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Testimony

Before the Subcommittee on Water and Power

Of the Committee on Resources

United States House of Representatives

Hearing on H.R. 885, Arizona Water Settlements Act

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Mr. Chairman and subcommittee members, I am Estevan López, Director of the New Mexico Interstate Stream Commission. I appreciate very much the opportunity to appear before you today and provide comments on behalf of the State of New Mexico regarding the Arizona Water Settlements Act, H.R. 885. This legislation will resolve long-standing water issues among Indian Tribes and water users in New Mexico and Arizona. It is of great importance to the State of Arizona and will bring numerous benefits to water users and communities in the Gila River Basin.

In addition to the benefits to Indian Tribes and water users in Arizona, this bill could benefit western New Mexico, which shares the Gila River with Arizona. Both Title I of the bill, the Central Arizona Project Settlement Act, and Title II, the Gila River Indian Community Water Rights Settlement Act, bear directly on use of water within the Gila River Basin in New Mexico.

During the last year, we have worked with representatives of the State of Arizona, Indian Tribes, and water users to craft language that will address New Mexico's needs. We have made substantial progress, and if New Mexico's interests can be protected we will be able to stand fully behind the bill.

At this time, I would like to give you a brief summary of New Mexico's interests in the legislation and the progress the two states and other parties have made in addressing our concerns in the settlement documents and legislation. New Mexico has two discrete areas of interest. First, in the Upper Valley Defendant ("UVD") Agreement approved in Title II of the bill, we want to ensure that New Mexico farmers in the Virden Valley are treated fairly. Second, the authorization for a New Mexico unit under section 304 of the 1968 Act authorizing the Central Arizona Project (43 U.S.C. 1543, Public Law 90-537) (the "1968 Act") must be fully protected and advanced. I will discuss these two matters in turn.

Last year, my office and the New Mexico Office of the State Engineer participated in negotiating provisions of the UVD Agreement. The core agreement calls upon the UVDs to reduce current irrigation by 3,000 acres in exchange for the ability to pump groundwater up to 6 acre-feet per acre regardless of priority. The result in New Mexico is that water rights associated with up to 240 acres, or approximately 8 per cent of the currently irrigated acres in the Virden Valley, would be extinguished.

The State of New Mexico believes the UVD settlement in H.R. 885 is a fair and reasonable compromise that will protect all parties and provide a more secure and dependable water supply. We support implementing the UVD settlement.

Our second concern is to carry out the authorization for the New Mexico unit of the Central Arizona Project ("CAP") as provided in the 1968 Act.

In the U.S. Supreme Court litigation *Arizona v California*, 376 U.S. 340 (1964), the State of New Mexico presented evidence of present and past uses of water from its tributaries in the Lower Colorado River Basin

including the Gila River and its tributaries. In addition, New Mexico presented a water supply study showing how the state could apply and use the water it claimed as its equitable share of the Gila River.

The report of the Special Master found that New Mexico should be allowed present uses as an equitable apportionment of the waters of the Gila River Basin, but did not make an apportionment of water to New Mexico for future uses from the Gila. The 1968 Act authorized an apportionment to New Mexico as part of the CAP. The intent of the 1968 Act is to provide for future uses of water in New Mexico from the Gila River Basin above those specified in *Arizona v California*.

The 1968 Act directs the Secretary of the Interior to provide New Mexico its additional water through an exchange by which the Secretary would contract with water users in New Mexico for water from the Gila River Basin in amounts that will permit consumptive use of water not to exceed an annual average of 18,000 acre-feet, including reservoir evaporation, over and above the consumptive uses provided for by article IV of the decree in *Arizona v California*.

To complete the exchange, the 1968 Act also directs the Secretary to deliver CAP water to users in Arizona in sufficient quantities to replace in full any diminution of their Gila River water supply that results from the additional consumptive use of Gila River water in New Mexico.

Amendments to H.R. 885 are required to ensure New Mexico's ability to construct the New Mexico unit and develop the 18,000 acre-feet. Over the last nine months, we have been working with the State of Arizona, the Bureau of Reclamation, the Bureau of Indian Affairs, the Gila River Indian Community, the San Carlos Irrigation and Drainage District, and the Central Arizona Water Conservation District to develop necessary amendments and related settlement documents to facilitate construction and operation of the New Mexico unit of the CAP.

I will briefly note the issues under discussion and the progress being made. The issues are more fully described in the attached "Summary of Progress and Remaining Issues Relating to the Arizona Water Settlements Act and the New Mexico Unit of the Central Arizona Project" as jointly prepared by New Mexico and Arizona on September 23, 2003. The following issues and tasks have been or remain to be resolved, in part or whole, between Arizona and New Mexico in relation to the 18,000 acre-feet exchange:

1. New Mexico's initial concern was that the Arizona Water Settlements Act would prohibit the exchange of CAP water for New Mexico's additional diversion of Gila River water. This issue is resolved.
2. Progress is being made towards agreement on terms and conditions that will be incorporated into the exchange agreement between New Mexico, the Gila River Indian Community, and the Secretary of the Interior to effect the exchange provided in the 1968 Act.
3. All parties are working to develop acceptable operational parameters that will allow New Mexico to divert water without causing economic injury or harm to holders of senior downstream water rights. General concepts have been proposed and technical review is scheduled. We are working hard to resolve this difficult and complex issue.
4. Globe Equity constraints may serve to contravene the intent of the 1968 Act to provide additional consumptive uses in New Mexico. Work is ongoing related to the following Globe Equity issues:
 - a. To keep UVD users whole, accounting of storage in San Carlos Reservoir must include any water diverted by the New Mexico unit.
 - b. The ability of New Mexico to exchange without regard to the 1924 federal storage priority in San Carlos Reservoir, as was assumed in Reclamation's 1982 and 1987 studies, must be confirmed.
5. As originally contemplated in the 1968 Act, funding for the New Mexico unit is authorized as part of the CAP. While the original New Mexico project cost estimate was approximately seventy million dollars, that estimate inflated according to the Consumer Price Index results in a cost total of over three hundred million in today's dollars. However, we believe we can build a suitable project for approximately two hundred twenty million dollars, including increased costs to accommodate federal environmental mandates.

In the settlement, New Mexico has proposed and Arizona is considering one hundred fifty million dollars in funding for the New Mexico unit that would be integrated with the funding provided for other projects under the Arizona Water Settlements Act. Discussions are ongoing regarding what costs would be supported.

Under this proposal, New Mexico would have to make provision for at least seventy million dollars in construction costs plus substantial annual costs.

6. Several entities are seeking to exchange Gila River water for CAP water, a situation that could result in shortages of available Gila River water in some years. New Mexico has the senior exchange priority emanating from the 1968 Act. However, in the spirit of compromise, New Mexico has offered to share priorities up to a set amount of aggregate exchanges. Discussions and studies are under way to determine the amount of exchanges with which New Mexico would share priority.

Mr. Chairman, we are working tirelessly to finish our negotiations with the State of Arizona, Indian Tribes and other water users. Once those discussions are complete and resolution of these issues can be incorporated into this legislation, we look forward to providing New Mexico's strong support for enactment of this bill by Congress. Thank you again for the opportunity to present our views on this matter.