

PREPARED STATEMENT

OF THE HONORABLE NED NORRIS, JR., CHAIRMAN, TOHONO OODHAM
NATION

ON A BILL TO AMEND THE ARIZONA WATER SETTLEMENTS ACT (H.R. 3739)

TO THE SUBCOMMITTEE ON WATER & POWER

OF THE HOUSE COMMITTEE ON NATURAL RESOURCES

October 24, 2007

Good morning Chairwoman Napolitano, Ranking Member McMorris-Rodgers, Congressman Grijalva, and distinguished members of the Subcommittee. My name is Ned Norris, Jr. and I am the Chairman of the Tohono O'odham Nation located in Sells in the southernmost part of the State of Arizona. I am very pleased to appear before you today to discuss a matter of supreme importance to the Nation and its members, to other entities in our state such as the Central Arizona Project, the Salt River Project, the Arizona Department of Water Resources, the Gila River Indian Community, the City of Tucson, and to millions of our fellow citizens in the State of Arizona.

Before I proceed with my comments on H.R. 3739, I would like to express my personal and heartfelt gratitude to Congressman Grijalva and his excellent staff for their hard work and dedication to helping us preserve the integrity of the *Arizona Water Settlements Act*. I also want to express my thanks to Chairwoman Napolitano and Ranking Member McMorris-Rodgers and the subcommittee staff for understanding the complexities of our situation and scheduling today's hearing on H.R. 3739.

BACKGROUND ON THE ARIZONA WATER SETTLEMENTS ACT

In 2004 the *Arizona Water Settlements Act* (AWSA) was signed into law (Pub. L. 108-451) to settle a variety of water disputes in the State of Arizona. As discussed below, understanding the structure of the AWSA is important in that Title I relates to the Central Arizona Project, Title II involves the Gila River Indian Community, and Title III relates to the Tohono O’odham Nation. It is also important to understand that these three titles were negotiated and drafted largely by different teams of individuals and then melded together in the single legislative proposal that became the AWSA.

By its own terms, the AWSA takes effect on the “enforceability date” which is the date the Secretary of Interior publishes in the Federal Register a statement of findings that numerous enforceability conditions have been met. If the Secretary does not publish the statement of findings by December 31, 2007, the Act will fail.

THE NEED FOR A TECHNICAL AMENDMENT TO THE AWSA

Because each title of the Act was negotiated and drafted by a different working group, the wording of certain enforceability requirements differs from title to title. Title II, for instance, requires that the Gila River Indian Community’s water settlement agreement be approved by the state trial court. By comparison, Title III requires that the trial court approve the Nation’s water settlement agreement *and* that that approval be “final and nonappealable.”

The pertinent language of Title II (regarding the required approval of the Gila River Indian Community settlement) follows:

“Title II, Section 207(c), ENFORCEABILITY DATE
(1) IN GENERAL -- This section takes effect on the date on which the Secretary publishes in the Federal Register a statement of findings that ---

(G) the judgments and decrees attached to the Gila River agreement as exhibits 25.18A (Gila River adjudication proceedings) and 25.18B (Globe Equity Decree proceedings) have been approved by the respective courts;”

The pertinent language of Title III (regarding the approval of the Tohono O’odham Nation’s settlement) follows with the additional, problematic language underlined:

“Title III, Section 302(b), EFFECTIVE DATE -- This title and the amendments made by this title take effect as of the enforceability date, which is the date the Secretary publishes in the Federal Register a statement of findings that ---

(5) the judgment and decree attached to the Tohono O'odham settlement agreement as exhibit 17.1 has been approved by the State court having jurisdiction over the Gila River adjudication proceedings, and that judgment and decree have become final and nonappealable;

Given the drawn-out nature of water rights litigation, the additional ten words in Title III that require a “final and nonappealable” judgment make it unlikely that Title III’s enforceability requirements can be fully met in time for the Secretary to publish the required findings in the Federal Register before December 31, 2007. If this in fact occurs, Title III would fail and the 1982 *Southern Arizona Water Rights Settlements Act* would remain in place. Because all three titles in the Act are linked, should Title III be allowed to fail, the entire *Arizona Water Settlements Act* could fail as well. The Nation has demonstrated its good faith and willingness to be flexible by agreeing to “de-link” Title III from Titles I and II and this would be accomplished by the U.S. Department of Justice filing an amended repayment stipulation in the *CAWCD v. United States* case in federal court in Arizona and the federal judge issuing a favorable judgment.

H.R. 3739 would remedy the defect in Title III and help to preserve the integrity of the AWSA.

LITIGATION ALSO THREATENS THE INTEGRITY OF THE AWSA

The "final and nonappealable" language also presents a challenge because of an objection to the Tohono O'odham settlement agreement filed in the Gila River adjudication case in Arizona. On July 9, 2007, the Superior Court for Maricopa County approved the Tohono O'odham settlement and issued a judgment and decree accordingly. An objection by a litigant who was not a claimant in the case was made and denied. On July 19, 2007, the City of Tucson and other parties filed with the Arizona Supreme Court a motion for an interlocutory appeal on the Superior Court's approval of July 9, 2007. These parties also successfully moved the Court for an expedited review and briefing schedule on the issue as to why the Superior Court judgment and decree should not be affirmed.

On August 28, 2007, the Arizona Supreme Court accepted the interlocutory appeal and ordered that any additional petitions be filed by September 14, 2007; that responses be filed by October 15, 2007; and that reply briefs be filed by November 1, 2007.

Despite these encouraging decisions by the courts, there is no guarantee that the pending litigation will be resolved by December 31, 2007, and the resulting uncertainty creates the need for this legislation to ensure the integrity of Title III of the AWSA.

I would note that all parties to the AWSA support the technical amendment to the AWSA that would be made by H.R. 3739 and that letters of support have been provided

by the Central Arizona Project, the Salt River Project, the Arizona Department of Water Resources, the Gila River Indian Community, and the City of Tucson. I have attached copies of these letters for the Record.

CONCLUSION

In conclusion, Madam Chairwoman, I am here to provide the Nation's unqualified support for H.R. 3739 in order to remove the problematic language from the AWSA, preserve the integrity of Title III and the AWSA and ensure that the benefits of the Act flow to the Nation, to the other water using entities in southern Arizona, and indeed to all the citizens of the State of Arizona.

Thank you and I would be happy to answer any questions you might have at this time.

ATTACHMENT

(Letters of Support)

C:\Documents and Settings\moorp\Local Settings\Temporary Internet Files\OLKC\Final Norris Statement for 10-24-071.DOC