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Statement of

Joe Shirley, Jr.

President

Navajo Nation

Before the Subcommittee on Water and Power
House Resources Committee

Concerning
H.R. 885 – Arizona Water Settlements Act
October 2, 2003

CHAIRMAN CALVERT AND MEMBERS OF THE SUBCOMMITTEE:

I am President Joe Shirley of the Navajo Nation. Thank you for the opportunity to provide testimony before the Committee regarding the Navajo Nation's views on the proposed settlement for the Gila River Indian Community to be implemented by H.R. 885 entitled the "Arizona Water Settlements Act." The proposed settlement will have a tremendous impact on the ability of the United States to supply the Navajo Nation with the water supplies needed to transform the Navajo Reservation into the permanent homeland envisioned when the Reservation was established. I ask the Committee to consider those impacts before recommending the approval of the proposed settlement. Working together, we are confident that the Gila River settlement can be crafted in way that will not adversely affect the ability of the Navajo Nation to obtain the water supplies so desperately needed on the Navajo Reservation.

Let me begin by saying that the Navajo Nation greatly appreciates the tremendous effort that the Arizona Congressional Delegation has devoted to addressing the difficult water issues that confront the State of Arizona. Nothing is more important to the long-term welfare of the State than developing a reliable supply of water to meet the needs of all of the State's citizens, Indian and non-Indian alike. That cannot be done while the water rights of the Indian tribes in the State remain uncertain and cloud the rights of other water users without providing the tribes with the water that they so desperately need. We know that Congress is working hard to find fair and equitable solutions to these difficult problems, and the Navajo Nation wishes to work with you to find a way to address these issues in a way that also meets the long term needs of the Navajo Nation.

The Navajo Nation is not a party to the proposed Gila River agreement nor were we invited to participate in the settlement discussions. Having reviewed H.R. 885 and the settlement that it would implement, however, it is apparent that there are at least two aspects of the proposed settlement for the Gila River Indian Community that involve water resources that are critical to the Navajo Nation. Both of these issues are matters of utmost importance to the Navajo Nation. In addition, the legislation represents an enormous federal investment in providing water supplies to the State of Arizona. We want to be certain that the present legislation does not preclude devoting further resources towards solving the difficult water supply issues facing the Navajo Nation and its neighbors in rural Arizona and New Mexico.

First, Section 104 of H.R. 885 reallocates 197,500 acre-feet per year of agricultural water priority water from the Central Arizona Project ("CAP") for use by Arizona Indian tribes. The bill proposes to transfer to the Gila River Indian Community 102,000 acre-feet of that supply. In addition, Section 104 prohibits the reallocation of any of the supply to an Indian tribe in absence of an Indian water rights settlement that calls for such a reallocation. Moreover, the water in question is "agricultural priority" water which has an extremely limited reliability. Under the provisions Section 105 of the bill, only 17,448 acre-feet of that supply is firmed up so that it can be used for municipal and industrial purposes by the other tribes in Arizona for municipal and industrial purposes. In contrast, Section 104 (b) reallocates 65,647 acre-feet of the far more valuable municipal and industrial priority water to non-Indian towns and cities in Arizona.

The Navajo Nation is deeply concerned about these provisions. While we have worked hard over the last two decades to resolve the Nation's claims to water throughout Arizona and New Mexico, we have outstanding needs for water that cannot be put aside during the years that will be required to achieve an overall settlement of the Nation's claims in those states. We do not believe that water required to meet the everyday needs of tribal members should be held hostage until those settlements are completed. Nor do we believe that the water provided under the provisions of Sections 104 and 105 is adequate to meet the needs -- or the outstanding claims -- of the Navajo Nation.

For example, it is clear that water from the mainstream of the Colorado River in the Lower Basin is essential to meeting the long term needs of the Navajo Nation on its Reservation, yet the extent of the Nation's mainstream rights has never been seriously addressed, let alone determined. The residents of western portion of the Navajo Reservation lack reliable water supplies and commonly are forced to haul water to meet their everyday needs. As a result of these critical and immediate needs, the Navajo Nation recently brought suit against the Secretary of the Interior to redress the United States' failure to obtain and protect a water supply for the benefit of the Nation from the Lower Basin of the Colorado River. While we recognize that this litigation poses a threat to various Colorado River programs that are critical to all of the basin states, the continued neglect of Navajo interests left us no choice but to proceed with our claims in court.

The Arizona portion of the Navajo-Gallup Project is another example of the efforts underway to address the immediate drinking water needs of the Navajo Nation's members. That project would be the centerpiece of a settlement of the Navajo Nation's water rights claims to the San Juan River rights in New Mexico. The Navajo Nation and the State of New Mexico are close to a final settlement agreement and hope to introduce settlement legislation as early as next year. However, the most troublesome issue is identifying a supply of water for the Navajo-Gallup Project to serve the water-short community of Window Rock in Arizona. A CAP allocation may be necessary for use in Arizona through the Navajo-Gallup Project, but H.R. 885 would prohibit the Secretary from allocating that water supply in the absence of a water rights settlement in Arizona. The Navajo communities to be served by the project have an immediate need for additional drinking water and cannot wait for the resolution of the Navajo claims in Arizona.

Ultimately, the nature and extent of the Nation's water rights in Arizona must be resolved if there is to be any certainty with regard to the CAP water supply and for the Indian communities that rely on this supply. If, in fact, the Gila River settlement eliminates or substantially reduces the availability of CAP water for other tribal water rights settlements in Arizona, the United States and the State, in all likelihood, will not have sufficient Colorado River resources to facilitate a Navajo mainstream settlement without taking water away from existing users. In short, we ask that you do not fully obligate CAP allocations in accordance with the terms of this bill, given the Navajo Nation's outstanding needs. The failure to recognize those needs and to obtain and protect a water supply sufficient to meet those needs will only lead to further controversy and disruption in the future.

Second, section 12.14 of the proposed settlement describes a water budget for the Gila River Indian Community that includes a supply of water from Blue Ridge Reservoir, which is located on Clear Creek, a tributary of the Little Colorado River. The need for water from Blue Ridge to provide drinking water for water-short communities in the southern portion of the Navajo Reservation through the Three Canyon Project is now being studied by the Bureau of Reclamation in an ongoing study which Senator Kyl has sponsored. The Navajo Nation has always viewed Blue Ridge Reservoir as the cornerstone of any settlement of the Navajo rights in the Little Colorado River Basin because it is the only practical way to provide renewable surface water supplies to meet the domestic water needs of reservation communities in the vicinity of Leupp. As a result, the suggestion that Blue Ridge Reservoir provide a water supply for the Gila River settlement jeopardizes the contemplated Little Colorado River settlement to the detriment of everyone in the Basin. It is also important to point out that the water supply for Blue Ridge Reservoir is subject to the claims of the Navajo Nation in the Little Colorado River Adjudication, even if a portion of that water were to be provided to the Gila River Indian Community. In the absence of a settlement of the Navajo claims on the Little Colorado River, the Navajo Nation will have no alternative other than to pursue its claims to such water in the ongoing adjudication.

Third, this is a very substantial settlement. It provides the Gila River Indian Community with a water budget of 653,500 acre-feet of water and a hefty amount federal funds. Moreover, it permits the leasing of subsidized settlement water supplies from the community to non-Indian water users in central Arizona with no reimbursement to the United States for the capital costs of CAP. Far more troubling, however, are the benefits extended to non-Indian water users by the settlement. For example, Section 106(b) in conjunction

with Section 107 appears to render non-reimbursable \$73,561,337 of debt incurred by CAP agricultural water users in Arizona under Section 9(d) of the Act of August 4, 1939. We fail to see the justification for such waivers. Moreover, we understand that other non-Indian water users are waiting in the wings to take advantage of the unique and expensive funding mechanisms provided by the legislation. Whatever the merits of the funding mechanisms in the bill, the benefits of those procedures should be reserved for Indian water right settlements or the provision of much needed water supplies to tribal communities.

In closing, the Navajo Nation understands the significance of proposed Gila River settlement for the Gila River Indian Community and the State of Arizona. Unfortunately, the settlement as currently proposed jeopardizes the ability to resolve the critical issues facing Arizona, the United States and the Navajo Nation. The Navajo Nation wants to work with Congress, the Arizona Delegation, the State of Arizona and the other parties to the proposed Gila River settlement to address these concerns so that the proposed settlement may move forward promptly. Thank you for the opportunity to testify on this matter of great importance to the Navajo Nation.