

**TESTIMONY OF TANYA LEWIS, CHAIRWOMAN,
YAVAPAI-APACHE NATION
BEFORE THE
SENATE COMMITTEE ON INDIAN AFFAIRS
SEPTEMBER 25, 2024**

Good afternoon, my name is Tanya Lewis, I am the Chairwoman of the Yavapai-Apache Nation. I want to thank the Committee for the opportunity to testify and thank my fellow Tribal leaders who are here today and wish them well as they work to resolve their critical water issues. The Yavapai-Apache Nation strongly supports S.4705, the Yavapai-Apache Nation Water Rights Settlement Act of 2024 (Settlement) and the *Tú n̄l̄j̄n̄ichoh* Water Infrastructure Project that will be developed as part of this Settlement. I include with this written testimony a number of letters of support from State stakeholders and environmental organizations that we request be included in the record of this hearing.

Our Reservation, known as the “Yavapai-Apache Reservation” (Reservation), is located in central Arizona’s Verde Valley. Because of the failed Indian policies of the United States during the mid to late 1800’s and other historic disparities, our Reservation lands are non-contiguous and comprised of five different “Districts” (the Middle Verde District, the Camp Verde District, the Clarkdale District, the Rimrock District, and the Montezuma District).

The Verde River, which is one of the last remaining perennial rivers in Arizona, runs through the heart of the Middle Verde and Camp Verde Districts of our Reservation. The Settlement has taken many years to accomplish, and each generation of leadership for the Yavapai-Apache Nation (Nation) has played a role in the Nation finally reaching a comprehensive settlement to confirm our water rights and help protect the health and vitality of the Verde River and our local aquifers.

To the *Yavepé* (Yavapai) the Verde River is known as *Hatayakehela* (“big river”), and to the *Dilzhé’é* (Apache – being one of the numerous subgroups or bands comprising the “Western Apache”) the Verde River is known as *Tú n̄l̄j̄n̄ichoh* (“big water flowing”). The Verde River and its sources are within the aboriginal homeland of the *Yavepé* and *Dilzhé’é* people, which, as discussed in greater detail below, spans more than 16,000 square miles across what is now central and western Arizona.

The Verde River and its associated groundwater resources are the primary sources of water used by the Nation for all municipal, commercial, industrial, agricultural, and recreational uses. We also have significant cultural and religious interests in the Verde River Watershed and in the many springs and other water sources that supply the Verde River and its tributaries. These water sources support the Bald Eagle and other wildlife that are important to the culture and lifeways of the Nation. The Verde River’s water sources, and the trees and plants that are nurtured by the river, all play an essential role in the cultural and religious practices of the Yavapai and Apache People – practices that help preserve the identity and health of the Nation to this day.

It is also important to note that the Verde River and its perennial tributaries, like Oak Creek, Wet Beaver Creek, and West Clear Creek, provide diverse public recreational opportunities, including boating, kayaking, hunting, fishing, birding, hiking, picnicking, and photography. Because of this, the Verde River is a *major economic driver* for the rural communities located throughout the watershed, including the Yavapai-Apache Nation and our neighboring communities in and around the Verde Valley, including the City of Sedona, the City of Cottonwood, the Town of Camp Verde, and the Town of Clarkdale. In short, the continued reliable flow and health of the Verde River and its tributaries (and the groundwater sources that sustain these systems) is crucial to the Nation's present and future livelihood in its permanent Tribal homeland under *Winters v. United States*, 207 U.S. 564, 565, 28 S. Ct. 207, 208 (1908).

The Nation's Settlement Agreement will finally and fully resolve a host of critical water issues for the Nation by, among other things, providing water certainty for the Nation and our neighbors in the watershed and avoiding further costly litigation in Arizona's Gila River Adjudication Proceedings over the Nation's water rights and those of the United States on our behalf. It will also support the capture, treatment, and reuse of effluent for use on the Nation's farming operation in lieu of groundwater pumping and provide for the importation of a *renewable water supply* from the C.C. Cragin Dam and Reservoir that will further limit groundwater pumping that threatens the longevity of local aquifers and a healthy flowing Verde River.

To understand the importance of the Settlement, it is important to understand the Nation's history and the longstanding relationship that the *Yavepé* and *Dilzhé'é* people have to the Verde River and the Verde Valley. I will briefly review our history next in my testimony. I will also discuss the importance of this settlement as a means to finally fulfill the United States' obligation to secure the permanent homeland for my people, including a reliable and permanent source of water that all people need to have secure economic future. After this, I will provide a summary of the Settlement Agreement and S. 4705.

HISTORY OF THE YAVAPAI-APACHE NATION

The Yavapai-Apache Nation of the Camp Verde Indian Reservation is a federally recognized Indian Tribe pursuant to the Apache Treaty of 1852, 10 Stat. 979 and Section 16 of the Indian Reorganization Act of 1934, P.L. 73-383, 48 Stat. 984 *et seq.* Our first constitution was approved in 1937 and was most recently amended in April 1992. The Nation is comprised of two distinct cultures, the *Yavepé* people and the *Dilzhé'é* people.

Our aboriginal homeland spans more than 16,000 square miles across central Arizona. A map of our territory is attached to this testimony, and we ask that it be included in the record. Following the 1848 Treaty of Guadalupe Hidalgo, in which Mexico ceded the lands that comprise most of the Southwestern United States, our territory became part of the United States. Notwithstanding this, our lifeways and culture were left largely unaffected by the westward expansion of the United States until 1863, when gold was discovered in our homeland. This discovery led to a rush of people claiming our land, using our water, and killing the game our people needed to survive. The armed conflict between our people and the occupiers became part of a much larger conflict referred to by historians as the "Apache Wars" which lasted until 1890.

Intent on bringing an end to the conflict, the United States established a series of military camps across Arizona as well as reservations where a federal policy of concentrating and confining our people within a defined territory was imposed. President Grant established the Camp Verde Indian Reservation in 1871 along with the army fort known as Camp Verde. Our people were told then that our homeland would be reduced to the boundaries of the new reservation. Because the Verde River has always been necessary to sustain our people, the 1871 Camp Verde Reservation was purposefully established to encompass forty-five miles up and down the Verde River and ten miles on each side of the Verde River, totaling 900 square miles. This left our people with 6% of what had been our aboriginal territory since the beginning of time. Yet, this 900 square mile Reservation was to be our new permanent homeland, where, we were told, we would remain undisturbed by non-Indian settlers. On this supposed “permanent” homeland, we took advantage of its proximity to the Verde River to become productive and profitable farmers. In fact, an irrigation ditch we hand dug in 1874 is still in operation today as the Cottonwood Ditch.

Unfortunately, as was all too often the case throughout Indian Country in 19th century America, our Nation’s prosperity would not be allowed to continue. Due to pressure to open the Camp Verde Reservation to settlement by non-Indian farmers, ranchers, and miners, and from profiteers who wanted to quash the competition from our successful farms and ranches, the United States was convinced to open up our remaining lands to non-Indian settlement by forcibly removing our people from the Camp Verde Reservation and imprisoning us on the San Carlos Apache Reservation – approximately 180 miles away in southeastern Arizona.

Beginning on February 27, 1875, without consent or consideration, 1,476 of our people, young and old, pregnant, and infirm, were force marched by federal troops as prisoners of war 180 miles over the Mazatzal Mountains, including several stream crossings at high water in the dead of winter. When efforts were made to try and persuade the Special Commissioner of Indian Affairs in charge of our removal to take a less treacherous route around the mountains by means of wagons and horses, he responded by saying “They are Indians, let the beggars walk.” Corbusier, William T, *Verde to San Carlos*, p. 267 (1971). More than 100 of our people died enroute to San Carlos due to exposure, trauma, childbirth, and drowning. Today, we solemnly commemorate this date every year as Exodus Day, in honor of our ancestors and as a reminder of the suffering they endured on that two-month march. On April 23, 1875, President Grant terminated the Camp Verde Reservation and returned it to the public domain. This allowed non-Indians to build their lives and communities using the land, water, and other resources that were once guaranteed to my people by the United States.

After the surrender of Geronimo’s band of Chiricahua Apache in 1886, the Army began issuing permits allowing our people to work off the San Carlos Reservation and gather traditional foods in our original territory. By 1890, the Army stopped issuing permits and my people started to migrate back to our original homelands. Once given this opportunity, the *Yavepé* and *Dilzhé’é* returned home to the Verde Valley on foot. In many cases it took us years to make our way home. Along the way, many of my ancestors worked on the Federal dams, like Bartlett Dam and Roosevelt Dam, which were constructed on the Verde and Salt Rivers to supply water to what is

now metropolitan Phoenix. These dams are owned by the United States and operated today by the Salt River Project, a settling party in our Settlement.

Once we returned home, we worked as cowboys, construction workers, day laborers, and domestic workers. Our people returned to no established reservation or land base of any kind. All of our lands had been taken as a result of our 1871 forced removal to San Carlos by the United States. But our ancestors still found a way to survive in the communities that had sprung up in the Verde Valley on our former Reservation. With the assistance and advocacy of our Indian Agent, Dr. Taylor Gabbard, we were eventually able to secure appropriations from Congress in 1909 to purchase back 18.25 acres of land along the Verde River.

Since that time, we have been able to restore additional lands to our Reservation and today, our Reservation totals 1,810 acres - just 0.3% of our former 1871 Camp Verde Reservation and 0.0017% of our original territory. Because of the United States' forced removal of our people from the Verde Valley and the termination of the 1871 Camp Verde Reservation, we do not have the benefit of living on a unified and large reservation. Instead, our Tribal members live throughout the Verde Valley, both on and off our current Reservation lands. And despite all the hardship and adversity, today, the Yavapai-Apache Nation is one of the largest employers in the Verde Valley and we are a young and growing population.

**THE UNITED STATES' OBLIGATION
TO SECURE SUFFICIENT WATER FOR
A PERMANENT HOMELAND FOR THE YAVAPAI-APACHE NATION**

We who today put forward this Settlement Agreement for approval by the United States stand on the shoulders of our forebears who endured so much just so that we could return to the homeland on which our Creator placed us. More than 36 percent of the Nation's Tribal members are under the age of 18. Our waiting list for Tribal housing, now at more than 170 families, only continues to grow, but we have run out of land to construct tribal housing or other tribal governmental facilities. As a result, it is critical that the Nation secure the necessary land and water resources we need to continue our cultural and religious practices and provide the jobs, housing, social services, and sustained local economy that are necessary attributes of a permanent tribal homeland.

The Nation has a right to have the water it needs to secure a permanent homeland for our people, including water for economic development, housing, cultural uses, and other purposes. *See In re General Adjudication of all Rights to use Water in the Gila River System and Source*, 35 P. 3rd 68 (AZ. 2001) (setting forth the factors for quantifying federal reserved water rights for Arizona Indian tribes under *Winters*). Based on this standard, the Tribe filed water rights claims in Arizona's general stream adjudication to the Verde River and its systems and sources totaling 11,628 acre-feet per year (AFY) (in addition to a claim for a non-consumptive instream flow right in the Verde River).

In 2011, the Nation and the settling parties agreed to a water budget for the Nation of 6,888.50 AFY, which is included in the Settlement Agreement. In addition, in the Settlement Agreement, the parties agreed to protect the instream flow of the Verde River, which is

necessary to protect the Tribe's cultural and religious uses of the Verde River and to protect other key downstream Federal and other interest in the Verde River that rely on a healthy flowing Verde River, including (1) the National Wild and Scenic River (NWSR) segment of the Verde River that was designated by Congress due to its outstanding scenery and remarkable values under the Arizona Wilderness Act of 1984 (P.L. 98-406); (2) the Fort McDowell Yavapai Nation and the Salt River Pima Maricopa Indian Community who divert and use Verde River water sources as part of their Congressionally approved water rights settlements; and (3) the Salt River Project and metropolitan Phoenix that rely on surface water sources from the Verde River to meet a significant portion of their water supply needs.

The Yavapai-Apache Nation has a right to prosper and thrive in our restored homeland. We also have the right to self-determination and self-sufficiency. To be sure, our ancestors recognized the abundance and opportunity that the Verde Valley could provide when they returned home with nothing and, through sheer persistence, began the process of restoring our lands and rebuilding our community. But our community is growing, and the Tribe needs to grow with it. This is why we have invested our own dollars to complete an administrative land exchange with the U.S. Forest Service. Once complete, the land exchange will add an additional 3,088 acres of land to our Reservation – land that was shamefully, if not unlawfully, taken from us in the first place. The land exchange lands, coupled with 209 acres of Nation owned fee lands, will be added to the Reservation as part of the Settlement Act. These lands will serve as an anchor for our economic and community development well into the future, ensuring that my people will always have the economic revenue and housing we need to grow and thrive in our homeland. To do this, however, we must have the water to which we are entitled under the *Winters* doctrine, the Apache Treaty of 1852, and the United States' trust responsibility to the Nation.

The Settlement achieves this goal by, among other things, importing a renewable water supply from the C.C. Cragin Dam and Reservoir to the Reservation to offset groundwater pumping from the local aquifer, and by supporting the Nation's ability to capture wastewater and treat it to a high level for use on the Nation's farming operations in lieu of the farm's sole option of pumping raw groundwater. The Settlement is therefore critical to finally achieve a sustainable water future for the Nation. Currently, the sole source of potable water in the Verde Valley is local groundwater. However, groundwater pumping throughout the Verde River Watershed has increased exponentially over the last 75 years, particularly in the Verde Valley, which is home to multiple communities, including the Nation, the Town of Camp Verde, the Town of Clarkdale, the City of Cottonwood, and multiple unincorporated communities like Cornville and Rimrock.

As pressure on local aquifers has increased over the last decades, the availability and quality of local groundwater resources has diminished, in some cases frighteningly so. For example, increased pumping on and around the Nation's Middle Verde District of the Reservation has mobilized arsenic and other heavy metals that are naturally present in the local aquifer. As a result, the Nation and our neighboring communities have had to install expensive arsenic treatment systems to ensure that the water we pump is safe to drink. In some cases, arsenic concentrations are so high that treatment will not work. In fact, our utility department has had no choice but to shut down an existing well serving our Tunlii housing development due to untreatable levels of arsenic contamination. This places the Nation in a difficult and costly

position, because the more we pump local groundwater supplies the greater the chance we will encounter high levels of arsenic and other heavy metals that will render our wells unusable as a source of potable water for our people. The same is true for our local neighboring communities.

In addition to arsenic and other heavy metals, our local water sources have also been contaminated by bacteria and other organic contaminants due to failing septic systems. Stomach cancer is one of the primary cancer types in our community, and sadly Yavapai County has one of the highest rates of cancer mortality in the State of Arizona. It has long been proven that access to safe and clean drinking water improves overall health and life expectancies – in short water is life. Thus, the Nation's access to the delivery of up to 4,610 AFY of C.C. Cragin water under the Settlement is critical if we are to improve the health status of our people. Our people should not have to die younger and at higher rates simply because we do not have access to safe water supplies.

This is another reason why this Settlement is so vitally important to the Nation. It will secure a renewable imported supply of water for our Nation, which is necessary for our families and our businesses to thrive, while also ensuring that the water we drink does not threaten our life expectancy. Moreover, with this renewable water supply, we can limit future groundwater pumping that depletes flows in the Verde River which is a key source of our cultural health and spiritual wellness.

For our Nation to thrive, we must have a livable tribal homeland for our community, and for that to happen, we need to have necessary water supplies to meet our current and future needs. In short, this Settlement Agreement and the legislation confirming it will finally secure for our people the permanent home and prosperity that the United States once promised us under the 1852 Apache Treaty.

HISTORY OF SETTLEMENT NEGOTIATIONS

The journey to reach today's hearing has been long and arduous for our Nation. I want to acknowledge all the Nation's leaders, many of whom have now passed on, who worked so hard and with such unwavering commitment over the years on this Settlement, all so that I could be here testifying before you today. Over forty years ago, the Nation, and the United States on the Nation's behalf, filed our original claims for federal reserved and other water rights under the *Winters Doctrine* to the Verde River and its systems and sources in Arizona's General Stream Adjudication, known as the "Gila River Adjudication." Since this time, the Nation has been an active litigant in the Gila River Adjudication, though the Adjudication has yet to quantify our water rights. While the Gila River Adjudication has dragged on, upstream development and water diversions have depleted the water sources that support the Verde River, threatening the Nation's water rights and the natural and cultural resources the Nation relies upon in the Verde River. As a result, the Nation has made securing our water rights and protecting flows in the Verde River in cooperation with our neighboring communities a top priority.

In 2008, the Secretary of the Interior's Indian Water Rights Office (SIWRO) appointed a Water Rights Assessment Team to the Nation. In 2011, the SIWRO appointed a Federal Indian Water Rights Negotiation Team. Since this time, we have been engaged in water negotiations

with the federal government, our local communities, the Salt River Project, Central Arizona Project, the State of Arizona, and other key stakeholders.

In July 2023, after several years of intense analysis conducted with the assistance of the Bureau of Reclamation’s Value Engineering Study Team, the Nation and our settling partners agreed that the best (and only) way to both secure a renewable water supply for the current and future needs of our people and protect the Verde River was to develop a water delivery project that will import a renewable water supply from outside the watershed. As developed by the Bureau of Reclamation, this project would deliver surface water from the existing C.C. Cragin Dam and Reservoir that is owned by the Bureau of Reclamation and operated by Salt River Project to the Yavapai-Apache Reservation.

To this end, the Nation, our Federal Team, the State of Arizona, Salt River Project, Central Arizona Project, and our neighboring communities (the City of Cottonwood, Town of Clarkdale, and Town of Camp Verde) have worked tirelessly to finalize the Settlement Agreement. This work culminated in the Nation’s Tribal Council formally approving the Yavapai-Apache Nation Water Rights Settlement Agreement on June 26, 2024.

ELEMENTS OF THE SETTLEMENT

Let me now summarize the principal elements of the comprehensive water rights Settlement Agreement ratified by S. 4705:

- The Settlement Agreement is a comprehensive settlement of all outstanding claims for water rights for the Yavapai-Apache Nation and the United States on our behalf. Importantly, as part of the Settlement Agreement and the legislation, the Nation will waive its outstanding claims for water rights and damages associated with water rights in the Gila River Adjudication against the United States and all State parties, bringing finality and certainty to all the water users in the Verde River Watershed.
- Under the Settlement Agreement, the three Verde Valley communities located on the Verde River (the City of Cottonwood, the Town of Camp Verde, and the Town of Clarkdale) have agreed to limit their groundwater pumping and to no longer develop wells in close proximity to the Verde River, thereby protecting the Verde River from depletions caused by these wells.
- Under the Settlement Agreement, the Nation will have confirmed and decreed water rights to:
 - The delivery of 3,410 AFY of surface water from the C.C. Cragin Dam and Reservoir through the Cragin-Verde Pipeline;
 - The delivery, by exchange, of the Nation’s 1,200 AFA of high priority Central Arizona Project or “CAP” water from the C.C. Cragin Dam and Reservoir through the Cragin-Verde Pipeline;

- The diversion of 1,593 AFY of historic Verde River water rights for irrigation uses by the Nation on its farm;
 - The diversion of 684 AFY of groundwater to meet certain existing water needs on the Reservation and rights to additional pumping (away from the Verde River) if needed as a “back up” supply in years when C.C. Cragin Reservoir water is not fully available; and
 - The right to capture, treat, and reuse all effluent produced by the Nation, which will be treated in a new modern wastewater reclamation facility and integrated into the Nation’s farming operation to further reduce diversions from the Verde River.
- S. 4705 would authorize and fund construction of the Cragin-Verde Pipeline and other infrastructure to deliver surface water from the C.C. Cragin Reservoir Dam and Reservoir located on the Mogollon Rim, to the Yavapai-Apache Nation for treatment in a modern surface water drinking plant and distribution throughout the Reservation. The project is called the “*Tú n̄l̄j̄n̄ichoh* Water Infrastructure Project.”
- The Settlement Agreement and S. 4705 provides a pathway for local Verde Valley communities to also secure a renewable water supply from C.C. Cragin for their citizens, including for many of our Tribal members who live in these communities. This will be accomplished by allowing the *Tú n̄l̄j̄n̄ichoh* Water Infrastructure Project to be sized to include delivery of C.C. Cragin water to these local communities. This is a critical component of the legislation, as this would offset current and future groundwater pumping in the Verde Valley by these communities. By reducing groundwater pumping, the Nation’s instream flow right in the Verde River, which is a trust resource under the Settlement Agreement and the Act, will be protected. Moreover, because several of these local communities also provide drinking water to our Reservation lands (at the Camp Verde, Middle Verde, and Clarkdale Districts), providing these communities with access to a renewable water supply from the C.C. Cragin Dam and Reservoir under the Settlement will help secure a renewable water supply for the Nation.
- As part of the Settlement Agreement and with the funds received under S. 4705, the Nation will replace its long-outdated wastewater treatment system of facultative sewer lagoons with a modern wastewater reclamation facility that will allow the Nation to reclaim its wastewater for use in its farming operation. This reclaimed water will allow the Nation to offset current groundwater pumping from wells near the Verde River and support future irrigation with renewable water supplies in lieu of new groundwater pumping.
- S. 4705 would authorize the completion of a land exchange between the Forest Service and the Nation. This land exchange is currently underway between the Nation and the Forest Service under the normal administrative process

administered by the Forest Service, and it is expected to be completed in the fall of 2024. However, because the exchanged lands are integral to the Settlement Agreement, we have included authorization for the land exchange in this legislation. If the Nation and Forest Service complete the land exchange (as expected) this fall, as we expect to do, we will not need Congress to authorize the exchange.

- S. 4705 directs the Secretary of the Interior to take certain lands into trust that the Nation currently holds in fee, including the soon to be exchanged land exchange lands (which are subject to a pending lands to trust application filed with the Bureau of Indian Affairs). All of these land will be made part of the Nation's Reservation under the Act.
- Finally, the legislation directs the Forest Service to use existing authorities to undertake a land transfer to the Town of Camp Verde for public safety purposes – including the development of public safety facility to meet the needs of the Town, the Nation, and those traveling along Interstate 17 in the Verde Valley.

CONCLUSION

The passage of S. 4705 to ratify the Yavapai-Apache Nation's Water Rights Settlement Agreement is essential if our Nation is to finally attain a secure water future and a permanent tribal homeland for the *Yavepé* and *Dilzhé'é* people. In this time of persistent drought and aridification in Arizona, we must take concrete and generational action to secure the long-term needs of our communities. And, like our counterparts in metropolitan Phoenix who have long had the benefit of a diverse water supply due to historic investments by the United States in federal reclamation projects like Bartlett Dam on the Verde River, for the Nation to meet the future water needs of our people, we must also have access to renewable water resources and modern water infrastructure.

The *Yavepé* and *Dilzhé'é* people have lived in the Verde Valley since the beginning of time, and it is now time for the Nation, with the assistance of our trustee the United States, to build the water infrastructure needed to ensure that the Nation can continue to live and thrive in the Verde Valley as was guaranteed to us in our Treaty with the United States.

On behalf of the Yavapai-Apache Nation, thank you for the opportunity to testify before you today. I will be pleased to answer any questions you may have, and our Nation will help in any way it can to secure enactment of this critical legislation.