

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

DECEMBER 21, 2022.—Ordered to be printed

Mr. SCHATZ, from the Committee on Indian Affairs,  
submitted the following

R E P O R T

[To accompany S. 3168]

The Committee on Indian Affairs, to which was referred the bill, 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, having considered the same, reports favorably thereon with an amendment, in the nature of a substitute, and recommends that the bill, as amended, do pass.

PURPOSE

S. 3168 would amend the White Mountain Apache Tribe (WMAT) Water Rights Quantification Act of 2010<sup>1</sup> to modify the enforceability date for certain provisions of the settlement and adjust the costs for the construction of the Tribe's rural water system.

BACKGROUND

In 2010, Congress passed the White Mountain Apache Tribe Water Rights Quantification Act. Among other things, the Act authorized federal funding for the construction of the White Mountain Apache Rural Water System (RWS Project). The RWS Project includes construction and operation of a dam, storage reservoir, pumping plant, treatment facilities, and distribution system to provide a secure, safe, and dependable water supply for the Tribe and its members.

NEED FOR LEGISLATION

Since passage of the Act, unanticipated technical and engineering issues have created cost overruns and project delays, requiring two previous amendments to the Act. The first amendment clarified that water settlement funds can be used for planning, design and

<sup>1</sup> Pub. L. No. 111-291, 124 Stat. 3073.

construction of the RWS Project.<sup>2</sup> The second amendment extended the enforceability date of the Act from 2021 to 2023, which was intended to provide the Secretary of the Interior with sufficient time to meet their statutory obligations.<sup>3</sup>

#### SUMMARY OF THE BILL

S. 3168 amends the White Mountain Apache Tribe Water Rights Settlement Act of 2010 to extend, from 2023 to 2027, the deadline for the Department of the Interior to publish a statement of findings in the Federal Register in order to ensure the Act remains enforceable; make conforming amendments to the White Mountain Apache Tribe Rural Water System Loan Authorization Act; and increase the authorization of appropriations for the RWS Project's cost overrun account from \$11,000,000 to \$541,000,000.

#### LEGISLATIVE HISTORY

Senators Kelly and Sinema introduced S. 3168 on November 4, 2021. On March 23, 2022, the Committee held a legislative hearing on the bill. The Committee on Indian Affairs held a hearing on S. 3168 on March 23, 2022. The Committee met in an open business session on November 16, 2022, and ordered S. 3168 favorably reported, as amended.

Representative O'Halleran (D-AZ) introduced an identical companion bill, H.R. 5880, in the House of Representatives on November 4, 2021. On the same day, the House of Representatives referred the bill to the Committee on Natural Resources. The Subcommittee on Water, Oceans, and Wildlife held a hearing on H.R. 5880 on May 12, 2022.

#### COMMITTEE AMENDMENT

During its consideration of S. 3168, the Committee adopted an amendment in the nature of a substitute to extend the enforceability date for the settlement from 2023 to 2027 and to increase the cost overruns account authorization of appropriations from \$11 million to \$541 million. The amendment is further described in the Section-by-Section analysis.

#### SECTION-BY-SECTION ANALYSIS

##### *Section 1—Extension of Enforceability Date*

Section 1(a) extends the White Mountain Apache Tribe Water Rights Quantification Act of 2010 enforceability date by four years, from 2023 to 2027, and makes conforming edits to the White Mountain Apache Tribe Rural Water System Loan Authorization Act.

Section 1(b) provides for cost adjustments within the WMAT Water Rights Settlement Subaccount, WMAT Settlement Fund, WMAT Maintenance Fund, WMAT Cost Overrun Subaccount, and for construction costs.

Section 1(c) increases the authorization of appropriations from \$11,000,000 to \$541,000,000.

Section 1(d) provides that unobligated amounts within the Cost overrun Subaccount shall be transferred to the WMAT on the date

<sup>2</sup>Pub. L. No. 115–227.

<sup>3</sup>Pub. L. No. 116–94, 133 Stat. 2534.

on which title to the WMAT rural water system is conveyed to the Tribe, and authorizes appropriations of \$78,500,000 for deposit into the WMAT Settlement Fund.

Section 1(e) incorporates by reference a new subsection regarding substantial completion of the WMAT rural water system.

Section 1(f) establishes alternate conditions precedent for determining if the WMAT rural water system is substantially complete.

Section 1(g) clarifies conditions for deducting amounts from the WMAT Water Rights Settlement Subaccount based on expenditure of federal funds.

Section 1(h) directs the Secretary to include confirmation in their required Statement of Findings that certain funds have been deposited into the WMAT Cost Overrun Subaccount.

#### COST AND BUDGETARY CONSIDERATIONS

The Congressional Budget Office estimate of the costs of S. 3168, as ordered reported, has been requested but was not received at the time the report was filed. When the Congressional Budget Office completes its cost estimate, it will be posted on the Internet at [www.cbo.gov](http://www.cbo.gov).

#### REGULATORY AND PAPERWORK IMPACT STATEMENT

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires each report accompanying a bill to evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill. The Committee believes that S. 3168 will have minimal impact on regulatory or paperwork requirements.

#### EXECUTIVE COMMUNICATIONS

The Committee has received no communications from the Executive Branch regarding S. 3168.

#### CHANGES IN EXISTING LAW

On February 11, 2021 the Committee unanimously approved a motion to waive subsection 12 of rule XXVI of the Standing Rules of the Senate. In the opinion of the Committee, it is necessary to dispense with subsection 12 of rule XXVI of the Standing Rules of the Senate to expedite the business of the Senate.