

**Statement of John F. Sullivan  
Associate General Manager, Water Group  
Salt River Valley Water Users Association and  
Salt River Project Agricultural Improvement and Power District**

**Hearing before the Committee on Natural Resources  
Subcommittee on Water and Power**

**H.R. 1065—White Mountain Apache Tribe Water Rights  
Quantification Act of 2009**

**July 21, 2009**

Chairwoman Napolitano, Ranking Member McClintock, and members of the Subcommittee,

Thank you for the opportunity to testify in support of H.R. 1065, the White Mountain Apache Tribe Water Rights Quantification Act of 2009. I also thank Representative Ann Kirkpatrick for her introduction and continued support of this important legislation. My name is John F. Sullivan. I am the Associate General Manager, Water Group, of the Salt River Project (“SRP”), a large multi-purpose federal reclamation project embracing the Phoenix, Arizona metropolitan area. SRP has a history of negotiating and settling Indian water rights disputes in Arizona. Over the past four decades, SRP has worked with numerous tribes and stakeholders to resolve Indian water rights disputes in a manner that benefits both Indian communities and their non-Indian neighbors. Most important among the benefits is water supply certainty, which is a fundamental outcome of any water rights settlement.

SRP is composed of the Salt River Valley Water Users’ Association (“Association”) and the Salt River Project Agricultural Improvement and Power District (“District”). Under contract with the federal government, the Association, a private corporation authorized under the laws of the Territory of Arizona, and the District, a political subdivision of the State of Arizona, provide water from the Salt and Verde Rivers to approximately 250,000 acres of land in the greater Phoenix area. Over the past century, most of these lands have been converted from agricultural to urban uses and now comprise the core of metropolitan Phoenix.

The Association was organized in 1903 by landowners in the Salt River Valley to contract with the federal government for the building of Theodore Roosevelt Dam on the Salt River, located some 80 miles northeast of Phoenix, and other components of the Salt River Federal Reclamation Project. SRP was one of the first multipurpose projects approved under the Reclamation Act of 1902. In exchange for pledging their land as collateral for the federal loans to construct Roosevelt Dam, which loans have long since been fully repaid, landowners in the Salt River Valley received the right to water stored behind the dam.

In 1905, in connection with the formation of the Association, a lawsuit entitled *Hurley v. Abbott, et al.*, was filed in the District Court of the Territory of Arizona. The purpose of this lawsuit was to determine the priority and ownership of water rights in the

Salt River Valley to the natural flow of the Salt and Verde rivers and to provide for their orderly administration. The decree entered by Judge Edward Kent in 1910 adjudicated those water rights, provided water supply certainty to existing water users and, in addition, paved the way for the construction of additional water storage reservoirs by SRP on the Salt and Verde Rivers in Central Arizona.

Today, SRP operates six dams and reservoirs on the Salt and Verde Rivers in the Gila River Basin, one dam and reservoir on East Clear Creek in the Little Colorado River Basin, and 1,300 miles of canals, laterals, ditches and pipelines, groundwater wells, as well as numerous electrical generating, transmission and distribution facilities. The seven SRP reservoirs impound runoff from multiple watersheds, which is delivered via SRP canals, laterals and pipelines to municipal, industrial and agricultural water users in the Phoenix metropolitan area. SRP also operates approximately 250 deep well pumps to supplement surface water supplies available to the Phoenix area during times of drought. In addition, SRP provides power to nearly 900,000 consumers in the Phoenix area, as well as other rural areas of the State.

SRP holds the rights to water stored in these reservoirs, and for the downstream uses they supply, pursuant to the state law doctrine of prior appropriation, as well as federal law. Much of the water used in the Phoenix metropolitan area is supplied by these reservoirs.

The White Mountain Apache Tribe is located on the Fort Apache Reservation in eastern Arizona, established by Executive Order in 1871. The headwaters of the Salt River originate on the Fort Apache Reservation. Four of the seven reservoirs operated by SRP are located on the Salt River downstream of the Fort Apache Reservation, and approximately 42% of the water delivered by SRP to Phoenix metropolitan area customers originates on the Reservation. The United States, acting on behalf of the Tribe, has asserted claims in the pending Gila River Adjudication to the depletion of 179,000 acre-feet of water from these headwaters. These claims are based on the federal reservation of rights doctrine and largely encompass potential future uses of water by the Tribe on its Reservation.

Because resolution of the pending claims could take many years, entail great expense, and prolong water supply uncertainty, a group of Arizona water users began settlement negotiations with the White Mountain Apache Tribe about three years ago. In addition to the Tribe, the settlement parties include the United States, State of Arizona, Central Arizona Water Conservation District (“CAWCD”), Salt River Project Agricultural Improvement and Power District, Salt River Valley Water Users' Association, Roosevelt Water Conservation District, Buckeye Irrigation Company, Buckeye Water Conservation and Drainage District, Arizona Water Company, and the Arizona cities and towns of Phoenix, Mesa, Tempe, Chandler, Glendale, Scottsdale, Avondale, Peoria, Show Low, and Gilbert.

The negotiations culminated in a comprehensive settlement (“Settlement”) that resolves the longstanding water disputes and is embodied in the White Mountain Apache Tribe Water Rights Quantification Agreement and H.R. 1065, the White Mountain Apache Tribe Water Rights Quantification Act of 2009 currently before this Subcommittee. At this time, all of the state parties have formally approved and signed the Settlement through their boards and councils. The Settlement legislation confirms and approves the Tribe’s settlement, specifies water reallocations to implement the

Settlement, and authorizes a CAP water delivery contract with the Tribe. It provides parameters for Tribal CAP water leases and authorizes the Secretary to execute those leases. Furthermore, H.R. 1065 authorizes the Miner Flat Dam Project and funding for its construction, operation and maintenance, and repayment of the loan for planning and engineering that was authorized last year in P.L. 110-390.

Under the Settlement, the Tribe's water rights are quantified at a total diversion right of 99,000 acre-feet per year through a combination of surface water and Central Arizona Project ("CAP") water sources. The Tribe's surface water rights, the first component of the Tribe's quantified water rights, include the ability to divert 67,000 acre-feet per year from the Salt River system<sup>1</sup> and another 7,000 acre-feet per year from either the Salt River or Little Colorado River system. Maximum depletion amounts of 23,000 acre-feet per year from the Salt River system<sup>2</sup> and 4,000 acre-feet per year from either the Salt River or Little Colorado River system are also quantified by the Agreement. The second component of the Tribe's quantified water rights is a right to CAP water. The Tribe may deplete and put to its own use up to 25,000 acre-feet per year of CAP water or choose to lease some or all of this water to others. The Tribe has negotiated CAP water leases with the CAWCD and the valley cities of Avondale, Chandler, Gilbert, Glendale, Mesa, Peoria, Phoenix, and Tempe.

For their part, the Tribe has committed to providing waivers and releases of claims benefiting all State law water users in the Gila River and Little Colorado River basins and the United States (except on behalf of other Indian Tribes), as part of the Settlement and in return for the quantified water rights described above.

Establishment of an adequate water storage and distribution system to meet the domestic and industrial water requirements of the Tribe and its members is a critical component of the parties' efforts to settle all existing disputes regarding the White Mountain Apache Tribe's water rights. The Tribe's existing system is supported by a wellfield, but the aquifer's supply is limited and insufficient to serve the reservation's municipal water needs. As an interim measure, the Tribe plans to construct a small temporary water diversion system along the White River. However, this is only a short-term solution. The Tribe and the settling parties have determined that construction and operation of the Miner Flat Dam Project would best address the Tribe's growing municipal, rural and industrial water diversion, storage and delivery demands. The Project, which is estimated to cost approximately \$128 million, would include a dam and pipeline for water distribution within the Reservation's boundaries including the growing communities of White River, Cedar Creek, Carrizo, and Cibecue. As part of the Project, pipelines would be constructed to connect water treatment plants to existing Whiteriver, Carrizo, and Cibecue area water distribution systems. Associated water system connections, access roads, buildings, and electrical transmission and distribution facilities would also be included within the Project's scope.

As part of the Settlement and in recognition of the Tribe's sustained efforts to provide a reliable drinking water source to its people, the non-federal settlement parties have agreed to support the Tribe in developing a long-term solution to this challenge. As

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<sup>1</sup> Included within this total diversion right is 3,000 acre-feet per year which may be diverted beginning in the year 2100.

<sup>2</sup> Included within this total depletion right is 1,200 acre-feet per year which may be depleted beginning in the year 2100.

an initial step, the White Mountain Apache Tribe Rural Water System Loan Authorization Act was introduced by Representative Pastor in the House and Senator Kyl in the Senate last year. This legislation (H.R. 6754 and S. 3128) was approved by Congress and signed into law by President Bush as P.L. 110-390. It authorized \$9.8 million in the form of a loan to the Tribe to be repaid beginning in 2013. The Act established the groundwork to begin Project construction once the Settlement is approved, allowing inflationary costs to be minimized, potentially saving millions of dollars and providing much needed water to the communities on the Fort Apache Reservation years earlier. We greatly appreciate this Committee's work and leadership in passing this legislation to allow work to begin on this important project.

H.R. 1065 will continue the progress made last year toward providing a sustainable water supply for the White Mountain Apache Tribe and certainty for water users in Arizona, and has the strong support of the settlement parties and numerous water users in the Little Colorado River Basin. We look forward to working with the Subcommittee on this bill. Chairwoman Napolitano and Ranking Member McClintock, thank you again for the opportunity to testify and for considering our views. I am happy to answer any questions.