

**STATEMENT FOR THE RECORD
FROM THE
U.S. DEPARTMENT OF THE INTERIOR
BEFORE THE HOUSE NATURAL RESOURCES
SUBCOMMITTEE ON WATER, OCEANS, AND WILDLIFE
ON**

H.R. 5880, A BILL TO AMEND THE WHITE MOUNTAIN APACHE TRIBE WATER RIGHTS QUANTIFICATION ACT OF 2010 TO MODIFY THE ENFORCEABILITY DATE FOR CERTAIN PROVISIONS, AND FOR OTHER PURPOSES

MAY 12, 2022

Thank you for the opportunity to provide the Department of the Interior (Department)'s views on H.R. 5880, the White Mountain Apache Water Settlement Act Amendment.

H.R. 5880, a bill to amend the White Mountain Apache Tribe Water Rights Quantification Act of 2010 to modify the enforceability date for certain provisions, and for other purposes

The Department supports ongoing efforts to implement the White Mountain Apache Tribe Water Rights Quantification Act of 2010, Pub. L. 111-291, tit. III, 124 Stat. 3064, 3073-96, *amended by* Pub. L. 115-227, 132 Stat. 1626 (2018), *amended by* Pub. L. 116-94, div. C., tit. II, § 206, 133 Stat. 2534, 2669 (2019) (Quantification Act). We would like to work with the Tribe and the sponsor to craft a bill that we can fully support.

Background

The Quantification Act approved the White Mountain Apache Tribe Water Rights Quantification Agreement (Quantification Agreement) settling the White Mountain Apache Tribe's (WMAT) water rights in Arizona. The Quantification Act authorizes the design and construction of the WMAT rural water system, consisting of a dam and storage reservoir, pumping plant, distribution system and water treatment facilities. The WMAT rural water system will address the significant water infrastructure needs on the Reservation.

The Quantification Act established several funds and subaccounts to assist in its implementation. Two funds were established in Treasury: the WMAT Settlement Fund and the WMAT Maintenance Fund; and two subaccounts in the Lower Colorado River Basin Development Fund: the WMAT Water Rights Settlement Subaccount (Settlement Subaccount) and the WMAT Cost Overrun Subaccount (Cost Overrun Subaccount). The Tribe may use funds in the Settlement Subaccount to plan, design, and construct the WMAT rural water system. Following amendments in 2018, the WMAT Settlement Fund may also be used for planning, design and construction of the WMAT rural water system and other water-related projects. The Cost Overrun Subaccount may be used to complete, operate, and maintain the WMAT rural water system if Settlement Subaccount funds are insufficient. The Tribe may use the WMAT Maintenance Fund to operate, maintain, and replace the WMAT rural water system after title to the system transfers to the Tribe.

The Settlement Subaccount was authorized to consist of \$126,193 million (indexed) in mandatory appropriations and the Cost Overrun Subaccount was authorized to consist of \$24

million (indexed) from mandatory appropriations and \$11 million (indexed) of discretionary appropriations. The Quantification Act authorized \$78.5 million (indexed) for deposit in the WMAT Settlement Fund. In 2011, mandatory appropriations for the Settlement Subaccount and Cost Overrun Subaccount were placed into those subaccounts. In 2022, the Department announced the allocation of \$109,106 million from the Indian Water Rights Completion Fund, established by the Bipartisan Infrastructure Law, to the WMAT Settlement Fund.

The Quantification Agreement, including waivers, will not become enforceable until certain conditions are satisfied. One of those conditions is the issuance of a record of decision by the Secretary approving construction of the WMAT rural water project. The Secretary must publish in the *Federal Register* a statement of findings that all conditions for enforceability have been satisfied by no later than April 30, 2023, or the Quantification Act will be repealed by operation of law. Currently, Miner Flat Dam is the only project component that is not yet designed to a thirty percent design level, the level of design usually necessary for environmental compliance activities to move forward and enforceability of the Quantification Act to be reached.

During the design of Miner Flat Dam, the Tribe identified significant concerns about unanticipated seepage. Reclamation worked closely with the Tribe to better define, characterize, and understand seepage at the proposed site for Miner Flat Dam. Currently, efforts to design Miner Flat Dam are still ongoing, however significant cost increases above the originally authorized amounts have been identified because of measures necessary to address the unanticipated seepage. The increased costs above the originally authorized funds available for construction and the rapidly approaching enforceability date are the impetus for H.R. 5880. The extent of the increased cost is unknown at this time, but it is anticipated to significantly exceed originally authorized funding sourced identified in the originally enacted Quantification Act.

H.R. 5880

H.R. 5880 would amend the White Mountain Apache Tribe Water Rights Quantification Act of 2010 to extend by two years the deadline for the Secretary of the Interior to publish in the *Federal Register* a statement of findings that enumerated conditions precedent to enforceability of the settlement have occurred. H.R. 5880 would also authorize an additional \$250 million to be added to the Cost Overrun Subaccount for the design and construction of the WMAT rural water system, including Miner Flat Dam.

The Department agrees with the Tribe that there are significant challenges and cost gaps associated with the design of the WMAT rural water delivery system, specifically Miner Flat Dam. The Bureau of Reclamation and the Tribe have been working to reach agreement on the final project design and cost estimates of Miner Flat Dam, but work remains to be done. At this time, the Department cannot determine whether the additional \$250 million proposed by H.R. 5880 would provide sufficient funding to complete the WMAT rural water system. In addition, H.R. 5880 raises questions about the timing of indexing for newly authorized appropriations. The Department would like to resolve those questions with the Tribe and the bill sponsor.

The Department supports the intent of H.R. 5880 to provide the means to complete a needed rural water supply project for the Tribe. We agree and support an amendment that would extend the enforceability date of the Quantification Act to 2025. We are committed to working with the Tribe, the bill sponsor, and this Subcommittee to develop a more reliable cost estimate and to clarify indexing of any additional appropriations.