STATEMENT OF BUCK KITCHEYAN, CHAIRMAN, SAN CARLOS APACHE TRIBE, AT THE
JOINT HEARINGS ON H.R. 5539 BEFORE THE SELECT COMMITTEE ON INDIAN
AFFAIRS AND THE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS, UNITED
STATES SENATE AND HOUSE OF REPRESENTATIVES

September 11, 1990

The San Carlos Apache Tribe appreciates the opportunity to
testify on H.R. 5539. We wish to thank you, Mr. Chairman, for
conducting these hearings, as well as Congressman Udall and
Congressman Rhodes of Arizona for sponsoring the legislation, and the
many interests in Arizona that have contributed so much time and
effort in developing the bill.

The purpose of H.R. 5539 is to provide for the settlement of
water rights claims of the San Carlos Apache Tribe. It would do this
by ratifying an agreement entered into by the Tribe, the United
States, and non-Indian parties to the agreement. The Tribe supports
enactment of the bill with changes.

The San Carlos Apache Reservation was established by Executive
Orders dated November 9, 1871 and December 12, 1872. It consists
today of 1,893,841 acres. The Tribe's population is 10,000. Most of
the adult population is unemployed.

Proceedings to determine the full extent and nature of the
Tribe's water rights are currently pending before the U.S. District
Court in Arizona and in the Superior Court of the State of Arizona
(Maricopa County) as part of the General Adjudication of the Gila
River System and Source. The Superior Court trial on the Master's
findings is expected to occur in the Fall of 1991.

The Tribe has presently perfected rights to 6,000 acre-feet of
water under the Globe Equity Decree and has contracted for an
allocation of 12,700 acre-feet of CAP water for tribal homeland and
Indian agricultural purposes.

The federal government, on behalf of the Tribe, is claiming water
rights to 266,596 acre-feet, including 163,079 acre-feet for
practicably irrigable acreage (PIA). It is expected that the
government will soon amend its claims to increase substantially at
least its PIA claims for the Tribe. An Interior Department estimate
of the 1985 value of a claim for 292,406 acre-feet for the Tribe shows
a range of $152,506,200 to $255,379,600. The Tribe's own claims
greatly exceed those of the government. Furthermore, the Interior
Department estimates of claims values do not include estimates of
damages the Tribe may have suffered over the last one hundred years.

Introduction of H.R. 5539 follows eleven years of litigation and
eighteen months of negotiations.
The legislation would quantify the Tribe's water rights to the mainstream of the Black River, Salt River below its confluence with the Black River, San Pedro River and Gila River, as between the parties to the agreement. It would also establish, as between the parties, the Tribe's permanent right to the on-reservation diversion and use of all groundwater beneath the San Carlos Apache Reservation and all surface water in all the tributaries on the Reservation, including the right to regulate fully and store such water on the tributaries.

Under the legislation and the agreement, local non-Indian interests would contribute 92,300 acre-feet of water with a value estimated by the Interior Department to be $110,760,000. The federal government would contribute 47,955 acre-feet of CAP water with an estimated value of $57,546,000.

The non-Indian water contribution would consist of: 10,000 acre-feet from the San Carlos Irrigation and Drainage District; 7,300 acre-feet from the Salt River Project and Roosevelt Water Conservation District (per the agreement); and an estimated 25,000 acre-feet from the on-reservation tributaries and 75,000 acre-feet from on-reservation groundwater supplies, which are claimed by the non-Indian parties. The federal contribution would consist of: 33,300 acre-feet of Ak-Chin CAP allocation not required for delivery to the Ak-Chin Indian Community under Section 2(f)(2) of the Act of October 19, 1984; and 14,655 acre-feet of CAP water having a municipal and industrial priority which the Secretary of the Interior previously allocated to Phelps Dodge Corporation. The Tribe intends to lease, for municipal purposes, the CAP water contributed by the federal government.

The legislation would also require the federal government to:
(1) contribute $35,000,000 to a tribal trust fund; (2) grant debt relief to the Tribe for two loans the principal sums of which total $5,000,000, and (3) pay an as-yet-unspecified sum to SCIDD for the rights to up to 10,000 acre-feet of water. The estimated cost of the SCIDD rights is $10,000,000. The State of Arizona would be required to contribute $3,000,000 to the tribal trust fund.

With respect to potential uses of the federal contribution, the Tribe has provided the following pro-forma information to the Interior Department at its request:

A. Cost of irrigation distribution systems: $ 59,500,000.  
B. Capitalized cost of irrigation O & M: 60,348,750.

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1 The cost is based on the use of 84,700 af of water on 17,000 acres at the cost of $3,500 per acre for distribution systems. The estimated water use includes use of the Tribe's decreed rights (6,000 af), its CAP allocation (12,700 af), and additional water from certain sources specified in the proposed settlement and does not include use of water from reservation tributaries or aquifers. The cost estimate does not include the cost of delivery systems.
C. Water-based recreation opportunities: 13,396,000.
D. Wildlife management activities: 5,012,500.
E. Range improvements, cattle purchase etc.: 11,700,000.
F. Sawmill improvements (including a planer, dry kiln, and resaw): 1,500,000.

TOTAL $151,457,250.

H.R. 5539 directs the Secretary to designate for the benefit of the Tribe (1) 30,000 acre-feet of active conservation capacity in San Carlos Lake behind Coolidge Dam to permit the Tribe to maintain permanently a minimum pool of stored water for fish, wildlife, recreation and other purposes, and (2) such other capacity as is not being used by the Secretary to meet the obligations of the San Carlos Indian Irrigation Project for irrigation storage. Furthermore, the bill would provide that concessions for recreation and fish and wildlife purposes may only be granted by the Tribe.

The Tribe proposes a number of changes to H.R. 5539 which reflect the results of discussions among Arizona interests subsequent to the introduction of the bill.

First, the Tribe proposes to amend the bill and the agreement to provide for the settlement of its water rights claims with respect to the City of Globe. The Globe settlement would require the Secretary of the Interior to acquire for the Tribe an annual entitlement to 3,480 acre-feet of water from the Central Arizona Project having a CAP municipal and industrial priority, which the Secretary previously allocated to Globe. The City and the Tribe would enter into an agreement under which the City would pay to the Tribe a replacement allowance for groundwater withdrawn by the City from the Cutter sub-basin in excess of 2,500 acre-feet per year.

Second, the Tribe proposes to amend the agreement to reflect the principles of a memorandum of understanding entered into by Phelps Dodge Corporation and the Tribe on August 7, 1990. The Tribe's settlement with Phelps Dodge Corporation requires no contribution from the federal government. Among its several provisions, the settlement agreement would provide for extensions of right-of-way permits for the Phelps Dodge Black River pump station, powerline, pipeline and Willow Creek natural channel and a grant of a flowage easement through the Eagle Creek natural channel. Annual payments to the Tribe would be at appraised values, adjusted every five years. The agreement would also address Phelps Dodge use of surface water from Eagle Creek and the production of groundwater from consolidated formations east of the boundary of the San Carlos Apache Reservation. We are submitting a copy of the Phelps Dodge memorandum of understanding for the record.

In addition to those changes, the Tribe proposes to delete section 4(c) of the H.R. 5539. As part of the settlement between the
Tribe and SCIDD, section 4(c) directs the Secretary to acquire from SCIDD up to 10,000 acre-feet of water from the Gila River or from SCIDD's allocation of CAP water. The cost of this provision to the United States is not specified in the bill, but the Tribe estimates it to be not less than $10,000,000. The Tribe proposes that, in the event section 4(c) is deleted, the tribal trust fund be increased by $10,000,000 to enable the Tribe to acquire water on its own behalf.

The Tribe also proposes that section 4(f) be amended to modify the language to provide storage space for the Tribe behind Coolidge Dam. The Tribe's amendment would require the Secretary to designate only such active conservation capacity behind Coolidge Dam as is not being used by the Secretary to meet the obligation of the San Carlos Irrigation Project for irrigation storage. Any water stored by the Tribe would be the first to spill. This proposed amendment is an outcome of our discussions with representatives of the Gila River Indian Community.

The Tribe acknowledges that section 4(h) of H.R. 5539 inadvertently has caused a great deal of consternation among some Arizona water users who are not parties to the agreement. To clarify the intent, we propose that section 4(h) be amended to read:

(h) Except as provided in paragraph 23.4 of the Agreement, the Secretary and the Attorney General of the United States are authorized and directed to take all measures necessary to establish, as between and among the parties to the Agreement, the Tribe's permanent right to the on-reservation diversion and use of all groundwater beneath the Tribe's reservation and all surface water in all tributaries within the Tribe's reservation to the mainstream of Black River, Salt River below its confluence with Black River, San Pedro River and the Gila River, including the right to fully regulate and store such water on the tributaries. The Tribe's rights to the mainstream of Black River, Salt River below its confluence with Black River, San Pedro River and the Gila River shall be as provided in the Agreement and the Globe Equity Decree. With respect to parties not subject to the Agreement, the Secretary and the Attorney General of the United States shall continue to assert claims to water on behalf of the Tribe in courts of competent jurisdiction.

The Tribe recognizes the importance to itself and the federal government that the federal costs associated with the settlement be made as specific as possible and is working with the Interior Department to this end. In this regard, we note that the Bureau of Reclamation estimates that the cost of constructing on-reservation facilities to enable the Tribe to receive the 12,700 acre-feet of CAP water presently allocated to it is in excess of $40,000,000. We believe this estimate is too high. Although this cost is presently
associated with the Colorado River Basin Project Act and not H.R. 5539, the Tribe is willing to consider an amendment to the bill stipulating an agreed-upon amount and providing that that amount be added to the tribal trust fund.

The Tribe recognizes that some Arizona interests are concerned about use by the Tribe of the Ak-Chin CAP allocation water is not required for delivery to the Ak-Chin Indian Reservation under section 2(f)(2) of the Act of October 19, 1984 (P.L. 98-530, 98 Stat. 2698).

It is our understanding that the Arizona Department of Water Resources may contemplate reallocating this "surplus" Ak-Chin-CAP water to agricultural interests for their use in normal and wet years. We believe that its highest and best use is in settlement of the Tribe's claims against Central Valley water users for water from the mainstream of the Salt and Black Rivers, which CAP water the Tribe would then lease for M & I use. The Tribe contemplates leasing the entire 33,300 acre-feet of surplus Ak-Chin water to the City of Scottsdale to provide income to the Tribe and help Scottsdale meet its 100-year water supply requirement under State law. By using Ak-Chin CAP water, the Tribe would not disturb present M & I users of large amounts of water subject to its claims. Under this arrangement, Scottsdale would pay the O & M for water delivery. Accordingly, the Tribe does not seek a large additional federal contribution to the tribal trust fund to fund the O & M costs for delivery of water to the Tribe through CAP exchanges.

Furthermore, we question the appropriateness of allocating the Ak-Chin surplus to agricultural water users who were largely responsible for dewatering the Ak-Chin Indian Reservation and who contributed nothing to the settlement of Ak-Chin's claims, claims which the United States settled at enormous cost to the taxpayers.

The Tribe also intends to lease additional CAP water to Scottsdale and proposes to lease CAP water to the City of Glendale.

We regret to say we have not reached settlement with Upper Valley agricultural interests, or with the cities of Safford, Thatcher, and Pima, but we are optimistic that agreements can be reached in time to be enacted this year. We have had extensive discussions with representatives of Safford, Thatcher and Graham County.

The Tribe has also had lengthy discussions with representatives of the Gila River Indian Community to develop amendments for the Committee's consideration to assure that none of the provisions of H.R. 5539 will unfairly impact the claims of the Community. The Tribe will also make proposals to the Committee concerning the generation of power at Coolidge Dam and the use of Planet Ranch water as part of the San Carlos settlement legislation.

Mr. Chairman, thank you.