

TESTIMONY OF DR. DAMON CLARKE,
CHAIRMAN, HUALAPAI TRIBE
BEFORE THE SENATE INDIAN AFFAIRS COMMITTEE
IN SUPPORT OF S. 3300
THE HUALAPAI TRIBE WATER RIGHTS SETTLEMENT ACT OF 2016
September 14, 2016

Chairman Barrasso, Vice Chairman Tester and members of the Committee, my name is Dr. Damon Clarke, Chairman of the Hualapai Tribe. Our Hualapai Tribal Council strongly supports S. 3300, the Hualapai Tribe Water Rights Settlement Act of 2016. Before I describe the major elements of this legislation and the critical benefits the Tribe receives from it, let me briefly inform the Committee of the Tribe's water needs.

The Hualapai Reservation encompasses approximately 1 million acres in northwestern Arizona. All lands on the Reservation are tribal trust lands; there are no allotments or fee inholdings. The Colorado River forms the 108-mile northern boundary of the Reservation through a portion of the Grand Canyon.

Our Reservation has no significant surface streams other than the Colorado River, and has very limited groundwater resources. While the Tribe is presently able to serve our principal residential community, Peach Springs, with groundwater, that groundwater is a depletable resource, and well levels on the Reservation are dropping. The only feasible water supply for satisfying the long-term future needs of Peach Springs and of the rest of our Reservation is the Colorado River. Our Tribe needs delivery of Colorado River water both to provide a permanent and secure water supply to our future population in Peach Springs and elsewhere on our

Reservation, and to realize the unique opportunities for economic development we have already undertaken at Grand Canyon West—a world class tourist development the Tribe has constructed and operates on the Reservation on the western rim of the Grand Canyon.

Grand Canyon West currently employs approximately 300 tribal members (as well as about 300 non-members) and hosts over 1 million visitors a year. But it is located a two-hour drive on a dirt road from Peach Springs, where virtually all tribal members on the Reservation live. Thus, tribal employees at Grand Canyon West have daily round-trip commutes of four hours a day to their jobs at Grand Canyon West, and longer in inclement weather. Currently, it is impossible to locate a residential community at Grand Canyon West because of the lack of water there. This imposes an unsustainable burden on tribal members and their families. The Tribe needs Colorado River water at Grand Canyon West in order to allow tribal members to reside on the Reservation near to their jobs.

The Tribe also employs approximately 100 other tribal members in a tribally-owned hotel in Peach Springs and a seasonal tribal river rafting enterprise. We are proud of the fact that, without conducting any gaming, our Tribe is moving towards achieving full employment for our members and economic self-sufficiency.

But the severe lack of water on the Reservation is the major obstacle to reaching these goals. The nearest groundwater to Grand Canyon West is 35 miles away, and that supply is barely adequate for current operations, and completely inadequate for growth. With additional water, the Tribe could take advantage of the potential for further development that would provide additional jobs for tribal members and non-Indians, as well as revenues for our tribal government. And critically, as noted above, a supply of water at Grand Canyon West would also permit the Tribe to develop a residential community there, so our tribal employees would have

the option of living at Grand Canyon West, near their jobs, instead of having unreasonably long commutes from Peach Springs to get to their jobs.

Over the past six years, the Hualapai Tribe has negotiated a comprehensive settlement of all of the Tribe's reserved water rights with the State of Arizona and major private entities in Arizona. The United States actively participated in these settlement negotiations through a Federal Negotiating Team consisting of representatives from affected Interior Department agencies and from the Department of Justice. Legislation to ratify this settlement is now before the Committee. The legislation is strongly supported by the State of Arizona and by the private entities who are parties to the settlement—the Salt River Project, Central Arizona Water Conservatory District and Freeport Minerals Company.

The settlement legislation would authorize the expenditure of \$134.5 million in federal funds to construct the infrastructure necessary to deliver vitally needed Colorado River water to Peach Springs and Grand Canyon West, as well as an OM&R Trust Fund of \$32 million to defray future costs of operating, maintaining and replacing the project works. In addition, under the Bill Williams River Water Rights Settlement Act of 2014, Pub. L. 113-223, 128 Stat. 2096 (Dec. 16, 2014), the Freeport Minerals Company provided a major contribution to a Hualapai Tribe economic development fund which the Tribe can use to purchase Colorado River water rights in order to facilitate this comprehensive settlement. The 2014 Act states that this significant funding from Freeport constitutes a non-federal contribution to the Tribe's comprehensive water rights settlement. Sec. 5(d)(1)(B). Freeport also contributed an additional \$1 million to the Tribe that enabled the Tribe to complete an essential "appraisal level" study to determine the feasibility and costs of an infrastructure project to bring Colorado River water to

the Hualapai Reservation. That study is the technical report referenced in this settlement legislation.

Both of these contributions by Freeport represent a very substantial non-federal contribution to the costs of this comprehensive settlement.

Let me now summarize the principal elements of the comprehensive water rights settlement ratified by the legislation before you:

- The Act comprehensively settles all of the Hualapai Tribe's federally reserved water right claims for its Reservation and trust lands.
- The Tribe receives exclusive rights to all groundwater and surface water on the Reservation and its other trust lands, and agrees not to object to any pumping of groundwater or diversions of surface water outside the Reservation or its trust lands.
- The Tribe also receives an allocation of 4,000 acre feet a year of Central Arizona Project water from the Colorado River. Of this amount, 1,115 acre feet a year will be "firmed" (half by the United States and half by the State) until 2108 to protect against future shortages of the availability of Colorado River water in Arizona. The "firming" of this water by the State of Arizona represents another significant non-federal contribution to the costs of the settlement. The Act also provides the Tribe itself can "firm" additional portions of the Central Arizona Project Water allocated to the Tribe in any year the water is available and is not needed for delivery to the Reservation.
- As noted, the legislation authorizes a federally funded infrastructure project to deliver up to 3,414 acre feet a year from the Colorado River to the Reservation. The project would construct a diversion of water from the Colorado River on the Reservation at Diamond Creek and then a 70-mile pipeline to deliver the water to both Peach Springs and Grand Canyon

West. This system would replace the Tribe's reliance on the existing groundwater wells (except when those wells are needed as an emergency backup). The construction cost of this water delivery infrastructure is \$134.5 million (in February 2016 dollars). In addition, the legislation proposes additional federal funding of \$32 million for a trust account to defray operation, maintenance and replacement (OM&R) costs of the project.

Of the several alternatives studied for an infrastructure project to deliver water to the Reservation, this Diamond Creek diversion project has significant advantages—first, the diversion is at an area which is already developed as a boat launch onto the Colorado River, thus minimizing disturbance of any pristine areas in the Grand Canyon; second, there is already a road from Peach Springs down to the River at Diamond Creek, thus providing good access for construction, and third, this location is one of the few areas along the Colorado River where there is relatively flat land back from the River's edge to locate pumps and infrastructure.

This also is the only project alternative that delivers water to both Peach Springs and Grand Canyon West, providing sensible flexibility to allow the Tribe to serve its needs both in the near term and in the future. In addition to laying the foundation for a residential community at Grand Canyon West, the proposed project also provides for delivery of water to expand the Tribe's world-class tourism attraction there. The use of water for such economic development is well within the parameters of past Indian water rights settlements. Most Indian water rights settlements in this century have provided federal funding for infrastructure development to support commercial as well as residential uses of water. There is, for example, ample recent precedent for federally-funded irrigation projects to deliver water to Indian reservations for purposes of commercial agricultural, where agriculture is the basis of a tribe's economy. And in other recent settlements, federally-funded projects have delivered water to support other kinds of

economic development—including hydropower and other energy development, agriculture and a retail travel center.

The Hualapai Reservation does not have the natural resources to permit agriculture, timber or mineral development, but its virtually unique location on the Grand Canyon gives it a strong basis to create a self-sustaining tourism-based economy. The Tribe should be encouraged and supported in its efforts to develop the resources and economic opportunities that it has. Just as a federally funded irrigation project for an agriculture-based tribal economy supports a “commercial” use of water, so too the “commercial” use of water to develop Grand Canyon West is fully deserving of the federal government’s support.

As I noted above, passage of this legislation is absolutely essential if our Tribe is to realize the full economic potential of our Reservation. We have done everything possible to provide jobs and income to our people in order to lift them out of poverty—but the lack of a secure and replenishable water supply on our Reservation is our major obstacle to achieving economic self-sufficiency. We recognize that the infrastructure project authorized by this legislation entails federal costs, but it is far more costly for our people to be mired in poverty and to lack reasonable and adequate access to jobs.

Federal Indian policy has long favored economic self-sufficiency on Indian reservations, and the quantification of tribal water rights reserved under federal law in a manner that allows tribes to put their water to an economically productive use. Passage of this legislation is essential to allow my Tribe to attain these goals.

Thank you for the opportunity to testify before you today. I will be pleased to answer any questions you may have, and our Tribe will help in any way it can to secure enactment of this critical legislation.