

Statement of T. Darryl Vigil, Chairman of the Colorado River Basin Tribes Partnership, before the Subcommittee on Water and Power of the Senate Committee on Energy and Natural Resources, regarding the Bureau of Reclamation's Colorado River Basin Water Supply and Demand Study

July 16, 2013

Chairman Schatz and members of the Subcommittee, I am Darryl Vigil, a member of the Jicarilla Apache Nation and Chairman of the Colorado River Basin Tribes Partnership ("Partnership"). Thank you for the opportunity to testify before the Subcommittee today regarding the Bureau of Reclamation's Colorado River Basin Water Supply and Demand Study ("Study").

Background of the Colorado River Basin Tribes Partnership

The Partnership was formed in 1992 for the purpose of member Tribes joining together to develop and protect tribal water resources and to address technical, legal, economic and practical issues related to the operation of the Colorado River that would affect the interests of the ten Tribes with federally reserved water rights in the Colorado River and its Upper Basin tributaries ("Ten Tribes"). The Ten Tribes are located in both the Upper and Lower Basins of the Colorado River. The Tribes located in the Upper Basin are: Ute Indian Tribe of the Uintah and Ouray Reservation, the Ute Mountain Ute Tribe, the Southern Ute Indian Tribe and the Jicarilla Apache Nation; the Tribes located in the Lower Basin are: Chemehuevi Indian Tribe, Cocopah Indian Tribe, Colorado River Indian Tribes, Fort Mojave Indian Tribe and the Quechan Indian Tribe. One Tribe, the Navajo Nation, is located in both the Upper and Lower Basins. The Partnership is a member of the Colorado River Water Users Association and the immediate past Chairman of the Partnership, George Arthur, serves as the current President of the Colorado River Water Users Association in his capacity as representative of the Partnership.

Brief Description of the Tribes in the Seven Basin States and their Water Rights and Claims

The Study identified 29 federally recognized tribes ("tribes") in the Colorado River Basin ("Basin") with claims to the use of water from the Basin. To

date, there has been recognized, either through federal and state court decrees or congressionally approved tribal water settlements, that tribes in the Basin have the right to divert in excess of 2.9 million acre-feet-per year (“MAF”) from the Colorado River and its Upper Basin tributaries, of which the Ten Tribes have the right to divert in excess of 2.3 MAF. Because not all tribes in the Basin or all of the Ten Tribes have had their water rights determined, this amount will increase in the future as final resolution of the tribes rights are achieved. Given that the observed historical long term mean natural flow of the Colorado River is approximately 15 million acre feet per year, it is clear that the tribes’ rights constitute a significant quantity of the historic long term mean natural flow and need to be fully addressed by the Basin States and the United States in the ongoing Basin Study.

The Ten Tribes in the Basin use water for multiple purposes including irrigation, recreation, domestic, commercial, wildlife, instream flows, habitat restoration, municipal, industrial, mining, power generation, cultural and religious activities to list a few. The Ten Tribes are working hard to put the water to which they are entitled to use for the benefit of their tribal members but water development on the reservations has proven to be difficult and slow, frustrated in large part by the federal government’s general unwillingness to fund water infrastructure for the benefit of tribes. The Ten Tribes are very concerned that while they struggle to put their water to use, others with far more political clout are relying on unused tribal water supplies and will seek to curtail future tribal water use to protect their own uses. Stated another way, the Ten Tribes are concerned about the impact on other water users when the Ten Tribes’ water rights are put to full use for the benefit of tribal members and how that will affect the ability of the Ten Tribes to put their water to use.

Comments on the Study as it Relates to Tribal Water in the Basin.

At the outset of the Study, the Ten Tribes were not represented on the steering committee established for the Study; membership was limited to representatives of the Bureau and the Basin States. Nor did the Ten Tribes feel that they had much of a role in it because they were relegated to participation on sub-teams that were used to develop technical data for the Study. Because it appeared that the Study was to be a decision document which could significantly and adversely impact tribal water rights and tribal usage of water in the future,

exclusion from the steering committee became a matter of great concern to the Partnership; this shortcoming and other concerns were raised with the Bureau of Reclamation reminding the Bureau of the United States' trust responsibility to them in the protection of their water and of the tribes' sovereign status in control of their water. The Partnership suggested that the following steps be taken to address their concerns about the Study:

1. Acknowledge and protect the early priority of tribal water rights.
2. Recognize and protect the unused allocation of the tribes' quantified water rights.
3. Recognize and protect the unquantified tribal water rights.
4. Recognize the special status of tribal reserved water rights that is embodied in federal statutes and federal and state case law.
5. Provide a seat on the steering committee for the Partnership.
6. Require that the Colorado River Simulation System model quantify the extent of the reliance of water users on decreed and undecreed rights of tribes not being fully exercised.

In response to the concerns raised by the Partnership, the Bureau, much to its credit, undertook outreach to all of the tribes to explain the purpose of the Study, acknowledge the tribes' water rights and reaffirm the United States' trust responsibility to the tribes. The Bureau assured the Partnership that the Study was not intended to serve as a decision document but was a "first step" in identifying what the potential imbalances of Basin water supply and demand may be in the future and in identifying possible solutions to resolve those imbalances that deserve additional study and analysis. Because of the limited scope of the Study, the matters raised by the Partnership would not be addressed in the "first step" Study but those matters would be appropriate for further study. With that understanding and as a result of the Bureau's outreach efforts, a number of tribes actively cooperated with the Bureau in providing data for the Study.

The outreach proved to be successful and the results are reflected in Appendix C9 of the Study which contains Tribal Water Demand Scenario Quantification.

Although as noted, a number of tribes actively participated in the data collection needed for the Study, the Partnership was still wary that the information in the Study regarding tribal water might be used to their detriment, and recommended that a Disclaimer about the Study be incorporated into it. The import of which is that nothing in the Study is intended to nor shall the Study be construed so as to interpret, diminish or modify the rights of any federally recognized tribe, pursuant to federal and state court decrees, treaties, agreements executive orders, and federal trust responsibility. Further the Disclaimer acknowledges that the Bureau and the Basin States would continue to recognize the entitlement and right of each State and any federally recognized tribe under existing law to use and develop the water of the Colorado River system. Through the cooperative efforts of the Bureau personnel, the Basin States representatives and tribal representatives, a Disclaimer was developed and agreed upon; it is found at ES-22 in the Executive Summary of the Study.

Inclusion of the Disclaimer was an important aspect of the Study for the Ten Tribes and laid the foundation for future work with the Bureau and Basin States in the “next steps” phase of the Study.

Reasons for a Tribal Water Study as Part of the “next steps” Phase of the Study that the Bureau is Undertaking.

Because the Ten Tribes have significant quantities of recognized water rights which will increase as their remaining rights are finally quantified, any study of water in the Basin must reasonably include the Ten Tribes. Further because of their sovereign status and control over use of their water and the United States’ trust responsibility regarding protecting the tribes’ water resources, tribal involvement will be critical to any solution regarding future supply imbalance in the Basin.

Water allocation and management of tribal water have significant legal and policy considerations and while these issues are identified in the Study, they were not addressed. To correct this shortcoming, at a meeting on the 28th of May in San Diego on the “next steps” phase of the Study, attended by Commissioner Mike Connor and Assistant Secretary for Power and Water, Ann Castle, for the Department of the Interior, the Bureau announced it will be undertaking a Tribal Water Study as the “next steps” phase to address issues surrounding tribal water in the Basin States. This phase of the Study is intended to address tribal water issues in sufficient detail to provide the Bureau, the Basin States and Ten Tribes with the certainty necessary for future River management and planning.

In response to this announcement, the Partnership has created a legal/technical team to work with a counterpart team created by the Bureau to undertake this phase. The “next steps” phase will hopefully include a study capable of evaluating full tribal development, control, and protection of tribal water resources in the Basin.

Confirmation of the Partnership’s commitment to work collaboratively with the Bureau of Reclamation and Basin States to Address the Projected Supply and Demand Imbalances in the Basin

The Ten Tribes in the Basin have historically been good neighbors and consider water to be basic to life and are committed to working collaboratively with the Basin States, their Mexican relatives and the United States to initiate actions to implement plans to resolve current and future water imbalances in the Basin.

Conclusion

In conclusion, Mr. Chairman, I would be remiss in not acknowledging the yeoman’s work performed by Carly Jerla and Pam Adams of the Bureau of Reclamation in reaching out to the tribes and tirelessly advocating on the tribes’ behalf and ensuring that the tribes’ concerns were addressed. This effort resulted in the tribes actively participating in the Study. Their efforts were fully supported by Commissioner Connor, Assistant Secretary Castle and the Regional Directors of the Lower and Upper Basins, Terry Fulp and Larry Walkoviak. I also want to note the cooperation and to thank the Basin States’ representatives in working with the Partnership in developing the Disclaimer contained in the Study. Lastly, I want to thank Cathy Condon and Chuck Lawler from the Partnership for their work in coordinating tribal and Bureau work which resulted in an improved Study and better understanding of tribal water issues for all concerned.

I would be happy to respond to any questions the Committee may have, thank you.