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REPORT
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WHITE MOUNTAIN APACHE TRIBE WATER RIGHTS QUANTIFICATION ACT OF 2009

JANUARY 12, 2010.—Committeed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. RAHALL, from the Committee on Natural Resources, submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany H.R. 1065]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 1065) to resolve water rights claims of the White Mountain Apache Tribe in the State of Arizona, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "White Mountain Apache Tribe Water Rights Quantification Act of 2009".

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) proceedings to determine the nature and extent 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 ADMISSION.—The depiction of the reservation described in subparagraph (A)(ii) shall not—

(i) be used to affect any dispute between the Tribe and the United States concerning the legal boundary of the reservation; and

(ii) constitute an admission by the Tribe with regard to any dispute between the Tribe and the United States concerning the legal boundary of the reservation.

(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 section 16 of the Act of June 18, 1934 (commonly known as the "Indian Reorganization Act") (25 U.S.C. 476).

(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 104(a)(1)(A)(iii) of the Arizona Water Settlements Act (Public Law 108–451; 118 Stat. 3488), of which—

(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 beginning 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 Irrigation 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 allowed 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.

(c) 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 otherwise 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.

(c) 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 prohibiting 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 accrued 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, nation, or allottee; and

(viii) to assert any past, present, or future claim for trespass, use, and occupancy 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 successor of those entities), including all subsidiaries 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 subsidiaries and affiliates of those entities, to resolve 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 States on behalf of such a tribe, community, or nation;

(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 ½ of T. 9 N., R. 24 E.; south ½ of T. 9 N., R. 25 E.; north ½ of T. 8 N., R. 24 E.; north ½ 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 specifically waived under this section; and

(I) to assert any claim arising after the enforceability date for a future taking by the United States of reservation land, off-reservation trust land, or any property rights appurtenant 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 enforceability 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 conflicts with this Act, the Agreement has been revised 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 October 31, 2015, 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 subaccount to be known as the "White Mountain Apache Tribe Water Rights Settlement Subaccount", consisting of—

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

(2) 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 subaccount 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 accruing on the principal, of the White Mountain Apache Tribe Water Rights Settlement Subaccount shall be distributed 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.—Beginning on the date described in section 9(d), 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)).

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 entitlement 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 indemnify 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 receipt 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 Agreement; 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. 2 N., R. 26 E.; T. 3 N., R. 26 E.).

(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. 4½ 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 "2013" and inserting "2016".

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", for use by the Tribe in accordance with subparagraph (C), which shall consist of—

(i) such amounts as are deposited in the fund under subparagraph (B); and

(ii) any interest accrued on the deposited amounts.

(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 Reform Act of 1994 (25 U.S.C. 4001 et seq.).

(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 deadline described in section 9(d)(2) is not likely to be met because the amount authorized by subsection (a) has not been appropriated and deposited in the White Mountain Apache Tribe Water Rights Settlement Subaccount, 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 operation, 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 January 1, 2021, the Tribe or the Secretary, as applicable, may use amounts deposited in the WMAT Maintenance Fund under subsection (b)(3)(B) for operation, 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 Secretary 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 appropriate.

(g) CONDITIONS.—The amounts authorized to be appropriated 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) December 31, 2020; 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 October 31, 2015—

(1) effective beginning on November 1, 2015—

(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 Subaccount (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).

PURPOSE OF THE BILL

The purpose of H.R. 1065 is to resolve water rights claims of the White Mountain Apache Tribe in the State of Arizona, and for other purposes.

BACKGROUND AND NEED FOR LEGISLATION

The White Mountain Apache Tribe (Tribe) currently resides on 1.66 million acres of federal trust land in east-central Arizona. The Tribe's Fort Apache Indian Reservation was established by an Executive Order on November 9, 1871. The headwaters and several tributaries of the Salt River originate on reservation land.

In 1985, the United States, on behalf of the Tribe, filed substantial claims to water with a time immemorial date for approximately 180,000 acre-feet annually from the Salt River System in the Gila River adjudication proceedings in the Maricopa County Superior Court, as well as water rights claims in the Little Colorado River General Stream adjudication proceedings in the Apache County Superior Court. Both claims were based on the Tribe's federally reserved water rights established in *Winters v. U.S.,* 207 U.S. 564 (1908).

The United States amended its water rights filings in both proceedings in September 2000, asserting the Tribe's aboriginal and federally-reserved rights to transbasin groundwater resources that sustain the base flow for the springs and streams on the reserva-

tion. Both claims are currently pending in their respective courts. Enactment of H.R. 1065 would confirm the Settlement Agreement (Agreement) reached by the Tribe and other parties in both adjudication proceedings and after approval by the state courts, the Tribe's claims in those proceedings would be resolved.

The Tribe's substantial and senior water rights claims have created considerable uncertainty for as many as 3.5 million people who are dependent on the Salt River for water. The Salt River basin is the primary source of water for the Tribe, the Phoenix metropolitan area, and the Salt River Reclamation Project, which serves about 250,000 irrigated acres of agricultural land in Maricopa County in central Arizona.

A federal negotiating team was established by the Secretary of the Interior at the request of the Tribe to facilitate settlement negotiations in 2004. An agreement was reached in January 2009. To ensure a collaborative process the settling parties included the Tribe and the United States, the State of Arizona, the Central Arizona Water Conservation District (CAWCD), the Salt River Project Agricultural Improvement and Power District, the Salt River Valley Water Users' Association, the Roosevelt Water Conservation District, the Buckeye Irrigation Company, the Buckeye Water Conservation and Drainage District, the Arizona Water Company, and the cities and towns of Phoenix, Mesa, Tempe, Chandler, Glendale, Scottsdale, Avondale, Peoria, Show Low, and Gilbert. All of the non-federal parties have approved the Agreement.

The comprehensive Agreement resolves the Tribe's water rights claims. The Tribe would have an 1871-reserved water right to divert up to 74,000 acre-feet annually (27,000 acre-feet depletion), and in addition the right to divert up to an additional 25,000 acre-feet of Salt River System water through a Central Arizona Project (CAP) exchange (25,000 acre-feet depletion). Cumulatively the Tribe will have a total diversion right of 99,000 acre-feet per year with a total depletion right of 52,000 acre feet per year. A diversion right is the amount of water that can be diverted from the river. The depletion right represents the amount of water that is diverted, less the return flow to the system from which it was diverted. The Tribe will have an option for leasing the CAP water to the existing downstream cities and users.

An important component of the Agreement addresses the drinking water needs of the Tribe. Currently, a relatively small well field serves the drinking water needs of the majority of the residents on the Tribe's reservation. Water production from the wells has declined significantly over the last few years. As a result, the Tribe is experiencing chronic drinking water shortages. In 2009 the Tribe has been constructing a relatively small diversion project on the North Fork of the White River to augment the declining well water supply. The Tribe indicates that when the diversion project is completed it will replace most of the lost production from the existing well field, but will not produce enough water to meet the current peak demand of the Tribe's growing population. The drinking water project authorized in H.R. 1065 would provide a long-term solution, and the only viable one, to address the Tribe's drinking water shortages.

COMMITTEE ACTION

H.R. 1065 was introduced on February 13, 2009 by Rep. Ann Kirkpatrick (D–AZ). The bill was referred to the Committee on Natural Resources, and within the Committee to the Subcommittee on Water and Power. On July 21, 2009, the Subcommittee held a hearing on the bill.

On September 30, 2009, the Subcommittee was discharged from further consideration of H.R. 1065 and the full Natural Resources Committee met to consider the bill. Subcommittee Chairwoman Grace F. Napolitano (D–CA) offered an amendment in the nature of a substitute that, in large part, responded to concerns raised by the Department of the Interior. The amendment in the nature of a substitute made technical changes and added language that would transfer title of the White Mountain Apache Tribe Rural Water System to the Tribe. The amendment in the nature of a substitute was adopted by voice vote. The bill, as amended, was ordered favorably reported to the House of Representatives by voice vote.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

Section 1 provides that this Act may be cited as the "White Mountain Apache Tribe Water Rights Quantification Act of 2009."

Section 2. Findings and purposes

Subsection 2(a) provides the following findings: that a resolution of litigation proceedings intended to quantify the water rights of the Tribe might be a lengthy and costly process, prolonging uncertainty to their water rights; that instead, the parties to the litigation have agreed to permanently quantify the water rights of the Tribe and settle the Tribe's pending claims in the Gila River and Little Colorado River Adjudications in Arizona by entering into the White Mountain Apache Tribe Water Rights Quantification Agreement (the Agreement).

Subsection 2(b) provides that the purpose of this Act are: (1) to authorize, ratify, and confirm the Agreement as defined in the legislation; (2) to authorize and direct the Secretary of the Interior (the Secretary) to execute the Agreement; (3) to authorize the appropriations necessary for the U.S. to meet its obligations under the Agreement; and (4) to permanently resolve certain damage claims and all water rights claims of the Tribe.

Section 3. Definitions

Section 3 provides definitions for certain terms used in the White Mountain Apache Tribe Water Rights Quantification Act of 2009.

Section 4. Approval of Agreement

Section 4 authorizes, ratifies and confirms the Agreement. This section also authorizes and directs the Secretary to execute the Agreement as approved by Congress, including any and all environmental compliance required by federal law.

Section 5. Water rights

Section 5 provides that tribal water rights will be held in trust by the United States, through the Secretary of the Interior, for the benefit of the Tribe. This section further requires the Tribe to enact a tribal water code to administer tribal water rights, no later than 18 months after the enforceability date in subsection 9(d), with specific conditions as listed in subsection 5(e). The Tribe's water rights shall not be subject to loss by abandonment or forfeiture.

Section 5(b), (c), and (d) describe the reallocation of, and costs associated with, Central Arizona Project (CAP) water allocated to the Tribe under the Agreement.

Section 6. Contract

Section 6 describes contracts related to the Tribe's leasing of CAP water. The Tribe may, with the approval of the Secretary, enter into leases with the counties of Maricopa, Pinal, Pima, and Yavapai for the temporary (not to exceed 100 years) delivery of any portion of the Tribe's CAP water. The contact or option to lease is subject to specific conditions, as described in Subsections 6(a).

Subsection 6(b) specifies the requirements of the contract. Subsection 6(c) ratifies, authorizes, and confirms the contract. Subsection 6(d) directs the Secretary to execute the contract, and subsection 6(e) describes the fees and charges applicable to tribal CAP water.

Subsection 6(f) prohibits tribal CAP water from being leased, exchanged, forborne or transferred by the Tribe for use outside the State of Arizona.

Subsection 6(g) authorizes, ratifies, and confirms the leases of tribal CAP water attached as exhibits to the Settlement Agreement.

Section 7. Authorization of Rural Water System

Section 7 authorizes the planning, design, and construction of the White Mountain Apache Tribe (WMAT) Rural Water System and describes its components, service area, and construction requirements.

Subsection 7(e) further specifies that the Secretary is authorized to convey title to the Project to the Tribe after publication in the Federal Register of a statement of findings providing that the conditions specified in this subsection have been satisfied, including the condition that the Tribe has been operating the project successfully for a period of five years.

Section 8. Satisfaction of claims

Subsection 8(a) provides that the benefits to the Tribe and its members under this Act are in full satisfaction of the Tribe's and its members' claims for water rights and injuries to water rights.

Subsection 8(b) provides that the Agreement's maximum annual diversion amounts and maximum annual depletion amounts shall apply to the use of water on any lands currently outside the reservation that are subsequently determined to be part of the reservation, and to the use of water on any fee lands currently within the reservation that are put into trust and made part of the reservation.

Subsection 8(c) provides that the Act is not intended to recognize or establish any tribal member's individual right to water on the reservation.

Section 9. Waiver and release of claims

Section 9(a) authorizes the United States to execute certain waivers and release of claims in either its capacity as trustee for the Tribe and its members or in its own right. It also authorizes the Tribe to execute waivers in its own capacity and for its members. The waiver of water-related claims in Section 9 encompasses claims for water rights, injury to water rights, and damages to tribal resources due to loss of water or water rights.

Subsection 9(b) reserves certain rights of and retains certain claims by the Tribe on its own behalf and its members, and the United States as trustee for the Tribe and its members, or in its own right, including past, present, and future claims against Freeport McMoRan Copper & Gold, Inc., Phelps Dodge Corporation or Phelps Dodge Morenci, Inc. for trespass, use, and occupancy of the Reservation in, on, or along the Black River ("Black River Claims"). The legislation does not affect the ability of the Tribe or the other parties to assert any claims or defenses against each other regarding the Black River Claims.

Subsection 9(c) establishes the conditions and timing under which the waivers are effective.

Subsection 9(d) provides that the enforceability date shall be subject to a requirement that the Secretary publish a statement of findings in the Federal Register concerning a number of listed conditions. It also establishes the extent of the water rights available for use on land held in trust for the Tribe and its members.

Subsection 9(e) provides that nothing in this Act or in the Agreement affects the right of the United States to take any action relating to human health, safety, or the environment.

Subsection 9(f) provides that except as specified, this Act has no effect on rights to water for land outside the reservation boundaries or off-reservation trust land.

Subsection 9(g) provides that any tribal entitlements to water shall be satisfied from the water resources set forth in the Agreement and this Act.

Subsection 9(h) sets forth certain objections that are prohibited to the Tribe and the United States acting as trustee for the Tribe.

Section 10. White Mountain Apache Tribe Water Rights Settlement Subaccount

Subsection 10(a) establishes the White Mountain Tribe Water Rights Settlement Subaccount within the Lower Colorado River Basin Development Fund.

Subsection 10(b) establishes the conditions for expenditures and withdrawals of all or part of the White Mountain Apache Tribe Water Rights Settlement Subaccount, enforcement of those conditions, limitation on the liability of federal officials, requirements for an expenditure plan by the Tribe, and requirements for annual tribal reporting.

Subsection 10(c) specifies that funds from the White Mountain Apache Tribe Water Rights Settlement Subaccount are not to be distributed on a per capita basis.

Subsection 10(d) establishes that amounts in the White Mountain Apache Tribe Water Rights Settlement Subaccount are not to be made available until the enforceability date.

Section 11. Miscellaneous provisions

Subsection 11(a) waives the sovereign immunity of the United States and the Tribe for certain specified civil actions under the Agreement and Act.

Subsection 11(b) provides that nothing in this Act affects any water right or claim of any Indian tribe, band or community other than the White Mountain Apache Tribe.

Subsection 11(c) limits the liability of the United States and directs the Tribe to indemnify the United States against certain specific claims.

Subsection 11(d) provides that the Reclamation Reform Act of 1982 (43 U.S.C. 390aa et seq.) does not apply under certain listed circumstances related to the Agreement and this Act.

Subsection 11(e) transfers and restores to the Tribe and the San Carlos Apache Tribe certain specified portions of named secretarial power site reserves located on the Fort Apache Indian Reservation and the San Carlos Apache Reservation, respectively.

Subsection 11(f) states that water received under a lease or exchange of tribal CAP water has no effect on future allocations of CAP water by the Secretary.

Subsection 11(g) provides that, except with respect to certain restored lands and off-reservation trust land acquired prior to January 1, 2008, the Tribe, after the enforceabilty date, may only have additional lands taken into trust by the United States through an Act of Congress. It further provides that after-acquired trust lands outside the reservation shall not include federal reserved water rights and that certain restored lands shall have water rights pursuant to Section 8(b).

Subsection 11(h) amends Section 3(b)(2) of the WMAT Rural Water System Loan Authorization Act (P.L. 110–390; 122 Stat. 4191) to extend the loan repayment commencement date from January 1, 2013 to January 1, 2016 in order to coincide with this Act's enforceability date.

Section 12. Authorizations of appropriations

Subsection 12(a) authorizes to be appropriated approximately $126 million for the planning, engineering, design, environmental compliance, and construction of the WMAT rural water system.

Subsection 12(b) establishes the WMAT Settlement Fund within the Treasury of the United States, and authorizes the appropriation of $113.5 million for deposit therein, of which not less than $4.95 million must be used for rehabilitation of existing irrigation systems. Authorized uses of funds in the WMAT Settlement Fund are listed in Subsection 12(b)(2)(C). Subsection 12(b) also establishes within the Treasury the WMAT Maintenance Fund, authorizes the appropriation of $50 million for deposit therein, and prescribes the uses thereof. It further directs the Secretary to manage and invest the funds and establishes the availability date and conditions for expenditures and withdrawals.

Section 12(c) indexes the amounts to be appropriated for the WMAT rural water supply system, the WMAT Settlement Fund

and the WMAT Maintenance Fund to be adjusted to reflect changes in construction cost indices since October 1, 2007.

Section 12(d) provides for the transfer of up to $50 million into the White Mountain Apache Subaccount from the Emergency Fund for Indian Safety and Health, if funds are available. A subsequent transfer of up to $50 million from the Emergency Fund for Indian Safety and Health is also authorized, for a total to not exceed $100 million.

Section 12(e) authorizes to be appropriated $2.5 million for the operation, maintenance, and replacement costs of the WMAT rural water system. It also allows the Tribe or the Secretary to use amounts deposited in the WMAT Maintenance Fund for operation, maintenance, and replacement costs of the WMAT rural water system.

Section 12(f) authorizes the appropriation of up to $25 million for WMAT rural water system cost overruns. These sums are to be derived by transfer from the appropriations authorized in subsection 12(b)(2)(B), resulting in no net increase of total authorized appropriations under the Act.

Section 12(g) provides the conditions for expenditure or withdrawal of funds authorized to be appropriated to the Secretary for deposit in the WMAT Maintenance Fund, and any interest accrued.

Section 13. Antideficiency

Section 13 provides that the United States shall not be liable for failure to carry out obligations or activities required by this Act, if adequate appropriations for such purposes are not provided by Congress.

Section 14. Repeal on failure of enforceability date

Section 14 repeals the Act if the Secretary does not publish the statement of findings required under Subsection 9(d) by the enforceability date of October 31, 2015, effective beginning on November 1, 2015. Any amounts appropriated under subsections (a), (b), (d), and (e) of section 12 along with any interest shall immediately revert to the Treasury. The section further provides for return of other amounts deposited in the White Mountain Apache Tribe Water Settlement Subaccount, along with any interest, to their respective sources.

Section 15. Compliance with environmental laws

Section 15 provides that the Secretary, in carrying out the Act, must comply with applicable federal environmental laws and regulations, including the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Natural Resources' oversight findings and recommendations are reflected in the body of this report.

CONSTITUTIONAL AUTHORITY STATEMENT

Article I, section 8 of the Constitution of the United States grants Congress the authority to enact this bill.

COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out this bill. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974.

2. Congressional Budget Act. As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this bill does not contain any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

3. General Performance Goals and Objectives. As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill is to resolve water rights claims of the White Mountain Apache Tribe in the State of Arizona, and for other purposes

4. Congressional Budget Office Cost Estimate. Under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of the Congressional Budget Office:

H.R. 1065—White Mountain Apache Tribe Water Rights Quantification Act of 2009

Summary: H.R. 1065 would approve and ratify a settlement agreement between the White Mountain Apache Tribe and the state of Arizona. The agreement would resolve tribal claims to water rights in the state. As part of that agreement, the bill would authorize the appropriation of funds to construct a rural water system to deliver water to tribal lands. The bill also would establish two trust funds for the tribe to protect and restore tribal lakes and forests, conduct certain economic development projects, and operate and maintain the rural water system. Finally, the bill would authorize appropriations for the Department of the Interior (DOI) to operate and maintain the water system until it is conveyed to the tribe.

Assuming appropriation of the necessary amounts, CBO estimates that implementing H.R. 1065 would increase discretionary spending by $134 million over the 2010–2019 period and $66 million after 2019. CBO also estimates that enacting H.R. 1065 would increase direct spending by $125 million over the 2010–2019 period and $22 million after 2019. Enacting the legislation would not affect revenues.

H.R. 1065 contains intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) because it would require the tribe to enact a tribal water code and prohibit it from objecting to the drilling or use of some wells. CBO estimates that the cost of complying with those mandates would be small and far

below the threshold established in UMRA ($69 million in 2009, adjusted annually for inflation).

H.R. 1065 contains no private-sector mandates as defined in UMRA.

Estimated cost to the federal government: The estimated budgetary impact of H.R. 1065 is shown in the following table. The costs of this legislation fall within budget functions 300 (natural resources and environment) and 450 (community and regional development).

	By fiscal year, in millions of dollars—											
	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2010–2014	2010–2019
CHANGES IN SPENDING SUBJECT TO APPROPRIATION [a]												
Settlement Fund:												
Estimated Authorization Level	0	0	0	0	0	0	132	0	0	0	0	132
Estimated Outlays	0	0	0	0	0	0	132	0	0	0	0	132
DOI Operation & Maintenance:												
Estimated Authorization Level	0	0	0	0	0	0	*	*	*	*	0	2
Estimated Outlays	0	0	0	0	0	0	*	*	*	*	0	2
Total Changes:												
Estimated Authorization Level	0	0	0	0	0	0	132	*	*	*	0	134
Estimated Outlays	0	0	0	0	0	0	132	*	*	*	0	134
CHANGES IN DIRECT SPENDING												
Rural Water System: [b]												
Estimated Budget Authority	0	0	0	0	0	0	50	40	30	20	0	140
Estimated Outlays	0	0	0	0	0	0	44	37	25	19	0	125

Note: DOI = Department of the Interior; * = less than $500,000. Amounts may not sum to totals because of rounding.

[a] Excludes amounts authorized to be appropriated for a Tribal Maintenance Fund because CBO expects those amounts would not be needed until 2021.

[b] CBO estimates that an additional $22 million would be spent for the water system after 2019.

Basis of estimate: For this estimate, CBO assumes that H.R. 1065 will be enacted by the end of calendar year 2010 and that the necessary amounts will be appropriated when the settlement becomes effective. The enforcement of the settlement agreement depends on the completion of a number of actions by federal, state, local, and tribal entities. CBO expects that those actions will be completed early in fiscal year 2016. The estimated costs for the authorized water projects are based on information from DOI and on historical spending patterns for similar activities.

The White Mountain Apache Tribe and several other parties have signed a settlement agreement resolving a water-rights dispute in northeast Arizona. The United States would become a party to that agreement upon enactment of H.R. 1065, provided that certain other conditions are met. Among those conditions, the Secretary of the Interior would have to publish a statement of findings in the Federal Register indicating that all parties have executed the agreement; the U.S. district court would have to issue a decree concerning the agreement; sufficient funds to construct a rural water system, which CBO estimates would cost $147 million, would have to be deposited into the White Mountain Apache Tribe Water Rights Settlement Subaccount; and Arizona would have to appropriate $2 million for the construction of the rural water system.

Should the Secretary not publish the required statement of findings by October 31, 2015, verifying that all conditions necessary to execute the agreement have been met, the agreement would not take effect, and no federal funds could be spent after that date.

Spending subject to appropriation

H.R. 1065 would authorize the appropriation of funds for a variety of activities to benefit the White Mountain Apache Tribe. The bill would authorize appropriations to construct a rural water system and to protect and restore tribal lakes and forests, conduct certain economic development projects, and operate and maintain the rural water system. Assuming appropriation of the necessary amounts, CBO estimates that implementing the settlement agreement would increase discretionary spending by $134 million over the 2010–2019 period and $66 million after 2019.

Most of the amounts authorized to be appropriated by H.R. 1065 would be allowed to accrue interest on unspent amounts. CBO considers the authority to spend amounts credited as interest on unspent balances of appropriated funds to be an increase in direct spending as discussed later in this cost estimate. CBO expects that funds would be appropriated in the year the settlement becomes effective. If the Congress chose to appropriate funds prior to the year in which those funds would be spent, interest would accrue on the unspent balances, and the legislation's estimated impact on direct spending would be larger. Under the bill, that spending would occur after fiscal year 2020.

Settlement Fund. The bill would authorize the appropriation of about $114 million (plus additional amounts needed because of increases in construction costs) for the White Mountain Apache Tribe Settlement Fund. CBO expects that those funds would be appropriated near the beginning of fiscal year 2016—the enforcement date of the settlement. Funds would be used to protect and restore tribal lakes and forests and for certain economic development

projects. CBO expects that the entire amount in the fund (including adjustments for inflation) would be recorded as an outlay of $132 million in 2016.

Payments to certain tribal trust funds that are held and managed in a fiduciary capacity by the federal government on behalf of Indian tribes are treated as payments to a nonfederal entity. As a result, CBO expects that the entire amount deposited into the settlement fund would be recorded as an outlay in 2016 when the funds could be spent by the tribe. Subsequently, any use of such funds and interest payments to the tribe would have no effect on the federal budget.

DOI Operation & Maintenance. The bill would authorize the appropriation of $2.5 million for DOI to operate and maintain the new rural water system until 2021 when funds from the tribal maintenance fund could be spent. CBO estimates that operating and maintaining the rural water system would cost about $500,000 a year over the 2016–2020 period.

Tribal Maintenance Fund. The bill would authorize the appropriation of $50 million (plus additional amounts needed because of increases in construction costs) for the White Mountain Apache Tribe Maintenance Fund. CBO expects that those funds would be appropriated in fiscal year 2021 when the funds could be spent. Funds would be used to operate and maintain the rural water system. CBO expects that the entire amount in the fund (including adjustments for inflation) would be recorded as an outlay of $66 million in 2021.

Rural Water System Subaccount. The bill would authorize the appropriation of $126 million (plus additional amounts needed because of increases in construction costs) to build a rural water system for the tribe. Following enactment of H.R. 1065, however, the Secretary of the Interior would be authorized to use funds from the Future Indian Water Settlement subaccount established under Public Law 108–451 and designated to implement Indian water settlements in Arizona. CBO expects that amounts in that account would be used to execute the settlement. The expenditure of those funds would increase direct spending (see Direct Spending section, below).

CBO assumes that the full amount necessary to construct the rural water system would be expended from the Future Indian Water Settlement Subaccount, resulting in direct spending. If, instead, the Congress appropriated funds for that purpose, it would reduce the amounts expended from that subaccount and lower the legislation's estimated impact on direct spending.

The bill also would require the Secretary of the Treasury to transfer such sums as are available—up to $50 million—from the Emergency Fund for Indian Safety and Health (established under Public Law 110–293) to the rural water system subaccount in 2010. Because no funds have been appropriated for the emergency fund, CBO expects that no funds would be available for transfer to the subaccount in 2010.

Direct spending

Future Indian Water Settlement Subaccount. The Arizona Water Settlements Act (Public Law 108–451) established this subaccount and authorized it to receive up to $250 million of receipts from the

Lower Colorado River Basin Development Fund, with deposits into the subaccount starting by January 2010. The Colorado River Basin Development Fund collects receipts from the users of the Central Arizona water project and certain other receipts from the sale of electricity generated at federal water projects. Those amounts are available for federal agencies to spend without further appropriation for a variety of purposes including operating and maintaining certain water projects. The Arizona Water Settlements Act provided that amounts deposited in the Future Indian Water Settlement Subaccount may be used for Indian water rights settlements in Arizona approved by the Congress subsequent to its enactment.

CBO expects that funds from the Future Indian Water Settlement Subaccount would be used to construct the rural water system on tribal lands. Based on information from DOI, CBO also expects that the tribe would enter into a contract with the federal government under the Indian Self-Determination and Education Act, which allows Indian tribes to assume responsibilities for programs, functions, and services or activities that would otherwise be carried out by the federal government. Because CBO expects the tribe to assume responsibility for constructing the water system, we expect that construction of that system would begin in 2016 when the tribe would spend funds designated for that purpose. We estimate that constructing the water system would increase direct spending by $125 million over the 2016–2019 period and by $22 million after 2019.

Interest Earnings on the Settlement Fund and the Maintenance Fund. Under the bill, interest accrued on amounts appropriated for both the settlement and maintenance funds could not be spent until after 2020. Because we expect that funds would be appropriated for those purposes during the fiscal years in which those funds would be needed, we estimate that accrued interest earnings would total less than $500,000 and spending of that interest would have a negligible impact on direct spending in 2021.

Estimated impact on state, local, and tribal governments: H.R. 1065 would require the White Mountain Apache Tribe to enact policies that would govern tribal water rights and would prohibit the tribe from objecting to the use of some existing wells or the drilling of new wells pursuant to future adjudication proceedings, as detailed in the agreement. Those provisions would be intergovernmental mandates as defined in UMRA because they would place statutory requirements on the tribe that are separate from provisions of the agreement. CBO estimates that the cost of complying with those mandates would be small and well below the threshold established in UMRA ($69 million in 2009, adjusted annually for inflation). Furthermore, amounts authorized for the settlement fund could be used to develop the tribal water code.

Other provisions of the bill would benefit the tribe. Any costs to the tribe from those provisions would be incurred voluntarily as a result of entering into the settlement agreement.

Estimated impact on the private sector: H.R. 1065 contains no private-sector mandates as defined in UMRA.

Previous CBO estimate: On November, 16, 2009, CBO transmitted a cost estimate for S. 313, the White Mountain Apache Tribe Water Rights Quantification Act of 2009, as ordered reported

by the Senate Committee on Indian Affairs on September 10, 2009. The two bills are similar, and the CBO cost estimates are the same.

Estimate prepared by: Federal Costs: Jeff LaFave; Impact on State, Local, and Tribal Governments: Melissa Merrell; Impact on the Private Sector: Marin Randall.

Estimate approved by: Theresa Gullo, Deputy Assistant Director for Budget Analysis.

COMPLIANCE WITH PUBLIC LAW 104–4

This bill contains no unfunded mandates.

EARMARK STATEMENT

H.R. 1065 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SECTION 3 OF THE WHITE MOUNTAIN APACHE TRIBE RURAL WATER SYSTEM LOAN AUTHORIZATION ACT

SEC. 3. MINER FLAT PROJECT LOAN.

(a) * * *

(b) TERMS AND CONDITIONS OF LOAN.—The loan provided under subsection (a) shall—

(1) * * *

(2) be repaid over a term of 25 years, beginning on January 1, [2013] *2016*.

* * * * * * *

ADDITIONAL VIEWS OF REPRESENTATIVE GRACE F. NAPOLITANO

The White Mountain Apache Tribe Water Rights Quantification Act of 2009 (H.R. 1065) would ratify the Settlement Agreement that would quantify the water rights of the White Mountain Apache Tribe (Tribe). The bill would settle the Tribe's past, present and future claims against the United States for compromising tribal water rights and failing to maintain federal irrigation projects serving the reservation and authorize funds for the development of a drinking water system on the Tribe's reservation.

On November 10, 2009, the Administration, through Commissioner of the Bureau of Reclamation Michael L. Connor, submitted a views letter ("Views Letter") regarding the legislation as reported by the Committee.

The Views Letter acknowledges that "[a]s reflected by the changes made in the marked up version of H.R. 1065, substantial work has been done and refinements made to this settlement by the parties and the Arizona delegation." (Views Letter, p. 2). The Views Letter notes with approval a number of changes that the Tribe agreed to make in response to the Administration's concerns relating to, among other things, (1) the findings, (2) the definitions, (3) potential cost overruns of the Miner Flat Dam and Reservoir, (4) funding for water development activities, and (5) the contract provisions under the Indian Self Determination Act. The Views Letter also emphasizes improvements in areas such as (1) waivers and (2) the title transfer of the Miner Flat Project.

Included with these views is a December 14, 2009, letter sent by the Tribe to Representative Kirkpatrick and myself that responds to the issues raised by Commissioner Connor in the Views Letter. I would like to highlight a few of the Tribe's responses:

1. The Conditions Required for the U.S. to Convey to the Tribe the Miner Flat Project Are Reasonable and Appropriate Given the Complex Nature of the Project

At the Administration's request, the Tribe agreed to accept title to the Miner Flat Project once the following three conditions have been met: (1) the project is declared substantially complete; (2) the funds authorized to be appropriated for the operation, maintenance, and replacement (OM&R) of the project have been deposited into the WMAT Maintenance Fund; and (3) the Tribe has operated the project for five years. H.R. 1065, Section 7(e)(2). Commissioner Connor believes "this new language is an improvement over the original language." (Views Letter, p. 3)

The Views Letter, however, recommends several changes, none of which the Tribe believes are necessary or warranted. For example,

it recommends reducing the time period that the Tribe is required to operate the project from five years to one year. The Miner Flat Project is a relatively complex municipal water supply project comprised of a dam, reservoir, water treatment plant, 55 mile long water transmission pipeline, several pumping stations, and connected distribution systems. The Tribe will need to operate the project for several years before it has the requisite experience and technical expertise to accept title to the project from the United States. It is unreasonable for the United States to expect the Tribe to have the requisite expertise to operate a Reservation-wide drinking water system in only one year. Finally, the language in the bill concerning the title transfer is eminently reasonable since at least seven other previously authorized Reclamation Indian drinking water projects are held in trust in perpetuity by the United States.

The Views Letter also recommends language limiting the liability of the United States associated with the Miner Flat Project that becomes effective once the conditions for conveyance have been met. H.R. 1065, however, already authorizes a waiver of any claims the Tribe may have against the United States relating to the OM&R of the Miner Flat Project. (The waiver becomes effective once the funds authorized under the legislation for the OM&R are deposited into the WMAT Maintenance Fund. See H.R. 1065, Section 9(a)(3)(F).) As a result, the additional language concerning the United State's liability is unnecessary.

2. The Use of Funds for the WMAT Settlement from the Emergency Fund for Indian Safety and Health is Consistent with the Underlying Authorization

Under Title VI of the Tom Lantos and Henry J. Hyde United States Global Leadership Against HIV/AIDS, Tuberculosis, and Malaria Reauthorization Act of 2008 (P.L. 110–293) (the "Act"), Congress established the Emergency Fund for Indian Safety and Health (Emergency Fund) and authorized up to $1 billion over a five-year period for water supply projects that are part of congressionally approved water settlements. The Miner Flat Project fits squarely within this criterion. Accordingly, H.R. 1065, as reported, authorizes the use of a limited amount of funds from the Emergency Fund for the construction of the Miner Flat Project. The Views Letter argues that this provision undermines the language in the Act specifying that the funding be allocated in accordance with a Secretarial plan. While the Act requires the Administration to prepare this plan by July 30, 2009, it has failed to do so. Therefore, the Administration cannot require that H.R. 1065 comply with a plan it has failed to prepare.

3. The Parties have Agreed to Extend the Time to Secure Federal Funding for the Project

The Views Letter correctly points out the challenges associated with securing the federal funding necessary to implement the settlement by 2015. As a result, the parties have agreed to extend that date until 2020.

GRACE F. NAPOLITANO.

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December 14, 2009

The Honorable Grace F. Napolitano
Chairwoman, Subcommittee on Water and Power
Committee on Natural Resources
House of Representatives
1522 Longworth House Office Building
Washington D.C. 20515

The Honorable Ann Kirkpatrick
United States Congresswoman
House of Representatives
1123 Longworth House Office Building
Washington D.C. 20515

Re: H. R. 1065, White Mountain Apache Water Rights Quantification Act of 2009

Dear Chairwoman Napolitano and Congresswoman Kirkpatrick:

The White Mountain Apache Tribe has reviewed the View Letter submitted to the Subcommittee on Water and Power on November 10, 2009, by the Commissioner of the Bureau of Reclamation, Michael L. Connor, on behalf of the Administration. The response of the Tribe to the issues raised in Commissioner Connor's View Letter follows below. The Tribe requests that its response be made part of the House Report to H.R. 1065.

1. **The Conditions Required for the U.S. to Convey to the Tribe the Miner Flat Project Are Reasonable and Appropriate Given the Complex Nature of the Project.**

At the Administration's request, the Tribe agreed to accept title to the Miner Flat Project once the following three conditions have been met: (1) the project is declared substantially complete; (2) the funds authorized to be appropriated for the operation, maintenance, and replacement ("OM&R") of the project have been deposited into the WMAT Maintenance Fund; and (3) the Tribe has operated the project for five years. H.R. 1065, Section 7(e)(2). Commissioner Connor believes "this new language is an improvement over the original language." (Views Letter, p. 3)

The Views Letter, however, recommends several changes, none of which the Tribe believes are necessary or warranted. For example, it recommends reducing the time period that the Tribe is required to operate the project from five years to one year. The Miner Flat Project is a relatively complex municipal water supply project comprised of a dam, reservoir, water treatment plant, 55 mile long water transmission pipeline, several pumping stations, and connected distribution systems. The Tribe will need to operate the project for several years before it has the requisite experience and technical expertise to accept title to the project from the United States. It is unreasonable for the United States to expect the Tribe to have the requisite expertise to operate a Reservation-wide drinking water system in only one year. Finally, the language in the bill concerning the title transfer is eminently reasonable since at least seven other previously authorized Reclamation Indian drinking water projects are held in trust in perpetuity by the United States.

The Views Letter also recommends language limiting the liability of the United States associated with the Miner Flat Project that becomes effective once the conditions for conveyance have been met. H.R. 1065, however, already authorizes a waiver of any claims the Tribe may have against the United States relating to the OM&R of the Miner Flat Project. (The waiver becomes effective once the funds authorized under the legislation for the OM&R are deposited into the WMAT Maintenance Fund. *See* H.R. 1065, Section 9(a)(3)(F).) As a result, the additional language concerning the United State's liability is unnecessary.

2. The Waivers Are Appropriate and Consistent with Previous Arizona Indian Water Settlements.

Attachment 2 of the Views Letter recommends several unnecessary revisions regarding waiver language. For example, the changes suggested to the introductory paragraphs in section 9(a)(1), (2), and (3) are editorial changes that add nothing to the clarity of the waivers. The first suggested change of switching the word "provided" to "specifically retained" is unnecessary since the referenced subparagraphs make it absolutely clear that the Tribe and the United States "shall retain" any claims listed in the subparagraph. The second suggested change of adding the words "and notwithstanding any provision to the contrary in the Agreement" creates confusion over the effect of the waivers by creating the implication that some provision of the underlying settlement agreement ("Agreement") is inconsistent with the language of the waivers. There is no inconsistency between the waivers and the Agreement and neither the Department nor anyone else has identified any such inconsistency. If there were an inconsistency, which there is not, that should be addressed directly by revising the language of the Agreement, not adding some imprecise wording to the waivers.

The suggested addition of a new subparagraph 9(a)(3)(D) to the Tribe's waiver of claims against the United States is unnecessary in light of the language of section 13 of the legislation, which incorporates the federal Antideficiency Act. This proposed wording has never been used in any prior Arizona Indian water settlements legislation and the inclusion of the proposed

language in this instance could be used as an argument to infer that such a claim was not waived in the earlier settlements. The inclusion of the antideficiency provision is sufficient protection against such claim under federal law.

The suggested deletion of the words "or the United States on behalf of such a tribe, community, nation or allottee" from the retentions set forth in subparagraphs 9(b)(1)(A)(iv), (vii), and (b)(2)(D) and (E) would preclude the Tribe from objecting to conflicting water claims and claims for injuries to the water rights of the Tribe when those claims are asserted by the United States on behalf of another tribe. In essence, the United States is creating the dichotomy where the Tribe could object to those claims if they were asserted directly by another tribe, but not when the United States was asserting the claims on behalf of another tribe. The suggestion of this language deletion raises serious questions whether the United States is breaching its trust responsibility to the Tribe and not protecting the water rights the Tribe is securing through this settlement. The language proposed for deletion has been included in several of the prior Arizona Indian water settlement agreements.

The Tribe opposes the proposed addition of language to subparagraph 9(b)(2)(F) in Attachment 2, as it injects concepts not addressed by the waivers since they are, by their terms, limited to waivers and retentions of claims. No such proposed language has been included in any prior Arizona water settlement act or agreement.

The Tribe is opposed to deletion of section 9(b)(2)(F) as suggested in Attachment 2 to the Views Letter. The suggested deletion of language essential for the protection of the Tribe's ground water and surface water rights accentuates the conflict of interests that permeates the Department of Interior's trust obligation to the Tribe. The current language was inserted to protect the Tribe's Northern boundary for a distance of 12 miles where it abuts the National Forest. Presently, there is no threat to the Tribe's agreed to water use rights. The Tribe has constructed a housing development along the northern boundary. Future Tribal plans project up to as many as 30,000 homes and commercial development along this 12 mile corridor next to national forest lands. If national forest lands along this common boundary are traded or sold, or if the Forest Service allows pumping of water from national forest land along the Tribe's boundary for non-Indian municipal use, injury could occur to the Tribe's water rights as agreed to in the Agreement. The current reservation of rights and retention of claims by the Tribe is necessary to protect the integrity of the Tribe's water rights in the Agreement.

The addition of the proposed new subparagraph 9(d)(1)(G) is unnecessary since the definition of the Agreement includes all of the attached exhibits, which includes the waivers, and subsection 9(d)(1)(A)(ii) already requires the Tribe and the Secretary to execute the waivers as part of the Agreement.

The Tribe also objects to the proposed language in Section 9(a)(4) of Attachment 2 of the Views Letter. The Tribe has a long-standing claim (unrelated to water) that approximately

16,000 acres of reservation land along the 1871 Executive Order Northern boundary of the Fort Apache Indian Reservation were erroneously surveyed outside of the Tribe's reservation and placed in the National Forest. The language that the Views Letter proposes in the subsection entitled, "Effect On Claims," is not necessary and confuses the issue. For example, Attachment 2 uses the term "concerning title to lands outside the current boundary of the reservation." It is the Tribe's position that title to the erroneously surveyed 16,000 acres never changed and remains within the 1871 Executive Order boundaries. A survey error cannot change Executive Order boundaries of a reservation. Also, the suggested use of the term "current boundary of the reservation," implies that the boundary has changed or that the "current boundary" is an established fact. The present language in H.R. 1065, section 3, Definitions, (20) Reservation- appropriately deals with the survey claim by stating that the depiction of the reservation on a map attached to the Agreement as Exhibit 2.81 does not constitute an admission by the Tribe with regard to any dispute between the Tribe and the United States concerning the legal boundary of the reservation. The recently suggested language is unnecessary and raises more issues than it resolves.

3. The White Mountain Apache Tribe Water Rights Settlement Subaccount

Section 10 establishes the White Mountain Apache Tribe Water Rights Settlement Subaccount for the planning, design, and construction of the Miner Flat Project for the Tribe. Funding in the Subaccount established under section 10 consists of funds from (1) the Lower Colorado River Basin Development Fund; (2) amounts appropriated under section 12(a); (3) the Emergency Fund for Indian Safety and Health; and (4) Arizona state funds provided under subparagraph 13.3 of the Agreement.

The Views Letter states that section 10(b)(1)(A) as written allows the White Mountain Apache Tribe to "withdraw any portion of the White Mountain Apache Tribe Water Rights Settlement Subaccount." The Views Letter suggests that because of this, the provision is inconsistent with the concept of an Indian Self-Determination and Education Assistance Act (ISDEAA) contract as laid out in section 7(g). Accordingly, the Views Letter states the legislation should be changed to clarify whether the Secretary is being called upon to establish a trust fund to be controlled by the Tribe or to accomplish the construction of the Miner Flat Project under the Act through an ISDEAA contract.

The Views Letter excerpt from section 10(b)(1)(A) is incomplete. Section 10(b)(1)(A), read in its entirety, unequivocally states that the Tribe may only withdraw amounts from the Subaccount on approval of the Secretary and then only pursuant to a ISDEAA agreement with the Secretary under section 7(g). The Subaccount is under the control of the Secretary, not the Tribe. Moreover, section 10(b)(1)(B) states that the Tribe under a section 7(g) ISDEAA agreement with the Secretary shall only use amounts from the Subaccount for (1) the planning, design, and construction of the Miner Flat Project, including sums necessary for the Bureau of Reclamation to carry out its oversight of the planning, design and construction of the Miner Flat

Project, (2) to pay any outstanding balance on the loan authorized by the White Mountain Apache Tribe Rural Water System Loan Authorization Act (Pub. L. 110-390; 122 Stat. 4191), and (3) to carry out required environmental compliance activities associated with planning, design, and construction of the Miner Flat Project.

Section 7(g)(2) referenced in section 10(b)(A) and (B), provides that any contract with the Tribe entered pursuant to the ISDEAA "for the purpose of carrying out any provision of this Act shall incorporate such provisions regarding periodic payment of funds, timing for the 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." No stronger language is required in the legislation to place the Subaccount under the control of the Secretary and subject to the requirements of the ISDEAA.

4. The Limited Waiver of Sovereign Immunity is Appropriate.

The Views Letter's objection to the breadth of the waiver of sovereign immunity in section 11 (a) for the enforcement or interpretation of the legislation or the Agreement would leave some of the beneficiaries of the legislation and the Agreement without an effective remedy to enforce some of the provisions of the legislation or the Agreement if they were violated by the Tribe or the United States. There is no risk of additional litigation from this waiver unless either the United States or the Tribe allegedly violates the legislation or the Agreement. In that event, the adversely affected beneficiaries of the settlement should be able to seek to enforce the bargain approved by Congress and the parties. This waiver is also the same as the one included in the Gila River Indian Community Water Rights Settlement Act of 2004.

5. The Amount of Federal Funding for the Settlement is Appropriate and Justified.

The Views Letter questions whether the $113.5 million authorized to be established under section 12 is an appropriate amount of federal funding. In that regard, it states that the uses to which the $113.5 million fund would be put are not clearly specified because of the latitude given to the Tribe in section 12(b)(2)(C) to spend the funds in a number of very different ways. This is contradictory to what the Views Letter states in the first paragraph of its ninth point that "... authorizing funding for water development activities to be carried out directly by the Tribe rather than the Secretary is consistent with the goals of self-determination and self-sufficiency and will allow the Tribe to prioritize what projects to carry out with available funds."

The WMAT Settlement Fund was negotiated by the Tribe to fund water related economic development projects such as, rehabilitation of fish hatcheries and existing recreational lakes facilities, repair and rehabilitation of existing irrigation systems neglected by the Bureau of Indian Affairs, protection, restoration, and economic development of forest and watershed health, and other water related economic development projects utilizing the Tribe's retained water rights. The Views Letter is incorrect when it states that the $113.5 million authorized to be appropriated to the Secretary is not part of the consideration for settlement of the Tribe's

reserved water rights. The Views Letter is correct that $4.95 million of the $113.5 million authorized to be appropriated for repairs to the irrigation system is contingently tied to a waiver by the Tribe of a breach of trust claim against the federal government. The waiver becomes effective upon appropriation of the $4.95 million to rehabilitate the irrigation system.

The $109 million of remaining funding would be subject to appropriations and is not a condition precedent that must be accomplished in order for the settlement to be final and enforceable, but that does not mean that the $109 million is not consideration for the settlement. The Tribe is aware that these appropriations are not a condition precedent for the settlement to become effective and that the United States is not liable to the Tribe if it fails to appropriate these funds under H.R. 1065. The authorization of these appropriations, however, is of great value to the Tribe and is part of the consideration of the settlement.

The Tribe negotiated for the authorizations for appropriations for wet water development in exchange and in consideration for relinquishing approximately 25,000 acre-feet of Salt River Water annually. The Salt River Project places a value of $6,000 per acre foot for Salt River Water. The Tribe relinquished Salt River Water with an 1871 priority date valued at $150 million annually in exchange for and in consideration for funding for wet water development. The 25,000 acre-feet annually is part of the original 180,000 acre-feet diversion right claimed by the United States in 1985 for the Tribe in the general stream adjudications.

The Views Letter also ignores the Tribe's agreement to waive its breach of trust claims against the federal government, the Tribe's trustee, for its total failure to stop the Phelps Dodge Corp., now known as Freeport Copper and Gold Inc., from trespassing on the Tribe's land since 1944. Hundreds of millions of dollars in profit were made by Freeport from the construction of a diversion dam on the Black River, half of which is on the Tribe's reservation trust land. The trespass is still ongoing. The Tribe waived its very valuable trespass and unjust enrichment claim against the United States in exchange for anticipated Administration support of H.R. 1065, but that support has not been forthcoming as evidenced by the Views Letter that questions the amount of the Federal Government's contribution to the Tribe's water rights settlement.

The value of other potential breach of trust claims against the United States that will be waived by the Tribe and which are summarized in the Tribe's Liability Paper dated August 19, 2009, and addressed to Pam Williams, Director of the Secretary's Indian Water Rights Office, far exceeds the total federal contribution to the Tribe's water rights settlement, including the cost of the Miner Flat Project, which without question, is a trust obligation of the United States (Views Letter at 1, "The Reservation's need for reliable and safe drinking water is not in question.").

Mentioned, but not addressed by the Views Letter, is the trust fund to subsidize the OM&R costs of the domestic water supply system to be constructed under H.R. 1065. The Tribe's expert consultants have estimated that the OM&R trust obligation would cost the United

States approximately $2.163 million a year. Once the OM&R trust fund in the amount of $50 million is established under section 12(b)(3), the United States shall be relieved of paying annual OM&R expenses of the trust obligation. Assuming inflation at 3% annually, the Tribe will be required to subsidize the $50 million trust fund within 28 years; assuming a 4% return on investment of the trust fund by the Tribe, it will take 42 years. Stated another way, assuming a 100 year lifetime of the Miner Flat Project, the United States is being relieved of $84 million in taxpayer expense if the trust fund cannot achieve more than a 4% rate of return with an average annual inflation rate of 3%.

In sum, the Views Letter is dismissive, without citation or viable argument, of the value of the Tribe's waiver in H.R. 1065 of potential water related breach of trust claims against the United States.

6. The Use of Funds for the WMAT Settlement from the Emergency Fund for Indian Safety and Health is Consistent with the Underlying Authorization.

Under Title VI of the Tom Lantos and Henry J. Hyde United States Global Leadership Against HIV/AIDS, Tuberculosis, and Malaria Reauthorization Act of 2008 (P.L. 110-293) (the "Act"), Congress established the Emergency Fund for Indian Safety and Health ("Emergency Fund") and authorized up to $1 billion over a five-year period for water supply projects that are part of congressionally approved water settlements. The Miner Flat Project fits squarely within this criterion. Accordingly, H.R. 1065, as reported, authorizes the use of a limited amount of funds from the Emergency Fund for the construction of the Miner Flat Project. The Views Letter argues that this provision undermines the language in the Act specifying that the funding be allocated in accordance with a Secretarial plan. While the Act requires the Administration to prepare this plan by July 30, 2009, it has failed to do so. Therefore, the Administration cannot require that H.R. 1065 comply with a plan it has failed to prepare.

7. The Parties have Agreed to Extend the Time to Secure Federal Funding for the Project.

The Views Letter correctly points out the challenges associated with securing the federal funding necessary to implement the settlement by 2015. As a result, the parties have agreed to extend that date until 2020.

Sincerely,

Robert C. Brauchli
Water Rights Counsel for the Tribe

ADDITIONAL VIEWS OF REPRESENTATIVE TOM McCLINTOCK

This bill rightly attempts to resolve longstanding Indian water rights claims, but Congress lacks sufficient information to assess whether the $292 million authorized in this legislation is appropriate. Therefore, as Ranking Republican of the House Water and Power Subcommittee, I have serious fiscal concerns with this well-intended bill.

It is important that Congress play a role in settling Indian water rights claims, some of which comprise the oldest standing litigation in the federal court system. Settling legal claims not only resolves litigation but also can help establish water supply certainty for water users on and off-reservations.

But Congress must also answer key questions when it considers these and other settlements and should not be just a rubber stamp. For example, one of the most important questions involving a settlement—especially when American taxpayer dollars will be used is whether resolving the litigation will be advantageous to the federal government compared to its liability under current law. That question has not been answered for H.R. 1065.

If Congress were the board of directors of a private corporation deciding whether to approve a negotiated legal settlement, we would be guilty of breaching our fiduciary responsibility to stockholders if we made that decision without consulting legal counsel to determine the company's financial exposure absent the settlement.

Since this question remains unanswered, Congress is forced to be the arbitrator between sides involved in the litigation. This is a role Congress should not be forced to assume without sufficient information. Given the troublesome fact that the current Administration has expressed general fiscal and other reservations about this bill, Congress should ask for and deserves answers. As part of this, Department of the Interior was asked for its views on the bill as passed by the Natural Resources Committee. The Department's response to Congress, which is attached, clearly indicates there are issues that still need to be resolved.

I also sent a letter on September 25, 2009 to the Department of Justice asking for opinions on this legislation. The letter specifically asks the Attorney General to provide his view on the "likelihood that the recipients of water rights and funds transferred by these settlements would prevail on the merits of their claims and whether these settlement amounts represent a net benefit to the taxpayers as compared to the consequences and costs of litigation." To date, I have not received a response from the Department of Justice, and I fundamentally believe that Congress needs this and other answers before moving forward with spending hundreds of millions of American taxpayer dollars.

My request is based on precedent. In an appearance before the Natural Resources Committee on legislation resolving Colville Indian claims, a Clinton Administration Justice Department official testified in 1994, "[T]he Federal government is not that well postured for a victory on this claim which has been pending for over 40 years. Absent the settlement, we could well litigate it for another ten years and the outcome could easily be a significant cost to the taxpayers and the public." This testimony was very helpful in moving that legislation forward. According to the Congressional Research Service, Justice Department officials have testified on additional settlements pending before Congress, so there is no reason why this Congress should act without similar information on this bill.

Without these transparent answers and with the large amount of taxpayer funding in this bill, I have serious concerns with the way this Congress and the Obama Administration are moving forward on H.R. 1065 and Indian water rights settlement bills in general.

TOM MCCLINTOCK.

United States Department of the Interior

BUREAU OF RECLAMATION
Washington, DC 20240

NOV 10 2009

IN REPLY REFER TO:

The Honorable Grace F. Napolitano
Chairwoman, Subcommittee on Water and Power
Committee on Natural Resources
House of Representatives
Washington, DC 20515

Dear Chairwoman Napolitano:

In response to your request, this letter presents the views of the Administration regarding H.R. 1065, the "White Mountain Apache Tribe Water Rights Quantification Act," as reported by the Subcommittee on Water and Power on September 30, 2009.

I want to begin by emphasizing that for over twenty years, the federal government has acknowledged that negotiated Indian water rights settlements are preferable to protracted and divisive litigation. Our policy of support for negotiations is premised on a set of general principles including that the United States participate in water settlements consistent with its responsibilities as trustee to Indians; that Indian tribes receive equivalent benefits for rights which they, and the United States as trustee, may release as part of a settlement; that Indian tribes should realize value from confirmed water rights resulting from a settlement; and that settlements are to contain appropriate cost-sharing proportionate to the benefits received by all parties benefiting from the settlement. Ultimately this Administration's goal is to engage with settlement parties early so that we can address issues during negotiation rather than waiting until legislation is introduced in Congress.

At the heart of this bill are provisions ratifying and approving the White Mountain Apache Quantification Agreement dated January 13, 2009, a settlement reached between the tribe and other non-federal parties regarding the quantification of the Tribe's water rights in Arizona. H.R. 1065 requires the Bureau of Reclamation to plan, design, construct, operate, maintain, replace, and rehabilitate a rural water system to serve the White Mountain Apache tribe. The rural water system authorized through this bill would replace and expand the current water delivery system on the Reservation, which relies on a diminishing groundwater source and is quickly becoming insufficient to meet the needs of the Reservation population. The Reservation's need for reliable and safe drinking water is not in question. H.R. 1065 also establishes a trust fund for the operation and maintenance of the system to be constructed. This legislation is the culmination of

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cooperative negotiations among the Tribe and many non-Indian water users throughout northern and central Arizona. The negotiations were focused on the need for a long term solution to the problems of an inadequate Reservation domestic water supply and quantifying the Tribe's water rights. The parties are to be commended for their determined efforts to reach an agreement as well as the work they have continued to put into amending the settlement legislation to address the Administration's concerns.

I testified on this bill before the House Committee on Natural Resources, Subcommittee on Water and Power on July 21, 2009, prior to the amendments made during the markup. As reflected by the changes made in the marked up version of H.R. 1065, substantial work has been done and refinements made to this settlement by the parties and the Arizona delegation. We would like to continue to work with the parties and the sponsors to address certain remaining concerns to make this a settlement that the Administration could support. This set of comments focuses on the areas in this legislation that were improved by the markup as well as those areas where the Administration believes additional work and changes to the legislation are needed.

First, we note with approval changes made in the Findings contained in section 2 of H.R. 1065. Although we do not consider a Findings section to be necessary and would prefer to omit it, if it is included, it should reflect Federal policy accurately. We especially appreciate the emphasis in section 2(a)(5) on the positive results of achieving certainty concerning the Tribe's water rights, which include assisting the Tribe in achieving self-determination and self-sufficiently, as well as providing opportunities for economic development for the entire region.

Second, new definitions of the Lower Basin Development Fund and Indian tribe are acceptable. Third, the Administration notes that changes in the wording at the beginning of section 5(a) do not change the substance of the Tribe's federal reserved water rights as quantified under this Act but could raise implementation questions. We would like to further discuss this section with the parties.

Fourth, the Administration's testimony on the bill raised serious concerns with the provision in section 7(e) of the authorizing legislation that provides that the WMAT Rural Water System will be held in trust by the United States. The unusual and explicit statement in the legislation establishing the trust has the effect of creating substantial financial and other obligations on the part of the United States. Moreover, as the testimony emphasized, the Administration believes transferring title to the domestic water supply system is more consistent with concepts of self determination and tribal

sovereignty and more in keeping with other recent legislation that provides tribes with assets and opportunities that they then can control as reservation economies and conditions evolve. We believe that this approach of offering assistance with the goal of tribal self-sufficiency is preferable to creating an expectation that the Federal government will be responsible for permanently operating and subsidizing reservation infrastructure.

Following the testimony, we are pleased to note that the sponsors and parties to H.R. 1065 have made changes to this provision of the bill that are a significant start in the right direction. New language in the bill as marked up authorizes the transfer of title to the Tribe once a series of criteria have been met. As we have explained to the proponents of this settlement, the new language is an improvement over the original language. However the bill should establish a clearer requirement that the Tribe assume ownership for the system and should be consistent with the processes laid out in the Aamodt settlement (S. 1105) and the Crow settlement (S. 375). An attachment to this letter includes language that we recommend to satisfy our concerns. We will continue to work with the parties to the settlement to achieve appropriate and workable language.

Fifth, we note with approval changes made following markup in section 7(g) providing appropriate requirements for the use of a contract under the Indian Self Determination Act in the context of this settlement. The amended language allows the Secretary of the Interior to require appropriate accounting and review measures so that the Secretary will have the tools to ensure that Federal funds are expended as intended if the Tribe exercises the option of constructing the rural water system itself through a Self Determination Act contract.

Sixth, while improvements have been made to the waivers contained in section 9 of H.R. 1065, including the addition of a retention section that is largely consistent with the retention section in other pending settlements, as well as a waiver of claims against the United States with respect to Freeport McMoran Copper and Gold, Inc.'s occupation of reservation lands, the Administration continues to have concerns about the waiver section. An attachment to this letter includes language that we recommend to satisfy our concerns.

Seventh, we have technical concerns regarding the edits made in section 10 regarding the White Mountain Apache Tribe Water Rights Settlement Subaccount. To be consistent with the provisions in section 7(g) that would apply if the Tribe exercises its option to enter into a contract with the Bureau of Reclamation under which it would plan, design, and construct the rural water system called for under this Act, this subaccount should consist of funds appropriated to the Secretary of the Interior. The provisions that have been added to this section at section 10(b)(1) allowing the Tribe to "withdraw any portion of the White Mountain Apache Tribe Water Rights Settlement Subaccount" are not consistent with the concept of a Self Determination Act contract as laid out in section 7(g). The Administration believes that the money authorized to be appropriated for planning, design, and construction of the rural water system in section 12(a) should be

appropriated to the Secretary to carry out the activities authorized in section 7. The funds should either be used by Reclamation to construct the rural water system or else be transferred to the Tribe within the sideboards of an Indian Self Determination Act contract as described in section 7(g). There should be no provisions in section 10 allowing the money appropriated for these purposes to be withdrawn by the Tribe. As the Administration stated in its testimony, the legislation needs to clarify whether the Secretary is being called upon to establish a trust fund to be controlled by the Tribe or to accomplish the construction through an Indian Self-Determination and Education Assistance Act (ISDEAA) contract.

Eighth, the United States objects to Section 11(a) -- which waives the sovereign immunity of the United States for "interpretation or enforcement of this Act or the Agreement" in "a United States or State court." This subsection should be eliminated. This waiver is unnecessary, as demonstrated by the absence of such a waiver in similar bills, such as S. 1105, the Aamodt Litigation Settlement Act, and S. 375, the Crow Tribe Water Rights Settlement Act. Further, this provision will engender additional litigation -- and likely in competing state and federal forums -- rather than resolving the water rights disputes underlying adjudication.

Ninth, the Administration has some concerns about section 12 of H.R. 1065 after markup. There are some aspects of this section that are improvements. For example, authorizing funding for water development activities to be carried out directly by the Tribe rather than the Secretary is consistent with the goals of self-determination and self-sufficiency and will allow the Tribe to prioritize what projects to carry out with available funds. The Administration also notes with approval section 12(f) of the bill, providing that if the Secretary determines that the amount authorized to be appropriated for planning, design, and construction of the rural water system is not sufficient, up to $25 million can be transferred from the trust fund established for tribal water development to the account being used to cover the costs of the rural water system. This provision puts the risk of a cost overrun upon the Tribe rather than upon the Federal government and reduces the risk to the Federal government of approving this settlement prior to the completion of further studies to better determine the true cost of developing the rural water system as called for under this Act.

However there are other aspects of this section that raise questions. Most critically, the Administration still has questions about what would constitute an appropriate amount of federal funding for the funds that would be established under section 12 of H.R. 1065. Our analysis of this would include consideration of (1) the uses to which the $113.5 million development fund would be put (which are not clearly specified, given the amount of latitude given to the Tribe in section 12(b)(2)(C) to spend the funds in a number of very different ways); (2) the potential for a non-Federal contribution, based on any non-Indian benefits received, to the settlement; and (3) the appropriate size of a trust fund to subsidize the operation, maintenance and repair (OM &R) costs of the domestic water supply system.

Also, the Administration notes that only $4.95 million of the $113.5 million authorized to be appropriated in section 12(b)(2)(B) is tied to settlement implementation. Other than the $4.95 million provided for rehabilitation of irrigation systems on the reservation (which must be appropriated in order for a part of the tribal waivers to come into effect), the Administration does not believe the money authorized for the development fund is consideration for this settlement. Given the benefits being obtained by the Tribe under this settlement, the Administration would consider the approximately $109 million of additional funding for a development fund authorized under this bill to be excessive if it were viewed as settlement consideration. This $109 million of funding is subject to appropriations and not a part of the conditions precedent that must be accomplished in order for this settlement to be final.

In addition, we are still analyzing the provisions in section 12(d) mandating the transfer of any available funds up to $50 million from the Emergency Fund for Indian Safety and Health established by 22 U.S.C. 7601 et. seq.. This provision appears to place the settlement approved for the White Mountain Apache Tribe as the top priority for any funds made available from the Emergency Fund for Indian Safety and Health. This provision appears to directly undermine the provisions of the original authorization bill specifying that the funding be allocated in accordance with a Secretarial plan.

As an overarching issue that remains in the post-markup legislation, we note that the bill would require all of the funding for the rural water system to be appropriated by October 31, 2015. This is only two years later than in the bill as introduced. The bill seems to contemplate that all the funding will be appropriated before Reclamation, or the Tribe under an Indian Self Determination Act contract, is capable of actually completing construction. Given the realities of federal budgeting, it would be much more realistic to provide a longer period to budget for what are ultimately determined to the appropriate federal costs of this system. To the extent that one of the factors driving the settlement proponents to ask for this money upfront is a desire for waivers that come into effect earlier, we would suggest that they look at other settlements involving construction where waivers are able to come into effect but are subject to nullification if construction does not get completed within the time frame established in the settlement agreement and authorizing legislation.

The Administration does not object to two clarifying changes were made in sections 7(c)(2)(C) (eliminating language that set an apparent limit on the time period during which title to the rural water system can be transferred) and section 12(g) (clarifying that accrued interest as well as appropriated funds available in the Maintenance Fund would be accessible when the given criteria are met).

While we still have concerns with this bill, the Administration is committed to working with Congress and all parties concerned in developing a settlement that the Administration can fully support. If the parties continue to negotiate with the same good faith they have shown thus far, we are hopeful that an appropriate and fair settlement can be reached that will contribute to long-term harmony and cooperation among the parties.

Thank you for the opportunity to present these views for the record.

Sincerely,

Michael L. Connor
Commissioner

cc: The Honorable Nick J. Rahall, II
Chairman, Committee on Natural Resources

The Honorable Doc Hastings
Ranking Member, Committee on Natural Resources

The Honorable Tom McClintock
Ranking Member, Subcommittee on Water and Power, Committee on Natural Resources

Attachment 1: Title Transfer Language

(a) Conveyance of the WMAT rural water system.—

(1) IN GENERAL.—Subject to paragraph (2), on completion of the construction of the WMAT rural water system, the Secretary shall convey to the White Mountain Apache Tribe all right, title and interest to the system, including any land or interests in land located within the boundaries of the Reservation that is acquired by the United States for the construction of the WMAT rural water system.

(2) CONDITIONS FOR CONVEYANCE. — The Secretary shall not convey the WMAT rural water system under paragraph (1) until the Secretary makes a finding that:

(A) Operating Criteria, Standing Operating Procedures, an Emergency Action Plan, and first filling and monitoring criteria have been established for the system;

(B) the system is substantially complete;

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

(D) the White Mountain Apache Tribe has been afforded a period not to exceed one year to operate the system with the assistance of the Bureau after the system is substantially complete and Standard Operating Procedures have been established.

(3) Liability. —

(A) In General. — Effective on the date of the conveyance under this subsection, the United States shall not be held liable by any court for damages of any kind arising out of any act, omission, or occurrence relating to the land or facilities conveyed, other than damages caused by acts of negligence committee by the United States, or by employees or agents of the United States, prior to the date of conveyance.

(B) Tort Claims. — Nothing in this section increases the liability of the United States beyond the liability provided in chapter 171 of title 28, United States Code (commonly known as the "Federal Tort Claims Act").

Attachment 2

This document includes the edits that the Administration requests in the waiver section of the WMAT settlement legislation in redline form.

SEC. 9. WAIVER AND RELEASE OF CLAIMS.

(a) In General.—

(1) CLAIMS AGAINST THE STATE AND OTHERS.—Except as specifically retained in subsection (b)(1) and notwithstanding any provisions to the contrary in the Agreement, 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—

Deleted: provided

(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 specifically retained in subsection (b)(3) and notwithstanding any provisions to the contrary in the Agreement, 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—

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(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 specifically retained in subsection (b)(2) and notwithstanding any provisions to the contrary in the Agreement, 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—

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(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) future claims relating in any manner to the availability and appropriation

of United States funds to carry out the provisions of the Agreement or this Act;

(E) 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;

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(F) 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);

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(G) 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;

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(H) 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 accrued at any time prior to the enforceability date; and

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(I) 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.

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(4) EFFECT ON CLAIMS.—Nothing in this Act expands, diminishes, or in any way impacts any claim the Tribe may assert, or any defense the United States may assert, concerning title to lands outside the current boundary of the reservation.

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(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,

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(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, or allottee; and

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(viii) to assert any past, present, or future claim for trespass, use, and occupancy 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 successor of those entities), including all subsidiaries 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 subsidiaries and affiliates of those entities, to resolve 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) and notwithstanding any provisions to the contrary in the Agreement, 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, or dependent Indian community,

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(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, or dependent Indian community;

(F) to remedies, privileges, immunities, powers, and claims not specifically waived under this Act; and

(G) to assert any claim arising after the enforceability date for a future taking by the United States of reservation land, off-reservation trust land, or any property rights appurtenant 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 enforceability 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 conflicts with this Act, the Agreement has been revised 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;

(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; and

(G) the waivers and releases authorized and set forth in subsection (a) have been executed by the Tribe and the Secretary.

(2) FAILURE OF ENFORCEABILITY DATE TO OCCUR.—If, because of the failure of the enforceability date to occur by October 31, 2015, 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,

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Deleted: (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;¶

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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.

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