

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

July 20, 2022

Hello and good afternoon, Chairman Schatz, Vice Chair Murkowski, and members of the Committee. My name is Jason Freihage, and I serve as the Deputy Assistant Secretary of Management for Indian Affairs at the U.S. Department of the Interior (Department).

Thank you for the opportunity to present the Department's testimony on S.4104, The Hualapai Tribe Water Rights Settlement Act of 2022, a bill to approve the settlement of water rights claims of the Hualapai Tribe and certain allottees in the State of Arizona, to authorize construction of a water project relating to those water rights claims, and for other purposes and S.4439, The Katimiîn and Aameekyáaraam Sacred Lands Act, a bill to take certain Federal land located in Siskiyou County, California, and Humboldt County, California, into trust for the benefit of the Karuk Tribe, and for other purposes.

The Department supports both S. 4104 and S. 4439.

S. 4104 - Hualapai Tribe Water Rights Settlement Act of 2022

I. Introduction

The Biden Administration recognizes that water is a sacred and valuable resource for Tribal Nations and that long-standing water crises continue to undermine public health and economic development in Indian Country. This Administration strongly supports the resolution of Indian water rights claims through negotiated settlements. Indian water settlements help ensure that Tribal Nations have safe, reliable water supplies; improve environmental and health concerns on reservations; enable economic growth; promote Tribal sovereignty and self-sufficiency; and help fulfill the United States' trust responsibility to Tribes. At the same time, water rights settlements have the potential to end decades of controversy and contention among Tribal Nations and neighboring communities and promote cooperation in the management of water resources. Congress plays an important role in approving Indian water rights settlements and we stand ready to work with this Committee and Members of Congress to advance Indian water rights settlements.

Indian water rights settlements play a pivotal role in this Administration's commitment to putting equity at the center of everything we do to improve the lives of everyday people—including

Tribal Nations. We have a clear charge from President Biden 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. To that end, the Biden Administration’s policy on negotiated Indian water settlements continues to be based on the following principles: the United States will participate in settlements consistent with its legal and moral trust responsibilities to Tribal Nations; Tribes should receive equivalent benefits for rights which they, and the United States as trustee, may release as part of the settlement; Tribes should realize value from confirmed water rights resulting from a settlement; and settlements should contain appropriate cost-sharing proportionate to the benefits received by all parties benefiting from the settlement. In addition, settlements should provide finality and certainty to all parties involved.

The Infrastructure Investment and Jobs Act provided a significant boost toward meeting our commitments to Tribal Nations for water rights by providing \$2.5 billion in the Indian Water Rights Settlement Completion Fund (referred to as the Completion Fund) for enacted Indian Water settlements. In February, the Department announced allocations totaling \$1.7 billion for enacted Indian water rights settlements that have outstanding federal payments necessary to complete their terms. All of this funding has been allocated by the Bureau of Reclamation for settlement project implementation or by the BIA into settlement trust funds where they are earning interest until the Tribes are able to pull down the funds for settlement uses. In order to complete allocations of remaining funding, BIA is engaging with Tribes to finalize indexing costs which are necessary to determine their final settlement payments over the coming months. The Bureau of Reclamation will continue to work with the Department to identify project specific allocations from the Completion Fund to meet implementation needs.

II. Historical Context

A. The Hualapai Reservation and the Hualapai Tribe

The Hualapai Tribe’s aboriginal homeland is located in the Grand Canyon and plateau region to the south of the Grand Canyon. The Tribe’s main Reservation was established on January 4, 1883, by Executive Order, and is comprised of approximately 992,462 acres of tribal trust lands in northwestern Arizona. The tribal headquarters is Peach Springs, Arizona, near the southern boundary of the Reservation. The northern boundary of the main Reservation is 108 miles along the Colorado River in the Grand Canyon. There is also a 60-acre Executive Order Reservation located in the Big Sandy River Basin, approximately 40 miles south of the main Reservation. The primary sources of employment on the Reservation are recreation, tourism, and tribal and federal government services. The Grand Canyon is the primary source of tourism on the Reservation, with activities at the Tribe’s tourism center, Grand Canyon West, and river rafting in the Colorado River. The Tribe also owns and operates the Hualapai Lodge, located in Peach Springs.

In 2007, the Tribe completed Grand Canyon West, which includes the Skywalk, a horseshoe-shaped glass-bottom walkway that extends out from the rim of the Grand Canyon. Pre-pandemic, annual visitation at Grand Canyon West exceeded one million visitors, making it the primary economic driver on the Reservation.

B. Water Resources of the Hualapai Reservation

The main Reservation is located primarily in the Colorado River Basin with a small portion in the Upper Verde River Basin. Most on-Reservation streams are ephemeral. Several springs discharging from the regional aquifer at the bottom of canyons can provide baseflow for short perennial reaches, which ultimately discharge to the Colorado River. The largest of these perennial streams are Diamond Creek and Spencer Creek, with mean annual flows of over 3,700 acre-feet per year (afy) and 4,600 afy, respectively. The springs that feed these streams are located in remote portions of deep canyons and are not readily accessible for use by the Tribe. Smaller springs on the plateaus provide water for livestock purposes.

Groundwater is the primary water supply on the Reservation and is available in varying degrees of magnitude, depending on the type and location of water-bearing zones. The major water use on the Reservation occurs in two locations: the town of Peach Springs and Grand Canyon West. Three wells serve the Peach Springs public water supply system and are located approximately 6.5 miles southwest of the town. These wells produce water from the Truxton Aquifer, an aquifer in the Truxton Valley that extends off the Reservation.

For over a decade, Grand Canyon West relied entirely on groundwater pumped and then transported by way of an approximately 35-mile-long pipeline. In 2019, the groundwater well supplying Grand Canyon West went dry. To keep this cornerstone of the Tribe's tourist economy operational, the Tribe has had to haul water approximately 30-miles from a well near Peach Springs to the now-dry well site. The hauled groundwater is then piped to Grand Canyon West. For it to thrive as the Tribe has envisioned, Grand Canyon West needs improved access to water.

III. Proposed Hualapai Tribe Settlement Legislation

The Tribe claims water rights in the Colorado, Verde, and Bill Williams River basins. Negotiations regarding potential settlement of the Tribe's water rights claims have been ongoing since 2011, when the United States established a team to negotiate a comprehensive settlement of all the Tribe's water rights within Arizona. The settlement was divided into two phases; the first phase addressed reserved water rights to several off-reservation tracts in the Bill Williams River Basin and resulted in the Bill Williams River Water Rights Settlement Act of 2014, P.L. 113-223. The second phase, addressed in S. 4104, covers additional water rights in the Bill Williams River Basin, as well as the remainder of the Tribe's water rights in the Colorado River Basin and the Verde River Basin.

S. 4104 would resolve the Tribe's remaining water rights claims in Arizona; ratify and confirm the Hualapai Tribe water rights settlement agreement among the Hualapai Tribe, the United States, the State of Arizona, and others; and authorize funds to implement the settlement agreement. The bill would reallocate 4,000 acre-feet of fourth-priority Central Arizona Project (CAP) non-Indian agriculture priority water to the Tribe to be used for any purpose on or off the Reservation within the lower Colorado River basin in Arizona. S. 4104 establishes a Trust Fund of \$180 million, to be indexed, that the Tribe can use to develop water infrastructure on its Reservation as it determines necessary and on its own timeframe. S. 4104 also authorizes a

\$5,000,000 fund for the Secretary of the Interior for settlement implementation, including for ongoing groundwater monitoring and modeling.

As discussed below, S. 4104 is the product of negotiations among the Tribe, the United States, the State of Arizona, and other interested parties, to resolve Departmental concerns expressed in prior testimony.

IV. Department of the Interior Position on S. 4104

The Department is pleased to support S. 4104. This bill is the result of over a decade of dedicated, good-faith negotiations to reach consensus on key issues. The Department appreciates that each settlement is unique, and its terms must be tailored to meet the needs of the settling Tribe and other parties.

S. 4104 is drafted to meet the Tribe's current and long-term needs for water by providing a Trust Fund to be used by the Tribe according to its needs and determinations. Rather than committing the Tribe or the United States to construct specific water infrastructure projects, S. 4104 allows the Tribe to make decisions regarding how, when, and where to develop water infrastructure on its Reservation. This approach to settlement is consistent with tribal sovereignty and self-determination.

S. 4104 provides that the Tribe can use the Trust Fund to plan, design, and construct a water project in the lower Colorado River basin in Arizona at locations on or directly adjacent to the Hualapai Reservation. Environmental compliance and issuance of a record of decision by the Secretary are conditions precedent to construction of such a project. The environmental compliance process will allow for the identification and mitigation of any adverse impacts of a project, including adverse impacts to the Grand Canyon National Park.

Previously introduced bills to approve the settlement included provisions prohibiting the Tribe and the United States from objecting to any use of groundwater outside the boundaries of the Reservation, even if those uses interfere with acknowledged Federal reserved groundwater rights. The Department testified repeatedly against such restrictions. Recent negotiations, however, produced compromise language tailored to the unique facts and hydrogeology on and around the Reservation. The Department believes that S. 4104, as introduced, would protect the groundwater resources available on the Reservation while providing certainty to surrounding communities that also rely on the Truxton Aquifer for their development. However, we caution that the compromises reached in this settlement are not a "one size fits all" and should not be considered a precedent for other settlements.

As a final matter, the Department notes that S. 4104 contains restrictions on taking lands into trust in Arizona. The State of Arizona takes the position, as a matter of policy, that Indian water rights settlements must include the restriction that, as of the date of enactment, the settling Tribe may have additional lands taken into trust only if specifically authorized by Congress. This restriction is a significant limitation on the authority of the United States under existing Federal law and is contrary to this Administration's strong support for returning ancestral lands to Tribes. The Department does not seek to contradict the Tribe's decision that the benefits provided by S.

4104, including the addition of certain lands to the Reservation as part of the settlement, justify this compromise. The Department supports the Tribe's exercise of its sovereignty while strongly disfavoring restrictions on the taking of lands into trust.

V. Conclusion

The Department appreciates the dedication of all parties, including the Tribe and the State of Arizona, to these prolonged negotiations and the willingness of all the parties to reach consensus on contentious issues. The Department is pleased to support S.4104.

S. 4439 - Katimiîn and Aamekyáaraam Sacred Lands Act

S. 4439 would transfer approximately 1,031 acres of Federal land, including improvements and appurtenances thereto, in Siskiyou and Humboldt Counties, California, from the United States Forest Service to the Department of the Interior and direct the Secretary of the Interior to take that land into trust for the benefit of the Karuk Tribe. The transfer of administrative jurisdiction and transfer into trust in the bill is subject to the condition that the Chief of the Forest Service continues to manage the National Wild and Scenic Rivers System that flows through the Katimiîn and Aamekyáaraam land. Additionally, the bill directs the Secretary of Agriculture to: (1) provide to the Secretary of the Interior a survey of the land, and (2) enter a memorandum of understanding with the Karuk Tribe to establish mutual goals to protect and enhance the river values of any component of the National Wild and Scenic Rivers System that flows through the land. Gaming on the land would be prohibited.

The Department supports this legislation. The Katimiîn and Aamekyáaraam land is sacred to the Karuk Tribe and vital to their culture and traditions. We appreciate the difficulty and uncertainty that the Tribe currently faces in relying upon a Special Use Permit for ceremonial access. The Department strongly supports returning traditional and sacred lands back to Tribes and supports agreements with Indian Tribes to collaborate in the co-stewardship of Federal waters under the jurisdiction of the Department of the Interior and the Department of Agriculture. As set forth in Joint Secretarial Order 3403, signed by the Secretaries of both the Department of the Interior and the Department of Agriculture, we will continue to support Tribal opportunities to consolidate Tribal homelands and empower Tribal stewardship of those resources. As an example of the multiple strategies the Administration is advancing, the FY 2023 President's budget includes \$14.8 million for land acquisition efforts on and off current reservations.

Conclusion

Chairman Schatz, Vice Chairman Murkowski, and Members of the Committee, thank you for the opportunity to provide the Department's views on these important bills. I look forward to answering any questions.