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[Report No. 111-119]

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

IN THE SENATE OF THE UNITED STATES

JANUARY 26, 2009

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

JANUARY 21, 2010

Reported by Mr. DORGAN, with an amendment

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

A BILL

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

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

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

1 **SEC. 2. FINDINGS AND PURPOSES.**

2 (a) FINDINGS.—Congress finds that—

3 (1) proceedings to determine the nature and ex-
4 tent of the water rights of the White Mountain
5 Apache Tribe, members of the Tribe, the United
6 States, and other claimants are pending in—

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

14 (B) the civil action pending in the Superior
15 Court of the State of Arizona for the County of
16 Apache styled In re the General Adjudication of
17 All Rights to Use Water in the Little Colorado
18 River System and Source and numbered CIV-
19 6417;

20 (2) a final resolution of those proceedings
21 might—

22 (A) take many years;

23 (B) entail great expense;

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

1 ~~(D)~~ seriously impair the long-term eco-
2 nomic well-being of all parties to the pro-
3 ceedings;

4 ~~(3)~~ the Tribe, non-Indian communities located
5 near the reservation of the Tribe, and other Arizona
6 water users have agreed—

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

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

15 ~~(4)~~ it is the policy of the United States to quan-
16 tify, to the maximum extent practicable, water rights
17 claims of Indian tribes without lengthy and costly
18 litigation;

19 ~~(5)~~ as of the date of enactment of this Act, the
20 tribal water rights are unquantified vested property
21 rights held in trust by the United States for the ben-
22 efit of the Tribe; and

23 ~~(6)~~ in keeping with the trust responsibility of
24 the United States to Indian tribes, and to promote
25 tribal sovereignty and economic self-sufficiency, it is

1 appropriate that the United States participate in
 2 and contribute funds for the implementation of the
 3 Agreement.

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

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

7 (2) to authorize and direct the Secretary to exe-
 8 cute the Agreement and carry out all obligations of
 9 the Secretary under the Agreement;

10 (3) to authorize the actions and appropriations
 11 necessary for the United States to meet the obliga-
 12 tions of the United States under the Agreement and
 13 this Act; and

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

16 (A) the Tribe and its members;

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

19 (C) the parties to the Agreement; and

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

22 **SEC. 3. DEFINITIONS.**

23 In this Act:

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

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

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

6 (i) made in accordance with this Act;

7 or

8 (ii) otherwise approved by the Sec-
9 retary.

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

12 (3) CAP.—The term “CAP” means the ree-
13 lamation project authorized and constructed by the
14 United States in accordance with title III of the Col-
15 orado River Basin Project Act (43 U.S.C. 1521 et
16 seq.).

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

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

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

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

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

13 (A) the Mark Wilmer Pumping Plant;

14 (B) the Hayden-Rhodes Aqueduct;

15 (C) the Fannin-McFarland Aqueduct;

16 (D) the Tucson Aqueduct;

17 (E) any pumping plant or appurtenant
 18 works of a feature described in any of subpara-
 19 graphs (A) through (D); and

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

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

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

3 (A) the contract between the Tribe and the
4 United States attached as exhibit 7.1 to the
5 Agreement and numbered 08-XX-30-W0529
6 and dated **[_____]**; and

7 (B) any amendments to that contract.

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

12 (12) ENFORCEABILITY DATE.—The term “en-
13 forceability date” means the date described in sec-
14 tion 12(e)(1).

15 (13) INJURY TO WATER RIGHTS.—

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

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

22 (i) a change in the groundwater table;

23 and

24 (ii) any effect of such a change.

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

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

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

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

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

16 (16) REPAYMENT CONTRACT.—The term “re-
17 payment contract” means—

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

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

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

11 (18) RESERVATION.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 (a) APPROVAL.—

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

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

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

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

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

7 (c) NATIONAL ENVIRONMENTAL POLICY ACT.—

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

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

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

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

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

20 (2) EXECUTION OF AGREEMENT.—

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

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

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

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

10 (a) ~~RIGHTS HELD IN TRUST.—~~The tribal water
 11 rights shall be held in trust by the United States on behalf
 12 of Tribe.

13 (b) ~~REALLOCATION.—~~

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

19 (A) an annual entitlement to 23,782 acre-
 20 feet per year of CAP water that has a non-In-
 21 dian agricultural delivery priority (as defined in
 22 the Contract) in accordance with section
 23 104(a)(1)(A)(iii) of the Arizona Water Settle-
 24 ments Act (Public Law 108–451; 118 Stat.
 25 3488), of which—

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

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

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

17 (i) acquired by the Secretary through
18 the permanent relinquishment of the
19 Harquahala Valley Irrigation District CAP
20 subcontract entitlement in accordance with
21 the contract numbered ~~3-07-30-W0290~~
22 among the District, Harquahala Valley Ir-
23 rigation District, and the United States;
24 and

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

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

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

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

23 (1) nonreimbursable; and

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

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

4 (1) governs the tribal water rights; and

5 (2) includes, at a minimum—

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

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

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

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

1 **SEC. 6. CONTRACT.**

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

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

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

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

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

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

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

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

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

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

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

18 ~~(ii)~~ the expenditure of those funds;

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

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

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

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

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

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

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

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

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

4 (2) without limit as to term.

5 (e) RATHIFICATION.—

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

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

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

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

23 (f) PROHIBITIONS.—

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

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

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

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

16 ~~(g) LEASES.—~~

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

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

24 ~~(B) the Secretary shall execute the leases.~~

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

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

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

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

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

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

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

25 (4) appurtenant buildings and access roads;

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

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

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

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

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

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

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

9 (g) APPLICABILITY OF ISDEAA.—Planning, design,
 10 construction, operation, maintenance, rehabilitation, and
 11 replacement of the WMAT rural water system on the res-
 12 ervation shall be subject to the provisions (including regu-
 13 lations) of the Indian Self-Determination and Education
 14 Assistance Act (25 U.S.C. 450 et seq.).

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

20 **SEC. 8. OUTDOOR RECREATION FACILITIES, NATIONAL**
 21 **FISH HATCHERIES, AND EXISTING IRRIGA-**
 22 **TION SYSTEMS.**

23 (a) IN GENERAL.—Subject to the availability of ap-
 24 propriations, on request of the Tribe, the Secretary shall
 25 provide financial and technical assistance to complete the

1 Hawley Lake, Horseshoe Lake, Reservation Lake, Sunrise
2 Lake, and Big and Little Bear Lake reconstruction
3 projects and facilities improvements, as generally de-
4 scribed in the Bureau report entitled “White Mountain
5 Apache Tribe Recreation Planning Study—April 2003”.

6 (b) ~~ALCHESAY WILLIAMS CREEK NATIONAL FISH~~
7 ~~HATCHERY COMPLEX.—~~

8 (1) ~~IN GENERAL.—~~Subject to the availability of
9 appropriations, the Secretary shall operate, main-
10 tain, rehabilitate, and upgrade the Alchesay-Wil-
11 liams Creek National Fish Hatchery Complex on the
12 reservation for the continued general and primary
13 benefit of the Tribe and the White Mountain region.

14 (2) ~~COMPLEX REHABILITATION.—~~The rehabili-
15 tation of, and upgrades to, the complex described in
16 paragraph (1) shall include—

17 (A) ~~raceway construction and rehabilita-~~
18 ~~tion, water quality improvements, a water recir-~~
19 ~~ulation system, supplemental water treatment~~
20 ~~capability, equipment acquisition, and building~~
21 ~~rehabilitation; and~~

22 (B) ~~capital improvement and deferred~~
23 ~~maintenance facility needs identified in the re-~~
24 ~~ports of the United States Fish and Wildlife~~
25 ~~Service entitled “Facilities Needs Assessment”~~

1 and “Merrick Report” and dated September
2 2000, as updated through 2008.

3 (c) ~~TRIBE FISHERY CENTER.~~—Subject to the avail-
4 ability of appropriations, the Secretary shall plan, design,
5 construct, operate, maintain, rehabilitate, and replace a
6 fish grow-out facility, to be known as the “WMAT Fishery
7 Center”, on the west side of the reservation for the benefit
8 of the Tribe, consisting of—

- 9 (1) a 10,000 square foot indoor facility;
- 10 (2) circular fiberglass tanks;
- 11 (3) plumbing and required equipment;
- 12 (4) collection and conveyance water systems;
- 13 and
- 14 (5) raceways and ponds.

15 (d) ~~SUNRISE SKI PARK SNOW-MAKING INFRASTRUC-~~
16 ~~TURE.~~—Subject to the availability of appropriations, the
17 Secretary shall plan, design, and construct snow-making
18 capacity and infrastructure for Sunrise Ski Park, con-
19 sisting of—

- 20 (1) enlargement of Ono Lake;
- 21 (2) replacement of snow-making infrastructure,
22 as necessary; and
- 23 (3) expansion of snow-making infrastructure
24 and capacity to all ski runs on Sunrise Peak, Apache
25 Peak, and Cyclone Peak.

1 (e) **EXISTING IRRIGATION SYSTEM REHABILITA-**
2 **TION.**—Subject to the availability of appropriations, the
3 Secretary shall operate, maintain, rehabilitate, and up-
4 grade the Canyon Day and other historic irrigation sys-
5 tems on the reservation for the continued general and pri-
6 mary benefit of the Tribe.

7 (f) **APPLICABILITY OF ISDEAA.**—Planning, design,
8 construction, operation, maintenance, rehabilitation, re-
9 placement, and upgrade of the projects identified in this
10 section shall be subject to the provisions (including regula-
11 tions) of the Indian Self-Determination and Education As-
12 sistance Act (25 U.S.C. 450 et seq.).

13 **SEC. 9. FEASIBILITY STUDY OF NEEDED FOREST PROD-**
14 **UCTS IMPROVEMENTS.**

15 (a) **FEASIBILITY STUDY.**—Subject to the availability
16 of appropriations and pursuant to the provisions (includ-
17 ing regulations) of the Indian Self-Determination and
18 Education Assistance Act (25 U.S.C. 450 et seq.), on re-
19 ceipt of a request by the Tribe, the Secretary shall conduct
20 a feasibility study of options for—

21 (1) improving the manufacture and use of tim-
22 ber products derived from commercial forests on the
23 reservation; and

24 (2) improving forest management practices,
25 consistent with sustained yield principles for multi-

1 purpose forest uses, healthy forest initiatives, and
 2 other applicable law to supply raw materials for fu-
 3 ture manufacture and use.

4 (b) REPORT.—Not later than 2 years after the date
 5 of enactment of this Act, the Secretary, with concurrence
 6 of the tribal council of the Tribe, shall submit to Congress
 7 a report describing the results of the feasibility study
 8 under subsection (a), including recommendations of the
 9 Secretary, if any, for the improvements described in that
 10 subsection.

11 (c) IMPLEMENTATION.—Subject to the availability of
 12 appropriations, the Secretary shall plan, design, and con-
 13 struct the improvements recommended under subsection
 14 (b).

15 **SEC. 10. RECREATION IMPOUNDMENTS AND RELATED FA-**
 16 **CILITIES.**

17 Subject to the availability of appropriations, on re-
 18 ceipt of a request by the Tribe and pursuant to the provi-
 19 sions (including regulations) of the Indian Self-Deter-
 20 mination and Education Assistance Act (25 U.S.C. 450
 21 et seq.), the Secretary shall—

22 (1) conduct a feasibility study of recreation im-
 23 poundments throughout the reservation;

24 (2) develop recommendations for the implemen-
 25 tation, by not later than 1 year after the date of en-

1 actment of this Act, of feasible recreation impound-
2 ments; and

3 ~~(3)~~ plan, design, and construct any rec-
4 ommended recreation impoundments and related
5 recreation facilities.

6 **SEC. 11. SATISFACTION OF CLAIMS.**

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

13 (b) USES OF WATER.—All uses of water on lands
14 outside of the reservation, if and when such lands are sub-
15 sequently and finally determined to be part of the reserva-
16 tion through resolution of any dispute between the Tribe
17 and the United States over the location of the reservation
18 boundary, and any fee lands within the reservation put
19 into trust and made part of the reservation, shall be sub-
20 ject to the maximum annual diversion amounts and the
21 maximum annual depletion amounts specified in the
22 Agreement.

23 (c) NO RECOGNITION OF WATER RIGHTS.—Notwith-
24 standing subsection (a), nothing in this Act has the effect

1 of recognizing or establishing any right of a member of
 2 the Tribe to water on the reservation.

3 **SEC. 12. WAIVER AND RELEASE OF CLAIMS.**

4 (a) IN GENERAL.—

5 (1) CLAIMS AGAINST THE STATE AND OTH-
 6 ERS.—Except as provided in subparagraph 12.6 of
 7 the Agreement, the Tribe, on behalf of itself and its
 8 members, and the United States, acting in its capac-
 9 ity of trustee for the Tribe and its members as part
 10 of the performance of their obligations under the
 11 Agreement, are authorized to execute a waiver and
 12 release of any claims against the State (or any agen-
 13 cy or political subdivision of the State), or any other
 14 person, entity, corporation, or municipal corporation
 15 under Federal, State, or other law for all—

16 (A)(i) past, present, and future claims for
 17 water rights for the reservation and off-reserva-
 18 tion trust land arising from time immemorial
 19 and, thereafter, forever, and

20 (ii) past, present, and future claims for
 21 water rights arising from time immemorial and,
 22 thereafter, forever, that are based upon aborigi-
 23 nal occupancy of land by the Tribe, its mem-
 24 bers, or their predecessors;

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

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

10 (iii) claims for injury to water rights aris-
11 ing after the enforceability date for the reserva-
12 tion and off-reservation trust land resulting
13 from off-reservation diversion or use of water in
14 a manner not in violation of the Agreement or
15 State law; and

16 (C) past, present, and future claims aris-
17 ing out of or relating in any manner to the ne-
18 gotiation or execution of the Agreement or the
19 negotiation or enactment of this Act.

20 (2) CLAIMS AGAINST TRIBE.—Except as pro-
21 vided in subparagraph 12.8 of the Agreement, the
22 United States, in all its capacities (except as trustee
23 for an Indian tribe other than the Tribe), as part of
24 the performance of its obligations under the Agree-
25 ment, is authorized to execute a waiver and release

1 of any and all claims against the Tribe, its members,
 2 or any agency, official, or employee of the Tribe,
 3 under Federal, State, or any other law for all—

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

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

14 (C) past, present, and future claims aris-
 15 ing out of or related in any manner to the nego-
 16 tiation or execution of the Agreement or the ne-
 17 gotiation or enactment of this Act.

18 ~~(3) CLAIMS AGAINST THE UNITED STATES.—~~

19 Except as provided in subparagraph 12.7 of the
 20 Agreement, the Tribe, on behalf of itself and its
 21 members, as part of the performance of its obliga-
 22 tions under the Agreement, is authorized to execute
 23 a waiver and release of any claim against the United
 24 States, including agencies, officials, or employees
 25 thereof (except in the United States capacity as

1 trustee for other tribes); under Federal, State, or
2 other law for any and all—

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

7 (ii) past, present, and future claims for
8 water rights arising from time immemorial and,
9 thereafter, forever, that are based on aboriginal
10 occupancy of land by the Tribe and its mem-
11 bers, or their predecessors;

12 (B)(i) past and present claims relating in
13 any manner to damages, losses, or injuries to
14 water, water rights, land, or other resources
15 due to loss of water or water rights (including
16 but not limited to damages, losses or injuries to
17 hunting, fishing, gathering, or cultural rights
18 due to loss of water or water rights; claims re-
19 lating to interference with, diversion or taking
20 of water; or claims relating to failure to protect,
21 acquire, or develop water, water rights or water
22 infrastructure) within the reservation and off-
23 reservation trust land that first accrued at any
24 time prior to the enforceability date;

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

6 (iii) claims for injury to water rights aris-
7 ing after the enforceability date for the reserva-
8 tion and off-reservation trust land resulting
9 from the off-reservation diversion or use of
10 water in a manner not in violation of the Agree-
11 ment or applicable law;

12 (C) past, present, and future claims aris-
13 ing out of or relating in any manner to the ne-
14 gotiation, execution, or adoption of the Agree-
15 ment, an applicable settlement judgment or de-
16 cree, or this Act;

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

21 (E) past and present claims relating to the
22 operation, maintenance, and replacement of ex-
23 isting irrigation systems on the reservation con-
24 structed prior to the enforceability date that
25 first accrued at any time prior to the enforce-

1 ability date, which waiver shall only become ef-
2 fective upon the full appropriation and payment
3 of such funds authorized by section 16(c)(4) to
4 the Tribe;

5 (F) future claims relating to operation,
6 maintenance, and replacement of the WMAT
7 rural water system, which waiver shall only be-
8 come effective upon the full appropriation of
9 funds authorized by section 16(b) and their de-
10 posit into the Rural Water System OM&R
11 Fund; and

12 (G) past, present, and future breach of
13 trust and negligence claims for damage to the
14 natural resources of the Tribe caused by ripar-
15 ian and other vegetative manipulation, includ-
16 ing over-cutting of forest resources by the
17 United States for the purpose of increasing
18 water runoff from the reservation.

19 (4) NO WAIVER OF CLAIMS.—Nothing in this
20 subsection waives any claim of the Tribe against the
21 United States for future takings by the United
22 States of reservation land or off-reservation trust
23 land or property rights appurtenant to those lands,
24 including any water rights set forth in paragraph
25 4.0 of the Agreement.

1 (b) ~~EFFECTIVENESS OF WAIVER AND RELEASES.—~~

2 Except where otherwise specifically provided in subpara-
3 graphs ~~(E)~~ and ~~(F)~~ of subsection ~~(a)(3)~~, the waivers and
4 releases under subsection ~~(a)~~ shall become effective on the
5 enforceability date.

6 (c) ~~ENFORCEABILITY DATE.—~~

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

10 (A) to the extent the Agreement conflicts
11 with this Act, the Agreement has been revised
12 through an amendment to eliminate the conflict
13 and the Agreement, so revised, has been exe-
14 cuted by the Secretary, the Tribe and the Gov-
15 ernor of the State;

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

18 (C)(i) the funds authorized in sections 13
19 and 16(a), have been appropriated and depos-
20 ited in the Rural Water System Construction
21 Fund; and

22 (ii) if applicable, the funds described in
23 section 16(i) have been deposited in the Rural
24 Water System Construction Fund;

1 (D) the State funds described in subpara-
2 graph 12.3 of the Agreement have been depos-
3 ited in the Rural Water System Construction
4 Fund;

5 (E) the Secretary has issued a record of
6 decision approving the construction of the
7 WMAT rural water system in a configuration
8 substantially similar to that described in section
9 7; and

10 (F) the judgments and decrees substan-
11 tially in the form of those attached to the
12 Agreement as exhibits 12.9.6.1 and 12.9.6.2
13 have been approved by the respective trial
14 courts.

15 (2) FAILURE OF ENFORCEABILITY DATE TO
16 OCCUR.—If, because of the failure of the enforce-
17 ability date to occur by October 31, 2013, this sec-
18 tion does not become effective, the Tribe and its
19 members, and the United States, acting in the ca-
20 pacity of trustee for the Tribe and its members,
21 shall retain the right to assert past, present, and fu-
22 ture water rights claims and claims for injury to
23 water rights for the reservation and off-reservation
24 trust land.

1 (3) NO RIGHTS TO WATER.—Upon the occur-
 2 rence of the enforceability date, all land held by the
 3 United States in trust for the Tribe and its members
 4 shall have no rights to water other than those spe-
 5 cifically quantified for the Tribe and the United
 6 States, acting in the capacity of trustee for the
 7 Tribe and its members for the reservation and off-
 8 reservation trust land pursuant to paragraph 4.0 of
 9 the Agreement.

10 (d) UNITED STATES ENFORCEMENT AUTHORITY.—
 11 Nothing in this Act or the Agreement affects any right
 12 of the United States to take any action, including environ-
 13 mental actions, under any laws (including regulations and
 14 the common law) relating to human health, safety, or the
 15 environment.

16 **SEC. 13. USE OF LOWER COLORADO RIVER BASIN DEVEL-**
 17 **OPMENT FUND.**

18 (a) USE OF AMOUNTS.—

19 (1) IN GENERAL.—Subject to paragraph (2), up
 20 to \$100,000,000 of amounts in the Lower Colorado
 21 River Basin Development Fund made available
 22 under section 403(f)(2)(D)(vi) of the Colorado River
 23 Basin Project Act (43 U.S.C. 1543(f)(2)(D)(vi))
 24 may be used, without further appropriation, for the

1 planning, engineering, design, and construction of
 2 the WMAT rural water system.

3 ~~(2) REQUIREMENT.~~—If a loan is made to the
 4 Tribe pursuant to the White Mountain Apache Tribe
 5 Rural Water System Loan Authorization Act (Public
 6 Law ~~110–390~~; 122 Stat. 4191), the Tribe shall use
 7 such amounts made available under paragraph ~~(1)~~
 8 as are necessary to repay that loan.

9 ~~(b) OFFSET.~~—To the extent necessary, the Secretary
 10 shall offset amounts expended pursuant to subsection (a)
 11 using such additional amounts as may be made available
 12 to the Secretary for the applicable fiscal year.

13 **SEC. 14. TRUST FUNDS.**

14 ~~(a) ESTABLISHMENT.~~—There is established in the
 15 Treasury of the United States—

16 ~~(1)~~ a fund to be known as the “Rural Water
 17 System Construction Fund”, consisting of—

18 ~~(A)~~ the funds made available under section
 19 ~~13~~;

20 ~~(B)~~ the amounts appropriated to the fund
 21 pursuant to subsections (a) and (i) of section
 22 ~~16~~; as applicable; and

23 ~~(C)~~ the funds provided in subparagraph
 24 ~~13.3~~ of the Agreement; and

1 (2) a fund to be known as the “Rural Water
2 System OM&R Fund”, consisting of amounts appro-
3 priated to the fund pursuant to section 16(b).

4 (b) MANAGEMENT.—The Secretary shall manage the
5 Rural Water System Construction Fund and the Rural
6 Water System OM&R Fund, including by—

7 (1) making investments from the funds; and
8 (2) distributing amounts from the funds to the
9 Tribe, in accordance with the American Indian
10 Trust Fund Management Reform Act of 1994 (25
11 U.S.C. 4001 et seq.).

12 (c) INVESTMENT OF FUNDS.—The Secretary shall in-
13 vest amounts in the funds in accordance with—

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

15 (2) the first section of the Act of June 24,
16 1938 (25 U.S.C. 162a);

17 (3) subsection (b);

18 (4) the obligations of Federal corporations and
19 Federal Government-sponsored entities the charter
20 documents of which provide that the obligations of
21 the entities are lawful investments for federally man-
22 aged funds, including—

23 (A) the obligations of the United States
24 Postal Service described in section 2005 of title
25 39, United States Code;

1 (B) bonds and other obligations of the
2 Tennessee Valley Authority described in section
3 15d of the Tennessee Valley Authority Act of
4 1933 (16 U.S.C. 831n-4);

5 (C) mortgages, obligations, and other secu-
6 rities of the Federal Home Loan Mortgage Cor-
7 poration described in section 303 of the Federal
8 Home Loan Mortgage Corporation Act (12
9 U.S.C. 1452); and

10 (D) bonds, notes, and debentures of the
11 Commodity Credit Corporation described in sec-
12 tion 4 of the Act of March 8, 1938 (15 U.S.C.
13 713a-4); and

14 (5) the obligations referred to in section 201 of
15 the Social Security Act (42 U.S.C. 401).

16 (d) EXPENDITURES AND WITHDRAWALS.—

17 (1) TRIBAL MANAGEMENT PLANS.—

18 (A) IN GENERAL.—The Tribe may with-
19 draw any portion of the Rural Water System
20 Construction Fund or the Rural Water System
21 OM&R Fund on approval by the Secretary of a
22 tribal management plan under the American In-
23 dian Trust Fund Management Reform Act of
24 1994 (25 U.S.C. 4001 et seq.).

1 (B) REQUIREMENTS.—In addition to the
2 requirements under that Act (25 U.S.C. 4001
3 et seq.); the tribal management plan shall re-
4 quire that the Tribe shall—

5 (i) use amounts in the Rural Water
6 System Construction Fund only for the
7 planning, design, and construction of the
8 rural water system, including such sums as
9 are necessary—

10 (I) for the Bureau to carry out
11 oversight of the planning, design, and
12 construction of the rural water sys-
13 tem; and

14 (II) to carry out all required en-
15 vironmental compliance activities asso-
16 ciated with the planning, design, and
17 construction of the rural water sys-
18 tem; and

19 (ii) use amounts in the Rural Water
20 System OM&R Fund only for the oper-
21 ation, maintenance, and replacement costs
22 associated with the delivery of water
23 through the rural water system.

24 (2) ENFORCEMENT.—The Secretary may pur-
25 sue such judicial remedies and carry out such ad-

1 ministrative actions as are necessary to enforce the
2 tribal management plan to ensure that amounts in
3 the Rural Water System Construction Fund and the
4 Rural Water System OM&R Fund are used in ac-
5 cordance with this section.

6 (3) **LIABILITY.**—On withdrawal by the Tribe of
7 amounts in the Rural Water System Construction
8 Fund or the Rural Water System OM&R Fund, the
9 Secretary and the Secretary of the Treasury shall
10 not retain liability for the expenditure or investment
11 of those amounts.

12 (4) **EXPENDITURE PLAN.**—

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

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

22 (C) **APPROVAL.**—The Secretary shall ap-
23 prove an expenditure plan under this paragraph
24 if the Secretary determines that the plan is—

25 (i) reasonable; and

1 (ii) consistent with this Act.

2 (5) ANNUAL REPORTS.—The Tribe shall submit
3 to the Secretary an annual report that describes
4 each expenditure from the Rural Water System Con-
5 struction Fund and the Rural Water System OM&R
6 Fund during the year covered by the report.

7 (e) PROHIBITION ON PER CAPITA DISTRIBUTIONS.—
8 No amount of the principal, or the interest or income ac-
9 cruing on the principal, of the Rural Water System Con-
10 struction Fund or the Rural Water System OM&R Fund
11 shall be distributed to any member of the Tribe on a per
12 capita basis.

13 (f) FUNDS NOT AVAILABLE UNTIL ENFORCEABILITY
14 DATE.—Amounts in the Rural Water System Construc-
15 tion Fund and the Rural Water System OM&R Fund shall
16 not be available for expenditure or withdrawal by the
17 Tribe until the enforceability date.

18 **SEC. 15. MISCELLANEOUS PROVISIONS.**

19 (a) LIMITED WAIVER OF SOVEREIGN IMMUNITY.—

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

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

24 (B) any claim by the United States or the
25 Tribe to sovereign immunity from the civil ac-

1 tion is waived for the sole purpose of resolving
2 any issue regarding the interpretation or en-
3 forcement of this Act or the Agreement.

4 (2) DESCRIPTION OF CIVIL ACTION.—A civil ac-
5 tion referred to in paragraph (1) is a civil action
6 filed—

7 (A) by any party to the Agreement or sig-
8 natory to an exhibit to the Agreement in a
9 United States or State court that—

10 (i) relates solely and directly to the in-
11 terpretation or enforcement of this Act or
12 the Agreement; and

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

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

18 (i) relates solely and directly to the in-
19 terpretation or enforcement of paragraph
20 12.0 of the Agreement; and

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

23 (b) EFFECT OF ACT.—Nothing in this Act quantifies
24 or otherwise affects any water right or claim or entitle-

1 ment to water of any Indian tribe, band, or community
 2 other than the Tribe.

3 (c) LIMITATION ON LIABILITY OF UNITED
 4 STATES.—

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

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

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

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

19 (d) APPLICABILITY OF RECLAMATION REFORM
 20 ACT.—The Reclamation Reform Act of 1982 (43 U.S.C.
 21 390aa et seq.) and any other acreage limitation or full-
 22 cost pricing provision under Federal law shall not apply
 23 to any individual, entity, or land solely on the basis of—

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

25 (2) the execution of this Act; or

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

3 (c) TREATMENT OF TRIBAL WATER RIGHTS.—The
4 tribal water rights—

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

7 (2) shall not be subject to forfeiture or aban-
8 donment.

9 (f) SECRETARIAL POWER SITES.—The portions of
10 the following named secretarial power site reserves that
11 are located on the reservation shall be transferred and re-
12 stored into the name of the Tribe:

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

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

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

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

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

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

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

5 (h) ~~AFTER-ACQUIRED TRUST LANDS.~~—

6 (1) ~~REQUIREMENT OF ACT OF CONGRESS.~~—

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

15 (B) ~~EXCEPTIONS.~~—Subparagraph (A)
16 shall not apply to—

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

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

1 (2) WATER RIGHTS.—

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

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

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

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

21 (B) RESERVATION STATUS.—Land taken
22 or held in trust by the Secretary under para-
23 graph (3), or restored to the reservation as a
24 result of resolution of a boundary dispute be-

1 tween the Tribe and the United States, shall be
2 deemed to be part of the reservation.

3 **SEC. 16. AUTHORIZATION OF APPROPRIATIONS.**

4 (a) **RURAL WATER SYSTEM.**—

5 (1) **PLANNING, ENGINEERING, DESIGN, AND**
6 **CONSTRUCTION.**—

7 (A) **IN GENERAL.**—There is authorized to
8 be appropriated for the planning, engineering,
9 design, and construction of the WMAT rural
10 water system \$126,193,000, as adjusted in ac-
11 cordance with subparagraph (B), less—

12 (i) the amount of funding applied to-
13 ward the planning, engineering, design,
14 and construction of the WMAT rural water
15 system under section 13; and

16 (ii) the funds to be provided under
17 subparagraph 13.3 of the Agreement.

18 (B) **ADJUSTMENTS AND INCLUSIONS.**—

19 The amount authorized to be appropriated
20 under subparagraph (A) shall—

21 (i) be adjusted as may be required
22 due to changes in construction costs of the
23 rural water system, as indicated by engi-
24 neering cost indices applicable to the types
25 of planning, engineering, design, and con-

1 construction occurring after October 1, 2007;
2 and

3 (ii) include such sums as are nec-
4 essary for the Bureau to carry out over-
5 sight of activities for planning, design, and
6 construction of the rural water system.

7 (2) ENVIRONMENTAL COMPLIANCE.—There are
8 authorized to be appropriated to the Secretary such
9 sums as are necessary to carry out all required Fed-
10 eral environmental compliance activities associated
11 with the planning, engineering, design, and construc-
12 tion of the rural water system.

13 (b) RURAL WATER SYSTEM OM&R.—There is au-
14 thorized to be appropriated \$50,000,000 for the operation,
15 maintenance, and replacement costs of the rural water
16 system.

17 (c) REHABILITATION OF RECREATION FACILITIES,
18 NATIONAL FISH HATCHERIES, AND EXISTING IRRIGA-
19 TION SYSTEMS.—There are authorized to be appropriated,
20 for use in accordance with section 8—

21 (1) \$23,675,000 to complete the Hawley Lake,
22 Horseshoe Lake, Reservation Lake, Sunrise Lake,
23 and Big and Little Bear Lake reconstruction
24 projects and facilities improvements;

1 (2) \$7,472,000 to the United States Fish and
2 Wildlife Service for the rehabilitation and improve-
3 ment of the Alchessay-Williams Creek National Fish
4 Hatchery Complex;

5 (3) \$5,000,000 to the Bureau of Indian Affairs
6 for the planning, design, and construction of the
7 WMAT Fishery Center; and

8 (4) for the rehabilitation of existing irrigation
9 systems—

10 (A) \$950,000 for the Canyon Day irriga-
11 tion system; and

12 (B) \$4,000,000 for the Historic irrigation
13 system.

14 (d) FEASIBILITY STUDY OF NEEDED FOREST PROD-
15 UCTS IMPROVEMENTS.—There are authorized to be appro-
16 priated—

17 (1) to the Bureau of Indian Affairs \$1,000,000
18 to conduct a feasibility study of the rehabilitation
19 and improvement of forest products manufacturing
20 and forest management on the reservation in accord-
21 ance with section 9; and

22 (2) \$24,000,000 to implement the recommenda-
23 tions developed under the study.

24 (e) SUNRISE SKI PARK SNOW-MAKING INFRASTRUC-
25 TURE.—There is authorized to be appropriated

1 \$25,000,000 for the planning, design, and construction of
2 snow-making infrastructure, repairs, and expansion at
3 Sunrise Ski Park in accordance with section 8.

4 (f) RECREATION IMPOUNDMENTS AND RELATED FA-
5 CILITIES.—There is authorized to be appropriated
6 \$25,000,000 to carry out section 10.

7 (g) ENVIRONMENTAL COMPLIANCE.—There are au-
8 thorized to be appropriated to the Secretary such sums
9 as are necessary to carry out all required environmental
10 compliance activities associated with the Agreement and
11 this Act.

12 (h) COST INDEXING.—The amounts authorized to be
13 appropriated under this section shall be adjusted as appro-
14 priate, based on ordinary fluctuations in engineering cost
15 indices applicable for the relevant types of construction,
16 if any, during the period beginning on October 1, 2007,
17 and ending on the date on which the amounts are made
18 available.

19 (i) EMERGENCY FUND FOR INDIAN SAFETY AND
20 HEALTH.—Effective beginning on January 1, 2010, if the
21 Secretary determines that, on an annual basis, the dead-
22 line described in section 12(c)(2) is not likely to be met
23 because the funds authorized in sections 13 and 16(a)
24 have not been appropriated and deposited in the Rural
25 Water System Construction Fund, not more than

1 \$100,000,000 of the amounts in the Emergency Fund for
2 Indian Safety and Health established by section 601(a)
3 of the Tom Lantos and Henry J. Hyde United States
4 Global Leadership Against HIV/AIDS, Tuberculosis, and
5 Malaria Reauthorization Act of 2008 (22 U.S.C. 7601 et
6 seq.) shall be transferred to the Rural Water System Con-
7 struction Fund, as necessary to complete the WMAT rural
8 water system project.

9 **SEC. 17. ANTIDEFICIENCY.**

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

16 **SEC. 18. REPEAL ON FAILURE OF ENFORCEABILITY DATE.**

17 If the Secretary fails to publish in the Federal Reg-
18 ister a statement of findings as required under section
19 12(c) by not later than October 31, 2013—

20 (1) effective beginning on November 1, 2013—

21 (A) this Act is repealed; and

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

1 (2) any amounts appropriated under sections
2 13 and subsections (a) and (b) of section 16, to-
3 gether with any interest accrued on those amounts,
4 shall immediately revert to the general fund of the
5 Treasury; and

6 (3) any amounts paid by the State in accord-
7 ance with the Agreement, together with any interest
8 accrued on those amounts, shall immediately be re-
9 turned to the State.

10 **SEC. 19. COMPLIANCE WITH ENVIRONMENTAL LAWS.**

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

13 (1) the National Environmental Policy Act of
14 1969 (42 U.S.C. 4321 et seq.);

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

17 (3) all other applicable Federal environmental
18 laws; and

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

21 **SECTION 1. SHORT TITLE.**

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

24 **SEC. 2. FINDINGS AND PURPOSES.**

25 (a) *FINDINGS.*—*Congress finds that—*

1 (1) *proceedings to determine the nature and ex-*
2 *tent of the water rights of the White Mountain Apache*
3 *Tribe, members of the Tribe, the United States, and*
4 *other claimants are pending in—*

5 (A) *the consolidated civil action in the Su-*
6 *perior Court of the State of Arizona for the*
7 *County of Maricopa styled In re the General Ad-*
8 *judication of All Rights To Use Water In The*
9 *Gila River System and Source, W-1 (Salt), W-*
10 *2 (Verde), W-3 (Upper Gila), W-4 (San Pedro);*
11 *and*

12 (B) *the civil action pending in the Superior*
13 *Court of the State of Arizona for the County of*
14 *Apache styled In re the General Adjudication of*
15 *All Rights to Use Water in the Little Colorado*
16 *River System and Source and numbered CIV-*
17 *6417;*

18 (2) *a final resolution of those proceedings*
19 *might—*

20 (A) *take many years;*

21 (B) *entail great expense; and*

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

24 (3) *the Tribe, non-Indian communities located*
25 *near the reservation of the Tribe, and other Arizona*

1 *water users have entered into the WMAT Water*
2 *Rights Quantification Agreement—*

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

8 *(B) to seek funding, in accordance with ap-*
9 *plicable law, for the implementation of the*
10 *Agreement;*

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

16 *(5) certainty concerning the extent of the water*
17 *rights of the Tribe will—*

18 *(A) provide opportunities for economic de-*
19 *velopment of all parties to the proceeding; and*

20 *(B) assist the Tribe to achieve self-deter-*
21 *mination and self-sufficiency; and*

22 *(6) in keeping with the trust responsibility of the*
23 *United States to Indian tribes, and to promote tribal*
24 *sovereignty and economic self-sufficiency, it is appro-*

1 *appropriate that the United States implement the Agree-*
 2 *ment.*

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

4 *(1) to authorize, ratify, and confirm the Agree-*
 5 *ment;*

6 *(2) to authorize and direct the Secretary to exe-*
 7 *cute the Agreement and carry out all obligations of*
 8 *the Secretary under the Agreement;*

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

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

15 *(A) the Tribe and its members;*

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

18 *(C) the parties to the Agreement; and*

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

21 **SEC. 3. DEFINITIONS.**

22 *In this Act:*

23 *(1) AGREEMENT.—The “Agreement” means—*

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

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

4 (i) made in accordance with this Act;

5 or

6 (ii) otherwise approved by the Sec-
7 retary.

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

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

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

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

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

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

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

9 (A) the Mark Wilmer Pumping Plant;

10 (B) the Hayden-Rhodes Aqueduct;

11 (C) the Fannin-McFarland Aqueduct;

12 (D) the Tucson Aqueduct;

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

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

19 (9) *CAP WATER*.—The term “CAP water” means
20 “Project Water” (as that term is defined in the repay-
21 ment stipulation).

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

23 (A) the proposed contract between the Tribe
24 and the United States attached as exhibit 7.1 to

1 *the Agreement and numbered 08–XX–30–W0529;*
2 *and*

3 *(B) any amendments to that contract.*

4 (11) *DISTRICT.*—*The term “District” means the*
5 *Central Arizona Water Conservation District, a polit-*
6 *ical subdivision of the State that is the contractor*
7 *under the repayment contract.*

8 (12) *ENFORCEABILITY DATE.*—*The term “en-*
9 *forceability date” means the date described in section*
10 *9(d)(1).*

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

15 (14) *INJURY TO WATER RIGHTS.*—

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

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

22 (i) *a change in the groundwater table;*

23 *and*

24 (ii) *any effect of such a change.*

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

4 (15) *LOWER COLORADO RIVER BASIN DEVELOP-*
5 *MENT FUND.*—*The term “Lower Colorado River*
6 *Basin Development Fund” means the fund established*
7 *by section 403 of the Colorado River Basin Project*
8 *Act (43 U.S.C. 1543).*

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

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

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

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

21 (18) *REPAYMENT CONTRACT.*—*The term “repay-*
22 *ment contract” means—*

23 (A) *the contract between the United States*
24 *and the District for delivery of water and repay-*
25 *ment of the costs of the CAP, numbered 14–06–*

1 W-245 (Amendment No. 1), and dated December
2 1, 1988; and

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

5 (19) *REPAYMENT STIPULATION.*—The term “re-
6 payment stipulation” means the stipulated judgment
7 and the stipulation for judgment (including any ex-
8 hibits to those documents) entered on November 21,
9 2007, in the United States District Court for the Dis-
10 trict of Arizona in the consolidated civil action styled
11 Central Arizona Water Conservation District v.
12 United States, et al., and numbered CIV 95-625-
13 TUC-WDB (EHC) and CIV 95-1720-PHX-EHC.

14 (20) *RESERVATION.*—

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

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

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

3 (B) NO EFFECT ON DISPUTE OR AS ADMIS-
4 SION.—The depiction of the reservation described
5 in subparagraph (A)(i) shall not—

6 (i) be used to affect any dispute be-
7 tween the Tribe and the United States con-
8 cerning the legal boundary of the reserva-
9 tion; and

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

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

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

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

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

24 (25) TRIBE.—The term “Tribe” means the White
25 Mountain Apache Tribe organized under section 16 of

1 *the Act of June 18, 1934 (commonly known as the*
2 *“Indian Reorganization Act”) (25 U.S.C. 476).*

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

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

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

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

13 (a) *APPROVAL.*—

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

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

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

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

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

7 (c) *NATIONAL ENVIRONMENTAL POLICY ACT.—*

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

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

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

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

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

20 (2) *EXECUTION OF AGREEMENT.—*

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

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

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

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

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

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

14 (2) *shall not be subject to forfeiture or abandon-*
15 *ment.*

16 (b) *REALLOCATION.*—

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

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

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

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

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

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

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

1 *rigation District, and the United States;*
2 *and*

3 *(ii) converted to CAP Indian Priority*
4 *water (as defined in the Contract) pursuant*
5 *to the Fort McDowell Indian Community*
6 *Water Rights Settlement Act of 1990 (Pub-*
7 *lic Law 101–628; 104 Stat. 4480).*

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

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

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

25 *(1) nonreimbursable; and*

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

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

6 (1) *governs the tribal water rights; and*

7 (2) *includes, at a minimum—*

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

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

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

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

1 **SEC. 6. CONTRACT.**

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

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

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

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

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

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

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

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

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

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

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

18 (ii) the expenditure of those funds;

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

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

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

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

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

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

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

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

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

4 (2) *without limit as to term.*

5 (c) *RATIFICATION.—*

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

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

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

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

23 (f) *PROHIBITIONS.—*

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

1 *transferred by the Tribe in any way for use directly*
2 *or indirectly outside the State.*

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

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

16 (g) *LEASES.—*

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

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

24 (B) *the Secretary shall execute the leases.*

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

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

6 (a) *IN GENERAL.*—*Subject to the availability of appro-*
7 *priations, the Secretary, acting through the Bureau, shall*
8 *plan, design, construct, operate, maintain, replace, and re-*
9 *habilitate the WMAT rural water system as generally de-*
10 *scribed in the project extension report dated February 2007.*

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

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

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

20 (3) *connections to existing distribution facilities,*
21 *including public and private water systems in exist-*
22 *ence on the date of enactment of this Act;*

23 (4) *appurtenant buildings and access roads;*

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

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

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

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

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

23 (e) *TITLE.*—

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

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

8 (A) *the designers' operating criteria, stand-*
9 *ing operating procedures, emergency action plan,*
10 *and first filling and monitoring criteria are es-*
11 *tablished and in place, and the WMAT rural*
12 *water system has been declared substantially*
13 *complete;*

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

18 (C) *the Tribe has been operating success-*
19 *fully under the established standing operating*
20 *procedures for a period of not more than 5 cal-*
21 *endar years.*

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

1 *alienation or taxation of the WMAT rural water sys-*
2 *tem or the underlying reservation land.*

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

8 *(g) APPLICABILITY OF ISDEAA.—*

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

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

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

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

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

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

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

1 *imum annual diversion amounts and the maximum annual*
 2 *depletion amounts specified in the Agreement.*

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

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

8 (a) *IN GENERAL.*—

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

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

24 (ii) *past, present, and future claims for*
 25 *water rights arising from time immemorial and,*

1 *thereafter, forever, that are based on aboriginal*
 2 *occupancy of land by the Tribe, its members, or*
 3 *their predecessors;*

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

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

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

19 *(C) past, present, and future claims arising*
 20 *out of or relating in any manner to the negotia-*
 21 *tion, execution, or adoption of the Agreement, an*
 22 *applicable settlement judgement or decree, or this*
 23 *Act.*

24 *(2) CLAIMS AGAINST TRIBE.—Except as provided*
 25 *in subsection (b)(3), the United States, in all its ca-*

1 *pacities (except as trustee for an Indian tribe other*
2 *than the Tribe), as part of the performance of its obli-*
3 *gations under the Agreement, is authorized to execute*
4 *a waiver and release of any and all claims against*
5 *the Tribe, its members, or any agency, official, or em-*
6 *ployee of the Tribe, under Federal, State, or any other*
7 *law for all—*

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

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

18 *(C) past, present, and future claims arising*
19 *out of or related in any manner to the negotia-*
20 *tion, execution, or adoption of the Agreement, an*
21 *applicable settlement judgement or decree, or this*
22 *Act.*

23 *(3) CLAIMS AGAINST UNITED STATES.—Except*
24 *as provided in subsection (b)(2), the Tribe, on behalf*
25 *of itself and its members, as part of the performance*

1 *of the obligations of the Tribe under the Agreement,*
2 *is authorized to execute a waiver and release of any*
3 *claim against the United States, including agencies,*
4 *officials, or employees of the United States (except in*
5 *the capacity of the United States as trustee for other*
6 *Indian tribes), under Federal, State, or other law for*
7 *any and all—*

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

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

17 *(B)(i) past and present claims relating in*
18 *any manner to damages, losses, or injuries to*
19 *water, water rights, land, or other resources due*
20 *to loss of water or water rights (including dam-*
21 *ages, losses, or injuries to hunting, fishing, gath-*
22 *ering, or cultural rights due to loss of water or*
23 *water rights, claims relating to interference with,*
24 *diversion, or taking of water, or claims relating*
25 *to failure to protect, acquire, or develop water,*

1 *water rights, or water infrastructure) within the*
2 *reservation and off-reservation trust land that*
3 *first accrued at any time prior to the enforce-*
4 *ability date;*

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

10 *(iii) claims for injury to water rights aris-*
11 *ing after the enforceability date for the reserva-*
12 *tion and off-reservation trust land resulting from*
13 *the off-reservation diversion or use of water in a*
14 *manner not in violation of the Agreement or ap-*
15 *plicable law;*

16 *(C) past, present, and future claims arising*
17 *out of or relating in any manner to the negotia-*
18 *tion, execution, or adoption of the Agreement, an*
19 *applicable settlement judgment or decree, or this*
20 *Act;*

21 *(D) past and present claims relating in any*
22 *manner to pending litigation of claims relating*
23 *to the water rights of the Tribe for the reserva-*
24 *tion and off-reservation trust land;*

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

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

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

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

1 **(b) RESERVATION OF RIGHTS AND RETENTION OF**
2 **CLAIMS.—**

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

5 **(A) IN GENERAL.—***Notwithstanding the*
6 *waiver and release of claims authorized under*
7 *subsection (a)(1), the Tribe, on behalf of itself*
8 *and the members of the Tribe, and the United*
9 *States, acting as trustee for the Tribe and mem-*
10 *bers of the Tribe, shall retain any right—*

11 *(i) subject to subparagraph 16.9 of the*
12 *Agreement, to assert claims for injuries to,*
13 *and seek enforcement of, the rights of the*
14 *Tribe and members of the Tribe under the*
15 *Agreement or this Act in any Federal or*
16 *State court of competent jurisdiction;*

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

22 *(iii) to assert claims for injuries to,*
23 *and seek enforcement of, the rights of the*
24 *Tribe under the judgment and decree en-*

1 *tered by the court in the Little Colorado*
2 *River adjudication proceedings;*

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

8 *(v) to participate in the Gila River ad-*
9 *judication proceedings and the Little Colo-*
10 *rado River adjudication proceedings to the*
11 *extent provided in subparagraph 14.1 of the*
12 *Agreement;*

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

17 *(vii) to assert any past, present, or fu-*
18 *ture claim for injury to water rights*
19 *against any other Indian tribe, Indian com-*
20 *munity or nation, dependent Indian com-*
21 *munity, allottee, or the United States on be-*
22 *half of such a tribe, community, nation, or*
23 *allottee; and*

24 *(viii) to assert any past, present, or fu-*
25 *ture claim for trespass, use, and occupancy*

1 *of the reservation in, on, or along the Black*
2 *River against Freeport-McMoRan Copper &*
3 *Gold, Inc., Phelps Dodge Corporation, or*
4 *Phelps Dodge Morenci, Inc. (or a prede-*
5 *cessor or successor of those entities), includ-*
6 *ing all subsidiaries and affiliates of those*
7 *entities.*

8 *(B) AGREEMENT.—On terms acceptable to*
9 *the Tribe and the United States, the Tribe and*
10 *the United States are authorized to enter into an*
11 *agreement with Freeport-McMoRan Copper &*
12 *Gold, Inc., Phelps Dodge Corporation, or Phelps*
13 *Dodge Morenci, Inc. (or a predecessor or suc-*
14 *cessor of those entities), including all subsidiaries*
15 *and affiliates of those entities, to resolve the*
16 *claims of the Tribe relating to the trespass, use,*
17 *and occupancy of the reservation in, on, and*
18 *along the Black River.*

19 *(2) RESERVATION OF RIGHTS AND RETENTION*
20 *OF CLAIMS BY TRIBE AGAINST UNITED STATES.—Not-*
21 *withstanding the waiver and release of claims author-*
22 *ized under subsection (a)(3), the Tribe, on behalf of*
23 *itself and the members of the Tribe, shall retain any*
24 *right—*

1 (A) *subject to subparagraph 16.9 of the*
2 *Agreement, to assert claims for injuries to, and*
3 *seek enforcement of, the rights of the Tribe and*
4 *members under the Agreement or this Act, in*
5 *any Federal or State court of competent jurisdic-*
6 *tion;*

7 (B) *to assert claims for injuries to, and seek*
8 *enforcement of, the rights of the Tribe and mem-*
9 *bers under the judgment and decree entered by*
10 *the court in the Gila River adjudication pro-*
11 *ceedings;*

12 (C) *to assert claims for injuries to, and seek*
13 *enforcement of, the rights of the Tribe and mem-*
14 *bers under the judgment and decree entered by*
15 *the court in the Little Colorado River adjudica-*
16 *tion proceedings;*

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

22 (E) *to assert past, present, or future claims*
23 *for injury to water rights or any other claims*
24 *other than a claim to water rights, against any*
25 *other Indian tribe, Indian community or nation,*

1 *dependent Indian community, or the United*
2 *States on behalf of such a tribe, community, or*
3 *nation;*

4 *(F) to assert claims arising after the en-*
5 *forceability date for injury to water rights result-*
6 *ing from the drilling of wells or pumping of*
7 *water from land located within national forest*
8 *land as of the effective date of the Agreement in*
9 *the south 1/2 of T. 9 N., R. 24 E.; south 1/2 of*
10 *T. 9 N., R. 25 E.; north 1/2 of T. 8 N., R. 24*
11 *E.; north 1/2 of T. 8 N., R. 25 E., if—*

12 *(i) title to that land is no longer re-*
13 *tained by the United States; or*

14 *(ii) water from that land is trans-*
15 *ported off the land for municipal or indus-*
16 *trial use;*

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

20 *(H) to assert any other claims not specifi-*
21 *cally waived under this section; and*

22 *(I) to assert any claim arising after the en-*
23 *forceability date for a future taking by the*
24 *United States of reservation land, off-reservation*
25 *trust land, or any property rights appurtenant*

1 to that land, including any water rights set forth
2 in paragraph 4.0 of the Agreement.

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

9 (c) *EFFECTIVENESS OF WAIVER AND RELEASES.*—Ex-
10 cept as otherwise specifically provided in subparagraphs
11 (E) and (F) of subsection (a)(3), the waivers and releases
12 under subsection (a) shall become effective on the enforce-
13 ability date.

14 (d) *ENFORCEABILITY DATE.*—

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

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

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

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

3 (C) the amount authorized by section 12(a)
4 has been deposited in the White Mountain
5 Apache Tribe Water Rights Settlement Sub-
6 account;

7 (D) the State funds described in subpara-
8 graph 13.3 of the Agreement have been deposited
9 in the White Mountain Apache Tribe Water
10 Rights Settlement Subaccount;

11 (E) the Secretary has issued a record of de-
12 cision approving the construction of the WMAT
13 rural water system in a configuration substan-
14 tially similar to that described in section 7; and

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

19 (2) *FAILURE OF ENFORCEABILITY DATE TO*
20 *OCCUR.—If, because of the failure of the enforceability*
21 *date to occur by October 31, 2015, this section does*
22 *not become effective, the Tribe and its members, and*
23 *the United States, acting in the capacity of trustee for*
24 *the Tribe and its members, shall retain the right to*
25 *assert past, present, and future water rights claims*

1 *and claims for injury to water rights for the reserva-*
2 *tion and off-reservation trust land.*

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

11 (e) *UNITED STATES ENFORCEMENT AUTHORITY.*—
12 *Nothing in this Act or the Agreement affects any right of*
13 *the United States to take any action, including environ-*
14 *mental actions, under any laws (including regulations and*
15 *the common law) relating to human health, safety, or the*
16 *environment.*

17 (f) *NO EFFECT ON WATER RIGHTS.*—*Except as pro-*
18 *vided in paragraphs (1)(A)(ii), (1)(B)(ii), (3)(A)(ii), and*
19 *(3)(B)(ii) of subsection (a), nothing in this Act affects any*
20 *rights to water of the Tribe, its members, or the United*
21 *States acting as trustee for the Tribe and members, for land*
22 *outside the boundaries of the reservation or the off-reserva-*
23 *tion trust land.*

24 (g) *ENTITLEMENTS.*—*Any entitlement to water of the*
25 *Tribe, its members, or the United States acting as trustee*

1 *for the Tribe and members, relating to the reservation or*
 2 *off-reservation trust land shall be satisfied from the water*
 3 *resources granted, quantified, confirmed, or recognized with*
 4 *respect to the Tribe, members, and the United States by the*
 5 *Agreement and this Act.*

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

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

13 (2) *object to, dispute, or challenge after the en-*
 14 *forceability date the drilling of any well or the with-*
 15 *drawal and use of water from any well in the Little*
 16 *Colorado River adjudication proceedings, the Gila*
 17 *River adjudication proceedings, or any other judicial*
 18 *or administrative proceeding.*

19 **SEC. 10. WHITE MOUNTAIN APACHE TRIBE WATER RIGHTS**
 20 **SETTLEMENT SUBACCOUNT.**

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

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

4 (2) *such other amounts as are available, includ-*
 5 *ing the funds provided in subparagraph 13.3 of the*
 6 *Agreement.*

7 (b) *EXPENDITURES AND WITHDRAWALS.—*

8 (1) *CONTRACTS.—*

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

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

21 (i) *for the Bureau to carry out over-*
 22 *sight of the planning, design, and construc-*
 23 *tion of the rural water system;*

24 (ii) *to repay any outstanding balance*
 25 *on the loan authorized by the White Moun-*

1 *tain Apache Tribe Rural Water System*
2 *Loan Authorization Act (Public Law 110-*
3 *390; 122 Stat. 4191); and*

4 *(iii) to carry out all required environ-*
5 *mental compliance activities associated with*
6 *the planning, design, and construction of*
7 *the rural water system.*

8 (2) *ENFORCEMENT.*—*The Secretary may pursue*
9 *such judicial remedies and carry out such adminis-*
10 *trative actions as are necessary to enforce an agree-*
11 *ment described in paragraph (1) to ensure that*
12 *amounts in the White Mountain Apache Tribe Water*
13 *Rights Settlement Subaccount are used in accordance*
14 *with this section.*

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

20 (4) *EXPENDITURE PLAN.*—

21 (A) *IN GENERAL.*—*The Tribe shall submit*
22 *to the Secretary for approval an expenditure*
23 *plan for any portion of the amounts in the sub-*
24 *account under this section that the Tribe does*
25 *not withdraw pursuant to this subsection.*

1 (B) *DESCRIPTION.*—*The expenditure plan*
 2 *shall describe the manner in which, and the pur-*
 3 *poses for which, the amounts remaining in the*
 4 *subaccount will be used.*

5 (C) *APPROVAL.*—*The Secretary shall ap-*
 6 *prove an expenditure plan under this paragraph*
 7 *if the Secretary determines that the plan is—*

8 (i) *reasonable; and*

9 (ii) *consistent with this Act.*

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

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

20 (d) *AVAILABILITY OF FUNDS.*—*Amounts in the White*
 21 *Mountain Apache Tribe Water Rights Settlement Sub-*
 22 *account shall not be available for expenditure or with-*
 23 *drawal by the Tribe until the enforceability date.*

24 **SEC. 11. MISCELLANEOUS PROVISIONS.**

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

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

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

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

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

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

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

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

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

24 (i) *relates solely and directly to the in-*
 25 *terpretation or enforcement of section 9 of*

1 *this Act and paragraph 12.0 of the Agree-*
2 *ment; and*

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

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

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

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

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

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

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

24 *(d) APPLICABILITY OF RECLAMATION REFORM ACT.—*

25 *The Reclamation Reform Act of 1982 (43 U.S.C. 390aa et*

1 *seq.) and any other acreage limitation or full-cost pricing*
 2 *provision under Federal law shall not apply to any indi-*
 3 *vidual, entity, or land solely on the basis of—*

4 (1) *receipt of any benefit under this Act;*

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

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

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

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

17 (2) *Black River Pumps (T. 2 N., R. 25 E.; T.*
 18 *2 N., R. 26 E.; T. 3 N., R. 26 E.).*

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

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

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

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

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

7 (g) *AFTER-ACQUIRED TRUST LAND.—*

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

9 (A) *LEGAL TITLE.—After the enforceability*
10 *date, if the Tribe seeks to have legal title to addi-*
11 *tional land in the State of Arizona located out-*
12 *side the exterior boundaries of the reservation*
13 *taken into trust by the United States for its ben-*
14 *efit, the Tribe may do so only pursuant to an*
15 *Act of Congress specifically authorizing the*
16 *transfer for the benefit of the Tribe.*

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

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

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

3 (2) WATER RIGHTS.—

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

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

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

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

22 (B) RESERVATION STATUS.—Land taken or
23 held in trust by the Secretary under paragraph
24 (3), or restored to the reservation as a result of
25 resolution of a boundary dispute between the

1 *Tribe and the United States, shall be deemed to*
 2 *be part of the reservation.*

3 *(h) CONFORMING AMENDMENT.—Section 3(b)(2) of the*
 4 *White Mountain Apache Tribe Rural Water System Loan*
 5 *Authorization Act (Public Law 110–390; 122 Stat. 4191)*
 6 *is amended by striking “2013” and inserting “2016”.*

7 **SEC. 12. AUTHORIZATION OF APPROPRIATIONS.**

8 *(a) RURAL WATER SYSTEM.—*

9 *(1) IN GENERAL.—There is authorized to be ap-*
 10 *propriated for the planning, engineering, design, en-*
 11 *vironmental compliance, and construction of the*
 12 *WMAT rural water system \$126,193,000.*

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

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

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

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

1 (B) *the WMAT Maintenance Fund estab-*
2 *lished by paragraph (3)(A).*

3 (2) *WMAT SETTLEMENT FUND.—*

4 (A) *ESTABLISHMENT.—There is established*
5 *in the Treasury of the United States a fund to*
6 *be known as the “WMAT Settlement Fund”, con-*
7 *sisting of such amounts as are deposited in the*
8 *fund under subparagraph (B), for use by the*
9 *Tribe in accordance with subparagraph (C).*

10 (B) *TRANSFERS TO FUND.—There is au-*
11 *thorized to be appropriated to the Secretary*
12 *\$113,500,000 for deposit in the WMAT Settle-*
13 *ment Fund, of which not less than \$4,950,000*
14 *shall be used for the rehabilitation of existing ir-*
15 *rigation systems.*

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

19 (i) *Fish production, including hatch-*
20 *eries.*

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

23 (iii) *Water-related economic develop-*
24 *ment projects.*

1 (iv) *Protection, restoration, and eco-*
2 *nomie development of forest and watershed*
3 *health.*

4 (v) *Any cost overruns for the comple-*
5 *tion of the WMAT rural water system, as*
6 *provided in subsection (f).*

7 (3) *WMAT MAINTENANCE FUND.—*

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

16 (B) *TRANSFERS TO FUND.—There is au-*
17 *thorized to be appropriated to the Secretary*
18 *\$50,000,000 for deposit in the WMAT Mainte-*
19 *nance Fund.*

20 (C) *USE OF FUNDS.—The Tribe or the Sec-*
21 *retary, as applicable, shall use amounts in the*
22 *WMAT Maintenance Fund only for the oper-*
23 *ation, maintenance, and replacement costs asso-*
24 *ciated with the delivery of water through the*
25 *rural water system.*

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

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

8 (B) *the first section of the Act of June 24,*
9 *1938 (25 U.S.C. 162a).*

10 (5) *AVAILABILITY OF AMOUNTS FROM FUNDS.*—
11 *Amounts in the Funds shall be available for expendi-*
12 *ture or withdrawal only after the enforceability date.*

13 (6) *EXPENDITURE AND WITHDRAWAL.*—

14 (A) *TRIBAL MANAGEMENT PLAN.*—

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

22 (ii) *REQUIREMENTS.*—*In addition to*
23 *the requirements under the American In-*
24 *Indian Trust Fund Management Reform Act*
25 *of 1994 (25 U.S.C. 4001 et seq.), a tribal*

1 *management plan under this subparagraph*
2 *shall require that the Tribe shall spend any*
3 *amounts withdrawn from the Funds in ac-*
4 *cordance with the purposes described in*
5 *paragraph (2)(C) or (3)(C).*

6 (iii) *ENFORCEMENT.—The Secretary*
7 *may take judicial or administrative action*
8 *to enforce the provisions of a tribal manage-*
9 *ment plan under this subparagraph to en-*
10 *sure that any amounts withdrawn from the*
11 *Funds under the plan are used in accord-*
12 *ance with this Act and the Agreement.*

13 (iv) *LIABILITY.—If the Tribe exercises*
14 *the right to withdraw amounts from the*
15 *Funds, neither the Secretary nor the Sec-*
16 *retary of the Treasury shall retain any li-*
17 *ability for the expenditure or investment of*
18 *the amounts.*

19 (B) *EXPENDITURE PLAN.—*

20 (i) *IN GENERAL.—The Tribe shall sub-*
21 *mit to the Secretary for approval an ex-*
22 *penditure plan for any portion of the*
23 *amounts in the Funds that the Tribe does*
24 *not withdraw under the tribal management*
25 *plan.*

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

5 (iii) *APPROVAL.*—*On receipt of an ex-*
6 *penditure plan under clause (i), the Sec-*
7 *retary shall approve the plan if the Sec-*
8 *retary determines that the plan is reason-*
9 *able and consistent with this Act and the*
10 *Agreement.*

11 (iv) *ANNUAL REPORT.*—*For each of the*
12 *Funds, the Tribe shall submit to the Sec-*
13 *retary an annual report that describes all*
14 *expenditures from the Fund during the year*
15 *covered by the report.*

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

20 (c) *COST INDEXING.*—*All amounts authorized to be ap-*
21 *propriated under subsections (a) and (b) shall be adjusted*
22 *as may be required to reflect the changes since October 1,*
23 *2007, in the construction cost indices applicable to the types*
24 *of construction involved in the construction of the WMAT*
25 *rural water supply system, the maintenance of the rural*

1 *water supply system, and the construction or rehabilitation*
2 *of the other development projects authorized under sub-*
3 *section (b)(2)(C).*

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

6 *(1) DEFINITION OF EMERGENCY FUND FOR IN-*
7 *DIAN SAFETY AND HEALTH.—In this subsection, the*
8 *term “Emergency Fund for Indian Safety and*
9 *Health” means the Emergency Fund for Indian Safe-*
10 *ty and Health established by section 601(a) of the*
11 *Tom Lantos and Henry J. Hyde United States Glob-*
12 *al Leadership Against HIV/AIDS, Tuberculosis, and*
13 *Malaria Reauthorization Act of 2008 (22 U.S.C. 7601*
14 *et seq.).*

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

21 *(3) SUBSEQUENT TRANSFER.—Effective begin-*
22 *ning on January 1, 2012, if the Secretary determines*
23 *that, on an annual basis, the deadline described in*
24 *section 9(d)(2) is not likely to be met because the*
25 *amount authorized by subsection (a) has not been ap-*

1 *appropriated and deposited in the White Mountain*
2 *Apache Tribe Water Rights Settlement Subaccount,*
3 *not more than \$50,000,000 of the amounts in the*
4 *Emergency Fund for Indian Safety and Health shall*
5 *be transferred to the White Mountain Apache Tribe*
6 *Water Rights Settlement Subaccount, as necessary to*
7 *complete the WMAT rural water system project.*

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

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

14 *(1) IN GENERAL.—There is authorized to be ap-*
15 *propriated to the Secretary \$2,500,000 for the oper-*
16 *ation, maintenance, and replacement costs of the*
17 *WMAT rural water system, to remain available until*
18 *the conditions described in subsection (g) have been*
19 *met.*

20 *(2) SUBSEQUENT FUNDING.—Beginning on Jan-*
21 *uary 1, 2021, the Tribe or the Secretary, as applica-*
22 *ble, may use amounts deposited in the WMAT Main-*
23 *tenance Fund under subsection (b)(3)(B) for oper-*
24 *ation, maintenance, and replacement costs of the*
25 *WMAT rural water system.*

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

12 (g) *CONDITIONS.*—The amounts authorized to be ap-
13 propriated to the Secretary for deposit in the WMAT Main-
14 tenance Fund under subsection (b)(3)(B) shall not be avail-
15 able for expenditure or withdrawal until the later of—

16 (1) December 31, 2020; and

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

20 **SEC. 13. ANTIDEFICIENCY.**

21 The United States shall not be liable for failure to
22 carry out any obligation or activity authorized to be carried
23 out, subject to appropriations, under this Act (including
24 any such obligation or activity under the Agreement) if ade-

1 *quate appropriations for that purpose are not provided by*
2 *Congress.*

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

4 *If the Secretary fails to publish in the Federal Register*
5 *a statement of findings as required under section 9(d) by*
6 *not later than October 31, 2015—*

7 *(1) effective beginning on November 1, 2015—*

8 *(A) this Act is repealed; and*

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

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

16 *(3) any other amounts deposited in the White*
17 *Mountain Apache Tribe Water Settlement Subaccount*
18 *(including any amounts paid by the State in accord-*
19 *ance with the Agreement), together with any interest*
20 *accrued on those amounts, shall immediately be re-*
21 *turned to the respective sources of those funds.*

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

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

1 (1) *the National Environmental Policy Act of*
2 *1969 (42 U.S.C. 4321 et seq.);*

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

5 (3) *all other applicable Federal environmental*
6 *laws; and*

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

Calendar No. 260

111TH CONGRESS
2^D SESSION

S. 313

[Report No. 111-119]

A BILL

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

JANUARY 21, 2010

Reported with an amendment