

**TESTIMONY OF
U.S. DEPARTMENT OF THE INTERIOR
COMMITTEE ON NATURAL RESOURCES
SUBCOMMITTEE ON WATER, WILDLIFE, AND FISHERIES
U.S. HOUSE OF REPRESENTATIVES**

- H.R. 1304, Rio San José and Rio Jemez Water Settlements Act of 2023
H.R. 3977, Navajo-Gallup Water Supply Project Amendments Act of 2023
H.R. 6599, Technical Corrections to the Northwestern New Mexico Rural Water Projects Act, Taos Pueblo Indian Water Rights Settlement Act, and Aamodt Litigation Settlement Act
H.R. 7240, Fort Belknap Indian Community Water Rights Settlement Act of 2024
H.R. 8685, Ohkay Owingeh Rio Chama Water Rights Settlement Act of 2024
H.R. 8791, Fort Belknap Indian Community Water Rights Settlement Act of 2024
H.R. 8920, Tule River Tribe Reserved Water Rights Settlement Act of 2024
H.R. 8940, Northeastern Arizona Indian Water Rights Settlement Act of 2024
H.R. 8945, Navajo Nation Rio San José Stream System Water Rights Settlement Act of 2024
H.R. 8949, Yavapai-Apache Nation Water Rights Settlement Act of 2024
H.R. 8951, Zuni Indian Tribe Water Rights Settlement Act of 2024
H.R. 8953, Crow Tribe Water Rights Settlement Amendments Act of 2024**

H.R. 7240 and H.R. 8791, Fort Belknap Indian Community Water Rights Settlement Act of 2024

H.R. 7240 and H.R. 8791, both titled Fort Belknap Indian Community Water Rights Settlement Act of 2024, would each approve and provide authorizations to carry out the settlement of the Assiniboine (Nakoda) and Gros Ventre (Aaniiih) Tribes’ water rights in the State of Montana. The Department supports resolving the Tribes’ water rights claims through a comprehensive settlement. While the Department supports H.R. 7240, introduced by Representative Rosendale, and similar legislation that has already passed the Senate, the Department does not support H.R. 8791.

I. Reservation and Historical Background

Congress established the Fort Belknap Indian Reservation (Reservation) in 1888 to secure a homeland for what are now the Assiniboine (Nakoda) and Gros Ventre (Aaniiih) Tribes. This homeland in Montana is just a small portion of the Tribes’ ancestral homelands.

Not long after the Reservation was established, the Federal Government filed a lawsuit to protect the Tribes’ right to water on its homelands. That lawsuit eventually reached the Supreme Court in 1908. The Supreme Court determined that the establishment of the Reservation included the senior right to water on the Reservation. *Winters v. United States*, 207 U.S. 564. In its opinion, the Court explained that the Reservation would be inadequate to fulfill the needs of the Tribes and the policy goals of the United States “without a change of conditions.” The Court also noted, [t]he lands were arid and, without irrigation, were practically valueless.”

Winters has had far-reaching and long-lasting consequences for all of Indian country. The case stands for the principle that the establishment of a reservation for a Tribe includes the reservation of waters necessary to make the reservation a livable homeland. The *Winters* doctrine protects Tribal rights and homelands, safeguarding the rights and interests of Tribes across the United States. Despite their legal victory in *Winters*, Tribes of the Fort Belknap Indian Reservation have not been able to fully put their reserved water rights to use.

Today, the Reservation is comprised of approximately 605,338 acres, including lands held in Trust for the Tribes and allotments held in trust for individual Indians, situated mainly in the Milk River Basin in north central Montana. The Milk River forms the Reservation's northern boundary. The southern boundary is from 25 to 35 miles south of the Milk River, extending on either side of the northern crest of the Little Rocky Mountains.

The low rainfall on most of the Reservation severely limits what can be grown without irrigation. Not surprisingly, the major water use on the Reservation is the Fort Belknap Indian Irrigation Project (FBIIP). The Bureau of Indian Affairs (BIA) owns the FBIIP, which diverts water from the Milk River and two tributaries, Threemile Creek and White Bear Creek, and includes a 634 acre-feet (af) reservoir on Threemile Creek. The FBIIP serves 10,475 assessed acres, 92 percent of which are held in trust by the United States for the benefit of the Tribes or allottees. Groundwater wells on the Reservation are primarily used for domestic and municipal purposes and, to a lesser extent, stock watering.

According to BIA and Tribal data, 3,351 Tribal members currently live on the Reservation. The total Tribal membership in August 2021, including members living off the Reservation, was 8,609. Most on-Reservation residents reside in three main towns: Fort Belknap Agency on the northern boundary of the Reservation, and Lodge Pole and Hays on the southern portion of the Reservation.

The primary sources of employment on the Reservation are Tribal and Federal government services. The main industry is agriculture, consisting of cattle ranches, raising alfalfa hay for feed, and larger dryland farms. The unemployment rate on the Reservation is nearly 50%, according to a 2019 Montana State University study.

II. Proposed Fort Belknap Indian Community Settlement Legislation

In its role as Trustee, the United States filed water rights claims for Reservation lands in the Milk River and Missouri River basins in the ongoing statewide water rights adjudication. Since 1990, the Tribes, State, and United States have engaged in negotiations to resolve the Tribes' and allottees' water rights within the State. In 2001, the Montana legislature approved the Montana-Fort Belknap Indian Community Water Rights Compact (Compact). Congressional approval is necessary before the United States may join in the Compact.

Both H.R. 7240 and H.R. 8791 would authorize, ratify, and confirm the Compact to the extent it is consistent with H.R. 7240 or H.R. 8791. This would resolve the Tribes' water rights claims in Montana by recognizing the Tribal Water Right, which is defined by and established in the Compact. The Tribal Water Right entitles the Tribes to over 446,000 acre-feet per year (afy) of

surface water, plus groundwater. Consistent with Federal law, both bills would protect the rights of allottees to use a portion of the Tribal Water Right for agricultural, domestic, and related uses on their allotments. In addition to the Tribal Water Rights provided by the Compact, both H.R. 7240 and H.R. 8791 include a 20,000 afy allocation of storage from Lake Elwell, a Bureau of Reclamation (Reclamation) facility on the Marias River, also known as Tiber Reservoir.

Both H.R. 7240 and H.R. 8791 would also authorize funds to implement the provisions of the Compact and each bill, respectively.

H.R. 7240 and H.R. 8791 each would authorize Federal appropriations—\$1.34 billion or \$1.17 billion, respectively—for three general purposes: rehabilitation of the Fort Belknap Indian Irrigation Project; administration and development of the Tribes’ water rights; and mitigation for the impacts on water users outside the Reservation. Both bills are a mixed project- and fund-based settlement.

Both H.R. 7240 and H.R. 8791 include two specific projects that the Department is charged with planning, designing, and constructing: (1) the rehabilitation, modernization, and expansion of the existing FBIIP; and (2) the rehabilitation and expansion of certain Milk River Project facilities to satisfy the Compact required mitigation negotiated by the Tribes and the State.

Both H.R. 7240 and H.R. 8791 authorize the appropriation of up to \$415.8 million for the rehabilitation, modernization, and expansion of the FBIIP. The Department supports rehabilitating and expanding the FBIIP to serve additional lands capable of sustained and economically viable irrigation. Without further study, however, the costs of rehabilitating and expanding the FBIIP cannot be reliably determined. The Tribes believe that the requested authorization will cover the costs.

Additionally, both H.R. 7240 and H.R. 8791 contain a provision providing that the Secretary’s obligations to rehabilitate, modernize, and expand the FBIIP will be deemed satisfied if, despite diligent efforts, the project cannot be completed as contemplated due solely to the authorized appropriation being insufficient. Only H.R. 8791, though, identifies the BIA as the lead agency for the rehabilitation, modernization, and expansion of FBIIP, while providing the Tribes the opportunity to perform these activities through self-determination contracts. The identification of BIA as the lead agency for the rehabilitation, modernization, and expansion of FBIIP is unusual. In contrast, previously enacted Indian water rights settlements that have required the Secretary to plan, design, and construct major infrastructure have identified Reclamation as the lead agency for such purposes. Reclamation has the staffing and expertise and a demonstrated history of success in planning, designing, and constructing infrastructure. For these reasons and to ensure successful implementation of H.R. 8791, the Department does not support H.R. 8791’s identification of the Bureau of Indian Affairs alone as the lead agency. The Department supports, however, compromise language contained in H.R. 7240 that identifies “the Bureau of Indian Affairs, in coordination with the Bureau of Reclamation” as the lead agency for FBIIP rehabilitation, modernization, and expansion.

Both H.R. 7240 and H.R. 8791 authorize the appropriation of up to \$300 million to rehabilitate and expand certain Milk River Project facilities to implement the mitigation measures required

by the Compact. Both bills identify Reclamation as the lead agency to implement these mitigation projects. The Department testified in the 117th Congress about practical concerns regarding its ability to satisfy Compact provisions requiring mitigation of impacts on junior non-Indian and Milk River Project water users caused by the development of the Tribal Water Right. However, since the time of that testimony, Reclamation completed modeling that identifies viable alternatives to satisfy the Compact's mitigation requirement. Based on Reclamation's modeling, the Department determined that rehabilitation of the St. Mary Canal and the expansion of the Dodson South Canal will provide the 35,000 afy of mitigation required by the Compact. Again, without a feasibility level study, reliable costs of rehabilitating and expanding the FBIIP cannot be determined. In an effort to avoid cost gap issues, both H.R. 7240 and H.R. 8791 provide that the Secretary's obligations to complete Milk River Project mitigation projects will be deemed satisfied if despite diligent efforts, the projects cannot be completed as contemplated due solely to the authorized appropriations being insufficient.

Because the St. Mary Canal is located on the Blackfeet Reservation, both H.R. 7240 and H.R. 8791 require Reclamation to complete the canal's rehabilitation in coordination with the Blackfeet Tribe.

In addition to the project-based components described above, both H.R. 7240 and H.R. 8791 would establish a trust fund for the Tribes—in the amount of \$628.7 million or \$454.2 million, respectively—to be used for various purposes. Some of these purposes, such as the development of domestic water infrastructure and establishment of a Tribal water resources department to administer the Tribal Water Right, are commonplace in Indian water rights settlements. Both bills would specifically authorize the Tribes to use their trust fund to plan, design, and construct a pipeline to transport Lake Elwell water from an off-Reservation point of diversion on the Missouri River to the southern portion of the Reservation. The Department understands that the Tribes would be required to comply with all applicable Federal and State laws when implementing this and all other provisions in the settlement.

H.R. 7240 and H.R. 8791 would both also transfer 10,322.58 acres of federal land and 3,519.3 acres of land currently owned by the Tribes into trust for the Tribes as part of the Reservation. In addition, both bills direct the Secretary of the Interior and the Secretary of Agriculture to negotiate with the State to exchange certain State lands within the boundaries of the Reservation for federal lands elsewhere in the State.

Both H.R. 7240 and H.R. 8791 state that the United States shall not be liable for any failure to carry out any obligation or activity authorized by this Act if there are not enough funds available in the Reclamation Water Settlements Fund established by section 10501(a) of the Omnibus Public Land Management Act of 2009 (43 U.S.C. 407(a)). Regarding this section, the Administration encourages extension of this funding.

Summary

The Department recognizes that the Tribes and State of Montana have worked hard to negotiate this settlement. The Department believes that this legislation is consistent with the Administration's priorities of protecting Tribal homelands and meeting our trust responsibility. It

would also bring meaning to the legal victory the Tribes and the United States secured more than a century ago in *Winters*. For the reasons discussed above, the Department opposes H.R. 8791. The Department supports, instead, H.R. 7240.

H.R. 8940, Northeastern Arizona Indian Water Rights Settlement Act of 2024

H.R. 8940, the Northeastern Arizona Indian Water Rights Settlement Act of 2024, would, among other things, approve and provide authorizations to carry out the settlement of water rights claims of the Navajo Nation, Hopi Tribe, and San Juan Southern Paiute Tribe in Arizona. The Department strongly supports the goals of H.R. 8940 and is committed to working with the Tribes and the Committee to resolve outstanding concerns discussed below.

I. Background

A. Historic Context

The Navajo Nation, Hopi Tribe, and San Juan Southern Paiute Tribe have occupied lands in northeastern Arizona since time immemorial. Today, the Navajo Reservation encompasses over 17 million acres in northeastern Arizona, New Mexico, and southeastern Utah. Approximately 10 million acres of the Navajo Reservation are within the State of Arizona. Of the Nation's more than 400,000 members, approximately 95,000 live on the Navajo Reservation in Arizona. There are over 540 allotments within the exterior boundaries of the Navajo Reservation in Arizona. Approximately 470 of these allotments were created out of the public domain and issued to individual Navajo Indians under section 4 of the General Allotment Act and similar authorities. The Reservation was later expanded to surround these public domain allotments. The remaining allotments within the exterior boundaries of the Navajo Reservation were created out of Reservation lands pursuant to section 1 of the General Allotment Act. In addition, there are 51 public domain allotments issued to individual Navajo Indians located outside the exterior boundaries of the Navajo Reservation in Arizona.

The Hopi Reservation is made up of approximately 1.5 million acres located in Arizona and entirely within the exterior boundaries of the Navajo Reservation. There are approximately 15,000 members of the Hopi Tribe, of whom approximately 9,000 live on the Hopi Reservation. There are 11 public domain allotments on the Hopi Reservation at Moenkopi. These allotments were issued to individual Hopi Indians under section 4 of the General Allotment Act before lands at Moenkopi were added to the Hopi Reservation.

The San Juan Southern Paiute Tribe has occupied lands within the Navajo Reservation in Arizona and Utah since time immemorial but does not yet have a reservation for its exclusive use. In 1986, the San Juan Southern Paiute petitioned the Department for recognition as a Federally recognized Tribe through the Federal Acknowledgement Process. In December 1989, the Department approved the petition and recognized the San Juan Southern Paiute Tribe as an Indian Tribe. It is the only so-called "landless" Federally recognized Tribe in Arizona. In 2000, the San Juan Southern Paiute Tribe and the Navajo Nation entered into an inter-Tribal treaty to resolve land disputes between the two Tribes and finally establish a Reservation, consisting of a

Northern Area in Utah and a Southern Area in Arizona, for the exclusive use and benefit of the San Juan Southern Paiute Tribe. The inter-Tribal treaty requires Congressional approval to become effective. H.R. 8940 would ratify and confirm the treaty and thereby establish a 5,400-acre San Juan Southern Paiute Reservation.

B. Water Resources of the Navajo Nation, the Hopi Tribe, and the San Juan Southern Paiute Tribe

The Navajo Reservation in Arizona encompasses lands within the Colorado River Basin, including approximately 5.7 million acres within the Little Colorado River drainage, approximately 3.2 million acres within the San Juan River drainage, and approximately 1.1 million acres within the Colorado River Mainstem drainage. The Hopi Reservation and proposed San Juan Southern Paiute Southern Area are located entirely within the Little Colorado River drainage in the Lower Colorado River Basin.

All of the Tribes rely primarily on groundwater from the Navajo (“N”) and Coconino (“C”) Aquifers to satisfy their water needs. Surface water is primarily used for traditional farming practices and stockwatering; it is too unreliable to satisfy domestic and municipal needs. Lack of access to clean drinking water is pervasive on the Reservations. According to some estimates, up to 30% of homes on the Navajo Reservation in Arizona lack indoor plumbing. The situation on the Hopi Reservation and San Juan Southern Paiute lands is similar to that on the Navajo Reservation. Many Tribal members from all three Tribes must haul potable water to their homes to satisfy basic needs like drinking, cooking, bathing, and cleaning. Sometimes the distances traveled to haul water are staggering.

C. Litigation and Settlement Negotiation

Since 1979, an adjudication has been ongoing to resolve water rights claims in the Little Colorado River drainage. Over 13,000 claims have been filed by over 5,000 claimants. In 1988, the LCR adjudication judge appointed a “settlement committee” to resolve claims for all Tribes within the adjudication boundaries. Thereafter, in 1991, the Department of the Interior established an LCR Negotiation Team. Over the decades, negotiations have progressed at varying levels of intensity and with various levels of success. Meanwhile, litigation of the Tribes’ water rights in the LCR adjudication has continued and in recent years has increased in intensity.

Recognizing that litigation would not address the needs on the Tribes or the interests of the State parties, on October 23, 2023, leadership from the Navajo Nation, Hopi Tribe, Department of the Interior, State of Arizona, and other settlement parties met in Phoenix, Arizona and made commitments to work in good faith to reach a negotiated water rights settlement of the Navajo Nation and Hopi Tribe’s claims to water in Arizona. By January 2024, the parties were meeting at least once, and often multiple times, per week and were making significant progress toward a negotiated settlement. In February 2024, the San Juan Southern Paiute Tribe began participating in the negotiations. By late-April 2024, the Tribes and local parties had reached agreement. In May 2024, all three Tribes passed resolutions in support of the Northeastern Arizona Indian Water Rights Settlement Agreement (“Settlement Agreement”). Thereafter, attorneys

representing 35 local parties, including the State of Arizona, the Central Arizona Water Conservation District (“CAWCD”), the Salt River Project Agricultural Improvement and Power District and the Salt River Valley Water Users’ Association (“SRP”), various Arizona cities and towns, irrigation districts, and ranchers, delivered a letter in support of the Settlement Agreement and proposed Federal legislation to the Arizona Congressional Delegation. The Settlement Agreement has been formally approved by the respective boards of SRP, CAWCD, Flagstaff City Council, and the Arizona Game and Fish Commission.

II. Proposed Northeastern Arizona Indian Water Rights Settlement

H.R. 8940 would resolve all the water rights claims in Arizona of the Navajo Nation, the Hopi Tribe, and the San Juan Southern Paiute Tribe; ratify and confirm the Settlement Agreement among the Tribes, the State of Arizona, and other local parties; establish a Reservation for the San Juan Southern Paiute Tribe by ratifying and confirming the inter-Tribal treaty between the Navajo Nation and the San Juan Southern Paiute Tribe; authorize the Secretary of the Interior to sign the Settlement Agreement; and authorize funds to implement the settlement, including for the development of water infrastructure on the Reservations.

H.R. 8940 would ratify and confirm the water rights of the Navajo Nation, the Hopi Tribe, and the San Juan Southern Paiute Tribe, as defined in the Settlement Agreement. By ratifying the Settlement Agreement, H.R. 8940 recognizes each Tribe’s rights to all surface water and groundwater on its respective Reservation in Arizona, subject to an inter-Tribal agreement between the Navajo Nation and the Hopi Tribe concerning the N Aquifer, springs, and shared washes. In addition, H.R. 8940 would allocate Arizona Colorado River Water to the Navajo Nation and the Hopi Tribe, including Lower Basin and Upper Basin water. Consistent with the Settlement Agreement, H.R. 8940 would confirm the Navajo Nation’s right to 44,700 acre-feet per year (afy) of Arizona Upper Basin Colorado River water and 3,600 afy of Arizona Fourth Priority Lower Basin Colorado River water and the Hopi Tribe’s right to 2,300 afy of Arizona Upper Basin Colorado River water and 4,178 afy of Arizona Fourth Priority Lower Basin Colorado River water. The agreement would allow the Navajo Nation and Hopi Tribe to use these allocations of Colorado River water on their Reservations and lease the water in both the Upper and Lower Basins in the State of Arizona. Finally, H.R. 8940 requires the Secretary to enter into water delivery contracts with the Navajo Nation and the Hopi Tribe for the delivery of these Arizona Colorado River water allocations.

H.R. 8940 would also address water rights for allotments in various ways. With respect to the 11 Hopi allotments at Moenkopi, H.R. 8940 would ratify and confirm water rights consistent with the Special Master’s report in the Little Colorado River adjudication. The Special Master’s report largely approved the water rights claims made by the United States on behalf of the public domain Hopi allottees at Moenkopi. The Settlement Agreement requires the entry of a decree confirming those rights.

H.R. 8940 would also resolve the water rights claims for allotments of Reservation land within the exterior boundaries of the Navajo Reservation by confirming the Navajo Section 1 Allottees’ rights to a just and equal distribution of water from the Navajo Nation’s water rights to fulfill the purposes for which the allotments were created. H.R. 8940 would not, however, resolve the

water rights claims of the more than 520 allotments of the public domain made to Navajo Indians both within and outside of the exterior boundaries of the Navajo Reservation. While the Settlement Agreement makes certain limited compromises on behalf of, and secures certain benefits to, the public domain allotments, it does not fully resolve these rights. Instead, Navajo public domain allotment water rights would be adjudicated later in the Little Colorado River adjudication.

H.R. 8940 would also resolve significant inter-Tribal issues such as the management of water sources relied on by the Navajo Nation and the Hopi Tribe and a land dispute between the Navajo Nation and the San Juan Southern Paiute Tribe.

To address management of shared water sources, H.R. 8940 would approve an agreement between the Navajo Nation and the Hopi Tribe regarding shared washes, springs, and the N-Aquifer. The inter-Tribal agreement regarding the washes and springs would allow for certain rehabilitation and betterment of historically irrigated acres and improvement projects to restore washes and springs. With respect to the N-Aquifer, the Navajo Nation and the Hopi Tribe would agree to annual pumping limits to protect the long-term viability of the N-Aquifer, which is a vital source of water for both Tribes. H.R. 8940 would also require the USGS to continue and expand its existing groundwater monitoring program in the Black Mesa area. Monitoring by the USGS would be used by the Tribes to inform future N-Aquifer management decisions.

To resolve the long-standing land dispute between the Navajo Nation and the San Juan Southern Paiute Tribe, H.R. 8940 would ratify an inter-Tribal treaty which establishes a Reservation for the San Juan Southern Paiute Tribe out of lands within the Navajo Reservation. This new San Juan Southern Paiute Reservation would consist of 5,400 acres in Arizona and Utah. In addition, the Navajo Nation, through the Navajo Tribal Utility Authority, agrees to provide water service to San Juan Southern Paiute Southern Area in Arizona.

H.R. 8940 would also protect the status quo for non-Indian water users by ratifying an agreement by the Navajo Nation, Hopi Tribe, San Juan Southern Paiute Tribe not to object to, challenge, or assert priority against certain off-Reservation water uses by non-Indians. Importantly for the non-Indian parties involved, the Settlement Agreement protects past, present, and future uses. The agreement not to object to certain future water uses is uncommon in water rights settlement. Here, however, the unique hydrology within the LCR drainage minimizes on-Reservation and on-allotment impacts of off-Reservation and off-Allotment surface water uses. With respect to off-Reservation groundwater use, the Settlement recognizes two buffer zones within which the Tribes and the United States, acting as trustee, retain their right to object to, dispute, challenge, or assert priority against off-Reservation groundwater uses if those groundwater uses do not satisfy certain criteria. Groundwater uses that meet the specified criteria within the buffer zones are protected from objection, dispute, challenge, and assertions of priority by the Tribe and the United States, as trustee. In exchange for this and other benefits, non-Indian parties agree to some restrictions on the development of future off-Reservation water uses and also agree not to object to certain elements of the water rights claims to be filed on behalf of public domain allotments outside the boundaries of the Navajo Reservation.

A centerpiece of H.R. 8940 is the *iiná bá - paa tuwaqat'si* pipeline ("Pipeline") to be planned,

designed, and constructed by the Bureau of Reclamation (“Reclamation”) and substantially configured as Alternative 5, Option B-100 of the Navajo-Hopi Value Planning Study – Arizona (October 2020) (“Value Planning Study” or “Study”). H.R. 8940 provides that, upon completion, the Pipeline is to be owned, operated, and maintained by the Navajo Nation and the Hopi Tribe consistent with an operation agreement to be negotiated by the two Tribes.

H.R. 8940 would authorize a Federal contribution of at least \$5 billion dollars, to be indexed, toward settlement: \$1.715 billion, plus such sums as are necessary, for construction of the Pipeline and \$3.285 billion for deposit in Trust Funds for the benefit of the Tribes.

As discussed in detail below, the Department expects completion of the Pipeline to cost significantly more than \$1.715 billion, thus making the true Federal cost of H.R. 8940 currently uncertain given the authorization for appropriation of “such sums as are necessary.”

H.R. 8940 would establish three trust funds: Navajo Nation Trust Fund, Hopi Tribe Trust Fund, and San Juan Southern Paiute Tribe Trust Fund. H.R. 8940 would establish a \$2,746,700,000 trust fund for the Navajo Nation. Of this amount, \$2,369,200 is allocated to plan, design, and construct water infrastructure projects; \$229.5 million is allocated to operate and maintain projects constructed using the trust fund; \$40 million is allocated to establish renewable energy projects to support water infrastructure projects; \$80 million is allocated to modernize infrastructure on historically irrigated land and install livestock wells; and \$28 million is allocated to purchase land with senior water rights in the Lower Basin in Arizona.

H.R. 8940 would establish a \$508,500,000 trust fund for the Hopi Tribe. Of this amount, \$390 million is allocated to plan, design, and construct groundwater infrastructure projects, including the expansion of the Hopi Arsenic Mitigation Project; \$87 million is allocated to operate and maintain projects constructed using the trust fund; \$30 million is allocated to modernize infrastructure on historically irrigated land and install livestock wells; and \$1.5 million is allocated to purchase land with senior water rights in the Lower Basin in Arizona.

H.R. 8940 would establish a \$29,800,000 trust fund for the San Juan Southern Paiute Tribe. Of this amount, \$28 million is allocated to plan, design, and construct groundwater infrastructure projects on the San Juan Southern Paiute Southern Area; \$1.5 million is allocated to operate and maintain projects constructed using the trust fund and to offset the imputed cost of delivery of water from the Pipeline to the San Juan Southern Paiute Southern Area; and \$300,000 is allocated to modernize infrastructure on historically irrigated land and install livestock wells on the San Juan Southern Paiute Southern Area.

III. Department of the Interior Position on H.R. 8940

The Department of the Interior commends the work of the Hopi Tribe, Navajo Nation, San Juan Southern Paiute Tribe, and the State of Arizona to resolve longstanding water claims. The Department strongly supports the goals of the legislation and is committed to working with the Tribes, Committee, and settlement parties to address outstanding issues in H.R. 8940 as currently drafted to ensure its implementation. The parties have made significant progress with H.R. 8940 and the Department believes this settlement is on a trajectory to completion this term.

Federal Contribution

H.R. 8940 establishes an Implementation Fund to be used by the Secretary, acting through the Bureau of Reclamation, to plan, design, and construct the Pipeline. H.R. 8940 provides \$1.715 billion in mandatory appropriations for this purpose. If the Pipeline cannot be completed for \$1.715 billion, H.R. 8940 authorizes the appropriation of such funds as may be necessary to address the cost gap. This authorization of such sums as are necessary raises significant concerns for the Department. The amount of mandatory funding for the Pipeline included in H.R. 8940 is based on a Value Planning Study completed by the Department, with input from the Navajo Nation, and the Hopi Tribe. Value planning studies are not intended to provide a true or accurate estimate of the actual cost of project construction. Instead, Value planning studies use preliminary-level cost estimates to compare the relative costs of various infrastructure options. Value planning studies provide useful information that allows options to be ranked according to various measures, including from least to most expensive, but should not be used as a basis for congressional authorization. Moreover, the Department's experience with other infrastructure-based settlements such as Aamodt, White Mountain Apache and Navajo-San Juan have shown significant cost increases as planning and construction move forward. With a substantial cost gap expected and a Pipeline completion deadline of 2040, the Department has significant concerns about the implications of covering the cost gap from its discretionary budget. Further, the Department would highlight that completion of the pipeline by the deadline of 2040 would prove challenging given the complexity of the infrastructure and agreements, as well as the uncertainty in costs. While H.R. 8940 allows the Tribes to use their trust funds to supplement funding for the Pipeline, whether to do so is left to the Tribes' discretion. Thus, whether the trust funds would be used for this purpose is uncertain. The Department would appreciate the opportunity to work with the Tribes and the Committee to identify alternatives to addressing the anticipated cost gap.

Operations Agreements

H.R. 8940 provides that ownership, operation, and maintenance of the Pipeline will transfer to the Navajo Nation and the Hopi Tribe upon substantial completion. The bill further provides that the Tribes must enter into an operations agreement, to be approved by the Secretary, as a condition of substantial completion. The Department supports the requirement that the Tribes enter into a Secretarially-approved operations agreement for operation of the Pipeline. However, as drafted, H.R. 8940 would allow construction of the Pipeline to begin before the execution of an operations agreement. The execution and approval of such an operation agreement (or agreements) should be required before the Department begins construction of the Pipeline as postponing this agreement until after construction begins introduces additional risk to the project and would reduce flexibility to make modifications necessary to help reach agreement between the Tribes and the Department.

Navajo Nation Tribal Water Code

Tribal management of water resources on Reservations is essential to sovereignty. The Department supports and encourages this exercise of sovereignty, including with respect to the rights of Reservation allottees, provided that certain protections are guaranteed to the allottees.

Many enacted water rights settlements recognize the right of allottees to a just and equal distribution of water to serve the purposes of the allotment and require the Tribe to enact tribal water code provisions that guarantee this right and provide a process by which allottees may request a distribution of water. Water code provisions enacted to satisfy these conditions become effective only after Secretarial approval. In contrast, while recognizing the rights of Reservation allottees to a just and equal distribution of water, H.R. 8940 provides that “if necessary,” the Navajo Nation will amend its water code to provide enumerated protections to Reservation allottees. H.R. 8940 is ambiguous as to who determines whether it is “necessary” for the Navajo Nation to amend its code. The Department recommends that H.R. 8940 be revised to require the Navajo Nation to amend its water code to provide necessary protections to Allottees and that those water code provisions not become effective unless approved by the Secretary.

Colorado River Operations

Consistent with the Settlement Agreement, H.R. 8940 provides for the allocation of Arizona Colorado River Water to the Navajo Nation and the Hopi Tribe. The agreement would allow the Navajo Nation and Hopi Tribe to use these allocations on their Reservations and lease water in both the Upper and Lower Colorado River Basins in the State of Arizona, allowing for the storage of water within Arizona, the transportation of water through the Central Arizona Project (CAP), as well as storage of Navajo Nation water in Navajo Reservoir and Frank Chee Willetto, Sr Reservoir, subject to certain conditions.

H.R. 8940 further authorizes the Secretary to enter into Colorado River water delivery contracts with the Navajo Nation and the Hopi Tribe subject to several requirements, limitations, and conditions, and authorizes the Secretary to use the mainstream of the Colorado River and the San Juan River to transport and deliver settlement water. Subject to approval by the Secretary, and in accordance with all applicable Federal and State laws, the Tribes would be authorized to lease and exchange the Colorado River water allocations in the Upper and Lower Basin, for use both on- and off-reservation, within the State of Arizona.

HR 8940 provides for the Secretary to account for the water deliveries as part of the settlement. The means by which the Secretary would account for this water is novel and Reclamation will need time to better understand the implementation of the accounting language as written. The Department would like the opportunity to make technical modifications to ensure consistency with Reclamation’s accounting of Colorado River water, including participation in water conservation efforts, to ensure application would be in line with the parties’ intent.

As a general matter, the Department supports the key principles of Tribal equity, Tribal sovereignty, and Tribal self-determination. Clean, reliable drinking water is critical to upholding these principles. We are committed to addressing the lack of clean, reliable drinking water in Tribal communities. Additionally, we support the opportunity for all Tribes to enjoy cultural, spiritual, and economic benefits from their water rights. In keeping with these principles and commitments, the Department supports the inclusion within the settlement and allowance for the Tribes to use, store, and lease Colorado River water as provided for in HR 8940. These rights and provisions are similar in concept to the rights to lease CAP water in Arizona granted to Tribes under various Indian water rights settlements in Arizona and consistent with principles of self-determination and Tribal sovereignty. We would like to work with the Sponsor and

Committee on technical amendments regarding Colorado River operations and accounting.

Navajo-Gallup Amendments

HR 8940 provides authority to meet the purposes of the settlement by diverting water through the Navajo-Gallup Water Supply Project, including through the San Juan Lateral. These diversions through the Pipeline and the Navajo-Gallup Water Supply Project facilities are intended to address critical tribal and non-Indian Water supply needs in areas that otherwise lack of other reasonable alternatives. The Department supports the inclusion of these provisions, however the Northwestern New Mexico Rural Water Projects Act, P.L. 111-11, limited the size of the San Juan Lateral. In order to implement and meet the additional purposes of H.R. 8940, technical modifications are necessary to provide authority to increase the capacity of key components of the San Juan Lateral as well as modifications to expanding the service area to allow for water deliveries to additional areas in northeastern Arizona.

Energy Acquisition

Section 6(g) of H.R. 8940 provides that the amounts of energy needed to deliver water to the Tribes shall be acquired by the Tribes. As drafted, H.R. 8940 makes the Tribes responsible for acquiring energy needed for the Secretary to construct the Pipeline. In the event the Tribes are not able to acquire adequate energy for Pipeline construction, the Secretary would be unable to fulfill her obligations under the Settlement. The Department recommends that the Pipeline be exempted from Section 6(g) and the responsibility to secure energy for the Pipeline remain with the Secretary until title transfers to the Tribes.

Miscellaneous

While this testimony highlights the most pressing of the Department's concerns with H.R. 8940, it is important to note that Departmental review of H.R. 8940 and the Settlement Agreement is ongoing. Given the complexity of this Settlement, it is reasonable to expect additional drafting concerns to be identified through this review process.

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In sum, the parties have worked together to resolve longstanding claims in a way that would benefit all the people of Arizona, Navajo Nation, Hopi Tribe, and San Juan Southern Paiute Tribe. The Department is committed to reaching a conclusion as proposed by H.R. 8940 and supports nearly all of the key terms in this legislation. The Department will work with the sponsors and the parties to resolve outstanding issues so that we can bring these claims to a positive resolution and fulfill our trust responsibility by delivering water to Tribal members in their homelands.