

HUALAPAI TRIBE WATER RIGHTS SETTLEMENT ACT OF
2022

DECEMBER 22, 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. 4104]

The Committee on Indian Affairs, to which was referred the bill (S. 4104) to approve the settlement of water rights claims of the Hualapai Tribe and certain allottees in the State of Arizona, to authorize construction of a water project relating to those water rights claims, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill (as amended) do pass.

PURPOSE

S. 4104 authorizes and ratifies the water rights settlement agreement between the Hualapai Tribe, certain allottees, and the state of Arizona. S. 4104 also funds water-related projects and allows the Tribe to access water from the Colorado River, the Bill Williams River, and the Verde River. The bill also transfers certain lands into trust for the Hualapai Tribe.¹

BACKGROUND

The Hualapai reservation was established in two locations by a series of Executive Orders.² The primary reservation is comprised of approximately 1 million acres along the Grand Canyon in northwest Arizona. The secondary reservation is comprised of approximately 60 acres located 40 miles south of the primary reservation. Although the Hualapai Reservation is bordered in part by a 108-mile stretch of the Colorado River, the Tribe relies on unpredict-

¹In the future, land located outside the reservation may only be taken into trust through an act of Congress.

²Exec. Order of January 4, 1883; Exec. Order of December 22, 1898; Exec. Order of May 14, 1900; Exec. Order of June 2, 1911.

able groundwater supplies as its primary source of water because it has not yet settled its water rights to the river.³

NEED FOR LEGISLATION

Water use on the primary reservation occurs in two locations—Peach Springs and Grand Canyon West—but neither of these locations have adequate infrastructure to support sustained future use.⁴ Infrastructure problems have not only caused general water insecurity, they have also hindered the reservation economy by forcing the Tribe to limit its Grand Canyon-based tourism activities in Grand Canyon West, the main economic driver for the reservation.

In an effort to address water insecurity and related economic development challenges, the Tribe has been negotiating its water rights claims since 2011. The first phase of negotiations settled the Tribe’s water rights to off-reservation tracts in the Bill Williams River Basin,⁵ and the second phase—which includes S. 4104—will settle the remaining water rights in the Bill Williams River Basin and the Colorado and Verde River Basins. As such, enactment of S. 4104 will resolve, fully and finally, all of the Tribe’s claims to water rights in the State of Arizona.

SUMMARY OF THE BILL

S. 4104 authorizes, ratifies, and confirms the Hualapai Water Rights Settlement Agreement; establishes limitations on the storage, transfer, lease, and transport of water from the Hualapai Central Arizona Project; establishes the Hualapai Water Trust Fund Account and the Hualapai Water Settlement Implementation Fund Account; adds certain lands to the Hualapai Reservation and places additional lands into trust for the benefit of the Hualapai Tribe; provides for reallocation of approximately 4,000 acre-feet per year of CAP water to the Tribe and firms certain specified quantities of that water; and places certain requirements on the Secretary of the Interior.

LEGISLATIVE HISTORY

On April 28, 2022, Senator Sinema (D–AZ) and Senator Kelly (D–AZ) introduced S. 4104, the *Hualapai Tribe Water Rights Settlement Act of 2022*. On the same day, the Senate referred the bill to the Committee on Indian Affairs. On July 20, 2022, the Committee held a legislative hearing. On November 16, 2022, the Committee held a mark-up and ordered the bill to be reported favorably with an amendment in the nature of a substitute.

On April 28, 2022, Representative O’Halloran (D–AZ) introduced H.R. 7633, an identical companion bill. On the same day, the

³Hybrid Legislative Hearing on H.R. 263, H.R. 3081, H.R. 5880, H.R. 6238, H.R. 6369, H.R. 7612, H.R. 7632, and H.R., 7633 Before the Subcomm. On Water, Oceans, and Wildlife of the H. Comm. on Nat. Res., 117th Cong. (2022) (statement for the rec. of U.S. Dep’t of Interior Off. of Cong. and Legis. Affs.); Hybrid Legislative Hearing on H.R. 263, H.R. 3081, H.R. 5880, H.R. 6238, H.R. 6369, H.R. 7612, H.R. 7632, and H.R. 7633 Before the Subcomm. On Water, Oceans, and Wildlife of the H. Comm. on Nat. Res., 117th Cong. (2022) (testimony of Dr. Damon Clarke, Chairman, Hualapai Tribe).

⁴Peach Springs is supplied by three wells that have old, failing infrastructure and issues with E-coli and coliform contamination; the well supplying Grand Canyon West ran dry in 2019, forcing the Tribe to haul water from 30 miles away.

⁵Bill Williams River Water Rights Settlement Act of 2014, Pub. L. No. 113–223, 128 Stat. 2096 (2014).

House of Representatives referred the bill to the Committee on Natural Resources. On April 29, 2022, H.R. 7633 was further referred to the Committee on Natural Resources, Subcommittee on Water, Oceans, and Wildlife. On May 12, 2022, the Subcommittee held a hearing and Representatives Stanton (D–AZ), Gosar (R–AZ), and Gallego (D–AZ) joined as co-sponsors. Representative Kirkpatrick (D–AZ) joined as a co-sponsor on May 18, 2022. To date, the House has taken no further action on H.R. 7633.

Representative Neguse (D–CO) introduced H.R. 5118, the Continental Divide Trail Completion Act, along with Representatives Leger Fernandez (D–NM), Stansbury (D–NM), and Beyer (D–VA) on August 27, 2022. Title V of Division B of H.R. 5118, is substantially similar to S. 4104. On the day it was introduced, H.R. 5118 was referred to the Committee on Natural Resources. On September 8, 2021, the bill was further referred to the Committee on Natural Resources, Subcommittee on National Parks, Forest, and Public Lands. On November 9, 2021, the Subcommittee held a hearing. The subcommittee discharged the bill on January 19, 2022, and on the same day, the Committee on Natural Resources marked up the bill. Representative Neguse offered an amendment in the nature of a substitute which was agreed to by voice vote. The bill was reported and placed on the Union Calendar, as amended, on July 18, 2022. The bill passed the House by a vote of 218 to 199 on July 29, 2022. H.R. 5118 was received in the Senate on August 2, 2022.

116th Congress. On May 1, 2019, Senators McSally (R–AZ) and Sinema (D–AZ) introduced S. 1277, the *Hualapai Tribe Water Rights Settlement Act of 2019*. On the same day, the Senate referred the bill to the Committee on Indian Affairs. The Senate took no further action on S. 1277 in the 116th Congress.

On May 1, 2019, Representatives O’Halloran (D–AZ), Stanton (D–AZ), Kirkpatrick (D–AZ), Gallego (R–AZ), Gosar (R–AZ), Schweikert (R–AZ), and Lesko (R–AZ) introduced H.R. 2459, an identical companion bill. On the same day, the bill was referred to the Committee on Natural Resources. On May 8, 2019, H.R. 2459 was further referred to the Natural Resources Committee, Subcommittee on Water, Oceans, and Wildlife. On June 6, 2019, the Subcommittee held a hearing. The House took no further action on H.R. 2459 in the 116th Congress.

Prior to the 116th Congress, the Senate Committee on Indian Affairs considered various versions of the *Hualapai Tribe Water Rights Settlement Act*.⁶ The House Committee on Natural Resources considered the *Hualapai Tribe Water Rights Settlement Act* in the 115th Congress, but no further action was taken.⁷

COMMITTEE AMENDMENT

During its consideration of S. 4104, the Committee adopted an amendment in the nature of a substitute. The amendment increases the authorization of appropriations to \$312,000,000; corrects the coordinate reference to the Valentine Cemetery parcel; prevents the Tribe’s leasing and exchanging activities from extending to Navajo, Apache, or Cochise Counties; and separate the Sec-

⁶ Hualapai Tribe Water Rights Settlement Act of 2017, S. 1770, 115th Cong. (2017); Hualapai Tribe Water Rights Settlement Act of 2016, S. 3300, 114th Cong. (2016).

⁷ Hualapai Tribe Water Rights Settlement Act of 2017, H.R. 4723, 115th Cong. (2017).

retary’s environmental review process from the process to determine the enforceability date of the settlement agreement.

SECTION-BY-SECTION ANALYSIS OF S. 4104 AS ORDERED REPORTED

Section 1—Short title

This section sets forth the short title as the “Hualapai Tribe Water Rights Settlement Act of 2022.”

Section 2—Purposes

This section clarifies that the purpose of the Act is to fully and finally resolve the water rights claims of the Hualapai Tribe and the United States to water in the state of Arizona, including the Verde River, Bill Williams River, and the Colorado River; to authorize, ratify, and confirm the Hualapai Tribe water rights settlement agreement; to authorize and direct the Secretary to execute their duties and obligations under the Hualapai Tribe water rights agreement and the Act; and to authorize appropriations necessary to carry out the Hualapai Tribe water rights settlement agreement.

Section 3—Definitions

This section clarifies applicable definitions.

Section 4—Ratification and Execution of Hualapai Tribe Water Rights Settlement Agreement

Section 4(a) authorizes, ratifies, and confirms the Hualapai water rights settlement agreement and amendments thereto that make the settlement consistent with the Act.

Section 4(b) directs the Secretary to execute the Hualapai water rights settlement agreement; and permits the Secretary to approve modifications to appendices and exhibits, provided that such modifications are consistent with the Act and do not require congressional approval.

Section 4(c) directs the Secretary to comply with the Endangered Species Act, the National Environmental Policy Act (NEPA), and other applicable federal laws when implementing the settlement agreement, and to prepare any necessary environmental documents consistent with applicable provisions of such laws. This section also clarifies that execution of the settlement agreement by the Secretary shall not constitute a major federal action under NEPA.

Section 5—Water Rights

Section 5(a) directs that the United States will hold, in trust, certain water rights for the benefit of the Hualapai Tribe and certain allottees.

Section 5(b) clarifies that certain water rights will not be subject to loss through non-use, forfeiture, abandonment, or other operation of law.

Section 5(c) prohibits permanent alienation by the Tribe of any water entitlement purchased with amounts in the Economic Development Fund described in the settlement agreement.

Section 5(d) clarifies that the Hualapai Tribe has the right to divert, use, and store Hualapai Tribe Central Arizona Project (CAP) water in accordance with Section 13.

Section 5(e) affirms the rights of the Hualapai Tribe to use, store, assign, transfer, lease, and transport water from the Colorado River and establishes the conditions under which such rights may be exercised.

Section 5(f) prevents the off-reservation sale, lease, transfer, or use of groundwater or surface water from the Tribe's reservation or trust land, other than under exchange.

Section 5(g) clarifies that groundwater may be transported in accordance with state law: (1) away from Hualapai fee land and land the Tribe acquires in fee after the enforceability date; and (2) away from land added to the Hualapai Reservation by Sections 11 and 12 to other land within the Hualapai Reservation.

Section 6—Hualapai Water Trust Fund Account; Construction of Hualapai Water Project; Funding

Section 6(a)(1)–(2) establishes the Hualapai Water Trust Fund Account and directs the Secretary to deposit appropriated amounts into the account.

Section 6(a)(3)–(4) requires the Secretary to manage the account in accordance with the American Indian Trust Fund Management Reform Act of 1994 and other federal laws governing the deposit and investment of Tribal funds; to invest the trust funds with earnings accruing to the Tribe; and to make the trust funds generally available to the Tribe on the enforceability date, with funds for environmental compliance activities made available immediately upon deposit.

Section 6(a)(5)–(6) permits the Tribe to withdraw from the account pursuant to a Tribal management or expenditure plan approved by the Secretary, authorizes the Secretary to approve and enforce such management and expenditure plans, states that the Secretary's approval decisions generally shall not be subject to judicial review except under the Administrative Procedure Act.

Section 6(a)(7) limits use of the trust funds to: (1) planning, design, and construction of projects to divert, treat, and convey up to 3,414 acre feet per year of water from the Colorado River in the lower basin; (2) operation, maintenance, and replacement (OM&R) activities on the Hualapai Water Project Account; (3) construction of facilities to transport electrical power to pump water for the Hualapai Water Project; (4) construction, repair, and replacement of infrastructure necessary for groundwater wells; (5) acquisition of land, interests in land, and water rights off-reservation in the Truxton Basin; (6) reimbursement for planning, design and engineering costs incurred between the Act's enactment date and enforceability date, and construction costs incurred between the date the Secretary issues a record of decision and the enforceability date; and (7) making contributions to the Economic Development Fund described in the settlement agreement to purchase additional Colorado River water entitlements and appurtenant land.

Section 6(a)(8)–(12) limits federal liability for expenditures and investments made by the Tribe after withdrawal; confirms the Tribe will retain title to, control over, and operation of any project constructed with trust funds; makes the Tribe responsible for the OM&R costs of such projects; prohibits per capita distribution of any portion of the trust funds; and requires annual reporting regarding withdrawals.

Section 6(b) establishes the Hualapai Water Settlement Implementation Fund Account, directs the Secretary to deposit appropriated amounts into the account, and requires the Secretary to use the account funds to develop basin groundwater withdrawal estimates and groundwater monitoring.

Section 7—Authorization of Appropriations

Section 7 authorizes appropriations of \$312,000,000 into the Hualapai Water Trust Fund Account and \$5,000,000 into the Hualapai Water Settlement Implementation Fund Account, and provides for indexing and construction cost adjustments to account for market volatility.

Section 8—Environmental Compliance

Section 8 permits the Tribe to begin necessary environmental, cultural, and historical compliance activities upon the deposit of funds into the Hualapai Water Trust Fund Account; reaffirms that nothing in the Act affects or directs the outcome of any analysis under NEPA or other applicable federal environmental or historical and cultural protection law; clarifies that costs associated with such compliance shall be paid from the Hualapai Water Trust Fund Account, except that the Secretary shall remain responsible for the activities of the federal government; permits construction of the Hualapai Water Project to begin when the Secretary issues a record of decision after completion of an environmental impact statement; and permits the Tribe to receive reimbursement from the Hualapai Water Trust Fund Account for construction costs incurred by the Tribe between the issuance of the Secretary's record of decision and the enforceability date.

Section 9—Waivers, Releases, and Retention of Claims

Section 9(a) authorizes the Tribe, and the United States as trustee for the Tribe, to execute a waiver and release of past, present, and future claims against Arizona, the United States, and other parties for certain water rights and injury to water rights, as well as claims regarding negotiation, execution, or adoption of the settlement agreement, related judgements or decrees, or the Act. This section also provides for the retention of certain claims by the Tribe and establishes that the waivers and releases shall become effective on the enforceability date.

Section 9(b) authorizes the United States, as trustee for allottees of the Tribe, to execute a waiver and release of past, present, and future claims against Arizona and other parties for certain water rights and injury to water rights, as well as claims regarding negotiation, execution, or adoption of the settlement agreement, related judgements or decrees, or the Act. This section also provides for the retention of certain claims by the allottees and establishes that the waivers and releases shall become effective on the enforceability date.

Section 9(c) authorizes the United States, acting in all capacities except as trustee for other Indian Tribes, to execute a waiver and release of past, present, and future claims against the Hualapai Tribe, its members, and any agency, official, or employee of the Tribe for certain water rights and injury to water rights, as well as claims regarding negotiation, execution, or adoption of the set-

tlement agreement, related judgements or decrees, or the Act. This section also provides for the retention of certain claims by the United States and establishes that the waivers and releases shall become effective on the enforceability date.

Section 9(d) authorizes the United States, acting solely on behalf of the Department of the Interior, to execute a waiver and release of claims against Freeport for injury to water rights in connection with the Bill Williams River phase 2 water rights settlement agreement, as well as claims regarding negotiation or execution of that settlement agreement, the Hualapai Tribe water rights settlement agreement, or the Act. This section also provides for the retention of certain claims by the United States, establishes that the waivers and releases shall become effective on the enforceability date, and provides that the Bill Williams River phase 2 water rights settlement agreement shall have no precedential effect or establish any standard or methodology for quantification of water rights claims in other proceedings.

Section 10—Satisfaction of Water Rights and Other Benefits

Section 10(a) affirms that benefits realized under this Act, the Bill Williams agreements, and the Bill Williams Act by the Tribe, its members (except in their capacity as allottees), and the United States as trustee shall be in full satisfaction of such beneficiaries' claims for water rights and injury to water rights, and that any entitlement to water of such beneficiaries for Hualapai land shall be satisfied out of the water resources provided for in such acts and agreements.

Section 10(b) affirms that benefits realized under this Act, the Bill Williams agreements, and the Bill Williams Act by allottees of the Tribe shall replace, substitute for, and fully satisfy all claims for water rights and injury to water rights regarding the allotments of the allottees and the United States as trustee, and that any entitlement to water of such beneficiaries for allotments shall be satisfied out of the water resources provided for in such acts and agreements. This section further provides that nothing in this Act or the Hualapai Tribe water rights settlement agreement recognizes or establishes any allottee or Tribal member rights to water on Hualapai land, or prohibits the Tribe or an allottee from acquiring additional water rights.

Section 11—Land Added to Hualapai Reservation

This Section adds certain specified lands to the Hualapai Reservation.

Section 12—Trust Land

Section 12(a) takes certain specified lands into trust for the benefit of the Hualapai Tribe.

Section 12(b) adds the lands taken into trust under Section 12(a) to the Hualapai Reservation and provides for the administration of such lands in accordance with the laws and regulations generally applicable to Tribal trust lands.

Section 12(c) clarifies that lands taken into trust under Section 12(a) remain subject to valid existing rights, easements, rights-of-way, contracts, and management agreements.

Section 12(d) clarifies that this section does not affect existing water or land rights of the Tribe in existence prior to enactment of this Act.

Section 12(e) requires an act of Congress to take future lands taken into trust for the Tribe and clarifies that such lands will have water rights under state law only, with no federally reserved water rights.

Section 13—Reallocating of CAP NIA Priority Water; Firming; Water Delivery Contract; Colorado River Accounting

Section 13(a) directs the Secretary to reallocate the Hualapai Tribe CAP water to the Tribe on the enforceability date.

Section 13(b) provides for firming of the Tribe's CAP water.

Section 13(c) directs the Secretary to enter into a water delivery contract with the Tribe for permanent service for an unlimited term, and outlines the contract requirements for delivery area, method of delivery, distribution of CAP non-Indian agricultural delivery priority water, leases and exchanges and their terms (including barring the Hualapai tribe from leasing CAP water within Navajo, Apache, and Cochise counties), entitlements to lease and exchange funds, conditions for water use and storage, prohibition on use of water outside the lower basin of the state, CAP fixed OM&R charges, CAP pumping energy charges, waiving property tax equivalency payments, lessee responsibility for charges, advance payments, calculation of delivery charges, and CAP repayment.

Section 13(d) provides that Hualapai Tribe CAP water diverted directly from the Colorado River shall be accounted for as deliveries of CAP water within the State.

Section 14—Enforceability Date

Section 14(a) clarifies the enforceability date is the date on which the Secretary publishes in the Federal Register a statement of findings that: (1) conflicts between this Act and the Hualapai Tribe water settlement agreement have been resolved; (2) required waivers and releases have been executed; (3) abstracts have been completed; (4) the appropriated amounts have been deposited into the Hualapai Water Trust Fund Account; (5) the Gila River adjudication decree has been approved; and (6) the Secretary has executed the required water delivery contract. (These report requirements do not include issuance of a record of decision pursuant to section 8(d).)

Section 14(b) requires the Secretary to publish a statement of findings by April 15, 2029—or a later date mutually agreed to by the Tribe, the United States, and the State—and provides for the repeal of this Act, the return of appropriated amounts, and the voiding of contracts, agreements, secretarial actions pursuant to the Act if the Secretary fails to meet the enforceability date. This section further provides that Sections 11 and 12 regarding trust lands shall remain in effect, notwithstanding any failure by the Secretary to meet the enforceability date.

Section 14(c) provides that, if the Secretary fails to meet the enforceability date, the United States may offset trust funds used or authorized under this Act against claims by the Tribe described in Section 9(a)(2)(A).

Section 14(d) clarifies the conditions under which the Bill Williams River phase 2 water settlement agreement will take effect and become enforceable.

Section 15—Administration

Section 15(a) provides for a limited waiver of the sovereign immunity of the Tribe and the United States.

Section 15(b) clarifies that nothing in this Section alters the law regarding pre-enforcement review of Federal environmental or safety-related enforcement actions.

Section 15(c) directs the Secretary, acting through the U.S. Geological Survey Water Use Program, to estimate groundwater withdrawals for the Truxton Basin outside the boundaries of the Hualapai Reservation, to provide annual estimates of such withdrawals, and to notify the state if groundwater withdrawals exceed estimates.

Section 15(d) states that the United States is not liable for any failure to carry out any obligation or activity authorized by this Act if adequate appropriations are not provided or there are not enough monies available to carry out the Act.

Section 15(e) clarifies that the Reclamation Reform Act of 1982 shall not apply to any person, entity, or tract of land solely on the basis of receipt of a benefit under this Act, execution or performance of this Act, or the use, storage, delivery, lease, or exchange of CAP water.

Section 15(f) clarifies that this Act does not modify certain other federal laws, water compacts, or treaties.

COST AND BUDGETARY CONSIDERATIONS

The Congressional Budget Office estimate of the costs of S. 4104, 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.

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. 4104 will have minimal impact on regulatory or paperwork requirements.

EXECUTIVE COMMUNICATIONS

The Committee has received no communications from the Executive Branch regarding S. 4104.

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.