

**Testimony of Eldred Enas
Tribal Council Chairman
Colorado River Indian Tribes
May 27, 2009.**

Mr. Chairman, members of the committee, ladies and gentlemen, on behalf of the Colorado River Indian Tribes, I would like to express our appreciation for the opportunity to testify before you today on the effects of water quality issues in the Lower Colorado River region.

The Colorado River Indian Tribes are comprised of four tribal groups. The Mohave, the Chemehuevi, the Navajo, and the Hopi each contribute to our unique social, cultural and economic blend. We draw upon the strength, creativity, courage, and wisdom of each of these tribal groups to inform and guide our decisions as we address the challenges before us.

In my dual professional roles as a member of Tribal Council, and as the Tribe's Chairman, I am obligated to preserve, promote and protect the economic interests of the Tribe. Those interests include, among others, over 100,000 acres of prime farm land, irrigated with water from the Lower Colorado River. The quality of the water applied to this acreage has a direct impact on the quality and quantity of the crops produced. Threats to the water quality of the Lower Colorado River put at risk a \$400 million dollar economic engine that sustains not only our Reservation, but which has a significant regional impact as well.

As the Committee is aware, our Tribe holds one of the largest and most senior water allocation rights on the Lower Colorado River. With an annual allocation of 719,000 acre-feet of mainstream water, and a priority date of March 3, 1865, it is perhaps an understatement to say that the Colorado River is the "life blood" of our people. For centuries, we have lived along the river, and earned our living from the river. The river provides water to drink, water to irrigate our fields, water to recreate on, and water for a vast and rich riparian habitat. We harvest electricity from its flow, and revenue from residents and visitors who come to stay and play along nearly one hundred miles of river shoreline within our Reservation. We are, naturally, grateful for the river's bounty, and revere it for its natural beauty.

The Committee also, no doubt, is aware that while the Lower Colorado River embodies our past, and our present, it is the future health of the river that is essential to, and bears directly upon the lasting physical, economic, and spiritual health of our people. We are mindful as well that, although our relationship to the Colorado River is uniquely intimate, more than thirty million of our fellow American citizens, citizens of the United States of Mexico, and visitors from around the world also rely upon the waters of the Lower Colorado River each year for residential, commercial, and recreational purposes. The Tribe therefore regards its stewardship responsibilities as paramount not only to its own future well being, but also to the future well being of the southwestern United States at large.

Current Programs:

Where water quality issues are concerned, the Colorado River Indian Tribes have a long history of cooperative relationships with its neighbors at the Federal, State and Local levels. All desert dwellers quickly discover that a clean, reliable water source is more valuable than gold. Neighbors who share that perspective are valuable to us, and we endeavor to be good neighbors ourselves. The Tribe currently expends considerable resources to maintain water quality in two areas. The Environmental Protection Office monitors residential and farm lands within the Reservation boundaries and enforces Tribal laws regarding the use, application, discharge and disposal of waste materials, agricultural chemicals and related products. The Ahakhav Tribal Preserve is committed to restoration and preservation of over 1,200 acres of wetlands along the banks of the Lower Colorado River. Extensive revegetation of native plants improves water quality while providing refuge to animals native to the Lower Colorado River Basin, but threatened by the changes in river usage, water quality and encroaching development. Visitors are rewarded with a stretch of river restored to a nearly-natural state. In consultation with State and Federal agencies, the Tribe continuously explores opportunities to expand the scope and effectiveness of these programs. However, two pressing issues, which are beyond the ability of the Tribe to adequately address or prevent, threaten to impair the water quality on the Lower Colorado River. These are the issues of over allocation, and contamination.

Current Challenges: Over-allocation and Contamination

Over-allocation:

Regional population growth, shifting use patterns and the effects of the recent drought – whether caused by a natural warming trend, or human activities, or some combination of the two – have elevated the pressures on the river to a degree that it now requires constant care and monitoring to maintain a reasonable level of water quality.

The Tribes welcome responsible, wisely planned, sustainable growth for the economic benefits such development provides. Our Tribal economy is no different in that respect than any other political subdivision, or business entity. The key, however, is sustainability. Growth for the sake of profit to a community generally, is an understandable aim, but sanctioning growth for the sake of profiteering for the benefit of a few shareholders looking for a quick pile of gold, and at the expense of those “downstream” is not only unsustainable, it is unwise. and an abrogation of the oversight responsibility vested in executive and legislative bodies such as this one. The Tribes therefore oppose ill-conceived, unregulated or under-regulated developments of the sort recently proposed along the upper reaches of the Lower Colorado River – where hundreds of thousands of new houses are proposed to be built, but where neither State nor Federal law sufficiently protects the interests of the Tribes or other Lower Colorado River users.

The Colorado River Compact based its water allocation schedule on an average annual flow of 15 million acre feet per year pursuant to estimates available at the time. Modern scientific evidence indicates that a somewhat lower average annual flow - approximately 13.75 million acre feet per year – may be more accurate. Going forward, the Tribe urges this Committee to use the most accurate scientific data available when drafting or amending legislation related to river allocation, usage, and the establishment of maximum safe contaminant levels.

Contamination:

While we strive to be good stewards and good neighbors in regard to our usage of Lower Colorado River water, even the best of relationships among stakeholders will not prevent the economic, environmental, and social disaster that would likely occur if, for example, the Chromium VI-laden groundwater nearing the river aquifer at Topock Gorge were to reach, and contaminate the Lower Colorado River. Located as we are, just forty river-miles downstream from the Pacific Gas and Electric (PG&E) Topock Compressor Station, where this nightmare scenario is playing out, the Tribe is acutely aware of the tenuous nature of “water quality” as that phrase relates to our daily lives.

And while this is perhaps the most urgent contamination problem threatening the quality of the water in the Lower Colorado River today, it is by no means the only one. Perchlorate still creeps into the river from the exploded fuel plant near Henderson, Nevada. Uranium-laden tailings at the Atlas mine site near Moab, Utah threaten to leach radioactive water into the river, thousands of watercraft engines and batteries foul the reservoirs and river segments each year, farming operations return chemical-laden drain water to the mainstream after watering their fields, and run-off from the municipalities along the river injects yet another “special blend” of pharmacological alchemy into the river. In short, the prognosis for the water quality in the Lower Colorado River, in the Tribe’s view, is not good. While not all of these situations pose severe or imminent danger downstream, water quality in the Lower Colorado River will not improve over time without reversing, or at least reducing these contaminant inflows.

The Tribe nonetheless remains hopeful. The Tribe applauds and supports the efforts of municipalities such as Lake Havasu City, which undertook a \$463 million dollar project to install a city-wide sewer system to prevent further contamination of the river. Likewise, the Tribe watches the progress being made to remediate the chromium contamination at the PG&E Topock Compressor Station site with cautious optimism. These two efforts, though prompted initially by the threat of litigation, are examples of the effectiveness of the Clean Water Act, and related environmental law, when those laws are adequately enforced.

Adequate enforcement requires both vigilant oversight, and funding. In the view of the Tribe, the ultimate responsibility for oversight and enforcement of water quality laws on the Lower Colorado River, an invaluable national resource upon which one-tenth of the entire U.S. population relies for its water, must rest with the Federal

government. To the extent that States, Tribes, Counties, or Municipalities are able to develop systems to eliminate or minimize harmful discharge into the river, or to execute effective clean-up processes of localized contaminant sites, the Tribe urges this Committee to provide Federal funding, either directly, or in the form of low-cost loans, to support those efforts. Where water-quality issues are concerned, proactive measures nearly always cost less than reactive ones, and produce better results as well.

California's Department of Toxic Substance Control (DTSC) is the "lead agency" for the Topock Compressor Station remediation project because federal law does not provide jurisdiction until a Federal interest is directly impacted – the chromium-tainted groundwater is approaching, but not yet actually in direct contact with the river aquifer. Though the Bureau of Reclamation, the Bureau of Land Management and the Environmental Protection Agency are all consulted on the clean-up process at Topock Gorge, the State of California bears the brunt of the oversight responsibilities. To their credit, the DTSC and the State of California appear to be bearing this burden well. However, some western states may not have the same level of resources available to them as does California, especially in our present economic situation. What concerns the Tribe is the risk that a state or municipality may not be able financially to devote the resources necessary to adequately monitor its shoreline for potential sources of harmful discharge, or effectively conduct or enforce an urgently needed clean-up. Additionally, while the Tribe is deeply grateful for DTSC's diligent effort there, the State of California cannot clean up the Perchlorate spill in Nevada, nor can the State of Nevada clean up the uranium tailings in Utah.

Water quality on the Lower Colorado River is inexorably linked to the quality of the water that flows down from the Upper Basin region. The health of the whole river system, the Upper and Lower Colorado River, can only be assured through oversight and coordinated management by Federal authorities. The Tribe therefore urges this Committee to consider whether the adoption of a systemic approach to the laws affecting the Colorado River – one extending Federal jurisdiction and authority over potential contamination sources to include those situations, like at Topock Gorge, where neither the Clean Water Act nor the Safe Drinking Water Act provides the statutory authority for direct Federal action - would be in the nation's best interest. Our people would, I believe, support such a position.

Additional Concerns – Inefficient Usage:

On the Colorado River Indian Reservation, we operate a large, sophisticated irrigation system, but one built over the course of nearly a century. The system was constructed with federal funds. Farmers using the system pay the costs of operation and maintenance. But the original design was never completed. The Tribe works diligently to maximize the efficiency of our system, however, certain features, such as miles of unlined ditches, simply cannot be remedied without a major rehabilitation, and a commitment of substantial financial resources.

In 1991, the Bureau of Indian Affairs completed a study of the irrigation system on the Colorado River Indian Reservation, and provided to the Tribe a “Final Planning Report.” The Report indicates that a “rehabilitation and betterment” of the irrigation system will improve the efficiency of our water usage by bringing more acreage into production, and reducing the return-flow into the mainstream by 30,000 acre feet per year. Reduced return flow decreases the salinity of the mainstream, and improves water quality for downstream users, and riparian habitat. Additional irrigable land made available to farmers in this region will create jobs, and boost the regional economy. The Tribe notes also that the project benefit-cost ratio for the rehabilitation is stated to be 1.63. The Tribe therefore recommends that the Committee consider action to fund completion of this project and others like it, that both improve usage efficiency, and water quality in the Lower Colorado River.

In conclusion, the Tribe wishes once again to express its appreciation to the Committee for this opportunity to address these issues. Public awareness of water quality issues appears to be on the rise, and the need for vigilant, prudent management of our limited resource is clear. While the Tribe is fortunate to have so large and senior an allotment of Colorado River water, we do not take the river for granted. The Colorado River is strong, but not invincible. As the Committee moves forward in its consideration of water quality issues on the Lower Colorado River, we hope it will view, as we do, the need to assess the whole of the Colorado River, and legislate accordingly.

There is much for this Committee to consider, over-allocation, contamination, efficient usage, efficient storage, recreation, evaporation, and increased population to name just a few. The Tribe wishes the Committee well in its deliberations.