

**Statement of Alan Mikkelsen
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U.S. Department of the Interior
Before the**

**House Natural Resources Committee
U.S. House of Representatives**

On H.R.1904, the Indian Water Rights Settlement Extension Act.

April 4, 2019

Chairman Grijalva, Ranking Member Bishop, and Members of the committee, I am Alan Mikkelsen, and I am the Senior Advisor to Acting Secretary Bernhardt and Chair of the Working Group on Indian Water Settlements at the U.S. Department of the Interior (Department). Thank you for the opportunity to discuss H.R. 1904, a bill to amend the Omnibus Public Land Management Act of 2009 (Title X, Part II of Public Law 111-11) to make the Reclamation Water Settlements Fund permanent. As stated in the Administration's testimony in the 115th Congress on similar legislation introduced in the Senate, the Administration remains committed to implementing and adequately funding enacted settlements, and has ensured adequate funding to implement all authorized settlements through the annual Budget process.

The Department continues to strongly support Indian water rights settlements that adhere to the principles outlined in the Department's 1990 Criteria and Procedures that are grounded in the policy that negotiated Indian water rights settlements are preferable to protracted and divisive litigation as a means of resolving water rights disputes. Negotiated settlements allow tribes, states, and local water users to achieve finality on difficult issues of title to water, freeing up surrounding communities to make critical management and development decisions. Settlements allow the parties to develop creative solutions to overarching water resources issues. One of the key factors in making settlements meaningful to the health and welfare of tribes and non-Indian communities, and to creating water certainty and economic-development opportunities in the West, has been funding. Funding is needed to secure new water supplies, build or rehabilitate infrastructure required to deliver water, and protect resources such as treaty fishing rights that are of critical importance to tribes. Settlements provide opportunities for local solutions, and because they have federal and local cost-share requirements, the settling parties share in the burdens, as well as the benefits, that can arise from investments in infrastructure. The FY 2020 Budget requests \$178.5 million for the implementation of Indian water rights settlements.

Background

To date, Congress has enacted 32 Indian water settlements, addressing the need for reliable water supplies in Indian country. There are over 280 federally recognized tribes in the West alone (excluding Alaska), and the Department continues to see an increase in requests from tribes and states to enter into water rights settlement negotiations. Many of these tribes need: clean,

reliable drinking water; repairs to dilapidated irrigation projects; and the development of other water infrastructure to bring economic development to reservations. States increasingly seek settlement of Indian water rights to provide certainty for holders of State-based water rights, clarify authority to manage water resources, and plan for the future.

Indian water rights settlements can however be costly, and costs have increased over the years. Within the last ten years, the Omnibus Public Lands Management Act of 2009 (P.L. 111-11), the Claims Resolution Act of 2010 (P.L. 111-291) and the Water Infrastructure Improvements for the Nation (WIIN) Act (P.L. 114-322) authorized seven new settlements that call for total Federal expenditures totally approximately \$2.5 billion. Although some mandatory funding was provided with the Claims Resolution Act, substantial discretionary funding is needed to meet the statutory settlement obligations. Each of these settlements contain deadlines by which funding must be completed or the settlement fails and long standing, expensive, and disruptive litigation resumes. In addition to the statutory requirements to fund these settlements within prescribed timeframes, the availability of funding has implications for economic development in Indian and non-Indian communities and raises other human considerations and equity concerns. For example, the availability of potable water can affect economic development, tribal health and welfare. Stalled funding would also delay the receipt of the economic benefits that are associated with settlements, which is why the Budget provides sufficient resources to implement enacted settlements. These benefits will not fully accrue until the physical infrastructure associated with settlements is complete and operational. Construction funding also provides short-term economic stimulus to localities or regions which is important given the high unemployment levels in Indian country.

The Department currently has 2 Federal Assessment Teams, 21 Federal Negotiation Teams that are working with tribes to achieve additional settlements, and 23 teams working on implementing enacted settlements. Two of the settlements included as priorities for the Settlement fund, Navajo Lower Colorado Basin and Fort Belknap, have not been enacted, and the Federal contributions to these settlements may approach a billion dollars based on similar enacted settlements. While allocation of funding among the priority settlements identified in the Settlements Fund is complicated by construction schedules and other matters and cannot be fully predicted, at this time it appears there will be little, if any, funding in the Settlement Fund for settlements not specifically listed as priorities. The Department has always given priority to funding settlements in the annual Budget.

Reclamation Water Settlements Fund

In 2009, Congress created the Reclamation Water Settlements Fund, which authorizes the deposit of funds that would otherwise be deposited into the Reclamation Fund, into a separate account within the U.S. Treasury. Currently, the Secretary of the Interior is authorized to expend from the Reclamation Water Settlements Fund, without further appropriation, up to \$120 million a year of the amounts deposited through FY 2029, plus accrued interest, in each of the years from FY 2020 to FY 2034. The Secretary may use money in the Reclamation Water Settlements Fund to implement congressionally approved water rights settlements, if the settlement requires the Bureau of Reclamation to provide financial assistance, or to plan, design or construct water

supply infrastructure. In addition, the currently authorized Reclamation Water Settlements Fund establishes certain funding priorities for settlements in the states of New Mexico, Montana, and Arizona.

Finally, the law includes a reversion clause providing that if any settlement identified in the above funding priority is not approved by an act of Congress by December 31, 2019, the Secretary has the discretion to use the reserved funds for any authorized use.

H.R.1904

H.R. 1904 would make the Reclamation Water Settlements Fund permanent and would not prioritize settlements other than those currently prioritized. While the current Reclamation Water Settlement Fund will become available for expenditures in 2020, much of it is already committed to existing, enacted settlements. The Department looks forward to working with the Committee to determine the best approach for authorizing future settlements.

The Department takes into consideration the effects of growing populations and related water demands, widespread drought in the West, and the need for new infrastructure and water storage in many locations. These factors are certain to drive an increase in the demand for water settlements.

I want to underscore the importance of these settlements, and recognize the aim of the bill sponsor and this Committee in considering H.R. 1904. Disputes over Indian water rights can be expensive and divisive. In many instances, these disputes last for decades, represent a tangible barrier to progress for tribes, and significantly hinder the rational and beneficial management of water resources. Indian water rights settlements can break down these barriers and help create conditions that improve water resources management by providing finality and certainty for all affected water users. When settlements can be reached, they provide opportunities for economic development, produce critical benefits for tribes and non-Indian parties, and bring together communities to improve water management practices in some of the most stressed water basins in the country. Successful settlements are also consistent with the Federal trust responsibility to American Indians and with Federal policy promoting Indian self-determination and economic self-sufficiency.

As noted above, the Department supports Indian water rights settlements grounded in the policy that negotiated Indian water rights settlements are preferable to protracted and divisive litigation as a means of resolving water rights disputes. The Department looks forward to working with the Committee and discussing the best means of achieving future settlements.

This concludes my written statement. I am pleased to answer questions at the appropriate time.