

Testimony of Daryl Vigil
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and
Co-facilitator of the Water & Tribes Initiative
to the
U.S. Committee on Natural Resources
Sub-Committee on Water, Oceans, and Wildlife
Honorable Representative Raul Grijalva (D-Az), Chairman
Subject:

Colorado River Drought Conditions and Response Measures

October 15, 2021 12:00 MDT

Chairman Huffman, Ranking Member Bentz, and other members of the Sub-Committee, thank you for the opportunity to testify about the drought situation in the western United States.

My name is Daryl Vigil. I am an enrolled member of the Jicarilla Apache Nation; I am also of Jemez and Zia Pueblo descent. My reservation is in north central New Mexico and extends from the New Mexico/Colorado border 70 miles south. My Tribe has significant water rights in the Colorado River Basin. I have had the honor of being my Tribe's Water Administrator for the last 11 years, and I am grateful that the leadership of the Nation—President Edward Velarde and my Legislative Council—has trusted and empowered me to speak on behalf of the Nation and to co-facilitate a broader tribal/basin dialogue through the Water & Tribes Initiative.

Thank you for your leadership on convening this hearing to address the ongoing drought in the Colorado River basin and how we, collectively, are responding. This is an issue of extreme urgency and vital importance not only to the tribes in the basin, but to the entire basin and this country as a whole.

My remarks speak to the past, present, and future role of tribes in Colorado River governance. My key message is that as sovereigns in the basin, tribes—along with federal and state governments—need to be at the decision-making table. Tribes have senior water rights to at

least 25% of the current natural flow of the Colorado River but have historically been excluded from decision-making or “consulted” only after decisions have been made. It is my sincere hope that the attention and action of this Committee represents the beginning of a new chapter in the management of the Colorado River—a chapter in which tribes are treated with the same dignity, respect, and responsibility as the other sovereigns in the basin.

Past

Tribes have been living sustainably in the Colorado River Basin for a millennium and continue to do so today, despite mother nature’s challenges, colonization, and systematic strategies to terminate, exterminate, and assimilate the indigenous people of this country. We have experience and knowledge developed over many hundreds of years of sustainable and adaptive living. We understand the importance of honoring the very things that keep us alive, that feed us and quench our thirst.

The foundational law of the river, the Colorado River Compact was developed in 1922 without tribal participation. At that time, my tribe (reservation established 1887, after our own trail of tears) was surviving on government rations outside our traditional homelands. Although we were historically nomadic (hunter, gatherers) the U.S. government tried to make us farmers and ranchers on lands that did not support those activities (Chama Valley-White Clan, taken first by the Spanish, Tierra Amarilla Land Grant). We didn’t establish a governance structure until 1934 (IRA), couldn’t vote until 1948, and did not have plumbing in the town of Dulce until the early 1960s. My Nation settled its water rights claims in 1992 during the early years of tribal water settlements.

Present

Fast forward to today, nearly a hundred years since development of the Colorado River Compact. Tribes continue to be largely left out of the problem-solving and decision-making processes. Tribes were not consulted in developing the 2007 Interim Guidelines, which create the

current management framework for the river. They were not consulted in the 2012 Basin Supply-Demand Study, nor were they consulted—except after the fact—on the decision to initiate Drought Response Operations this summer. All of these decisions directly impact tribal water rights, tribal communities, and Native people throughout the basin.

Over the past 10 years, individual tribes, along with the Ten Tribes Partnership and the Water & Tribes Initiative, have sought to raise awareness and understanding of the role of tribes in the basin, have forged partnerships with federal and state governments, and have worked with conservation groups and other water users to emphasize how the current structures for management have not honored the spirit of settlement agreements, have not provided access to basic infrastructure for clean drinking water, and have not acknowledged thousands of years of environmental, cultural, traditional, ceremonial, and spiritual tribal values.

Future

As you know, the 2007 Interim Guidelines, the Drought Contingency Plans, and other governing arrangements will expire at the end of 2025. The Biden Administration is expected to launch the formal process to develop a new management framework for the river sometime in the coming months—a framework that must and will directly address the ongoing drought and a much drier future with a lot less water ... all in the context of the ongoing pandemic.

This is a pivotal moment in history given the current realities of drought and aridification, the opportunity to create a new management framework for the river, and the 100th anniversary of the Colorado River Compact in 2022. It is time to create a new paradigm for governing the use of the Colorado River—one that integrates best available science and indigenous knowledge of the basin. And one that involves tribes as active partners in problem-solving, decision-making, and governance. This new paradigm has been emerging organically over the past decade in the form of many collaborations and

partnerships among tribes, states, the federal government, stakeholders, and water users.

Building on this collaborative culture, we need to create something like a Sovereign Governance Team that includes tribes in a process of shared decision-making with the other sovereigns in the basin—state and federal governments. This approach was used successfully in the Columbia River Basin (which encompasses portions of Montana, Idaho, Oregon, and Washington) to prepare for the renegotiation of the Columbia River Treaty between the United States and Canada.

In a report based on over 100 interviews with tribal and other leaders in the Colorado River Basin, many people expressed a belief that a Sovereign Governance Team creates a level playing field among sovereigns. Tribes are treated as co-equals with states and the federal government, rather than as other “interest groups” or “stakeholders,” as in past processes. A Sovereign Governance Team integrates tribes in a meaningful way into planning and problem-solving before decisions are made; and it provides an opportunity for all stakeholders, experts, and the public to be more meaningfully involved in an inclusive, open, and transparent process.

Chairman Huffman and members of the Committee, you can make this happen. We need this type of governance structure to respond to the issues facing the basin. Your leadership to move in this direction would also be a significant expression of fulfilling the federal government’s trust responsibility to the 30 tribes in the basin. Without this type of structure, tribes will continue to bear the impacts of the unrealistic expectation that federal and state sovereigns will effectively and responsibly represent tribal water interests along with their own. Tribes themselves, not state and federal officials, are in the best position to advocate for and protect their own tribal interests.

While my tribe is actively working on addressing the impacts of drought, we do so knowing the uncertainty surrounding our participation in the broader planning for the basin. We ask that you formalize a process for tribal participation in a new era policy and partnership, where tribal sovereignty is acknowledged and respected,

and where tribes can be effective sovereign partners to create solutions to address the tremendous challenges before us now and in years to come.

Thank you.

More detailed information regarding water-related issues of importance to tribes in the Colorado River Basin can be found at the following locations:

<http://www.naturalresourcespolicy.org/projects/water-tribes-colorado-river-basin/>

<http://naturalresourcespolicy.org/projects/water-tribes-colorado-river-basin/3.20-wti-report-executive-summary-final.pdf>

<https://www.usbr.gov/lc/region/programs/crbstudy/tws/finalreport.html>