional directive on the limitation of pumping did not address whether this is a "reserved" pumping right or the equivalency of a state-based grandfathered pumping right in an active management area. In return for clarifying that this is not a reserved right the State has agreed to seek state law changes to allow additional protection to the Nation's groundwater resource from the effects of new wells around the reservation. Under this legislative change, the State adds to its water management responsibilities in the Tucson Active Management Area.

Each of the major parties, the City of Tucson, Asarco, and FICO, have entered separate agreements with the Nation and the allottees to further protect the groundwater resource of the reservation. This includes a creative solution by Asarco to substitute tribal CAP water for Asarco's industrial groundwater use through a storage arrangement.

Waivers and releases under the 1982 Act only provided for past and present claims to water rights and injuries to water rights, while the Title III amendments include future claims to water rights and injuries to water rights with some defined exceptions to enable the parties to enforce the settlement provisions.

In 1982, it was envisioned that the Bureau of Reclamation would construct or rehabilitate three different farm units for the Nation. Under Title III, a procedure is outlined to substitute a \$18.3 million development fund for one farm that would have been built on unspoiled desert lands. The \$18.3 million is a present value substitute for a project already authorized as part of a settlement and committed to construction. Of the remaining commitment, one farm is already completed, and the last farm rehabilitation and expansion project has begun, both using CAP funding.

A procedure for dismissing the pending lawsuits is agreed upon in the settlement agreement, and confirmed by Title III. It provides for class action consolidation and dismissal of Indian allottee claims based on the receipt of settlement benefits. There are over 3000 individual Indian allottees with land interests in the basin. The State finds that this procedure gives greater certainty, binding not just the present litigants but also their successors.

In summary, Title III provides better tools for dismissal of pending lawsuits, a confirmed supply of settlement water for the Nation, protection of tribal groundwater, creative uses of CAP water, and legal certainty over issues not addressed in 1982, such as the nature of the groundwater pumping right.

#### Title IV: San Carlos Apache Tribal Water Settlement

Unfortunately, at this time we do not have a San Carlos Apache tribal water settlement. Congress approved a San Carlos Apache Tribe water settlement of their claims to the Salt River watershed portion of the reservation in 1992. Since that time, several discussions have been about resolving the tribe's claims to the Gila River watershed portion of the reservation. These issues are also being addressed in the General Stream Adjudication of the Gila River and its source.

The State stands ready to assist in the negotiation of the San Carlos Apache tribal claims to the Gila River when the Tribe and the United States reach an understanding of the parameters of such a settlement. It is possible that a settlement will be reached before passage of H.R. 885. However, the State does not believe that the rest of legislation should be delayed if Title IV cannot be completed.

Provisions have been made in Title II to maintain the rights of the San Carlos Apache Tribe against the settling parties. The San Carlos Apache Tribe expressed concerns to the State that the legislation and the

settlement agreement for the Gila River Indian Community hinder use of their current water rights. They cite primarily the exchange provisions in the Community's settlement, and the legislative changes proposed by the State of New Mexico, both in Title II. Under the Globe Equity decree of 1935 the Apaches were awarded a water right with an 1846 priority date to irrigate 1,000 acres along the Gila River. The State fully supports maintaining the ability to use this right, and in fact, would support proposals to enhance the ability of the Apaches to make use of the 1846 right.

The State is optimistic that the Apache claims to the Gila will be resolved in the not too distant future, either by settlement or in Adjudication Court, but urges the Committee to move forward on H.R. 885, with or without a new Apache settlement.

## Summary and Conclusion

Before closing I would note that there are concerns that have been raised by non-parties to the settlements. Most notably the Navajo Nation, in its endeavor to quantify its water rights, has offered comments. Their primary concern is that the Navajo Nation claims have not been considered in this legislation. The State of Arizona is currently negotiating with the Navajo Nation about its claims to the mainstem Colorado River. It is our hope that a portion of the water acquired pursuant to the relinquishments authorized in Title I will be available for settling their claims.

Title I provides the final division of the Colorado River waters to be delivered through the CAP, clarifies contractual relationships with the United States, authorizes a shortage-sharing approach, and furthers the intent of the stipulated settlement between Central Arizona Water Conservation District and the United States on repayment of construction costs of the CAP. Presently unallocated CAP water is finally allocated or reallocated pursuant to public processes completed many years ago. Finally, Title I provides a mechanism for relinquishment of agricultural priority water to be used for Indian water settlements, both present and future, along with a funding mechanism for those settlements and for the delivery of CAP water to Indian customers. The funding mechanisms proposed through the Lower Colorado River Basin Fund may be unique, but they are worthy of congressional approval. These benefits accrue primarily to Arizona Indian tribes and their future economic development.

Title II confirms the water rights settlement of the Gila River Indian Community, ending long-standing judicial and cultural conflicts concerning millions of acre-feet of water. It provides the Community with a clear final water budget and the resources to utilize that water in return for complete waivers and releases of water rights claims and injuries to water rights. Many of the settlement's features enhance the ability to conserve groundwater in central Arizona, including the leasing of tribal CAP supplies to non-Indian users in Arizona. Title II resolves potential legal disputes over how non-tribal lands gain trust or reservation status by confirming that it is properly Congress' role to determine if and how reservations are changed. The State has committed to pursue changes in state law and to expend millions of dollars to assure the Community more reliable water supplies and to preserve groundwater on and around the reservation.

Title III provides means to finalize a settlement long overdue for the Tohono O'odham Nation and the people of southern Arizona. It modernizes the 1982 settlement, providing water use flexibility, especially of CAP water. In seeking additional protections of tribal groundwater, the settlement complements existing state water management goals. The effort in amending the settlement gave tribal, local, state, and federal government representatives an opportunity to better understand each other and to become partners instead of combatants.

We have worked long and hard to negotiate the three settlements represented by the respective Titles, and the State of Arizona strongly recommends that the Committee support H.R. 885, the Arizona Water Settlements Act of 2003.

Herbert R. Guenther

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Testimony on behalf of The Honorable Janet Napolitano

Governor of the Great State of Arizona

Subcommittee on Water and Power

Before the Committee on Resources

United States House of Representatives

Hearing on H.R. 885 Arizona Water Settlements Act

Thursday, October 2, 2003

#### DISCLOSURE REQUIREMENT

Required by House Rule XI, clause 2(g)

And Rules of the Committee on Resources

A. This part is to be completed by all witnesses:

1. Name: Herb Guenther (former Arizona State Senator)
2. Business Address: 500 North Third Street, Phoenix, Az. 85004
3. Business Telephone number: (602) 417-2410
4. Organization you are representing:

Arizona Department of Water Resources and The Honorable Janet Napolitano, Governor of the Great State of Arizona.

5. Training, education, diplomas, degrees:

Arizona State University-degree in Wildlife Biology

6. Licenses, certifications or affiliations:

Arizona State Senator for four years

Arizona State House of Representatives for nine years

Arizona State Senate-Chair, Natural Resources & Environment Committee

Colorado River Water Users Association-Past President and Board member.

7. Employment, occupation, ownership:

23 years Wellton-Mohawk Irrigation & Drainage District

10 years Bureau of Reclamation

8. Offices

Director, Arizona Department of Water Resources