

## Calendar No. 340

111<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION**H. R. 1065**

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IN THE SENATE OF THE UNITED STATES

JANUARY 22, 2010

Received

MARCH 26 (legislative day, MARCH 25), 2010

Read twice and placed on the calendar

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**AN ACT**

To resolve water rights claims of the White Mountain Apache Tribe in the State of Arizona, 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. SHORT TITLE.**

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

6 **SEC. 2. FINDINGS AND PURPOSES.**

7 (a) FINDINGS.—Congress finds that—

8 (1) proceedings to determine the nature and ex-  
9 tent of the water rights of the White Mountain

1 Apache Tribe, members of the Tribe, the United  
2 States, and other claimants are pending in—

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

10 (B) the civil action pending in the Superior  
11 Court of the State of Arizona for the County of  
12 Apache styled In re the General Adjudication of  
13 All Rights to Use Water in the Little Colorado  
14 River System and Source and numbered CIV-  
15 6417;

16 (2) a final resolution of those proceedings  
17 might—

18 (A) take many years;

19 (B) entail great expense; and

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

22 (3) the Tribe, non-Indian communities located  
23 near the reservation of the Tribe, and other Arizona  
24 water users have entered into the WMAT Water  
25 Rights Quantification Agreement—

1 (A) to permanently quantify the water  
2 rights of the Tribe, members of the Tribe, and  
3 the United States in its capacity as trustee for  
4 the Tribe and members in accordance with the  
5 Agreement; and

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

9 (4) it is the policy of the United States to quan-  
10 tify and settle Indian water rights claims, and to  
11 promote Indian self-determination and economic  
12 self-sufficiency, without lengthy and costly litigation,  
13 if practicable;

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

16 (A) provide opportunities for economic de-  
17 velopment of all parties to the proceeding; and

18 (B) assist the Tribe to achieve self-deter-  
19 mination and self-sufficiency; and

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

25 (b) PURPOSES.—The purposes of this Act are—

1           (1) to authorize, ratify, and confirm the Agree-  
2           ment;

3           (2) to authorize and direct the Secretary to exe-  
4           cute the Agreement and carry out all obligations of  
5           the Secretary under the Agreement;

6           (3) to authorize the actions and appropriations  
7           necessary for the United States to meet the obliga-  
8           tions of the United States under the Agreement and  
9           this Act; and

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

12                   (A) the Tribe and its members;

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

15                   (C) the parties to the Agreement; and

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

18 **SEC. 3. DEFINITIONS.**

19         In this Act:

20           (1) AGREEMENT.—The “Agreement” means—

21                   (A) the WMAT Water Rights Quantifica-  
22                   tion Agreement dated January 13, 2009; and

23                   (B) any amendment or exhibit (including  
24                   exhibit amendments) to that agreement that  
25                   are—

- 1 (i) made in accordance with this Act;  
2 or  
3 (ii) otherwise approved by the Sec-  
4 retary.

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

7 (3) CAP.—The term “CAP” means the rec-  
8 lamation project authorized and constructed by the  
9 United States in accordance with title III of the Col-  
10 orado River Basin Project Act (43 U.S.C. 1521 et  
11 seq.).

12 (4) CAP CONTRACTOR.—The term “CAP con-  
13 tractor” means an individual or entity that has en-  
14 tered into a long-term contract (as that term is used  
15 in the repayment stipulation) with the United States  
16 for delivery of water through the CAP system.

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

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

24 (7) CAP SUBCONTRACTOR.—The term “CAP  
25 subcontractor” means an individual or entity that

1 has entered into a long-term subcontract (as that  
2 term is used in the repayment stipulation) with the  
3 United States and the District for the delivery of  
4 water through the CAP system.

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

7 (A) the Mark Wilmer Pumping Plant;

8 (B) the Hayden-Rhodes Aqueduct;

9 (C) the Fannin-McFarland Aqueduct;

10 (D) the Tucson Aqueduct;

11 (E) any pumping plant or appurtenant  
12 works of a feature described in any of subpara-  
13 graphs (A) through (D); and

14 (F) any extension of, addition to, or re-  
15 placement for a feature described in any of sub-  
16 paragraphs (A) through (E).

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

20 (10) CONTRACT.—The term “Contract”  
21 means—

22 (A) the proposed contract between the  
23 Tribe and the United States attached as exhibit  
24 7.1 to the Agreement and numbered 08–XX–  
25 30–W0529; and

1 (B) any amendments to that contract.

2 (11) DISTRICT.—The term “District” means  
3 the Central Arizona Water Conservation District, a  
4 political subdivision of the State that is the con-  
5 tractor under the repayment contract.

6 (12) ENFORCEABILITY DATE.—The term “en-  
7 forceability date” means the date described in sec-  
8 tion 9(d)(1).

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

13 (14) INJURY TO WATER RIGHTS.—

14 (A) IN GENERAL.—The term “injury to  
15 water rights” means an interference with, dimi-  
16 nution of, or deprivation of, a water right under  
17 Federal, State, or other law.

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

20 (i) a change in the groundwater table;

21 and

22 (ii) any effect of such a change.

23 (C) EXCLUSION.—The term “injury to  
24 water rights” does not include any injury to  
25 water quality.

1           (15) LOWER COLORADO RIVER BASIN DEVELOP-  
2           MENT FUND.—The term “Lower Colorado River  
3           Basin Development Fund” means the fund estab-  
4           lished by section 403 of the Colorado River Basin  
5           Project Act (43 U.S.C. 1543).

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

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

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

14           (17) OPERATING AGENCY.—The term “Oper-  
15           ating Agency” means the 1 or more entities author-  
16           ized to assume responsibility for the care, operation,  
17           maintenance, and replacement of the CAP system.

18           (18) REPAYMENT CONTRACT.—The term “re-  
19           payment contract” means—

20                   (A) the contract between the United States  
21                   and the District for delivery of water and re-  
22                   payment of the costs of the CAP, numbered  
23                   14–06–W–245 (Amendment No. 1), and dated  
24                   December 1, 1988; and



1 (B) any amendment to, or revision of, that  
2 contract.

3 (19) REPAYMENT STIPULATION.—The term  
4 “repayment stipulation” means the stipulated judg-  
5 ment and the stipulation for judgment (including  
6 any exhibits to those documents) entered on Novem-  
7 ber 21, 2007, in the United States District Court  
8 for the District of Arizona in the consolidated civil  
9 action styled Central Arizona Water Conservation  
10 District v. United States, et al., and numbered CIV  
11 95–625–TUC–WDB (EHC) and CIV 95–1720–  
12 PHX–EHC.

13 (20) RESERVATION.—

14 (A) IN GENERAL.—The term “reservation”  
15 means the land within the exterior boundary of  
16 the White Mountain Indian Reservation estab-  
17 lished by the Executive order dated November  
18 9, 1871, as modified by subsequent Executive  
19 orders and Acts of Congress—

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

24 (ii) generally depicted on the map at-  
25 tached to the Agreement as exhibit 2.81.

1 (B) NO EFFECT ON DISPUTE OR AS ADMIS-  
2 SION.—The depiction of the reservation de-  
3 scribed in subparagraph (A)(ii) shall not—

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

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

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

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

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

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

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

1 known as the “Indian Reorganization Act”) (25  
2 U.S.C. 476).

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

6 (27) WMAT RURAL WATER SYSTEM.—The  
7 term “WMAT rural water system” means the mu-  
8 nicipal, rural, and industrial water diversion, stor-  
9 age, and delivery system described in section 7.

10 (28) YEAR.—The term “year” means a cal-  
11 endar year.

12 **SEC. 4. APPROVAL OF AGREEMENT.**

13 (a) APPROVAL.—

14 (1) IN GENERAL.—Except to the extent that  
15 any provision of the Agreement conflicts with a pro-  
16 vision of this Act, the Agreement is authorized, rati-  
17 fied, and confirmed.

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

22 (b) EXECUTION OF AGREEMENT.—To the extent that  
23 the Agreement does not conflict with this Act, the Sec-  
24 retary shall—

1           (1) execute the Agreement (including signing  
2 any exhibit to the Agreement requiring the signature  
3 of the Secretary); and

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

7 (c) NATIONAL ENVIRONMENTAL POLICY ACT.—

8           (1) ENVIRONMENTAL COMPLIANCE.—In imple-  
9 menting the Agreement, the Secretary shall prompt-  
10 ly comply with all applicable requirements of—

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

13                   (B) the Endangered Species Act of 1973  
14 (16 U.S.C. 1531 et seq.);

15                   (C) all other applicable Federal environ-  
16 mental laws; and

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

20 (2) EXECUTION OF AGREEMENT.—

21           (A) IN GENERAL.—Execution of the Agree-  
22 ment by the Secretary under this section shall  
23 not constitute a major Federal action under the  
24 National Environmental Policy Act of 1969 (42  
25 U.S.C. 4321 et seq.).

1 (B) ENVIRONMENTAL COMPLIANCE.—The  
2 Secretary shall carry out all necessary environ-  
3 mental compliance required by Federal law in  
4 implementing the Agreement.

5 (3) LEAD AGENCY.—The Bureau shall serve as  
6 the lead agency with respect to ensuring environ-  
7 mental compliance associated with the WMAT rural  
8 water system.

9 **SEC. 5. WATER RIGHTS.**

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

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

14 (2) shall not be subject to forfeiture or aban-  
15 donment.

16 (b) REALLOCATION.—

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

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

1 104(a)(1)(A)(iii) of the Arizona Water Settle-  
2 ments Act (Public Law 108–451; 118 Stat.  
3 3488), of which—

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

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

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

20 (i) acquired by the Secretary through  
21 the permanent relinquishment of the  
22 Harquahala Valley Irrigation District CAP  
23 subcontract entitlement in accordance with  
24 the contract numbered 3–07–30–W0290  
25 among the District, Harquahala Valley Ir-

1                   rigation District, and the United States;  
2                   and

3                   (ii) converted to CAP Indian Priority  
4                   water (as defined in the Contract) pursu-  
5                   ant to the Fort McDowell Indian Commu-  
6                   nity Water Rights Settlement Act of 1990  
7                   (Public Law 101–628; 104 Stat. 4480).

8                   (2) AUTHORITY OF TRIBE.—Subject to approval  
9                   by the Secretary under section 6(a)(1), the Tribe  
10                  shall have the sole authority to lease, distribute, ex-  
11                  change, or allocate the tribal CAP water described  
12                  in paragraph (1).

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

16                  (d) ALLOCATION AND REPAYMENT.—For the pur-  
17                  pose of determining the allocation and repayment of costs  
18                  of any stages of the CAP constructed after November 21,  
19                  2007, the costs associated with the delivery of water de-  
20                  scribed in subsection (b), regardless of whether the water  
21                  is delivered for use by the Tribe or in accordance with  
22                  any assignment, exchange, lease, option to lease, or other  
23                  agreement for the temporary disposition of water entered  
24                  into by Tribe, shall be—

25                  (1) nonreimbursable; and

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

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

6           (1) governs the tribal water rights; and

7           (2) includes, at a minimum—

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

12                   (B) terms of a water conservation plan, in-  
13                   cluding objectives, conservation measures, and  
14                   an implementation timeline;

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

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



1 **SEC. 6. CONTRACT.**

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

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

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

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

16 (ii) the contracts or options to ex-  
17 change shall be for the term provided in  
18 the contract or option; and

19 (iii) a lease or option to lease pro-  
20 viding for the temporary delivery of tribal  
21 CAP water shall require the lessee to pay  
22 to the Operating Agency all CAP fixed  
23 OM&R charges and all CAP pumping en-  
24 ergy charges (as defined in the repayment  
25 stipulation) associated with the leased  
26 water; and

1 (B) renegotiate any lease at any time dur-  
2 ing the term of the lease, subject to the condi-  
3 tion that the term of the renegotiated lease  
4 shall not exceed 100 years;

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

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

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

15 (i) any funds received by the Tribe as con-  
16 sideration under a contract or option to lease or  
17 exchange tribal CAP water; or

18 (ii) the expenditure of those funds;

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

21 (B) if the delivery capacity of the CAP system  
22 is significantly reduced or anticipated to be signifi-  
23 cantly reduced for an extended period of time, the  
24 Tribe shall have the same CAP delivery rights as a  
25 CAP contractor or CAP subcontractor that is al-

1       lowed to take delivery of water other than through  
2       the CAP system;

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

5           (6) as authorized by subsection (f)(2)(A) of sec-  
6       tion 403 of the Colorado River Basin Project Act  
7       (43 U.S.C. 1543) and to the extent that funds are  
8       available in the Lower Colorado River Basin Devel-  
9       opment Fund established by subsection (a) of that  
10      section, the United States shall pay to the Operating  
11      Agency the CAP fixed OM&R charges associated  
12      with the delivery of tribal CAP water (except in the  
13      case of tribal CAP water leased by any individual or  
14      entity);

15          (7) the Secretary shall waive the right of the  
16      Secretary to capture all return flow from project ex-  
17      change water flowing from the exterior boundary of  
18      the reservation; and

19          (8) no CAP water service capital charge shall  
20      be due or payable for the tribal CAP water, regard-  
21      less of whether the water is delivered for use by the  
22      Tribe or pursuant to a contract or option to lease  
23      or exchange tribal CAP water entered into by the  
24      Tribe.

25      (b) REQUIREMENTS.—The Contract shall be—

1           (1) for permanent service (within the meaning  
2 of section 5 of the Boulder Canyon Project Act (43  
3 U.S.C. 617d)); and

4           (2) without limit as to term.

5           (c) RATIFICATION.—

6           (1) IN GENERAL.—Except to the extent that  
7 any provision of the Contract conflicts with a provi-  
8 sion of this Act, the Contract is authorized, ratified,  
9 and confirmed.

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

14          (d) EXECUTION OF CONTRACT.—To the extent that  
15 the Contract does not conflict with this Act, the Secretary  
16 shall execute the Contract.

17          (e) PAYMENT OF CHARGES.—The Tribe, and any re-  
18 cipient of tribal CAP water through a contract or option  
19 to lease or exchange, shall not be obligated to pay a water  
20 service capital charge or any other charge, payment, or  
21 fee for CAP water, except as provided in an applicable  
22 lease or exchange agreement.

23          (f) PROHIBITIONS.—

24           (1) USE OUTSIDE STATE.—No tribal CAP  
25 water may be leased, exchanged, forborne, or other-

1 wise transferred by the Tribe in any way for use di-  
2 rectly or indirectly outside the State.

3 (2) USE OFF RESERVATION.—Except as author-  
4 ized by this section and paragraph 4.7 of the Agree-  
5 ment, no tribal water rights under this Act may be  
6 sold, leased, transferred, or used outside the bound-  
7 aries of the reservation or off-reservation trust land  
8 other than pursuant to an exchange.

9 (3) AGREEMENTS WITH ARIZONA WATER BANK-  
10 ING AUTHORITY.—Nothing in this Act or the Agree-  
11 ment limits the right of the Tribe to enter into an  
12 agreement with the Arizona Water Banking Author-  
13 ity established by section 45–2421 of the Arizona  
14 Revised Statutes (or any successor entity), in ac-  
15 cordance with State law.

16 (g) LEASES.—

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

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

24 (B) the Secretary shall execute the leases.

1           (2) AMENDMENTS.—To the extent that amend-  
2           ments are executed to make the leases described in  
3           paragraph (1) consistent with this Act, those amend-  
4           ments are authorized, ratified, and confirmed.

5 **SEC. 7. AUTHORIZATION OF RURAL WATER SYSTEM.**

6           (a) IN GENERAL.—Subject to the availability of ap-  
7           propriations, the Secretary, acting through the Bureau,  
8           shall plan, design, construct, operate, maintain, replace,  
9           and rehabilitate the WMAT rural water system as gen-  
10          erally described in the project extension report dated Feb-  
11          ruary 2007.

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

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

18                (2) pipelines extending from the water treat-  
19                ment plants to existing water distribution systems  
20                serving the Whiteriver, Carrizo, and Cibecue areas,  
21                together with other communities along the pipeline;

22                (3) connections to existing distribution facili-  
23                ties, including public and private water systems in  
24                existence on the date of enactment of this Act;

25                (4) appurtenant buildings and access roads;

1           (5) electrical power transmission and distribu-  
2           tion facilities necessary for services to rural water  
3           system facilities;

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

6           (7) such other project components as the Sec-  
7           retary determines to be appropriate to meet the  
8           water supply, economic, public health, and environ-  
9           mental needs of the portions of the reservation  
10          served by the WMAT rural water system, including  
11          water storage tanks, water lines, and other facilities  
12          for the Tribe and the villages and towns on the res-  
13          ervation.

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

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

24          (e) TITLE.—

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

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

9           (A) the designers' operating criteria,  
10 standing operating procedures, emergency ac-  
11 tion plan, and first filling and monitoring cri-  
12 teria are established and in place, and the  
13 WMAT rural water system has been declared  
14 substantially complete;

15           (B) the funds authorized to be appro-  
16 priated under section 12(b)(3)(B) have been ap-  
17 propriated and deposited in the WMAT Mainte-  
18 nance Fund; and

19           (C) the Tribe has been operating success-  
20 fully under the established standing operating  
21 procedures for a period of 5 calendar years.

22           (3) ALIENATION AND TAXATION.—Conveyance  
23 of title to the Tribe pursuant to paragraph (2) does  
24 not waive or alter any applicable Federal law prohib-



1       iting alienation or taxation of the WMAT rural  
2       water system or the underlying reservation land.

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

8       (g) APPLICABILITY OF ISDEAA.—

9           (1) AGREEMENT FOR SPECIFIC ACTIVITIES.—

10       On receipt of a request of the Tribe, and in accord-  
11       ance with the Indian Self-Determination and Edu-  
12       cation Assistance Act (25 U.S.C. 450 et seq.), the  
13       Secretary shall enter into an agreement with the  
14       Tribe to carry out the activities authorized by this  
15       section.

16           (2) CONTRACTS.—Any contract entered into  
17       pursuant to the Indian Self-Determination and Edu-  
18       cation Assistance Act (25 U.S.C. 450 et seq.) for the  
19       purpose of carrying out any provision of this Act  
20       shall incorporate such provisions regarding periodic  
21       payment of funds, timing for use of funds, trans-  
22       parency, oversight, reporting, and accountability as  
23       the Secretary determines to be necessary (at the sole  
24       discretion of the Secretary) to ensure appropriate  
25       stewardship of Federal funds.

1 (h) CONDITION.—As a condition of construction of  
2 the facilities authorized by this section, the Tribe shall  
3 provide, at no cost to the Secretary, all land or interests  
4 in land, as appropriate, that the Secretary identifies as  
5 being necessary for those facilities.

6 (i) OPERATION AND MAINTENANCE.—Subject to the  
7 availability of appropriations as provided for in section  
8 12(e), the Secretary, acting through the Bureau, shall op-  
9 erate and maintain the WMAT rural water system until  
10 the date on which title to the WMAT rural water system  
11 is conveyed to the Tribe pursuant to subsection (e)(2).

12 **SEC. 8. SATISFACTION OF CLAIMS.**

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

19 (b) USES OF WATER.—All uses of water on land out-  
20 side of the reservation, if and when such land is subse-  
21 quently and finally determined to be part of the reserva-  
22 tion through resolution of any dispute between the Tribe  
23 and the United States over the location of the reservation  
24 boundary, and any fee land within the reservation put into  
25 trust and made part of the reservation, shall be subject

1 to the maximum annual diversion amounts and the max-  
2 imum annual depletion amounts specified in the Agree-  
3 ment.

4 (c) NO RECOGNITION OF WATER RIGHTS.—Notwith-  
5 standing subsection (a), nothing in this Act has the effect  
6 of recognizing or establishing any right of a member of  
7 the Tribe to water on the reservation.

8 **SEC. 9. WAIVER AND RELEASE OF CLAIMS.**

9 (a) IN GENERAL.—

10 (1) CLAIMS AGAINST THE STATE AND OTH-  
11 ERS.—Except as provided in subsection (b)(1), the  
12 Tribe, on behalf of itself and its members, and the  
13 United States, acting in its capacity of trustee for  
14 the Tribe and its members, as part of the perform-  
15 ance of their obligations under the Agreement, are  
16 authorized to execute a waiver and release of any  
17 claims against the State (or any agency or political  
18 subdivision of the State), or any other person, enti-  
19 ty, corporation, or municipal corporation under Fed-  
20 eral, State, or other law for all—

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

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

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

10          (ii) past, present, and future claims for in-  
11 jury to water rights arising from time immemo-  
12 rial and, thereafter, forever, that are based on  
13 aboriginal occupancy of land by the Tribe and  
14 its members, or their predecessors; and

15          (iii) claims for injury to water rights aris-  
16 ing after the enforceability date for the reserva-  
17 tion and off-reservation trust land resulting  
18 from off-reservation diversion or use of water in  
19 a manner not in violation of the Agreement or  
20 State law; and

21          (C) past, present, and future claims aris-  
22 ing out of or relating in any manner to the ne-  
23 gotiation, execution, or adoption of the Agree-  
24 ment, an applicable settlement judgement or de-  
25 cree, or this Act.

1           (2) CLAIMS AGAINST TRIBE.—Except as pro-  
2           vided in subsection (b)(3), the United States, in all  
3           its capacities (except as trustee for an Indian tribe  
4           other than the Tribe), as part of the performance of  
5           its obligations under the Agreement, is authorized to  
6           execute a waiver and release of any and all claims  
7           against the Tribe, its members, or any agency, offi-  
8           cial, or employee of the Tribe, under Federal, State,  
9           or any other law for all—

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

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

20                   (C) past, present, and future claims aris-  
21                   ing out of or related in any manner to the nego-  
22                   tiation, execution, or adoption of the Agree-  
23                   ment, an applicable settlement judgement or de-  
24                   cree, or this Act.

1           (3) CLAIMS AGAINST UNITED STATES.—Except  
2           as provided in subsection (b)(2), the Tribe, on behalf  
3           of itself and its members, as part of the performance  
4           of the obligations of the Tribe under the Agreement,  
5           is authorized to execute a waiver and release of any  
6           claim against the United States, including agencies,  
7           officials, or employees of the United States (except  
8           in the capacity of the United States as trustee for  
9           other Indian tribes), under Federal, State, or other  
10          law for any and all—

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

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

20                   (B)(i) past and present claims relating in  
21                   any manner to damages, losses, or injuries to  
22                   water, water rights, land, or other resources  
23                   due to loss of water or water rights (including  
24                   damages, losses, or injuries to hunting, fishing,  
25                   gathering, or cultural rights due to loss of

1 water or water rights, claims relating to inter-  
2 ference with, diversion, or taking of water, or  
3 claims relating to failure to protect, acquire, or  
4 develop water, water rights, or water infrastruc-  
5 ture) within the reservation and off-reservation  
6 trust land that first accrued at any time prior  
7 to the enforceability date;

8 (ii) past, present, and future claims for in-  
9 jury to water rights arising from time immemo-  
10 rial and, thereafter, forever that are based on  
11 aboriginal occupancy of land by the Tribe, its  
12 members, or their predecessors; and

13 (iii) claims for injury to water rights aris-  
14 ing after the enforceability date for the reserva-  
15 tion and off-reservation trust land resulting  
16 from the off-reservation diversion or use of  
17 water in a manner not in violation of the Agree-  
18 ment or applicable law;

19 (C) past, present, and future claims aris-  
20 ing out of or relating in any manner to the ne-  
21 gotiation, execution, or adoption of the Agree-  
22 ment, an applicable settlement judgment or de-  
23 cree, or this Act;

24 (D) past and present claims relating in any  
25 manner to pending litigation of claims relating

1 to the water rights of the Tribe for the reserva-  
2 tion and off-reservation trust land;

3 (E) past and present claims relating to the  
4 operation, maintenance, and replacement of ex-  
5 isting irrigation systems on the reservation con-  
6 structed prior to the enforceability date that  
7 first accrued at any time prior to the enforce-  
8 ability date, which waiver shall only become ef-  
9 fective on the full appropriation and payment to  
10 the Tribe of \$4,950,000 authorized by section  
11 12(b)(2)(B);

12 (F) future claims relating to operation,  
13 maintenance, and replacement of the WMAT  
14 rural water system, which waiver shall only be-  
15 come effective on the full appropriation of funds  
16 authorized by section 12(b)(3)(B) and the de-  
17 posit of those funds in the WMAT Maintenance  
18 Fund;

19 (G) past and present breach of trust and  
20 negligence claims for damage to the land and  
21 natural resources of the Tribe caused by ripar-  
22 ian and other vegetative manipulation by the  
23 United States for the purpose of increasing  
24 water runoff from the reservation that first ac-



1 accrued at any time prior to the enforceability  
2 date; and

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

7 (b) RESERVATION OF RIGHTS AND RETENTION OF  
8 CLAIMS.—

9 (1) RESERVATION OF RIGHTS AND RETENTION  
10 OF CLAIMS BY TRIBE AND UNITED STATES.—

11 (A) IN GENERAL.—Notwithstanding the  
12 waiver and release of claims authorized under  
13 subsection (a)(1), the Tribe, on behalf of itself  
14 and the members of the Tribe, and the United  
15 States, acting as trustee for the Tribe and  
16 members of the Tribe, shall retain any right—

17 (i) subject to subparagraph 16.9 of  
18 the Agreement, to assert claims for inju-  
19 ries to, and seek enforcement of, the rights  
20 of the Tribe and members of the Tribe  
21 under the Agreement or this Act in any  
22 Federal or State court of competent juris-  
23 diction;

24 (ii) to assert claims for injuries to,  
25 and seek enforcement of, the rights of the

1 Tribe under the judgment and decree en-  
2 tered by the court in the Gila River adju-  
3 dication proceedings;

4 (iii) to assert claims for injuries to,  
5 and seek enforcement of, the rights of the  
6 Tribe under the judgment and decree en-  
7 tered by the court in the Little Colorado  
8 River adjudication proceedings;

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

14 (v) to participate in the Gila River ad-  
15 judication proceedings and the Little Colo-  
16 rado River adjudication proceedings to the  
17 extent provided in subparagraph 14.1 of  
18 the Agreement;

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

23 (vii) to assert any past, present, or fu-  
24 ture claim for injury to water rights  
25 against any other Indian tribe, Indian

1 community or nation, dependent Indian  
2 community, allottee, or the United States  
3 on behalf of such a tribe, community, na-  
4 tion, or allottee; and

5 (viii) to assert any past, present, or  
6 future claim for trespass, use, and occu-  
7 pancy of the reservation in, on, or along  
8 the Black River against Freeport-  
9 McMoRan Copper & Gold, Inc., Phelps  
10 Dodge Corporation, or Phelps Dodge  
11 Morenci, Inc. (or a predecessor or suc-  
12 cessor of those entities), including all sub-  
13 sidiaries and affiliates of those entities.

14 (B) AGREEMENT.—On terms acceptable to  
15 the Tribe and the United States, the Tribe and  
16 the United States are authorized to enter into  
17 an agreement with Freeport-McMoRan Copper  
18 & Gold, Inc., Phelps Dodge Corporation, or  
19 Phelps Dodge Morenci, Inc. (or a predecessor  
20 or successor of those entities), including all sub-  
21 sidiaries and affiliates of those entities, to re-  
22 solve the claims of the Tribe relating to the  
23 trespass, use, and occupancy of the reservation  
24 in, on, and along the Black River.

1           (2) RESERVATION OF RIGHTS AND RETENTION  
2           OF CLAIMS BY TRIBE AGAINST UNITED STATES.—  
3           Notwithstanding the waiver and release of claims  
4           authorized under subsection (a)(3), the Tribe, on be-  
5           half of itself and the members of the Tribe, shall re-  
6           tain any right—

7                   (A) subject to subparagraph 16.9 of the  
8                   Agreement, to assert claims for injuries to, and  
9                   seek enforcement of, the rights of the Tribe and  
10                  members under the Agreement or this Act, in  
11                  any Federal or State court of competent juris-  
12                  diction;

13                   (B) to assert claims for injuries to, and  
14                   seek enforcement of, the rights of the Tribe and  
15                   members under the judgment and decree en-  
16                   tered by the court in the Gila River adjudica-  
17                   tion proceedings;

18                   (C) to assert claims for injuries to, and  
19                   seek enforcement of, the rights of the Tribe and  
20                   members under the judgment and decree en-  
21                   tered by the court in the Little Colorado River  
22                   adjudication proceedings;

23                   (D) to object to any claims by or for any  
24                   other Indian tribe, Indian community or nation,  
25                   dependent Indian community, or the United

1 States on behalf of such a tribe, community, or  
2 nation;

3 (E) to assert past, present, or future  
4 claims for injury to water rights or any other  
5 claims other than a claim to water rights,  
6 against any other Indian tribe, Indian commu-  
7 nity or nation, dependent Indian community, or  
8 the United States on behalf of such a tribe,  
9 community, or nation;

10 (F) to assert claims arising after the en-  
11 forceability date for injury to water rights re-  
12 sulting from the drilling of wells or pumping of  
13 water from land located within national forest  
14 land as of the effective date of the Agreement  
15 in the south  $\frac{1}{2}$  of T. 9 N., R. 24 E.; south  $\frac{1}{2}$   
16 of T. 9 N., R. 25 E.; north  $\frac{1}{2}$  of T. 8 N., R.  
17 24 E.; north  $\frac{1}{2}$  of T. 8 N., R. 25 E., if—

18 (i) title to that land is no longer re-  
19 tained by the United States; or

20 (ii) water from that land is trans-  
21 ported off the land for municipal or indus-  
22 trial use;

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

1 (H) to assert any other claims not specifi-  
2 cally waived under this section; and

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

9 (3) RESERVATION OF RIGHTS AND RETENTION  
10 OF CLAIMS BY UNITED STATES.—Notwithstanding  
11 the waiver and release of claims authorized under  
12 subsection (a)(2), the United States shall retain any  
13 right to assert any claim not specifically waived in  
14 that subsection.

15 (c) EFFECTIVENESS OF WAIVER AND RELEASES.—  
16 Except as otherwise specifically provided in subparagraphs  
17 (E) and (F) of subsection (a)(3), the waivers and releases  
18 under subsection (a) shall become effective on the enforce-  
19 ability date.

20 (d) ENFORCEABILITY DATE.—

21 (1) IN GENERAL.—This section takes effect on  
22 the date on which the Secretary publishes in the  
23 Federal Register a statement of findings that—

24 (A)(i) to the extent the Agreement con-  
25 flicts with this Act, the Agreement has been re-

1           vised through an amendment to eliminate the  
2           conflict; and

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

6           (B) the Secretary has fulfilled the require-  
7           ments of sections 5 and 6;

8           (C) the amount authorized by section  
9           12(a) has been deposited in the White Moun-  
10          tain Apache Tribe Water Rights Settlement  
11          Subaccount;

12          (D) the State funds described in subpara-  
13          graph 13.3 of the Agreement have been depos-  
14          ited in the White Mountain Apache Tribe  
15          Water Rights Settlement Subaccount;

16          (E) the Secretary has issued a record of  
17          decision approving the construction of the  
18          WMAT rural water system in a configuration  
19          substantially similar to that described in section  
20          7; and

21          (F) the judgments and decrees substan-  
22          tially in the form of those attached to the  
23          Agreement as exhibits 12.9.6.1 and 12.9.6.2  
24          have been approved by the respective trial  
25          courts.

1           (2) FAILURE OF ENFORCEABILITY DATE TO  
2 OCCUR.—If, because of the failure of the enforce-  
3 ability date to occur by April 30, 2020, this section  
4 does not become effective, the Tribe and its mem-  
5 bers, and the United States, acting in the capacity  
6 of trustee for the Tribe and its members, shall re-  
7 tain the right to assert past, present, and future  
8 water rights claims and claims for injury to water  
9 rights for the reservation and off-reservation trust  
10 land.

11           (3) NO RIGHTS TO WATER.—On the occurrence  
12 of the enforceability date, all land held by the  
13 United States in trust for the Tribe and its members  
14 shall have no rights to water other than those spe-  
15 cifically quantified for the Tribe and the United  
16 States, acting in the capacity of trustee for the  
17 Tribe and its members, for the reservation and off-  
18 reservation trust land pursuant to paragraph 4.0 of  
19 the Agreement.

20           (e) UNITED STATES ENFORCEMENT AUTHORITY.—  
21 Nothing in this Act or the Agreement affects any right  
22 of the United States to take any action, including environ-  
23 mental actions, under any laws (including regulations and  
24 the common law) relating to human health, safety, or the  
25 environment.



1           (f) NO EFFECT ON WATER RIGHTS.—Except as pro-  
2 vided in paragraphs (1)(A)(ii), (1)(B)(ii), (3)(A)(ii), and  
3 (3)(B)(ii) of subsection (a), nothing in this Act affects any  
4 rights to water of the Tribe, its members, or the United  
5 States acting as trustee for the Tribe and members, for  
6 land outside the boundaries of the reservation or the off-  
7 reservation trust land.

8           (g) ENTITLEMENTS.—Any entitlement to water of  
9 the Tribe, its members, or the United States acting as  
10 trustee for the Tribe and members, relating to the reserva-  
11 tion or off-reservation trust land shall be satisfied from  
12 the water resources granted, quantified, confirmed, or rec-  
13 ognized with respect to the Tribe, members, and the  
14 United States by the Agreement and this Act.

15           (h) OBJECTION PROHIBITED.—Except as provided in  
16 subsection (b)(2)(F), the Tribe and the United States act-  
17 ing as trustee for the Tribe shall not—

18               (1) object to the usage of any well located out-  
19 side the boundaries of the reservation or the off-res-  
20 ervation trust land, as in existence on the enforce-  
21 ability date; or

22               (2) object to, dispute, or challenge after the en-  
23 forceability date the drilling of any well or the with-  
24 drawal and use of water from any well in the Little  
25 Colorado River adjudication proceedings, the Gila

1 River adjudication proceedings, or any other judicial  
2 or administrative proceeding.

3 **SEC. 10. WHITE MOUNTAIN APACHE TRIBE WATER RIGHTS**  
4 **SETTLEMENT SUBACCOUNT.**

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

10 (1) the amounts made available under sub-  
11 section (e);

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

15 (3) such other amounts as are available includ-  
16 ing the funds provided in subparagraph 13.3 of the  
17 Agreement.

18 (b) EXPENDITURES AND WITHDRAWALS.—

19 (1) CONTRACTS.—

20 (A) IN GENERAL.—The Tribe may with-  
21 draw any portion of the White Mountain  
22 Apache Tribe Water Rights Settlement Sub-  
23 account on approval by the Secretary pursuant  
24 to the terms of an agreement entered into  
25 under section 7(g).

1           (B) REQUIREMENTS.—An agreement en-  
2           tered into under section 7(g) shall require that  
3           the Tribe shall use the amounts in the White  
4           Mountain Apache Tribe Water Rights Settle-  
5           ment Subaccount only for the planning, design,  
6           and construction of the rural water system, in-  
7           cluding such sums as are necessary—

8                   (i) for the Bureau to carry out over-  
9                   sight of the planning, design, and con-  
10                  struction of the rural water system;

11                  (ii) to repay any outstanding balance  
12                  on the loan authorized by the White Moun-  
13                  tain Apache Tribe Rural Water System  
14                  Loan Authorization Act (Public Law 110–  
15                  390; 122 Stat. 4191); and

16                  (iii) to carry out all required environ-  
17                  mental compliance activities associated  
18                  with the planning, design, and construction  
19                  of the rural water system.

20           (2) ENFORCEMENT.—The Secretary may pur-  
21           sue such judicial remedies and carry out such ad-  
22           ministrative actions as are necessary to enforce an  
23           agreement described in paragraph (1) to ensure that  
24           amounts in the White Mountain Apache Tribe Water

1 Rights Settlement Subaccount are used in accord-  
2 ance with this section.

3 (3) LIABILITY.—On withdrawal by the Tribe of  
4 amounts in the White Mountain Apache Tribe Water  
5 Rights Settlement Subaccount, the Secretary and  
6 the Secretary of the Treasury shall not retain liabil-  
7 ity for the expenditure or investment of those  
8 amounts.

9 (4) EXPENDITURE PLAN.—

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

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

19 (C) APPROVAL.—The Secretary shall ap-  
20 prove an expenditure plan under this paragraph  
21 if the Secretary determines that the plan is—

22 (i) reasonable; and

23 (ii) consistent with this Act.

24 (5) ANNUAL REPORTS.—The Tribe shall submit  
25 to the Secretary an annual report that describes

1 each expenditure from the White Mountain Apache  
2 Tribe Water Rights Settlement Subaccount during  
3 the year covered by the report.

4 (c) PROHIBITION ON PER CAPITA DISTRIBUTIONS.—

5 No amount of the principal, or the interest or income ac-  
6 cruing on the principal, of the White Mountain Apache  
7 Tribe Water Rights Settlement Subaccount shall be dis-  
8 tributed to any member of the Tribe on a per capita basis.

9 (d) AVAILABILITY OF FUNDS.—

10 (1) IN GENERAL.—Amounts in the White  
11 Mountain Apache Tribe Water Rights Settlement  
12 Subaccount shall not be available for expenditure or  
13 withdrawal by the Tribe until the enforceability date.

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

19 (3) USE OF INTEREST.—The interest accrued  
20 on amounts invested under paragraph (2) shall not  
21 be available for expenditure or withdrawal until the  
22 later of—

23 (A) November 1, 2019; and

24 (B) the enforceability date.

1 (e) LOWER COLORADO RIVER BASIN DEVELOPMENT  
2 FUND.—

3 (1) IN GENERAL.—Of amounts in the Lower  
4 Colorado River Basin Development Fund made  
5 available under section 403(f)(2)(D)(vi) of the Colo-  
6 rado River Basin Project Act (43 U.S.C. 1543  
7 (f)(2)(D)(vi)), an amount equal to the difference be-  
8 tween the balance of the White Mountain Apache  
9 Tribe Settlement Subaccount (as of November 1,  
10 2019), and the amount authorized to be appro-  
11 priated under section 12(a)(1), but not to exceed  
12 \$100,000,000, shall be deposited, without further  
13 appropriation, in the White Mountain Apache Tribe  
14 Settlement Subaccount.

15 (2) AVAILABILITY OF FUNDS.—The funds au-  
16 thorized to be deposited in the White Mountain  
17 Apache Tribe Settlement Subaccount pursuant to  
18 paragraph (1) shall not be available for expenditure  
19 or withdrawal until the later of—

20 (A) November 1, 2019; and

21 (B) the enforceability date.

22 **SEC. 11. MISCELLANEOUS PROVISIONS.**

23 (a) LIMITED WAIVER OF SOVEREIGN IMMUNITY.—

24 (1) IN GENERAL.—In the case of a civil action  
25 described in paragraph (2)—

1 (A) the United States or the Tribe, or  
2 both, may be joined in the civil action; and

3 (B) any claim by the United States or the  
4 Tribe to sovereign immunity from the civil ac-  
5 tion is waived for the sole purpose of resolving  
6 any issue regarding the interpretation or en-  
7 forcement of this Act or the Agreement.

8 (2) DESCRIPTION OF CIVIL ACTION.—A civil ac-  
9 tion referred to in paragraph (1) is a civil action  
10 filed—

11 (A) by any party to the Agreement or sig-  
12 natory to an exhibit to the Agreement in a  
13 United States or State court that—

14 (i) relates solely and directly to the in-  
15 terpretation or enforcement of this Act or  
16 the Agreement; and

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

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

22 (i) relates solely and directly to the in-  
23 terpretation or enforcement of section 9 of  
24 this Act and paragraph 12.0 of the Agree-  
25 ment; and

1 (ii) names as a party the United  
2 States or the Tribe.

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

7 (c) LIMITATION ON LIABILITY OF UNITED  
8 STATES.—

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

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

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

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

23 (d) APPLICABILITY OF RECLAMATION REFORM  
24 ACT.—The Reclamation Reform Act of 1982 (43 U.S.C.  
25 390aa et seq.) and any other acreage limitation or full-



1 cost pricing provision under Federal law shall not apply  
2 to any individual, entity, or land solely on the basis of—

3 (1) receipt of any benefit under this Act;

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

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

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

14 (1) Lower Black River (T. 3 N., R. 26 E.; T.  
15 3 N., R. 27 E.).

16 (2) Black River Pumps (T. 2 N., R. 25 E.; T.  
17 2 N., R. 26 E.; T. 3 N., R. 26 E.).

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

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

23 (5) Walnut Canyon (T. 5 N., R. 17 E.; T. 5 N.,  
24 R. 18 E.).

1           (6) Gleason Flat (T. 4½ N., R. 16 E.; T. 5 N.,  
2           R. 16 E.).

3           (f) NO EFFECT ON FUTURE ALLOCATIONS.—Water  
4 received under a lease or exchange of tribal CAP water  
5 under this Act shall not affect any future allocation or  
6 reallocation of CAP water by the Secretary.

7           (g) AFTER-ACQUIRED TRUST LAND.—

8           (1) REQUIREMENT OF ACT OF CONGRESS.—

9           (A) LEGAL TITLE.—After the enforce-  
10 ability date, if the Tribe seeks to have legal title  
11 to additional land in the State of Arizona lo-  
12 cated outside the exterior boundaries of the res-  
13 ervation taken into trust by the United States  
14 for its benefit, the Tribe may do so only pursu-  
15 ant to an Act of Congress specifically author-  
16 izing the transfer for the benefit of the Tribe.

17           (B) EXCEPTIONS.—Subparagraph (A)  
18 shall not apply to—

19           (i) restoration of land to the reserva-  
20 tion subsequently and finally determined to  
21 be part of the reservation through resolu-  
22 tion of any dispute between the Tribe and  
23 the United States over the location of the  
24 reservation boundary unless required by  
25 Federal law; or

1 (ii) off-reservation trust land acquired  
2 prior to January 1, 2008.

3 (2) WATER RIGHTS.—

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

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

15 (3) ACCEPTANCE OF LAND IN TRUST STATUS.—

16 (A) IN GENERAL.—If the Tribe acquires  
17 legal fee title to land that is located within the  
18 exterior boundaries of the reservation, the Sec-  
19 retary shall accept the land in trust status for  
20 the benefit of the Tribe in accordance with ap-  
21 plicable Federal law (including regulations) for  
22 such real estate acquisitions.

23 (B) RESERVATION STATUS.—Land taken  
24 or held in trust by the Secretary under para-  
25 graph (3), or restored to the reservation as a

1 result of resolution of a boundary dispute be-  
2 tween the Tribe and the United States, shall be  
3 deemed to be part of the reservation.

4 (h) CONFORMING AMENDMENT.—Section 3(b)(2) of  
5 the White Mountain Apache Tribe Rural Water System  
6 Loan Authorization Act (Public Law 110–390; 122 Stat.  
7 4191) is amended by striking “January 1, 2013” and in-  
8 serting “May 1, 2020”.

9 **SEC. 12. AUTHORIZATION OF APPROPRIATIONS.**

10 (a) RURAL WATER SYSTEM.—

11 (1) IN GENERAL.—There is authorized to be  
12 appropriated for the planning, engineering, design,  
13 environmental compliance, and construction of the  
14 WMAT rural water system \$126,193,000.

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

22 (b) WMAT SETTLEMENT AND MAINTENANCE  
23 FUNDS.—

24 (1) DEFINITION OF FUNDS.—In this sub-  
25 section, the term “Funds” means—

1 (A) the WMAT Settlement Fund estab-  
2 lished by paragraph (2)(A); and

3 (B) the WMAT Maintenance Fund estab-  
4 lished by paragraph (3)(A).

5 (2) WMAT SETTLEMENT FUND.—

6 (A) ESTABLISHMENT.—There is estab-  
7 lished in the Treasury of the United States a  
8 fund to be known as the “WMAT Settlement  
9 Fund”, consisting of such amounts as are de-  
10 posited in the fund under subparagraph (B), to-  
11 gether with any interest accrued on those  
12 amounts, for use by the Tribe in accordance  
13 with subparagraph (C).

14 (B) TRANSFERS TO FUND.—There is au-  
15 thorized to be appropriated to the Secretary  
16 \$113,500,000 for deposit in the WMAT Settle-  
17 ment Fund, of which not less than \$4,950,000  
18 shall be used for the rehabilitation of existing  
19 irrigation systems.

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

23 (i) Fish production, including hatch-  
24 eries.

1 (ii) Rehabilitation of recreational  
2 lakes and existing irrigation systems.

3 (iii) Water-related economic develop-  
4 ment projects.

5 (iv) Protection, restoration, and eco-  
6 nomic development of forest and watershed  
7 health.

8 (v) Any cost overruns for the comple-  
9 tion of the WMAT rural water system, as  
10 provided in subsection (f).

11 (3) WMAT MAINTENANCE FUND.—

12 (A) ESTABLISHMENT.—There is estab-  
13 lished in the Treasury of the United States a  
14 fund to be known as the “WMAT Maintenance  
15 Fund”, consisting of such amounts as are de-  
16 posited in the fund under subparagraph (B), to-  
17 gether with any interest accrued on those  
18 amounts, for use by the Tribe in accordance  
19 with subparagraph (C).

20 (B) TRANSFERS TO FUND.—There is au-  
21 thorized to be appropriated to the Secretary  
22 \$50,000,000 for deposit in the WMAT Mainte-  
23 nance Fund.

24 (C) USE OF FUNDS.—The Tribe or the  
25 Secretary, as applicable, shall use amounts in

1 the WMAT Maintenance Fund only for the op-  
2 eration, maintenance, and replacement costs as-  
3 sociated with the delivery of water through the  
4 rural water system.

5 (4) ADMINISTRATION.—The Secretary shall  
6 manage the Funds in accordance with the American  
7 Indian Trust Fund Management Reform Act of  
8 1994 (25 U.S.C. 4001 et seq.), including by invest-  
9 ing amounts in the Funds in accordance with—

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

12 (B) the first section of the Act of June 24,  
13 1938 (25 U.S.C. 162a).

14 (5) AVAILABILITY OF AMOUNTS FROM  
15 FUNDS.—Amounts in the Funds shall be available  
16 for expenditure or withdrawal only after the enforce-  
17 ability date in accordance with subsection (g).

18 (6) EXPENDITURE AND WITHDRAWAL.—

19 (A) TRIBAL MANAGEMENT PLAN.—

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

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

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

12 (iii) ENFORCEMENT.—The Secretary  
13 may take judicial or administrative action  
14 to enforce the provisions of a tribal man-  
15 agement plan under this subparagraph to  
16 ensure that any amounts withdrawn from  
17 the Funds under the plan are used in ac-  
18 cordance with this Act and the Agreement.

19 (iv) LIABILITY.—If the Tribe exer-  
20 cises the right to withdraw amounts from  
21 the Funds, neither the Secretary nor the  
22 Secretary of the Treasury shall retain any  
23 liability for the expenditure or investment  
24 of the amounts.

25 (B) EXPENDITURE PLAN.—



1 (i) IN GENERAL.—The Tribe shall  
2 submit to the Secretary for approval an ex-  
3 penditure plan for any portion of the  
4 amounts in the Funds that the Tribe does  
5 not withdraw under the tribal management  
6 plan.

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

12 (iii) APPROVAL.—On receipt of an ex-  
13 penditure plan under clause (i), the Sec-  
14 retary shall approve the plan if the Sec-  
15 retary determines that the plan is reason-  
16 able and consistent with this Act and the  
17 Agreement.

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

23 (C) CERTAIN PER CAPITA DISTRIBUTIONS  
24 PROHIBITED.—No amount in the Funds shall

1           be distributed to any member of the Tribe on  
2           a per capita basis.

3           (c) COST INDEXING.—All amounts authorized to be  
4 appropriated under subsections (a) and (b) shall be ad-  
5 justed as may be required to reflect the changes since Oc-  
6 tober 1, 2007, in the construction cost indices applicable  
7 to the types of construction involved in the construction  
8 of the WMAT rural water supply system, the maintenance  
9 of the rural water supply system, and the construction or  
10 rehabilitation of the other development projects authorized  
11 under subsection (b)(2)(C).

12           (d) EMERGENCY FUND FOR INDIAN SAFETY AND  
13 HEALTH.—

14           (1) DEFINITION OF EMERGENCY FUND FOR IN-  
15 DIAN SAFETY AND HEALTH.—In this subsection, the  
16 term “Emergency Fund for Indian Safety and  
17 Health” means the Emergency Fund for Indian  
18 Safety and Health established by section 601(a) of  
19 the Tom Lantos and Henry J. Hyde United States  
20 Global Leadership Against HIV/AIDS, Tuberculosis,  
21 and Malaria Reauthorization Act of 2008 (22 U.S.C.  
22 7601 et seq.).

23           (2) INITIAL TRANSFER.—Not later than 90  
24 days after the date of enactment of this Act, such  
25 amounts as are available, but not to exceed

1       \$50,000,000, in the Emergency Fund for Indian  
2       Safety and Health shall be transferred to the White  
3       Mountain Apache Tribe Water Rights Settlement  
4       Subaccount.

5           (3) SUBSEQUENT TRANSFER.—Effective begin-  
6       ning on January 1, 2012, if the Secretary deter-  
7       mines that, on an annual basis, the amount author-  
8       ized to be appropriated under subsection (a) will not  
9       be appropriated and deposited in the White Moun-  
10      tain Apache Tribe Water Rights Settlement Sub-  
11      account by October 31, 2012, not more than  
12      \$50,000,000 of the amounts in the Emergency Fund  
13      for Indian Safety and Health shall be transferred to  
14      the White Mountain Apache Tribe Water Rights  
15      Settlement Subaccount, as necessary to complete the  
16      WMAT rural water system project.

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

22           (e) OPERATION, MAINTENANCE, AND REPLACE-  
23      MENT.—

24           (1) IN GENERAL.—There is authorized to be  
25      appropriated to the Secretary \$2,500,000 for the op-

1       eration, maintenance, and replacement costs of the  
2       WMAT rural water system, to remain available until  
3       the conditions described in subsection (g) have been  
4       met.

5           (2) SUBSEQUENT FUNDING.—Beginning on No-  
6       vember 1, 2019, or the enforceability date, whichever  
7       is later, the Tribe or the Secretary, as applicable,  
8       may use amounts deposited in the WMAT Mainte-  
9       nance Fund under subsection (b)(3)(B) for oper-  
10      ation, maintenance, and replacement costs of the  
11      WMAT rural water system.

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

24      (g) CONDITIONS.—The amounts authorized to be ap-  
25      propriated to the Secretary for deposit in the WMAT

1 Maintenance Fund, together with any interest accrued  
2 thereon, under subsection (b)(3), and any interest accru-  
3 ing on the WMAT Settlement Fund under subsection  
4 (b)(2), shall not be available for expenditure or withdrawal  
5 until the later of—

6 (1) November 1, 2019; and

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

10 **SEC. 13. ANTIDEFICIENCY.**

11 The United States shall not be liable for failure to  
12 carry out any obligation or activity authorized to be car-  
13 ried out, subject to appropriations, under this Act (includ-  
14 ing any such obligation or activity under the Agreement)  
15 if adequate appropriations for that purpose are not pro-  
16 vided by Congress.

17 **SEC. 14. REPEAL ON FAILURE OF ENFORCEABILITY DATE.**

18 If the Secretary fails to publish in the Federal Reg-  
19 ister a statement of findings as required under section  
20 9(d) by not later than April 30, 2020—

21 (1) effective beginning on May 1, 2020—

22 (A) this Act is repealed; and

23 (B) any action carried out by the Sec-  
24 retary, and any contract entered into, pursuant  
25 to this Act shall be void;

1           (2) any amounts appropriated under sub-  
2 sections (a), (b), (d), and (e) of section 12, together  
3 with any interest accrued on those amounts, shall  
4 immediately revert to the general fund of the Treas-  
5 ury; and

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

12 **SEC. 15. COMPLIANCE WITH ENVIRONMENTAL LAWS.**

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

15           (1) the National Environmental Policy Act of  
16 1969 (42 U.S.C. 4321 et seq.);

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

19           (3) all other applicable Federal environmental  
20 laws; and

21           (4) all regulations promulgated under the laws  
22 described in paragraphs (1) through (3).

Passed the House of Representatives January 21,  
2010.

Attest:

LORRAINE C. MILLER,

*Clerk.*



Calendar No. 340

11<sup>TH</sup> CONGRESS  
2<sup>D</sup> Session

**H. R. 1065**

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**AN ACT**

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

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MARCH 26 (legislative day, MARCH 25), 2010

Read twice and placed on the calendar