Opening Statement of Republican Leader Tom McClintock
Subcommittee on Water, Oceans and Wildlife
Legislative Hearing
June 26, 2019

The sub-committee meets today to hear three water rights settlement bills involving the Navajo, Hualapai and Aamodt Indian Nations.

In the landmark 1908 case of Winters v. United States, the Supreme Court ruled that when Congress recognized Indian tribal sovereign rights within their reservations, the right to all resources within those reservations was implicit. Without the right to water resources within those lands, the lands themselves were worthless.

More than a century later, we are still grappling with the rightful apportionment of those water rights. Tribes with unresolved Winters claims typically assert them with the federal government and attempt to negotiate a mutually agreeable settlement in lieu of a lawsuit.

When three such bills came before this subcommittee on September 30, 2009, I was serving in this same capacity, as ranking member. Here is what I said then:

"It is important that these claims be settled. They involve some of the oldest standing litigation in the federal court system. They establish something that the people of their regions – both on and off reservation – have lacked, and that is a certainty about future water rights and apportionments…

"These are settlements of outstanding litigation involving the United States Government. It seems to me that the only relevant question is whether these settlements are advantageous to the government compared to its likely liability under current law.

"If we were the board of directors of a private corporation deciding whether to approve a negotiated legal settlement, we would be guilty of breaching our fiduciary responsibility to stockholders if we made that decision without consulting legal counsel.

"The administration has expressed reservations about all of these bills, and that should be a warning to us. What troubles me most is that we have been unable to get a straight answer to the most important question at issue, and that is, "Do these settlements exceed the likely liability of the government if these claims went to court?"

"Or to be more blunt, are we cutting our losses or are we giving away the store?"

The sentiments I expressed in 2009 were made a formal protocol by Mr. Bishop when he became Chairman of the Natural Resources Committee in 2015 and have guided our consideration of such bills ever since.

Ten years later, that remains the central issue before us.

Last month, I sent a letter to the Departments of the Interior and Justice as well as to the Office of Management and Budget requesting they continue to follow the Indian water rights settlements protocol put forth by Mr. Bishop.

Under that protocol we have advanced three settlements through Congress.

Only one of the settlements before us today has received a letter from the departments of the Interior and Justice, pursuant to the protocol: H.R. 644 sponsored by the Committees Ranking Republican Rob Bishop.

I have concerns with the other two of the bills. H.R. 2459 is essentially the same bill Interior testified against just last Congress. As we will hear today, Interior believes the cost to construct a 70-mile pipeline from the Colorado River lifting water over 4,000 feet in elevation will be significantly higher than the amount authorized in this bill.

That concern is born out in our third bill, H.R. 3292, which adds $150 million above what we had previously paid to settle the Aamodt claim in 2010. We settled that case for $50 million. Yet we have before us a bill literally quadrupling the cost of that settlement.

The reason is that HR 3292 made taxpayers liable for specific projects that had been significantly low-balled. We thought we were settling for $50 million. Now we're finding the cost is $200 million.

H.R. 644, introduced by Republican Leader Bishop, avoids authorizing a specific water project and instead creates a water development fund to be used by the Navajo Nation to build water projects on an as needed basis. This allows the Navajo Nation the opportunity to achieve economic efficiency and flexibility in designing and construction water projects over time as needs arise, while protecting taxpayers from cost overruns or footing the bill for delays or an increase in design and construction costs.

This settlement model ensures that the "total cost of a settlement to all parties [does] not exceed the value of the existing claims as calculated by the Federal Government." I would urge the majority to consider this as we take up these bills.