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S. HRG. 107–608

ZUNI INDIAN TRIBE WATER SETTLEMENT ACT

HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED SEVENTH CONGRESS

SECOND SESSION

ON

S. 2743

TO APPROVE THE SETTLEMENT OF THE WATER RIGHTS CLAIMS OF THE ZUNI INDIAN TRIBE IN APACHE COUNTY, ARIZONA

JULY 18, 2002
WASHINGTON, DC

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ZUNI INDIAN TRIBE WATER RIGHTS SETTLEMENT ACT

THURSDAY, JULY 18, 2002

U.S. SENATE,
COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The committee met, pursuant to other business, at 10:10 a.m. in room 485, Senate Russell Building, Hon. Daniel K. Inouye (chairman of the committee) presiding.

Present: Senators Inouye and Campbell.

STATEMENT OF HON. BEN NIGHTHORSE CAMPBELL, U.S. SENATOR FROM COLORADO, VICE CHAIRMAN, COMMITTEE ON INDIAN AFFAIRS

Senator CAMPBELL [ASSUMING CHAIR]. We'll now move to Senate Bill 2743, the Zuni Indian Water Rights Settlement Act of 2002. Maybe I'll just say a few words on it. The chairman is absent.

Last session this committee and the Congress passed legislation to settle treaty-based water claims for other tribes—the Southern Utes—in our State. I'm very happy to say the President signed that in the year 2000. I think it really set a precedent for negotiated settlements on water among tribes, States, and the Federal Government.

Like the Zuni claims, those tribes involved a number of people and a lot of discussions, but it was a good bill, and I'm interested in encouraging negotiated settlements and I look forward to hearing from Secretary McCaleb and our other witnesses this morning.

Senator Inouye is now off the phone, so I will return the gavel, Senator.

STATEMENT OF HON. DANIEL K. INOUYE, U.S. SENATOR FROM HAWAII, CHAIRMAN, COMMITTEE ON INDIAN AFFAIRS

The CHAIRMAN. S. 2743, a bill to approve the settlement of the water rights claims of the Zuni Indian Tribe in Apache County, Arizona, and for other purposes, will now be taken up.

On August 28, 1984, the United States established a reservation for Zuni Indian Tribe in Apache County, AZ, for the purpose of enabling the members of the Zuni Tribe to continue their centuries-old religious and sustenance practices. In order to sustain life on the reservation, there must be access to water. However, the water rights of all water users in the Little Colorado River Basin in Arizona have been the subject of an ongoing stream adjudication since 1979.

In an effort to reach a final resolution of the various claims to water rights, the parties that will be affected by this bill entered into negotiations which have culminated in a settlement agreement. This legislation would ratify that settlement agreement, which provides not only for the resolution of the water rights, claims of the Zuni Indian Tribe, but also provides a means for assisting the tribe in acquiring surface water rights to provide the tribe's use of groundwater and provide for the restoration of wetlands located on the tribe's lands.

[Text of S. 2743 follows:]

II

107TH CONGRESS
2D SESSION

S. 2743

To approve the settlement of the water rights claims of the Zuni Indian Tribe in Apache County, Arizona, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 17, 2002

Mr. KYL (for himself and Mr. MCCAIN) introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

---

A BILL

To approve the settlement of the water rights claims of the Zuni Indian Tribe in Apache County, Arizona, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Zuni Indian Tribe Water Rights Settlement Act of 2002''.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress makes the following findings:

(1) It is the policy of the United States, in keeping with its trust responsibility to Indian tribes,

to promote Indian self-determination, religious freedom, political and cultural integrity, and economic self-sufficiency, and to settle, wherever possible, the water rights claims of Indian tribes without lengthy and costly litigation.

(2) Quantification of rights to water and development of facilities needed to use tribal water supplies effectively is essential to the development of viable Indian reservation communities, particularly in arid western States.

(3) On August 28, 1984, and by actions subsequent thereto, the United States established a reservation for the Zuni Indian Tribe in Apache County, Arizona upstream from the confluence of the Little Colorado and Zuni Rivers for long-standing religious and sustenance activities.

(4) The water rights of all water users in the Little Colorado River basin in Arizona have been in litigation since 1979, in the Superior Court of the State of Arizona in and for the County of Apache in Civil No. 6417, In re The General Adjudication of All Rights to Use Water in the Little Colorado River System and Source.

(5) Recognizing that the final resolution of the Zuni Indian Tribe's water claims through litigation

will take many years and entail great expense to all parties, continue to limit the Tribe's access to water with economic, social, and cultural consequences to the Tribe, prolong uncertainty as to the availability of water supplies, and seriously impair the long-term economic planning and development of all parties, the Tribe and neighboring non-Indians have sought to settle their disputes to water and reduce the burdens of litigation.

(6) After more than 4 years of negotiations, which included participation by representatives of the United States, the Zuni Indian Tribe, the State of Arizona, and neighboring non-Indian communities in the Little Colorado River basin, the parties have entered into a Settlement Agreement to resolve all of the Zuni Indian Tribe's water rights claims and to assist the Tribe in acquiring surface water rights, to provide for the Tribe's use of groundwater, and to provide for the wetland restoration of the Tribe's lands in Arizona.

(7) To facilitate the wetland restoration project contemplated under the Settlement Agreement, the Zuni Indian Tribe acquired certain lands along the Little Colorado River near or adjacent to its Reservation that are important for the success of the

project and will likely acquire a small amount of similarly situated additional lands. The parties have agreed not to object to the United States taking title to certain of these lands into trust status; other lands shall remain in tribal fee status. The parties have worked extensively to resolve various governmental concerns regarding use of and control over those lands, and to provide a successful model for these types of situations, the State, local, and tribal governments intend to enter into an Intergovernmental Agreement that addresses the parties' governmental concerns.

(8) Pursuant to the Settlement Agreement, the neighboring non-Indian entities will assist in the Tribe's acquisition of surface water rights and development of groundwater, store surface water supplies for the Zuni Indian Tribe, and make substantial additional contributions to carry out the Settlement Agreement's provisions.

(9) To advance the goals of Federal Indian policy and consistent with the trust responsibility of the United States to the Tribe, it is appropriate that the United States participate in the implementation of the Settlement Agreement and contribute funds for the rehabilitation of religious riparian areas and

other purposes to enable the Tribe to use its water entitlement in developing its Reservation.

(b) PURPOSES.—The purposes of this Act are—

(1) to approve, ratify, and confirm the Settlement Agreement entered into by the Tribe and neighboring non-Indians;

(2) to authorize and direct the Secretary of the Interior to execute and perform the Settlement Agreement and related waivers;

(3) to authorize and direct the United States to take legal title and hold such title to certain lands in trust for the benefit of the Zuni Indian Tribe; and

(4) to authorize the actions, agreements, and appropriations as provided for in the Settlement Agreement and this Act.

SEC. 3. DEFINITIONS.

In this Act:

(1) EASTERN LCR BASIN.—The term ''Eastern LCR basin'' means the portion of the Little Colorado River basin in Arizona upstream of the confluence of Silver Creek and the Little Colorado River, as identified on Exhibit 2.10 of the Settlement Agreement.

(2) FUND.—The term ''Fund'' means the Zuni Indian Tribe Water Rights Development Fund established by section 6(a).

(3) INTERGOVERNMENTAL AGREEMENT.—The term ''Intergovernmental Agreement'' means the intergovernmental agreement between the Zuni Indian Tribe, Apache County, Arizona and the State of Arizona described in Article 6 of the Settlement Agreement.

(4) PUMPING PROTECTION AGREEMENT.—The term ''Pumping Protection Agreement'' means an agreement, described in Article 5 of the Settlement Agreement, between the Zuni Tribe, the United States on behalf of the Tribe, and a local landowner under which the landowner agrees to limit pumping of groundwater on his lands in exchange for a waiver of certain claims by the Zuni Tribe and the United States on behalf of the Tribe.

(5) RESERVATION; ZUNI HEAVEN RESERVATION.—The term ''Reservation'' or ''Zuni Heaven Reservation'', also referred to as ''Kolhu:wala:wa'', means the following property in Apache County, Arizona: Sections 26, 27, 28, 33, 34, and 35, Township 15 North, Range 26 East, Gila and Salt River Base and Meridian; and Sections 2, 3, 4, 9, 10, 11, 13,

14, 15, 16, 23, 26, and 27, Township 14 North, Range 26 East, Gila and Salt River Base and Meridian.

(6) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior.

(7) SETTLEMENT AGREEMENT.—The term ''Settlement Agreement'' means that agreement dated June 7, 2002, together with all exhibits thereto. The parties to the Settlement Agreement include the Zuni Indian Tribe and its members, the United States on behalf of the Tribe and its members, the State of Arizona, the Arizona Game and Fish Commission, the Arizona State Land Department, the Arizona State Parks Board, the St. Johns Irrigation and Ditch Co., the Lyman Water Co., the Round Valley Water Users' Association, the Salt River Project Agricultural Improvement and Power District, the Tucson Electric Power Company, the City of St. Johns, the Town of Eagar, and the Town of Springerville.

(8) SRP.—The term ''SRP'' means the Salt River Project Agricultural Improvement and Power District, a political subdivision of the State of Arizona.

(9) TEP.—The term ''TEP'' means Tucson Electric Power Company.

(10) TRIBE, ZUNI TRIBE, OR ZUNI INDIAN TRIBE.—The terms ''Tribe'', ''Zuni Tribe'', or ''Zuni Indian Tribe'' means the body politic and federally recognized Indian nation, and its members.

(11) ZUNI LANDS.—The term ''Zuni Lands'' means all the following lands, in the State of Arizona, that, on the effective date described in section 9(a), are—

(A) within the Zuni Heaven Reservation;

(B) held in trust by the United States for the benefit of the Tribe or its members; or

(C) held in fee by or for the Tribe.

SEC. 4. AUTHORIZATION, RATIFICATIONS, AND CONFIRMATIONS.

(a) SETTLEMENT AGREEMENT.—To the extent the Settlement Agreement does not conflict with the provisions of this Act, such Settlement Agreement is hereby approved, ratified, confirmed, and declared to be valid. The Secretary is authorized and directed to execute the Settlement Agreement and any amendments approved by the parties necessary to make the Settlement Agreement consistent with this Act. The Secretary is further authorized to perform any actions required by the Settlement

Agreement and any amendments to the Settlement Agreement that may be mutually agreed upon by the parties to the Settlement Agreement.

(b) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Zuni Indian Tribe Water Rights Development Fund established in section 6(a), $19,250,000, to be allocated by the Secretary as follows:

(1) $3,500,000 for fiscal year 2004, to be used for the acquisition of water rights and associated lands, and other activities carried out, by the Zuni Tribe to facilitate the enforceability of the Settlement Agreement, including the acquisition of at least 2,350 acre-feet per year of water rights before the deadline described in section 9(b).

(2) $15,750,000, of which $5,250,000 shall be made available for each of fiscal years 2004, 2005, and 2006, to take actions necessary to restore, rehabilitate, and maintain the Zuni Heaven Reservation, including the Sacred Lake, wetlands, and riparian areas as provided for in the Settlement Agreement and under this Act.

(c) OTHER AGREEMENTS.—Except as provided in section 9, the following 3 separate agreements, together

with all amendments thereto, are approved, ratified, confirmed, and declared to be valid:

(1) The agreement between SRP, the Zuni Tribe, and the United States on behalf of the Tribe, dated June 7, 2002.

(2) The agreement between TEP, the Zuni Tribe, and the United States on behalf of the Tribe, dated June 7, 2002.

(3) The agreement between the Arizona State Land Department, the Zuni Tribe, and the United States on behalf of the Tribe, dated June 7, 2002.

SEC. 5. TRUST LANDS.

(a) NEW TRUST LANDS.—Upon satisfaction of the conditions in paragraph 6.2 of the Settlement Agreement, and after the requirements of section 9(a) have been met, the Secretary shall take the legal title of the following lands into trust for the benefit of the Zuni Tribe:

(1) In T. 14 N., R. 27 E., Gila and Salt River Base and Meridian:

(A) Section 13: SW¼, S½NE¼SE¼, W½SE¼, SE¼SE¼;

(B) Section 23: N½, N½SW¼, N½SE¼, SE¼SE¼, N½SW¼SE¼, SE¼SW¼SE¼;

(C) Section 24: NW¼, SW¼, S½NE¼, N½SE¼; and

(D) Section 25: N½NE¼, SE¼NE¼, NE¼SE¼.

(2) In T. 14 N., R. 28 E., Gila and Salt River Base and Meridian:

(A) Section 19: W½E½NW¼, W½NW¼, W½NE¼SW¼, NW¼SW¼, S½SW¼;

(B) Section 29: SW¼SW¼NW¼, NW¼NW¼SW¼, S½N½SW¼, S½SW¼, S½NW¼SE¼, SW¼SE¼;

(C) Section 30: W½, SE¼; and

(D) Section 31: N½NE¼, N½S½NE¼, S½SE¼NE¼, NW¼, E½SW¼, N½NW¼SW¼, SE¼NW¼SW¼, E½SW¼SW¼, SW¼SW¼SW¼.

(b) FUTURE TRUST LANDS.—Upon satisfaction of the conditions in paragraph 6.2 of the Settlement Agreement, after the requirements of section 9(a) have been met, and upon acquisition by the Zuni Tribe, the Secretary shall take the legal title of the following lands into trust for the benefit of the Zuni Tribe:

(1) In T. 14 N., R. 26E., Gila and Salt River Base and Meridian: Section 25: N½NE¼,

N½S½NE¼, NW¼, N½NE¼SW¼, NE¼NW¼SW¼.

(2) In T. 14 N., R. 27 E., Gila and Salt River Base and Meridian:

(A) Section 14: SE¼SW¼, SE¼;

(B) Section 16: S½SW¼SE¼;

(C) Section 19: S½SE¼SE¼;

(D) Section 20: S½SW¼SW¼, E½SE¼SE¼;

(E) Section 21: N½NE¼, E½NE¼NW¼, SE¼NW¼, W½SW¼NE¼, N½NE¼SW¼, SW¼NE¼SW¼, E½NW¼SW¼, SW¼NW¼SW¼, W½SW¼SW¼;

(F) Section 22: SW¼NE¼NE¼, NW¼NE¼, S½NE¼, N½NW¼, SE¼NW¼, N½SW¼NW¼, SE¼SW¼NW¼, N½N½SE¼, N½NE¼SW¼;

(G) Section 24: N½NE¼, S½SE¼;

(H) Section 29: N½N½;

(I) Section 30: N½N½, N½S½NW¼, N½SW¼NE¼; and

(J) Section 36: SE¼SE¼NE¼, NE¼NE¼SE¼.

(3) In T. 14 N., R. 28 E., Gila and Salt River Base and Meridian:

(A) Section 18: S½NE¼, NE¼SW¼, NE¼NW¼SW¼, S½NW¼SW¼, S½SW¼, N½SE¼, N½SW¼SE¼, SE¼SE¼;

(B) Section 30: S½NE¼, W½NW¼NE¼; and

(C) Section 32: N½NW¼NE¼, SW¼NE¼, S½SE¼NE¼, NW¼, SW¼, N½SE¼, SW¼SE¼, N½SE¼SE¼, SW¼SE¼SE¼.

(c) NEW RESERVATION LANDS.—Upon satisfaction of the conditions in paragraph 6.2 of the Settlement Agreement, after the requirements of section 9(a) have been met, and upon acquisition by the Zuni Tribe, the Secretary shall take the legal title of the following lands in Arizona into trust for the benefit of the Zuni Tribe and make such lands part of the Zuni Indian Tribe Reservation in Arizona: Section 34, T. 14 N., R. 26 E., Gila and Salt River Base and Meridian.

(d) LIMITATION ON SECRETARIAL DISCRETION.—The Secretary shall have no discretion regarding the acquisitions described in subsections (a), (b), and (c).

(e) LANDS REMAINING IN FEE STATUS.—The Zuni Tribe may seek to have the legal title to additional lands

in Arizona, other than the lands described in subsection (a), (b), or (c), taken into trust by the United States for the benefit of the Zuni Indian Tribe pursuant only to an Act of Congress enacted after the date of enactment of this Act specifically authorizing the transfer for the benefit of the Zuni Tribe.

(f) FINAL AGENCY ACTION.—Any written certification by the Secretary under subparagraph 6.2.B of the Settlement Agreement constitutes final agency action under the Administrative Procedure Act and is reviewable as provided for under chapter 7 of title 5, United States Code.

(g) NO FEDERAL WATER RIGHTS.—Lands taken into trust pursuant to subsection (a), (b), or (c) shall not have Federal reserved rights to surface water or groundwater.

(h) STATE WATER RIGHTS.—The water rights and uses for the lands taken into trust pursuant to subsection (a) or (c) must be determined under subparagraph 4.1.A and Article 5 of the Settlement Agreement. With respect to the lands taken into trust pursuant to subsection (b), the Zuni Tribe retains any rights or claims to water associated with these lands under State law, subject to the terms of the Settlement Agreement.

(i) FORFEITURE AND ABANDONMENT.—Water rights that are appurtenant to lands taken into trust pursuant to subsection (a), (b), or (c) shall not be subject to forfeiture and abandonment.

(j) AD VALOREM TAXES.—With respect to lands that are taken into trust pursuant to subsection (a) or (b)—

(1) such lands shall not be considered lands within an Indian reservation or lands owned or held by any Indian for the purposes of Article 20, paragraph 5 of the Arizona Constitution, for the purpose of paying in lieu taxes pursuant to this subsection and the Intergovernmental Agreement between the Zuni Tribe, Apache County, Arizona and the State of Arizona; and

(2) the Zuni Tribe shall make payments in lieu of all current and future State, county, and local ad valorem property taxes that would otherwise be applicable to those lands if they were not in trust.

(k) AUTHORITY OF TRIBE.—For purposes of complying with this section and Article 6 of the Settlement Agreement, the Tribe is authorized to enter into—

(1) the Intergovernmental Agreement between the Zuni Tribe, Apache County, Arizona, and the State of Arizona; and

(2) any intergovernmental agreement required to be entered into by the Tribe under the terms of the Intergovernmental Agreement.

(l) FEDERAL ACKNOWLEDGEMENT OF INTERGOVERNMENTAL AGREEMENTS.—

(1) IN GENERAL.—The Secretary shall acknowledge the terms of any intergovernmental agreement entered into by the Tribe under this section.

(2) NO ABROGATION.—The Secretary shall not seek to abrogate, in any administrative or judicial action, the terms of any intergovernmental agreement that are consistent with subparagraph 6.2.A of the Settlement Agreement and this Act.

(3) NO REMOVAL.—If a judicial action is commenced during a dispute over any intergovernmental agreement entered into under this section, and the United States is allowed to intervene in such action, the United States shall not remove such action to the Federal courts.

(m) RULE OF CONSTRUCTION.—Notwithstanding any other provision of this Act, nothing in this Act alters the continued application of the Act of May 25, 1918 (25 U.S.C. 211), within the State of Arizona.

(n) DISCLAIMER.—Nothing in this section repeals, modifies, amends, changes, or otherwise affects the Sec-

retary's obligations to the Zuni Tribe pursuant to the Act entitled ''An Act to convey certain lands to the Zuni Indian Tribe for religious purposes'' approved August 28, 1984 (Public Law 98–408; 98 Stat. 1533) (and as amended by the Zuni Land Conservation Act of 1990 (Public Law 101–486; 104 Stat. 1174)).

SEC. 6. DEVELOPMENT FUND.

(a) ESTABLISHMENT OF THE FUND.—

(1) IN GENERAL.—There is established in the Treasury of the United States a fund to be known as the ''Zuni Indian Tribe Water Rights Development Fund'', to be managed and invested by the Secretary, consisting of—

(A) the amounts authorized to be appropriated in section 4(b); and

(B) the appropriation to be contributed by the State of Arizona pursuant to paragraph 7.6 of the Settlement Agreement.

(2) ADDITIONAL DEPOSITS.—The Secretary shall deposit in the Fund any other monies paid to the Secretary on behalf of the Zuni Tribe pursuant to the Settlement Agreement.

(b) MANAGEMENT OF THE FUND.—The Secretary shall manage the Fund, make investments from the Fund, and make monies available from the Fund for distribution

to the Zuni Tribe consistent with the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4001 et seq.) (referred to in this section as the ''Trust Fund Reform Act''), this Act, and the Settlement Agreement.

(c) INVESTMENT OF THE FUND.—The Secretary shall invest amounts in the Fund in accordance with—

(1) the Act of April 1, 1880 (21 Stat. 70, ch. 41, 25 U.S.C. 161);

(2) the first section of the Act of June 24, 1938 (52 Stat. 1037, ch. 648, 25 U.S.C. 162a); and

(3) subsection (b).

(d) AVAILABILITY OF AMOUNTS FROM THE FUND.—The funds authorized to be appropriated pursuant to section 4(b)(2) and funds contributed by the State of Arizona pursuant to paragraph 7.6 of the Settlement Agreement shall be available for expenditure or withdrawal only after the requirements of section 9(a) have been met.

(e) EXPENDITURES AND WITHDRAWAL.—

(1) TRIBAL MANAGEMENT PLAN.—

(A) IN GENERAL.—The Zuni Tribe may withdraw all or part of the Fund on approval by the Secretary of a tribal management plan as described in the Trust Fund Reform Act.

(B) REQUIREMENTS.—In addition to the requirements under the Trust Fund Reform Act, the tribal management plan shall require that the Zuni Tribe spend any funds in accordance with the purposes described in section 4(b).

(2) ENFORCEMENT.—The Secretary may take judicial or administrative action to enforce the provisions of any tribal management plan to ensure that any monies withdrawn from the Fund under the plan are used in accordance with this Act.

(3) LIABILITY.—If the Zuni Tribe exercises the right to withdraw monies from the Fund, neither the Secretary nor the Secretary of the Treasury shall retain any liability for the expenditure or investment of the monies withdrawn.

(4) EXPENDITURE PLAN.—

(A) IN GENERAL.—The Zuni Tribe shall submit to the Secretary for approval an expenditure plan for any portion of the funds made available under this Act that the Zuni Tribe does not withdraw under this subsection.

(B) DESCRIPTION.—The expenditure plan shall describe the manner in which, and the

purposes for which, funds of the Zuni Tribe remaining in the Fund will be used.

(C) APPROVAL.—On receipt of an expenditure plan under subparagraph (A), the Secretary shall approve the plan if the Secretary determines that the plan is reasonable and consistent with this Act.

(5) ANNUAL REPORT.—The Zuni Tribe shall submit to the Secretary an annual report that describes all expenditures from the Fund during the year covered by the report.

(f) FUNDS FOR ACQUISITION OF WATER RIGHTS.—

(1) WATER RIGHTS ACQUISITIONS.—Notwithstanding subsection (e), the funds authorized to be appropriated pursuant to section 4(b)(1)—

(A) shall be available upon appropriation for use in accordance with section 4(b)(1); and

(B) shall be distributed by the Secretary to the Zuni Tribe on receipt by the Secretary from the Zuni Tribe of a written notice and a tribal council resolution that describe the purposes for which the funds will be used.

(2) RIGHT TO SET OFF.—In the event the requirements of section 9(a) have not been met and the Settlement Agreement has become null and void

under section 9(b), the United States shall be entitled to set off any funds expended or withdrawn from the amount appropriated pursuant to section 4(b)(1), together with any interest accrued, against any claims asserted by the Zuni Tribe against the United States relating to water rights at the Zuni Heaven Reservation.

(3) WATER RIGHTS.—Any water rights acquired with funds described in paragraph (1) shall be credited against any water rights secured by the Zuni Tribe, or the United States on behalf of the Zuni Tribe, for the Zuni Heaven Reservation in the Little Colorado River General Stream Adjudication or in any future settlement of claims for those water rights.

(g) NO PER CAPITA DISTRIBUTIONS.—No part of the Fund shall be distributed on a per capita basis to members of the Zuni Tribe.

SEC. 7. CLAIMS EXTINGUISHMENT; WAIVERS AND RELEASES.

(a) FULL SATISFACTION OF MEMBERS' CLAIMS.—

(1) IN GENERAL.—The benefits realized by the Tribe and its members under this Act shall constitute full and complete satisfaction of all members' claims for water rights or injuries to water rights

under Federal, State, and other laws (including claims for water rights in groundwater, surface water, and effluent) for Zuni Lands from time immemorial to the effective date described in section 9(a).

(2) NO RECOGNITION OR ESTABLISHMENT OF INDIVIDUAL WATER RIGHT.—Nothing in this Act recognizes or establishes any right of a member of the Tribe to water on the Reservation.

(b) TRIBE AND UNITED STATES AUTHORIZATION AND WAIVER.—The Tribe, on behalf of itself and its members and the Secretary on behalf of the United States in its capacity as trustee for the Zuni Tribe and its members, are authorized, as part of the performance of their obligations under the Settlement Agreement, to execute a waiver and release, subject to paragraphs 11.4 and 11.7 of the Settlement Agreement, for claims against the State of Arizona, or any agency or political subdivision thereof, or any other person, entity, corporation, or municipal corporation, under Federal, State, or other law for any and all—

(1) past, present, and future claims to water rights (including water rights in groundwater, surface water, and effluent) for Zuni Lands from time immemorial through the effective date described in section 9(a) and any time thereafter, except for

claims within the Zuni Protection Area as provided in Article 5 of the Settlement Agreement;

(2) past and present claims for injuries to water rights (including water rights in groundwater, surface water, and effluent and including claims for damages for deprivation of water rights and any claims for changes to groundwater table levels) for Zuni Lands from time immemorial through the effective date described in section 9(a);

(3) past, present, and future claims for water rights and injuries to water rights (including water rights in groundwater, surface water, and effluent and including any claims for damages for deprivation of water rights and any claims for changes to groundwater table levels) from time immemorial through the effective date described in section 9(a), and any time thereafter, for lands outside of Zuni lands but located within the Little Colorado River basin in Arizona, based upon aboriginal occupancy of lands by the Zuni Tribe or its predecessors;

(4) past and present claims for injuries to water quality accruing from time immemorial through the effective date described in section 9(a) for lands within the Little Colorado River basin in Arizona;

(5) future claims for injuries to water quality accruing after the effective date described in section 9(a) on any lands within the Eastern LCR basin caused by—

(A) the lawful diversion or use of surface water;

(B) the lawful withdrawal or use of groundwater, except within the Zuni Protection Area as provided in Article 5 of the Settlement Agreement;

(C) the Parties' performance of their obligations under this Settlement Agreement;

(D) the discharge of oil associated with routine physical or mechanical maintenance of wells or diversion structures;

(E) the discharge of oil associated with routine start-up and operation of well pumps; or

(F) any combination thereof; and

(6) claims for interference with the trust responsibility of the United States to the Zuni Tribe arising out of the negotiation of the Settlement Agreement or this Act.

(c) TRIBAL WAIVER AGAINST THE UNITED STATES.—The Tribe is authorized, as part of the perform-

ance of its obligations under the Settlement Agreement, to execute a waiver and release, subject to paragraphs 11.4 and 11.6 of the Settlement Agreement, for claims against the United States (acting in its capacity as trustee for the Zuni Tribe or its members, or otherwise acting on behalf of the Zuni Tribe or its members), including any agencies, officials, or employees thereof, for any and all—

(1) past, present, and future claims to water rights (including water rights in groundwater, surface water, and effluent) for Zuni Lands, from time immemorial through the effective date described in section 9(a) and any time thereafter;

(2) past and present claims for injuries to water rights (including water rights in groundwater, surface water, and effluent and any claims for damages for deprivation of water rights) for Zuni Lands from time immemorial through the effective date described in section 9(a);

(3) past, present, and future claims for water rights and injuries to water rights (including water rights in groundwater, surface water, and effluent and any claims for damages for deprivation of water rights) from time immemorial through the effective date described in section 9(a), and any time there-

after, for lands outside of Zuni Lands but located within the Little Colorado River basin in Arizona, based upon aboriginal occupancy of lands by the Zuni Tribe or its predecessors;

(4) past and present claims for failure to protect, acquire, or develop water rights of, or failure to protect water quality for, the Zuni Tribe within the Little Colorado River basin in Arizona from time immemorial through the effective date described in section 9(a); and

(5) claims for breach of the trust responsibility of the United States to the Zuni Tribe arising out of the negotiation of the Settlement Agreement or this Act.

SEC. 8. MISCELLANEOUS PROVISIONS.

(a) WAIVER OF SOVEREIGN IMMUNITY.—If any party to the Settlement Agreement, an agreement described in paragraph (1), (2), or (3) of section 4(c), a Pumping Protection Agreement, or a landowner or water user in the Little Colorado River basin in Arizona, files a lawsuit only relating directly to the interpretation or enforcement of this Act, the Settlement Agreement, an agreement described in paragraph (1), (2), or (3) of section 4(c), or a Pumping Protection Agreement, naming the United States or the Tribe as a party—

(1) the United States, the Tribe, or both may be added as a party to any such litigation, and any claim by the United States or the Tribe to sovereign immunity from such suit is hereby waived, other than with respect to claims for monetary awards except as specifically provided for in the Settlement Agreement; and

(2) the Tribe may waive its sovereign immunity from suit in the Superior Court of Apache County, Arizona for the limited purposes of enforcing the terms of the Intergovernmental Agreement, and any intergovernmental agreement required to be entered into by the Tribe under the terms of the Intergovernmental Agreement, other than with respect to claims for monetary awards except as specifically provided in the Intergovernmental Agreement.

(b) TRIBAL USE OF WATER.—

(1) IN GENERAL.—With respect to water rights made available under the Settlement Agreement and used on the Zuni Heaven Reservation—

(A) such water rights shall be held in trust by the United States in perpetuity, and shall not be subject to forfeiture or abandonment;

(B) State law shall not apply to water uses on the Reservation;

(C) the State of Arizona may not regulate or tax such water rights or uses (except that the court with jurisdiction over the decree entered pursuant to the Settlement Agreement or the Norviel Decree Court may assess administrative fees for delivery of this water);

(D) subject to paragraph 7.7 of the Settlement Agreement, the Zuni Tribe shall use water made available to the Zuni Tribe under the Settlement Agreement on the Zuni Heaven Reservation for any use it deems advisable;

(E) water use by the Zuni Tribe or the United States on behalf of the Zuni Tribe for wildlife or instream flow use, or for irrigation to establish or maintain wetland on the Reservation, shall be considered to be consistent with the purposes of the Reservation; and

(F)(i) not later than 3 years after the deadline described in section 9(b), the Zuni Tribe shall adopt a water code for regulation of water use on the lands identified in subsections (a) and (b) of section 5 that is reasonably equivalent to State water law (including statutes relating to dam safety and groundwater management); and

(ii) until such date as the Zuni Tribe adopts a water code described in clause (i), the Secretary, in consultation with the State of Arizona, shall administer water use and water regulation on lands described in that clause in a manner that is reasonably equivalent to State law.

(2) LIMITATION.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the Zuni Tribe or the United States shall not sell, lease, transfer, or transport water made available for use on the Zuni Heaven Reservation to any other place.

(B) EXCEPTION.—Water made available to the Zuni Tribe or the United States for use on the Zuni Heaven Reservation may be severed and transferred from the Reservation to other Zuni Lands if the severance and transfer is accomplished in accordance with State law (and once transferred to any lands held in fee, such water shall be subject to State law).

(c) RIGHTS-OF-WAY.—Federal laws (including regulations) concerning the granting of easements and rights-of-way shall apply to the lands identified in subsections (a) and (b) of section 5, but the United States and the

Zuni Tribe shall not unreasonably withhold consent for easements and rights-of-way for roads, utilities, and other necessary accommodations for adjoining landowners across the lands identified in subsection (a) or (b) of section 5 unless such easements and rights-of-way will cause significant and substantial harm to the Tribe's wetland restoration project or religious practices. If such harm is anticipated, the Zuni Tribe shall negotiate in good faith with the entity seeking the easements or rights-of-way for a reasonable accommodation of their mutual interests.

(d) CERTAIN CLAIMS PROHIBITED.—The United States shall make no claims for reimbursement of costs arising out of the implementation of this Act or the Settlement Agreement against any Indian-owned land within the Tribe's Reservation, and no assessment shall be made in regard to such costs against such lands.

(e) VESTED RIGHTS.—Except as described in paragraph 5.3 of the Settlement Agreement (recognizing the Zuni Tribe's use of 1,500 acre-feet per annum of groundwater) this Act and the Settlement Agreement do not create any vested right to groundwater under Federal or State law, or any priority to the use of groundwater that would be superior to any other right or use of groundwater under Federal or State law, whether through this Act, the Settlement Agreement, or by incorporation of any ab-

stract, agreement, or stipulation prepared under the Settlement Agreement. Notwithstanding the preceding sentence, the rights of parties to the agreements referred to in paragraph (1), (2), or (3) of section 4(c) and paragraph 5.8 of the Settlement Agreement, as among themselves, shall be as stated in those agreements.

(f) OTHER CLAIMS.—Nothing in the Settlement Agreement or this Act quantifies or otherwise affects the water rights, claims, or entitlements to water of any Indian tribe, band, or community, other than the Zuni Indian Tribe.

(g) NO MAJOR FEDERAL ACTION.—Execution of the Settlement Agreement by the Secretary as provided for in section 4(a) shall not constitute major Federal action under the National Environmental Policy Act (42 U.S.C. 4321 et seq.). The Secretary shall comply with that Act and shall carry out any other necessary environmental compliance during the implementation phase of this settlement.

SEC. 9. EFFECTIVE DATE FOR WAIVER AND RELEASE AUTHORIZATIONS.

(a) IN GENERAL.—The waiver and release authorizations contained in subsections (b) and (c) of section 7 shall become effective as of the date the Secretary causes to

be published in the Federal Register a statement of all the following findings:

(1) This Act has been enacted in a form approved by the parties in paragraph 3.1.A of the Settlement Agreement.

(2) The funds authorized by section 4(b) have been appropriated and deposited into the Fund.

(3) The State of Arizona has appropriated and deposited into the Fund the amount required by paragraph 7.6 of the Settlement Agreement.

(4) The Zuni Indian Tribe has either purchased or acquired the right to purchase at least 2,350 acre-feet per annum of surface water rights, or waived this condition as provided in paragraph 3.2 of the Settlement Agreement.

(5) Pursuant to subparagraph 3.1.D of the Settlement Agreement, the severance and transfer of surface water rights that the Tribe owns or has the right to purchase have been conditionally approved, or the Tribe has waived this condition as provided in paragraph 3.2 of the Settlement Agreement.

(6) Pursuant to subparagraph 3.1.E of the Settlement Agreement, the Tribe and Lyman Water Company have executed an agreement relating to the process of the severance and transfer of surface

water rights acquired by the Zuni Tribe or the United States, the pass-through, use, or storage of the Tribe's surface water rights in Lyman Lake, and the operation of Lyman Dam.

(7) Pursuant to subparagraph 3.1.F of the Settlement Agreement, all the parties to the Settlement Agreement have agreed and stipulated to certain Arizona Game and Fish abstracts of water uses.

(8) Pursuant to subparagraph 3.1.G of the Settlement Agreement, all parties to the Settlement Agreement have agreed to the location of an observation well and that well has been installed.

(9) Pursuant to subparagraph 3.1.H of the Settlement Agreement, the Zuni Tribe, Apache County, Arizona and the State of Arizona have executed an Intergovernmental Agreement that satisfies all of the conditions in paragraph 6.2 of the Settlement Agreement.

(10) The Zuni Tribe has acquired title to the section of land adjacent to the Zuni Heaven Reservation described as Section 34, Township 14 North, Range 26 East, Gila and Salt River Base and Meridian.

(11) The Settlement Agreement has been modified if and to the extent it is in conflict with this Act

and such modification has been agreed to by all the parties to the Settlement Agreement.

(12) A court of competent jurisdiction has approved the Settlement Agreement by a final judgment and decree.

(b) DEADLINE FOR EFFECTIVE DATE.—If the publication in the Federal Register required under subsection (a) has not occurred by December 31, 2005, sections 4 and 5, and any agreements entered into pursuant to sections 4 and 5 (including the Settlement Agreement and the Intergovernmental Agreement) shall not thereafter be effective and shall be null and void. Any funds and the interest accrued thereon appropriated pursuant to section 4(b)(2) shall revert to the Treasury, and any funds and the interest accrued thereon appropriated pursuant to paragraph 7.6 of the Settlement Agreement shall revert to the State of Arizona.

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The CHAIRMAN. Our first witness, we have the most distinguished senator from the State of Arizona, the Honorable Jon Kyl.

Senator Kyl, it is a pleasure to have you here, sir.

STATEMENT OF HON. JON KYL, U.S. SENATOR FROM ARIZONA

Senator KYL. Thank you very much, Mr. Chairman and Senator Campbell. Mr. Chairman, you have just described the settlement. Let me put my statement in the record and really summarize it.

You correctly noted that the purpose of this settlement is to provide a wetlands area for the Zuni to come to Arizona as part of their reservation there and engage in religious practices. They need water in order to recreate this wetlands area, and the settlement provides financial support for them to buy the water rights and settles any claims between the other water users in the area and the Zuni with respect to those water rights. It is agreed to by all of the parties, and I believe it will have the support of the U.S. Government, and therefore I would ask for the committee's favorable consideration.

I have one statement in the nature of an apology to make. All of the parties are most anxious to move on this as quickly as possible. As a result, we put a great deal of pressure on your staff, Mr. Chairman, and they have been wonderful in responding very quickly to the need to have the hearing, to reviewing the legislation, which they didn't receive until just very recently, even though the general outlines were well known. But I want to thank you and thank your staff especially for getting on this immediately to try to help the parties move this forward just as quickly as possible. I appreciate that very, very much.

[Prepared statement of Senator Kyl appears in appendix.]

The CHAIRMAN. Senator Campbell and I are most grateful to you for acknowledging the great work of the staff. We have known that for a long time. In fact, it may interest you to know that this committee has had more hearings and has reported out more measures than any other committee in the Congress of the United States.

Senator KYL. Mr. Chairman, if I could indulge the committee, would it be permissible for me to sit at the dias to hear the testimony of other witnesses? I'd very much like to do that. This settlement means a lot to me, and I want to make sure that——

The CHAIRMAN. You are always welcome, sir.

Senator KYL. All right. Thank you very much, Mr. Chairman.

The CHAIRMAN. And without objection your full statement is made part of the record.

Now may I call upon the Assistant Secretary for Indian Affairs, Department of the Interior, Neal McCaleb.

STATEMENT OF HON. NEAL A. MCCALEB, ASSISTANT SECRETARY FOR INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR

Mr. MCCALEB. Thank you very much, Mr. Chairman, Senator Campbell. I very much appreciate the opportunity to appear before the committee to discuss S. 2743, which is, as previously stated, a bill to authorize a water rights settlement for the Zuni Heaven Reservation.

The Administration supports the bill. There are some provisions in the bill that will probably require some further discussion because of the unique circumstances of this Zuni land. There are three reasons that this settlement unique. First of all, the tribal lands will be used almost exclusively for ceremonial and religious purposes and will not be used as a homeland to accommodate tribal members. Second, the water rights and land area involved are relatively small. Finally, the settlement provides a benefit by allowing additional lands to be taken into trust and providing the accompanying water rights.

I'm not going to read my entire testimony. It has been submitted for the record. I would comment that there are four other tribal nations in the Little Colorado Basin: The Hopi Tribe, the Navajo Nation, the Southern Paiute Tribe, and the White Mountain Apache. I would also note that this particular land involved in this water settlement is very sacred to the Zunis, and it had to do with the water that was there and the lake that was there that has been dried up over a period of time. The thrust of this water settlement is to restore these water rights and to restore these wetlands for their religious purposes.

This reservation was established by Congress in 1984 and was expanded in 1990. Since 1979, the water rights in the Little Colorado have been a subject of adjudication with the State of Arizona.

I would also point out that this bill authorizes Federal participation in the main settlement agreement, which includes three subsidiary agreements with the individual parties, and that the settlement constitutes a final settlement of water rights claims with the Zuni Tribe and is designed to release the United States from any potential claims that might be asserted by the tribe relative to the agreement that is reached here.

The financial partners in this settlement involve the State of Arizona, who is participating on the order of $6 million, and the Federal contribution will be about $19,250,000.

I think that I will stop with those remarks and try to answer any questions that the committee might have.

The CHAIRMAN. I thank you very much, Mr. Secretary.

[Prepared statement of Mr. McCaleb appears in appendix.]

The CHAIRMAN. I am certain you are aware that this is not the only pending settlement before us relating to Arizona Indian Tribes. There is one involving the water rights of Navajo Nation, and the Hopi Tribe. There have been some who have suggested that once this matter is resolved for the Zunis that the Government might not be too anxious to resolve the others. I am certain that is not the case.

Mr. MCCALEB. No, Mr. Chairman; as a matter of fact, I met as recently as July 2 in Albuquerque with a negotiating team from both the Navajo Nation and the Hopi Tribe in furtherance of our discussions of the settlement agreement. There was some discussion relative to this proposed settlement with the Zuni at that meeting. But we are doing everything we can to advance and expedite a settlement agreement with both the Navajo and Hopi.

The CHAIRMAN. I would like to congratulate you for the expeditious manner in which you have been handling the Gila River In-

dian Community and the Tohono O'odham Nation settlement negotiations.

Mr. MCCALEB. Thank you very much, largely due to the very beneficial influence of Senator Kyl.

The CHAIRMAN. Mr. Vice Chairman.

Senator CAMPBELL. Thank you, Mr. Chairman.

You mentioned the uniqueness of this bill. I guess the uniqueness really is that the land base of the tribe in question is in one State and the settlement deals with areas in another State, but if you look at some of the recent history of Colorado tribes, Wyoming tribes, I, frankly, think these negotiated settlements are the way to go. Protracted litigation in the past between tribes and States and the Federal Government has been expensive and contentious and just simply doesn't solve the problem to the satisfaction of everybody, as these new ways of negotiating settlements for water goes.

There are a few problems, I guess. You mentioned years of negotiations between the tribe, and your testimony indicates—it doesn't reflect the United States position on several issues. Do you believe those issues can be worked out to the satisfaction of the parties?

Mr. MCCALEB. Yes; I do. I think there are tangential issues that can be resolved. I'd call them maybe more than technical, but they are tangential issues. There is a great deal of effort that has been put into this settlement effort.

Senator CAMPBELL. You're willing to work with the tribes and the States involved in that?

Mr. MCCALEB. Yes.

Senator CAMPBELL. Okay. Thank you.

Senator Domenici has introduced legislation which I cosponsored, as well as several other members of the committee, entitled, "The Federal Integrity in Indian Claims Settlement Act." It is S. 1186, if you are interested in looking at that. It provides a budgetary mechanism to ensure the funds will be there to satisfy the Federal Government's responsibilities with respect to negotiated settlements and disputes related to Indian water rights.

Have you had a chance to look at that? I was going to ask if you support that measure.

Mr. MCCALEB. Senator, I have not seen the bill. I will take a look at it. I just jotted the number down and I will take a look at it immediately and respond to you on that.

Senator CAMPBELL. I would appreciate it if you would respond to the committee.

Thank you, Mr. Chairman.

The CHAIRMAN. I thank you very much.

I have several questions, if I may, I would like to submit to you and your office. They are all technical questions relating to liability and waivers of rights and such, and I look forward to receiving your responses.

Mr. MCCALEB. We'll do it with utmost dispatch, Mr. Chairman.

The CHAIRMAN. Thank you, sir.

Now may I recognize Senator Kyl.

Senator KYL. Thank you, Mr. Chairman. Just two quick points.

I very much appreciate your testimony and pledge to work with you. As a matter of fact, I know that one of the things that you

have pointed out as a potential deficiency I think you are absolutely correct on and ready to make the change right now, so I think we'll have no trouble making modifications that might be called for.

Second, I would like to reiterate, Mr. Chairman, that I am fully committed and everybody in the State of Arizona that has anything to do with these subjects is absolutely fully committed to, as quickly as possible, bringing to the Congress a Hopi/Navajo and other parties' settlement of their claims. As a matter of fact, we're going to be bothering you a lot. Right after Zuni we will have the Gila River and Tohono O'odham settlement, and hopefully not too long after that the Hopi/Navajo settlement, and that will resolve almost all of the issues in Arizona. We just can't do everything all at once, but both the Hopi and Navajo leaders have my solemn commitment—and I know that Senator McCain feels exactly the same way—that we will work very hard to get their issues resolved very quickly and be bringing a settlement to you reflecting their views, as well.

The CHAIRMAN. We are prepared to be of assistance.

Senator KYL. Thank you.

The CHAIRMAN. Any further questions?

[No response.]

The CHAIRMAN. If not, I thank you very much, Mr. Secretary.

Mr. MCCALEB. Thank you, Mr. Chairman.

The CHAIRMAN. Our next panel consists of the Governor of the Pueblo of Zuni, Zuni, NM, Malcolm B. Bowekaty, and the vice chairman of the Arizona Game and Fish Commission, Joe Carter.

The CHAIRMAN. Governor, it is always good to see you, sir.

Mr. BOWEKATY. I appreciate that.

STATEMENT OF MALCOLM B. BOWEKATY, GOVERNOR, PUEBLO OF ZUNI, ZUNI, NM, ACCOMPANIED BY EDISON VICENTI, SR., HEAD KATCHINA LEADER; PABLO PADILLA, SPECIAL ASSISTANT TO ZUNI TRIBAL COUNCIL; JANE MARX, ZUNI TRIBE ATTORNEY; AND OLIVER PAGE, HYDROLOGIST

Mr. BOWEKATY. Good morning. On behalf of my Zuni people I come here before you to present a water rights settlement that satisfactorily requires and meets the water needs for Zuni Heaven's area. It is also here for restoration project that has been before my tribe for over a century now. As this esteemed committee knows, we have seen the merits of a lot of our requests before this body by my former governors, as well as my colleagues, the tribal councils to establish the Zuni Heavens Reservation and also the amendments to include those areas that were inadvertently excluded in 1990.

Given that, we have also been working a lot with the different parties—the State parties, the Federal parties, as well as the private ranchers and the cities of St. John, Show Low, and Springerville. We believe that, as the Zuni Tribe, that this is the best that we can do, rather than going into protracted litigation.

I also have with me a delegation of our top religious leaders that I wish to acknowledge and beg the committee's indulgence to recognize two of those individuals. One of those is Edward Vicenti, Sr.,

our top religious leader. If I can beg the committee's indulgence, I'd like for him to say 30 seconds worth of statements.

The CHAIRMAN. Please.

Mr. VICENTI. Good morning, Mr. Chairman, Vice Chairman, and members of the committee. Today I greet you all with a very happy heart. You know, this is something that has been dear to me because it really directly affects me as a leader of the Katchina group.

I am directly affected because this is a very sacred place that we make a pilgrimage to on foot, and it is a place that in years past, over the centuries, back when my great-great-grandfathers were in this position, they told me about stories of how the place used to be like marshlands where they used to do their prayers, especially at night when we finally reached the point of our destinations. We have a prayer meeting at night. My great-grandparents always told me about the stories of how they used to do their prayers right where the springs used to exist, which is right now just a piece of dried land right now, and there was some wildlife in there like ducks and other frogs. When they did their prayers, it was like their spirits—well, they were in a spiritual form. They were being answered as their prayers were being recited.

Today we get there. We have to make arrangements with a rancher to provide water for us so we can share the water with their stocks where the stocks are grazing, and we have to share that, and that's where we have to fetch our water because there is no place where we can fetch water.

In years past, when the place still had some vegetation, there was a collection of seeds that we do, and also some of the willows that we do gather in the area. There is no longer existing.

I'm very glad and happy today. My heart is happy. I'm pretty sure my ancestors before time also feel that way, too, because this is what I was told by my grandfather, who held this position before me—that he hoped some day maybe, if we are fortunate enough, that this will get restored to the place and condition it was at one time, with a lot of vegetation and wildlife, and also a place where we can officially do our religious thing. Right now we have to use sort of makeshift ponds where we have to collect our water, and also we have to go off-site to gather some of the sacred things that we have to go collect. We have to do that off-site from where we do our religious things.

I am very glad today that we have come a long way, because I was part of the negotiation team early on as part of this group, to carry this ball forth. I, myself, it's very important to me and to our people, because it is a place that, after we, in this lifetime—that is a place that we all go to reside in spiritual form.

I thank everybody for my opportunity.

The CHAIRMAN. Your approval and your blessings are most appreciated by this committee.

Mr. BOWEKATY. As Mr. Vicenti had highlighted for us, Zuni Heavens and what we call Koluwala:wa is a hallowed ground, a sanctuary for our people. We make a lot of pilgrimages for that, and this settlement, negotiated settlement, has allowed us to judiciously as well as serendipitously allowed us to restore a significant portion of our original land base around the Zuni Heavens from

willing sellers of private ranchers in the area, so that has been an added blessing for our tribe.

We also look at Koluwalawa as a spiritual place for the genesis of our tribe for the future. Our tribe will always look at that. It has been a century-long struggle among other former governors. We have former Governor Henry Gasper back in the 1930's that formally requested the restoration of Zuni Heavens, as well as the restoration of the wetlands. We also have former Governor Robert E. Lewis, who trailblazed a lot of ways to allow the tribe to secure land and resources to purchase the land claims area, as well as the former aboriginal areas. We also have former Governor Edison Laselute, who actually testified before this exact same committee for the successful passage of the Zuni Heavens Act. We also have our former Governor Donald Eriacho, who also maintained the fight and the momentum for establishing the riparian restoration program.

The settlement actually allows the tribe to look at reestablishment of several critical springs within the area. One is called Hadinkya'a. It is the most sacred springs that we have.

Our Zuni Tribe deems the entire tributary at the Little Colorado River, as well as the Zuni River Basin, from the headwaters of the Zuni Mountains, where we have the first formal village near the reservation, Nutria, all the way down to the Zuni Heavens area, as well as the waters going into the Grand Canyon area as a sacred area. We offer our food offerings, our prayers, as well as our tobacco offerings along the river banks in any of those areas. So, consequently, the confluence of the Little Colorado and the Zuni River Basin is the nexus for our pilgrimages. That has actually allowed us to secure the pilgrimage trail by getting the lands that have actually been offered to the tribe for purchase, since we have willingly taken that.

We have also several other projects that would attempt to restore the wetlands. That is the reason why the bulk of the funds are being requested. The Zuni Tribe has invested a little bit over $5 million to purchase the lands, not just necessary for the lands but also to secure the most senior water rights relative to the establishment of the reservation in 1984. Ironically, that means that the Zuni who considered that as their aboriginal territory are now the junior water rights holders within the area. So, consequently, the settlement negotiation is probably the best way we can settle our water needs, as well as keep the rest of our neighbors whole.

Again, the Zuni Tribal Council has been hard pressed to make a lot of soul-searching decisions. One is the water quality waivers that we have encountered. The other one is the taking of the lands into trust with certain sanctions.

The Zuni Tribal Council spent a lot of time and a lot of hours, as well as consulted with our religious fathers to get the blessings, and they have made a very tough decision. Consequently, we are bound by their direction to approve this compact, and therefore we are here to present this information for you.

Esteemed Senators, we have only two remaining governors in the history of our tribe left alive. I would like to share the peace and serenity that will be on their faces when we announce to them the successful package and the successful acceptance of the package to

the entire Congressional process. I would love for this committee to recommend The Honorable Jon Kyl's recommendation that this committee give due passage to that.

On behalf of our Zuni Tribe, I would like to take this last step to introduce the main person that has been the guiding force and the binding spirit between this negotiating team, Wilfred Eriacho, and I also have in the audience my Lieutenant Governor, Barton Martza. But I would like to call on Wilfred Eriacho to do our concluding remarks.

I would be happy to answer any questions that the committee may have.

Mr. Wilfred Eriacho.

STATEMENT OF WILFRED ERIACHO, CHAIRMAN OF THE ZUNI WATER RIGHTS NEGOTIATION TEAM

Mr. ERIACHO. [Native words.] Good morning. How are all of you? Senator Inouye, Senator Kyl, Senator Campbell, and the staff that have worked so hard with them to have this negotiated settlement come to fruition, [Native word], thank you.

I share the happiness and joy from the heart that Brother Edison Vicenti expressed in his talking to you.

My name is Wilfred Eriacho. I am the chairman of the Zuni Water Rights Negotiation Team. I am of the Badger Clan and child of the Dogwood Clan. I have both traditional and formal education. My Zuni tribal traditional education started from birth until now. My Americanized education started from seven years of age until now. I am an administrator with the Zuni Public School District in our community and have participated in both traditional life and the modern life of our community.

I took on the leadership in the Zuni Water Rights Negotiation Team because I have personal knowledge that the Koluwala:wa area is the most sacred geographic area in Zuni Country. This is not only of modern vintage, it is a tradition that has been handed down to generations of Zuni people for at least 2,000 years. We know for a fact that the Koluwala:wa pilgrimage that both the governor and Mr. Vicenti referred to was practiced when the Spanish first came into this area on July 7, 1540. So this area has been extremely important to the Zuni people for centuries, generations of Zuni people.

It is the geographic area where past generations of Zuni people have gone to live in a spiritual life. We believe that when I and the Zuni people that are in this audience end our daylight life path, Koluwala:wa area is where we are going to end up as spirit life forms. This is the reason why the Zuni people are extremely anxious to return this geographic area into the condition that it was when it was created in ancient times and designated as the homeland of the spirit life of the Ashuwe. I think we owe them, past generation of Zuni people who have passed on into the spirit life form and to the future generations that will assume this life form, I think we owe them the responsibility to get these lands back into the condition that they were when they were first created.

According to the Zuni stories, Zuni knowledge, cultural knowledge that has been handed down to us, when that area was created for that purpose, the river was running swift and deep. There was

wetland conditions all around. A sacred lake was a lake that was waist deep, and all the springs were active from the Zuni villages in New Mexico to Koluwala:wa. These springs are very important, because they are the conduits through which we communicate with the spirits that live under these springs.

So I guess I could go on and on, but I think this is the information that all of us wanted to share with you. The governor mentioned past tribal council members. I am mentioning that past religious leaders—I am one of those religious leaders—will be most happy, you know, that this is getting accomplished. The present leaders that we have met with on several occasions are going to be extremely happy and extremely proud that we are going to finally see some results of our attempts at restoring the wetland conditions and the environment that would be very conducive to sustaining our spirit life forms in that area.

Again, I appreciate the work that all of us did: the Zuni people, the committee members that served with me on this, the directors of the program—Dorothy Firecloud and also Joan Sandee. They were tireless in their efforts—the State parties, Senator Kyl, and everybody.

Again, thank you very much. [Native words.]

Mr. BOWEKATY. Senator Inouye and committee, [Native words]. Thank you.

[Prepared statement of Mr. Bowekaty appears in appendix.]

The CHAIRMAN. The committee is most pleased that we were made part of the process to bring about happiness in the Zuni Tribe.

Governor, are you finished?

Mr. BOWEKATY. Yes; I am.

The CHAIRMAN. Mr. Carter?.

STATEMENT OF JOE CARTER, VICE CHAIRMAN, ARIZONA GAME AND FISH COMMISSION, SAFFORD, AZ, ACCOMPANIED BY JAMES ODENKIRK, ASSISTANT ATTORNEY GENERAL

Mr. CARTER. Good morning, Mr. Chairman, Mr. Vice Chairman, Senator Kyl from Arizona—a person I have great admiration for in his total commitment to all the people of Arizona. My name is Joe Carter. I am the vice chairman of the Arizona Game and Fish Commission. My written testimony has been submitted previously. I would ask that it be entered in the record.

The CHAIRMAN. Without objection.

Mr. CARTER. I would like to summarize it today, If I may, please.

First, I want to thank the committee for this opportunity to make this statement in support of this legislation. The Arizona Game and Fish Commission has worked tirelessly, along with many others represented here today, to achieve a historic agreement that we believe will be the foundation for the Zuni Indian Tribal Settlement Act of this year.

In authorizing the settlement agreement and making an appropriation to carryout the provisions of the agreement, this legislation, in our view, builds on the success that has already been achieved, and in particular will allow the Game and Fish and the Zuni Tribe to realize their mutual beneficial goals of restoring an

ecologically important section of the Little Colorado River in eastern Arizona.

Game and Fish enthusiastically participated in the settlement negotiations that have led to this agreement. The process was an opportunity to build on our existing efforts and relationships in the region to restore and maintain riparian habitat that are of critical importance to wildlife and fish.

Game and Fish and the Zuni Tribe have worked cooperatively, shared resources to improve the conditions of a large portion of the river. For over 10 years the Arizona Game and Fish has been active in acquiring riparian habitats and water rights within the Little Colorado River drainage. Our objective has been to use these water rights to protect minimum flows in the river, to encourage the reestablishment of native vegetation, and to return the channel, along with eroded banks, to a more natural condition, all with the eventual goals of protecting sensitive wildlife species.

We have found that diverse populations of wildlife have come back to these areas of the river because the flows have become more predictable.

It is our hope that these efforts will eventually lead to a recovery of listing of native fishes that historically were found throughout the Little Colorado River watershed. It is our opinion that the recovery of these species depends upon restoring additional portions of the river to help increase perennial flows and to restore the natural hydrograph.

The Settlement Act will provided a needed support toward this effort. It will authorize significant funding for the tribe to accomplish similar restoration projects on this property. The funding will be used for the Zuni Tribe to redevelop and maintain wetlands, conditions that previously existed within its natural Zuni Heaven Reservation. The Zuni restoration project at its sacred lake will include rebuilding the channel of the Little Colorado River, enhancing river flows, and reintroducing native wildlife and plant species which are essential to the tribe's religious and sustenance activities.

Game and Fish looks forward to a cooperative relationship with the tribe and assisting the tribe in its endeavor.

Under the settlement agreement, Arizona Game and Fish agrees as part of its continuing stream rehabilitation project to an expend over $6 million over the next 15 years and to acquire additional land and water rights with the express commitment to transfer as much as 1,000 acre feet of water to the Zuni Tribe for its wetland restoration project.

Game and Fish will also work cooperatively and share information so that the Zuni Tribe can be assured that any proposed acquisition that Game and Fish makes under the settlement agreement will likely result in excess water that can be used at the Zuni's wetland project, and that the water quality in the Little Colorado River remains in the acceptable standard.

Our anticipated funding source for the settlement agreement is the Arizona Heritage Fund, which is a dedicated source of money that is administered by the Arizona Game and Fish and is used for property acquisition and projects that are intended to benefit sensitive wildlife and their habitats.

In addition to the conservation agreements, Game and Fish will receive some measure of security in settling claims adversely affecting Game and Fish water rights. The parties have agreed under the agreement not to object to current attributes of the Game and Fish water rights, which includes rights in various recreational lakes in the region. This is important for many people to enjoy sports fishing in Arizona's White Mountains and for the local economies to benefit from the increasing number of recreationists.

The passage of this legislation, in our view, is important to the Arizona Game and Fish. We believe it is the catalyst that is necessary to allow the important work within the settlement agreement to proceed. Mr. Chairman, we believe that it represents the common goals to preserve our collective traditions, our values, and our heritages, and for this I urge passage of this legislation.

Again, Mr. Chairman, I want to thank Senator Kyl for his hard work in this endeavor and your committee members.

We would be happy to answer any questions you may have.

The CHAIRMAN. I thank you very much, Mr. Carter.

[Pepared statement of Mr. Carter appears in appendix.]

The CHAIRMAN. Right now we have a vote pending, so if I may I would like to call a recess for ten minutes.

[Recess.]

The CHAIRMAN. May we resume the hearings.

I have a question for the governor. Section 8C of the agreement states as follows:

> The Zuni Tribe shall not unreasonably withhold consent for easements and rights-of-way for roads, utilities, and other necessary accommodations for adjoining landowners across the lands unless such easements and rights-of-way will cause significant and substantial harm to the tribe's wetland restoration project or religious practices.

Can you tell us what sort of circumstances could the tribe or would the tribe reasonably decline to grant such easements and rights-of-way?

Mr. BOWEKATY. I'll use a couple of examples that actually highlight why we are very amenable to that.

On our current existing reservation in New Mexico, there is a private non-Indian person from the community of Raima. His land borders our reservation, and on the north, the east, and the south side of his property he has about a 200-foot-high mesa. The only way he can access his property is either building a road, maybe borrow the tramway from Albuquerque, or build a tunnel. The Zuni Tribe has given his access to his property through our reservation land. He has a 50-year-and-renewable lease up to 99 years of access and egress along our reservation side for at least 50 years, as well as up to 99 years, so he actually has used that for over five years now, and he has been a good neighbor. We have had no problems.

A similar situation exists on some property that has been purchased on the south side of our current reservation. The property is called "Mazone Ranch." We have been working very closely with the New Mexico State Game and Fish Department, as well as our tribe, as well as our game and fish officers, where we jointly work whenever there's—there are a couple of sections of State grazing lands, as well as State leased lands, that border some of our checkerboard area. We work very closely. There is a country road that

bisects that portion of the reservation. We direct all State-licensed hunters to the proper locations and vice versa. The State Game and Fish direct our tribal members to the proper sections of the tribe. We have that relationship.

In this situation, that is a fair and equitable situation with the lands that we already have in the Zuni Heavens area, the State lands that have been purchased.

We also currently lease some of those properties to the non-Indian ranchers in that area. We have been leasing those properties out for over 3 years now. We have had no problem. As most of the next panel will attest, we have a very good relationship. Consequently, I don't anticipate any situation where there is a right-of-way or an easement that will harm our neighbors or let alone the neighbors will harm us.

The CHAIRMAN. Thank you very much.

Mr. Carter, this bill waives sovereign immunity as far as the Federal Government and the tribe is concerned, but as a result of the Supreme Court decision in the *Seminole* case, waive the sovereign immunity of the States. In this case, the State has not waived sovereign immunity.

My question is: What remedies are available to the tribe if the tribe feels that it needs to enforce its rights against the State? And in what forum could it bring suit to enforce its rights?

Mr. CARTER. Mr. Chairman, with your indulgence, I would like to refer that question to James Odenkirk, who is with me. He is the assistant attorney general that represents the Game and Fish Commission.

The CHAIRMAN. All right.

Mr. CARTER. Thank you, sir.

Mr. ODENKIRK. Thank you, Senator. My name is Jim Odenkirk. I am an assistant attorney general with the State of Arizona. I represent the Game and Fish Commission.

My view is that, under the settlement agreement, the tribe would have access to State courts to resolve conflicts resulting from some issue arising from the settlement agreement.

The *Seminole* case I am familiar with, and I believe that refers to sovereign immunity in suits in Federal court. Most of the issues that would arise would be involving water right issues, and the State court would have primary jurisdiction over those matters.

The CHAIRMAN. And the State courts are available to the tribe?

Mr. ODENKIRK. Certainly.

The CHAIRMAN. I thank you very much, sir.

Do you have any questions?

Senator CAMPBELL. Thank you, Mr. Chairman.

I had the opportunity to walk over to vote with Senator Kyl, and I can tell you those who know him know he does not get involved with a bill unless he researches it completely and really knows the insides and outsides of a bill.

I had some questions dealing with priority water rights and restoration of the ground vegetation and so on, but he answered them completely for me, so maybe just only let me make a short comment on this business of easements and rights-of-way.

I certainly understand the tribe's concern when it comes to an area that is a religious area. I was thinking, when the governor

was talking, about a mountain in South Dakota that is used for spiritual purposes by a number of Northern Plains tribes. It is called "Bear Butte." One-half of that mountain is actually owned by the Cheyenne Tribe. The other one-half is owned by the State of South Dakota. There is a State visitors' center on their one-half of the mountain.

It is not uncommon, when Indians are there on the Indian side praying, for people with binoculars and cameras and actually leading tour groups to the other side so they can watch the Indians praying. I mean, that's almost sacrilegious. How would you like, if you were a Catholic or a protestant, to have somebody come in while you're praying and take pictures of you in church or record what you're saying when you're making your prayers?

That's what Indians actually face sometimes, Mr. Chairman. I know that there's a very big concern on the part of many tribal people, particularly spiritual leaders, about who is going to be on there and under what conditions, particularly when they are trying to do ceremonies.

Thank you. I have no questions.

Thank you for appearing, Governor.

The CHAIRMAN. Thank you very much.

Just for clarification, may I ask the deputy attorney general more specifically: As you know, there is no reciprocal provision that waives the sovereign immunity of the State of Arizona. The tribes' immunity is waived and the Federal Government's immunity is waived to allow the tribe to enforce its rights.

Now, by your statement this morning, are you saying that the State of Arizona is waiving its sovereign immunity to permit to tribe to enforce its rights in court?

Mr. ODENKIRK. Mr. Senator, I am certainly not in a position to state that the State of Arizona has waived its sovereign immunity. There are certainly occasions where the State has waived its sovereign immunity to allow suit in State and Federal court, but only the State legislature would be authorized to waive sovereign immunity in a manner further than what has already occurred.

The CHAIRMAN. When can the tribe sue the State, under what circumstances?

Mr. ODENKIRK. Senator, there would be a number of situations where the tribe could sue a State, especially if it was under a Federal law that Congress has expressly provided for the State's waiver of sovereign immunity, or in State court could certainly enforce provisions of the settlement agreement. The State has waived its sovereign immunity to jurisdiction under State court.

The CHAIRMAN. Well, under section 8(a)(1), the sovereign immunity of the United States and the tribe are waived, but not the State of Arizona, and so, under your interpretation, the State has not waived its sovereign immunity under this settlement, or has it?

Mr. ODENKIRK. Senator, I don't believe the State has waived its sovereign immunity. The parties have not been able—the parties are not in a position. The State agency parties are not in a position to waive sovereign immunity without authorization of the State legislature, just as the agencies of the United States would not be in a position to waive sovereign immunity without the authority of Congress.

The CHAIRMAN. So if the Zuni Tribe wants to sue the State of Arizona under the provisions of the agreement, it will have to go to the legislature to get approval first?

Mr. ODENKIRK. Senator, I believe if they wanted to sue in Federal court they would need to do so, but there is State court available for them to enforce the terms of the settlement agreement.

This is an issue that I would need to look at and further review, but I don't believe that the parties to the settlement agreement have the authority to waive sovereign immunity as to suit in Federal court.

The CHAIRMAN. Is the Zuni Tribe concerned about this provision?

Mr. BOWEKATY. We have thought long and hard, and I'm going to defer to my attorney, Jane Marx, for the technical issues, but we have looked at the implications and the potential liabilities in situations where we may need to look at that.

Ms. MARX. Thank you, Mr. Chairman.

The State of Arizona has no immunity from suit for enforcement of contracts. That's State law as I understand it from the early 1960's that has made that point clear. We're not concerned.

The CHAIRMAN. Thank you very much.

Do you have any further questions?

Senator CAMPBELL. No further questions, Mr. Chairman.

The CHAIRMAN. I thank the panel very much.

Mr. BOWEKATY. Thank you.

The CHAIRMAN. now may I call upon Norman Ray Brown of Lyman Water Company of St. Johns, Arizona, accompanied by David Brown of Brown and Brown Law Offices of Arizona; David Roberts, manager, water rights and contracts, Salt River Project of Phoenix, accompanied by John Weldon, Jr. of Salmon, Lewis and Weldon of Phoenix, AZ.

Mr. Brown.

STATEMENT OF NORMAN RAY BROWN, LYMAN WATER COMPANY, ST. JOHNS, AZ, ACCOMPANIED BY DAVID BROWN, BROWN AND BROWN LAW OFFICES, PINETOP, AZ

Mr. NORMAN BROWN. Thank you, Mr. Chairman, Mr. Vice Chairman, and Senator Kyl. I appreciate being able to be here today. I am Norman Brown. I live in St. Johns, which is in Apache County in Arizona. I'm a member and represent the board of directors of the Lyman Water Company, which is one of the largest water users on the river there. I have lived there and am doing a fairly good job of attempting to provide for my family with seven children. My wife, Karen—I'm a fifth generation farmer/rancher there. We have an alfalfa farm to help us provide feed for our cattle operation.

With me today is my brother, David, who is an attorney with the law firm of Brown and Brown. He is also a supervisor on the Apache County Board of Supervisors.

A portion of our cattle ranch is located adjacent to the Zuni Heaven portion of the reservation in Arizona there, and for many years we have been neighbors with that property there, and I have never had any problems with the previous owners or the current owners, the Zuni Tribe.

As my responsibilities as a member of the board of directors, we have for several years now been negotiating under this situation,

and, because we control a large area in the St. Johns area, approximately 2,500 acres of farm when we have sufficient water—as everybody knows, the last several years we have had a dearth of that water. I represent approximately 200 shareholders that use the water in our little valley there.

In the late 1800's, early settlers started using the water for the farms in the St. Johns area and also in Eager and Springerville, and developed those farms. In the early 1900's we had an adjudication process that resulted in the Norvell Decree.

I'm just making a few brief comments from the written comments, and I request that the committee receive my written testimony that I submitted earlier.

The Norvell Decree spells out who has water rights up and down the river since the late 1800's. At that time the decree did not include or address any claims to water rights by the Zuni Tribe; therefore, we have been in settlement negotiations with the tribe during the last several years.

I am here today to tell the committee that Lyman Water Company and also the small towns of St. Johns and Springerville and Eager, who are upstream from St. Johns, endorse the proposed settlement and agree that in this situation it would be the best.

I believe personally that the Lyman Water Company—on behalf of Lyman Water Company, this settlement is good for the whole situation because it recognizes the Norvell Decree, still recognizes the water rights we have there, helps us settle as neighbors and, on another hand, for our small company there it helps to maybe quit paying the attorneys that are involved.

Lyman Water Company controls Lyman Lake, and we have agreed to use that resource to help control water flows for all the parties involved.

I would like to thank the committee for the work that they have been doing in hearing this bill. I appreciate Senator Kyl and all the leadership he has shown in bringing this to this point.

One of the last requests I have is, if the committee has any authority, we need more rain in the whole area. [Laughter.]

That would help solve a lot of things.

That's all I have today. Thank you.

The CHAIRMAN. I thank you very much, Mr. Brown.

[Prepared statement of Mr. Norman Brown appears in appendix.]

The CHAIRMAN. Mr. Roberts.

STATEMENT OF DAVID ROBERTS, MANAGER, WATER RIGHTS AND CONTRACTS, SALT RIVER PROJECT, PHOENIX, AZ, ACCOMPANIED BY JOHN B. WELDON, JR., SALMON, LEWIS AND WELDON, PHOENIX, AZ

Mr. ROBERTS. Thank you, Mr. Chairman and Mr. Vice Chairman Campbell, members of the committee, as well as Senator Kyl—and I appreciate Senator Kyl very much in his, as you mentioned earlier, ability to work with these Indian water rights settlements. He has had a lot of experience. He really works on them well with us, and we really appreciate the opportunity to work with Senator Kyl on this particular settlement.

I am the manager of the Water Rights and Contracts Department at Salt River Projects. I am here to present testimony in sup-

port of this legislation. I have submitted written testimony, and I would just like to highlight some of the major parts of that testimony that I provided for the record.

The CHAIRMAN. Your full statement is part of the record now.

Mr. ROBERTS. Thank you.

SRP is a large, multi-purpose reclamation project authorized pursuant to the Reclamation Act and constructed in central Arizona. Pursuant to various contracts with the United States and the Reclamation Act, SRP operates six large storage reservoirs in central Arizona and is the largest water supplier in the Phoenix metropolitan area.

SRP also operates several large power plants throughout Arizona and distributes electricity from those power plants to more than three-quarters of a million customers in central Arizona.

You have heard quite a bit of testimony this morning about the history of the Zuni Indian Reservation. You've also heard testimony about the many benefits the settlement agreement will provide the Zuni Tribe, the State of Arizona, the cities and towns in the Upper Little Colorado River Basin, as well as the irrigators from the Little Colorado River Basin.

This morning I would like to just highlight a few of the important parts of the settlement that we think are critical in settling this claim, the claim by the Zuni Indian Tribe.

First, SRP's interest in the settlement, why the settlement is important to SRP; second, a short history regarding what led to the negotiations of the water rights claim by the Zuni Tribe; and, third, the importance of this settlement with respect to the settling parties, including the United States.

As I mentioned earlier, one of the major responsibilities of SRP is to produce and distribute electricity in central Arizona. SRP has a significant interest in the water issues in the Upper Little Colorado River Basin because one of the power plants owned and operated by SRP is the Coronado Generating Station located near St. Johns about 15 miles upstream from the Zuni Indian Reservation.

About 20 percent of the power generation owned by SRP comes from CGS. CGS was constructed in the mid 1970's and employs about 20 percent of the workforce in the area. Water for CGS is supplied by two well fields located near the plant, and SRP has pumped about 10,500 acre feet each year to supply the Coronado Generating Station.

With respect to how the settlement negotiations began, as you heard earlier, the Zuni Heaven Reservation is a fairly new reservation, having been created by Congress in 1984. For many years, this was not much of a concern to the area water users because most of the current uses of groundwater and surface water from the Little Colorado, including SRP's use of groundwater for CGS, predated Congress' creation of the Zuni Heaven Reservation and arguably would have priority over the tribe's use of water in times of shortage.

However, the arguable seniority of these upstream water rights to those of the Zuni Tribe was called into question in 1994 when the Justice Department asserted a claim in the Little Colorado River adjudication based on the tribe's use of water since time immemorial. This filing brought into focus a potential conflict be-

tween the tribe's water uses on the reservation as well as those of the surrounding communities.

In 1997, representatives of the tribe, the United States, SRP, and other local parties began negotiating a settlement of the tribe's claims.

Last, with respect to the importance of this settlement, as with the other Arizona Indian water rights settlements that have been submitted to and approved by Congress, there are three important characteristics of this settlement that warrant its approval.

First and foremost, the settlement resolves all outstanding water-related litigation between the Zuni Tribe and the other settling parties and settles once and for all the water rights of the tribe to surface water and groundwater in the Little Colorado River Basin in Arizona.

Second, the settlement provides the tribe with essential resources to restore and maintain the religiously significant riparian areas on its reservation. SRP will participate in that restoration process by providing the tribe with $1 million to be used toward developing a water supply to restore the tribe's sacred lake.

Third, the settlement provides certainty for the water users and the tribe with respect to current and future water uses in the basin. The settlement permits the continuation of existing surface water and groundwater uses in the basin. This is critical to the local economy of the Upper Little Colorado River area.

Additionally, as part of the settlement SRP and the tribe will enter into a separate supplemental agreement that will address the terms and conditions that apply to future pumping by SRP and the tribe. Under this agreement, SRP has agreed to refrain from drilling new wells or replacement wells within a specific area between the reservation and the existing well fields utilized by CGS in order to minimize the effects of SRP's wells on water supplies for the reservation. The tribe has also agreed to restrict its pumping of groundwater in an area surrounding SRP's well fields in order to minimize impacts on water supplies for CGS.

SRP will also undertake a groundwater quality monitoring program in an effort to identify future water quality changes in the area near the Zuni Heaven Reservation lands.

In conclusion, the Zuni Indian Tribe and the other parties to this settlement have worked diligently and will continue to do so to achieve the numerous compromises and contributions necessary for settlement of the tribe's water rights claims. The legislation before the committee embodies the hard work of those parties to achieve a result that is beneficial to both the tribe and the local water users, enabling them to use the scarce resource cooperatively with consideration for the needs of both sides.

SRP and the other settlement parties urge this committee to bring the settlement one step closer to completion by approving S. 2743.

Thank you for your time. I would be happy to answer any questions.

The CHAIRMAN. I thank you very much, Mr. Roberts.

[Prepared statement of Mr. Roberts appears in appendix.]

The CHAIRMAN. If I may ask a question of Mr. Brown, section 9 of the bill states that certain agreements among the parties shall

become null and void if certain prerequisites are not met by December 31, 2005. Among these prerequisites is the tribe's ability to purchase certain surface water rights and the severance and transfer of those water rights. Do you foresee that the tribe may have some difficulty in complying with these conditions?

Mr. NORMAN BROWN. I see that the tribe could very easily purchase some of those water rights up and down the river. It is a long way up and down there. It has been not feasible for them to try to acquire those rights up until now since they haven't had the resources to do so or the agreement to transfer those rights.

The CHAIRMAN. So you see no problems now?

Mr. NORMAN BROWN. No.

The CHAIRMAN. Thank you. And, for Mr. Roberts, is your organization committed to move forward expeditiously to reach similar settlements addressing the water rights of other tribes in Arizona?

Mr. ROBERTS. Yes, Mr. Chairman; we very much are. We have been involved in a number of settlements in Arizona, currently working on several right now, and certainly will work diligently towards that.

The CHAIRMAN. I want to commend both of your organizations for the expeditious manner in which you have resolved the Zuni water rights case. We look forward to further legislation to bring about settlements for other tribes.

Mr. Vice Chairman.

Senator CAMPBELL. Mr. Chairman, I have no questions. They all seem to support the bill, so I don't have to light into anybody. I'm just very happy they do.

Let me just tell Mr. Brown how much I admire your raising seven children on a ranch. We have a small ranch in Colorado. We only had to feed two, and we still had to have outside jobs, which meant I was either a bad rancher or they ate too much. [Laughter.]

Congratulations.

Mr. NORMAN BROWN. Thank you.

Senator CAMPBELL. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Kyl.

Senator KYL. Mr. Chairman, I just thank you very much for holding this hearing. I thank the witnesses. They have worked very, very hard. They have done all the work. They have expressed appreciation to me, but, frankly, they are the ones who have done the hard work. It just demonstrates what happens when everybody has a desire to sit down and resolve their differences and stop paying lawyers, so in that regard this is a very successful conclusion. [Laughter.]

The CHAIRMAN. That is why they call you a miracle worker, don't they.

With that, and with the gratitude of this committee, the hearing is adjourned.

Mr. NORMAN BROWN. Thank you.

Mr. ROBERTS. Thank you.

[Whereupon, at 11:35 a.m., the committee proceeded to further business.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

PREPARED STATEMENT OF HON. JON KYL, U.S. SENATOR FROM ARIZONA

Mr. President, on behalf of Senator McCain and myself I am introducing legislation today that would codify the settlement of the Zuni Indian Tribe's water rights for its religious lands in northeastern Arizona. Congress first recognized the importance of these lands in 1984 when it created the Zuni Heaven Reservation (Pub. L. No. 98–498, as amended by Pub. L. No. 101–486 (1990)). The small communities upstream from this Reservation have been fully appropriated—they have had more would-be water users than water—for nearly a century. The prospect of dividing this limited water with yet another user created great uncertainty. To resolve that uncertainty and to avoid expensive and protracted litigation, the Zuni Tribe, the United States on behalf of the Zuni Tribe, the State of Arizona (including the Arizona Game and Fish Commission, the Arizona State Land Department, and the Arizona State Parks Board) and the major water users in this area of Arizona negotiated for many years to produce a settlement that is acceptable to all parties.

This bill would provide the Zuni Tribe with the resources and protections necessary to acquire water rights from willing sellers and to restore and protect the wetland environment that previously existed on the Reservation. In return, the Zuni Tribe would waive its claims in the Little Colorado River Adjudication. In addition, the Zuni Tribe would, among other things, grandfather existing water uses and waive claims against many future water uses in the Little Colorado River basin. In summary, with this bill, the Zuni Tribe can achieve its needs for the Zuni Heaven Reservation while avoiding a disruption to local water users and industry. Furthermore, the United States can avoid litigating water rights and damage claims and satisfy its trust responsibilities to the Tribe regarding water for the Reservation. The parties have worked many years to reach consensus and I believe this bill would produce a fair result to all.

Zuni Indian Tribe Water Rights Settlement Agreement
Little Colorado River General Stream Adjudication

Senate Indian Affairs Committee-Testimony
Malcolm B. Bowekaty, Governor
July 18, 2002

Introduction

With me are: Lt Governor Barton Martza, Wilfred Eriacho Sr- Chairman Zuni Water Rights Team, Edison Vicenti Sr- Head Katchina Leader and Pablo Padilla, Special Assistant to Zuni Tribal Council. I also have with me the Zuni Tribe's attorney, Jane Marx and Mr. Oliver Page- Hydrologist.

Overview

On behalf of my- "Ashiwi"– Zuni People, we present a settlement to satisfy our water needs for a very special and sacred place. This settlement will put finality on our tribes' century-long endeavor to restore our role as stewards of our ancestral resting grounds, our Zuni Heaven. Furthermore, our tribe has serendipitously, secured a fraction of our aboriginal land base surrounding Zuni Heaven which enable us to protect a special pilgrimage corridor to "Koluwala:wa"or Zuni Heaven. In our belief system, if it is destined, then it will be realized. Today, we are here to seek your support and advocacy to legislatively operationalize this settlement and to resolve problems should they arise.

Honorable Committee Members, I humbly follow the footsteps of some great Zuni Leaders who have fought for lost lands and securing the right to practice our form of religious sustenance from time immemorial. Honorable Governor Henry Gasper (1935-1942) who was the first to formally ask in writing the return and restoration of our Zuni Heavens Land. Honorable Governor Robert E. Lewis (1975-1989), who trail blazed new routes for our tribe to secure land and resources. Honorable Governor Edison Laselute (1974-1978) for secure passage of the 1984 Zuni Heavens Act. Honorable Governor Donald Eriacho (1995-1998) for maintaining the fight for water restoration and wetlands establishment at our Koluwala:wa. Esteemed Senators, Our tribe has only two former Governors left. I hope- I know, that this settlement will come to fruition so I can witness their peace and serenity for our tribe's accomplishment.

Significance of Koluwala:wa and Importance of Water

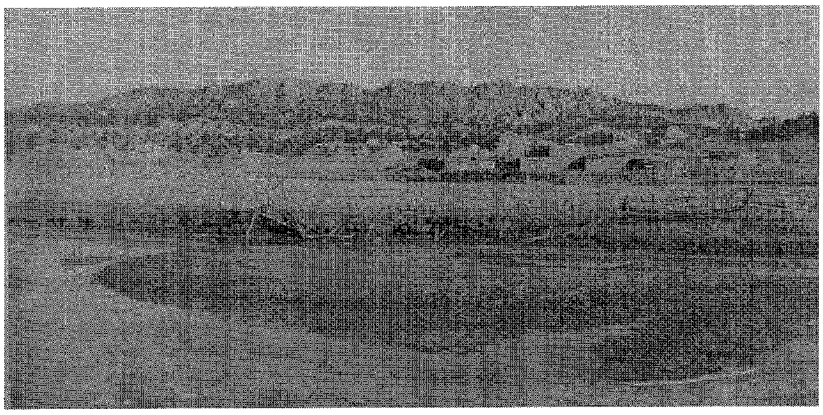
I beg the indulgence of this esteemed committee to share with you our tribes' view as to why this area is sacred and why it is the heart and soul of our very existence. Koluwala:wa is our nurturing place; our lifeline to strengthening our people, and to cleansing and purifying our spirits by communing with our departed fathers and our mothers. Our prayers, food offerings and ceremonies beseech from our ancestor forefathers and mothers protection, spiritual guidance, long healthy life and bountiful harvests. Our timeless connection to our ancestors is the very essence of our existence. Our people understand that from birth until death, Koluwala: wa (Zuni Heaven) is central to our existence. Our rituals, our kiva obligations, our kinship/clan obligations and our dances revolve around Zuni Heaven.

Our ceremonial calendar revolves around Zuni Heaven. The religious ceremonial dance events and religious fasting are integral to treks to our Koluwala:wa. Our religious and sustenance activities require harvesting of water, flora, fauna and minerals from Zuni Heaven; and other sacred springs. Extensive fasting and prayer precedes a solemn quadrennial pilgrimage to Zuni Heaven. Our Tribe has conducted this ceremony for over five centuries. (I refer you to Senate Report 98-441 for additional information) The common glue that binds this seemingly elaborate ceremonial cycle is water. Water is sacred! Springs, seeps, rainfall are the most precious thing on earth and to my Zuni People. The entire length of the Zuni River has always been deemed sacred from the headwaters at Nutria to the confluence of the Little Colorado River and ultimately to our Kohluwala:wa and our emergence from the waters of the Grand Canyon.

History of the Zuni River Basin and Little Colorado River Basin

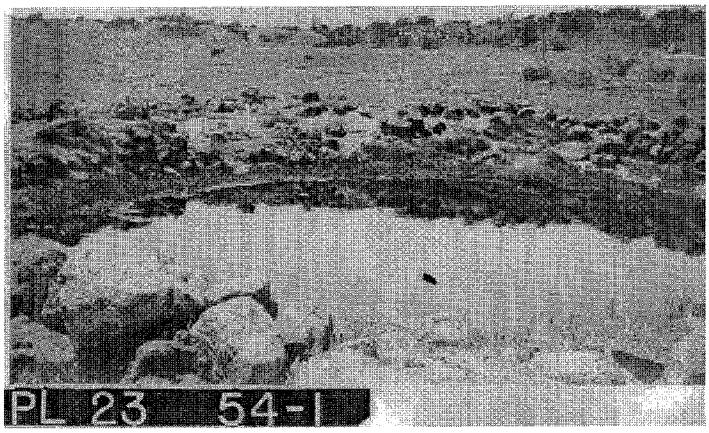
The Zuni River and the Little Colorado rivers have been used for agricultural, domestic, and religious harvests by our Zuni People. We relied on steady flows from the headwaters to the Grand Canyon in times past. Agriculturally, spreader dikes were constructed to allow normal flows and flood flows to cover valley floors. Near mouths of major arroyos earthen berms were constructed to capture snowfall that built up and slowly melted to saturate the ground. Consequently, when heavy rains fell the water penetrated deeply instead of flowing in sheets and contribute to incisions and arroyo cutting. Flooding was viewed as beneficial to cleanse not only spiritually but the salts that leached from slow years. The waters were channels or media for our prayers and food offerings for religious sustenance with our forefathers in Zuni Heaven and places beyond.

This photo shows a riparian environment. Water-marshes such as this dominated the areas of the Zuni and Little Colorado rivers, the subject of this settlement (The actual Zuni River Basin in New Mexico is not part of this Agreement!). This photo was taken on our reservation, under our natural resources management control; we can protect and maintain precious water resources. Springs and marshes like this existed at Koluwala:wa.



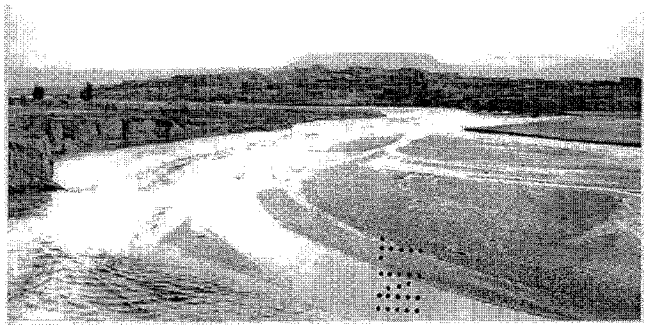
The following photos illustrate the abundant water that was available at the turn of the century and in the early 1920's-1930's. This photo of Upper Nutria, show the river meandering through agricultural fields. No incised channels evident at this point.

This shows the springs at Blackrock prior to development the Blackrock Dam. Spring-fed pools were common along the entire Zuni River.

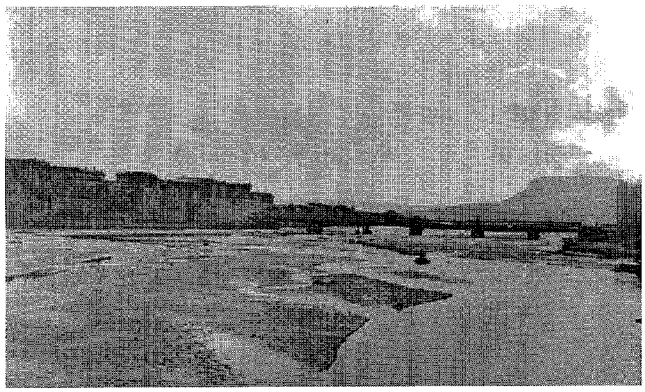


Caretakers of springs were religious and clan inspired. They cleaned the ponds frequently and controlled growth of noxious weeds or aquatic plants.

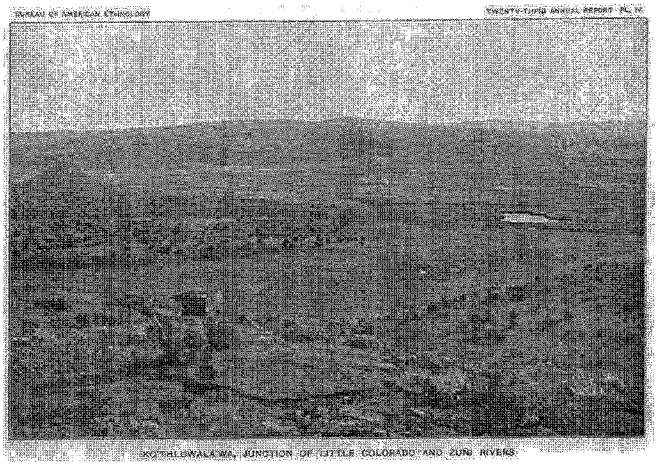
A flood scene at Zuni Pueblo contributed to flows directly to Zuni Heavens. Floods such as this cleanse the salts in slow years.



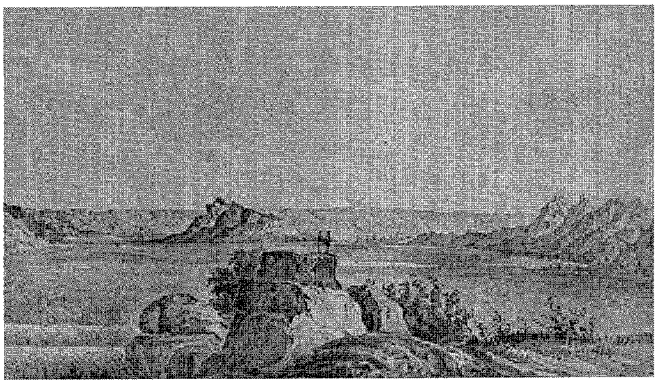
This scene depicted broad alluvial flooding at Zuni Pueblo, similar floods also occurred on the riverbank of Zuni Heaven.



Floods through the central Zuni Pueblo was common. This photo shows the aftereffects of flooding. Similar principles are applicable to the proposed Zuni Heaven restoration project.

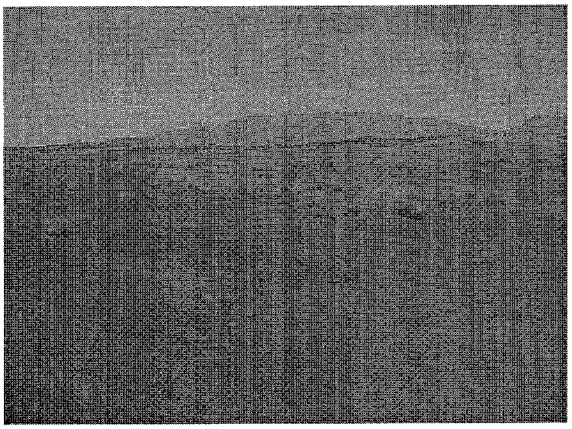


This photo shows the meandering river that fed springs relied on by our religious practitioners during our quadrennial pilgrimages.

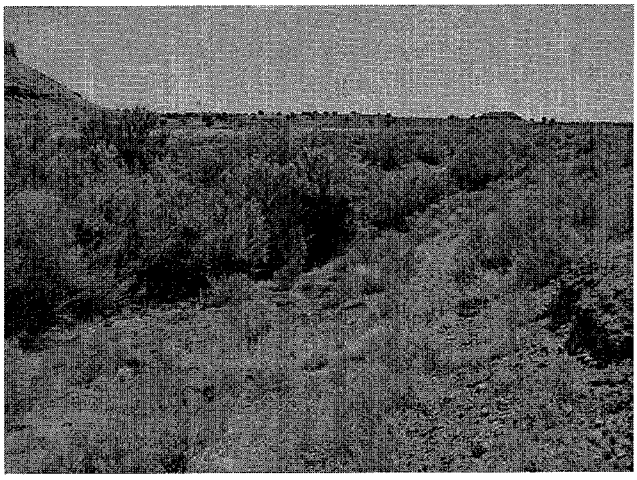


This depicts water at Zuni Heavens and a description of lush vegetation encountered by the Sitgreaves 1851 mapping expedition.

A caption in the original photo by the Smithsonian read "Leroux Island-Little Colorado River, near camp 4….Note the marshy grasses along the Little Colorado River that indicate abundant surface water in 1851."



Current photo of Zuni Heaven condition as compared to the previous photos indicate extensive groundwater depletion. Areas such as this would be slated for our wetlands restoration project.



Extensive loss of water on the Zuni River and Little Colorado River was due to upstream diversion dams such as this at Zion Dam.

This is all that remains of Zion dam after silting and flash flooding breached this dam. The extensive buildup of silt will be useful for our restoration project.

As seen in these photos, water was abundant and flowed, unimpeded to Zuni Heaven to nurture riparian flora and fauna. We can see what is possible. Our hardy existence and continued survival is due to good stewardship of water and ecosystems that depend on it, hence it is imperative and fundamentally clear that we resume the proper restoration of our riparian areas for harvesting resources that our tribe needs.

It is clear, therefore, why settlement rather than litigation is the preferable path for my people. As you know, in 1984 Congress set aside the Zuni Heaven Reservation for the express purpose of protecting the Tribe's long-standing religious and sustenance activities on those lands. As just described to you and testimony leading to passage of Pub. L. No. 98-498, 98 Stat. 1533 (August 28, 1984) revealed, water for riparian habitat and the Sacred Lake is essential to those activities, the very purpose for which Congress set aside the Reservation. That legislation as amended by Pub. L. No. 101-486, 104 Stat. 1174 (October 31, 1990), addressed the lands to be protected but did not cover the Tribe's water needs. Thus, the United States on behalf of the Tribe filed water rights claims in the LCR basin general adjudication which has been pending since 1979. Despite the strength of my Tribe's litigation claims relating to its use and occupation of the area encompassing Zuni Heaven and its waters since time immemorial, the Tribe was motivated by the desire to secure "wet" water and not just a "paper" water right. The settlement provides for real water to be acquired by the Tribe, in an area of the Little Colorado River basin where the surface water is already over appropriated and where there also exists significant groundwater demand. Equally important, the settlement also provides the resources to be able to restore the wetlands and riparian areas on our sacred lands, an outcome we would not obtain through litigation. This settlement, thus, restores the ecosystem necessary for our sacred practices and provides the parties, and Zuni in particular, the benefit of certainty and finality without spending numerous years and extensive resources in litigation. The Little Colorado River general adjudication involves thousands of parties, including five Indian tribes; this settlement resolves the claims of one tribe, and does so with no adverse impacts on the water rights of any party in the litigation.

Overview of The Settlement Agreement

This settlement is the culmination of the Tribe's attempts to protect and restore the sacred lands of Zuni Heaven. This settlement satisfies those claims by providing water and resources to rehabilitate and restore to the Reservation a riparian habitat for the Tribe's religious and sustenance activities.

Description of the Restoration Project and Water Needs

Our restoration project will take a number of years to accomplish. Simply described, it involves acquisition of water rights, use of groundwater, aggradation of the LCR stream channel, removal of exotic plants that impede restoration of the wetlands, and planting and maintenance of native plant species. Although our goal is to restore the area to as close to natural, pre-development conditions as possible, certain hydrologic conditions may have been permanently altered by upstream dams and surface water diversions as well as extensive groundwater pumping; significant engineering planning and design is needed, as well as the "artificial" maintenance of certain wetland and riparian areas. We will endeavor to create as natural an environment as is reasonably possible.

With regard to the water requirements, the settlement provides Zuni a minimum of 5,500 acre-feet per year (afy) of water to develop and maintain its wetland restoration project. The Tribe will use both groundwater and surface water. Importantly, the parties set out to provide water to the Tribe without disrupting, to the greatest extent possible, the existing uses and expectations of the parties. The mechanism to accomplish this goal includes the voluntary acquisition of surface water rights from willing sellers in an area where water uses are changing and irrigation is declining. In the long run, the Tribe needs to acquire a total of at least 3,600 afy of surface water. The remainder of the minimum 5,500 afy of water needs will be met through appropriation of flood-type flows, development and "harvesting" of water from Zuni lands upstream of the Reservation, and groundwater pumping. The settlement recognizes the right of the Tribe to withdraw 1,500 of groundwater free from objection by the parties. Notably, the Zuni Tribe will need to acquire 2,350 afy of surface water rights over the next few years in order to effectuate the settlement and waive its claims.

The Tribe's project includes two phases: a core, initial wetland development area that includes restoration of Hadin Kaya, the Tribe's Sacred Lake. This area will be developed immediately using groundwater, and will be maintained in perpetuity even in periods of drought. The secondary wetland area will be developed using surface water, after the Little Colorado River channel has been aggraded, or raised up, on the Reservation, through removal of sediment upstream and relocation of that sediment to Zuni Heaven. The extent of the secondary wetland area is expected to fluctuate depending on surface water availability in wetter or dryer years. (Appended is a technical description by Oliver Page of Stetson Engineering on the Wetlands Project).

As noted above, the surface water rights will be acquired pursuant to state law. As such they will carry the associated state law priority dates. However, of great significance to the Tribe, once those rights have been acquired and severed and transferred to the reservation, the water takes on key attributes of a federal right: the water rights shall be held in trust by the United States in perpetuity, the water rights cannot be lost by abandonment or forfeiture, state law does not apply to water uses on the Reservation, and the state has no authority to regulate or tax the use of the

water. The settlement provides similar protection for the Tribe's use of 1,500 afy of groundwater on the Reservation.

Contributions; Development Funds:

The settlement provides for a unique partnership among the Tribe, the United States, the State of Arizona, and certain individual parties to accomplish the goals of this settlement. First, in addition to the financial contribution of $19.25 million requested of the United States, the state parties, including the State of Arizona and other major groundwater pumpers, are contributing roughly $8 to $9 million dollars toward this settlement, and the Zuni Tribe itself has spent close to $5 million dollars to acquire certain key lands and water essential to the success of the project. The extent of shared funding is unprecedented in water rights settlements. Equally importantly, however, is the creative use of state programs to support the restoration and environmental goals of this settlement. In addition to contributions from its general funds, the State of Arizona is using two state programs aimed at endangered species protection and habitat conservation to fund its contribution to this settlement. Through use of these state funds, the Tribe will receive water rights to be used for its wetland restoration project as well as dollars that will be spent for wetland restoration and maintenance purposes. Ultimately, these efforts along the Little Colorado River stream will create more habitats for threatened and endangered species. Through this partnership, Zuni restores its sacred lands, and environmental protection goals are met.

This agreement will establish the Zuni Indian Tribe Development Fund managed by the Department of Interior into which the contributions from the State of Arizona and the United States will be deposited. As noted earlier, from the federal contribution, $3.5 million dollars will be made available immediately to secure water rights so that the settlement agreement can become enforceable. The remaining funds will be made available after the enforcement date. The Zuni Indian tribe has extensive working knowledge of the trust funds management and investment by the U.S. Treasury Department and Department of Interior's Office of Trust Funds Management. Our tribe has prudently used funds from prior settlement of land claims. We have exercised the regulatory prescribed funds draw down process for monies under Secretarial control. We have also exercised total withdrawal of monies under the American Indian Trust Fund Management Reform Act of 1994. The Congressional route for withdrawing of funds has also been successfully used by our Tribe.

The Zuni Indian Tribe will use the settlement Development Fund in the manner prescribed by this proposed legislation and by the terms embodied in the agreement. Our trustees at the Southwest Regional office and the Office of Trust Funds Management are extremely aware of our adherence to federal fiduciary standards, but more importantly, to the fiduciary standards of my people. We have met these standards and we will meet these exacting standards contemplated in this legislation.

As a final comment on the acquisition of water rights and early access to $3.5 million to secure those rights, we have been working with the Department of the Interior to develop an approach to dealing with those particular funds that will provide the Tribe flexibility and immediate access in order to secure good priority water rights while also respecting the Department's desire to oversee use of tribal funds. We believe we have reached a workable approach using the framework provided in the Trust Fund Reform Act and will continue to work with the Department on issues pertaining to use of these funds as well as the remainder of the federal funds to be appropriated pursuant to this settlement.

Rationale for Certain Waivers and Compromise

This settlement represents many hours of working with my people to develop a workable vision and concept for restoring our sacred Zuni Heaven given the present conditions at the Reservation. In addition, the settlement is the result of more than four years of extensive negotiations involving my water rights team and our water rights attorneys. As such, it contains negotiated compromises, some of which were arrived at only after a great deal of discussion and deliberation. Several provisions I will describe required a great deal of "soul-searching" and discussion by my water rights team and Council. We firmly believe, however, that this settlement, even with some difficult compromises, provides the best possible approach to securing an adequate amount of water of sufficient quality for our religious practices.

The first of the significant compromises relates to taking lands into trust. As mentioned above, the Tribe has acquired certain lands near the Reservation that are critical to our ability to gather and send water down the Little Colorado River channel to the Reservation. Other lands along the LCR are also important to the project. To further this settlement and the needs of some parties to have certainty about the status of these lands now and in the future, the Tribe identified a key corridor along the LCR that contains lands we now own or may acquire in the future that will be taken into trust as part of this settlement. One section of land adjacent to the Reservation will also be made part of the Reservation; it is the expected location of much of the Tribe's groundwater pumping. The legislation provides that only these lands in Arizona will be taken into trust, absent a subsequent act of Congress authorizing additional lands into trust for Zuni.

Before any lands may be taken into trust, the Tribe, the State of Arizona, and Apache County will enter into an intergovernmental agreement covering a number of water and land use issues that are identified in the settlement agreement. These issues include, for example, adoption of a tribal water code, jurisdiction by the Tribe over wildlife management, payments by the Tribe in lieu of state taxes, rights-of-way or easements for adjoining landowners, and protection of land remaining in fee status for the Tribe's religious practices. We support the intergovernmental agreement approach as a useful mechanism for sovereign governments to use to facilitate their relationship. After considering the nature of our land and water use in Arizona for sustaining our religion and culture, lands which are not the site of my people's homes or economic livelihood, we are also comfortable with the substantive agreements within the provisions to be covered by the intergovernmental agreement and believe they strike a reasonable balance of interests.

The next area of significant compromise relates to waiver of future water quality claims. We know that this waiver covers new ground in a water rights settlement. Again, after a great deal of deliberation and consideration of the specific circumstances of this settlement, we are comfortable with the compromises contained in the approach to waiver of these future claims. Circumstances may differ in another case where, for example, a reservation is a homeland and is located in an area with more industry or other development. Moreover, in our negotiations, we agreed to try to reach a settlement that would, as much as possible, maintain the status quo and the parties' existing water use expectations. This may not be a goal in another context. From the Tribe's perspective here, the location of the Reservation in a relatively undeveloped area of Arizona, combined with the state parties' agreement to provide water quality monitoring and data on an ongoing basis, along with the broad retention of regulatory authority by the United States to address water quality or environmental problems that may arise, provide us adequate assurance that a serious problem will not go un-remedied, even if the Tribe is limited in the type of claims it can assert. We understand that the administration may be seeking to further clarify and enhance the regulatory authority of the United States to enforce environmental and water quality laws and regulations, and we will certainly work with the parties to resolve satisfactorily any lingering concerns.

Finally, I want to discuss briefly the issue of the timing of the Tribe's waiver of litigation claims and the acquisition of water rights as a condition precedent to such a waiver. As I mentioned earlier, the Tribe needs to acquire 3,600 afy of surface water rights in order to develop its project. The Tribe will waive its claims, however, when 2,350 afy of the necessary 3,600 afy of surface water is acquired. This must be accomplished by the end of December 2005. Clearly, there is a risk to the Tribe of waiving its claims before it has acquired all of the necessary water rights. However, after significant thought, we felt it the wisest use of time and resources to structure the settlement in this fashion, for several reasons. First, under the settlement agreement and legislation, the Tribe has early access to $3.5 million dollars in order to secure the necessary 2,350 afy of water. Given the voluntary nature of the water acquisitions, we have attempted to strike an appropriate balance between a reasonably short time frame to determine whether the settlement will become finally enforceable, and a reasonable guess as to the amount of water at a reasonable price we expect could be acquired within the limited time frame. We did not want to be in a situation where we are forced to pay too much for any particular water right in order to satisfy the time deadlines, yet we need to know that we can reasonably expect to secure sufficient surface water to develop the project. The 2,350 afy amount is the parties' best estimate as to the amount of water at a reasonable price that we can anticipate acquiring with the initial funds by December 2005. We will then acquire the remainder of the water rights over time, with the State of Arizona expecting to contribute approximately 1,000 afy of water over the next fifteen years. We believe that this approach is fiscally sound and, in conjunction with our ability to use groundwater, provides us enough certainty about the ability to develop the entire wetland restoration project over time.

Conclusion

This water rights settlement agreement will allow our Zuni People to satisfy their life existence and will ensure the re-establishment of a riparian resource that benefit the entire area. We have worked closely and reasonably with all parties to keep whole their interests and to secure our interests to water and land. My Zuni Tribal Council, Religious Leaders and practitioners and most importantly our Zuni People are very comfortable with the settlement terms. Settlement funds from several sources will be sufficient to mobilize on the ground water delivery systems and the wetlands restoration efforts. Initial work has already begun as a direct result of collaboration between the Tribe and the State of Arizona.

We firmly know our non-Indian neighbors', towns and cities, industry and the State of Arizona have gained benefits far outweighing lengthy and expensive litigation. Expensive and protracted litigation still remains for the further reaches of the Little Colorado River, however, at least a significant portion is forever resolved. We believe we have addressed the fulfillment of trust obligations of the United States on behalf of our Zuni Indian Tribe.

Esteemed Senators, I again humbly for my Zuni People ask and urge your support and assistance to ratify this proposed legislation for our water rights. In our daily prescribed blessings as Governors and Tribal Councilmen, I bequeath on each of you "De'kohonne dashana awannik chiya:do"-Long healthy and bountiful life. Elahkwa!

APPENDIX- Stetson Engineering

SUMMARY OF
ZUNI HEAVEN WETLAND RESTORATION PROJECT

LITTLE COLORADO RIVER BASIN ADJUDICATION, ARIZONA

JULY 15, 2002

Since pre-development times, the Zuni people have used an area in Hunt Valley adjacent to the Little Colorado River (LCR) in Arizona for religious, sustenance and homeland purposes. The land, often referred to as Zuni Heaven, supported a lush riparian habitat with springs, streams and a sacred lake as late as the 1930s. The lands contained a wide variety of plant and animal species essential to the Zuni Tribe's homeland and religious practices. The sacred lake, several springs and related riparian habitat have been the core of the Zuni's religious beliefs. In 1984, Congress recognized the importance of these sites and practices when it established the Zuni Reservation in Arizona for the primary purpose of sustaining these historical activities.

Both, the bottom lands of the LCR in Hunt Valley and the sacred lake and springs have suffered ecological decline. In pre-development time, the sacred lake was sustained by surrounding springs and over-bank flow from the LCR. The ecological condition of the sacred lake and associated springs has changed significantly over the last 70 years. The riparian vegetation that once inhabited the area is no longer present. The sacred lake and most of the springs within the Reservation have become dry with loss of associated wetlands as a result of surface water depletions, dams and regional groundwater pumping. The incisement of the LCR through Zuni lands has prohibited replenishment of the lake and drained the shallow ground water that supported the native vegetation. Ground-water withdrawals in the vicinity of the Zuni lands have also contributed to the drying of the lake and springs.

PROJECT PURPOSE

Re-establish and maintain the wetland environment that existed at Zuni Heaven prior to effects from non-Indian development and restore the Tribe's ability to perform religious and sustenance activities.

PROJECT DESCRIPTION

The proposed Zuni Heaven project includes aggradation of the LCR, enhancement of the flow regimen of the LCR through acquisition of surface water rights and water salvage; the reintroduction and maintenance of native plant species; and development of a wetland environment, partially maintained by ground-water supplies, to sustain the reintroduced species.

Restoration of the wetland environment would involve reestablishing: (1) a primary wetland area including the sacred lake that would be maintained with ground water when surface water supplies are not adequate; and (2) a secondary wetland area that would be served by available surface water supplies and subject to water shortages. The minimum project acreage to receive water would be approximately 700 acres.

The proposed project features an integrated ground water / surface water system to serve the wetland water needs. Initially, canals and pipelines would distribute ground water pumped from wells to the primary wetland areas. As soon as the LCR has aggraded to the point where surface water can be diverted, surface water would begin to replace ground water for the maintenance of the primary wetland and would also serve the secondary wetland. Upon complete aggradation of the LCR, surface water would be used almost exclusively to maintain both wetlands. An off-reservation well field or the alternative, an off-stream reservoir, would be developed as part of the project to optimize supplemental surface water supplies.

WATER REQUIREMENTS

The estimated annual water requirements of a fully developed project would be as follows:

Primary Wetlands	1,500	Acre-Feet
Secondary Wetlands	4,000	
Total	**5,500**	**Acre-Feet**

WATER SUPPLY

Under a fully developed project, ground water would be expected to meet 200 to 300 acre-feet per year (AFY) of the demand (sacred lake and other portions of the primary wetland). Surface water would meet the balance (5,200 to 5,300 AFY) of the water demand.

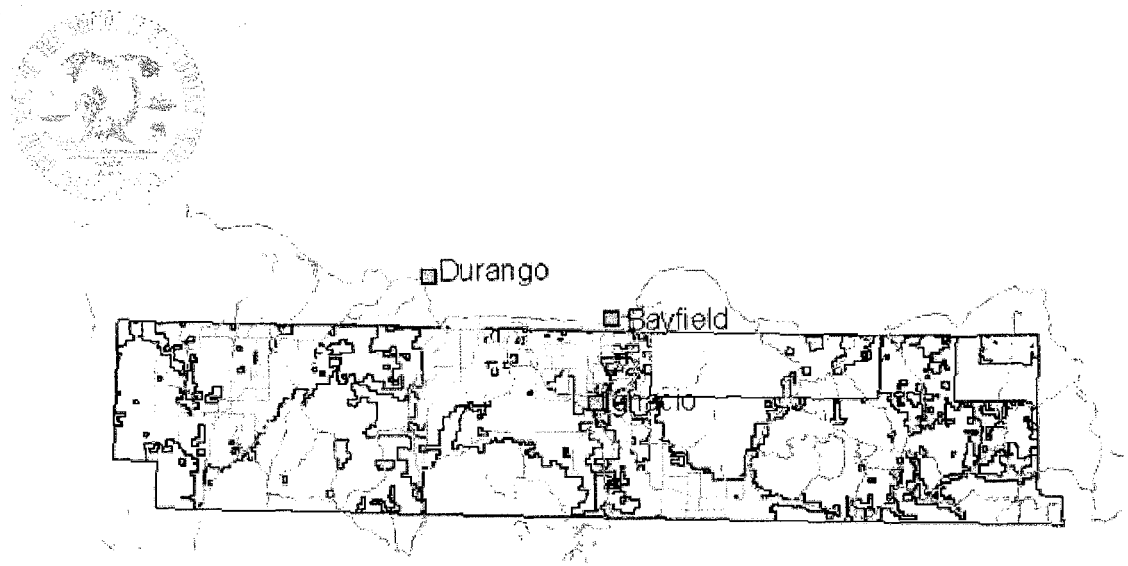
The sources of water for wetland maintenance include: (1) the LCR; (2) salvaged consumptive use of water from an area of land just upstream from the Reservation, referred to as the Meadows; and (3) water-right acquisitions.

IMPACT ON LITTLE COLORADO RIVER FLOWS

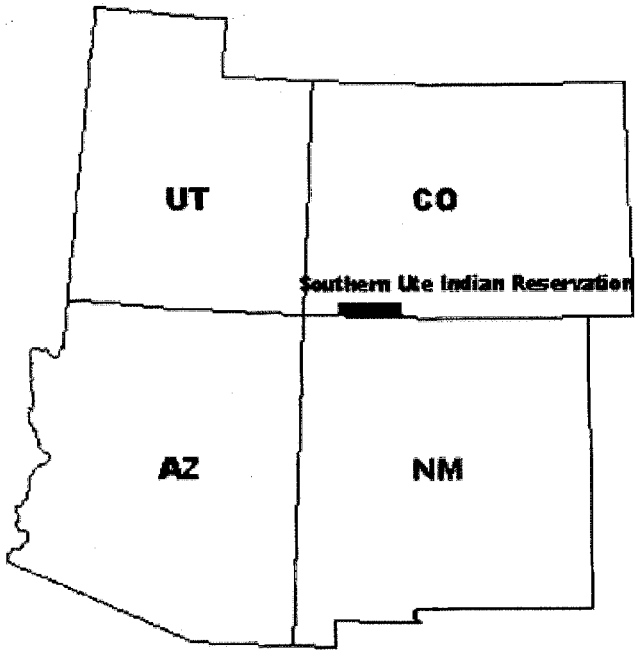
The proposed Zuni Heaven restoration project would not adversely impact the flow of the LCR downstream of Zuni Heaven. In fact, the proposed project would enhance the flow. Depletion of LCR flow would be primarily from the consumptive use of flow by the reestablished wetland vegetation. This depletion is more than offset by the removal of Zion Dam (part of proposed project), development of salvaged water, and the acquisition of upstream water rights. Flows would be enhanced, on average, by 1,700 AFY.

SETTLEMENT FUNDING REQUIREMENTS

The funding required to restore the Zuni Heaven wetland environment is $27.25 million, consisting of approximately $20.3 million for capital improvements, re-vegetation, and water acquisition, and $7.0 million for a trust fund to maintain the reestablished wetlands in perpetuity.



- Checkerboard of Land Ownership
  - 308,000 Acres (Trust)
  - 378,000 Acres (Fee Lands, including Nat'l Forest Land)



- Southwestern Colorado
- ~ 681,000 Acres

TESTIMONY OF

NORMAN BROWN,

BOARD MEMBER,

LYMAN WATER COMPANY

to the

Hearing of the

SENATE COMMITTEE ON INDIAN AFFAIRS

in support of

S. 2743

TO PROVIDE FOR THE

SETTLEMENT OF THE WATER RIGHTS CLAIMS

OF THE

ZUNI INDIAN TRIBE

IN NORTHEASTERN ARIZONA

JULY 18, 2002

WASHINGTON, D.C.

Chairman Inouye, Vice-Chairman Campbell, and Members of the Committee:

My name is Norman Brown. I live in St. Johns, Arizona. I am a farmer and rancher, and also serve on the Board of Directors of the Lyman Water Company, one of the largest water users and providers in the upper Little Colorado River area in Apache County, located in northeastern Arizona. With me today is my brother, David Brown, with the law firm of Brown & Brown. In addition to serving as Lyman Water Company's legal counsel, David serves on the Apache County Board of Supervisors.

In the late 1800s, the early settlers in the areas of St. Johns, Eagar and Springerville created various reservoirs and irrigation ditches supplied in part by water diverted from the Little Colorado River so that they would have a reliable and steady supply of water for their farming operations. The priority and amounts of water rights held by these pioneers, and the water companies that they formed, became the subject of a lawsuit initiated in 1904 before Judge W. S. Norviel, Commissioner of the Fourth Judicial District Court for the Territory of Arizona. In 1918, over a dozen years later, the Court issued what is now called "the Norviel Decree," which adjudicated claimed rights to the Little Colorado River.[1]

Among the adjudicated rights in the Norviel Decree were the water uses of the Meadows Reservoir Irrigation Company, which the Court recognized dated back to the years 1881 and 1894. Lyman Water Company, the successor in interest to the

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[1]Judgment and Decree entered in *The St. Johns Irrigation Company and The Meadows Reservoir Irrigation Company, Corporations, et al,* v *Round Valley Water Storage & Ditch Company, Springerville Water Right and Ditch Company, Corporations, et al,* in the Superior Court of the State of Arizona, in and for the County of Apache, on April 29, 1918, as modified and amended by orders dated March 17, 1921 and April 3, 1923.

Meadows company, formed its corporation in the early 1900s.

In 1911, Lyman Water Company constructed Lyman Reservoir and Dam (sometimes referred to as Lyman Lake) to store water for irrigation users in the St. Johns area. Its rights were recognized in supplements to the Norviel Decree that were entered in 1921 and 1923.

Today, 79 years after issuance of the 1923 Norviel Decree, the Lyman Water Company is much larger in scope. It has purchased the operations and water rights held by a number of small water companies listed in the original decree. It delivers water to approximately 200 shareholders of the company, who use that water to irrigate up to 2,500 acres of land.

Farming is an important economic activity for cash-strapped Apache County. Crops produced include alfalfa, pasture and other hay crops. As a matter of fact, I am a fifth-generation resident of Apache County, and continue the agricultural practices begun by my great, great grandfather in the St. Johns area. I currently manage a group of farms and ranches that include hundreds of acres of land, and rely on Little Colorado River water rights for the continued sustenance of these operations that provide employment and income to our communities.

The tourism to Lyman Lake is also an economic asset to northeastern Arizona. People from all over the state and the nation, for that matter, enjoy camping and fishing at Lyman Lake State Park, and enjoy learning more about the State's early history by viewing the wonderfully preserved petroglyphs that are a hallmark of the park.

Intrinsic to the Zuni Indian water settlement is the maintenance and

restoration of Zuni Heaven Reservation for its long-standing religious and sustenance activities that are just as important to the cultural heritage of Arizona and its Indian and non-Indian citizens as the prehistoric monuments and inscriptions preserved at Lyman Lake and along the Little Colorado River. With the assistance of St. Johns native Mo Udall and Senator Barry Goldwater, the spirituality and importance of Zuni Heaven was recognized by Congress through public law in 1984.[2] As neighbors to the Zuni Pueblo Indians, we also recognize the spiritual and life-giving significance of Zuni Heaven. The Zuni people wish to see the wetlands that have in the past been a primary component of Zuni Heaven restored. However, there have been legal impediments and complexities that have stood in the way of our being able to support the Zuni people through delivery of Little Colorado River water.

Federal conveyance of Zuni Heaven land to the Tribe did not take place until August 1984, 66 years *after* the Norviel Decree governing Little Colorado River water rights was entered. Obviously, the Norviel Decree did not address usage of water by the Zuni Indians who, along with the non-Indians, have claims to the waters of the Little Colorado River.

The continued development of the Little Colorado River basin, being dependent upon reliable allocation of Arizona's water resources, has been jeopardized by unresolved litigation regarding water rights based upon federal, state and other law. The validity of certain non-Indian claims to water and the liability of other water users and the

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[2]Pub. L. No. 98-498, Conveyance of Lands to the Zuni Indian Tribe, 98 Stat. 1533 (August 28, 1984), as amended by Pub. L. No. 101-486, 104 Stat. 1174 (October 31, 1990).

United States to the Zuni Indian Tribe have been raised. These issues are the subject of extensive and complex litigation pending in the Arizona state courts, litigation that has been costing hundreds upon hundreds of thousands of dollars for citizens in our part of the country who have historically faced economic challenges throughout the years. This litigation has been before the state court system since 1979 and is generally referred to as the Little Colorado River Adjudication.[3]

To alleviate the concerns of both the Zuni Indians and its non-Indian neighbors, Lyman Water Company and other parties have entered into negotiations for the settlement of the Zuni Indian Tribe's water rights. After four years, these negotiations have been fruitful and have led to the proposed settlement before you today. We respectfully approach you to help us in settling the water claims of the Zuni Indian Tribe and our communities by authorizing the settlement agreement.

From the prospective of Lyman Water Company's interests, there are a few points about the proposed settlement that I would like to summarize here.

First. The Norviel Decree Judge will conditionally approve the severance and transfer of 2,350 acre-feet per year of surface water subject to the Norviel Decree for use by the Zuni Tribe on the Zuni Heaven Reservation. This is important to the overall status of the Little Colorado River Adjudication that, as a matter of state law, recognizes the jurisdiction of the Norviel Decree Court over the areas covered in the Decree.

This 2,350 AFA will come from existing water rights available from the

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[3] *In re the General Adjudication of All Rights to Use Water in the Little Colorado River System and Source*, Apache County Superior Court Case No. 6417.

Little Colorado River, and will be measured at Lyman Reservoir. New applications to appropriate surface water in the Norviel Decree area will be denied unless those applications involve sources that are located in closed basins.

This 2,350 AFA will be used for the restoration of the wetlands in Zuni Heaven Reservation and for certain necessary uses on other parts of the Zuni reservation. The Tribe will not sell, lease, transfer or transport the water made available to it under this settlement to other lands or for other purposes, thus preserving the spirit and intent of this settlement and of the 1984 Congressional approval of the Zuni Heaven Reservation.

Second. Lyman Water Company will revise its operating procedures to comply with the water settlement. This may include procedures associated with the use of Lyman Lake for the pass-through, use or storage of Zuni Tribe surface water rights and the operation of Lyman Dam. Moreover, Lyman Water Company will consult with the Arizona State Parks Board regarding the terms and conditions on which they would agree to maintain a minimum pool in Lyman Lake for recreational use.

Third. Underground water is also subject to the settlement. The Zuni Tribe is entitled to pump 1,500 acre-feet of water per year from wells located on what is described as the "Zuni Pumping Lands." While the settlement provides that existing non-Indian groundwater wells will not be challenged by the Zuni Tribe or the United States in the Little Colorado Adjudication, the Tribe and the United States will have the right to challenge new non-exempt wells that are drilled in what is being called the "Zuni Protective Area." The purpose of restricting new well drilling within the protective area is to avoid injury to the wetlands restoration of the Zuni Heaven Reservation and to

ensure the availability of the 1,500 AFA of underground water to the Zuni Tribe. The proposed settlement provides for the exchange of information concerning state and federal water quality data and measurements by the non-Indian settlement parties to the Zuni Tribe. The Tribe will create a water code that will govern the use of its water on the reservation and that will promote and protect environmental quality in accordance with federal and state standards.

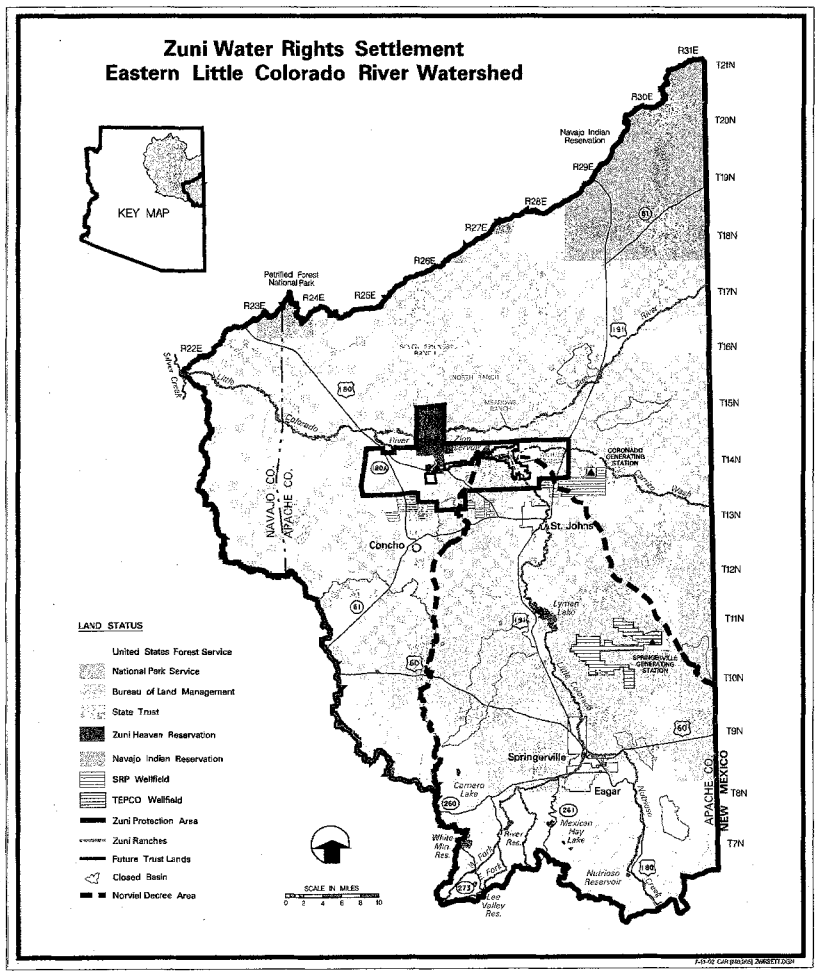
Fourth. The claims to water rights of the Zuni Tribe and the non-Indian settlement parties shall be catalogued and documented for purposes of settling this particular aspect of the ongoing Little Colorado River Adjudication. Furthermore, the Norviel Decree Court shall retain jurisdiction over the Norviel Decree and the settlement agreement. Hearings concerning administration of the Norviel Decree shall continue to be conducted in Apache County.

The Towns of Eagar and Springerville, also parties to this settlement, have asked me to appear before you today to voice their support of the Zuni Indian Tribe Water Rights Settlement Agreement and Act. Due to the disastrous effects of the recent Rodeo and Chediski fires that swept through over 460,000 acres of land in Apache and Navajo Counties, these towns are overwhelmed with an increased workload and costs and cannot at this time afford to send representatives to Washington D.C. I am attaching to my written testimony letters from both Eagar and Springerville expressing their support of this important water rights settlement.

The Lyman Water Company and the other parties to this settlement have worked diligently over the past four years in reaching this settlement, and will continue to

work with integrity and industry in contributing to the resolution of the Zuni Indian Tribe's water claims. We urge the Committee to help us in our efforts by approving Senate Bill 2743.

Thank you for your consideration of our views.


Zuni Water Rights Settlement
Eastern Little Colorado River Watershed
KEY MAP
Navajo Indian Reservation
Petrified Forest National Park
R31E
R30E
R29E
R28E
R27E
R26E
R25E
R24E
R23E
R22E
T21N
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NAVAJO CO.
APACHE CO.
NEW MEXICO
Concho
St. Johns
Springerville
Eagar
Lyman Lake
Nutrioso Reservoir
LAND STATUS
United States Forest Service
National Park Service
Bureau of Land Management
State Trust
Zuni Heaven Reservation
Navajo Indian Reservation
SRP Wellfield
TEPCO Wellfield
Zuni Protection Area
Zuni Ranches
Future Trust Lands
Closed Basin
Norviel Decree Area
SCALE IN MILES
0 2 4 6 8 10

TOWN OF SPRINGERVILLE

"A Community For All Seasons"

418 E. Main • P. O. Box 390 • Springerville, AZ 85938 • (520) 333-2656

July 10, 2002

Senate Select Committee on Indian Affairs
Washington, D.C.

Re: Settlement of the Water Rights Claims of the Zuni Indian Tribe in Northeastern Arizona

Chairman Inouye, Vice-chairman Campbell, and Members of the Committee:

The Town of Springerville respectfully urges the members of the Committee to endorse the Zuni Water Rights Settlements Act of 2002 providing for the settlement of the water rights claims of the Zuni Indian Tribe. Springerville is located in Apache County, in northeastern Arizona, and is a party to the proposed settlement.

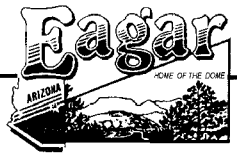
Unfortunately, our town is dealing with the aftermath of the disastrous Rodeo and Chediski fires that swept through Apache and Navajo Counties during the last two weeks of June. After viewing these fires, President Bush declared our county a federal disaster area. The wildfire emergency created a tremendous and unanticipated stress upon our town budget and staffing workloads and for that reason, we regret that we are unable to send a representative to Washington to personally express our support of this important water rights settlement. We endorse the testimony of Lyman Water Company.

Thank you for the opportunity to voice our support of the Zuni Indian Tribe Water Rights Settlement.

Respectfully submitted,

THE TOWN OF SPRINGERVILLE, ARIZONA

By: _____
Kay Dyson, Mayor



July 15, 2002

Senate Committee on Indian Affairs
Washington, D.C.

Re: Settlement of the Water Right Claims of the Zuni Indian Tribe in Northeastern Arizona

Chairman Inouye, Vice-Chairman Campbell, and Members of the Committee:

The Town of Eagar respectfully urges the members of the Committee to endorse the Zuni Water Rights Settlement Act of 2002, providing for the settlement of the water right claims of the Zuni Indian Tribe. Eagar is located in Apache County, in northeastern Arizona, and is a party to the proposed settlement.

Unfortunately, our town is dealing with the aftermath of the disastrous Rodeo and Chediski fires that swept through Apache and Navajo Counties during the last two weeks of June. After viewing these fires, President Bush declared our county a federal disaster area. The wildfire emergency created a tremendous and unanticipated stress upon our town budget and staffing workloads and for that reason, we regret that we are unable to send a representative to Washington to personally express our support of this important water rights settlement. We endorse the testimony of Lyman Water Company.

Thank you for the opportunity to voice our support of the Zuni Indian Tribe Water Rights Settlement.

Respectfully submitted,

THE TOWN OF EAGAR, ARIZONA

By: Sandra L. Burk
Sandra Burk, Mayor

TOWN OF EAGAR
P.O. Box 1300 • Eagar, AZ 85925-1300 • (520) 333-4128 • 174 South Main Street

TESTIMONY OF COMMISSIONER JOE CARTER

OF THE ARIZONA GAME AND FISH COMMISSION

ON

THE ZUNI INDIAN TRIBE SETTLEMENT ACT OF 2002

Thank you for the opportunity to present this testimony to the members of the Senate Indian Affairs Committee in support of this legislation. Arizona Game and Fish has worked tirelessly along with many others represented here today to achieve an historic agreement that is the foundation for the Zuni Indian Tribe Settlement Act of 2002. In authorizing the Settlement Agreement and making an appropriation to carry out the provisions of the agreement. This legislation builds on the success that has already been achieved, and in particular, it will allow Game and Fish and the Zuni Tribe to realize their mutually beneficial goals of restoring an ecologically important section of the Little Colorado River in eastern Arizona.

Game and Fish enthusiastically participated in the settlement negotiations that have led to the agreement. The process was an opportunity to enhance our existing efforts in the region to restore and maintain riparian habitats that are of critical environmental importance to wildlife and fisheries. Game and Fish and the Zuni Tribe will work cooperatively with shared resources to improve the condition of a large portion of the river.

Historically, the Little Colorado River was a low gradient perennial stream. For much of the past century, however, agricultural use, water diversions, upstream regulation of flow and channel straightening have impacted the river. For over ten years Arizona Game and Fish has been active in acquiring riparian habitats and water rights within the Little Colorado River drainage. Our objective has been to use water rights to protect minimum flows in the river, to encourage the reestablishment of native vegetation and to return the incised river channel and eroded banks to a more natural condition, all with the eventual goal of protecting sensitive wildlife species. We have found that diverse populations of wildlife have come back to these areas as the river flows became more predictable, the banks stabilized, and there was an increase in channel sinuosity and the native vegetation was reestablished.

The condition of two native species for instance have improved through Game and Fish efforts. These species are the Little Colorado River spinedace, a small native fish, and the Southwestern willow flycatcher, a neotropical migratory bird. Both species are federally listed under the Endangered Species Act. A portion of the Little Colorado River

watershed is critical habitat for the spinedace, which prefers perennial waters in cool, less turbid conditions. One of the requirements of the Recovery Plan for the spinedace is the establishment of refugia at various locations within the watershed. The Recovery Plan proposes that state and federal agencies acquire additional lands and water rights to help increase perennial flows and to restore the natural hydrograph. Accomplishing this objective will insure that spinedace populations and habitats become more secure, a necessary step to the eventual delisting of the species.

The Zuni Indian Tribe Settlement Act will provide needed support towards this effort. It will authorize significant funding for the Zuni Tribe to accomplish similar restoration projects on its property. The funding will be used for the Zuni Tribe to redevelop and maintain wetland conditions that previously existed within its Zuni Heaven Reservation. The Zuni restoration project at its Sacred Lake will include rebuilding the channel of the Little Colorado River, enhancing river flows and reintroducing native wildlife and plant species essential for the Tribe's religious and sustenance activities. Since pre-development times, the Zuni people have used an area in the Hunt Valley adjacent to the Little Colorado River for religious purposes. At one time, the area supported a lush riparian zone with natural springs and a lake. In 1984, Congress established the Zuni Reservation in Arizona, which encompasses this historically sacred area, and was set aside for the primary purpose of preserving the Zuni Tribe's water dependent activities. Game and Fish looks forward to a cooperative relationship with the Zuni Tribe and assisting the Tribe in its endeavor.

Under the terms of the Settlement Agreement, Game and Fish agrees as part of its continuing stream rehabilitation project to an expenditure of 6 million dollars over fifteen years to acquire additional land and water rights with the express commitment to transfer as much as 1,000 acre feet of water to the Zuni Tribe for use in its wetland restoration project. It is expected that Game and Fish will acquire water rights upstream of the Zuni Reservation, convert the water rights to instream flows to help restore riparian habitat on our own properties, and then transfer a portion of the water rights to the Zuni Tribe for eventual use downstream. The Settlement Agreement refers to these rights as excess rights, which is any amount of water that is not required to restore and maintain that portion of the river corridor on Game and Fish properties. Game and Fish will then sever and transfer these excess rights to the Zuni Tribe for similar uses on the Zuni Reservation. Agreed upon conditions of any Game and Fish transfer of water is that the water remain in the river channel until it reaches the Zuni's wetland project, and that the Zuni always use the water for some benefit to wildlife.

Game and Fish and the Zuni Tribe will also work cooperatively and share information so that the Zuni Tribe can be assured that any proposed acquisition that Game and Fish makes under the Settlement Agreement will likely result in some excess water that can be used at the Zuni's wetland project, and that the water quality in the Little Colorado River remains an acceptable standard.

Our anticipated source of funding for the Settlement Agreement is Arizona's Heritage Fund, which is a dedicated source of state money that Game and Fish administers for use in property acquisitions and projects that will benefit sensitive wildlife and habitats.

In addition to the wildlife conservation benefits of the agreement, Game and Fish will receive some measure of security in settling claims that adversely affect existing Game and Fish water rights. The parties have agreed under the agreement not to object to current attributes of Game and Fish water rights, which include rights in various recreational lakes in the region. This is important for the many people who enjoy sport-fishing in Arizona's White Mountains, and for the local economy that benefits from the increasing number of recreationists who use these lakes.

The passage of this legislation is vitally important to Arizona Game and Fish. The Settlement Act is the catalyst necessary to allow the important work in the Settlement Agreement to proceed. It represents the common goals to preserve our traditions, our values and our heritage, and for this, I urge your passage of this legislation.

STATEMENT
OF
NEAL MCCALEB, ASSISTANT SECRETARY–INDIAN AFFAIRS,
BEFORE THE SENATE INDIAN AFFAIRS COMMITTEE
ON S. 2743,
"ZUNI INDIAN TRIBE WATER RIGHTS SETTLEMENT ACT OF 2002"

JULY 18, 2002

Good morning Mr. Chairman and members of the Committee. I am Neal McCaleb, Assistant Secretary for Indian Affairs at the Department of the Interior. I appreciate the opportunity to appear before this Committee to discuss S. **2743**, a bill to authorize a water rights settlement for the Zuni Heaven Reservation, in northeastern Arizona.

The Administration generally supports the bill but has some concerns with certain provisions. The Administration has concluded, however, that the unique context presented by the Zuni lands in Arizona may warrant provisions of this nature with some modifications. For three reasons, the Zuni Settlement presents a unique situation. First, the tribal lands at issue are primarily for ceremonial use and generally will not be used as a homeland or to accommodate tribal members. Second, the water rights and land area involved are relatively small. Finally, the Settlement provides a benefit by allowing additional lands to be taken into trust and provides accompanying water rights. Based on the consideration of these unique circumstances, the Administration supports S. **2743** in concept. In general, many of the provisions found in S. **2743** are the exception rather than the rule and may not necessarily be appropriate in other Indian water settlements.

In general, the settlement reached by the parties is the product of a cooperative effort over the last five years among the Zuni Tribe, the State of Arizona, the United States, the Salt River Project and many other local water users. This effort was aided greatly by the work of the Honorable Michael C. Nelson, Presiding Judge for Apache County Superior Court, who has mediated the settlement discussions. The Settlement Agreement has been signed by the Tribe and is pending formal signature by the other 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 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 S.**2743**, which would ratify that agreement, are the fruits of that negotiation.

The Draft Legislation (S.2743)

S. **2743** approves and authorizes federal participation in the main settlement agreement, which includes three subsidiary agreements with individual parties. When fully implemented, this

agreement would constitute a final settlement of the water rights claims of the Zuni Tribe and the United States' claims on behalf of Zuni. The settlement agreement will secure a water budget of approximately 5,500 acre-feet per year, including both surface water and groundwater, for the rehabilitation and restoration of the Sacred Lake, wetlands and riparian areas of the Reservation. The surface water component of this water budget would be secured through the purchase of state law based water rights from willing sellers, as well as through flood flows of the Little Colorado River. To supplement surface flows in times of drought and to allow for the initiation of restoration activities while surface water rights are acquired, the settlement provides for a groundwater right of 1,500 acre feet per year.

The settlement involves significant cost sharing and cooperation among 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 to 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. The federal contribution of $19.25 million to the settlement would be authorized. These federal 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.

We believe the federal contribution contemplated in S. **2743** is appropriate to facilitate resolution of the Zuni Tribe's claims. The settlement is designed to release the United States from any potential damage claims that might be asserted by the Tribe and to relieve the government of the

obligation to litigate, at significant cost and over many years, the Tribe's water rights claims. At the same time, a final 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.

Concerns with the Draft Legislation

The Administration in concept supports the settlement set forth in S.**2743**, but has a few areas of concern with the bill as drafted. We are committed to working with the Committee, Senator Kyl, and the settlement parties during the upcoming August recess in this regard to reach a mutually agreeable solution.

We believe through working with the Committee and Senator Kyl, we can improve the following areas of the bill: Our first area of concern are the water quality waivers. The broad waivers within S. **2743** need to be clarified to avoid future litigation regarding the distinction between the sovereign capacity and trust capacity of the United States and to safeguard the authority of the United States enforcement authority. Second, the provisions regarding rights-of-way across tribal trust land conflict with established law and may lead to unnecessary litigation. Third, the United States opposes any additional waiver of its sovereign immunity as there exist sufficient avenues to address the interpretation or enforcement of S.**2743**. Fourth, S. **2743** raises a concern regarding the authority of the United States to remove actions to a federal court. Finally, S. **2743** treats land taken into trust as state lands for purposes of environmental regulation and permitting, contrary to current law and practice. The United States believes, however, that the intentions of

the parties to the Settlement Agreement can be addressed through alternative language while reducing litigation risk.

Conclusion

Negotiated agreements among Indian tribes, states, local parties, and the federal government, in general, are 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. On balance, the very unique circumstances of the Zuni and their lands and the benefits of this settlement, with certain modifications, outweigh concerns regarding these unusual aspects of this settlement.

We appreciate Senator Kyl's commitment to working with us and look forward to working closely with the Committee and the settlement parties to refine and clarify the language of S. 2743 to ensure that this legislation can be enacted into a law that advances the interests of all parties.

TESTIMONY OF

DAVID C. ROBERTS

MANAGER, WATER RIGHTS AND CONTRACTS

SALT RIVER PROJECT

to the

Hearing of the

SENATE COMMITTEE

ON INDIAN AFFAIRS

In support of S. 2743

TO PROVIDE FOR THE

SETTLEMENT OF THE WATER

RIGHTS CLAIMS OF THE

ZUNI INDIAN TRIBE TO

SURFACE WATER AND GROUNDWATER

IN THE LITTLE COLORADO

RIVER BASIN, ARIZONA

JULY 18, 2002

WASHINGTON, D.C.

1

Mr. Chairman Inouye, Vice Chairman Campbell, and members of the Committee:

My name is David C. Roberts. I am the Manager of the Water Rights and Contracts Department of the Salt River Project ("SRP"), a large, multi-purpose reclamation project authorized and constructed in central Arizona under the Reclamation Act of 1902. SRP is composed of the Salt River Valley Water Users' Association and the Salt River Project Agricultural Improvement and Power District. Pursuant to the Reclamation Act, as well as various contracts with the United States, the Association, a private water delivery organization, and the District, a political subdivision of the State of Arizona, operate six storage reservoirs and dams on the Salt and Verde Rivers in central Arizona. Water from these rivers is impounded in SRP's storage reservoirs for subsequent delivery to municipal, industrial and agricultural water users in the Phoenix metropolitan area, where over half of the State's population resides. SRP also provides power to more than 775,000 consumers in the Phoenix area, and in other rural areas of the State. Some of this power is generated through the operations of SRP's reservoirs. The remainder is supplied primarily by coal-fired power plants either operated by the District or in which the District has an ownership interest.

One such plant owned and operated by the District is the Coronado Generating Station ("CGS"), located near St. Johns, Arizona, in the Little Colorado River Basin. CGS was constructed in the mid-1970s with a generation capacity of 785 megawatts. The District commenced operation of CGS in 1980. Today, CGS employs 206 people, approximately 20% of the work force in St. Johns. Electricity generated at CGS is used by consumers throughout SRP's power service area, and accounts for approximately 20% of all electricity generated at SRP facilities.

Water for CGS is supplied by two wellfields located near the plant site. Water withdrawn from these wellfields for use at CGS totals approximately 10,500 acre-feet annually. The Little Colorado River is located approximately 7 miles west of CGS.

In 1984, Congress established the Zuni Heaven Indian Reservation on the Little Colorado River about 15 miles downstream from CGS. Congress enlarged the Reservation in 1990 to include additional lands on the Little Colorado River, near the two wellfields supplying CGS. The lands on the newly created Zuni Heaven Reservation had been used by the Tribe many years previously for traditional religious and cultural purposes. The lands and riparian areas encompassed by the current Zuni Heaven Reservation are considered sacred by the Tribe and the restoration and maintenance of the Little Colorado River and its riparian vegetation is integral to the Tribe's continued use of the lands for religious purposes.

The Tribe's ability to use the resources on the Zuni Heaven Reservation for religious and cultural purposes was threatened by reductions in groundwater levels and surface water flows in the Little Colorado River occurring for a variety of reasons over the past 100 years. Most of the current uses of groundwater and surface water from the Little Colorado, including SRP's pumping from wells to supply CGS, predated Congress' creation of the Zuni Heaven Reservation in 1984 and its expansion in 1990, and arguably would have priority over the Tribe's use of water from the Little Colorado River Basin during times of shortage. But the arguable seniority of these upstream water rights to those of the Tribe was called into question in 1994, when the United States, acting through the Justice Department, asserted a claim in the Little Colorado River Adjudication for the Zuni Heaven Reservation based on the Tribe's use of the lands since "time immemorial." This filing crystallized the already apparent conflict between the Tribe's water uses on the Zuni Heaven Reservation and those of the surrounding

communities, setting the stage for the water settlement negotiations between these parties, which commenced in 1997.

After five years of negotiations, the parties have reached a settlement, which is embodied in the legislation before this Committee today. The Settlement resolves all outstanding water related litigation between the Zuni Tribe and the other settling parties and settles, once and for all, the water rights of the Tribe to surface water and ground water in the Little Colorado River Basin. The Settlement also provides the Tribe with essential resources to restore and maintain the riparian areas on its Reservation that have been eroded over the past century. Certain integral components of the Settlement are discussed below.

First. Federal, State and local funding will be used for the Tribe's acquisition, on a voluntary basis, of upstream rights to surface water, construction and implementation of its riparian restoration project and for other purposes authorized by the Settlement Agreement. Water made available to the Reservation through these purchases will enable the Tribe to reestablish and maintain the wetland environment that previously existed within the Reservation, including restoring water to a sacred lake on the Reservation.[1] As part of the Settlement, SRP will provide the Tribe with $1 million, to be used towards providing a water supply for the sacred lake, as well as for the re-establishment of riparian vegetation on the Zuni Heaven Reservation. Additionally, under a cooperative arrangement between the Tribe and the Arizona Game and Fish Department, the Department will spend $5 million over the next 15 years to acquire upstream lands with irrigation rights or surface water rights alone, for inclusion in its ongoing Stream Rehabilitation Program. The purposes of this program are to provide habitat for

[1] A condition precedent to the enforceability of the Settlement is the Tribe's acquisition with these funds of either surface water rights, or options to purchase surface water rights, sufficient to provide at least 2,350 acre-feet annually to the Reservation for riparian restoration uses.

endangered, threatened or candidate species and other wildlife and to enhance stream flow. Up to 1,000 acre-feet of the water acquired by the Department under this arrangement will be transferred to the Tribe for instream uses on its Reservation.

Second. The Tribe and the other settling parties have stipulated to the Tribe's right to continue existing surface water uses on the Reservation, on lands held in trust for the benefit of the Tribe and on lands held in fee by the Tribe. The Settlement also recognizes the Tribe's right to 5,500 acre-feet of the unappropriated surface flood flows in the Upper Little Colorado River for wetlands, irrigation and cultural uses on the Zuni Heaven Reservation, as well as the Tribe's right to pump and use groundwater on the Reservation.

Third. The Settlement Agreement, and the proposed legislation before this Committee, authorizes the United States to take certain lands into trust for the Tribe. The lands to be taken into trust are located along the Little Colorado River, east of the Reservation, and are important components of the riparian restoration project to be undertaken by the Tribe under the Settlement. The taking of these lands into trust raised a number of contentious issues during the water settlement negotiations between the Tribe and local parties. Chief among these issues was the local parties' objection to any reduction in the existing, already small tax base for Apache County, which might ordinarily result from these lands having trust status. Through a delicately drafted set of conditions and limitations set forth in the Settlement Agreement, however, the parties were able to reach a compromise, permitting the taking of these lands into trust, while still assuring the continuation of the continuing county tax base.

Fourth. In exchange for these benefits to the Tribe, the Settlement provides a broad waiver of the Tribe's claims to groundwater and surface water from the Little Colorado River Basin, and permits the continuation of existing surface water and groundwater uses in the basin.

The Settlement also waives the Tribe's objections to future water uses within the Basin, with the exception of groundwater uses within a geographically defined area surrounding the Reservation, referred to as the "Zuni Protection Area." Groundwater uses within the Zuni Protection Area may be initiated, by separate agreement with the Tribe, subject to certain quantity limitations set forth in the Settlement.

Fifth. Pursuant to the Settlement, the Tribe and the United States will also enter into a separate, supplemental agreement with the District addressing the terms and conditions that apply to the District's withdrawal of groundwater for use at CGS, and providing for the monitoring of the effects of groundwater use at CGS on static water levels on the Reservation. Under its separate agreement with the Tribe and the United States, the District has agreed to refrain from drilling new or replacement wells within a geographically defined area between the Reservation and existing wellfields for CGS, in order to minimize the impacts of CGS wells on water supplies for the Reservation. The Tribe has reciprocally agreed to restrict its pumping of groundwater in an area referred to as the "Zuni Exclusion Area," in order to minimize impacts on water supplies for CGS. The Zuni Exclusion Area is generally located south of the Reservation in lands held in fee by the Tribe, and surrounds the SRP wellfields supplying CGS. In addition, the District will undertake a groundwater quality monitoring program in an effort to identify future water quality changes in the area near the Zuni Heaven Reservation lands.

The Zuni Indian Tribe and the other parties to this Settlement have worked diligently, and will continue to do so, to achieve the numerous compromises and contributions necessary for the settlement of the Tribe's water rights claims. The legislation before this Committee embodies the hard work of these parties to achieve a result that is beneficial to both the Tribe and local water users, enabling them to use a scarce resource cooperatively, with consideration

for the needs of both sides. The parties presently urge this Committee to bring the Settlement one step closer to completion by approving Senate Bill 2743.

Thank you for your consideration of these views.

SUPERIOR COURT OF ARIZONA
Apache County
MICHAEL C. NELSON
Presiding Judge

Apache County Courthouse • Post Office Box 667 • 70 West 3rd South • St. Johns, AZ 85936-0667
Phone: (928) 337-7555 • Facsimile: (928) 337-7586

July 18, 2002

Senator Daniel K. Inouye, Chairman
Senator Ben Nighthorse Campbell, Vice-Chariman
U.S. Senate Committee on Indian Affairs
Washington, D.C. 20510-6450

Subject: Zuni Tribe Water Rights Settlement Hearing

Dear Chairman Inouye and Vice Chairman Campbell:

Thank you for the invitation to present testimony to the Committee on Indian Affairs concerning the Zuni Water Rights Settlement. Unfortunately, I had previously made an unbreakable commitment to chair settlement negotiations in *New Mexico ex rel. State Engineer v. Aamodt*, a water rights adjudication in New Mexico, and will be unable to attend the Committee hearing.

I have been the Settlement Judge in the Little Colorado Stream Adjudication in Arizona since 1993. I first met with the Zuni Council in 1995 concerning settlement possibilities. The Pueblo submitted the first concrete settlement proposal in March, 1997, and settlement negotiations have proceeded, with some vigor, since then.

The Agreement that is before you is the result of more than five years of intense negotiation. Compromises were made by all sides to arrive at a final Agreement. I believe that the final settlement is fair to all parties and will benefit all the citizens in our part of the State.

Part of my responsibilities as Presiding Judge in Apache County is the administration of the Norviel Decree, a water rights adjudication that went to a final decree in 1918. This settlement works within the framework of that Decree, and provides for the transfer of the existing decreed rights to the Zuni Pueblo. This should cause minimal disruption in the way we have distributed water over the past eighty-five years.

As you know, the uncertainty of the tribal and federal reserved water rights claims has created a cloud over the property rights of the non-Indians in the areas impacted by these claims. This settlement is a step toward removing that cloud. Given

our physical situation, namely the close proximity of the Zuni Heaven Reservation to the existing users in the Norviel Decree area, this is a significant step indeed.

The terms of the settlement will allow the Zuni Pueblo to proceed with their plans to restore the natural conditions of the Zuni Heaven Reservation to pre-conquest conditions. I feel this restoration will benefit everyone in this area, by increasing natural stream flows in the Little Colorado River and by encouraging the growth of native vegetation and the propagation of native species of fish and birds.

I urge your favorable consideration of this settlement.

Sincerely,

Michael C. Nelson

MICHAEL C. NELSON
Presiding Judge

MCN/bjs

○