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Subcommittee on Water and Power
on
“Indian Water Rights Settlements”

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Madam Chairwoman and members of the subcommittee, my name is John Sullivan and I am the Associate General Manager, Water Group, at the Salt River Project (SRP). In my capacity of Associate General Manager, I also serve on the board and advisory committee of the National Water Resources Association (NWRA) and the Family Farm Alliance, respectively. Thank you for the opportunity to testify today before the subcommittee on Indian water rights settlements. We appreciate the subcommittee's attention to this timely issue that is important to SRP, its customers, and water users throughout the West.

Over the four past decades, SRP has worked with numerous tribes and stakeholders to resolve water rights disputes in a manner that benefits both Indian communities and their non-Indian neighbors. Attached to my testimony is a map that shows the location of the settlements we have been involved with. Our commitment to the negotiations process has led to significant successes, and today's hearing combined with our past experience is a great step toward meeting the challenges of future quantifications and settlements.

Just last month in Arizona, we celebrated the completion of the Gila River Indian Community and Tohono O'Odham Nation water rights settlements, which were passed as part of the Arizona Water Settlements Act in 2004. Completion of these settlements is a landmark achievement, and I would like to thank Congressman Grijalva, Chairwoman Napolitano, ranking member McMorris-Rodgers, and other members of the Natural Resources Committee for your part in initially passing and subsequently amending the Act. In addition, I would again like to thank Senators Kyl and McCain, the Gila River Indian Community, the Tohono O'Odham Nation, the State of Arizona, the Central Arizona Water Conservation District, the City of Phoenix and all of the others that were instrumental to the success of these settlements.

I am also pleased to report that we are continuing to work diligently towards the completion of the settlement of the claims of the White Mountain Apache Tribe to surface water and ground water from the Gila and Little Colorado River Basins, as well as the claims of the Navajo Nation and the Hopi Tribe to surface water and ground water from the Little Colorado River Basin and to water from the Lower Colorado River. In the near future, we hope to culminate our negotiations with these tribes into settlement agreements that can then be presented to the Congress for its approval.

The Salt River Project

SRP is composed of the Salt River Valley Water Users' Association ("Association") and the Salt River Project Agricultural Improvement and Power District ("District"). Under contract with the federal government, the Association, a private corporation authorized under the laws of the Territory of Arizona, and the District, a political subdivision of the State of Arizona, provide water from the Salt and Verde Rivers to approximately 250,000 acres of land in the greater Phoenix area. Over the past century, most of these lands have been converted from agricultural to urban uses and now comprise the core of metropolitan Phoenix.

The Association was organized in 1903 by landowners in the Salt River Valley to contract with the federal government for the building of Theodore Roosevelt Dam, located some 80 miles northeast of Phoenix, and other components of the Salt River Federal Reclamation Project. SRP was the first multipurpose project approved under the Reclamation Act of 1902. In exchange for pledging their land as collateral for the federal loans to construct Roosevelt Dam, which loans have long since been fully repaid, landowners in the Salt River Valley received the right to water stored behind the dam.

In 1905, in connection with the formation of the Association, a lawsuit entitled *Hurley v. Abbott, et al.*, was filed in the District Court of the Territory of Arizona. The purpose of this lawsuit was to determine the priority and ownership of water rights in the Salt River Valley and to provide for their orderly administration. The decree entered by Judge Edward Kent in 1910 adjudicated those water rights and, in addition, paved the way for the construction of additional water storage reservoirs by SRP on the Salt and Verde Rivers in Central Arizona.

Today, SRP operates six dams and reservoirs on the Salt and Verde Rivers in the Gila River Basin, one dam and reservoir on East Clear Creek in the Little Colorado River Basin, 1,300 miles of canals, laterals, ditches and pipelines, groundwater wells, and numerous electrical generating, transmission and distribution facilities. The seven SRP reservoirs impound runoff from multiple watersheds, which is delivered via SRP canals, laterals and pipelines to municipal, industrial and agricultural water users in the Phoenix metropolitan area. SRP also operates approximately 250 deep well pumps to supplement surface water supplies available to the Phoenix area during times of drought. In addition, SRP provides power to nearly 900,000 customers in the Phoenix area, as well as other rural areas of the State.

Past Arizona Indian Water Rights Settlements

Salt River Pima – Maricopa Indian Community - The Salt River Pima-Maricopa Community reservation consists of approximately 53,000 acres of land on the northeast corner of the Phoenix metropolitan area, at the confluence of the Salt and Verde Rivers. In the early-1980's, as part of the ongoing water rights adjudication in the state court, the Community and the United States asserted claims to approximately 185,000 acre-feet of water annually from the Salt and Verde rivers. Negotiations involving the United States and numerous municipalities and water districts, including the Salt River Project, began

in the mid-1980s and eventually led to the Salt River Pima-Maricopa Indian Community Water Rights Settlement Act of 1988. The settlement resolved the concerns of both the Community and the other settling parties by securing 122,400 acre-feet annually of a dependable water supply, and the funds needed to utilize the resource, in exchange for the Community agreeing to waive any additional water rights claims or claims for money damages.

The Salt River Project was integrally involved in negotiating this settlement and SRP water and facilities are an important piece of the final agreement. First, to allow the Community to utilize more of its historic entitlement from the Salt River, the settlement requires that a portion of the New Conservation Space behind Roosevelt Dam, completed in 1995 and now operated by SRP, be made available for the storage of 7,000 acre-feet of the Indian Community's early entitlement to water from the Salt River. The agreement also entitles the Indian Community to divert up to 26,000 acre-feet of SRP stored water annually for use on the reservation lands, depending on the amount of water stored in SRP reservoirs on May 1 of each year.

Fort McDowell Yavapai Nation - The Fort McDowell Yavapai Nation, formerly called the Fort McDowell Indian Community, has a reservation 23 miles northeast of Phoenix. The Verde River runs through the reservation. In the early 1980s, the United States asserted claims to water on behalf of the Community in the amount of 31,500 acre-feet per year plus instream flows. Both the United States and Community indicated that they intended to assert larger claims in the future. The Fort McDowell Indian Community Water Rights Settlement Act of 1990 was negotiated between the Community and several non-Indian parties, including SRP, and was signed into law in November of 1990. In exchange for a waiver of the Community's claims for water rights or injuries to water rights, the Act provides an annual entitlement of 36,350 acre-feet of water to be used on the Community's reservation. In addition, the Act authorized the federal appropriation of \$23 million and a \$13 million loan pursuant to the Small Reclamation Projects Act.

SRP was actively involved in negotiating the Fort McDowell Indian Community Settlement. The settlement agreement requires that SRP make available 3,000 acre-feet of storage space behind Bartlett and Horseshoe dams, to allow the Community to regulate and better utilize its historic entitlement to the diversion of water from the Verde River. As part of the agreement, the Indian Community is also entitled to divert up to 6,730 acre-feet annually of SRP stored water from the Verde River, depending on the amount of water stored in SRP's reservoirs on May 1 of each year, and SRP provides a minimum of 100 cfs except during extreme droughts.

San Carlos Apache Tribe - The San Carlos Apache Tribe has a reservation located in east-central Arizona, near the city of Globe. The United States filed claims in the Gila River Adjudication on behalf of the Tribe for over 292,000 acre-feet of water annually from the Salt and Gila rivers, their tributaries and ground water. In October of 1992, Congress enacted the San Carlos Apache Tribe Water Rights Settlement Act. The Act recognized the Tribe's right to divert 7,300 acre-feet annually from the Salt River or from the Black River, which is a tributary to the Salt River upstream from SRP's reservoirs,

with a priority date of 1871. In addition, the Act allocated to the Tribe approximately 64,000 acre-feet annually from the Central Arizona Project and recognized the Tribe's right to use water from all on reservation tributaries, as well as groundwater beneath the reservation. In exchange for these sources of water and the Settlement Act's establishment of a \$38.4 million tribal trust fund for on-reservation economic development, the Tribe agreed to waive its claims on the Salt River and its tributaries. The Act did not resolve the San Carlos Apache Tribe's claims to water from the Gila River, however, and the Tribe continues to assert these claims in the adjudication currently pending in the Arizona courts.

SRP was heavily involved in the negotiation of this settlement, which required almost a decade to complete. Other major participants included several major cities in Maricopa County, irrigation districts and industrial users in central Arizona.

Zuni Indian Tribe - The Zuni Heaven Reservation, located in eastern Arizona in the Little Colorado River Basin, was authorized by Congress in legislation enacted in 1984 and amended in 1990. The purpose of the reservation was to recognize longstanding religious and sustenance activities by the Tribe on these lands along the Little Colorado and Zuni rivers in the vicinity of St. Johns, Arizona. In 2003, Congress enacted the Zuni Indian Tribe Water Rights Settlement Act. The Act confirmed the terms of a settlement agreement entered into among the Tribe, the United States, the State of Arizona and several local water users and utilities, including SRP. The settlement agreement permanently resolved the Tribe's water rights claims and provided resources to restore wetlands and the Sacred Lake on the Zuni Heaven Reservation.

To restore the wetlands and lake on the Zuni Heaven Reservation for its religious and sustenance needs, the settlement act authorized the Tribe to acquire the rights to up to 3,600 acre feet of surface water annually, from willing sellers in the Norviel Decree area of eastern Arizona. The Tribe also was permitted to pump a maximum of 1,500 acre-feet of groundwater per year to supplement surface water during times of shortage. The Settlement also established the Tribe's right to existing surface water supplies in the amount of 1,935 acre-feet annually. The Zuni Indian Tribe Water Rights Settlement Act provided federal funding for the acquisition of water rights, and for facilities construction and related costs, in the amount of \$19.25 million. The State of Arizona and the Arizona Game and Fish Commission also provided a total of \$6.6 million in funding for the settlement for wetland restoration and enhancement of instream flow and riparian areas. Further, SRP contributed \$1 million toward providing a water supply for the Sacred Lake and the reestablishment of riparian vegetation on the reservation. In exchange for these benefits, the Zuni Tribe and the United States on its behalf agreed to waive their objections to all existing uses of surface water and groundwater in the Little Colorado River Basin, as well as objections to certain future uses, as outlined in the agreement.

Gila River Indian Community - The Gila River Indian Community's Reservation encompasses approximately 377,000 acres of land in central Arizona. Most of the lands within the Reservation are located within the Gila River watershed, while a small portion of the lands lie within the Salt River watershed, west of Phoenix and several miles

downstream from SRP's reservoirs. In the Gila River Adjudication, pending before the Arizona courts, the Indian Community had asserted claims to water from Salt and Gila Rivers, their tributaries and ground water totaling more than 2.7 million acre-feet annually. As I have mentioned, the Gila River Indian Community Water Rights Settlement was passed as title two of the Arizona Water Settlements Act in 2004. The settlement resolves all outstanding water related litigation between the Indian Community and the other settling parties, and settles, once and for all, the water rights of the Indian Community to surface water and ground water in the Gila River Basin.

Under the settlement agreement, the Community is entitled to an average of 653,500 acre-feet of water annually from a number of sources. Of that total, up to 35,000 acre-feet annually will come from SRP stored water, and up to an additional 328,500 acre-feet of water from the Central Arizona Project (CAP). Under specified conditions, portions of the Community's CAP water will be exchanged with SRP for the storage of the same amount of Salt and Verde River water in SRP reservoirs. The Arizona Water Settlements Act also provided federal funding in the amount of \$200 million to be used for the rehabilitation of the Community's existing water system, for rehabilitation of past subsidence damages on the reservation, to defray some of the operation, maintenance and replacement costs of the CAP water to be delivered to the Community, and to implement a program to monitor water quality on the reservation.

Benefits of Settlements

Madam Chairwoman, as you can see, the Salt River Project has a history of negotiating and settling Indian water rights disputes, and we have seen the productive solutions and mutual benefits that can occur when tribes and other stakeholders work collaboratively.

Most important among the benefits is water supply certainty, which is a fundamental outcome of any water rights settlement. In order to realize this certainty, it is critical that settlements contain comprehensive waivers of water rights claims. The assurance of a consistent long-term supply gives all water users the confidence to invest in conveyance infrastructure or make capital expenditures, such as permanent crops or commercial and residential development, needed for the most effective and valuable utilization of their water supply.

The negotiation process is also beneficial because it moves away from often costly and contentious litigation. In the courts, water rights claims can be, and have been, contested for decades. The obvious primary benefit of avoiding litigation is the savings of money and resources that can be used for a more useful purpose. However, there can be additional benefits of settling water rights claims through the settlement process. Securing a water entitlement through litigation will not of itself provide the funding or assistance needed for tribes to put their water to use. By working through the settlement process, a framework can be put in place to ensure that an entitlement results in delivered water, rather than only a paper water right.

In addition, the improved communication and trust produced by a negotiated settlement has allowed Indian communities and their neighbors to improve water management regionally. The Gila Indian Community settlement is an example of how, by maintaining a positive relationship, opportunities have become available for cities to increase water supply by entering into lease and exchange agreements with the Indian Community for presently unused water resources. When parties are treated fairly and have a stake in the solution, these types of arrangements, which maximize the benefit of our water resources, are more readily attainable.

Continued Challenges and Recommendations:

While progress on settling Indian water right claims has been made on many fronts, there are still outstanding disputes in Arizona and throughout the West that tribes and water users are working to address. In fact, some of the most difficult issues associated with all Indian water rights settlements are becoming even more complicated. Moving forward, there are several important challenges that need to be given attention.

Process - While each settlement negotiation has its own characteristics and unique challenges, the themes of collaboration and a trustworthy process, and the goals of certainty and a definitive resolution can remain the constant. SRP has found that it takes an inclusive process to produce the kind of creative solutions needed to settle complex and wide-ranging water rights claims. Involving members of the federal team, such as Interior's Office of Indian Water Rights, at an early point in the process is essential to a favorable outcome.

Water Supply – Many water basins in the West are already over-appropriated. As growth and drought persist, constructing water budgets for future settlements that are operable for all the parties involved becomes increasingly complex. The availability and dedication of Central Arizona Project (CAP) water was instrumental in several of the more recent Indian water rights settlements in Arizona. It is important that water providers and the federal government continue to take advantage of opportunities to develop new sources of water and stretch existing supplies. Without incremental growth of supply and increased conservation, the ability to find water to dedicate to future Indian settlements, without injuring other parties, will become limited.

Funding – Funding is often needed to build or improve water infrastructure needed by tribes to deliver and beneficially use the water they are entitled to under a settlement. As water users throughout the West know, state and federal budgets are tight and relying on the appropriations process to fund projects can be uncertain. In many cases, the inability to fully fund projects prolongs construction and raises the total price.

In response to the questions posed in my invitation to testify, I believe having a source of funding dedicated to Indian water rights settlements would greatly improve the opportunity for successful agreements moving forward. I also recognize that this is easier said than done. Non-traditional funding sources may be needed to meet the financial need, and the water and tribal communities need to engage this question, along with the

federal and state governments, to ensure that there is an ability to pay for needed features of future settlements.

Support from the Department of the Interior – As I have already mentioned, the Secretary of the Interior's Office of Indian Water Rights is important for technical support and it is important for it to be involved early and consistently throughout the process. I urge the Interior Department, in this and subsequent administrations, to continue engaging in negotiations and making Indian water rights settlements a priority.

Madam Chairwoman and Members of the Subcommittee, thank you once again for the opportunity to testify before you today. I would be happy to answer any questions.