

**STATEMENT OF THE
UNITED STATES DEPARTMENT OF THE INTERIOR
SENATE COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE
ON
S. 3300, HUALAPAI TRIBE WATER RIGHTS SETTLEMENT ACT OF 2016**

SEPTEMBER 14, 2016

Thank you for the opportunity to provide the Department of the Interior's position on S. 3300, the Hualapai Tribe Water Rights Settlement Act of 2016, which would approve and provide authorizations to carry out a settlement of the water right claims of the Hualapai Tribe in Arizona (Tribe). The Department has significant concerns about the Federal costs of the settlement, which totals approximately \$173.5 million in 2016 dollars, and may also underestimate its true cost. In addition, the Department is unable to conclude at this time that a pipeline bringing water from the Colorado River to remote locations on the Hualapai Reservation is the best and least costly alternative to supply water to the Hualapai Reservation (Reservation) communities and economic development projects. Therefore, the Department cannot support S. 3300 as introduced.

I. Introduction

First, we would like to begin by acknowledging that disputes over Indian water rights are expensive and divisive. In many instances, Indian water rights disputes, which may last decades, are tangible barriers to social and economic progress for tribes, and significantly hinder the rational and beneficial management of water resources. Settlements of Indian water rights disputes break down these barriers and help create conditions that improve water resources management by providing certainty as to the rights of all water users who are parties to the dispute. That certainty provides opportunities for economic development, improves relationships, and encourages collaboration among neighboring communities. This has been proven time and again throughout the West as the United States has pursued a policy of settling Indian water rights disputes whenever possible. Indian water rights settlements are also consistent with the federal trust responsibility to American Indians and with federal policy promoting Indian self-determination and economic self-sufficiency.

For these reasons and more, for nearly 30 years, federally recognized Indian tribes, states, local parties, and the federal government have acknowledged that negotiated Indian water rights settlements are preferable to the protracted litigation over Indian water rights claims. This Administration supports the resolution of Indian water rights claims through negotiated settlement where possible, consistent with the *Criteria and Procedures for the Participation of the Federal Government in Negotiations for the Settlement of Indian Water Right Claims* ("*Criteria and Procedures*"). These principles include that the United States participates in water

settlements consistent with its role as trustee to Indians; that Indian tribes receive equivalent benefits for rights which they, and the United States as trustee, may release as part of a settlement; that Indian tribes should realize value from confirmed water rights included in a settlement; and that settlements should include appropriate cost-sharing by all parties proportionate to the benefits received by each from the settlement.

II. Historical Context

A. The Hualapai Reservation and the Hualapai Tribe

The aboriginal homeland of the Hualapai Tribe is the Grand Canyon and plateau region to the south of the Grand Canyon. The main Reservation was established by Executive Order on January 4, 1883, and encompasses approximately 992,462 acres of tribal trust lands located in northwestern Arizona. The tribal headquarters is Peach Springs, Arizona, near the southern boundary of the Reservation. The entire northern boundary of the main Reservation is 108 miles along the Colorado River in the Grand Canyon. In addition to the main Reservation, there is also a 60-acre Executive Order Reservation located approximately 40 miles south of the main Reservation.

According to the 2007 population estimates, the population of the Reservation was 1,776. The total tribal membership in 2010, including members living off the Reservation, was 2,300. The majority of on-Reservation residents reside in or near Peach Springs.

Employment on the Reservation primarily consists of recreation, tourism, and tribal and federal government services. Tourism is driven primarily by activities related to the Grand Canyon: the Tribe's tourism center, Grand Canyon West; and river rafting in the Colorado River. The Tribe also owns and operates the Hualapai Lodge, located in Peach Springs.

Opened in 2007, Grand Canyon West includes the Skywalk, a horseshoe-shaped glass-bottom walkway that extends out from the rim of the Grand Canyon. Annual visitation at Grand Canyon West has steadily increased since its opening, and exceeded one million visitors for the first time in 2015, making it the primary economic driver on the Reservation.

B. Water Resources of the Hualapai Reservation

The main Reservation is located primarily in the Colorado River basin with a small portion in the Upper Verde River basin. The majority of streams on the Reservation are ephemeral. Several springs discharging from the regional aquifer at the bottom of canyons can provide baseflow for short perennial reaches, which ultimately discharge to the Colorado River. The largest of these perennial streams are Diamond Creek and Spencer Creek, with mean annual flows of over 3,700 acre-feet per year (afy) and about 4,600 afy, respectively. The springs that feed these streams are remotely located in deep canyons and are not practically accessible for use by the Tribe. Smaller springs on the plateaus provide water for livestock purposes.

Groundwater resources on the Reservation occur in varying degrees of magnitude, depending on the type and location of water-bearing zones. The Department is conducting groundwater studies and is preparing to perform two additional groundwater studies in an effort to accurately characterize the groundwater resources on and near the Reservation.

The major water use on the Reservation occurs in two locations: The town of Peach Springs and Grand Canyon West. Three wells serve the Peach Springs public water supply system and are located approximately 6.5 miles southwest of the town. The current level of water use in Peach Springs is approximately 250 afy. All three supply wells produce water from the Truxton aquifer, an aquifer in the alluvial sand and gravel and lake deposits of Truxton Valley that extends off the Reservation. Water for Grand Canyon West is supplied via a pipeline from a well approximately 30 miles away. Current water use at Grand Canyon West is 40 afy. Current cumulative water use for the Reservation is around 300 afy.

III. Proposed Hualapai Tribe Settlement Legislation

A. Negotiation

The Tribe claims water rights in the Colorado, Verde, and Bill Williams River basins. Negotiations regarding potential settlement of the Tribe's water rights claims have been ongoing since 2011, when the United States established a negotiating team to negotiate a comprehensive settlement of all the Tribe's water rights within Arizona. The settlement was divided into two phases, the first phase addressed certain water rights in the Bill Williams River basin and resulted in the Bill Williams River Water Rights Settlement Act of 2014, P.L. 113-223. The second phase, addressed in S. 3300, covers additional water rights in the Bill Williams River basin, as well as the remainder of the Tribe's water rights in the Colorado River basin and the Verde River basin.

S. 3300 would resolve the Tribe's water rights claims in Arizona; ratify, and confirm the Hualapai Tribe water rights settlement agreement among the Hualapai Tribe, the United States, the State of Arizona, and others; and authorize funds to implement the settlement agreement. The bill would reallocate 4,000 acre-feet of fourth-priority Central Arizona Project (CAP) non-Indian agriculture priority water to the Tribe to be used for any purpose on or off the Reservation within the lower Colorado River basin in Arizona.

S. 3300 authorizes the appropriation of a total of \$173,500,000 for the following purposes:

- \$134,500,000 to design and construct the Hualapai Water Project (Project), consisting of approximately 70 miles of pipeline from the Colorado River to Peach Springs and Grand Canyon West, two water treatment plants, several pumping plants, and other appurtenant features with an overall capacity designed to deliver 3,414 afy;

- \$32,000,000 for the Hualapai OM&R Trust Account, to be used by the Tribe for operation, maintenance, and replacement of the Project;
- \$5,000,000 for the Secretary of the Interior for operation, maintenance, and replacement of the Project until such time that title of the Project is transferred to the Tribe by the Secretary; and
- \$2,000,000 for the Secretary to provide technical assistance to the Tribe, including operation and management training for the Project.

IV. Department of the Interior Positions on S. 3300

While the Department has a record of strong support for Indian water rights settlements, the Department has significant concerns about S. 3300 and does not support the legislation for the reasons stated below.

The Department is concerned by the disparity between the level of funding called for in S.3300 and the relatively small amount of water to be delivered to the Tribe through the Project. The Department is also concerned about the scope and size of the Project given current and projected water uses on the Reservation. In addition, we believe the cost to construct a 70-mile pipeline from the Colorado River lifting water over 4,000 feet in elevation will be significantly higher than the amount authorized in S. 3300. Moreover, we believe that the proposed infrastructure project is likely to generate substantial litigation on multiple fronts.

The *Criteria and Procedures* require us to analyze whether the settlement “include[s] non-Federal cost sharing proportionate to the benefits received by the non-Federal parties.” In this instance, the State parties have failed to make earnest efforts to provide for adequate cost-sharing relative to the benefits they will receive in this Indian water rights settlement.

The Department is concerned that S.3300 would set a precedent requiring tribes to pay CAP costs that are unrelated to settlement benefits. This settlement would be the first in Arizona that includes CAP water but does not use any portion of the CAP operating system for water deliveries to the Reservation. Despite lack of use of the system, S. 3300 would obligate the Tribe to pay the CAP fixed OM&R charges for all water deliveries. Under such an arrangement, water delivered to the Reservation would incur two OM&R costs – the fixed CAP OM&R charge and the Tribe’s own Project OM&R costs. The Department does not support this “double charge” for water deliveries.

S. 3300 also includes two provisions that the Department continues to have concerns about: a broad waiver of sovereign immunity and a restriction limiting all future land into trust acquisitions to be accomplished only through acts of Congress. While other Arizona Indian water rights settlements contain somewhat similar provisions, the Department has opposed such provisions in the past and continues to do so. The sovereign immunity waiver is even broader than prior provisions and is far broader than it needs to be for any reasonable purpose.

As a final matter, the Department is deeply concerned about provisions of S.3300 and the settlement agreement that prohibit the Tribe and the United States from objecting to any use of groundwater outside the boundaries of the Reservation even if those uses interfere with acknowledged Federal reserved groundwater rights. This provision represents significant risks to both the Tribe and the United States and implicates Federal trust responsibilities.

V. Conclusion

S. 3300 reflects a significant effort by the Tribe and the state parties to settle the Hualapai Tribe's water rights through negotiation. The Department shares this goal and is committed to working with the Tribe and the parties to reach a final and fair settlement of the Tribe's water rights claims that we can fully support.