

Calendar No. 683

117TH CONGRESS
2D SESSION

S. 3168

To amend the White Mountain Apache Tribe Water Rights Quantification Act of 2010 to modify the enforceability date for certain provisions, and for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 4, 2021

Mr. KELLY (for himself and Ms. SINEMA) introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

DECEMBER 19, 2022

Reported by Mr. SCHATZ, with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

To amend the White Mountain Apache Tribe Water Rights Quantification Act of 2010 to modify the enforceability date for certain provisions, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*

2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. WHITE MOUNTAIN APACHE TRIBE RURAL**

4 **WATER SYSTEM.**

5 ~~(a) ENFORCEABILITY DATE.—~~

1 (A) in the matter preceding subparagraph
2 (A), by striking “April 30, 2023” and inserting
3 “December 30, 2027”; and

4 (B) in subparagraph (A), by striking “May
5 1, 2023” and inserting “December 31, 2027”.

6 (2) *CONFORMING AMENDMENT.*—Section 3(b)(2)
7 of the *White Mountain Apache Tribe Rural Water*
8 *System Loan Authorization Act (Public Law 110–*
9 *390; 122 Stat. 4191; 124 Stat. 3092)* is amended by
10 striking “beginning on” and all that follows through
11 the period at the end and inserting “beginning on De-
12 cember 31, 2027.”.

13 (b) *COST INDEXING.*—Section 312(c) of the *White*
14 *Mountain Apache Tribe Water Rights Quantification Act*
15 *of 2010 (Public Law 111–291; 124 Stat. 3095)* is amended
16 by striking “All amounts made available under” and all
17 that follows through the period at the end and inserting
18 the following:

19 “(1) *WHITE MOUNTAIN APACHE TRIBE WATER*
20 *RIGHTS SETTLEMENT SUBACCOUNT.*—All amounts
21 made available under subsection (a) shall be adjusted
22 as necessary to reflect the changes since October 1,
23 2007, in the construction cost indices applicable to
24 the types of construction involved in the construction

1 *of the WMAT rural water system and the mainte-*
2 *nance of the WMAT rural water system.*

3 “(2) *WMAT SETTLEMENT FUND.*—*All amounts*
4 *made available under subsection (b)(2) shall be ad-*
5 *justed annually to reflect the changes since October 1,*
6 *2007, in the construction cost indices applicable to*
7 *the types of construction involved in the construction*
8 *of the WMAT rural water system and the mainte-*
9 *nance of the WMAT rural water system.*

10 “(3) *WMAT MAINTENANCE FUND.*—*All amounts*
11 *made available under subsection (b)(3) shall be ad-*
12 *justed on deposit to reflect changes since October 1,*
13 *2007, in the Consumer Price Index for All Urban*
14 *Consumers West Urban 50,000 to 1,500,000 published*
15 *by the Bureau of Labor Statistics.*

16 “(4) *WMAT COST OVERRUN SUBACCOUNT.*—*Of*
17 *the amounts made available under subsection (e)(2)—*

18 “(A) *\$35,000,000 shall be adjusted as nec-*
19 *essary to reflect the changes since October 1,*
20 *2007, in the construction cost indices applicable*
21 *to the types of construction involved in the con-*
22 *struction of the WMAT rural water system and*
23 *the maintenance of the WMAT rural water sys-*
24 *tem; and*

1 “(B) additional funds, in excess of the
2 amount referred to in subparagraph (A), shall be
3 adjusted as necessary to reflect the changes since
4 April 1, 2021, in the construction cost indices
5 applicable to the types of construction involved
6 in the construction of the WMAT rural water
7 system and the maintenance of the WMAT rural
8 water system.

9 “(5) CONSTRUCTION COSTS ADJUSTMENT.—The
10 amounts made available under subsections (a), (b)(2),
11 and (e)(2) shall be adjusted to address construction
12 cost changes necessary to account for unforeseen mar-
13 ket volatility that may not otherwise be captured by
14 engineering cost indices, as determined by the Sec-
15 retary, including repricing applicable to the types of
16 construction and current industry standards in-
17 volved.”.

18 (c) FUNDING FOR WMAT COST OVERRUN SUB-
19 ACCOUNT.—Section 312(e)(2)(B) of the White Mountain
20 Apache Tribe Water Rights Quantification Act of 2010
21 (Public Law 111–291; 124 Stat. 3095) is amended by strik-
22 ing “\$11,000,000” and inserting “\$541,000,000”.

23 (d) RETURN TO TREASURY.—

24 (1) IN GENERAL.—Section 312(e)(4)(B) of the
25 White Mountain Apache Tribe Water Rights Quan-

1 *tification Act of 2010 (Public Law 111–291; 124*
2 *Stat. 3096) is amended, in the matter preceding*
3 *clause (i), by striking “shall be—” and all that fol-*
4 *lows through the period at the end of clause (ii) and*
5 *inserting “shall be returned to the general fund of the*
6 *Treasury.”.*

7 (2) *CONFORMING AMENDMENT.—Section*
8 *312(b)(2) of the White Mountain Apache Tribe Water*
9 *Rights Quantification Act of 2010 (Public Law 111–*
10 *291; 124 Stat. 3093; 132 Stat. 1626) is amended by*
11 *striking subparagraph (B) and inserting the fol-*
12 *lowing:*

13 *“(B) TRANSFERS TO FUND.—There is au-*
14 *thorized to be appropriated to the Secretary for*
15 *deposit in the WMAT Settlement Fund*
16 *\$78,500,000.”.*

17 (e) *CONVEYANCE OF TITLE TO TRIBE.—Section*
18 *307(d)(2)(E) of the White Mountain Apache Tribe Water*
19 *Rights Quantification Act of 2010 (Public Law 111–291;*
20 *124 Stat. 3082; 132 Stat. 1626) is amended, in the matter*
21 *preceding clause (i), by striking “water system—” and all*
22 *that follows through the period at the end of clause (ii)(II)*
23 *and inserting “water system is substantially complete, as*
24 *determined by the Secretary in accordance with subsection*
25 *(k).”.*

1 (f) *REQUIREMENTS FOR DETERMINATION OF SUB-*
 2 *STANTIAL COMPLETION OF THE WMAT RURAL WATER*
 3 *SYSTEM.*—Section 307 of the White Mountain Apache Tribe
 4 *Water Rights Quantification Act of 2010 (Public Law 111–*
 5 *291; 124 Stat. 3080; 132 Stat. 1626) is amended by adding*
 6 *at the end the following:*

7 “(k) *REQUIREMENTS FOR DETERMINATION OF SUB-*
 8 *STANTIAL COMPLETION OF THE WMAT RURAL WATER*
 9 *SYSTEM.*—The WMAT rural water system shall be deter-
 10 *mined to be substantially complete if—*

11 “(1) *the infrastructure constructed is capable of*
 12 *storing, diverting, treating, transmitting, and distrib-*
 13 *uting a supply of water as set forth in the final*
 14 *project design described in subsection (c); or*

15 “(2) *the Secretary—*

16 “(A) *expended all of the available funding*
 17 *provided to construct the WMAT rural water*
 18 *system; and*

19 “(B) *despite diligent efforts, cannot com-*
 20 *plete construction as described in the final*
 21 *project design described in subsection (c) due*
 22 *solely to the lack of additional authorized fund-*
 23 *ing.”.*

24 (g) *REQUIREMENT.*—Section 310(b) of the White
 25 *Mountain Apache Tribe Water Rights Quantification Act*

1 of 2010 (Public Law 111–291; 124 Stat. 3090) is amended
 2 by adding at the end the following:

3 “(3) *EXPENDITURES.*—If, before the enforce-
 4 ability date, Federal funds are expended to carry out
 5 activities described in subparagraph (A) or (C) of
 6 paragraph (2) in excess of the amounts provided pur-
 7 suant to the White Mountain Apache Tribe Rural
 8 Water System Loan Authorization Act (Public Law
 9 110–390; 122 Stat. 4191), such expenditures shall be
 10 accounted for as White Mountain Apache Tribe Water
 11 Rights Settlement Subaccount funds.”.

12 (h) *ENFORCEABILITY DATE EFFECTIVENESS.*—Section
 13 309(d)(1) of the White Mountain Apache Tribe Water
 14 Rights Quantification Act of 2010 (Public Law 111–291;
 15 124 Stat. 3088; 133 Stat. 2669) is amended—

16 (1) by redesignating subparagraphs (D) through
 17 (G) as subparagraphs (E) through (H), respectively;
 18 and

19 (2) by inserting after subparagraph (C) the fol-
 20 lowing:

21 “(D) such amount, up to the amount made
 22 available under section 312(e)(2), as the Sec-
 23 retary determines to be necessary to construct the
 24 WMAT rural water system that is capable of
 25 storing, diverting, treating, transmitting, and

1 *distributing a supply of water as set forth in the*
2 *final project design described in section 307(c)*
3 *has been deposited in the WMAT Cost Overrun*
4 *Subaccount;”.*

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