

I yield back the balance of my time.
The SPEAKER pro tempore. All time for debate on the bill has expired.

The Chair understands that the amendment will not be offered.

Pursuant to House Resolution 1017, the previous question is ordered on the bill, as amended.

The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER pro tempore. The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. RAHALL. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, further proceedings on this question will be postponed.

WHITE MOUNTAIN APACHE TRIBE WATER RIGHTS QUANTIFICATION ACT OF 2009

Mr. RAHALL. Mr. Speaker, pursuant to House Resolution 1017, I call up the bill (H.R. 1065) to resolve water rights claims of the White Mountain Apache Tribe in the State of Arizona, and for other purposes, and ask for its immediate consideration in the House.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Pursuant to House Resolution 1017, the bill is considered read.

The amendment in the nature of a substitute printed in the bill, modified by the amendment printed in part C of House Report 111-399, is adopted.

The text of the bill, as amended, is as follows:

H.R. 1065

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

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

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) proceedings to determine the nature and extent of the water rights of the White Mountain Apache Tribe, members of the Tribe, the United States, and other claimants are pending in—

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

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

(2) a final resolution of those proceedings might—

(A) take many years;

(B) entail great expense; and

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

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

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

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

(4) it is the policy of the United States to quantify and settle Indian water rights claims, and to promote Indian self-determination and economic self-sufficiency, without lengthy and costly litigation, if practicable;

(5) certainly concerning the extent of the water rights of the Tribe will—

(A) provide opportunities for economic development of all parties to the proceeding; and

(B) assist the Tribe to achieve self-determination and self-sufficiency; and

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

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

(1) to authorize, ratify, and confirm the Agreement;

(2) to authorize and direct the Secretary to execute the Agreement and carry out all obligations of the Secretary under the Agreement;

(3) to authorize the actions and appropriations necessary for the United States to meet the obligations of the United States under the Agreement and this Act; and

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

(A) the Tribe and its members;

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

(C) the parties to the Agreement; and

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

SEC. 3. DEFINITIONS.

In this Act:

(1) AGREEMENT.—The “Agreement” means—

(A) the WMAT Water Rights Quantification Agreement dated January 13, 2009; and

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

(i) made in accordance with this Act; or

(ii) otherwise approved by the Secretary.

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

(3) CAP.—The term “CAP” means the reclamation project authorized and constructed by the United States in accordance with title III of the Colorado River Basin Project Act (43 U.S.C. 1521 et seq.).

(4) CAP CONTRACTOR.—The term “CAP contractor” means an individual or entity that has entered into a long-term contract (as that term is used in the repayment stipulation) with the United States for delivery of water through the CAP system.

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

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

(7) CAP SUBCONTRACTOR.—The term “CAP subcontractor” means an individual or entity that has entered into a long-term subcontract (as that term is used in the repayment stipulation) with the United States and the District for the delivery of water through the CAP system.

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

(A) the Mark Wilmer Pumping Plant;

(B) the Hayden-Rhodes Aqueduct;

(C) the Fannin-McFarland Aqueduct;

(D) the Tucson Aqueduct;

(E) any pumping plant or appurtenant works of a feature described in any of subparagraphs (A) through (D); and

(F) any extension of, addition to, or replacement for a feature described in any of subparagraphs (A) through (E).

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

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

(A) the proposed contract between the Tribe and the United States attached as exhibit 7.1 to the Agreement and numbered 08-XX-30-W0529; and

(B) any amendments to that contract.

(11) DISTRICT.—The term “District” means the Central Arizona Water Conservation District, a political subdivision of the State that is the contractor under the repayment contract.

(12) ENFORCEABILITY DATE.—The term “enforceability date” means the date described in section 9(d)(1).

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

(14) INJURY TO WATER RIGHTS.—

(A) IN GENERAL.—The term “injury to water rights” means an interference with, diminution of, or deprivation of, a water right under Federal, State, or other law.

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

(i) a change in the groundwater table; and

(ii) any effect of such a change.

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

(15) LOWER COLORADO RIVER BASIN DEVELOPMENT FUND.—The term “Lower Colorado River Basin Development Fund” means the fund established by section 403 of the Colorado River Basin Project Act (43 U.S.C. 1543).

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

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

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

(17) OPERATING AGENCY.—The term “Operating Agency” means the 1 or more entities authorized to assume responsibility for the care, operation, maintenance, and replacement of the CAP system.

(18) REPAYMENT CONTRACT.—The term “repayment contract” means—

(A) the contract between the United States and the District for delivery of water and repayment of the costs of the CAP, numbered 14-06-W-245 (Amendment No. 1), and dated December 1, 1988; and

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

(19) REPAYMENT STIPULATION.—The term “repayment stipulation” means the stipulated judgment and the stipulation for judgment (including any exhibits to those documents) entered on November 21, 2007, in the United States District Court for the District of Arizona in the consolidated civil action styled *Central Arizona Water Conservation District v. United States*, et al., and numbered CIV 95-625-TUC-WDB (EHC) and CIV 95-1720-PHX-EHC.

(20) RESERVATION.—

(A) IN GENERAL.—The term “reservation” means the land within the exterior boundary of the White Mountain Indian Reservation established by the Executive order dated November 9, 1871, as modified by subsequent Executive orders and Acts of Congress—

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

(ii) generally depicted on the map attached to the Agreement as exhibit 2.81.

(B) NO EFFECT ON DISPUTE OR AS ADMISSION.—The depiction of the reservation described in subparagraph (A)(ii) shall not—

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

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

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

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

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

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

(25) TRIBE.—The term “Tribe” means the White Mountain Apache Tribe organized under section 16 of the Act of June 18, 1934 (commonly known as the “Indian Reorganization Act”) (25 U.S.C. 476).

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

(27) WMAT RURAL WATER SYSTEM.—The term “WMAT rural water system” means the municipal, rural, and industrial water diversion, storage, and delivery system described in section 7.

(28) YEAR.—The term “year” means a calendar year.

SEC. 4. APPROVAL OF AGREEMENT.

(a) APPROVAL.—

(1) IN GENERAL.—Except to the extent that any provision of the Agreement conflicts with a provision of this Act, the Agreement is authorized, ratified, and confirmed.

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

(b) EXECUTION OF AGREEMENT.—To the extent that the Agreement does not conflict with this Act, the Secretary shall—

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

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

(c) NATIONAL ENVIRONMENTAL POLICY ACT.—

(1) ENVIRONMENTAL COMPLIANCE.—In implementing the Agreement, the Secretary shall promptly comply with all applicable requirements of—

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

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

(C) all other applicable Federal environmental laws; and

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

(2) EXECUTION OF AGREEMENT.—

(A) IN GENERAL.—Execution of the Agreement by the Secretary under this section shall not constitute a major Federal action under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(B) ENVIRONMENTAL COMPLIANCE.—The Secretary shall carry out all necessary environmental compliance required by Federal law in implementing the Agreement.

(3) LEAD AGENCY.—The Bureau shall serve as the lead agency with respect to ensuring environmental compliance associated with the WMAT rural water system.

SEC. 5. WATER RIGHTS.

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

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

(2) shall not be subject to forfeiture or abandonment.

(b) REALLOCATION.—

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

(A) an annual entitlement to 23,782 acre-feet per year of CAP water that has a non-Indian agricultural delivery priority (as defined in the Contract) in accordance with section 104(a)(1)(A)(iii) of the Arizona Water Settlements Act (Public Law 108-451; 118 Stat. 3488), of which—

(i) 3,750 acre-feet per year shall be firmed by the United States for the benefit of the Tribe for the 100-year period beginning on January 1, 2008, with priority equivalent to CAP M&I priority water, in accordance with section 105(b)(1)(B) of that Act (118 Stat. 3492); and

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

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

(i) acquired by the Secretary through the permanent relinquishment of the Harquahala Valley Irrigation District CAP subcontract entitlement in accordance with the contract numbered 3-07-30-W0290 among the District, Harquahala Valley Irrigation District, and the United States; and

(ii) converted to CAP Indian Priority water (as defined in the Contract) pursuant to the Fort McDowell Indian Community Water Rights Settlement Act of 1990 (Public Law 101-628; 104 Stat. 4480).

(2) AUTHORITY OF TRIBE.—Subject to approval by the Secretary under section 6(a)(1), the Tribe shall have the sole authority to lease, distribute, exchange, or allocate the tribal CAP water described in paragraph (1).

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

(d) ALLOCATION AND REPAYMENT.—For the purpose of determining the allocation and repayment of costs of any stages of the CAP constructed after November 21, 2007, the costs associated with the delivery of water described in subsection (b), regardless of whether the water is delivered for use by the Tribe or in accordance with any assignment, exchange, lease, option to lease, or other agreement for the temporary disposition of water entered into by Tribe, shall be—

(1) nonreimbursable; and

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

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

(1) governs the tribal water rights; and

(2) includes, at a minimum—

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

(B) terms of a water conservation plan, including objectives, conservation measures, and an implementation timeline;

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

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

SEC. 6. CONTRACT.

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

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

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

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

(ii) the contracts or options to exchange shall be for the term provided in the contract or option; and

(iii) a lease or option to lease providing for the temporary delivery of tribal CAP water shall require the lessee to pay to the Operating Agency all CAP fixed OM&R charges and all CAP pumping energy charges (as defined in the repayment stipulation) associated with the leased water; and

(B) renegotiate any lease at any time during the term of the lease, subject to the condition that the term of the renegotiated lease shall not exceed 100 years;

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

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

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

(i) any funds received by the Tribe as consideration under a contract or option to lease or exchange tribal CAP water; or

(ii) the expenditure of those funds;

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

(B) if the delivery capacity of the CAP system is significantly reduced or anticipated to be significantly reduced for an extended period of time, the Tribe shall have the same CAP delivery rights as a CAP contractor or CAP subcontractor that is allowed to take delivery of water other than through the CAP system;

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

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

(7) the Secretary shall waive the right of the Secretary to capture all return flow from project exchange water flowing from the exterior boundary of the reservation; and

(8) no CAP water service capital charge shall be due or payable for the tribal CAP water, regardless of whether the water is delivered for use by the Tribe or pursuant to a contract or option to lease or exchange tribal CAP water entered into by the Tribe.

(b) REQUIREMENTS.—The Contract shall be—

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

(2) without limit as to term.

(c) RATIFICATION.—

(1) IN GENERAL.—Except to the extent that any provision of this Act, the Contract is authorized, ratified, and confirmed.

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

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

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

(f) **PROHIBITIONS.**—

(1) **USE OUTSIDE STATE.**—No tribal CAP water may be leased, exchanged, forborne, or otherwise transferred by the Tribe in any way for use directly or indirectly outside the State.

(2) **USE OFF RESERVATION.**—Except as authorized by this section and paragraph 4.7 of the Agreement, no tribal water rights under this Act may be sold, leased, transferred, or used outside the boundaries of the reservation or off-reservation trust land other than pursuant to an exchange.

(3) **AGREEMENTS WITH ARIZONA WATER BANKING AUTHORITY.**—Nothing in this Act or the Agreement limits the right of the Tribe to enter into an agreement with the Arizona Water Banking Authority established by section 45-2421 of the Arizona Revised Statutes (or any successor entity), in accordance with State law.

(g) **LEASES.**—

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

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

(B) the Secretary shall execute the leases.

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

SEC. 7. AUTHORIZATION OF RURAL WATER SYSTEM.

(a) **IN GENERAL.**—Subject to the availability of appropriations, the Secretary, acting through the Bureau, shall plan, design, construct, operate, maintain, replace, and rehabilitate the WMAT rural water system as generally described in the project extension report dated February 2007.

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

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

(2) pipelines extending from the water treatment plants to existing water distribution systems serving the Whiteriver, Carrizo, and Cibecue areas, together with other communities along the pipeline;

(3) connections to existing distribution facilities, including public and private water systems in existence on the date of enactment of this Act;

(4) appurtenant buildings and access roads;

(5) electrical power transmission and distribution facilities necessary for services to rural water system facilities;

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

(7) such other project components as the Secretary determines to be appropriate to meet the water supply, economic, public health, and environmental needs of the portions of the reservation served by the WMAT rural water system, including water storage tanks, water lines, and other facilities for the Tribe and the villages and towns on the reservation.

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

(d) **CONSTRUCTION REQUIREMENTS.**—The components of the WMAT rural water system shall

be planned and constructed to a size that is sufficient to meet the municipal, rural, and industrial water supply requirements of the WMAT rural water system service area during the period beginning on the date of enactment of this Act and ending not earlier than December 31, 2040.

(e) **TITLE.**—

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

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

(A) the designers' operating criteria, standing operating procedures, emergency action plan, and first filling and monitoring criteria are established and in place, and the WMAT rural water system has been declared substantially complete;

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

(C) the Tribe has been operating successfully under the established standing operating procedures for a period of 5 calendar years.

(3) **ALIENATION AND TAXATION.**—Conveyance of title to the Tribe pursuant to paragraph (2) does not waive or alter any applicable Federal law prohibiting alienation or taxation of the WMAT rural water system or the underlying reservation land.

(f) **TECHNICAL ASSISTANCE.**—The Secretary shall provide such technical assistance as is necessary to enable the Tribe to plan, design, construct, operate, maintain, and replace the WMAT rural water system, including operation and management training.

(g) **APPLICABILITY OF ISDEAA.**—

(1) **AGREEMENT FOR SPECIFIC ACTIVITIES.**—On receipt of a request of the Tribe, and in accordance with the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.), the Secretary shall enter into an agreement with the Tribe to carry out the activities authorized by this section.

(2) **CONTRACTS.**—Any contract entered into pursuant to the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) for the purpose of carrying out any provision of this Act shall incorporate such provisions regarding periodic payment of funds, timing for use of funds, transparency, oversight, reporting, and accountability as the Secretary determines to be necessary (at the sole discretion of the Secretary) to ensure appropriate stewardship of Federal funds.

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

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

SEC. 8. SATISFACTION OF CLAIMS.

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

(b) **USES OF WATER.**—All uses of water on land outside of the reservation, if and when such land is subsequently and finally determined to be part of the reservation through reso-

lution of any dispute between the Tribe and the United States over the location of the reservation boundary, and any fee land within the reservation put into trust and made part of the reservation, shall be subject to the maximum annual diversion amounts and the maximum annual depletion amounts specified in the Agreement.

(c) **NO RECOGNITION OF WATER RIGHTS.**—Notwithstanding subsection (a), nothing in this Act has the effect of recognizing or establishing any right of a member of the Tribe to water on the reservation.

SEC. 9. WAIVER AND RELEASE OF CLAIMS.

(a) **IN GENERAL.**—

(1) **CLAIMS AGAINST THE STATE AND OTHERS.**—Except as provided in subsection (b)(1), the Tribe, on behalf of itself and its members, and the United States, acting in its capacity of trustee for the Tribe and its members, as part of the performance of their obligations under the Agreement, are authorized to execute a waiver and release of any claims against the State (or any agency or political subdivision of the State), or any other person, entity, corporation, or municipal corporation under Federal, State, or other law for all—

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

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

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

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

(iii) claims for injury to water rights arising after the enforceability date for the reservation and off-reservation trust land resulting from off-reservation diversion or use of water in a manner not in violation of the Agreement or State law; and

(C) past, present, and future claims arising out of or relating in any manner to the negotiation, execution, or adoption of the Agreement, an applicable settlement judgement or decree, or this Act.

(2) **CLAIMS AGAINST TRIBE.**—Except as provided in subsection (b)(3), the United States, in all its capacities (except as trustee for an Indian tribe other than the Tribe), as part of the performance of its obligations under the Agreement, is authorized to execute a waiver and release of any and all claims against the Tribe, its members, or any agency, official, or employee of the Tribe, under Federal, State, or any other law for all—

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

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

(C) past, present, and future claims arising out of or relating in any manner to the negotiation, execution, or adoption of the Agreement, an applicable settlement judgement or decree, or this Act.

(3) **CLAIMS AGAINST UNITED STATES.**—Except as provided in subsection (b)(2), the Tribe, on behalf of itself and its members, as part of the performance of the obligations of the Tribe under the Agreement, is authorized to execute a waiver and release of any claim against the United

States, including agencies, officials, or employees of the United States (except in the capacity of the United States as trustee for other Indian tribes), under Federal, State, or other law for any and all—

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

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

(B)(i) past and present claims relating in any manner to damages, losses, or injuries to water, water rights, land, or other resources due to loss of water or water rights (including damages, losses, or injuries to hunting, fishing, gathering, or cultural rights due to loss of water or water rights, claims relating to interference with, diversion, or taking of water, or claims relating to failure to protect, acquire, or develop water, water rights, or water infrastructure) within the reservation and off-reservation trust land that first accrued at any time prior to the enforceability date;

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

(iii) claims for injury to water rights arising after the enforceability date for the reservation and off-reservation trust land resulting from the off-reservation diversion or use of water in a manner not in violation of the Agreement or applicable law;

(C) past, present, and future claims arising out of or relating in any manner to the negotiation, execution, or adoption of the Agreement, an applicable settlement judgment or decree, or this Act;

(D) past and present claims relating in any manner to pending litigation of claims relating to the water rights of the Tribe for the reservation and off-reservation trust land;

(E) past and present claims relating to the operation, maintenance, and replacement of existing irrigation systems on the reservation constructed prior to the enforceability date that first accrued at any time prior to the enforceability date, which waiver shall only become effective on the full appropriation and payment to the Tribe of \$4,950,000 authorized by section 12(b)(2)(B);

(F) future claims relating to operation, maintenance, and replacement of the WMAT rural water system, which waiver shall only become effective on the full appropriation of funds authorized by section 12(b)(3)(B) and the deposit of those funds in the WMAT Maintenance Fund;

(G) past and present breach of trust and negligence claims for damage to the land and natural resources of the Tribe caused by riparian and other vegetative manipulation by the United States for the purpose of increasing water runoff from the reservation that first accrued at any time prior to the enforceability date; and

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

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

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

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

(i) subject to subparagraph 16.9 of the Agreement, to assert claims for injuries to, and seek enforcement of, the rights of the Tribe and mem-

bers of the Tribe under the Agreement or this Act in any Federal or State court of competent jurisdiction;

(ii) to assert claims for injuries to, and seek enforcement of, the rights of the Tribe under the judgment and decree entered by the court in the Gila River adjudication proceedings;

(iii) to assert claims for injuries to, and seek enforcement of, the rights of the Tribe under the judgment and decree entered by the court in the Little Colorado River adjudication proceedings;

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

(v) to participate in the Gila River adjudication proceedings and the Little Colorado River adjudication proceedings to the extent provided in subparagraph 14.1 of the Agreement;

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

(vii) to assert any past, present, or future claim for injury to water rights against any other Indian tribe, Indian community or nation, dependent Indian community, allottee, or the United States on behalf of such a tribe, community, nation, or allottee; and

(viii) to assert any past, present, or future claim for trespass, use, and occupancy of the reservation in, on, or along the Black River against Freeport-McMoRan Copper & Gold, Inc., Phelps Dodge Corporation, or Phelps Dodge Morenci, Inc. (or a predecessor or successor of those entities), including all subsidiaries and affiliates of those entities.

(B) AGREEMENT.—On terms acceptable to the Tribe and the United States, the Tribe and the United States are authorized to enter into an agreement with Freeport-McMoRan Copper & Gold, Inc., Phelps Dodge Corporation, or Phelps Dodge Morenci, Inc. (or a predecessor or successor of those entities), including all subsidiaries and affiliates of those entities, to resolve the claims of the Tribe relating to the trespass, use, and occupancy of the reservation in, on, and along the Black River.

(2) RESERVATION OF RIGHTS AND RETENTION OF CLAIMS BY TRIBE AGAINST UNITED STATES.—Notwithstanding the waiver and release of claims authorized under subsection (a)(3), the Tribe, on behalf of itself and the members of the Tribe, shall retain any right—

(A) subject to subparagraph 16.9 of the Agreement, to assert claims for injuries to, and seek enforcement of, the rights of the Tribe and members under the Agreement or this Act, in any Federal or State court of competent jurisdiction;

(B) to assert claims for injuries to, and seek enforcement of, the rights of the Tribe and members under the judgment and decree entered by the court in the Gila River adjudication proceedings;

(C) to assert claims for injuries to, and seek enforcement of, the rights of the Tribe and members under the judgment and decree entered by the court in the Little Colorado River adjudication proceedings;

(D) to object to any claims by or for any other Indian tribe, Indian community or nation, dependent Indian community, or the United States on behalf of such a tribe, community, or nation;

(E) to assert past, present, or future claims for injury to water rights or any other claims other than a claim to water rights, against any other Indian tribe, Indian community or nation, dependent Indian community, or the United States on behalf of such a tribe, community, or nation;

(F) to assert claims arising after the enforceability date for injury to water rights resulting from the drilling of wells or pumping of water from land located within national forest land as of the effective date of the Agreement in the south ½ of T. 9 N., R. 24 E.; south ½ of T. 9 N., R. 25 E.; north ½ of T. 8 N., R. 24 E.; north ½ of T. 8 N., R. 25 E., if—

(i) title to that land is no longer retained by the United States; or

(ii) water from that land is transported off the land for municipal or industrial use;

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

(H) to assert any other claims not specifically waived under this section; and

(I) to assert any claim arising after the enforceability date for a future taking by the United States of reservation land, off-reservation trust land, or any property rights appurtenant to that land, including any water rights set forth in paragraph 4.0 of the Agreement.

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

(c) EFFECTIVENESS OF WAIVER AND RELEASES.—Except as otherwise specifically provided in subparagraphs (E) and (F) of subsection (a)(3), the waivers and releases under subsection (a) shall become effective on the enforceability date.

(d) ENFORCEABILITY DATE.—

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

(A)(i) to the extent the Agreement conflicts with this Act, the Agreement has been revised through an amendment to eliminate the conflict; and

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

(B) the Secretary has fulfilled the requirements of sections 5 and 6;

(C) the amount authorized by section 12(a) has been deposited in the White Mountain Apache Tribe Water Rights Settlement Subaccount;

(D) the State funds described in subparagraph 13.3 of the Agreement have been deposited in the White Mountain Apache Tribe Water Rights Settlement Subaccount;

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

(F) the judgments and decrees substantially in the form of those attached to the Agreement as exhibits 12.9.6.1 and 12.9.6.2 have been approved by the respective trial courts.

(2) FAILURE OF ENFORCEABILITY DATE TO OCCUR.—If, because of the failure of the enforceability date to occur by April 30, 2020, this section does not become effective, the Tribe and its members, and the United States, acting in the capacity of trustee for the Tribe and its members, shall retain the right to assert past, present, and future water rights claims and claims for injury to water rights for the reservation and off-reservation trust land.

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

(e) UNITED STATES ENFORCEMENT AUTHORITY.—Nothing in this Act or the Agreement affects any right of the United States to take any action, including environmental actions, under any laws (including regulations and the common law) relating to human health, safety, or the environment.

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

(g) **ENTITLEMENTS.**—Any entitlement to water of the Tribe, its members, or the United States acting as trustee for the Tribe and members, relating to the reservation or off-reservation trust land shall be satisfied from the water resources granted, quantified, confirmed, or recognized with respect to the Tribe, members, and the United States by the Agreement and this Act.

(h) **OBJECTION PROHIBITED.**—Except as provided in subsection (b)(2)(F), the Tribe and the United States acting as trustee for the Tribe shall not—

(1) object to the usage of any well located outside the boundaries of the reservation or the off-reservation trust land, as in existence on the enforceability date; or

(2) object to, dispute, or challenge after the enforceability date the drilling of any well or the withdrawal and use of water from any well in the Little Colorado River adjudication proceedings, the Gila River adjudication proceedings, or any other judicial or administrative proceeding.

SEC. 10. WHITE MOUNTAIN APACHE TRIBE WATER RIGHTS SETTLEMENT SUBACCOUNT.

(a) **ESTABLISHMENT.**—There is established in the Lower Colorado River Basin Development Fund a subaccount to be known as the “White Mountain Apache Tribe Water Rights Settlement Subaccount”, consisting of—

(1) the amounts made available under subsection (e);

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

(3) such other amounts as are available including the funds provided in subparagraph 13.3 of the Agreement.

(b) **EXPENDITURES AND WITHDRAWALS.**—

(1) **CONTRACTS.**—

(A) **IN GENERAL.**—The Tribe may withdraw any portion of the White Mountain Apache Tribe Water Rights Settlement Subaccount on approval by the Secretary pursuant to the terms of an agreement entered into under section 7(g).

(B) **REQUIREMENTS.**—An agreement entered into under section 7(g) shall require that the Tribe shall use the amounts in the White Mountain Apache Tribe Water Rights Settlement Subaccount only for the planning, design, and construction of the rural water system, including such sums as are necessary—

(i) for the Bureau to carry out oversight of the planning, design, and construction of the rural water system;

(ii) to repay any outstanding balance on the loan authorized by the White Mountain Apache Tribe Rural Water System Loan Authorization Act (Public Law 110-390; 122 Stat. 4191); and

(iii) to carry out all required environmental compliance activities associated with the planning, design, and construction of the rural water system.

(2) **ENFORCEMENT.**—The Secretary may pursue such judicial remedies and carry out such administrative actions as are necessary to enforce an agreement described in paragraph (1) to ensure that amounts in the White Mountain Apache Tribe Water Rights Settlement Subaccount are used in accordance with this section.

(3) **LIABILITY.**—On withdrawal by the Tribe of amounts in the White Mountain Apache Tribe Water Rights Settlement Subaccount, the Secretary and the Secretary of the Treasury shall not retain liability for the expenditure or investment of those amounts.

(4) **EXPENDITURE PLAN.**—

(A) **IN GENERAL.**—The Tribe shall submit to the Secretary for approval an expenditure plan for any portion of the amounts in the subaccount under this section that the Tribe does not withdraw pursuant to this subsection.

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

(C) **APPROVAL.**—The Secretary shall approve an expenditure plan under this paragraph if the Secretary determines that the plan is—

(i) reasonable; and

(ii) consistent with this Act.

(5) **ANNUAL REPORTS.**—The Tribe shall submit to the Secretary an annual report that describes each expenditure from the White Mountain Apache Tribe Water Rights Settlement Subaccount during the year covered by the report.

(c) **PROHIBITION ON PER CAPITA DISTRIBUTIONS.**—No amount of the principal, or the interest or income accruing on the principal, of the White Mountain Apache Tribe Water Rights Settlement Subaccount shall be distributed to any member of the Tribe on a per capita basis.

(d) **AVAILABILITY OF FUNDS.**—

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

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

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

(A) November 1, 2019; and

(B) the enforceability date.

(e) **LOWER COLORADO RIVER BASIN DEVELOPMENT FUND.**—

(1) **IN GENERAL.**—Of amounts in the Lower Colorado River Basin Development Fund made available under section 403(f)(2)(D)(vi) of the Colorado River Basin Project Act (43 U.S.C. 1543(f)(D)(vi)), an amount equal to the difference between the balance of the White Mountain Apache Tribe Settlement Subaccount (as of November 1, 2019), and the amount authorized to be appropriated under section 12(a)(1), but not to exceed \$100,000,000, shall be deposited, without further appropriation, in the White Mountain Apache Tribe Settlement Subaccount.

(2) **AVAILABILITY OF FUNDS.**—The funds authorized to be deposited in the White Mountain Apache Tribe Settlement Subaccount pursuant to paragraph (1) shall not be available for expenditure or withdrawal until the later of—

(A) November 1, 2019; and

(B) the enforceability date.

SEC. 11. MISCELLANEOUS PROVISIONS.

(a) **LIMITED WAIVER OF SOVEREIGN IMMUNITY.**—

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

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

(B) any claim by the United States or the Tribe to sovereign immunity from the civil action is waived for the sole purpose of resolving any issue regarding the interpretation or enforcement of this Act or the Agreement.

(2) **DESCRIPTION OF CIVIL ACTION.**—A civil action referred to in paragraph (1) is a civil action filed—

(A) by any party to the Agreement or signatory to an exhibit to the Agreement in a United States or State court that—

(i) relates solely and directly to the interpretation or enforcement of this Act or the Agreement; and

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

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

(i) relates solely and directly to the interpretation or enforcement of section 9 of this Act and paragraph 12.0 of the Agreement; and

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

(b) **EFFECT OF ACT.**—Nothing in this Act quantifies or otherwise affects any water right or claim or entitlement to water of any Indian tribe, band, or community other than the Tribe.

(c) **LIMITATION ON LIABILITY OF UNITED STATES.**—

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

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

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

(2) **INDEMNIFICATION.**—The Tribe shall indemnify the United States, and hold the United States harmless, with respect to any claim (including claims for takings or breach of trust) arising out of the receipt or expenditure of funds described in paragraph (1)(A).

(d) **APPLICABILITY OF RECLAMATION REFORM ACT.**—The Reclamation Reform Act of 1982 (43 U.S.C. 390aa et seq.) and any other acreage limitation or full-cost pricing provision under Federal law shall not apply to any individual, entity, or land solely on the basis of—

(1) receipt of any benefit under this Act;

(2) the execution or performance of the Agreement; or

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

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

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

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

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

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

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

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

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

(g) **AFTER-ACQUIRED TRUST LAND.**—

(1) **REQUIREMENT OF ACT OF CONGRESS.**—

(A) **LEGAL TITLE.**—After the enforceability date, if the Tribe seeks to have legal title to additional land in the State of Arizona located outside the exterior boundaries of the reservation taken into trust by the United States for its benefit, the Tribe may do so only pursuant to an Act of Congress specifically authorizing the transfer for the benefit of the Tribe.

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

(i) restoration of land to the reservation subsequently and finally determined to be part of the reservation through resolution of any dispute between the Tribe and the United States over the location of the reservation boundary unless required by Federal law; or

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

(2) **WATER RIGHTS.**—

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

(B) **RESTORED LAND.**—Land restored to the reservation as the result of resolution of any reservation boundary dispute between the Tribe and the United States, or any fee simple land within the reservation that are placed into trust, shall have water rights pursuant to section 8(b).

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

(A) **IN GENERAL.**—If the Tribe acquires legal fee title to land that is located within the exterior boundaries of the reservation, the Secretary shall accept the land in trust status for the benefit of the Tribe in accordance with applicable

Federal law (including regulations) for such real estate acquisitions.

(B) **RESERVATION STATUS.**—Land taken or held in trust by the Secretary under paragraph (3), or restored to the reservation as a result of resolution of a boundary dispute between the Tribe and the United States, shall be deemed to be part of the reservation.

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

SEC. 12. AUTHORIZATION OF APPROPRIATIONS.

(a) **RURAL WATER SYSTEM.**—

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

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

(b) **WMAT SETTLEMENT AND MAINTENANCE FUNDS.**—

(1) **DEFINITION OF FUNDS.**—In this subsection, the term “Funds” means—

(A) the WMAT Settlement Fund established by paragraph (2)(A); and

(B) the WMAT Maintenance Fund established by paragraph (3)(A).

(2) **WMAT SETTLEMENT FUND.**—

(A) **ESTABLISHMENT.**—There is established in the Treasury of the United States a fund to be known as the “WMAT Settlement Fund”, consisting of such amounts as are deposited in the fund under subparagraph (B), together with any interest accrued on those amounts, for use by the Tribe in accordance with subparagraph (C).

(B) **TRANSFERS TO FUND.**—There is authorized to be appropriated to the Secretary \$113,500,000 for deposit in the WMAT Settlement Fund, of which not less than \$4,950,000 shall be used for the rehabilitation of existing irrigation systems.

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

(i) Fish production, including hatcheries.

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

(iii) Water-related economic development projects.

(iv) Protection, restoration, and economic development of forest and watershed health.

(v) Any cost overruns for the completion of the WMAT rural water system, as provided in subsection (f).

(3) **WMAT MAINTENANCE FUND.**—

(A) **ESTABLISHMENT.**—There is established in the Treasury of the United States a fund to be known as the “WMAT Maintenance Fund”, consisting of such amounts as are deposited in the fund under subparagraph (B), together with any interest accrued on those amounts, for use by the Tribe in accordance with subparagraph (C).

(B) **TRANSFERS TO FUND.**—There is authorized to be appropriated to the Secretary \$50,000,000 for deposit in the WMAT Maintenance Fund.

(C) **USE OF FUNDS.**—The Tribe or the Secretary, as applicable, shall use amounts in the WMAT Maintenance Fund only for the operation, maintenance, and replacement costs associated with the delivery of water through the rural water system.

(4) **ADMINISTRATION.**—The Secretary shall manage the Funds in accordance with the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4001 et seq.), including by investing amounts in the Funds in accordance with—

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

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

(5) **AVAILABILITY OF AMOUNTS FROM FUNDS.**—Amounts in the Funds shall be available for expenditure or withdrawal only after the enforceability date in accordance with subsection (g).

(6) **EXPENDITURE AND WITHDRAWAL.**—

(A) **TRIBAL MANAGEMENT PLAN.**—

(i) **IN GENERAL.**—The Tribe may withdraw all or part of amounts in the Funds on approval by the Secretary of a tribal management plan as described in the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4001 et seq.).

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

(iii) **ENFORCEMENT.**—The Secretary may take judicial or administrative action to enforce the provisions of a tribal management plan under this subparagraph to ensure that any amounts withdrawn from the Funds under the plan are used in accordance with this Act and the Agreement.

(iv) **LIABILITY.**—If the Tribe exercises the right to withdraw amounts from the Funds, neither the Secretary nor the Secretary of the Treasury shall retain any liability for the expenditure or investment of the amounts.

(B) **EXPENDITURE PLAN.**—

(i) **IN GENERAL.**—The Tribe shall submit to the Secretary for approval an expenditure plan for any portion of the amounts in the Funds that the Tribe does not withdraw under the tribal management plan.

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

(iii) **APPROVAL.**—On receipt of an expenditure plan under clause (i), the Secretary shall approve the plan if the Secretary determines that the plan is reasonable and consistent with this Act and the Agreement.

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

(C) **CERTAIN PER CAPITA DISTRIBUTIONS PROHIBITED.**—No amount in the Funds shall be distributed to any member of the Tribe on a per capita basis.

(c) **COST INDEXING.**—All amounts authorized to be appropriated under subsections (a) and (b) shall be adjusted as may be required to reflect the changes since October 1, 2007, in the construction cost indices applicable to the types of construction involved in the construction of the WMAT rural water supply system, the maintenance of the rural water supply system, and the construction or rehabilitation of the other development projects authorized under subsection (b)(2)(C).

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

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

(2) **INITIAL TRANSFER.**—Not later than 90 days after the date of enactment of this Act, such amounts as are available, but not to exceed \$50,000,000, in the Emergency Fund for Indian Safety and Health shall be transferred to the White Mountain Apache Tribe Water Rights Settlement Subaccount.

(3) **SUBSEQUENT TRANSFER.**—Effective beginning on January 1, 2012, if the Secretary determines that, on an annual basis, the amount authorized to be appropriated under subsection (a) will not be appropriated and deposited in the White Mountain Apache Tribe Water Rights Settlement Subaccount by October 31, 2012, not more than \$50,000,000 of the amounts in the Emergency Fund for Indian Safety and Health shall be transferred to the White Mountain Apache Tribe Water Rights Settlement Subaccount, as necessary to complete the WMAT rural water system project.

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

(e) **OPERATION, MAINTENANCE, AND REPLACEMENT.**—

(1) **IN GENERAL.**—There is authorized to be appropriated to the Secretary \$2,500,000 for the operation, maintenance, and replacement costs of the WMAT rural water system, to remain available until the conditions described in subsection (g) have been met.

(2) **SUBSEQUENT FUNDING.**—Beginning on November 1, 2019, or the enforceability date, whichever is later, the Tribe or the Secretary, as applicable, may use amounts deposited in the WMAT Maintenance Fund under subsection (b)(3)(B) for operation, maintenance, and replacement costs of the WMAT rural water system.

(f) **COST OVERRUNS.**—On a determination by the Secretary that the amount authorized to be appropriated under subsection (a) is not sufficient for the completion of the WMAT rural water system, there are authorized to be appropriated such sums as are necessary, but not to exceed an additional \$25,000,000, to complete the WMAT rural water system, to be derived by transfer from the amounts authorized to be appropriated to the Secretary for deposit in the WMAT Settlement Fund under subsection (b)(2)(B) in such amounts as the Secretary, in concurrence with the Tribe, determines to be appropriate.

(g) **CONDITIONS.**—The amounts authorized to be appropriated to the Secretary for deposit in the WMAT Maintenance Fund, together with any interest accrued thereon, under subsection (b)(3), and any interest accruing on the WMAT Settlement Fund under subsection (b)(2), shall not be available for expenditure or withdrawal until the later of—

(1) November 1, 2019; and

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

SEC. 13. ANTIDEFICIENCY.

The United States shall not be liable for failure to carry out any obligation or activity authorized to be carried out, subject to appropriations, under this Act (including any such obligation or activity under the Agreement) if adequate appropriations for that purpose are not provided by Congress.

SEC. 14. REPEAL ON FAILURE OF ENFORCEABILITY DATE.

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

(1) effective beginning on May 1, 2020—

(A) this Act is repealed; and

(B) any action carried out by the Secretary, and any contract entered into, pursuant to this Act shall be void;

(2) any amounts appropriated under subsections (a), (b), (d), and (e) of section 12, together with any interest accrued on those amounts, shall immediately revert to the general fund of the Treasury; and

(3) any other amounts deposited in the White Mountain Apache Tribe Water Settlement Subaccount (including any amounts paid by the

State in accordance with the Agreement), together with any interest accrued on those amounts, shall immediately be returned to the respective sources of those funds.

SEC. 15. COMPLIANCE WITH ENVIRONMENTAL LAWS.

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

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

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

(3) all other applicable Federal environmental laws; and

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

The SPEAKER pro tempore. After 1 hour of debate on the bill, as amended, it shall in order be to consider the amendment printed in part D of House Report 111-399 if offered by the gentleman from California (Mr. MCCLINTOCK), or his designee, which shall be considered read, and shall be debatable for 10 minutes equally divided and controlled by the proponent and an opponent.

The gentleman from West Virginia (Mr. RAHALL) and the gentleman from Washington (Mr. HASTINGS) each will control 30 minutes.

The Chair recognizes the gentleman from West Virginia.

GENERAL LEAVE

Mr. RAHALL. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days to revise and extend their remarks and insert extraneous material on H.R. 1065.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from West Virginia?

There was no objection.

Mr. RAHALL. I yield myself such time as I may consume.

Mr. Speaker, I am pleased to bring before the House legislation that would adjudicate the water rights of the White Mountain Apache Tribe, and end years of active litigation by ratifying the settlement agreement. This is a bipartisan measure, sponsored by the gentlelady from Arizona, ANN KIRKPATRICK, for whom I extend tremendous applause for the manner in which she has led the House on this issue, brought it before our attention, and secured the cosponsorship of the entire Arizona House delegation.

The waters of the White Mountain Apache Reservation feed to the Salt River of Arizona. The Salt River is a primary water source for the metropolitan area of Phoenix, Arizona, along with thousands of acres of agricultural land. Coming to closure on water rights is imperative to protect the water supply for thousands of people in Arizona. Equally important is the fulfillment of commitments made to the White Mountain Apache people to provide them a clean reliable water supply, and to repair their irrigation system, which has fallen into disrepair.

In this settlement all parties came together with a mutual desire for success. Indeed, the parties to this settlement agreement include the White

Mountain Apache, the State of Arizona, the cities of Phoenix, Scottsdale, Tempe, and others, and various water user organizations and entities. As with the two bills we just considered, I want to again acknowledge the administration's position that for over 20 years the Federal Government has stated that negotiated Indian water rights settlements are preferable to protracted and divisive litigation. The pending measure does just this, with a negotiated settlement and an end to decades of litigation.

I thank the gentlelady from Arizona, ANN KIRKPATRICK, and her colleagues in the Arizona delegation for their hard work in bringing this measure forward. I also again would recognize the tireless efforts of our subcommittee chairwoman, the gentlelady from California, GRACE NAPOLITANO, for her countless hours of hearings and staff meetings and other meetings with the affected parties on this issue. And I would thank the White Mountain Apache people for their continued dedication to this settlement and legislation.

Access to water should not be a privilege in this country, but is a basic, fundamental right. These people have clearly earned our respect and support for this legislation. I urge the passage thereof.

I reserve the balance of my time.

Mr. HASTINGS of Washington. I yield myself such time as I may consume.

Mr. Speaker, once again this is the third of three settlement bills. The arguments that I had made on the first two bills are applicable to this one. I will just add one other point. And that is that these three bills have a cost to the taxpayer of a half a billion dollars, \$500 million. And there certainly is an unrest in this country as to what this Congress has done in a fiscal manner. This is small. We are talking about millions, when other programs we are talking about in this Congress unfortunately total trillions. But if we need to get our house in order, this is simply something that we need to have more information on before we pass judgment on it.

With that, Mr. Speaker, I will reserve the balance of my time.

Mr. RAHALL. Mr. Speaker, I am happy to yield such time as she may consume to the lead cosponsor of this legislation who has worked so hard on this issue, the gentlewoman from Arizona (Mrs. KIRKPATRICK).

□ 1145

Mrs. KIRKPATRICK of Arizona. Mr. Speaker, I rise today in support of H.R. 1065, the White Mountain Apache Water Rights Quantification Act.

Water is a precious resource to all of us in the Southwest. In my district, farmers have to fight to keep their crops growing, firefighters are constantly challenged by raging wildfires, and local officials consider the drinking water supply in every discussion of the community's future. We know we

need to make each drop count. That is why I am proud to have worked with the White Mountain Apache and other stakeholders to introduce this bill.

The White Mountain Apache Water Rights Quantification Act finalizes a settling agreement that will end a long-running water rights dispute in greater Arizona and provides a path toward a reliable long-term water supply for the White Mountain Apache tribe and areas across the State.

The agreement under consideration continues a long history of settlements of Indian water rights disputes in our State. We have found time and again that these settlements, as opposed to litigation, help the tribes and their neighbors achieve real certainty in their water supply. They are able to better plan for the years to come. The negotiating process also builds working relationships between the parties involved, allowing them to cooperate and more effectively manage their watersheds for the future. With this legislation, folks here will finally begin to see these benefits.

Along with approving the agreement, this bill authorizes construction of the Miner Flat dam and pipeline, which will provide a 100-year municipal drinking water supply to towns on the White Mountain Apache tribal lands. That is critically important because our need for drinking water is both immediate and serious. People in the area are being threatened with water shortages even now, in the winter of what was a great water year in the rest of the State.

Nearly 15,000 tribal members will be served by the project, and it cannot come a moment too soon for them. Furthermore, it lets us move forward with a number of projects that are crucial economic drivers for the region: fish hatcheries, irrigation projects, and infrastructure improvements to a local ski park. We will be able to create jobs and get folks back to work.

I was born and raised on White Mountain Apache tribal lands, and my hometown is one of those that would gain from this project. I have seen firsthand the challenges that these communities face, and I am confident that this legislation will make a real difference in addressing them.

At this point, I would like to address the cost issue that has been raised by my esteemed colleague from Washington. When I was a kid, we had to boil our water, and if we didn't, we got sick. We got real sick. That was over 50 years ago. We didn't have the convenience of purified water that comes delivered in big jugs that I've seen in most congressional offices here in Washington. That situation, where folks living in the United States today do not have access to running water that they can drink, is not acceptable.

My confidence that this legislation will make a real difference in addressing those critical needs is shared by many in Arizona where the bill has earned widespread support. Every single member of our State's delegation in

the House is cosponsoring H.R. 1065, and I want to point out that that includes my esteemed colleague Congressman JEFF FLAKE, who I think is the watchdog of the House on spending in Congress.

I have worked closely with Senator KYL to move forward on this critical project in both Chambers. Folks on both sides of the aisle recognize the importance of securing our water supply. They also recognize the effort and care it has taken to get to this point. The settlement has taken 21 different stakeholder groups years of negotiation and compromise to reach. It is carefully crafted to best fit the needs and demands of all those involved. It is time for folks in my district to get the infrastructure and water supply they have been working toward for so long.

I urge my colleagues to pass this bill. Mr. HASTINGS of Washington. Mr. Speaker, I am pleased to yield such time as he may consume to the gentleman from California (Mr. MCCLINTOCK).

Mr. MCCLINTOCK. I thank the gentleman for yielding.

Mr. Speaker, we are told over and over that this is an agreement that has been painstakingly and meticulously worked out. That's the sort of agreement that we would have if I were to sue the Federal Government for \$10 million, go to my next-door neighbor and say, can't you agree that the Federal Government should send us at least \$5 million? We reach an agreement, and then present it to Congress as a settlement of an outstanding claim. That's essentially what's going on here.

Let me read to you the testimony of Michael Connor, the Commissioner of the Bureau of Reclamation, to the Subcommittee on Water and Power regarding this bill in July of last year. He said: While we're aware that the settling parties worked closely with the Federal negotiating team in developing the parameters of this settlement, we have also been informed by the team that issues involving the cost of this settlement were not considered. We believe that these costs need to be discussed and negotiated and that the benefits of the settlement must justify the costs.

Those negotiations never took place between the Federal Government and the stakeholders. Those negotiations took place among the stakeholders themselves, and they all agreed that the Federal Government should send them lots and lots of money.

The same Commissioner of the Bureau of Reclamation then sent a letter on November 10, 2009, to the chairwoman of the Subcommittee on Water and Power and warned about these things again. He said: Other than the \$4.95 million provided for rehabilitation of irrigation systems on the reservation, the administration does not believe the money authorized for the development fund is consideration for this settlement.

I would also point out that under the terms of this measure—that again are questioned by the administration—the Federal Government is responsible for handing over that money, and then the tribe, in the provisions of the bill, has the authority to withdraw those funds for purposes unrelated to water development. That's why those of us in the minority, although we are very sympathetic to the history that has brought us to this point and seek an equitable settlement for all sides in this dispute, seriously question why a settlement between the United States Government and the stakeholders involved was not fully negotiated by the United States Government and why this measure written by Congress is being submitted to the administration when it is the administration's responsibility to be involved in the negotiations of all of the details of the ultimate settlement.

Mr. RAHALL. Mr. Speaker, I reserve the balance of my time.

Mr. HASTINGS of Washington. Mr. Speaker, I yield myself the balance of my time.

Mr. Speaker, I will just simply repeat what I said at the outset. I must reluctantly rise to oppose all three of these settlement bills based on the simple fact that we don't have all the information we need.

While we applaud people on the local level settling tough disputes, especially water issues, and I am especially sensitive to that, Mr. Speaker, because I am from the western part of the United States, it is in the best interests of all of the people in this country to know what the cost to them would be because they're all taxpayers. I think that's self-evident.

So this debate, at least from our side of the aisle, didn't question the merits of those settlement agreements mainly because, at least from this Member's perspective, I know how difficult that is when you have these types of disputes. Our issue is simply the transparency of what the cost will be to the taxpayers of this country. We deserve to have that before these settlement issues come to the floor of the House. We deserve to have this information so we can do due diligence in committee and then make a judgment if the settlement is in fact in the best interests of the taxpayers. That is really all this debate has been about on these three bills.

So with that, Mr. Speaker, I would just simply say that we don't have transparency on this potential half-a-billion-dollar assessment that's going to go to the taxpayer. We should have that and we don't. So it is for that reason, Mr. Speaker, that I rise in opposition to this bill and urge my colleagues to vote "no."

Mr. Speaker, I yield back the balance of my time.

Mr. RAHALL. Mr. Speaker, before yielding to the gentleman from Michigan to close on our side, I would just reiterate what has already been said by the gentlewoman from Arizona, that

she is joined in her cosponsorship of this legislation by the gentleman considered the watchdog of fiscal spending in this body, Mr. JEFF FLAKE, in cosponsoring this bill.

At this point, I yield the balance of my time to the co-Chair of our Native American Caucus in the Congress and a valued member of our Committee on Natural Resources, the gentleman from Michigan, Mr. DALE KILDEE.

Mr. KILDEE. I thank the gentleman for yielding.

Mr. Speaker, I support strongly the passage of H.R. 1065 and the other two bills, H.R. 3342 and H.R. 3254.

In the 33 years that I've been in Congress, I've worked hard with Mr. RAHALL—he and I came to Congress together—trying to work out these water rights. I have always tried to make sure that we were fair to everybody, particularly fair to the Native Americans who have been deprived of their water rights in too many instances, and Mr. RAHALL has made this a priority to make sure that we get equity and justice here.

Water is extremely important all over the world. It's extremely important, of course, in the Southwest. I just feel that the hard work that went into this bill and the sense of equity and the sense of justice and fairness to all those involved has produced three very good bills, and I strongly urge support of them.

Mr. RAHALL. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. All time for debate on the bill has expired.

The Chair understands that the amendment will not be offered.

Pursuant to House Resolution 1017, the previous question is ordered on the bill, as amended.

The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER pro tempore. The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. RAHALL. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, further proceedings on this question will be postponed.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, proceedings will resume on questions previously postponed.

Votes will be taken in the following order:

passage of H.R. 3254,
passage of H.R. 3342,
passage of H.R. 1065, and
motions to suspend the rules with regard to H. Res. 1021, and the Senate