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STATEMENT

OF

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UNITED STATES DEPARTMENT OF THE INTERIOR

BEFORE THE

HOUSE COMMITTEE ON RESOURCES

SUBCOMMITTEE ON WATER AND POWER

ON

H.R. 495

"ZUNI INDIAN TRIBE WATER RIGHTS SETTLEMENT ACT OF 2003"

April 1, 2003

Good morning Mr. Chairman and members of the Subcommittee. My name is Theresa Rosier and I am the Counselor to the Assistant Secretary - Indian Affairs within the Department of the Interior. I appreciate the opportunity to appear before this Subcommittee to discuss H.R. 495, "Zuni Indian Tribe Water Rights Settlement Act of 2003."

The Administration supports H.R. 495. The bill is the product of a cooperative effort over the last five years among the Zuni Pueblo, the State of Arizona, the United States, the Salt River Project and many local water users in northeastern Arizona. The Settlement Agreement has been signed by the Zuni Tribe and many other settlement parties.

Background

The Little Colorado River (LCR) Basin covers an area of approximately 17.2 million acres or 26,964 square miles in northeastern Arizona and northwestern New Mexico. The main stem of the Little Colorado River is entirely in Arizona. Therefore, this adjudication deals only with claims inside the borders of Arizona. Five different Indian tribes have reservations, or pending claims to reservation lands, within the Basin: the Navajo Nation, Hopi Tribe, Zuni Tribe, San Juan Southern Paiute Tribe and the White Mountain Apache Tribe.

The Settlement Agreement at issue here concerns only the Zuni Tribe's relatively small water right claims at the Zuni Heaven Reservation located in the south eastern section of the Basin, at the confluence of the Zuni and Little Colorado Rivers. Zuni Heaven is a unique reservation created fairly recently to accommodate the religious and cultural practices of the Zuni. The main Zuni reservation, in contrast, is located in New Mexico. The majority of the Zuni members reside on the main reservation.

According to Zuni religious beliefs, a lake formerly located on the Zuni Heaven Reservation is a window into heaven. That lake and the surrounding wetlands disappeared in recent history due to upstream diversions and groundwater pumping in the surrounding areas. The Settlement Agreement provides the Tribe with the water and land to restore the lake for use in future religious ceremonies.

The Zuni Heaven Reservation was established by Congress in 1984 through Public Law 98-498 and expanded in 1990 through Public Law 101-486 to further the religious and cultural needs of the Tribe. That legislation established the land base of the Reservation within the Tribe's aboriginal territory and facilitated the Tribe's regular pilgrimage from New Mexico to Arizona by authorizing the United States to obtain easements along the pilgrimage route.

Since 1979, water rights in the Little Colorado River basin have been the subject of

an Arizona state general stream adjudication. The United States filed a water rights claim on behalf of the Zuni Tribe in the state proceeding for water rights to Zuni Heaven. Mirroring most general stream adjudications, the litigation has moved very slowly. Recognizing that the Zuni claims lent themselves to settlement, the parties devoted significant effort to negotiations. The Settlement

Agreement and H.R. 495, which would ratify that agreement, are the fruits of that negotiation.

H.R. 495

H.R. 495 approves and authorizes federal participation in a settlement agreement, which includes three subsidiary agreements. When fully implemented, the settlement would constitute a final resolution of the water rights claims of the Zuni Tribe and the United States on its behalf. The Settlement would secure to the Zuni Tribe approximately 5,500 acre-feet per year, including both surface water and groundwater, and provide for the rehabilitation and restoration of the Sacred Lake, wetlands and riparian areas of the Reservation. The surface water component of the Settlement would be secured through the purchase of state law based water rights from willing sellers, as well as through use of flood flows of the Little Colorado River. To supplement surface flows in times of drought and to allow for restoration activities to be initiated while surface water rights are acquired, the Settlement provides the Tribe with a groundwater right of 1,500 acre feet per year.

The Settlement involves significant cost sharing and cooperation between the federal government and the state and local parties. The Tribe's non-Indian neighbors have agreed to assist in the acquisition of water rights, to store surface water supplies for the Tribe and make other contributions to carry out the Settlement. In addition, some water supplies for the Settlement will be secured through up to \$6 million in water protection grants funded by the State of Arizona. H.R. 495 would authorize a total Federal settlement contribution of \$19.25 million. These funds would be used for the acquisition of water rights, as well as other actions necessary to restore the Sacred Lake, the wetlands and riparian areas of the Zuni Heaven Reservation. These actions include engineering, water and sediment distribution, removal of exotic vegetation, reestablishment of native vegetation, aggrading the river channel and other related activities.

We believe the federal contribution contemplated in H.R. 495 is appropriate to facilitate resolution of the Zuni Tribe's water rights. The Settlement is designed to release the United States from any potential damage claims that might be asserted by the Tribe and will relieve the federal government of the obligation to litigate, at significant cost and over many years, the Tribe's water rights claims. The United States would retain its ability to initiate enforcement actions as necessary in the future to protect the environment and water quality in the area. Resolution of the Tribe's water rights claims would provide certainty to its neighbors, enabling them to plan and make necessary investments based on the assurance that they have secure and stable water rights.

Conclusion

Negotiated agreements among Indian tribes, states, local parties, and the federal government are, in general, the most effective way to resolve reserved water right claims in a manner that secures tribal rights to assured water supplies for present and future generations while at the same time providing for sound management of an increasingly scarce resource. The known benefits of settlement generally outweigh the uncertainties that are inherent in litigation to the tribe, the state, other interested parties and the United States. The settlement embodied in H.R. 495 is an example of the creative solutions that can be found to resolve contentious water rights problems in the West.

This concludes my statement. I would be happy to answer any questions the Subcommittee may have.

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