H. R. 1065

IN THE SENATE OF THE UNITED STATES

JANUARY 22, 2010

Received

MARCH 26 (legislative day, MARCH 25), 2010

Read twice and placed on the calendar

AN ACT

To resolve water rights claims of the White Mountain Apache Tribe in the State of Arizona, and for other purposes.

Be it enacted by the Senate and House of Representa-
tives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “White Mountain Apache Tribe Water Rights Quantification Act of 2010”.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) proceedings to determine the nature and ex-
tent of the water rights of the White Mountain
Apache Tribe, members of the Tribe, the United States, and other claimants are pending in—

(A) the consolidated civil action in the Superior Court of the State of Arizona for the County of Maricopa styled In re the General Adjudication of All Rights To Use Water In The Gila River System and Source, W–1 (Salt), W–2 (Verde), W–3 (Upper Gila), W–4 (San Pedro); and

(B) the civil action pending in the Superior Court of the State of Arizona for the County of Apache styled In re the General Adjudication of All Rights to Use Water in the Little Colorado River System and Source and numbered CIV–6417;

(2) a final resolution of those proceedings might—

(A) take many years;

(B) entail great expense; and

(C) prolong uncertainty concerning the availability of water supplies;

(3) the Tribe, non-Indian communities located near the reservation of the Tribe, and other Arizona water users have entered into the WMAT Water Rights Quantification Agreement—
(A) to permanently quantify the water rights of the Tribe, members of the Tribe, and the United States in its capacity as trustee for the Tribe and members in accordance with the Agreement; and

(B) to seek funding, in accordance with applicable law, for the implementation of the Agreement;

(4) it is the policy of the United States to quantify and settle Indian water rights claims, and to promote Indian self-determination and economic self-sufficiency, without lengthy and costly litigation, if practicable;

(5) certainty concerning the extent of the water rights of the Tribe will—

(A) provide opportunities for economic development of all parties to the proceeding; and

(B) assist the Tribe to achieve self-determination and self-sufficiency; and

(6) in keeping with the trust responsibility of the United States to Indian tribes, and to promote tribal sovereignty and economic self-sufficiency, it is appropriate that the United States implement the Agreement.

(b) PURPOSES.—The purposes of this Act are—
(1) to authorize, ratify, and confirm the Agreement;

(2) to authorize and direct the Secretary to execute the Agreement and carry out all obligations of the Secretary under the Agreement;

(3) to authorize the actions and appropriations necessary for the United States to meet the obligations of the United States under the Agreement and this Act; and

(4) to permanently resolve certain damage claims and all water rights claims among—

(A) the Tribe and its members;

(B) the United States in its capacity as trustee for the Tribe and its members;

(C) the parties to the Agreement; and

(D) all other claimants in the proceedings referred to in subsection (a)(1).

SEC. 3. DEFINITIONS.

In this Act:

(1) AGREEMENT.—The “Agreement” means—

(A) the WMAT Water Rights Quantification Agreement dated January 13, 2009; and

(B) any amendment or exhibit (including exhibit amendments) to that agreement that are—
(i) made in accordance with this Act;

or

(ii) otherwise approved by the Secretary.

(2) BUREAU.—The term “Bureau” means the Bureau of Reclamation.

(3) CAP.—The term “CAP” means the reclamation project authorized and constructed by the United States in accordance with title III of the Colorado River Basin Project Act (43 U.S.C. 1521 et seq.).

(4) CAP CONTRACTOR.—The term “CAP contractor” means an individual or entity that has entered into a long-term contract (as that term is used in the repayment stipulation) with the United States for delivery of water through the CAP system.

(5) CAP FIXED OM&R CHARGE.—The term “CAP fixed OM&R charge” has the meaning given the term in the repayment stipulation.

(6) CAP M&I PRIORITY WATER.—The term “CAP M&I priority water” means the CAP water having a municipal and industrial delivery priority under the repayment contract.

(7) CAP SUBCONTRACTOR.—The term “CAP subcontractor” means an individual or entity that
has entered into a long-term subcontract (as that term is used in the repayment stipulation) with the United States and the District for the delivery of water through the CAP system.

(8) CAP system.—The term “CAP system” means—

(A) the Mark Wilmer Pumping Plant;
(B) the Hayden-Rhodes Aqueduct;
(C) the Fannin-McFarland Aqueduct;
(D) the Tucson Aqueduct;
(E) any pumping plant or appurtenant works of a feature described in any of subparagraphs (A) through (D); and
(F) any extension of, addition to, or replacement for a feature described in any of subparagraphs (A) through (E).

(9) CAP water.—The term “CAP water” means “Project Water” (as that term is defined in the repayment stipulation).

(10) Contract.—The term “Contract” means—

(A) the proposed contract between the Tribe and the United States attached as exhibit 7.1 to the Agreement and numbered 08–XX–30–W0529; and
(B) any amendments to that contract.

(11) DISTRICT.—The term “District” means the Central Arizona Water Conservation District, a political subdivision of the State that is the contractor under the repayment contract.

(12) ENFORCEABILITY DATE.—The term “enforceability date” means the date described in section 9(d)(1).

(13) INDIAN TRIBE.—The term “Indian tribe” has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

(14) INJURY TO WATER RIGHTS.—

(A) IN GENERAL.—The term “injury to water rights” means an interference with, diminution of, or deprivation of, a water right under Federal, State, or other law.

(B) INCLUSIONS.—The term “injury to water rights” includes—

(i) a change in the groundwater table;

and

(ii) any effect of such a change.

(C) EXCLUSION.—The term “injury to water rights” does not include any injury to water quality.
(15) LOWER COLORADO RIVER BASIN DEVELOPMENT FUND.—The term “Lower Colorado River Basin Development Fund” means the fund established by section 403 of the Colorado River Basin Project Act (43 U.S.C. 1543).

(16) OFF-RESERVATION TRUST LAND.—The term “off-reservation trust land” means land—

(A) located outside the exterior boundaries of the reservation that is held in trust by the United States for the benefit of the Tribe as of the enforceability date; and

(B) depicted on the map attached to the Agreement as exhibit 2.57.

(17) OPERATING AGENCY.—The term “Operating Agency” means the 1 or more entities authorized to assume responsibility for the care, operation, maintenance, and replacement of the CAP system.

(18) REPAYMENT CONTRACT.—The term “repayment contract” means—

(A) the contract between the United States and the District for delivery of water and repayment of the costs of the CAP, numbered 14–06–W–245 (Amendment No. 1), and dated December 1, 1988; and
(B) any amendment to, or revision of, that contract.

(19) Repayment stipulation.—The term “repayment stipulation” means the stipulated judgment and the stipulation for judgment (including any exhibits to those documents) entered on November 21, 2007, in the United States District Court for the District of Arizona in the consolidated civil action styled Central Arizona Water Conservation District v. United States, et al., and numbered CIV 95–625–TUC–WDB (EHC) and CIV 95–1720–PHX–EHC.

(20) Reservation.—

(A) In general.—The term “reservation” means the land within the exterior boundary of the White Mountain Indian Reservation established by the Executive order dated November 9, 1871, as modified by subsequent Executive orders and Acts of Congress—

(i) known on the date of enactment of this Act as the “Fort Apache Reservation” pursuant to the Act of June 7, 1897 (30 Stat. 62, chapter 3); and

(ii) generally depicted on the map attached to the Agreement as exhibit 2.81.
(B) NO EFFECT ON DISPUTE OR AS ADMIS-
SION.—The depiction of the reservation de-
scribed in subparagraph (A)(ii) shall not—

(i) be used to affect any dispute be-
tween the Tribe and the United States
concerning the legal boundary of the res-
ervation; and

(ii) constitute an admission by the
Tribe with regard to any dispute between
the Tribe and the United States con-
cerning the legal boundary of the reserva-
tion.

(21) SECRETARY.—The term “Secretary”
means the Secretary of the Interior.

(22) STATE.—The term “State” means the
State of Arizona.

(23) TRIBAL CAP WATER.—The term “tribal
CAP water” means the CAP water to which the
Tribe is entitled pursuant to the Contract.

(24) TRIBAL WATER RIGHTS.—The term “tribal
water rights” means the water rights of the Tribe
described in paragraph 4.0 of the Agreement.

(25) TRIBE.—The term “Tribe” means the
White Mountain Apache Tribe organized under sec-
tion 16 of the Act of June 18, 1934 (commonly

(26) WATER RIGHT.—The term “water right” means any right in or to groundwater, surface water, or effluent under Federal, State, or other law.

(27) WMAT RURAL WATER SYSTEM.—The term “WMAT rural water system” means the municipal, rural, and industrial water diversion, storage, and delivery system described in section 7.

(28) YEAR.—The term “year” means a calendar year.

SEC. 4. APPROVAL OF AGREEMENT.

(a) APPROVAL.—

(1) IN GENERAL.—Except to the extent that any provision of the Agreement conflicts with a provision of this Act, the Agreement is authorized, ratified, and confirmed.

(2) AMENDMENTS.—Any amendment to the Agreement is authorized, ratified, and confirmed, to the extent that such an amendment is executed to make the Agreement consistent with this Act.

(b) EXECUTION OF AGREEMENT.—To the extent that the Agreement does not conflict with this Act, the Secretary shall—
(1) execute the Agreement (including signing any exhibit to the Agreement requiring the signature of the Secretary); and

(2) execute any amendment to the Agreement necessary to make the Agreement consistent with this Act.

(c) NATIONAL ENVIRONMENTAL POLICY ACT.—

(1) ENVIRONMENTAL COMPLIANCE.—In implementing the Agreement, the Secretary shall promptly comply with all applicable requirements of—

(A) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.);

(B) the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);

(C) all other applicable Federal environmental laws; and

(D) all regulations promulgated under the laws described in subparagraphs (A) through (C).

(2) EXECUTION OF AGREEMENT.—

(A) IN GENERAL.—Execution of the Agreement by the Secretary under this section shall not constitute a major Federal action under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).
(B) **ENVIRONMENTAL COMPLIANCE.**—The Secretary shall carry out all necessary environmental compliance required by Federal law in implementing the Agreement.

(3) **LEAD AGENCY.**—The Bureau shall serve as the lead agency with respect to ensuring environmental compliance associated with the WMAT rural water system.

**SEC. 5. WATER RIGHTS.**

(a) **TREATMENT OF TRIBAL WATER RIGHTS.**—The tribal water rights—

(1) shall be held in trust by the United States in perpetuity; and

(2) shall not be subject to forfeiture or abandonment.

(b) **REALLOCATION.**—

(1) **IN GENERAL.**—In accordance with this Act and the Agreement, the Secretary shall reallocate to the Tribe, and offer to enter into a contract with the Tribe for the delivery in accordance with this section of—

(A) an annual entitlement to 23,782 acre-feet per year of CAP water that has a non-Indian agricultural delivery priority (as defined in the Contract) in accordance with section

   (i) 3,750 acre-feet per year shall be
    firmed by the United States for the benefit
    of the Tribe for the 100-year period begin-
    ning on January 1, 2008, with priority
    equivalent to CAP M&I priority water, in
    accordance with section 105(b)(1)(B) of
    that Act (118 Stat. 3492); and

   (ii) 3,750 acre-feet per year shall be
    firmed by the State for the benefit of the
    Tribe for the 100-year period beginning on
    January 1, 2008, with priority equivalent
    to CAP M&I priority water, in accordance
    with section 105(b)(2)(B) of that Act (118
    Stat. 3492); and

   (B) an annual entitlement to 1,218 acre-
    feet per year of the water—

   (i) acquired by the Secretary through
    the permanent relinquishment of the
    Harquahala Valley Irrigation District CAP
    subcontract entitlement in accordance with
    the contract numbered 3–07–30–W0290
    among the District, Harquahala Valley Ir-
rigation District, and the United States;
and

(ii) converted to CAP Indian Priority water (as defined in the Contract) pursuant to the Fort McDowell Indian Community Water Rights Settlement Act of 1990 (Public Law 101–628; 104 Stat. 4480).

(2) AUTHORITY OF TRIBE.—Subject to approval by the Secretary under section 6(a)(1), the Tribe shall have the sole authority to lease, distribute, exchange, or allocate the tribal CAP water described in paragraph (1).

(c) WATER SERVICE CAPITAL CHARGES.—The Tribe shall not be responsible for any water service capital charge for tribal CAP water.

(d) ALLOCATION AND REPAYMENT.—For the purpose of determining the allocation and repayment of costs of any stages of the CAP constructed after November 21, 2007, the costs associated with the delivery of water described in subsection (b), regardless of whether the water is delivered for use by the Tribe or in accordance with any assignment, exchange, lease, option to lease, or other agreement for the temporary disposition of water entered into by Tribe, shall be—

(1) nonreimbursable; and
(2) excluded from the repayment obligation of the District.

(e) WATER CODE.—Not later than 18 months after the enforceability date, the Tribe shall enact a water code that—

(1) governs the tribal water rights; and

(2) includes, at a minimum—

(A) provisions requiring the measurement, calculation, and recording of all diversions and depletions of water on the reservation and on off-reservation trust land;

(B) terms of a water conservation plan, including objectives, conservation measures, and an implementation timeline;

(C) provisions requiring the approval of the Tribe for the severance and transfer of rights to the use of water from historically irrigated land identified in paragraph 11.3.2.1 of the Agreement to diversions and depletions on other non-historically irrigated land not located on the watershed of the same water source; and

(D) provisions requiring the authorization of the Tribe for all diversions of water on the reservation and on off-reservation trust land by any individual or entity other than the Tribe.
SEC. 6. CONTRACT.

(a) IN GENERAL.—The Secretary shall enter into the Contract, in accordance with the Agreement, to provide, among other things, that—

(1) the Tribe, on approval of the Secretary, may—

(A) enter into contracts or options to lease, contracts to exchange, or options to exchange tribal CAP water in Maricopa, Pinal, Pima, and Yavapai Counties in the State providing for the temporary delivery to any individual or entity of any portion of the tribal CAP water, subject to the condition that—

(i) the term of the contract or option to lease shall not be longer than 100 years;

(ii) the contracts or options to exchange shall be for the term provided in the contract or option; and

(iii) a lease or option to lease providing for the temporary delivery of tribal CAP water shall require the lessee to pay to the Operating Agency all CAP fixed OM&R charges and all CAP pumping energy charges (as defined in the repayment stipulation) associated with the leased water; and
(B) renegotiate any lease at any time during the term of the lease, subject to the condition that the term of the renegotiated lease shall not exceed 100 years;

(2) no portion of the tribal CAP water may be permanently alienated;

(3)(A) the Tribe (and not the United States in any capacity) shall be entitled to all consideration due to the Tribe under any contract or option to lease or exchange tribal CAP water entered into by the Tribe; and

(B) the United States (in any capacity) has no trust or other obligation to monitor, administer, or account for, in any manner—

(i) any funds received by the Tribe as consideration under a contract or option to lease or exchange tribal CAP water; or

(ii) the expenditure of those funds;

(4)(A) all tribal CAP water shall be delivered through the CAP system; and

(B) if the delivery capacity of the CAP system is significantly reduced or anticipated to be significantly reduced for an extended period of time, the Tribe shall have the same CAP delivery rights as a CAP contractor or CAP subcontractor that is al-
lowed to take delivery of water other than through the CAP system;

(5) the Tribe may use tribal CAP water on or off the reservation for any purpose;

(6) as authorized by subsection (f)(2)(A) of section 403 of the Colorado River Basin Project Act (43 U.S.C. 1543) and to the extent that funds are available in the Lower Colorado River Basin Development Fund established by subsection (a) of that section, the United States shall pay to the Operating Agency the CAP fixed OM&R charges associated with the delivery of tribal CAP water (except in the case of tribal CAP water leased by any individual or entity);

(7) the Secretary shall waive the right of the Secretary to capture all return flow from project exchange water flowing from the exterior boundary of the reservation; and

(8) no CAP water service capital charge shall be due or payable for the tribal CAP water, regardless of whether the water is delivered for use by the Tribe or pursuant to a contract or option to lease or exchange tribal CAP water entered into by the Tribe.

(b) REQUIREMENTS.—The Contract shall be—
(1) for permanent service (within the meaning of section 5 of the Boulder Canyon Project Act (43 U.S.C. 617d)); and

(2) without limit as to term.

(e) Ratification.—

(1) In general.—Except to the extent that any provision of the Contract conflicts with a provision of this Act, the Contract is authorized, ratified, and confirmed.

(2) Amendments.—Any amendment to the Contract is authorized, ratified, and confirmed, to the extent that such an amendment is executed to make the Contract consistent with this Act.

(d) Execution of Contract.—To the extent that the Contract does not conflict with this Act, the Secretary shall execute the Contract.

(e) Payment of Charges.—The Tribe, and any recipient of tribal CAP water through a contract or option to lease or exchange, shall not be obligated to pay a water service capital charge or any other charge, payment, or fee for CAP water, except as provided in an applicable lease or exchange agreement.

(f) Prohibitions.—

(1) Use outside state.—No tribal CAP water may be leased, exchanged, forborne, or other-
wise transferred by the Tribe in any way for use directly or indirectly outside the State.

(2) USE OFF RESERVATION.—Except as authorized by this section and paragraph 4.7 of the Agreement, no tribal water rights under this Act may be sold, leased, transferred, or used outside the boundaries of the reservation or off-reservation trust land other than pursuant to an exchange.

(3) AGREEMENTS WITH ARIZONA WATER BANKING AUTHORITY.—Nothing in this Act or the Agreement limits the right of the Tribe to enter into an agreement with the Arizona Water Banking Authority established by section 45–2421 of the Arizona Revised Statutes (or any successor entity), in accordance with State law.

(g) LEASES.—

(1) IN GENERAL.—To the extent the leases of tribal CAP Water by the Tribe to the District and to any of the cities, attached as exhibits to the Agreement, are not in conflict with the provisions of this Act—

(A) those leases are authorized, ratified, and confirmed; and

(B) the Secretary shall execute the leases.
(2) AMENDMENTS.—To the extent that amendments are executed to make the leases described in paragraph (1) consistent with this Act, those amendments are authorized, ratified, and confirmed.

SEC. 7. AUTHORIZATION OF RURAL WATER SYSTEM.

(a) IN GENERAL.—Subject to the availability of appropriations, the Secretary, acting through the Bureau, shall plan, design, construct, operate, maintain, replace, and rehabilitate the WMAT rural water system as generally described in the project extension report dated February 2007.

(b) COMPONENTS.—The WMAT rural water system under subsection (a) shall consist of—

(1) a dam and storage reservoir, pumping plant, and treatment facilities located along the North Fork White River near the community of Whiteriver;

(2) pipelines extending from the water treatment plants to existing water distribution systems serving the Whiteriver, Carrizo, and Cibecue areas, together with other communities along the pipeline;

(3) connections to existing distribution facilities, including public and private water systems in existence on the date of enactment of this Act;

(4) appurtenant buildings and access roads;
(5) electrical power transmission and distribution facilities necessary for services to rural water system facilities;

(6) all property and property rights necessary for the facilities described in this subsection; and

(7) such other project components as the Secretary determines to be appropriate to meet the water supply, economic, public health, and environmental needs of the portions of the reservation served by the WMAT rural water system, including water storage tanks, water lines, and other facilities for the Tribe and the villages and towns on the reservation.

(e) SERVICE AREA.—The service area of the WMAT rural water system shall be as described in the Project Extension report dated February 2007.

(d) CONSTRUCTION REQUIREMENTS.—The components of the WMAT rural water system shall be planned and constructed to a size that is sufficient to meet the municipal, rural, and industrial water supply requirements of the WMAT rural water system service area during the period beginning on the date of enactment of this Act and ending not earlier than December 31, 2040.

(e) TITLE.—
(1) IN GENERAL.—Title to the WMAT rural water system shall be held in trust by the United States in its capacity as trustee for the Tribe.

(2) CONVEYANCE TO TRIBE.—The Secretary may convey to the Tribe title to the WMAT rural water system after publication by the Secretary in the Federal Register of a statement of findings that—

(A) the designers’ operating criteria, standing operating procedures, emergency action plan, and first filling and monitoring criteria are established and in place, and the WMAT rural water system has been declared substantially complete;

(B) the funds authorized to be appropriated under section 12(b)(3)(B) have been appropriated and deposited in the WMAT Maintenance Fund; and

(C) the Tribe has been operating successfully under the established standing operating procedures for a period of 5 calendar years.

(3) ALIENATION AND TAXATION.—Conveyance of title to the Tribe pursuant to paragraph (2) does not waive or alter any applicable Federal law prohib-
iting alienation or taxation of the WMAT rural water system or the underlying reservation land.

(f) TECHNICAL ASSISTANCE.—The Secretary shall provide such technical assistance as is necessary to enable the Tribe to plan, design, construct, operate, maintain, and replace the WMAT rural water system, including operation and management training.

(g) APPLICABILITY OF ISDEAA.—

(1) AGREEMENT FOR SPECIFIC ACTIVITIES.—On receipt of a request of the Tribe, and in accordance with the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.), the Secretary shall enter into an agreement with the Tribe to carry out the activities authorized by this section.

(2) CONTRACTS.—Any contract entered into pursuant to the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) for the purpose of carrying out any provision of this Act shall incorporate such provisions regarding periodic payment of funds, timing for use of funds, transparency, oversight, reporting, and accountability as the Secretary determines to be necessary (at the sole discretion of the Secretary) to ensure appropriate stewardship of Federal funds.
(h) CONDITION.—As a condition of construction of the facilities authorized by this section, the Tribe shall provide, at no cost to the Secretary, all land or interests in land, as appropriate, that the Secretary identifies as being necessary for those facilities.

(i) OPERATION AND MAINTENANCE.—Subject to the availability of appropriations as provided for in section 12(e), the Secretary, acting through the Bureau, shall operate and maintain the WMAT rural water system until the date on which title to the WMAT rural water system is conveyed to the Tribe pursuant to subsection (e)(2).

SEC. 8. SATISFACTION OF CLAIMS.

(a) IN GENERAL.—The benefits realized by the Tribe and its members under this Act shall be in full satisfaction of all claims of the Tribe and its members for water rights and injury to water rights, except as set forth in the Agreement, under Federal, State, or other law with respect to the reservation and off-reservation trust land.

(b) USES OF WATER.—All uses of water on land outside of the reservation, if and when such land is subsequently and finally determined to be part of the reservation through resolution of any dispute between the Tribe and the United States over the location of the reservation boundary, and any fee land within the reservation put into trust and made part of the reservation, shall be subject
to the maximum annual diversion amounts and the maximum annual depletion amounts specified in the Agreement.

(c) No Recognition of Water Rights.—Notwithstanding subsection (a), nothing in this Act has the effect of recognizing or establishing any right of a member of the Tribe to water on the reservation.

SEC. 9. WAIVER AND RELEASE OF CLAIMS.

(a) In General.—

(1) Claims against the State and others.—Except as provided in subsection (b)(1), the Tribe, on behalf of itself and its members, and the United States, acting in its capacity of trustee for the Tribe and its members, as part of the performance of their obligations under the Agreement, are authorized to execute a waiver and release of any claims against the State (or any agency or political subdivision of the State), or any other person, entity, corporation, or municipal corporation under Federal, State, or other law for all—

(A)(i) past, present, and future claims for water rights for the reservation and off-reservation trust land arising from time immemorial and, thereafter, forever; and
(ii) past, present, and future claims for water rights arising from time immemorial and, thereafter, forever, that are based on aboriginal occupancy of land by the Tribe, its members, or their predecessors;

(B)(i) past and present claims for injury to water rights for the reservation and off-reservation trust land arising from time immemorial through the enforceability date;

(ii) past, present, and future claims for injury to water rights arising from time immemorial and, thereafter, forever, that are based on aboriginal occupancy of land by the Tribe and its members, or their predecessors; and

(iii) claims for injury to water rights arising after the enforceability date for the reservation and off-reservation trust land resulting from off-reservation diversion or use of water in a manner not in violation of the Agreement or State law; and

(C) past, present, and future claims arising out of or relating in any manner to the negotiation, execution, or adoption of the Agreement, an applicable settlement judgement or decree, or this Act.
(2) **Claims against Tribe.**—Except as provided in subsection (b)(3), the United States, in all its capacities (except as trustee for an Indian tribe other than the Tribe), as part of the performance of its obligations under the Agreement, is authorized to execute a waiver and release of any and all claims against the Tribe, its members, or any agency, official, or employee of the Tribe, under Federal, State, or any other law for all—

(A) past and present claims for injury to water rights resulting from the diversion or use of water on the reservation and on off-reservation trust land arising from time immemorial through the enforceability date;

(B) claims for injury to water rights arising after the enforceability date resulting from the diversion or use of water on the reservation and on off-reservation trust land in a manner not in violation of the Agreement; and

(C) past, present, and future claims arising out of or related in any manner to the negotiation, execution, or adoption of the Agreement, an applicable settlement judgement or decree, or this Act.
(3) Claims against United States.—Except as provided in subsection (b)(2), the Tribe, on behalf of itself and its members, as part of the performance of the obligations of the Tribe under the Agreement, is authorized to execute a waiver and release of any claim against the United States, including agencies, officials, or employees of the United States (except in the capacity of the United States as trustee for other Indian tribes), under Federal, State, or other law for any and all—

(A)(i) past, present, and future claims for water rights for the reservation and off-reservation trust land arising from time immemorial and, thereafter, forever; and

(ii) past, present, and future claims for water rights arising from time immemorial and, thereafter, forever that are based on aboriginal occupancy of land by the Tribe, its members, or their predecessors;

(B)(i) past and present claims relating in any manner to damages, losses, or injuries to water, water rights, land, or other resources due to loss of water or water rights (including damages, losses, or injuries to hunting, fishing, gathering, or cultural rights due to loss of
water or water rights, claims relating to interference with, diversion, or taking of water, or claims relating to failure to protect, acquire, or develop water, water rights, or water infrastructure) within the reservation and off-reservation trust land that first accrued at any time prior to the enforceability date;

(ii) past, present, and future claims for injury to water rights arising from time immemorial and, thereafter, forever that are based on aboriginal occupancy of land by the Tribe, its members, or their predecessors; and

(iii) claims for injury to water rights arising after the enforceability date for the reservation and off-reservation trust land resulting from the off-reservation diversion or use of water in a manner not in violation of the Agreement or applicable law;

(C) past, present, and future claims arising out of or relating in any manner to the negotiation, execution, or adoption of the Agreement, an applicable settlement judgment or decree, or this Act;

(D) past and present claims relating in any manner to pending litigation of claims relating
to the water rights of the Tribe for the reservation and off-reservation trust land;

(E) past and present claims relating to the operation, maintenance, and replacement of existing irrigation systems on the reservation constructed prior to the enforceability date that first accrued at any time prior to the enforceability date, which waiver shall only become effective on the full appropriation and payment to the Tribe of $4,950,000 authorized by section 12(b)(2)(B);

(F) future claims relating to operation, maintenance, and replacement of the WMAT rural water system, which waiver shall only become effective on the full appropriation of funds authorized by section 12(b)(3)(B) and the deposit of those funds in the WMAT Maintenance Fund;

(G) past and present breach of trust and negligence claims for damage to the land and natural resources of the Tribe caused by riparian and other vegetative manipulation by the United States for the purpose of increasing water runoff from the reservation that first ac-
crued at any time prior to the enforceability date; and

(H) past and present claims for trespass, use, and occupancy of the reservation in, on, and along the Black River that first accrued at any time prior to the enforceability date.

(b) Reservation of Rights and Retention of Claims.—

(1) Reservation of rights and retention of claims by Tribe and United States.—

(A) In general.—Notwithstanding the waiver and release of claims authorized under subsection (a)(1), the Tribe, on behalf of itself and the members of the Tribe, and the United States, acting as trustee for the Tribe and members of the Tribe, shall retain any right—

(i) subject to subparagraph 16.9 of the Agreement, to assert claims for injuries to, and seek enforcement of, the rights of the Tribe and members of the Tribe under the Agreement or this Act in any Federal or State court of competent jurisdiction;

(ii) to assert claims for injuries to, and seek enforcement of, the rights of the
Tribe under the judgment and decree entered by the court in the Gila River adjudication proceedings;

(iii) to assert claims for injuries to, and seek enforcement of, the rights of the Tribe under the judgment and decree entered by the court in the Little Colorado River adjudication proceedings;

(iv) to object to any claims by or for any other Indian tribe, Indian community or nation, or dependent Indian community, or the United States on behalf of such a tribe, community, or nation;

(v) to participate in the Gila River adjudication proceedings and the Little Colorado River adjudication proceedings to the extent provided in subparagraph 14.1 of the Agreement;

(vi) to assert any claims arising after the enforceability date for injury to water rights not specifically waived under this section;

(vii) to assert any past, present, or future claim for injury to water rights against any other Indian tribe, Indian
community or nation, dependent Indian community, allottee, or the United States on behalf of such a tribe, community, na- 

tion, or allottee; and

(viii) to assert any past, present, or future claim for trespass, use, and occup- 

pancy of the reservation in, on, or along the Black River against Freeport- 

McMoRan Copper & Gold, Inc., Phelps Dodge Corporation, or Phelps Dodge Morenci, Inc. (or a predecessor or suc- 

cessor of those entities), including all sub-

sidiaries and affiliates of those entities.

(B) AGREEMENT.—On terms acceptable to the Tribe and the United States, the Tribe and the United States are authorized to enter into an agreement with Freeport-McMoRan Copper & Gold, Inc., Phelps Dodge Corporation, or Phelps Dodge Morenci, Inc. (or a predecessor 
or successor of those entities), including all sub-
sidiaries and affiliates of those entities, to re-

solve the claims of the Tribe relating to the trespass, use, and occupancy of the reservation in, on, and along the Black River.
(2) Reservation of rights and retention of claims by tribe against United States.—
Notwithstanding the waiver and release of claims authorized under subsection (a)(3), the Tribe, on behalf of itself and the members of the Tribe, shall retain any right—

(A) subject to subparagraph 16.9 of the Agreement, to assert claims for injuries to, and seek enforcement of, the rights of the Tribe and members under the Agreement or this Act, in any Federal or State court of competent jurisdiction;

(B) to assert claims for injuries to, and seek enforcement of, the rights of the Tribe and members under the judgment and decree entered by the court in the Gila River adjudication proceedings;

(C) to assert claims for injuries to, and seek enforcement of, the rights of the Tribe and members under the judgment and decree entered by the court in the Little Colorado River adjudication proceedings;

(D) to object to any claims by or for any other Indian tribe, Indian community or nation, dependent Indian community, or the United
(E) to assert past, present, or future claims for injury to water rights or any other claims other than a claim to water rights, against any other Indian tribe, Indian community or nation, dependent Indian community, or the United States on behalf of such a tribe, community, or nation;

(F) to assert claims arising after the enforceability date for injury to water rights resulting from the drilling of wells or pumping of water from land located within national forest land as of the effective date of the Agreement in the south 1⁄2 of T. 9 N., R. 24 E.; south 1⁄2 of T. 9 N., R. 25 E.; north 1⁄2 of T. 8 N., R. 24 E.; north 1⁄2 of T. 8 N., R. 25 E., if—

(i) title to that land is no longer retained by the United States; or

(ii) water from that land is transported off the land for municipal or industrial use;

(G) to assert any claims arising after the enforceability date for injury to water rights not specifically waived under this section;
(H) to assert any other claims not specifi-
cally waived under this section; and

(I) to assert any claim arising after the en-
forceability date for a future taking by the
United States of reservation land, off-reserva-
tion trust land, or any property rights appur-
tenant to that land, including any water rights
set forth in paragraph 4.0 of the Agreement.

(3) Reservation of Rights and Retention
of Claims by United States.—Notwithstanding
the waiver and release of claims authorized under
subsection (a)(2), the United States shall retain any
right to assert any claim not specifically waived in
that subsection.

(c) Effectiveness of Waiver and Releases.—
Except as otherwise specifically provided in subparagraphs
(E) and (F) of subsection (a)(3), the waivers and releases
under subsection (a) shall become effective on the enforce-
ability date.

(d) Enforceability Date.—

(1) In General.—This section takes effect on
the date on which the Secretary publishes in the
Federal Register a statement of findings that—

(A)(i) to the extent the Agreement con-
flicts with this Act, the Agreement has been re-
vised through an amendment to eliminate the conflict; and

(ii) the Agreement, as so revised, has been executed by the Secretary, the Tribe, and the Governor of the State;

(B) the Secretary has fulfilled the requirements of sections 5 and 6;

(C) the amount authorized by section 12(a) has been deposited in the White Mountain Apache Tribe Water Rights Settlement Subaccount;

(D) the State funds described in subparagraph 13.3 of the Agreement have been deposited in the White Mountain Apache Tribe Water Rights Settlement Subaccount;

(E) the Secretary has issued a record of decision approving the construction of the WMAT rural water system in a configuration substantially similar to that described in section 7; and

(F) the judgments and decrees substantially in the form of those attached to the Agreement as exhibits 12.9.6.1 and 12.9.6.2 have been approved by the respective trial courts.
(2) Failure of enforceability date to occur.—If, because of the failure of the enforceability date to occur by April 30, 2020, this section does not become effective, the Tribe and its members, and the United States, acting in the capacity of trustee for the Tribe and its members, shall retain the right to assert past, present, and future water rights claims and claims for injury to water rights for the reservation and off-reservation trust land.

(3) No rights to water.—On the occurrence of the enforceability date, all land held by the United States in trust for the Tribe and its members shall have no rights to water other than those specifically quantified for the Tribe and the United States, acting in the capacity of trustee for the Tribe and its members, for the reservation and off-reservation trust land pursuant to paragraph 4.0 of the Agreement.

(e) United States Enforcement Authority.—Nothing in this Act or the Agreement affects any right of the United States to take any action, including environmental actions, under any laws (including regulations and the common law) relating to human health, safety, or the environment.
(f) NO EFFECT ON WATER RIGHTS.—Except as provided in paragraphs (1)(A)(ii), (1)(B)(ii), (3)(A)(ii), and (3)(B)(ii) of subsection (a), nothing in this Act affects any rights to water of the Tribe, its members, or the United States acting as trustee for the Tribe and members, for land outside the boundaries of the reservation or the off-reservation trust land.

(g) ENTITLEMENTS.—Any entitlement to water of the Tribe, its members, or the United States acting as trustee for the Tribe and members, relating to the reservation or off-reservation trust land shall be satisfied from the water resources granted, quantified, confirmed, or recognized with respect to the Tribe, members, and the United States by the Agreement and this Act.

(h) OBJECTION PROHIBITED.—Except as provided in subsection (b)(2)(F), the Tribe and the United States acting as trustee for the Tribe shall not—

(1) object to the usage of any well located outside the boundaries of the reservation or the off-reservation trust land, as in existence on the enforceability date; or

(2) object to, dispute, or challenge after the enforceability date the drilling of any well or the withdrawal and use of water from any well in the Little Colorado River adjudication proceedings, the Gila
River adjudication proceedings, or any other judicial or administrative proceeding.

SEC. 10. WHITE MOUNTAIN APACHE TRIBE WATER RIGHTS SETTLEMENT SUBACCOUNT.

(a) ESTABLISHMENT.—There is established in the Lower Colorado River Basin Development Fund a sub-account to be known as the “White Mountain Apache Tribe Water Rights Settlement Subaccount”, consisting of—

(1) the amounts made available under subsection (e);

(2) the amounts appropriated to the subaccount pursuant to subsections (a) and (d) of section 12, as applicable; and

(3) such other amounts as are available including the funds provided in subparagraph 13.3 of the Agreement.

(b) EXPENDITURES AND WITHDRAWALS.—

(1) CONTRACTS.—

(A) IN GENERAL.—The Tribe may withdraw any portion of the White Mountain Apache Tribe Water Rights Settlement Subaccount on approval by the Secretary pursuant to the terms of an agreement entered into under section 7(g).
(B) REQUIREMENTS.—An agreement entered into under section 7(g) shall require that the Tribe shall use the amounts in the White Mountain Apache Tribe Water Rights Settlement Subaccount only for the planning, design, and construction of the rural water system, including such sums as are necessary—

(i) for the Bureau to carry out oversight of the planning, design, and construction of the rural water system;

(ii) to repay any outstanding balance on the loan authorized by the White Mountain Apache Tribe Rural Water System Loan Authorization Act (Public Law 110–390; 122 Stat. 4191); and

(iii) to carry out all required environmental compliance activities associated with the planning, design, and construction of the rural water system.

(2) ENFORCEMENT.—The Secretary may pursue such judicial remedies and carry out such administrative actions as are necessary to enforce an agreement described in paragraph (1) to ensure that amounts in the White Mountain Apache Tribe Water
Rights Settlement Subaccount are used in accordance with this section.

(3) LIABILITY.—On withdrawal by the Tribe of amounts in the White Mountain Apache Tribe Water Rights Settlement Subaccount, the Secretary and the Secretary of the Treasury shall not retain liability for the expenditure or investment of those amounts.

(4) EXPENDITURE PLAN.—

(A) IN GENERAL.—The Tribe shall submit to the Secretary for approval an expenditure plan for any portion of the amounts in the sub-account under this section that the Tribe does not withdraw pursuant to this subsection.

(B) DESCRIPTION.—The expenditure plan shall describe the manner in which, and the purposes for which, the amounts remaining in the subaccount will be used.

(C) APPROVAL.—The Secretary shall approve an expenditure plan under this paragraph if the Secretary determines that the plan is—

(i) reasonable; and

(ii) consistent with this Act.

(5) ANNUAL REPORTS.—The Tribe shall submit to the Secretary an annual report that describes
each expenditure from the White Mountain Apache
Tribe Water Rights Settlement Subaccount during
the year covered by the report.

(c) Prohibition on Per Capita Distributions.—
No amount of the principal, or the interest or income ac-
cruing on the principal, of the White Mountain Apache
Tribe Water Rights Settlement Subaccount shall be dis-
tributed to any member of the Tribe on a per capita basis.

(d) Availability of Funds.—

(1) In General.—Amounts in the White
Mountain Apache Tribe Water Rights Settlement
Subaccount shall not be available for expenditure or
withdrawal by the Tribe until the enforceability date.

(2) Investment.—The Secretary shall invest
the amounts in the White Mountain Apache Tribe
Water Rights Settlement Subaccount in accordance
with section 403(f)(4) of the Colorado River Basin
Project Act (43 U.S.C. 1543(f)(4)).

(3) Use of Interest.—The interest accrued
on amounts invested under paragraph (2) shall not
be available for expenditure or withdrawal until the
later of—

(A) November 1, 2019; and

(B) the enforceability date.
(c) LOWER COLORADO RIVER BASIN DEVELOPMENT FUND.—

(1) IN GENERAL.—Of amounts in the Lower Colorado River Basin Development Fund made available under section 403(f)(2)(D)(vi) of the Colorado River Basin Project Act (43 U.S.C. 1543(f)(2)(D)(vi)), an amount equal to the difference between the balance of the White Mountain Apache Tribe Settlement Subaccount (as of November 1, 2019), and the amount authorized to be appropriated under section 12(a)(1), but not to exceed $100,000,000, shall be deposited, without further appropriation, in the White Mountain Apache Tribe Settlement Subaccount.

(2) AVAILABILITY OF FUNDS.—The funds authorized to be deposited in the White Mountain Apache Tribe Settlement Subaccount pursuant to paragraph (1) shall not be available for expenditure or withdrawal until the later of—

(A) November 1, 2019; and

(B) the enforceability date.

SEC. 11. MISCELLANEOUS PROVISIONS.

(a) LIMITED WAIVER OF SOVEREIGN IMMUNITY.—

(1) IN GENERAL.—In the case of a civil action described in paragraph (2)—
(A) the United States or the Tribe, or both, may be joined in the civil action; and

(B) any claim by the United States or the Tribe to sovereign immunity from the civil action is waived for the sole purpose of resolving any issue regarding the interpretation or enforcement of this Act or the Agreement.

(2) DESCRIPTION OF CIVIL ACTION.—A civil action referred to in paragraph (1) is a civil action filed—

(A) by any party to the Agreement or signatory to an exhibit to the Agreement in a United States or State court that—

(i) relates solely and directly to the interpretation or enforcement of this Act or the Agreement; and

(ii) names as a party the United States or the Tribe; or

(B) by a landowner or water user in the Gila River basin or Little Colorado River basin in the State that—

(i) relates solely and directly to the interpretation or enforcement of section 9 of this Act and paragraph 12.0 of the Agreement; and
(ii) names as a party the United
States or the Tribe.

(b) EFFECT OF ACT.—Nothing in this Act quantifies
or otherwise affects any water right or claim or entitle-
ment to water of any Indian tribe, band, or community
other than the Tribe.

(c) LIMITATION ON LIABILITY OF UNITED
STATES.—

(1) IN GENERAL.—The United States shall
have no trust or other obligation—

(A) to monitor, administer, or account for,
in any manner, any amount paid to the Tribe
by any party to the Agreement other than the
United States; or

(B) to review or approve the expenditure of
those funds.

(2) INDEMNIFICATION.—The Tribe shall indem-
nify the United States, and hold the United States
harmless, with respect to any claim (including claims
for takings or breach of trust) arising out of the re-
ceipt or expenditure of funds described in paragraph
(1)(A).

(d) APPLICABILITY OF RECLAMATION REFORM
ACT.—The Reclamation Reform Act of 1982 (43 U.S.C.
390aa et seq.) and any other acreage limitation or full-
cost pricing provision under Federal law shall not apply
to any individual, entity, or land solely on the basis of—

(1) receipt of any benefit under this Act;

(2) the execution or performance of the Agree-
ment; or

(3) the use, storage, delivery, lease, or exchange
of CAP water.

(e) SECRETARIAL POWER SITES.—The portions of
the following named secretarial power site reserves that
are located on the Fort Apache Indian Reservation or the
San Carlos Apache Reservation, as applicable, shall be
transferred and restored into the name of the Tribe or
the San Carlos Apache Tribe, respectively:

(1) Lower Black River (T. 3 N., R. 26 E.; T.
3 N., R. 27 E.).

(2) Black River Pumps (T. 2 N., R. 25 E.; T.

(3) Carrizo (T. 4 N., R. 20 E.; T. 4 N., R. 21
E.; T. 4½ N., R. 19 E.; T. 4½ N., R. 20 E.; T.
4½ N., R. 21 E.; T. 5 N., R. 19 E.).

(4) Knob (T. 5 N., R. 18 E.; T. 5 N., R. 19
E.).

(5) Walnut Canyon (T. 5 N., R. 17 E.; T. 5 N.,
R. 18 E.).
(6) Gleason Flat (T. 4 1⁄2 N., R. 16 E.; T. 5 N., R. 16 E.).

(f) No Effect on Future Allocations.—Water received under a lease or exchange of tribal CAP water under this Act shall not affect any future allocation or reallocation of CAP water by the Secretary.

(g) After-acquired Trust Land.—

(1) Requirement of Act of Congress.—

(A) Legal Title.—After the enforceability date, if the Tribe seeks to have legal title to additional land in the State of Arizona located outside the exterior boundaries of the reservation taken into trust by the United States for its benefit, the Tribe may do so only pursuant to an Act of Congress specifically authorizing the transfer for the benefit of the Tribe.

(B) Exceptions.—Subparagraph (A) shall not apply to—

(i) restoration of land to the reservation subsequently and finally determined to be part of the reservation through resolution of any dispute between the Tribe and the United States over the location of the reservation boundary unless required by Federal law; or
(ii) off-reservation trust land acquired prior to January 1, 2008.

(2) WATER RIGHTS.—

(A) IN GENERAL.—Under this section, after-acquired trust land outside the reservation shall not include federally reserved rights to surface water or groundwater.

(B) RESTORED LAND.—Land restored to the reservation as the result of resolution of any reservation boundary dispute between the Tribe and the United States, or any fee simple land within the reservation that are placed into trust, shall have water rights pursuant to section 8(b).

(3) ACCEPTANCE OF LAND IN TRUST STATUS.—

(A) IN GENERAL.—If the Tribe acquires legal fee title to land that is located within the exterior boundaries of the reservation, the Secretary shall accept the land in trust status for the benefit of the Tribe in accordance with applicable Federal law (including regulations) for such real estate acquisitions.

(B) RESERVATION STATUS.—Land taken or held in trust by the Secretary under paragraph (3), or restored to the reservation as a
result of resolution of a boundary dispute between the Tribe and the United States, shall be deemed to be part of the reservation.

(h) Conforming Amendment.—Section 3(b)(2) of the White Mountain Apache Tribe Rural Water System Loan Authorization Act (Public Law 110–390; 122 Stat. 4191) is amended by striking “January 1, 2013” and inserting “May 1, 2020”.

SEC. 12. AUTHORIZATION OF APPROPRIATIONS.

(a) Rural Water System.—

(1) In general.—There is authorized to be appropriated for the planning, engineering, design, environmental compliance, and construction of the WMAT rural water system $126,193,000.

(2) Inclusions.—The amount authorized to be appropriated under paragraph (1) shall include such sums as are necessary, but not to exceed 4 percent of construction contract costs, for the Bureau to carry out oversight of activities for planning, design, environmental compliance, and construction of the rural water system.

(b) WMAT Settlement and Maintenance Funds.—

(1) Definition of Funds.—In this subsection, the term “Funds” means—
(A) the WMAT Settlement Fund established by paragraph (2)(A); and

(B) the WMAT Maintenance Fund established by paragraph (3)(A).

(2) WMAT SETTLEMENT FUND.—

(A) ESTABLISHMENT.—There is established in the Treasury of the United States a fund to be known as the “WMAT Settlement Fund”, consisting of such amounts as are deposited in the fund under subparagraph (B), together with any interest accrued on those amounts, for use by the Tribe in accordance with subparagraph (C).

(B) TRANSFERS TO FUND.—There is authorized to be appropriated to the Secretary $113,500,000 for deposit in the WMAT Settlement Fund, of which not less than $4,950,000 shall be used for the rehabilitation of existing irrigation systems.

(C) USE OF FUNDS.—The Tribe shall use amounts in the WMAT Settlement Fund for any of the following purposes:

(i) Fish production, including hatcheries.
(ii) Rehabilitation of recreational lakes and existing irrigation systems.

(iii) Water-related economic development projects.

(iv) Protection, restoration, and economic development of forest and watershed health.

(v) Any cost overruns for the completion of the WMAT rural water system, as provided in subsection (f).

(3) WMAT MAINTENANCE FUND.—

(A) Establishment.—There is established in the Treasury of the United States a fund to be known as the “WMAT Maintenance Fund”, consisting of such amounts as are deposited in the fund under subparagraph (B), together with any interest accrued on those amounts, for use by the Tribe in accordance with subparagraph (C).

(B) Transfers to Fund.—There is authorized to be appropriated to the Secretary $50,000,000 for deposit in the WMAT Maintenance Fund.

(C) Use of Funds.—The Tribe or the Secretary, as applicable, shall use amounts in
the WMAT Maintenance Fund only for the operation, maintenance, and replacement costs associated with the delivery of water through the rural water system.

(4) ADMINISTRATION.—The Secretary shall manage the Funds in accordance with the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4001 et seq.), including by investing amounts in the Funds in accordance with—

(A) the Act of April 1, 1880 (25 U.S.C. 161); and

(B) the first section of the Act of June 24, 1938 (25 U.S.C. 162a).

(5) AVAILABILITY OF AMOUNTS FROM FUNDS.—Amounts in the Funds shall be available for expenditure or withdrawal only after the enforceability date in accordance with subsection (g).

(6) EXPENDITURE AND WITHDRAWAL.—

(A) TRIBAL MANAGEMENT PLAN.—

(i) IN GENERAL.—The Tribe may withdraw all or part of amounts in the Funds on approval by the Secretary of a tribal management plan as described in the American Indian Trust Fund Management

(ii) REQUIREMENTS.—In addition to the requirements under the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4001 et seq.), a tribal management plan under this subparagraph shall require that the Tribe shall spend any amounts withdrawn from the Funds in accordance with the purposes described in paragraph (2)(C) or (3)(C).

(iii) ENFORCEMENT.—The Secretary may take judicial or administrative action to enforce the provisions of a tribal management plan under this subparagraph to ensure that any amounts withdrawn from the Funds under the plan are used in accordance with this Act and the Agreement.

(iv) LIABILITY.—If the Tribe exercises the right to withdraw amounts from the Funds, neither the Secretary nor the Secretary of the Treasury shall retain any liability for the expenditure or investment of the amounts.

(B) EXPENDITURE PLAN.—
(i) IN GENERAL.—The Tribe shall submit to the Secretary for approval an expenditure plan for any portion of the amounts in the Funds that the Tribe does not withdraw under the tribal management plan.

(ii) DESCRIPTION.—The expenditure plan shall describe the manner in which, and the purposes for which, amounts of the Tribe remaining in the Funds will be used.

(iii) APPROVAL.—On receipt of an expenditure plan under clause (i), the Secretary shall approve the plan if the Secretary determines that the plan is reasonable and consistent with this Act and the Agreement.

(iv) ANNUAL REPORT.—For each of the Funds, the Tribe shall submit to the Secretary an annual report that describes all expenditures from the Fund during the year covered by the report.

(C) CERTAIN PER CAPITA DISTRIBUTIONS PROHIBITED.—No amount in the Funds shall
be distributed to any member of the Tribe on a per capita basis.

(c) Cost Indexing.—All amounts authorized to be appropriated under subsections (a) and (b) shall be adjusted as may be required to reflect the changes since October 1, 2007, in the construction cost indices applicable to the types of construction involved in the construction of the WMAT rural water supply system, the maintenance of the rural water supply system, and the construction or rehabilitation of the other development projects authorized under subsection (b)(2)(C).

(d) Emergency Fund for Indian Safety and Health.—

(1) Definition of Emergency Fund for Indian Safety and Health.—In this subsection, the term “Emergency Fund for Indian Safety and Health” means the Emergency Fund for Indian Safety and Health established by section 601(a) of the Tom Lantos and Henry J. Hyde United States Global Leadership Against HIV/AIDS, Tuberculosis, and Malaria Reauthorization Act of 2008 (22 U.S.C. 7601 et seq.).

(2) Initial Transfer.—Not later than 90 days after the date of enactment of this Act, such amounts as are available, but not to exceed
$50,000,000, in the Emergency Fund for Indian Safety and Health shall be transferred to the White Mountain Apache Tribe Water Rights Settlement Subaccount.

(3) SUBSEQUENT TRANSFER.—Effective beginning on January 1, 2012, if the Secretary determines that, on an annual basis, the amount authorized to be appropriated under subsection (a) will not be appropriated and deposited in the White Mountain Apache Tribe Water Rights Settlement Subaccount by October 31, 2012, not more than $50,000,000 of the amounts in the Emergency Fund for Indian Safety and Health shall be transferred to the White Mountain Apache Tribe Water Rights Settlement Subaccount, as necessary to complete the WMAT rural water system project.

(4) LIMITATION.—The total amount transferred from the Emergency Fund for Indian Safety and Health to the White Mountain Apache Tribe Water Rights Settlement Subaccount under paragraphs (2) and (3) shall not exceed $100,000,000.

(e) OPERATION, MAINTENANCE, AND REPLACEMENT.—

(1) IN GENERAL.—There is authorized to be appropriated to the Secretary $2,500,000 for the op-
eration, maintenance, and replacement costs of the
WMAT rural water system, to remain available until
the conditions described in subsection (g) have been
met.

(2) **SUBSEQUENT FUNDING.**—Beginning on No-

vember 1, 2019, or the enforceability date, whichever
is later, the Tribe or the Secretary, as applicable,
may use amounts deposited in the WMAT Main-
tenance Fund under subsection (b)(3)(B) for oper-
ation, maintenance, and replacement costs of the
WMAT rural water system.

(f) **COST OVERRUNS.**—On a determination by the
Secretary that the amount authorized to be appropriated
under subsection (a) is not sufficient for the completion
of the WMAT rural water system, there are authorized
to be appropriated such sums as are necessary, but not
to exceed an additional $25,000,000, to complete the
WMAT rural water system, to be derived by transfer from
the amounts authorized to be appropriated to the Sec-
retary for deposit in the WMAT Settlement Fund under
subsection (b)(2)(B) in such amounts as the Secretary,
in concurrence with the Tribe, determines to be appro-
priate.

(g) **CONDITIONS.**—The amounts authorized to be ap-
propriated to the Secretary for deposit in the WMAT
Maintenance Fund, together with any interest accrued thereon, under subsection (b)(3), and any interest accruing on the WMAT Settlement Fund under subsection (b)(2), shall not be available for expenditure or withdrawal until the later of—

(1) November 1, 2019; and

(2) the date on which the Secretary determines that the conditions described in section 9(d) have been met.

SEC. 13. ANTIDEFICIENCY.

The United States shall not be liable for failure to carry out any obligation or activity authorized to be carried out, subject to appropriations, under this Act (including any such obligation or activity under the Agreement) if adequate appropriations for that purpose are not provided by Congress.

SEC. 14. REPEAL ON FAILURE OF ENFORCEABILITY DATE.

If the Secretary fails to publish in the Federal Register a statement of findings as required under section 9(d) by not later than April 30, 2020—

(1) effective beginning on May 1, 2020—

(A) this Act is repealed; and

(B) any action carried out by the Secretary, and any contract entered into, pursuant to this Act shall be void;
(2) any amounts appropriated under subsections (a), (b), (d), and (e) of section 12, together with any interest accrued on those amounts, shall immediately revert to the general fund of the Treasury; and

(3) any other amounts deposited in the White Mountain Apache Tribe Water Settlement Sub-account (including any amounts paid by the State in accordance with the Agreement), together with any interest accrued on those amounts, shall immediately be returned to the respective sources of those funds.

SEC. 15. COMPLIANCE WITH ENVIRONMENTAL LAWS.

In carrying out this Act, the Secretary shall promptly comply with all applicable requirements of—

(1) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.);  
(2) the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);  
(3) all other applicable Federal environmental laws; and  
(4) all regulations promulgated under the laws described in paragraphs (1) through (3).


Attest: LORRAINE C. MILLER,  
Clerk.
AN ACT

To resolve water rights claims of the White Mountain Apache Tribe in the State of Arizona, and for other purposes.

MARCH 26 (legislative day, MARCH 25), 2010

Read twice and placed on the calendar