STATEMENT OF
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UNITED STATES DEPARTMENT OF THE INTERIOR
BEFORE THE UNITED STATES
SENATE COMMITTEE ON INDIAN AFFAIRS

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Aanii (Hello)! Good afternoon, Chairman Schatz, Vice Chairman Murkowski, and members of the Committee. My name is Bryan Newland, and I am the Assistant Secretary for Indian Affairs at the U.S. Department of the Interior (Department). Thank you for the opportunity to present the Department's testimony at this important oversight hearing, "Water as a Trust Resource: Examining Access in Native Communities."

Introduction

The United States acts as a trustee for the land and water rights of Tribes, American Indians, and Alaska Natives. The United States has a trust responsibility to Indian Tribes and Indian people and consistent with that has charged itself with moral obligations of the highest responsibility and trust. These obligations are at their greatest when it comes to protecting the ability of Tribes, and their citizens, to maintain their existence on lands the United States holds in trust for their benefit.

The Biden Administration recognizes that water is essential for people to lead healthy, safe, and fulfilling lives on Tribal lands. Water is the among the most sacred and valuable resources for Tribal nations.

The Administration further recognizes that long-standing water crises continue to undermine public health and economic development in Indian Country. The Administration strongly supports the resolution of Indian reserved water rights claims through negotiated settlements. Indian water settlements protect the senior water rights reserved by Tribal Nations and help ensure that the citizens of these Nations have reliable and safe water for drinking, cooking, and sanitation; improve the public health and environment on reservations; enable economic growth; promote Tribal sovereignty and self-sufficiency; and help fulfill the United States' trust responsibility to Tribes.

Within the Department, the Office of Native Hawaiian Relations is responsible for discharging the Secretary's responsibilities in administering the United States' relationship with the Native Hawaiian Community. Water plays an important role in the Native Hawaiian Community. That Community has a saying *"Ola i ka wai"* which translates to water (*wai*) is life (*ola*), and the importance of water is expressed in other words such as *waiwai* which means valuables or wealth and *kānāwai* which means laws and codes and literally translates to "belonging to the waters" as traditional laws regulated the water systems. While the Native Hawaiian Community has asserted its water rights through specific and sometimes prolonged litigation with private

water users and the State of Hawai‘i, through its historical role and expertise in protecting Indian water rights, the Department seeks to examine the nature and extent of water rights available for Hawaiian home lands and for Native Hawaiian traditional and customary rights and practices.

Below is a discussion of some of the ways that we are meeting our obligations to Tribes to ensure access to this critical resource.

Water Rights Settlements

Indian water rights settlements are one of the many areas in which the Department is working to uphold the federal government's trust responsibilities to Tribes. These settlements help ensure that Tribal Nations have safe and reliable water supplies that provide the foundation for future economic development. The Secretary's Indian Water Rights Office manages the Department's Indian Water Rights Settlement Program. Since 1978, the Department has entered into 35 Congressionally-enacted Indian water rights settlements. Water rights settlements typically quantify Tribal water rights, identify water supplies available to satisfy those rights, and provide funding for water-related infrastructure and other purposes. When determining sources and quantity of water, drought and climate change are considerations, especially now that we are experiencing significant drought in many areas.

Settlements often include mechanisms to address drought and climate change. For example, the Arizona Water Settlements Act of 2004 (AWSA), involving water rights of the Gila River Indian Community and the Tohono O'odham Nation, allows for underground storage of surface supplies when surface water is not immediately needed so that that stored water can be accessed in times of shortage. In addition, AWSA, the White Mountain Apache Tribe Water Rights Quantification Act of 2010, and the Hualapai Tribe Water Rights Settlement Act of 2022 each require the Secretary and the State of Arizona to provide specific quantities of "firmed" Central Arizona Project water. Through "firming," the Tribes receive delivery of higher priority water during times of shortage. An additional drought mitigation tool is surface storage. Several settlements include funding for the construction of surface water storage facilities for use by Tribes. One such example is the White Mountain Apache Tribe Water Rights Quantification Act of 2010, which authorizes the construction of a rural water project, including a reservoir, to serve the White Mountain Apache Tribe. Some settlements, such as the Navajo-Utah Water Rights Settlement, provide funding for on-farm efficiencies intended to increase conservation and thereby make additional water available for domestic purposes. Finally, settlements often include funding to rehabilitate and modernize Indian irrigation projects. As discussed below, improvements to irrigation can conserve water by making these projects more efficient.

Investments in Indian water rights settlements lead to real change on the ground for Tribal communities. To date, the Biden-Harris Administration has invested more than $3.1 billion towards fulfilling the terms of enacted Indian Water Rights Settlements. This includes more than $2.2 billion from the Indian Water Right Settlement Completion Fund (Completion Fund) enacted under the Bipartisan Infrastructure Law (BIL).

Building upon investments in the BIL, the Biden-Harris Administration recently transmitted a proposal to the Senate and House for $250 million annually in mandatory funding over 10 years

to expand the Indian Water Rights Settlement Completion Fund to cover the costs of enacted and future water rights settlements and $34 million annually in mandatory funding over 10 years for ongoing costs including operations and maintenance costs associated with enacted water settlements. These annual requirements are associated with the Ak Chin Indian Water Rights Settlement Project, the Animas-La Plata Project (Colorado Ute Settlement), the Columbia and Snake River Salmon Recovery Project (Nez Perce Settlement), and the Navajo-Gallup Water Supply Project. Providing a stable, dedicated funding source for Indian water rights settlements helps to ensure these commitments are honored and Tribal communities have safe, reliable water supplies to support public and environmental health and economic opportunity.

Bureau of Indian Affairs (BIA) Drought Mitigation Efforts

Tribal Climate Resilience Program

Since 2011, the Tribal Climate Resilience Program (TCR) has awarded over 35 projects that address Tribal specific Drought Plans and Vulnerability Assessments. TCR has funded around $1 million in Drought Vulnerability assessments for Tribes to conduct studies and assess impacts on their lands and people. TCR also funded $4 million to Tribes to identify drought mitigation strategies for the future. In 2022, TCR awarded two implementation projects addressing drought specific impacts: $1.6 million for the installation of infrastructure for water recirculation at a Tribal hatchery and $999,436 for rangeland water improvement. TCR is part of three Drought Working Groups across the nation and have attended five technical meetings that deal with drought specifically.

Irrigation Programs

Many of the Indian Irrigation projects were designed and constructed over a hundred years ago, long before drought mitigation became a concern. The old infrastructure and the design of the Irrigation projects themselves need to be modernized to adapt to less available water for irrigation. To mitigate drought effects, BIA is incorporating state-of-art modernization concepts that modify existing facilities to improve water management and improve irrigation service to customers. Examples of drought mitigation projects include transitioning from open channel canals to pipelines, or using canal liners, to reduce evaporation and seepage. BIA is also advancing the concept of small, re-regulating reservoirs to store irrigation water within the project boundaries, which improves water use efficiency during droughts. BIA is increasing utilization of SCADA (Supervisory Control and Data Acquisition) systems, which use computers to control, monitor, and analyze water usage rather than relying on a ditch rider to open and close water control gates. SCADA helps mitigate effects of water shortage due to drought by improving operations.

Recent modifications to pumping plants at the Fort Peck Irrigation Project in Montana will improve water supply to the Project, especially during times of low flow in the Missouri River. Uintah and Flathead Irrigation Projects are converting open channel canals to pipelines, which eliminates seepage and evaporation. BIA is currently working with the Colorado River Indian Tribes on a proposed re-regulating reservoir at the Colorado River Irrigation Project in Arizona to allow BIA to better manage water within the Project and reduce the impacts of drought.

Colorado River Indian Tribes Water Resiliency Act

The BIA is implementing P.L. 117-343, the Colorado River Indian Tribes Water Resiliency Act, with the Colorado River Indian Tribes (CRIT) and the Bureau of Reclamation to establish water conservation and leasing agreements which will make Tribal decreed water available for drought mitigation in the Lower Colorado River Basin. P.L. 117-343 authorized permanent authority for CRIT to enter into lease or exchange agreements, storage agreements, and agreements for reductions in consumptive use (e.g., conserved water) of CRIT's Arizona decreed water allocation in the Lower Colorado River Basin in Arizona. The Department, CRIT, and the State of Arizona are in the process of finalizing the three-party agreement required for implementation of P.L 117-343.

San Carlos Irrigation Project-Power Division (SCIP)

Reductions in hydropower generation in the Lower Colorado River Basin due to years of drought and extremely low water levels available to generate hydropower negatively impact the cost of SCIP's power purchase contracts. Recent extreme weather events in Texas, wildfires in California and other factors outside of BIA's control, such as spikes in natural gas prices, also impacted the purchase power market available to SCIP. Recent spikes in the cost of purchased power created significant funding shortfalls for SCIP. As a result, the BIA increased rates charged to its customers to meet the new purchase power requirements and continue normal operation and maintenance of SCIP facilities. SCIP has not had its own hydro-generation for several decades and relies solely on power purchases to serve its customers. BIA has little or no access to renewable energy sources to mitigate drought impacts. The BIA, Tribes, and customers would all benefit from the development of large-scale renewable power generation projects which could be the source of a long-term power supply commitment for SCIP.

Water Resources Programs

The Branch of Water Resources provides funding for necessary technical research, studies, and other information for Indian Tribes to serve as informed and prudent managers of their water resources. Water supplies and availability are under stress on multiple Tribal reservations and/or jurisdictions across the United States. Some of these areas have longstanding issues related to water stress such as the Colorado River and the Rio Grande River Basins, and these challenges are likely to increase with development and climate change. The Branch has provided project funding to aid Tribes in assessing their water supply vulnerabilities during drought. These projects include the preparation of comprehensive reservation water management and development plans, interagency drought management plans, and technical assessments to define and characterize Tribal water resources. Projects to fund stream gauging systems have provided groundwater, surface water and reservoir water data to aid Tribes in management decisions regarding water supply management during all stages of drought.

Improvement of Bureau of Indian Affairs and Hopi Public Water Systems

To address groundwater supplies with naturally occurring elevated arsenic concentrations, the Hopi Tribe (Tribe) implemented a regional water supply delivery system termed the "Hopi

Arsenic Mitigation Project" (HAMP). HAMP involves the construction of wells at the Turquoise Trail region and the installation of water lines to the areas of First Mesa and Second Mesa.

To address challenges with arsenic treatment, and to assure drinking water quantity and quality with the BIA public water systems (PWSs) serving Hopi communities, the BIA initiated a process to connect the BIA PWSs to the HAMP or regional water supply, increase the capacity of the HAMP, and to update the BIA-owned water delivery infrastructure. This process involves BIA and Hopi Tribal partnerships in the design and construction of drinking water delivery infrastructure related to connecting BIA assets to HAMP to include expanding the capacity of the HAMP; and upgrading BIA assets so that these assets are in acceptable condition for transfer to the Tribe.

The Department has invested $10.48 million in annual appropriations and $15.366 million BIL funding to accomplish the replacement of old water infrastructure with new state of the art infrastructure as well as the addition of new water infrastructure, enhancing the HAMP/existing regional water supply.

Successes completed and planned include: (1) strengthening the Hopi Tribal government's utility program; (2) historic investment in the Hopi community to help bolster community resilience and replace aging infrastructure; (3) the provision of superior quality drinking water to Hopi communities; (4) improving the safety and reliability of water to Hopi communities; (5) the provision of the effective use and management of trust resources/groundwater for the next 50 years; and (6) the transfer of water infrastructure assets, and the operation and maintenance of those assets to the Tribe.

With these accomplishments, the Department demonstrates a new vision on leveraging the resources of the federal government to help the Hopi community. Funding is essential to advancing, supporting, and empowering the Tribe. These investments ensure operational, efficient, and resilient water systems, protect Hopi communities, and fulfill the Department's trust responsibilities.

Columbia River

Drought increases impact on water quantity and quality of the rivers Indian Tribes rely on for economic, subsistence and cultural activities. From 2017 to 2023, the BIA doubled the amount of funding from approximately $5 million to approximately $10 million to the Columbia River Columbia River Inter-Tribal Fish Commission (CRITFC) to ensure Tribal access to the river and support a healthy fishery resource. In addition to annual appropriations, the BIA also awarded $2.5 million in BIL water sanitation funding to CRITFC to upgrade critical water and sanitation needs that will ensure safe drinking water. With these annual appropriations, the BIA continues to work on multiple Treaty Fishing Access Sites (TFAS) and In-Lieu Fishing Sites, including Cooks In-Lieu and North Bonneville TFAS.

Bureau of Reclamation Drought Mitigation

The BIL and Inflation Reduction Act (IRA) provided substantial funding to help Reclamation advance its mission. Combined, these laws represent the largest investments in climate resilience

in the nation's history and provide unprecedented resources to support the Administration's comprehensive, government-wide approach to make western communities more resilient to drought and climate change. For Reclamation, this includes a $13 billion total investment in western water infrastructure as well as a share in executing the $2.5 billion for authorized water rights settlement projects. These additional resources made available by Congress have significantly increased Reclamation's efforts to mitigate for drought while advancing substantial investments to increase water access for underserved communities.

Section 50231 of the IRA provided $550 million specifically to tackle the issue of water access for disadvantaged communities – allowing for Reclamation to provide funding for planning, design, or construction of water projects to provide domestic water supplies to communities or households that don't have reliable access to domestic water supplies. The funding provided under Section 50231 provides a unique authority and opportunity for Reclamation – while Reclamation's analogous authorities generally require a cost share and/or repayment, this section allows for us to provide up to 100 percent of the cost of the planning, design, or construction of water projects. Reclamation expects this flexibility to significantly benefit communities that do not have reliable access to domestic water supplies and may require additional funding assistance. Since enactment, Reclamation has worked with Tribes and stakeholders across the west to understand how to best implement this funding and ensure that the federal investment assists in delivering benefits to disadvantaged communities.

Regarding BIL's implementation over the past two years, Reclamation's focus has been on using the historic investments in water infrastructure in an effective and efficient way while ensuring it has tangible impacts in the communities we serve. To date, Reclamation has allocated $2.7 billion of BIL funding to 370 projects across more than 12 program areas and sub-categories identified in the law, and in all 17 western states as well as Hawai‘i and Puerto Rico. The BIL made substantial investments in designated programs, including significant funding for programs that directly address mitigating drought and increasing water access.

United States Geological Survey Drought Mitigation Efforts

The U.S. Geological Survey (USGS) uses Cooperative Matching Funds (CMF), which leverage other agencies' resources with USGS funding, to support water research in Indian Country. In Fiscal Year 2022, through USGS Water Science Centers, CMF were used in partnership with 64 Tribes or Tribal entities to conduct a wide range of monitoring and interpretive science activities. This amounted to $4.5 million in combined funding.

In addition to CMF, the USGS has provided limited funding through the National Groundwater Monitoring Network and the Federal Priority Streamgages Program for monitoring and research on Tribal lands. Starting in 2017, Congress directed the USGS to use CMF to work closely with Tribal leaders in conducting water-resource investigations to support Indian water rights negotiations, implementations, and settlements. Through Fiscal Year 2023, a total of $3.5 million has been allocated, through a solicitation process, to support Indian water rights settlement activities.

Conclusion

We have a clear charge from the President and Secretary Haaland to improve water access and water quality on Tribal lands. Access to water is fundamental to human existence, economic development, and the future of communities— especially Tribal communities. As highlighted above, the Department has tried to maximize the impact of IRA, BIL, and annual appropriations to uphold our trust responsibilities and ensure Tribal communities receive the water resources they have long been promised.