

TESTIMONY OF DR. DAMON CLARKE,
CHAIRMAN, HUALAPAI TRIBE
BEFORE THE SENATE COMMITTEE ON INDIAN AFFAIRS
IN SUPPORT OF S. 4104
THE HUALAPAI TRIBE WATER RIGHTS SETTLEMENT ACT OF 2022
JULY 20, 2022

Chairman Schatz and members of the Committee, my name is Dr. Damon Clarke. I am Chairman of the Hualapai Tribe.

The Hualapai Tribe strongly supports S. 4104, the Hualapai Tribe Water Rights Settlement Act of 2022. Before I describe the major elements of this legislation and the critical benefits the Tribe receives from it, let me briefly explain to the Committee our Tribe's pressing water needs.

1. The Tribe's critical need for additional water.

The Hualapai Reservation encompasses approximately one 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 is arid. It has no significant surface streams other than the Colorado River. It has very limited groundwater resources. The Tribe's groundwater wells are a depletable resource and well levels on the Reservation have been dropping for years. The Tribe's principal residential community at Peach Springs relies exclusively on three groundwater wells in the Truxton Aquifer, near the Reservation's southern boundary. Those wells were installed in 1975, so the piping for the well system is 47 years old and has failed in the recent

past, leaving our community without water for several days. One of the wells has also suffered episodes of dangerous E-coli and coliform contamination and we have not been able to locate the source of the contamination. When that well is out of service because of contamination, we are unable to supply sufficient water to the community, so we have to implement strict mandatory conservation measures. Because this groundwater is the only source of water for our residential needs on the Reservation, we are very vulnerable to any short-term interruptions in supply from these wells, and also to the long-term decline in the water levels in the Truxton Aquifer.

Our own water experts have studied the Truxton Aquifer and concluded that it can supply “approximately 30 to 40 years of the Tribe’s long-term demand” and therefore is not “a permanent water supply solution” for the Tribe. In addition, the Truxton Aquifer extends off the Reservation and is vulnerable to depletion from off-Reservation pumping that is out of the Tribe’s control. This groundwater clearly is not a secure long-term water supply that the Tribe can rely on for the future of our Reservation population.

The situation is even worse elsewhere on the Reservation. There is a small well on the east side of the Reservation that provides water to ranchers and wildlife in that area, but the water is not potable for human consumption. And there are two wells at West Water, which is on Buck-and-Doe Road, a gravel road that runs from Peach Springs to our tourist development at Grand Canyon West on the western rim of the Grand Canyon. The West Water wells, which are 35 miles from Grand Canyon West, previously provided all of the water for our activities there. But four years ago, the water table in those wells suddenly dropped because of the drought, and both wells failed.

This crisis continues today. For the past three years, the Tribe has been forced by lack of water to curtail some of our operations at Grand Canyon West, thus threatening the heart of our

on-Reservation economy and the main source of employment for our members. We have attempted to locate other sources of water that we can use to supply Grand Canyon West. Although we did find some off-Reservation sources, Arizona law prohibited us from transporting this water across basins. As an emergency measure, we have resorted to pumping water from the Truxton Aquifer and hauling it 15 miles by truck on Buck-and-Doe Road to the West Water site, where the water is then pumped for 35 miles out to Grand Canyon West. This patchwork system is burdensome, insecure and very expensive, but it is the only way we can continue our remaining operations at Grand Canyon West. And this emergency has made the Tribe even more dependent on the Truxton Aquifer. It also has placed additional stress on that Aquifer because we are now forced to use it to supply both Peach Springs and, more distantly, Grand Canyon West. Let me quote our Director of Public Works about the current situation:

This places an even greater demand on the public water system serving the community of Peach Springs. Leaving the Tribe praying that the trucks don't break down, the pumps don't fail, the pipeline stays together and there are no more E-coli events.

Providing Colorado River water for the Tribe to use at Grand Canyon West would alleviate a substantial burden on our members, who rely on their jobs at Grand Canyon West to support their families. Grand Canyon West is located a two-hour drive on a gravel road from Peach Springs, where virtually all tribal members now live. Thus, tribal members who are employed at Grand Canyon West have daily four-hour round-trip commutes to their jobs, and even longer in inclement weather. Currently, it is impossible to locate a residential community at Grand Canyon West because of the total lack of water there. This situation imposes an unsustainable burden on tribal members who live in Peach Springs and work at Grand Canyon West, and on their families. The Tribe urgently needs Colorado River water delivered to the

Reservation in order to allow the Tribe to develop a residential community at Grand Canyon West so the tribal members who are employed there can reside closer to their jobs.

I cannot emphasize strongly enough the importance of Grand Canyon West to the economic sustainability of the Hualapai Tribe. The Hualapai Reservation does not have the natural resources to permit commercial agriculture, timber or mineral development. But the Reservation's virtually unique location on the Grand Canyon gives the Tribe a strong basis to create a self-sustaining tourism-based economy. Grand Canyon West is the centerpiece of the Tribe's economy. Prior to the pandemic, the Grand Canyon Resort Corporation, a tribal corporation which operates Grand Canyon West and other tribal enterprises, along with the tribal government, employed more than 1,500 workers (more than 550 of whom were non-tribal members). At that point, the Hualapai Tribe was the second largest employer in Mohave Country in Arizona, and Grand Canyon West hosted over 1 million visitors a year. We believe that operations there will return to this capacity as pandemic restrictions continue to ease.

As I noted earlier, the groundwater wells nearest to Grand Canyon West, which are 35 miles away, have given out. With the Colorado River water that the Tribe will receive if this legislation is enacted, and with the funding to build the infrastructure to deliver that water to Grand Canyon West that will be authorized by this legislation, the Tribe will be able to take full advantage of the potential for further development of Grand Canyon West, and will be able to create additional jobs for both tribal members and non-Indians, as well as provide new revenues for our tribal government.

And there will also be significant benefits beyond this. In 2017, the Tribe commissioned Professor Joseph P. Kalt from the Harvard Project on American Indian Economic Development at the John F. Kennedy School of Government, to analyze the economic impact that

implementation of our water rights settlement would have on the regional economy of northwestern Arizona and southern Nevada, as well as on the economy of the State of Arizona and the Nation as a whole. Professor Kalt's report, which was prepared prior to the impact of the recent pandemic, states that the economic development of Grand Canyon West that would be triggered by the water and infrastructure authorized by this settlement would support an average of more than 6,500 jobs per year in Arizona, and close to 1,000 jobs per year in southern Nevada. For the Nation as a whole, the project would support an average of more than 10,000 jobs per year, nearly \$1.5 billion in federal tax revenues (in 2017 dollars), and a present value (in 2017 dollars) of more than \$9.3 billion in gross domestic product (GDP) for the United States.

The use and delivery of water for this kind of 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, and a retail travel center. Therefore, the infrastructure development authorized by S. 4104 to support the Hualapai Tribe's tourism-based economy is completely consistent with past Indian water rights settlements approved by Congress.

The Colorado River is the only feasible water supply for satisfying the long-term future needs of our population living in Peach Springs and on the rest of our Reservation. Our Tribe needs delivery of Colorado River water both to provide a permanent and secure water supply for

the domestic and residential needs of our present and future population, and also to fully realize the opportunities for economic development that we have at Grand Canyon West.

2. History of Settlement Negotiations.

Over a five-year period beginning in early in 2011 and ending in 2016, the Hualapai Tribe, in two phases, negotiated a settlement of all of the Tribe's federally 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. In Phase 1, the parties successfully resolved a portion of the Tribe's water rights—those in the Bill Williams River watershed, where the Tribe has a small parcel of Reservation land and tribal members have some allotted trust land. That phase 1 settlement was ratified by the Bill Williams River Water Rights Settlement Act of 2014, Pub. L. 113-223, 128 Stat. 2096 (Dec. 16, 2014).

In 2016, the Tribe and the State parties reached an agreement on Phase 2, but the Federal agencies were unprepared to support it. Since then, the Tribe and the State parties have worked diligently to reach agreement with the Federal Negotiating Team, and we are very pleased that we have done so this year. The legislation now before the Committee, S. 4104, will resolve all of the Tribe's remaining water rights claims on a comprehensive basis. The legislation is strongly supported by the Tribe, by the State of Arizona and by the private entities which are parties to the settlement—the Salt River Project, the Central Arizona Water Conservation District and Freeport Minerals Corporation—all of which have signed the settlement agreement. It is also supported by Mohave County, the local jurisdiction in which most of the Reservation is located. And now for the first time, this legislation also has the support of the Departments of the Interior and Justice.

This negotiation to resolve the Hualapai Tribe's water rights, which has now taken us 11 years to complete, has been a very long road for the Tribe. Versions of this legislation to ratify our water rights settlement were introduced in the House or Senate, or both, in the 114th Congress, the 115th Congress and the 116th Congress. This Committee conducted two hearings on the Hualapai settlement bills in earlier Congresses, in September 2016 and December 2017. A subcommittee of the House Natural Resources Committee conducted a hearing just two months ago, in May 2022, on the companion House bill in this Congress, H.R. 7633.

Until this year, we never before had the full support of the Interior Department and the Justice Department for our water rights settlement. We are very pleased that the comprehensive settlement of our water rights—and S. 4104 which ratifies that settlement—now has the full support not only of all State parties, but of the Federal parties as well.

3. Elements of the Settlement.

Let me now summarize the principal elements of the comprehensive water rights settlement ratified by S. 4104, and also point out two important differences in the legislation from the earlier versions of the bill:

- The Act comprehensively settles all of the Hualapai Tribe's federally reserved water right claims for its Reservation and trust lands, including the Tribe's right to water from the Colorado River.
- The Settlement Act recognizes the Tribe's exclusive rights to all groundwater and surface water on the Reservation and its other trust lands. The Act protects the Tribe's on-Reservation groundwater by preserving the rights of the Tribe and the United States to object to off-Reservation pumping in certain specifically defined circumstances that could impair the on-Reservation groundwater resource. This is an important change from earlier versions of the

legislation which provided that the Tribe and the United States would entirely waive their rights to object to off-Reservation pumping. This legislation therefore strengthens the protections for the Tribe's groundwater, which is a particularly significant and positive change for the Tribe with regard to the Truxton Aquifer.

- The Tribe receives an allocation of 4,000 acre-feet a year of Central Arizona Project (CAP) 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 in the availability of Colorado River water in Arizona. The Act also provides that 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.

- The legislation authorizes the appropriation of \$180 million for a trust fund for the Tribe to use to construct an infrastructure project to deliver up to 3,414 acre-feet a year of water from the Colorado River to the Reservation. The project, as currently planned by the Tribe, will divert water from the Colorado River on the Reservation at Diamond Creek and then deliver it through a 70-mile pipeline to both Peach Springs and Grand Canyon West. This system will replace the Tribe's reliance on the existing groundwater wells in the Truxton Aquifer (except when those wells are needed as an emergency backup). The legislation also authorizes the appropriation of \$5 million for the U.S. Geological Service to use to monitor groundwater levels in the Truxton Aquifer.

I want to point out that the provisions in this legislation relating to the infrastructure project also differ from earlier versions of this bill. Previous legislation would have ratified a "project-based" settlement, and authorized funding for an infrastructure project to be constructed by the Bureau of Reclamation. S. 4104 instead will ratify a "funds-based" settlement, and

authorizes an agreed-upon amount of funding to be provided to a trust fund for the Tribe to use to construct the infrastructure project. This change in approach was made at the request of the Interior Department, and is supported by the Tribe.

- Finally, certain lands owned by the Hualapai Tribe in the Bill Williams Basin are designated by the legislation to be brought into trust status, and certain other lands currently held in trust for the Tribe near the Hualapai Reservation will be made part of the Reservation.

4. Conclusion.

Passage of S. 4104 to ratify the Hualapai Tribe water rights settlement is absolutely essential if our Tribe is to attain a secure future on our Reservation, to accommodate future growth of our population and 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 that prevents us from achieving economic self-sufficiency, a goal that Federal Indian policy has long favored. Passage of this legislation is essential to allow my Tribe to attain this goal.

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.