

**BEFORE THE UNITED STATES SENATE
COMMITTEE ON INDIAN AFFAIRS**

Prepared Statement of Honorable Matthew J. Box, Chairman

SOUTHERN UTE INDIAN TRIBE

Hearing on the Pine River Indian Irrigation Project Act of 2009

April 29, 2010

I. INTRODUCTION

Chairman Dorgan, Vice Chairman Barrasso, and members of the Committee on Indian Affairs, I am Matthew J. Box, the Chairman of the Southern Ute Indian Tribe. I am honored to appear before you today to provide testimony regarding the Pine River Indian Irrigation Project Act (“PRIIP Act”), a piece of legislation that the Southern Ute Indian Tribal Council, our tribal members, and I have been anxiously awaiting for a number of years. The PRIIP Act, S. 1264, was introduced by our two Senators, Mr. Udall and Mr. Bennet, and on behalf of the Southern Ute Indian Tribe, I would like to thank them for continued commitment to representing the Tribe and its interests as well as all Coloradans. I would also like to humbly thank the Committee for your consideration of my remarks today.

II. BACKGROUND

The Southern Ute Indian Reservation (“Reservation”) consists of approximately 700,000 acres of land in southwestern Colorado within the Four Corners area. Our tribal members have resided in the area of the Reservation since time immemorial even though our ancestors were nomadic hunter-gatherers who traveled over broad territory on a regular basis. Despite our far-ranging history, we, like so many others in Indian Country,

have been expected to become farmers since the early 1880's, when our present day Reservation was established. It was as a result of the federal government's policy of encouraging Indian agriculture that the Pine River Indian Irrigation Project ("PRIIP") was born.

Some of the irrigation ditches that eventually served as the basis of the project were constructed by the Indian Agency in 1877. In 1895, the Pine River Indian Agency filed claims for water from the Pine River to irrigate over 18,000 acres of land. In the 1920s, in part as a response to the disputes over water rights, the Office of Indian Affairs began investigations into the possibility of storing early season flood waters for irrigation of almost 17,000 acres of Indian land in the Pine River Valley. During the 1920s, growing concerns related to Indian irrigation led to the first comprehensive investigation into Indian irrigation programs. The report from this investigation, called the Preston-Engle Report, was published in 1928. The PRIIP, then known as the Southern Ute Irrigation Project, was one of the projects studied at that time.

From its inception, the PRIIP has not served its users as it was intended. For example, as noted in a 2006 study by the Government Accountability Office on Indian Irrigation Projects ("2006 GAO Report" – copy submitted herewith), construction of the PRIIP was never actually completed. *See* GAO-06-314, Indian Irrigation Projects, p. 42. Since that time, the "crisis-style" management discovered by the GAO study has led to ongoing operational and management deficiencies that have degraded the project's infrastructure and facilities to the point of nearly complete failure.

Presently, the PRIIP is intended to provide water to approximately 12,000 acres and nearly 400 individual users, including approximately 100 non-Indians and the Town

of Ignacio, and is operated by the Bureau of Indian Affairs (“BIA”). A map showing the PRIIP is attached to this testimony. According to the 2006 GAO Report, the project is carrying a deferred maintenance backlog of needed improvements that amounts to approximately \$20 million. Other, less official estimates have put that amount as high as \$60 million. The deteriorated condition of the PRIIP means that many of its users are unable to access and use water for agricultural irrigation. The pictures included with this testimony show some examples of the deteriorated condition of the PRIIP. Despite this condition, users have seen rates for operation and maintenance increase over recent years even while the PRIIP continues to fail to deliver water for their use. In fact, according to a 1999 study done by the Bureau of Reclamation, geographic and climactic conditions prevent PRIIP users from generating a return on their investment that would justify PRIIP charges of more than \$6.00 per acre; however, current charges exceed \$15.00.

The PRIIP Act seeks to remedy the years of neglect that the PRIIP has suffered. Given this long history of that neglect, beginning with the failure to actually complete the project, rehabilitating the PRIIP will certainly not be an easy task; however, we believe the PRIIP Act represents an effective approach to doing so.

III. THE PRIIP ACT

As presented for your consideration, the PRIIP Act generally approaches the rehabilitation of the project in phases: first, the Secretary of the Interior (“Secretary”) would be required to assess the condition of the PRIIP, including its infrastructure, and establish priorities for fixing the problems identified by the assessment; then, following such assessment, the rehabilitation activities would be carried out through cost-sharing agreements between the federal government and the Tribe.

A. Findings and Purpose.

As noted in Section 2 (Findings and Purpose), this approach would address the PRIIP's current deficiencies while providing numerous benefits, including: water conservation; extending available water supply; increased agricultural production; economic benefits; safer facilities; the preservation of our culture; and, improvement of water management and the reduction of water conflicts. No longer would tribal members and other water users on the PRIIP wait for the irrigation water to come on in the spring only to find that, because of the condition of the project's facilities, the water did not make it to their land. In addition, the use of the project's water would be much more efficient if, for example, the activities called for in the PRIIP Act were to result in better containment, such as canal linings, and delivery. Ultimately, the purpose of the Act is to finally fulfill the initial purpose of the PRIIP itself, which was to help promote and support agricultural development by the Tribe, its members and the local community.

To achieve these goals, we would anticipate that the Secretary would call upon the Bureau of Reclamation as the agency to handle the tasks outlined by the PRIIP Act. Regardless, however, throughout both phases, the Secretary is encouraged, if not required, to work with us and others to ensure that the ultimate results are collaborative and successful. All too often, we have seen federal agencies and others who, under the best of intentions, fail to accomplish their objectives because they fail to involve and/or communicate with others who could provide assistance. Furthermore, even though the PRIIP will continue to be managed and operated by the BIA, the same agency that has overseen the project's decline, we are committed to doing our part to help all PRIIP

users, including non-Indians, benefit from the project. The goals of the PRIIP Act are far too important for us to avoid assisting even though we have no legal or other responsibility to do so.

The following outlines the sections of the PRIIP Act that describe the phases in additional detail. These sections begin at Section 4, which follows a short section of definitions.

B. Section 4 – Study of Irrigation Infrastructure of Project.

The first phase, which would commence as soon as practicable following enactment of the PRIIP Act, would require the Secretary, in consultation with the Tribe, to study the PRIIP's irrigation infrastructure and, based on the study, develop a list of recommended activities and cost estimates for each that would, within a decade of completion of the study, repair, rehabilitate or reconstruct such infrastructure, where appropriate. This section includes specific factors, such as the recommendations of the Tribe and the benefits of each activity on the overall PRIIP, for the Secretary to consider in establishing the priority of rehabilitation activities. The PRIIP Act would also require that the Secretary consider any threats to the health and safety of tribal members, BIA employees or the general public; the extent of disrepair of the PRIIP and the ability of its users to adequately irrigate; water conservation; and the extent to which the activities would provide the benefits outlined above.

Following completion of the study and identification of priorities, which must be accomplished within 18 months of the date of enactment of the PRIIP Act, the Secretary is required to provide his findings in a report to Committees of both the Senate and House and to the Tribe. The Secretary's report must include the list of activities and the

Secretary's findings regarding the priority factors and his consultation. The PRIIP Act also requires that the report be reviewed and updated by the Secretary, in consultation with the Tribe, no less than every two years after its submission.

We support the approach outlined by Section 4 because it provides clear guidance to the Secretary and ensures that no rehabilitation work on the PRIIP would be undertaken without prior careful consideration. Given the overwhelming nature of the PRIIP's decrepit condition, development and review of the priorities identified in the PRIIP Act would ensure that the rehabilitation activities are conducted efficiently and in a logical and effective order. The Committee could certainly consider additional priorities to be added and modify the reporting requirements outlined by the current version of the bill; however, we feel that the current draft is a reasonable approach to breaking down the immense amount of work needed on the PRIIP into smaller, more easily accomplished projects.

C. Section 5 – Irrigation Infrastructure Grants and Agreements.

Section 5 of the PRIIP Act creates the mechanism by which the rehabilitation, repair and replacement of the deficient irrigation infrastructure can be completed. Under this Section, the Secretary is authorized to enter cooperative agreements or provide grants to the Tribe for the planning, design, construction or implementation of any appropriate activity identified by the Secretary in his study of the PRIIP. The Section also requires the Secretary to consult with the Tribe and the Assistant Secretary for Indian Affairs in providing such assistance and requires that he coordinate the activity with any work being done by the BIA's operations and maintenance program. Lastly, the Section

includes a cost sharing requirement that limits the federal share of such projects to 75% but also allows the Secretary to waive that requirement upon request by the Tribe.

After years of watching the PRIIP deteriorate without action by the BIA or other federal agency, we have realized that a new approach is needed to repair and rehabilitate the project. Therefore, we are committed to working with the federal government to fix the PRIIP and to doing so on a cooperative and, where appropriate, cost-share basis.

D. Remaining Sections.

The remaining sections of the PRIIP Act make clear that nothing in the Act is intended to affect water rights of the Tribe or Colorado's water laws or interstate compact and authorize appropriations to carry out the study and rehabilitation work. These appropriations are divided into an amount of \$4M for the study and, following that, an annual amount of \$10M for each fiscal year from FY10 through FY15 for the actual rehabilitation, repair and replacement activities. For obvious reasons, this last section is critical to the success of the PRIIP Act and our efforts to finally address the project's needs.

III. CONCLUSION

The PRIIP Act is necessary to finally fulfill the responsibilities for adequate maintenance of the PRIIP that have been ignored for so long. We fully support the approach outlined by the Act because it provides a logical, efficient and effective strategy for tackling such a decades-old and imposing problem. We are committed to working with the federal government to tackle these issues and help our tribal members and others who benefit from the PRIIP. Without such cooperation and despite our ongoing contention the federal government has been required to at least minimally maintain the

PRIP as part of its trust responsibility to us as a federally recognized Indian tribe, it seems likely that fiscal constraints, competing agency obligations and general bureaucratic inertia would continue to leave the PRIP without any prospect for improvement. Therefore, if Congress is willing to approve the PRIP Act and appropriate the necessary funds to see it through, we are willing and able to finally restore the PRIP to its intended working condition. I am honored to appear before you today and respectfully thank you for your consideration of my testimony.