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Testimony of Governor Richard P. Narcia

Gila River Indian Community

Before the

House Subcommittee on Water and Power

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Thank you Chairman Calvert and Vice-Chairman Renzi, and members of the Subcommittee on Water and Power. I am Richard Narcia, Governor of the Gila River Indian Community. I appreciate this opportunity to share with you the Community's strong support for the Arizona Water Settlements Act (H.R. 885). I would also like to take this opportunity to particularly thank you, Representative Hayworth, for your hard work and leadership in sponsoring this important legislation. I would also like to thank Senator Kyl for his steadfast support of the Community and for his commitment and dedication to our settlement.

This settlement is a monumental achievement for our Community and enjoys the unanimous support of our Council, ten of whom are here with me today. For the record, I would like to acknowledge each of them: Wally Jones, Eugene Blackwater, Jennifer Allison-Ray, Bernell Allison, Sr., Cecil Lewis, Gordon Santos, Gerald Sunna, Christopher Soke, Sr., Jonathan Thomas, and Harry Cruye. Finally, I would also like to recognize and thank the members of the Community Water Negotiation Team for their hard work in making this a reality, including Council members who are also members of the Team – Harry Cruye, Jonathan Thomas, and Chris Soke, Dana Norris, the former Director of the Office of Water Rights, Cecil Antone, the current Director of the Office of Water Rights, Rod Lewis, the General Counsel for the Community, Ardell Ruiz, Harlan Bohnee, and Lee Thompson.

## Introduction

By way of introduction, the Gila River Indian Community was formally established by Executive Order in 1859. The Community is comprised of the Akimel O'odham (Pima) and the Pee Posh (Maricopa) people. We are the largest Indian Community in the Phoenix metropolitan area, with a Reservation encompassing nearly 600 square miles and with an enrolled population of over 19,000. We have a long history in the Phoenix Valley, dating back thousands of years. Some of the most ancient agricultural irrigation systems in the world were built by our ancestors and can be found throughout the Phoenix metropolitan area. Agriculture was the mainstay of our Community until very recent times.

The Arizona Water Settlements Act will help reestablish our Community's access to renewable sources of water as compensation for the Gila River water taken from the Tribe beginning over a century ago. The return of dependable sources of water will enable more members of our Community to participate in our agricultural heritage and enjoy a better way of life.

The Arizona Water Settlements Act encompasses the largest Indian water claims settlement in U.S. history. This agreement has been negotiated over the last fourteen years by nearly all major water users in central Arizona, including representatives of our Community, state, local and other tribal governments, farming and industry. The agreement establishes and prioritizes the allocation of water among these parties. It concludes longstanding litigation that has been expensive and disruptive to our Community and to others in central Arizona, preventing us from planning future growth and impeding steps to achieve economic stability and political harmony in the region.

The Arizona Water Settlements Act also provides a mechanism for funding future Indian water rights settlements in Arizona and the construction of new water distributions systems for Indian tribes in the Phoenix Valley as required under existing water settlement agreements. Thus, it provides major benefits for other Arizona tribes, both those that have already settled their water claims and are awaiting the construction of their water systems, as well as those that are seeking to settle their claims at some point in

the future.

## Our History

To fully appreciate the importance of the Arizona Water Settlements Act to our Community and its future, I would like to briefly review our history and the central role of water to our culture and economic prosperity.

We are the Akimel O'odham, the People of the River. We have resided in the Gila River Valley of central Arizona for centuries. The direct ancestors of the Akimel O'odham, the Ancient Hohokum, farmed in the Gila River Valley since at least 300 A.D., developing hundreds of miles of irrigation canals to supply water for crops such as maize, squash, lima beans, tobacco and cotton.

Together, the Akimel O'odham and Pee Posh thrived on what the Gila River provided – a plentiful source of food for tribal members, water for irrigation and a way of life for all the Tribes' people. The River was our breadbasket and the center of our economic and social life. It provided for all the Community's needs, and as a result, the People of the River were among the most prosperous, self-sufficient communities, Indian and non-Indian, in the entire Phoenix Valley. As settlers moved to the Phoenix Valley, our Community adapted to and assisted the new settlers by providing food and protection. Members of the Community formed a component of the first Arizona Territorial Guard.

This all changed in late 19th century. New settlements were established up-stream from our Tribal lands, including farmers, industry, and other landowners, who began to divert water from the Gila River. As the turn-of-the-century approached, the steady flow of the Gila River across our tribal lands diminished, and with this dependable water source went our vast farmlands and our ability to sustain all Members of our Community.

Today, the Gila River does not flow through our Tribal lands. It is now a dry river bed winding through the desert. The loss of the Gila River has resulted in great poverty to many Members of our Community, and has led to changes in our diet that have resulted in the highest per-capita incidence of diabetes of any community in the world.

## Background to Arizona Water Settlements Act

Our struggle to regain the Gila River began in the early part of the last century. In 1924, Congress authorized construction of the Coolidge Dam as the primary feature of a new irrigation project – called the San Carlos Irrigation Project – that would provide irrigation for our Reservation. The 1924 Act was intended to address our loss of Gila River water and, in so doing, fulfill the trust obligation of the United States to our Community.

The 1924 was also to create a non-Indian component to this irrigation project. Unfortunately, although the 1924 Act provided that our component of this project was to be built before the non-Indian portion, our portion was never completed, and what was built was never adequately engineered or maintained. Thus, although the San Carlos Irrigation Project was intended to create an irrigation project for 50,000 of the irrigable acres on our Reservation, it never served more than 30,000 acres and today serves just over 15,000 acres.

In 1925, citing the 1924 Act, the United States sued water users upstream of our Community in order to reestablish existing rights of the Community in the Gila River. Unfortunately, the U.S. government, in all candor, did not do a very good job in making its case on our behalf, which resulted in greater frustration and increased federal liability to our Community. Our frustration was fed by the fact that when the Community sought to intervene itself in this litigation, the United States actually opposed our intervention. As a result, we were prevented then from actually participating in litigation that would set the framework for our struggle to protect our water rights up to the present day.

Ten years later, in 1935, this litigation ended in a settlement and consent decree – called the 1935 Globe Equity Decree – which recognized the Community's rights to 300,000 acre-feet of Gila River water each year. This was far less water than our people had access to for centuries prior to the settlement. Moreover, to this day, we have yet to receive much more than 100,000 acre-feet annually of the amount decreed in 1935. Thus, not only did the Community not receive recognition of all its water rights in 1935, it has not even received from the Gila River that to which the Globe Equity Court decreed it was entitled.

As a result, our Community has been forced to continue its struggle to vindicate its claims to water through litigation. First, in 1982, we began an effort in federal district court to enforce the 1935 Decree against upstream Gila River diverters. Second, we filed the single largest claim for water rights in the Gila River Adjudication, a separate State court proceeding begun in the mid-1970s to determine and establish the priority of water rights in the Gila River system and its tributaries. In this State court adjudication, we are claiming approximately 1.2 million acre-feet of water annually from these water systems and seeking judicial recognition that our water rights supercede those of all other non-Indian users.

Absent the comprehensive water settlement contained in the Arizona Water Settlements Act, we will have no choice but to continue to pursue our water rights through this litigation. We will also have to explore more actively any action we might have against the federal government for its failure to adequately protect and develop our water resources as required by its trust responsibility to the Community and its statutory obligations under the 1924 Act.

#### The Settlement Agreement and Arizona Water Settlements Act

In 1989, our Community and the United States Government initiated water settlement negotiations to address the great uncertainty about the allocation and dependability of water supplies to our Reservation and to the more than three million residents and businesses of Maricopa, Pinal, Pima, Graham, and Gila Counties in central Arizona. Nearly 14 years later, we have reached a comprehensive settlement of our Community's water rights claims and the allocation and priority of water supplies among the major water users in central Arizona.

Our settlement is in many ways unique:

- One, it is the largest settlement of Indian water rights in U.S. history, at least to this date.
- Two, it involves thirty-five separate parties, both Indian and non-Indian, most of which have required separate negotiations and agreements to resolve the specific issues raised between them and the Community. It is a very large bundle of compromises, each of which was thrashed out with the full consideration of its implications and importance in the overall deal. Its very size precludes the possibility of it being perfect, but the Community recognizes that it would be unrealistic to expect perfection in a settlement of this size and scope. I can assure the Subcommittee that in each instance in which the Community has compromised, it has done so with due deliberation by both the Water Negotiation Team and, when necessary, the prior approval of the Council.
- Three, our settlement is part of a more comprehensive settlement of repayment issues between the United States and the Central Arizona Water Conservation District. This settlement establishes a unique framework for resolving funding and water supply issues not just for our settlement and that of the Tohono O'odham Nation, but also Indian water rights settlements already negotiated and approved in the past, and those to come in the future. This settlement component is critical to our settlement and without it, the settlement will not work.
- Four, although most Indian water settlements affect only a single State, ours includes water users in New Mexico as well. A number of the parties with whom we are settling are located in the State of New Mexico in the Virden Valley. Moreover, we have worked closely with the State of New Mexico to ensure our settlement does not adversely affect the exchange rights that the State of New Mexico obtained in the 1968 Colorado River Basin Project Act. We are now actively exploring with the State of New Mexico, along with all the other affected parties in the State of Arizona, means of potentially implementing these exchange rights. If other New Mexico concerns or interests are raised, we will, of course, do what we can to help to address them.
- Fifth, given the complexity of interests addressed in our settlement, and the very large number of parties involved, as well as our geographic location in close proximity to major metropolitan areas in the Phoenix area, the Community has been obliged to serve as the primary coordinator of all such negotiations and to work out issues between parties as well as our own. This has been a major undertaking on the part of the Community, but one that we believe is well worth the effort. As we approach Congress for consideration of this major piece of legislation, we can safely say that every essential issue that can be resolved in the context of one individual Tribe's settlement has been resolved.
- Sixth, the Community has actively sought out the views of other parties potentially affected by this

settlement, particularly other tribes, in an effort to explain our settlement and alleviate any concerns that we can. I have personally reached out to all other tribal leaders in the State in this regard. I cannot guarantee that we completely agreed with their concerns, but I know that we have made a fair and reasonable effort to do so. My own experience with other Indian water settlements in Arizona that were considered without any consultation or consideration of other tribes' concerns is a major motivation for me in this regard.

The benefits of this settlement for our Community are many. Most importantly, it will guarantee a dependable supply of water to our lands. In total, we will have an annual entitlement of 653,500 acre-feet of water under the agreement. Most of this will come from the Central Arizona Project, which delivers approximately 1.5 million acre-feet of Colorado River water each year to central Arizona. While this amount is only a fraction of the water to which we are legally entitled, it does provide our Community with new water sources to replace some of the Gila River water we have lost -- our Community has a strong desire for actually deliverable water rather than rights to water that is not enforced.

The settlement agreement also will ensure construction and maintenance of the distribution systems that will be needed to allow delivery of water to the Reservation. Together, the settlement water and distribution infrastructure will enable more of our Community Members to farm Tribal lands and Allotted lands, as well as provide them an opportunity to escape poverty and to participate more meaningfully in the economy of the region. While there is little chance that we can recapture the past prosperity of our ancestors, the settlement agreement will enable more Tribal members to participate in our ancestors' way of life.

I would note that all funds that the Community is to receive as part of this settlement are being used solely for the development of a viable water delivery system for our farmers. One portion of the funds that the Community will receive from this settlement is to be used to rehabilitate and finally build out the long-awaited San Carlos Irrigation Project on our Reservation. Although authorized in 1924 and intended by Congress to be built prior to any non-Indian portions of that project, it never was completed and what was built has fallen into substantial disrepair.

The Community has agreed to use most of the funds it receives for that worthwhile end. The remaining balance is intended to assist the Community in making the CAP water it receives in lieu of its rights to the natural waters of the Gila River affordable for its Members and Allottees. The Community has committed to supplement the funds it receives from the settlement for this purpose.

As a result of this settlement, the Community will also achieve a separate peace with non-Indian parties throughout Arizona. The Community has struggled for this peace for many years, many times working hand in hand with other Arizona Indian Tribes, such as the San Carlos Apache Tribe. We are convinced that this is the right path for the Community at this time. There is no question that our presence may be missed by other tribes who are still involved in ongoing litigation. However, the Community has deliberated on this at length and made its choice.

This is not to say that our choice was easy. To achieve agreement, we, like all other parties to this settlement, have had to make many compromises along the way. Some were harder than others, but each was carefully considered and approved by our Council. We view the package as developed as one that is worthy of all our support.

The Arizona Water Settlements Act contains numerous benefits for Arizona. It will eliminate uncertainty among Indian communities, state and local government leaders, industry, farmers and other citizens, concerning future water use in central Arizona. This will enable long-term water planning to proceed for all concerned. The Act will help settle drawn-out and costly litigation of water rights and damage claims, enabling all parties to the settlement to refocus on future economic planning and growth.

The Act also will help ensure that existing water use in central Arizona and upstream of our Reservation on the Gila River will not be disrupted or displaced by our claims. Through lease and exchange agreements with the surrounding cities, the settlement provides for unique new opportunities for the Community and the surrounding municipalities to cooperate in their water use and planning. Finally, the Arizona Water Settlements Act, more than any federal government action since this water dispute began over a hundred years ago, will help satisfy the United States' trust responsibility to our Community and other Indian tribes. It will ensure dependable renewable water supplies and delivery to Tribal lands, as partial compensation for water taken from the Community, its Members and Allottees for over a century.

Conclusion

The settlement agreement encompassed in the Arizona Water Settlements Act is the top priority of the Gila River Indian Community. We have expended enormous amounts of time and resources to reach this agreement with nearly every major water user in central Arizona. While our Community, and each party to this agreement, will make sacrifices to consecrate this settlement, we will do so in exchange for dependable supplies of renewable water and a more certain economic future. For our Community, this settlement offers an opportunity for more of our Tribal members to partake in the rich agricultural heritage of our ancestors, the Akimel O'odham and Pee Posh.

I again want to express my appreciation for the opportunity to appear before the Subcommittee today to share our views on this historic legislation. We are very hopeful that the Subcommittee will favorably consider this legislation and that it will be enacted during this Congress so that our people – and so many other stakeholders in Central Arizona – may finally begin to realize the benefits that will flow from this long overdue water settlement.

Thank you.