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Congress of the United States

House of Representatives

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WATER AND POWER

Mohave County Board of Supervisors
P.O. Box 7000
Kingman, Arizona 86402

Re: H.R. 4924

Dear Supervisors Angius, Watson, Johnson, Moss and Bishop:

Thank you for the comments you submitted for the Hearing Record on September 24, 2014, on my bill H.R. 4924 - The Bill Williams River Water Rights Settlement Act of 2014. This letter is in response to that letter and objections to the bill filed by the Mohave County Board of Supervisors (the Board). The Board has stated that their opposition to this Bill (and its companion Bill, S. 2503) is not opposition to the settlement of water rights claims asserted by the Hualapai Tribe - instead the Board is asserting that some aspects of this legislation will result in burdens to the County and its residents. Specifically, the Board has identified three primary areas of concern: 1) the loss of tax revenues from lands going into trust for the Tribe or into the ownership of the Arizona Game and Fish Commission (AZGFC) and resulting limitation on the potential for future growth; 2) access to the Planet Ranch lands for hunting, fishing and other recreational purposes; and 3) the validity of the Planet Ranch water rights proposed by Freeport for sever and transport to its Wikieup Wellfield.

I. Loss of Tax Revenues

The Board identifies two areas of concern under this settlement 1) the Right of First Refusal granted under this settlement to the Hualapai Tribe and 2) the transfer of Freeport's property to the AZGFC. For the reasons cited below it cannot be asserted that there in fact will be any meaningful impact to Mohave County from these provisions.

Lands-Into-Trust

The first concern regarding the Right of First Refusal for lands owned by Freeport at the Banegas Ranch is centered on the potential that someday the Tribe may acquire those lands and request that those lands be put into Trust status, negatively affecting Mohave County due to a loss in property tax revenue and the loss of potential developable land. This is a rather significant assumption, as the lands in question are not public, and the current owner does not intend to develop nor divest the lands in any way. The settlement agreements simply allow the Tribe to compete at fair market value for the lands if the lands are ever considered for divestment by Freeport, and in no way is a guarantee that the Tribe will in fact acquire the lands, or that Freeport will ever sell them. Under the Agreements, Freeport is required, if it someday intends to divest those lands, to first make those lands available to the Tribe at fair market value. The Board's objection assumes that Freeport must sell those lands and will only sell to the Tribe, which is not the case. The agreements do not require Freeport to sell those lands nor does it require Freeport to sell those lands to the Tribe at

lower than market value. There is no guarantee that either of these will occur any time in the future.

Moreover, the amount of property tax revenue is insignificant. In 2013, Freeport paid approximately \$2,389.60 (an average of \$27.78 per parcel) in property taxes associated with these lands. It is difficult to understand how the County claims that if these lands are put into Trust and it foregoes this \$2,389.60, that this action will create a negative tax burden on the county's taxpayers, when Mohave County levied \$51,776,089 in property taxes in 2013.¹ This represents approximately .00004614% of the County's revenues.

The Board further asserts that the legislation should be amended to include a provision that no additional lands within the Big Sandy River watershed will be taken into Trust without the consent of the County. According to federal regulations, a tribal government must submit a specific application to the federal Bureau of Indian Affairs (BIA), part of the U.S. Department of the Interior, when it wants land it owns taken into Trust. In July 1995, the BIA issued regulations governing the fee-to-trust process. According to the regulations (5 CFR 151.10) the BIA is required to notify state and local governments when they receive an application from a tribe to process a taxable parcel of land to trust status. The notification is provided for the purpose of allowing government entities an opportunity to comment. Notices must identify the land to be transferred and the requesting tribe, as well as the tribe's proposed use of the land. When applying to take land into Trust, a tribe must provide the following information to the BIA:

- * Official citations of federal statutes under which the transaction is to take place and a tribal government resolution authorizing the acceptance of the transfer;
- * A legal description of the property and a tribal request for trust status;
- * Discussion of whether third parties will be using the land;
- * Discussion of the need to take the land into trust and justification why the present status of the land will not serve that need. Avoiding taxation may not be used as a reason;
- * Description of the purposes of the transfer. The tribe must specifically explain the intended use of the acquired land (eg. housing, economic development) and how the acquisition will enhance that use;
- * Assessment of impact on local government. The tribe, after consulting with local government, must describe any existing conflicts over taxation and services such as: policing, utilities, zoning and fire protection;
- * Indication of resolution of problems and conflicts. Where conflicts exist, tribes must also describe how they intend to resolve conflicts over tax funded activities;
- * Proof of compliance with the National Environmental Policy Act and federal hazardous waste laws.

From this list, it is clear that there is a process that involves "local governments" if the Tribe were to ever consider these lands for inclusion under Trust. If the Right of First Refusal is ever exercised, the Board would then have an opportunity to present its concerns and issues. Given that there is no certainty whatsoever at this time that the Tribe will ever

¹ http://resources.mohavecounty.us/File/Finance/Mohave_Cty_6-30-13_AFR.pdf

acquire the lands, and that there is a process that involves "local governments if the Tribe does acquire the lands and wants to put them into Trust," the Board's opposition on this matter appears to be not only hypothetical but rather premature.

The Board correctly points out that other settlements in Arizona have included language that restricts additional lands into trust; however, they fail to disclose why this restriction has been agreed in other settlements. Some of those previous settlements included specified lands that were negotiated to be put into Trust and in exchange a limitation on putting additional lands into Trust was seen by the parties as fair compensation for this allowance. The parties to the current Agreements associated with H.R. 4924 recognized and agreed that it would be discussed and reviewed in the comprehensive settlement process after assessing all the impacts of that settlement and does not preclude a restriction on lands into Trust in the Big Sandy River watershed.

Donation of Planet Ranch to AZGFC

The second issue related to the loss of tax revenue centers on the donation of certain portions of Planet Ranch, currently owned by Freeport, to the Arizona Game and Fish Commission. This issue has been raised and discussed by the AZGFC itself. At its September 5, 2014 public meeting, the Commission voted unanimously to confirm its existing commitment (consistent with Arizona Revised Statutes §45-17-272) to make voluntary contributions in lieu of property taxes for the Planet Ranch property to La Paz and Mohave Counties. This is a long-standing practice of the Commission to compensate local governments for any losses in revenue that they might incur. Because of this commitment, there is no loss in current revenue to the Counties for the Planet Ranch property.

This was confirmed by Arizona Game and Fish Department Director, Larry Voyles, in a September 30, 2014 letter to the County Supervisors Association Executive Director Craig Sullivan. In this letter, Director Voyles stated, "The Commission has made payment in-lieu of taxes on all properties that had been subject to property taxation and are eligible lands under Arizona Revised Statutes §17-272 at the time the Commission acquired the properties and since the inception of the statute in 1993."

The Board also states that the legislation will negatively affect the potential for future development, and thus will impact the potential collection of future property taxes. First of all, it is important to note that the Planet Ranch is owned by Freeport and I am told that Freeport does not intend to develop this land in any way, other than putting the lands back into agricultural use. Second, as illustrated in Exhibit VI.12 - Countywide Land Use Diagram - Sub Area 8, of the Mohave County General Plan 2010 (page 75)², the privately-owned Planet Ranch lands are not designated for urban, suburban or rural development, nor are they identified for any industrial or commercial development. The Board has failed to provide us any master plan, long-range plan or any planning document whatsoever for that matter that included this land as potential growth for the County.

When Planet Ranch was put up by the City of Scottsdale for sale, the Board did not make a bid or show any interest in acquiring the property at that time. Furthermore, while the final route for I-11 has not been determined to date, the preferred route is not close to this isolated location, which takes in excess of an hour to travel to on a dirt road. I am co-chair of the I-11 Caucus and one of the primary advocates of this infrastructure project. I have not seen this land on any map that shows close proximity to a potential I-11 path. One can only conclude that there are no immediate plans for development of this remote area

² http://legacy.co.mohave.az.us/deptfiles/PZ/misc_file/GP_Draft1b.pdf

and, therefore, no potential for any additional tax revenues from development. Land uses can change over time, and the use of the land by AZGFC is not absolutely permanent.

Freeport's total real estate tax liability for Planet Ranch in 2013 was \$6,704.00. Of this approximately \$1,959.00 of taxable lands are being donated to the AZGFC and Mohave County will be compensated by the recent AZGFC action, resulting in no net loss in property tax revenue. All remaining lands will continue to have a tax liability payable by Freeport.

Furthermore, the Board has claimed that the Bagdad Mine and Freeport's operation yield no economic benefit to Mohave County. According to the Center for Competitiveness and Prosperity Research, L. William Seidman Research Institute, W.P. Carey School of Business at Arizona State University, Freeport's impact on the economy of Mohave County related to components including but not limited to Direct effects from FCX operations, Direct and indirect effects from supplier purchases and indirect effects from consumer spending by FCX employees is approximately \$16 million and 175 jobs. In addition, the economic study found that the Bagdad Mine provides an annual economic impact of \$339 million to the State of Arizona and is responsible for the creation of 4,000 direct and indirect jobs. These are real and existing benefits to the State of Arizona, as well as Mohave County, which far outweigh the insignificant property tax revenue concerns.

II. Access to Planet Ranch

One thing I think we all should agree upon is that we respect private property rights. A private land owner can sell land or water rights to whomever they want. A private land owner has the right to fence off private property and exclude a trespasser. The Board has stated that the language in the legislation regarding public access to Planet Ranch after transfer to AZGFC is cryptic and will allow the state and federal government to grant access if they "feel like it." First, it is important to note that Planet Ranch is currently under private ownership and that there has been no lawful public access to this land for many years. To access the land a person would have to trespass on Freeport's private property. The language in the H.R.4924 actually directs that the lands that will be transferred for the Lower Colorado River Multi-Species Conservation Program (LCR-MSCP) be open to the public. This Congressional legislation directing public land agencies to allow access is not voluntary. If passed, it is federal law and cannot be interpreted to be a suggestion or an arbitrary decision of the agency.

Portions of Planet Ranch will remain in Freeport's ownership and under federal and state laws, will be protected as private property; consistent with the same protections afforded any other private property owner in Mohave County. For those portions of Planet Ranch that will be transferred for LCR- MSCP purposes, the Arizona Game and Fish Commission, at its meeting on August 22, 2014, had extensive discussion on the issue of public access, and there was a consensus among the Commissioners that this land be open to the public for hunting, fishing and recreational purposes. Arizona Game and Fish Department Director, Larry Voyles, also stated in his September 30, 2014, letter that "The Commission and the Department actively engage federal and state land management agencies on providing and increasing adequate public access for wildlife-related recreation. In just the last 5 years nearly two million acres of public and private land have been made available for hunting, fishing and other forms of recreation." In fact, most Multi-Species Conservation Program land in Arizona contains some form of hunting and fishing. In short, ownership by the State guarantees public access. Private ownership does not.

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III. Validity of the Planet Ranch Water Rights

Finally, the Board asserts that the water rights at Planet Ranch must be in question because of Freeport's actions to put the lands back into irrigation. Whether this position has legal merits is not one I can decide, nor can the Board. The Board is correct that State law requires surface water permit holders to exercise their water rights without a lapse in use for five years to avoid forfeiture of the water rights. However, the law also provides municipalities with pending sever and transfer applications an exception to this provision. Freeport purchased Planet Ranch and the associated water rights in 2011 from the City of Scottsdale. To claim that a private company, which invested approximately \$20 million to purchase private property and water rights, forfeited these water rights based on a Google map image prior to the actual purchase is fanciful and incorrect.

While under the ownership of the City of Scottsdale, the City submitted an application to sever and transfer of the water rights to its service area in Maricopa County and thus was exempt from the forfeiture provision. Freeport's ownership started in December, 2011 and Freeport therefore has until December, 2016 to put the water rights to beneficial use (five years after it acquired the water rights). In this case the original beneficial use of those water rights was for agricultural purposes. Therefore, Freeport, in order to protect those water rights, is exercising its obligation under State law. The reasons for Freeport's sever and transport to the Wikieup Wellfield have never been a secret: Freeport is a mining company and it has just as much right as any other person or entity in Arizona to utilize its water rights, as long as that use is consistent with State law and does not harm vested water rights holders.

Freeport's actions to put the water to beneficial use is necessary to protect the water rights both for Freeport and the LCR-MSCP once that land is being transferred to the AZGFC. This bill also benefits water users throughout the state of Arizona, as Freeport has generously agreed to a "diversion limitation" or a cap on its withdrawals from the wellfield and other specified groundwater wells at its historic maximum pumping level of 10,055 acre-feet per year (AFY). This will result in a net water benefit to the basin of nearly 30,000 AFY. Water rights claims in Arizona are still unresolved for 11 different tribes, and the drought conditions have put even more pressure on scarce resources. During these tough times, an agreement where a private water rights holder willing volunteers to reduce water use to which it is entitled by nearly 30,000 AFY is a great thing.

IV. Conclusion

In conclusion, I would like to address a few other issues that have been raised by the Board. The claim that lights "flicker" in nearby towns when the water pumps are turned on for the Bagdad Mine is not credible. Notably, this claim is not coming from a power utility. Suffice to say the power grid for Arizona does not rest on a precipice dependent upon whether a few water pumps are turned on.

The following statement deserves my reply: "I want my congressman to respect private property and the rule of law,...but also engage local governments and taxpayers like they are supposed to." I agree, and walk this daily. I believe the federal government owns too much land in general, and way too much land in the West. My general philosophy is this: give us our land back, or give us our Payment in Lieu of Taxes (PILT) in an expeditious and equitable manner. I have been one of a handful of members leading the charge to ensure federal PILT payments are made to counties until land is returned to private ownership or to the states. I also led a legislative effort this year to ensure resources for the State Criminal

Alien Assistance Program (SCAAP) were maintained in the Fiscal Year 2015 Appropriations Bill. SCAAP is a grant program that reimburses states and local governments for the cost of incarcerating undocumented immigrants convicted of crimes.

Additionally, I introduced H.R. 596, legislation that reforms the royalty and permit process for the development of renewable energy on public lands. Under the current process counties get no revenue for development of these energy resources. H.R. 596 distributes rents and royalties by returning 25% to the state, and 25% to the county. 15% goes to the BLM for the purposes of more efficiently processing permit applications, and 25% is deposited into a fund for sportsmen and conservation purposes, including increasing outdoor recreation such as hunting, fishing, and hiking. The remaining 10% is deposited into the general fund of the U.S. Treasury for the purposes of deficit reduction. Since federal lands are not taxable, state and local governments deserve a share of the revenues from the sales of energy production on lands within their borders.

With respect to listening to and engaging taxpayers, in the fiscal year 2015 appropriations process, I had more success than any other member of Congress, passing 21 of 27 amendments and positively affecting almost one billion dollars in federal spending. My amendments accounted for more than 10% of the total amendments passed by the House during the appropriations season. Several ideas for these amendments came from taxpayers and constituents of mine in Arizona.

I would also like to address the claim that the County was "largely kept in the dark about this legislation." My office, as well as Senator Flake's office, has been very proactive in engaging the Board on this issue and has made several personal trips and communications to members of the Board and Board staff to discuss these issues. I asked Freeport where Mohave County was on this bill and mandated my staff reach out to the Board prior to introduction of this legislation. My staff followed my directions and made formal outreach efforts on June 13, 2014. We also arranged for members of the Board to meet personally with Freeport and even encouraged a public meeting and tour of Planet Ranch so Freeport could brief the Board on the proposed legislation. Unfortunately, the Board undermined this opportunity to learn by passing a resolution against the bill without having a full understanding of the bill.

Several attempts have been made, and continue to be made to accommodate any concerns raised about this legislation, including adding additional language to the bill to strengthen and address issues such as public access. While litigation is an approach that might result in a positive outcome for one party, it does hamper the ability to facilitate a meaningful and open dialogue between the parties. I understand the Board's desire to look out for its citizens (one I personally share), and I respect whatever approach the Board decides to take in the future on this matter. However, if the Board would like to reap the full benefits of this legislation for the County, I would respectfully suggest it engage in a meaningful dialogue and bring realistic solutions to the table.

I continue to fight for the Board and Mohave County on your issues. While there may be some disagreement on this bill, we probably agree on 98% of other issues. Thanks to our efforts working together, I am confident that rainbow trout stocking operations will resume at the Willow Beach National Fish Hatchery in the near future. I will continue to press for compensation and justice for the Downwinders. I will continue to push to make I-11 a reality. I will continue to try and get business to relocate to Mohave County, and I have worked closely with Nucor in that regard. Mohave County is a top priority for me, and I greatly value the relationships I have with the Board and the people of Mohave County.

Just last week I had a meeting in Lake Havasu City about an economic development project that would bring in new water for Lake Havasu City, Bullhead City and Parker. A consultant in this meeting (a representative of your board was in attendance) included in his PowerPoint that passage of H.R. 4924 would actually allow for more water to flow to these cities during this project as a result of reduced water use at Planet Ranch. Besides the reasons previously mentioned, this is another potential benefit of my legislation for the County.

H.R. 4924 is supported by the entire Arizona House delegation. This legislation is also supported by the Hualapai Tribal Council (Resolution No. 40-2014), Freeport-McMoRan, the Arizona Department of Water Resources, the Arizona Game and Fish Commission, the Governor of Arizona, the Arizona State Land Department, the Arizona Chamber of Commerce, the Salt River Project, the Central Arizona Project and the Yavapai County Board of Supervisors. I urge the County to continue to work with my office as well as these other supporters and stakeholders on this legislation. I strongly encourage all parties to continue to talk and resolve any differences. I see a lot of opportunities and possible options that could provide additional economic development and support for the County. If the Board would like, I am happy to assist with beginning those discussions.

I thank you for taking the time to make comments on this legislation. I hope these clarifications address the reservations you have about the bill. Since your letter was submitted for the Hearing Record for the House Natural Resources Hearing on H.R. 4924, this response will also be submitted for that Hearing Record at this time.

I look forward to future efforts together, and please feel free to contact me or my office anytime.

Sincerely,



Paul A. Gosar, DDS
Congressman 4th District Arizona