

TESTIMONY OF SHERRY COUNTS,
CHAIRWOMAN, HUALAPAI TRIBE
BEFORE THE SENATE INDIAN AFFAIRS COMMITTEE
IN SUPPORT OF S. 2503,
THE BILL WILLIAMS RIVER WATER RIGHTS SETTLEMENT ACT OF 2014

July 9, 2014

Chairman Tester, Vice Chairman Barrasso and Members of the Committee, I am Sherry Counts, the Chairwoman of the Hualapai Tribe. Our Hualapai Tribal Leaders and Members strongly support S. 2503, the Bill Williams River Water Rights Settlement Act of 2014. Before I describe the several critical benefits the Tribe receives from this legislation, 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 supply its main residential community, Peach Springs, with groundwater, the only feasible water supply for satisfying the future needs of most of the Reservation is the Colorado River.

The Tribe is in dire need of Colorado River water in order to realize the opportunities for economic development we have already undertaken. We have constructed and operate Grand Canyon West, a world class tourist development on the Reservation on the western rim of the Grand Canyon. Grand Canyon West currently employs over 250 tribal members and hosts

approximately 700,000 visitors a year. But it is located a two-hour drive away from Peach Springs, where virtually all tribal members who reside on the Reservation live. Thus tribal employees at Grand Canyon West have daily commutes of four hours a day, and longer in inclement weather.

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

The lack of water is the major obstacle to our 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 to tribal members and revenues to the tribal government. Water at Grand Canyon West would also support the development of a residential community there so our tribal members would not have to commute from Peach Springs to get to their jobs.

Over the past three years, we have been negotiating a comprehensive settlement of all the Tribe's reserved water rights with the Justice and Interior Departments, the State of Arizona and major private entities in Arizona. The basic principles of this settlement have been agreed upon, but the settlement is not yet ready for submission to Congress because the Tribe needs first to complete a comprehensive study of the engineering feasibility of the various alternatives for constructing the infrastructure needed to deliver Colorado River water to Grand Canyon West, and a detailed projection of construction and OM&R costs of those alternatives. We expect that

this study will be ready to submit to the Bureau of Reclamation and other parties to the negotiations by early next year.

In the meantime, the Tribe – along with the United States and Freeport Minerals Corporation – have reached an agreement settling our water rights claims in the Big Sandy Creek, south of our main Reservation. This settlement faces a deadline, which is why we and the other parties seek enactment of S. 2503 now, in advance of the comprehensive settlement of our Reservation water rights. This deadline is imposed by the possible application of provisions of Arizona state law that could result in the forfeiture of water rights Freeport holds in the Bill Williams Basin. Freeport wishes to sever and transfer some of these water rights upstream to its Wikieup well field, which serves its nearby copper mine, and contribute the rest of these water rights to state and federal agencies as part of the Lower Colorado Multi-Species Conservation Plan.

To meet this deadline, the Tribe urges Congress to enact S. 2503 this year, ahead of considering our comprehensive water rights settlement. Let me now describe the important benefits the Hualapai Tribe receives under S. 2503.

First, as a result of this legislation, the two major landowners and water users in Big Sandy Creek – the United States and Freeport Minerals Corporation – will confirm federally reserved water rights for the Tribe totaling 300 acre feet a year (afy) relating to a 60-acre parcel of land added to our Reservation along Big Sandy Creek by an Executive Order signed by President Taft in 1911. Freeport and the United States will also confirm federally reserved water rights totaling 394 afy to two off-reservation trust allotments issued to Hualapai tribal members in the Big Sandy. Both of these amounts were calculated by the Tribe's expert hydrologist using the methodology set forth in controlling decisions of the United States Supreme Court and the

Arizona Supreme Court. The agreements this legislation ratifies also require Freeport to provide supplemental water to the tribal and allotted lands in certain circumstances to ensure the Tribe and allottees can fully utilize these reserved water rights.

Second, the agreements ratified by S. 2503 also provide vital protections for the Tribe's water rights on fee land it owns along Big Sandy Creek called Cholla Canyon Ranch. The Tribe has applied to the Secretary of the Interior to take the Ranch into trust for it, and Freeport has agreed to support that application. This Ranch contains a spring that is sacred to the Tribe, Cofer Hot Spring, the flows of which have diminished in recent years due to pumping by Freeport. Freeport has already ceased all but the most minimal pumping in the aquifer that feeds Cofer Hot Spring, and in the agreements ratified and approved by S. 2503, Freeport agrees permanently to cease pumping more than minimal amounts from that aquifer. Freeport also will give the Tribe a right of first refusal to purchase Freeport's lands at Banegas Ranch and surrounding land Freeport owns to protect the flow of Cofer Hot Spring. Once these agreements become effective, Freeport will record a binding covenant in the county land records that will impose the same pumping limitations on any future purchaser of any portion of Banegas Ranch, should Freeport decide to sell and the Tribe decides not to buy these lands.

Under the agreements, Freeport's pumping at the Wikieup well field is capped at 10,055 afy. The Tribe has requested the Interior Department to drop objections it has filed to Freeport's sever and transfer applications to bring water from Planet and Lincoln Ranches up to the Wikieup well field, and in these agreements Interior agrees to do that.

In addition to the important benefits S. 2503 provides for the Hualapai Tribe in the Big Sandy Creek, Freeport will also immediately contribute \$1 million to the costs of an essential study the Tribe has initiated (thus far with its own funds and a grant from the Interior

Department Bureau of Reclamation) to determine the feasibility and costs of bringing Colorado River water to the Hualapai Reservation. This contribution from Freeport will allow the Tribe to complete this study, and then to finish its ongoing negotiations for a comprehensive Colorado River water settlement with the Justice and Interior Departments, the State of Arizona, and various private entities in Arizona.

Lastly, with the timely enactment of this legislation, Freeport will contribute a substantial additional sum to the Tribe's economic development fund that the Tribe will use to purchase rights to use Colorado River water. The legislation provides that these two contributions by Freeport will count as non-federal contributions to the final comprehensive Colorado River water rights settlement the Tribe is negotiating with federal and state parties.

For all of these reasons, the Tribe strongly supports S. 2503. We do, however, request two technical changes that are needed to conform the bill to the Hualapai BWR Agreement. In Section 6(d)(3)(B), page 26, line 20, after "Agreement" and before the semicolon, the words "or the Hualapai Tribe Water Rights Settlement Agreement" should be inserted. This would conform the bill to Paragraph 7.1(iii)(b) of the Hualapai BWR Agreement. And in Section 6(e)(1)(A), page 27, lines 10-11, after "relating to," the words "injury to" should be deleted and the words "claims for" should be inserted. That would conform the bill to Paragraph 7.3(i)(a) of the Hualapai BWR Agreement.

In conclusion, the Tribe is very pleased with the provisions of this legislation that will protect its lands and those of tribal member allottees in the Big Sandy Creek and lay the foundation for the Tribe to complete its negotiations in the near future for a comprehensive settlement of all its reserved water rights on its Reservation. The Tribe hopes that the Committee will support S. 2503 and that Congress will speedily enact it.

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 legislation.