



**U.S. House of Representatives
Committee on Transportation and Infrastructure
Subcommittee on Water Resources and Environment
1324 Longworth House Office Building
Washington, D.C. 20515**

“Proposals for a Water Resources Development Act of 2022: Stakeholder Priorities”

**Written Testimony of Peter Yucupicio, Chairman
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Lios enchim aniavu, Chair Napolitano, Ranking Member Rouzer, and members of the Subcommittee. My name is Peter Yucupicio, and I am the Chairman of the Pascua Yaqui Tribe of Arizona (Tribe). I am here today to testify regarding the Water Resources Development Act of 2022 (WRDA) and to urge the Committee to increase the authorization levels for the environmental infrastructure (EI) authorities under Section 595 of the Water Resources Development Act of 1999, Public Law 106-53, as amended, to help address the critical need for water infrastructure projects in the eligible states, including in our state of Arizona. As discussed in greater detail below, we also recommend the Committee consider several other measures in WRDA, including enhancements to EI that could improve the ability of Indian tribes to access this important program.

I would like to acknowledge and express our appreciation for the opportunity to testify today and thank the Committee for your continued support for EI in the biennial WRDA.

The Environmental Infrastructure Assistance Act and the Pascua Yaqui Tribe

The Pascua Yaqui Tribe is a federally recognized tribe with a reservation southwest of Tucson, Arizona. Our Tribe was recognized by Congress pursuant to the Act of September 18, 1978, P.L. 95-375 (92 Stat. 712), as amended, and the Indian Reorganization Act of 1934 (48 Stat. 984) (IRA). We are an historic tribe with a small, 2,216-acre Reservation established for the use and benefit of the Tribe’s 22,000 members. Since our Tribe’s federal recognition in 1978, our Tribal government has focused on providing housing, public services, and economic opportunities for our Tribal members on our Reservation and in our Tribally recognized communities in Arizona.

Like many of our sister tribes here in the west, the Pascua Yaqui Tribe has limited access to potable water supplies. In the case of our Tribe, we do not have a surface water supply of our own on the

Reservation and our access to groundwater is extremely limited. Pursuant to a *2011 Intergovernmental Agreement between the City of Tucson and Pascua Yaqui Tribe for Potable Water Service* (Tucson IGA), the Tribe receives potable water service from our neighbor, the City of Tucson, but Tucson caps the amount of water it will deliver to the Tribe at 600 acre-feet + 300 acre-feet for public facilities. With the development of much-needed housing for Tribal members and associated Tribal facilities, we are on course to exceed our water delivery limits with Tucson in only a few years. This is why the EI authority for Arizona is so critical, since it provides another resource for communities, including Tribal communities, to meet our water infrastructure needs – here with the participation of the U.S. Army Corps of Engineers (USACE).

With the support of Congressman Greg Stanton, the Pascua Yaqui Tribe was the first Tribe in Arizona to tap into Arizona's EI authority. With funding awarded to the Tribe through the USACE, we are finally able to construct a water distribution line that will bring non-potable water to our Tribal Wellness Center on the Reservation to irrigate recreational facilities, including ballfields and a public park, that we maintain to encourage a healthy lifestyle for our Tribal members.

Importantly, this project will also result in the conservation of at least 50 acre-feet (16,292,550 gallons) of potable water each year on the Reservation, contributing to the protection of the Tribe's limited water resources and making it possible for the Tribe to provide a future potable water supply to 375 homes on our Reservation. While we have many more water challenges to overcome, projects like those supported by the EI authority and the USACE will help our Tribe achieve a reliable water supply for our growing Tribal population. We are therefore grateful for this program and urge the Committee to increase the authorization for the Arizona authority and expand the number of states (and thus tribes) that are eligible to participate.

On the funding side of things, Indian tribes are only now learning about the EI program and as discussed below, tribes face barriers to participation in federal infrastructure programs, like the Arizona EI authority, that often preclude our participation in these programs. Without additional authorization and more resources for EI, it is likely that tribes will be frozen out of the benefits of EI once again, since this funding will be quickly secured by municipalities and other non-tribal beneficiaries that are more familiar with the EI program, despite the urgent need for water supply and water resource projects and technical assistance on tribal lands.

Recommended Improvements in the Environmental Infrastructure Assistance Act

As the Chairman of the Pascua Yaqui Tribe, I frequently interact with tribal leaders from federally recognized Indian tribes located throughout the West and see first-hand the glaring need for additional federal investments in the development, repair, and replacement of water and wastewater infrastructure on Tribal lands, among other environmental infrastructure projects. Indeed, as tribes struggle with years of drought and the reality of a much hotter and drier future, Indian tribes, just like many of our neighboring communities, need increased access to financial resources and technical assistance – like those provided by the EI – to enhance, and in many instances retool, our existing water supply and wastewater systems to conserve water, offset potable uses, and recycle water to support the health of our environment and provide a more flexible water supply for our future.

Unfortunately, many tribes simply lack the financial resources needed to address these infrastructure needs. Compounding these challenges, tribes often find that federal programs established to address water infrastructure needs in the United States are hard to access, require an insurmountable cost share, or have screening criteria that do not fit the circumstances of tribal communities. And while our Tribe is grateful to have been able to tap into resources made available through the Arizona EI authority, we are also aware that only a small handful of tribes in EI eligible states have applied for or received funding or technical assistance under this important program. Accordingly, on behalf of the Pascua Yaqui Tribe and our sister tribes here in the West, in addition to increasing the authorizations for these EI authorities, we respectfully urge the Committee to consider the following actions that would expand tribal access to the EI program and support important water resiliency projects on tribal lands.

1. The USACE should develop a plan for tribal engagement on the EI

The USACE has been an excellent partner to the Pascua Yaqui Tribe as we work to develop our non-potable water line for the Wellness Center on our Reservation. But our Tribe was lucky to hear about the availability of funds for the EI program in the first place, as the program is not formally noticed to Indian tribes in eligible states. In fact, it was only through the tribal outreach efforts of Congressman Stanton and his office that the Tribe became aware of its eligibility for EI and the potential fit between our Wellness Center project and EI criteria.

Indian tribes, especially smaller and rural tribes, often lack the in-house resources and capacity to independently identify programs like the EI program as a source of technical assistance and support for critical water supply projects on their reservations. The development of a written plan for tribal engagement on EI by the USACE could help bridge this gap for tribes and provide a much greater opportunity for Indian tribes to participate in the benefit of EI resources. The tribal engagement plan could, among other things, require that a notice of funding availability be shared with eligible tribes well in advance of any applicable deadlines. To be effective, the notice could also outline, in a clear and concise way, what projects are eligible for EI assistance, the timelines for applying for such assistance, and the contact information for local USACE staff who are able to provide guidance on the application process. The USACE could also offer individual government-to-government consultation with tribes interested in learning more about the EI program.

2. Cost Share and Reimbursement Requirement

While there are several federal grant programs available to help tribes build critical water and wastewater infrastructure on tribal lands, in many instances, these programs require a non-federal cost-share match by the tribe, often from 50% to 75% of the total project cost. While the EI program is an improvement, since the non-federal cost share is only 25%, even this can be a significant barrier for participation in the program for tribes.

As this Committee knows well, constructing and repairing water and wastewater facilities and other environmental infrastructure projects requires a substantial capital expenditure for any community. In non-native communities, these types of capital improvements are typically funded

through tax-payer dollars and bonds, as well as impact fees assessed to private developers. However, tribal communities do not have the same mechanisms to generate or receive tax benefits or otherwise use bonding capacity. Moreover, because tribes develop and maintain these large water resource projects to facilitate their own economic development projects or to support tribal services and tribal housing, tribes do not have the benefit of assessing impact fees on developers to help fund these projects.

Tribes' inability to tap into sources of revenue like certain taxes, bonds, or impact fees on par with their neighboring communities magnifies the difficulty presented by the EI's non-federal 25% cost share. First, without sufficient water and wastewater infrastructure, tribes are unable to engage in robust economic development projects that could provide a source of revenue to meet the 25% cost share requirement, even though the very lack of water related infrastructure is what makes the tribe eligible for the EI program in the first place. This presents a difficult chicken and egg situation for tribes. Second, because the 25% cost share must be non-federal, tribes are unable to use other sources of available federal dollars that they may have access to in order to fund the non-federal 25% cost share, even if cost share is allowable under other federal programs.

In recognition of the unique circumstances faced by Indian tribes, including tribes' limits on access to revenue sources that are available to non-native communities and the dire need for water and wastewater infrastructure on tribal lands, the Tribe recommends the Committee consider allowing Indian tribes to use available federal funding sources to meet the 25% cost share requirement of the EI program or eliminate this cost share requirement for tribes entirely.

In addition, the reimbursable nature of the EI program also presents barriers to tribal participation. Specifically, the EI program requires participating tribes to fund 75% of the construction costs of EI approved projects up front, with the USACE providing a subsequent reimbursement of costs to the tribe after the fact. In many instances, however, tribes lack the financial tools or tribal funding sources (as discussed above) to participate in programs like EI that only reimburse the tribe for construction costs after the fact. To ensure greater participation of tribes in the EI program, the Committee should consider changes to these requirements for tribal participants.

While small, the changes to the EI program discussed in our testimony today would be a big step in assisting tribes to fully participate in this program on par with non-native communities, providing a federal investment on tribal lands that will assist tribes in meeting critical water needs now and in the future.

Expand the Mission of the Army Corps of Engineers

While it is our understanding that the WRDA has typically focused the USACE's mission on traditional civil works purposes, including improving navigation, reducing flood risk, and restoring aquatic ecosystems, there is a very strong need for the USACE to expand its core mission to include water supply projects generally. The need for assistance from the USACE in the development of these types of projects could not be greater for communities in the West, as we see the impacts of drought and ongoing aridification drastically depleting the availability of water resources at both a local and regional scale. The USACE stands in a unique and important position to assist communities, including our tribal communities, as we adapt to these rapidly developing water

supply challenges in real time. We hope the Committee will consider the opportunity that WRDA presents to expand the mission of the USACE to provide much greater assistance in water supply projects moving forward.

Conclusion

Chair Napolitano, Ranking Member Rouzer, and members of the Subcommittee, thank you for the opportunity to testify today. On behalf of the Pascua Yaqui Tribe, we urge the Committee to consider the recommendations set forth in our testimony that have the potential to magnify the impact of the WRDA in Indian Country. We are also grateful for the inclusion of Arizona in the EI program and for the benefit it is bringing to help meet the water needs of our Tribe. I would be honored to answer any questions you may have.