SENATE ENVIRONMENT & PUBLIC WORKS COMMITTEE
TRANSPORTATION AND INFRASTRUCTURE SUBCOMMITTEE

"PERSPECTIVES ON NEW AND EXISTING US ARMY CORPS OF ENGINEERS AUTHORITIES TO RESPOND TO WATER MANAGEMENT ISSUES INCLUDING DROUGHT AND WATER CONSERVATION"

TESTIMONY OF GOVERNOR STEPHEN ROE LEWIS
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Chairman Kelly and Ranking Member Cramer, thank you for the opportunity to submit this testimony on behalf of the Gila River Indian Community ("Community"). The Community is a federally recognized Indian tribe comprised of over 23,000 members with a Reservation of over 375,000 acres located between the cities of Phoenix and Tucson, Arizona. We appreciate the Subcommittee's focus on the U.S. Army Corps of Engineers ("USACE") authorities as they relate to drought and water conservation. While testimony at this hearing will encompass USACE authorities that reach beyond the Colorado River Basin ("Basin"), the Community's testimony will focus on our experience as it relates directly to the drought and water conservation issues affecting that Basin.

This hearing underscores what the Community believes is the appropriate strategy to address the drought crisis in the Basin. Drought is a complicated and multi-jurisdictional problem requiring an all-of-government approach that looks to utilize all available resources. The Community has been extensively involved in the crisis in the Basin since 2016, resulting in invaluable experience in drought and water conservation management.

During the past twenty-four months, the crisis in our Basin has evolved into what is termed a "mega-drought" and the Community has worked with numerous federal agencies during that period, including the Department of the Interior, the Department of Agriculture, the Environmental Protection Agency, and USACE. In our experience, one federal agency whose role has perhaps been overlooked by others is USACE. The Subcommittee is to be commended for looking at ways to bring USACE more into the overall drought response because, based on our experience, USACE could play an important role in helping in an all-of-government response to addressing the drought. We have seen this with our own, relatively limited, but innovative project, a pilot project for the installation of solar panel covers on one of our irrigation canals.

USACE has worked tirelessly with us to support our development of the project, though there have been frankly some delays that perhaps could have been avoided, and ultimately USACE still lacks the statutory tools to truly treat tribes such as the Community as respected sovereign partners. Before turning to that topic, the Community would like to generally discuss what we have come to know of USACE's role and potential role in managing drought in the Basin and more generally in the West. We will then turn to our own interaction with USACE in connection with our solar covered canal project, which we believe demonstrates its commitment to managing

drought while working alongside tribal governments. We will conclude with some ideas on how Congress can enhance USACE's role in this critical all-of-government effort.

USACE Role in Drought Response

In working with USACE, we have come to appreciate that USACE has an active role in drought management and resilience. But it is a role that we think could still be expanded. USACE has already contemplated a major role on drought as evinced by the Memorandum on Army Civil Works Supporting Drought Resilience in America's Communities, dated July 2022, which demonstrates the agency's careful and thoughtful consideration of using its authorities to address the growing demand for integrated water resources management. (Attached). The Memorandum highlights action areas in which USACE is partnering with other federal, tribal, state, and local agencies to support drought resilience in communities facing water supply challenges, and it underscores USACE's commitment to an all-of-government approach to addressing drought management.

The Community is aware of specific efforts that USACE has already taken, or is taking, to address drought in a number of critical areas: (1) new infrastructure investments; (2) operational improvements at existing facilities; (3) ecosystem resilience; (4) planning assistance; and (5) tribal and other partnership programs. While the Community's direct experience with USACE is limited to the Tribal Partnership Program ("TPP"), discussed further below, the Community has a few thoughts on the role USACE can play with respect to each of these critical areas to increase water availability and otherwise take pressure off of Colorado River water supplies.

1. *New Infrastructure Investments*

It is the Community's understanding that USACE is often asked to provide funding and technical support for local water resource infrastructure through its Environmental Infrastructure ("EI") program. The Water Resources Development Act of 2022 ("WRDA 2022") authorized $4.3 billion of new EI projects, including $1.5 billion in the seven (7) states that lie within the Basin ("Basin States"). In 2022, USACE provided approximately $33 million of funding for EI Projects in four of the Basin States, including Arizona, and, in 2023, USACE is funding $45 million of projects in three of the Basin States, including Arizona. It is the Community's understanding that these projects include reclaimed water pipelines and brackish groundwater desalination facilities, all projects that will help diversify water supplies and incrementally reduce reliance on the Colorado River. The EI program is one that could be particularly well suited for tribes with brackish groundwater, like the Community, and we intend to explore this potential opportunity more fully with USACE in the coming months.

In addition, the Water Infrastructure Finance and Innovation Act ("WIFIA") Loan Program authorized USACE to create a loan program to promote investment in the rehabilitation, repair, and/or improvement of non-federal dams. According to the USACE's National Inventory, there are approximately 1,500 non-federal dams in the Basin States, of which over 800 dams are labeled significant or high hazards. The Community's understanding is that these facilities will help address water supply if restored to full operating capability, and that the Colorado River is a priority for the program, which is expected to accept loan applications in Summer 2023. This

program alone, if properly exploited, could have a very significant effect on water supplies in the Basin on a long-term basis.

2. *Operational Improvements at Existing Facilities*

USACE is also actively engaged in several projects that will result in short-term or long-term changes in reservoir operations associated with flood pool management. USACE's stated goal in these efforts is to use improved forecasting and hydrologic information to allow for modified reservoir operations that maintain acceptable levels of flood protection while increasing storage and/or water releases for the benefit of water supply providers.

For instance, the Community is aware of the Forecast-Informed Reservoir Operations ("FIRO"), a multi-agency research and development initiative focused on states in the West. Preliminary results at Prado Dam in California indicate that an average increase of 7,000 acre-feet annually may be available through FIRO to increase groundwater recharge operations for Orange County Water District. A final viability assessment at Prado Dam is currently scheduled for completion by August 31, 2023, at which time USACE has indicated that it will begin to incorporate the use of FIRO into its water operations plan. This will increase water supplies made available in the Basin, again taking pressure off of the Colorado River as the primary source of water supply in the Basin, particularly if the initiative is expanded, as we understand USACE is doing. USACE has indicated it is in the process of completing preliminary screening assessments on eighty-five (85) dams within the South Pacific Division, including the Basin, which will lead to a prioritization for applying FIRO at other facilities. This is an area in which USACE can have a major impact on water supplies throughout the West.

It is also the Community's understanding that USACE is working with the Bureau of Reclamation and the Salt River Project ("SRP") to complete a review and environmental assessment of a five-year operations deviation at Roosevelt Dam that would modify how water is released from the flood control space at Lake Roosevelt. As SRP will testify, they estimate that revised operations could increase water availability, approximately 20,000 to 60,000 acre-feet annually, for local water providers. Given the reductions Arizona water users like the Community have already experienced, and which we may face again moving forward, we recommend the Subcommittee support USACE in these kinds of efforts, particularly with SRP and elsewhere in the Basin, to help offset the dramatic reductions we are facing.

3. *Ecosystem Resilience*

USACE is also involved in restoration work within the Basin as well as its connected regions. The most important area of ecosystem restoration in the Basin is in the Salton Sea, which is the key to additional reductions in California's Imperial Irrigation District ("IID"). Without a solution to the ecosystem impact of reduced flows into the Salton Sea, IID is limited in its ability to contribute to Basin-wide reductions in use, which are essential to our collective success.

USACE is completing a programmatic Environmental Assessment ("EA"), in cooperation with other federal and state agencies, to facilitate Section 404 permitting of the Clean Water Act and other federal actions associated with California's ten-year, 30,000-acre habitat conservation

and dust mitigation plan for the Salton Sea. USACE has invested Infrastructure Investment and Jobs Act funding to initiate feasibility work on restoration projects that align with the ten-year plan, and other potential projects consistent with federal interests for ecosystem restoration. Based on our most recent briefings by California and Arizona water leaders, the Salton Sea restoration efforts are finally starting to pay off and USACE needs to continue to lead the way with its EA and other investments there.

Lastly, USACE is in discussion with the California Natural Resources Agency to evaluate its potential involvement in a number of environmental restoration projects that could advance stabilization and recovery of endangered species in the Central Valley. The Community believes that accelerated action on these projects over the next several years could improve water availability to Reclamation's Central Valley Project and California Department of Water Resources' State Water Project, which supplies water to Southern California where many municipal water suppliers are also importers of Colorado River water.

4. *Planning Assistance*

USACE is currently in discussion with California Department of Water Resources to conduct a comprehensive study to identify opportunities and constraints of twelve (12) southern California USACE reservoirs and channels to support regional water supply resilience and reduce reliance on imported water supplies. This action would reduce pressures of decreasing imported water sources, including the Colorado River, for over 17 million residents. The Community believes that the findings in this study could subsequently guide future Basin or project-specific funding decisions to ensure existing USACE reservoirs contribute to enhanced economic, ecosystem, and societal values as water demands evolve.

5. *Tribal Partnership Program ("TPP")*

As part of Army Civil Works environmental justice initiatives, USACE has actively engaged in outreach to generate more opportunities to increase its work with tribal nations and improve water infrastructure. The TPP programs is a "gateway" program for underserved tribal communities. In November 2022, Assistant Secretary of the Army for Civil Works, Michael Connor, issued new Interim Tribal Partnership Program Guidance to expand the types of projects that can be done in partnership with tribes. A copy of the Interim Guidance is attached. The Community is aware that long-term TPP guidance is currently being devised, which will streamline how USACE works with tribes and highlight options for cost-share relief to facilitate actions under the TPP.

A critical element of the Interim TPP Guidance is its commitment to tribal sovereignty and genuine government-to-government partnership. Paragraph 5 of the Interim Guidance provides:

> In addition, this memorandum directs the Corps to use the utmost flexibility in utilizing and accommodating Tribal expertise and resources in all phases of the TPP program execution, from Indigenous knowledge, to technical expertise in project design and construction, to contracting capability. Many Tribal Nations are as

capable or more capable as any other partner for a Corps Civil Works project, and in many areas can equal the Corps' capabilities.

This is a strong and compelling statement of the commitment of USACE to the TPP and working with tribes as equal governmental partners on projects of potentially national significance.[1]

Through the TPP, USACE works with tribes as cost-share partners on Civil Works projects, demonstrating USACE's commitment to engage in regular and meaningful consultation with tribal officials in the development of water resources projects. President Biden's FY 2023 Budget invested $16,514,000 in the TPP, and $13,000,000 has been requested in the FY 2024 Budget. If the TPP is embraced by tribes as a tool for water resource management to any meaningful extent, the amounts budgeted for it are woefully inadequate to meet the potential need.

The Community's Solar Covered Canal Pilot Project and the TPP

Beginning in late 2021, the Community began to explore the development of a net-zero farming economy and reducing water use on-Reservation during times of severe drought such as the one we are experiencing now. At President Biden's first Tribal Leaders Summit in December 2021, the Community announced that as part of this exploration, the Community was launching an effort to build a pilot project to test the viability and benefits of covering irrigation canals with solar panels, thereby generating both renewable energy for irrigation canal and on-farm purposes, and also reducing water evaporation from the canals, thereby conserving water. The concept had been considered in the past by some major water delivery entities, and by Reclamation, but had never been tested anywhere in the United States. There was one such project reported in India, but otherwise, it was largely an academic concept with no real world experience.

As part of its dual drought and net-zero initiative, the Community directed the development of a design for a high-profile project site that would test the viability of the concept and provide benefits to the Community's agricultural economy and infrastructure.[2] Based on the developed design, which benefited from enhanced efficiency in solar panels and lower costs, the Community began exploring possible sources of federal funding for constructing the project.[3]

Because it was a pilot project, and to ensure the project would be viewed seriously as a potential drought response tool, the Community wanted to ensure that the federal government was engaged and fully supportive of the project. After discussing the project initially with Reclamation, the lead agency for irrigation canal construction on the Community's Reservation, and obtaining its support and partial funding, the Community approached USACE to determine if it might have an interest in working with the Community on this innovative and potentially significant project.

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[1] Unfortunately, the commitment is not completely matched by USACE's ability to quickly review and move TPP projects forward, or to allowing tribes the ability, through self-governance, to manage projects on their own. This is an issue we will cover in more detail later.

[2] The Community invested its own funds in the development of the design for the project, which after its review, Reclamation agreed to fund in order to further the project's development as a project for other tribes and other areas in the Basin.

[3] Additional information on the Community's Solar-Covered Canal Pilot Project is attached.

In early 2022, the Community approached Assistant Secretary Connor to discuss the project with him and explore a possible collaboration to develop the project. His office directed us to explore the possibility of funding the project through the TPP. To be frank, unlike many other federal agencies, USACE has not in the past had a reputation within Indian Country of being an easy agency with which to deal. Nevertheless, the Community was encouraged by the reception of the Assistant Secretary and saw an opportunity to further support the Administration's all-of-government response to the drought by working with a new federal agency like USACE.

In November 2022, the Assistant Secretary issued his new Interim TPP Guidelines, with an expanded view of the government-to-government relationship, a solid indication of potential partnership. At that same time, the Community executed an agreement with USACE for the agency to undertake a study to validate the feasibility of the pilot project to confirm the Community's design as a prelude to funding the majority of the project's cost.

Immediately after execution, the Community had expected to begin work on the validation effort, which the Community believed, based on Section 5 of the Interim TPP Guidance, would largely involve deference to the design and evaluation that the Community had undertaken with a nationally recognized firm, at its own cost and expense. The validation study process proposed by USACE at that time was actually one that would have taken at least one year, and possibly two to even complete.

As the Subcommittee is well aware, drought response efforts, especially those that involve innovative pilot projects such as this, require a more rapid timeline for development. The time period for the current proposed response by the Department of the Interior is for the period 2023-26. A recent project that the Community developed with Reclamation to conserve additional water supplies on an expedited basis has an accelerated construction schedule and its conserved water supplies are already being counted toward the total goal of Lower Basin reductions over the next three years in order to help address a crisis situation. Our point is that drought response may seem to be an effort that can take time, and at times perhaps it should, but this is not one of those times, and we urged USACE to accelerate its internal processes and develop new tools to accommodate the urgency required to address the overall water supply in the Basin. It is worth noting that the Community is not asking for shortcuts in quality of review or processes, but rather a reliance on tribes as federal partners where the established experience and expertise of the tribe is acknowledged.

In response to the Community's urging, USACE substantially accelerated its approval processes, and worked with the Community cooperatively throughout the entire process, addressing policy issues as they arose and accelerating the process to catch up with the necessary pace of drought response. USACE began the validation study in January 2023, which was subsequently completed in record time, validating and approving the Community's pilot project and budget in early May 2023. (Copy of the USACE reports attached).

In a meeting with Assistant Secretary Connor this morning, we confirmed the final language for our Partnership Project Agreement this morning and expect to execute it in the next two weeks after final Council approval. We are hopeful that we will find a path to begin

construction on this important pilot as soon as July of this year, with completion expected no more than six months after construction begins.

The Community's cooperation with USACE is a textbook example in many ways of how federal partners can work together in an all-of-government approach to a common crisis. There was excellent communication and cooperation on both sides, and the end result will be a project that will test an important innovation for its potentially significant impact, both on the amount of water that may be conserved, but also on the development of renewable energy to fuel a net-zero farm economy of the future. One of the important takeaways from our work to date is that a solar covered canal project has a much shorter lead time from feasibility to construction because it is an improvement on an already constructed and permitted project, which not only allows for dual use of the lands involved (no new right of ways involved), but also eliminates the need for new environmental reviews. This can accelerate project development timelines for solar projects of this type by 12-18 months, at a minimum.

Despite the overall success of the collaboration, there are also some important lessons learned and areas where congressional action could help improve USACE's implementation of the TPP.

First, as noted above, the total amount of funding for the TPP is set at $13 million in the FY 2024 budget. Our project alone, small as it is, is budgeted to spend more than $6 million.[4] Assuming Congress can help USACE become a better tribal partner by providing USACE self-governance contracting authority, a second recommendation, we believe Congress should consider investing more funds into the TPP to provide USACE the ability to expand its work with tribes.

Second, as noted above, one significant issue for the Community is that USACE has indicated that it cannot contract directly with the Community to provide the funding for the tribe to contract and oversee this project. This is contracting authority that the Community enjoys with almost every other federal agency, and this should be no different. USACE's own Interim TPP Guidance recognizes in Section 5 that tribes such as the Community often have much better experience and capacity in a particular area than USACE, and USACE should respect and rely on it, just like nearly every other federal agency in the government would.

While the requirement for USACE contracting authority may be relevant for other non-federal entities, it cannot supersede the trust responsibility that the federal government and Congress have enshrined in the Indian Self-Determination and Education Assistance Act. We strongly urge Congress to consider providing USACE with self-governance contracting authority. If the Community had been able to contract directly with USACE, the project would have already been completed and the cost would have been for substantially less than the project will ultimately cost. And, most importantly, this would fulfill the federal government's statutory mandate of respecting and building tribal self-governance capabilities.

Despite these critiques, the Community remains a strong supporter of USACE and its efforts to address the drought and water conservation, including those it has undertaken to do with

[4] This is the budget for the project from USACE. We believe that the project will only cost approximately half that amount when all is said and done.

us. USACE is no doubt one of the most rigid, inflexible, and uncompromising agencies in the federal government, but its leadership is committed to tribal engagement, and we look forward to a continuing relationship as we build this project and possibly more to come that will benefit the Community and the Basin.