

**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  
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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. 3977, Navajo-Gallup Water Supply Project Amendments Act of 2023**

H.R. 3977, the Navajo-Gallup Water Supply Project Amendments Act of 2023, would amend the Northwestern New Mexico Rural Water Project Act, P.L. 111-11, Title X, Subtitle B, Part III, *amended* by P.L. 114-57 (together the 2009 Act). The Department supports H.R. 3977.

**I. Background**

The 2009 Act, which was part of the Omnibus Public Land Management Act of 2009, approved settlement of the Navajo Nation’s water rights claims in the San Juan River Basin in New Mexico and, as the cornerstone of the settlement, directed the Secretary (acting through the Bureau of Reclamation (Reclamation)) to design, construct, operate, and maintain the Navajo Gallup Water Project (Project). When completed, the Project will provide a reliable and sustainable domestic, municipal, and industrial water supply from the San Juan River to 43 Chapters of the Navajo Nation, including the Nation’s capital of Window Rock, Arizona; the city of Gallup, New Mexico; and the southwest portion of the Jicarilla Apache Reservation. All of these entities are currently relying on a shrinking supply of groundwater that is of poor quality and is inadequate to meet present domestic water needs, let alone projected needs.

The 2009 Act authorized an appropriation of \$870 million (2007 price level), adjusted annually using engineering cost indices, to plan, design, and construct the Project, which includes construction of two water transmission laterals—the Cutter and San Juan Laterals. The Department, through Reclamation, has been implementing the 2009 Act with significant success. In October 2021, Reclamation declared substantial completion of the Cutter Lateral, the smaller

of the two laterals, and it transferred operation, maintenance, and replacement responsibilities for the Cutter Lateral to the Navajo Nation in June 2022. As of May 2021, the completed segments of the Project have facilitated delivery of drinking water to 6,200 people (1,550 households) in eight Navajo chapters, including an additional 50 homes that previously did not have drinking water. Reclamation has also made significant progress on the San Juan Lateral and has completed over 60 percent of the features on the lateral. Reclamation and their partners have completed or are currently constructing 285 of the 300 miles of Project water transmission pipelines. Last year, Reclamation acquired the San Juan Generating Station water system facilities that will provide both construction and operation and maintenance savings, increased operational flexibility, and reduced risks to operations for the Project.

## **II. H.R. 3977 Provisions and Positions of the Department of the Interior**

H.R. 3977 would amend the Act in several ways:

**Increase the authorized Project cost ceiling.** H.R. 3977 provides an additional authorization of \$725.7 million to complete the Project. This is comprised of \$689.45 million to address a cost/funding cost gap, \$30 million for Navajo community connections to the Project water transmission line, and \$6.25 million for renewable energy features.

The 2009 Act's appropriation ceiling was based on a preliminary, 2007 appraisal-level design estimate rather than a feasibility level design estimate, which is the level of estimation that Reclamation recommends for reliability. As final design and construction of the Project progressed, the difference between the 2009 Act's appropriation ceiling and the costs estimated to complete the Project (Working Cost Estimate) became apparent. At the time H.R. 3977 was introduced in July of 2023, the indexed authorized appropriation ceiling was \$1,413.7 million (October 2022 price level) but the Project Working Cost Estimate was \$2,138.4 million (October 2022 price level). After accounting for non-Federal funding contributions from the Project beneficiaries received through the Contributed Funds Act, Reclamation estimates the cost/funding gap is \$689.45 million. The cost increases are based on more reliable cost estimate updates, primarily associated with the two water treatment plants and the San Juan Lateral intake, as well as the increased cost of heavy civil construction in remote areas of New Mexico. Moreover, the latest Working Cost Estimate reflects the significant inflation and market volatility, at levels not seen in 40 years, which have far outpaced projected indexing used in updating the appropriation ceiling.

The Department supports the additional authorization contained in H.R. 3977. The additional authorization will enable Reclamation to complete the Project in accordance with requirements of the 2009 Act and is reflective of Project participant's needs and the reality of construction costs in this remote area of New Mexico. The additional authorization of \$6.25 million for renewable energy development will enable Reclamation to construct lower cost and alternative power generation for areas on the project (notably the Cutter Lateral) where Colorado River Storage Project (CRSP) power is not available. This provision also provides up to \$1.25 million of the \$6.25 million to develop small hydropower generation for Project facilities to help offset a portion of the Project's pumping costs. The additional authorization of \$30 million for community connections is critical to the Project's success and will help ensure that water

deliveries are made to all Navajo communities within the original Project service area. The Navajo Nation has agreed to provide an additional \$60 million, approximately, of its own funding to cover the full costs of connecting all existing Navajo communities to the San Juan Lateral.

**Operation, Maintenance, and Replacement (OM&R) Waiver.** H.R. 3977 provides for a \$250 million OM&R trust fund for the Navajo Nation and up to a \$10 million OM&R trust fund for the Jicarilla Apache Nation, the latter conditioned on an ability to pay analysis. The 2009 Act includes a provision allowing the Secretary to waive, for a period of not more than 10 years, the OM&R costs allocable to the Navajo Nation when the Secretary determines those costs exceed the Nation's ability to pay. Reclamation conducted an ability to pay analysis in 2020, following Reclamation practice for evaluating the end-user's ability to pay for municipal and industrial water systems, that concluded the Navajo Nation did not have the ability to pay.

The Department supports establishing a \$250 million OM&R trust fund for the Navajo Nation because it will assist the Nation in paying OM&R during the time needed to increase the customer base and economic development necessary to support full OM&R payments. While the 2009 Act did not provide OM&R assistance to the Jicarilla Apache Nation, the Department supports up to a \$10 million OM&R trust fund if the allocable OM&R costs are in excess of the Jicarilla Apache Nation's ability-to-pay.

**Expand the Project service area.** H.R. 3977 would also expand the Project to serve the Navajo Nation's four chapters in the Rio San Jose Basin (RSJB) in New Mexico and the Lupton community in Arizona to help the Navajo Nation increase the customer base and potentially lower OM&R costs. The proposed amendments do not include funding that would be needed to increase the capacity of the Crownpoint Lateral, nor additional improvements necessary to supply the RSJB.

The Department supports the expansion of the Project service area.

**Cap the City of Gallup's Repayment Obligation.** H.R. 3977 would cap the City of Gallup's (City) repayment obligation at 25% of its allocated construction costs, not to exceed \$76 million. Under the 2009 Act, the City is responsible for paying between 25% to 35% of its allocable costs, based on its ability to pay. Reclamation estimates that this provision would reduce the City's repayment obligation by approximately \$33 million.

The Department does not oppose the cap on the City's repayment obligation.

**Project Lands Transfer.** H.R. 3977 would transfer Navajo fee lands and Bureau of Land Management lands, upon which easements have been acquired for Project purposes, to the Navajo Nation in trust with the condition that Reclamation would retain easements for Project construction, operation, and maintenance. H.R. 3977 also transfers ownership of land underlying the recently acquired San Juan Generating Station water conveyance and storage facilities to the Navajo Nation in trust. H.R. 3977 provides for an easement for Reclamation to continue to carry out construction, operation, and maintenance necessary to incorporate those facilities into the Project until title transfer under section 10602(f) of the 2009 Act.

The Department supports the land transfer provisions of S.1898, which would take land into trust, exclusive of Project facilities. We would like to make technical changes to the Bill, similar to those contained in the amendment in the nature of a substitute to S. 1898 reported out of the Senate Committee on Indian Affairs on November 15, 2023, to clarify that Reclamation would retain ownership of Project facilities and infrastructure on the land until transferred to the Navajo Nation under section 10602(f) of the 2009 Act.

**Deferred Construction.** H.R. 3977 would authorize establishment of a Deferred Construction Fund and execution of a deferred construction agreement under which the Navajo Nation would acknowledge that full capacity of several Project features will not be needed until future demands materialize. The Navajo Nation would be able to use the Deferred Construction Fund to construct or expand facilities as higher demand requires over time.

The Department supports establishing a Deferred Construction Fund because it will allow Reclamation to construct only those water treatment and storage facilities needed to satisfy anticipated demand over the next 20-plus years, rather than immediately beginning work on the larger facilities that will not be needed until demand increases substantially. This provision is fiscally conscious and minimizes OM&R costs that would otherwise be spent on un-used Project facilities in the first years of water deliveries while providing for the later development of facilities to meet the Project's full build-out demand.

**Extend Completion Deadline to December 31, 2029.** H.R. 3977 extends the date by which the Project must be completed to December 31, 2029.

The Department supports extending the Project completion. Necessary design changes, including incorporating San Juan Generating Station water system facilities into the Project, have created delays in construction and a deadline extension is necessary to allow remaining Project features to be completed.

**Eliminate Double Taxation.** H.R. 3977 would allow taxation by either the Navajo Nation or the State of New Mexico depending on the ownership of land underlying Project facilities. Currently, both the State of New Mexico and the Navajo Nation have been taxing Federal contractors on construction activities on Navajo Tribal lands.

The Department supports eliminating the double taxation that is an additional and unnecessary cost to the Project. Reclamation estimates that this provision will save approximately \$50 million.

**Non-Project Water Use in the State of Utah.** While not included in H.R. 3977, but included in the amendment in the nature of a substitute to S. 1898 reported out of the Senate Committee on Indian Affairs on November 15, 2023, is a provision that grants the Navajo Nation authority to use the Navajo-Gallup Water Supply Project's San Juan Lateral to treat, store, and convey up to 2,000 acre-feet of its Navajo-Utah Settlement water rights (non-Project water) to Navajo communities in southeast Utah without increasing the capacity of any Project infrastructure in the State of New Mexico or any infrastructure in the State of Arizona or Utah necessary to deliver water to Navajo communities in Utah.

The Department would support the inclusion of similar language in H.R. 3977.

In sum, the Department supports H.R. 3977, as it will allow the Department to fulfill the commitments made in the 2009 Act to deliver clean drinking water to the Navajo Nation and other Project beneficiaries.

## **H.R. 8945, Navajo Nation Rio San José Stream System Water Rights Settlement Act of 2024**

H.R. 8945, the Navajo Nation Rio San Jose' Stream System Water Rights Settlement Act of 2024, would approve and provide authorizations to carry out the settlement of water rights claims of the Navajo Nation in the Rio San José River basin in New Mexico.

### **I. The Navajo Nation and Rio San José Basin Water Resources**

The Navajo Nation has approximately 298,000 enrolled members, of which about 122,000 live in New Mexico. The Navajo Nation consists of five agencies, further subdivided into 110 chapters. The Eastern Navajo Agency, headquartered in Crownpoint, encompasses 31 chapters within Western New Mexico as well as the satellite reservation areas of To'hajiilee and Alamo. Four of the chapters, with a total estimated population of 3,810 Tribal members, are within the Rio San José Basin. These are the chapters of Smith Lake, Casamero Lake, Thoreau and Baca/Prewitt. In addition, the satellite reservation of To'hajiilee, within the Rio Puerco basin, has an estimated 1,424 tribal members.

The Navajo Nation is located in an arid region of New Mexico and the chapters in the Rio San José Basin are primarily reliant on intermittent surface flows and groundwater supplies. Drought is a common occurrence that has impacted, and continues to impact, the Tribe. The supply of water available to the Navajo Nation has been reduced over time from extensive groundwater demands by non-Indian water users. An estimated 30 percent of residences do not have running water. While the Navajo Nation has water rights senior to the majority of non-Indian users in the basin, it is facing water shortages that impact its ability to provide sustainable water for its current and future water needs. Recent effects of global warming and climate change are exacerbating these effects and surface water supplies are dwindling. The Navajo Nation seeks funding as part of the proposed settlement to develop its water resources for various uses, including domestic and municipal purposes for current and future Tribal populations.

### **II. Proposed Navajo Rio San José Settlement Legislation**

The Settlement would resolve all outstanding water claims in the Rio San José basin in New Mexico that could be brought by the Navajo Nation or by the United States, in its capacity as trustee for the Nation, and would achieve finality with respect to all those claims. Legislation (H.R.1304) is currently pending to resolve the water rights claims of Acoma and Laguna in the Rio San José basin. If both H.R. 1304 and H.R.8945 are enacted, all Tribal water rights claims in the Rio San José basin would be resolved. H.R. 8945 would also approve a conditional settlement of Navajo Nation claims in the Rio Puerco basin.

H.R. 8945 would ratify and confirm the Navajo Nation's water rights to approximately 2,355 acre-feet per year (AFY) from surface water and groundwater sources in the Rio San José basin. These amounts include 638 AFY of groundwater for past and present uses, and 1300 AFY of groundwater for future uses. Conditionally settled claims in the Rio Puerco basin would be 506 AFY.

H.R. 8945 would also protect non-Indian water users, as the Navajo Nation would agree to not make priority calls against certain non-Indian water rights.

While the Navajo Nation Rio San José settlement would be fund-based, the proposed Federal contribution is largely based on the expansion of the existing Navajo-Gallup Water Supply Project and the creation of a regional water transmission system and community connections to bring imported water into the Rio San José basin. The trust fund to be established by H.R. 8945 totals \$223.271 million, to be indexed. Of that amount, \$200.271 million could be used for:

1. Acquiring water rights or water supply;
2. Planning, permitting, designing, engineering, constructing, reconstructing, replacing, rehabilitating, operating, or repairing water production, treatment, or delivery infrastructure, including for domestic and municipal use, on-farm improvements, or wastewater infrastructure;
3. Navajo Nations' water rights management and administration;
4. Watershed protection and enhancement, support of agriculture, water-related Navajo community welfare and economic development, and costs relating to implementation of the settlement agreement; and
5. Environmental compliance associated with project developed with trust funds.

The remaining trust fund money (\$23 million) could only be used for OM&R. The State of New Mexico would contribute \$3 million for the benefit of non-Indian acequia projects.

There are over 300 "Navajo" allotments in the basin. While the Department believes that most of these are allotments that were issued to individual Indians out of the Public Domain under section four of the General Allotment Act, final historic studies have not been completed and water rights claims have not been developed. Therefore, it has not been possible to include these allotments in the settlement. The water rights of these allotments would be adjudicated at a later date in the on-going adjudication of the Rio San José basin. H.R. 8945 would not in any way impose any conditions on the use of water on these allotments or alter the ability of the United States and allottees to make water rights claims for these lands in the future.

The Department of the Interior is pleased to support H.R. 8945. This bill in combination with H.R. 1304 would settle all Tribal rights in the Rio San José Basin, bringing stability to the basin for all water users. H.R. 8945 would provide funding to allow the Navajo Nation to plan water infrastructure for the current and long-term water needs of its people. This approach to settlement is consistent with Tribal sovereignty and self-determination, and with our trust responsibilities, and will help to ensure that Navajo Nation can maintain itself in a viable homeland.

## **H.R. 8949, Yavapai-Apache Nation Water Rights Settlement Act of 2024**

H.R. 8949, the Yavapai-Apache Nation Water Rights Settlement Act of 2024, among other things, would approve the settlement of the Yavapai-Apache Nation and authorize construction of a water project relating to the Nation’s water rights claims. The Department supports the goals of H.R. 8949 and is committed to working with the Nation and the Committee to resolve the Department’s concerns with H.R. 8949 as introduced.

### **I. Background**

#### **A. Historical Context**

The ancestors of Yavapai-Apache Nation (“Nation”) have lived and occupied lands in the Verde Valley in Arizona since time immemorial and were well-established as a hunting, gathering, and agricultural people before the United States secured the area from Mexico through the Treaty of Guadalupe Hidalgo in 1848. Since 1848, pursuant to statute and administrative action, the United States has taken into trust approximately 1,850 acres as the Yavapai-Apache Reservation (“Reservation”). The Reservation includes five non-contiguous districts: the Clarkdale District, consisting of approximately 120 acres northwest of the Town of Clarkdale and the City of Cottonwood; the Middle Verde District, consisting of approximately 1,600 acres northwest of the Town of Camp Verde; the Rimrock District, consisting of approximately 4 acres east of the Middle Verde District; the Montezuma District, consisting of approximately 80 acres northeast of the Town of Camp Verde and between the Middle Verde and Rimrock Districts; and the Camp Verde District consisting of approximately 50 acres southeast of the Town of Camp Verde. Of the approximately 2,673 enrolled members of the Nation, approximately 750 live on the Reservation. Current water needs on the Reservation are satisfied through surface and groundwater. The Verde River—one of the few remaining perennial rivers in Arizona—flows through the Reservation.

#### **B. Water Resources, Litigation, and Settlement Negotiation**

The water rights of the Nation are the subject of ongoing litigation in the Gila River general stream adjudication (“Adjudication”). The United States claimed 4,922 acre-feet per year (“AFY”) of surface and groundwater to satisfy the Nation’s past, present, and future needs.

Efforts to resolve the Nation’s water rights through settlement have been on-going since approximately 2008. As the Adjudication continued, the urgency for a settlement increased. In August 2023, the Department, Nation, and Salt River Project Agricultural Improvement and Power District and the Salt River Valley Water Users’ Association, met and committed to intensify negotiations with a goal of reaching agreement expeditiously.

### **II. Proposed Yavapai-Apache Nation Water Rights Settlement**

H.R. 8949 would resolve all the water rights claims in Arizona of the Nation; ratify and confirm the Settlement Agreement among the Nation, the State of Arizona, and other local parties; authorize the Secretary of the Interior to sign the Settlement Agreement; and authorize funds to



implement the settlement.

H.R. 8949 would confirm the Nation's right to divert 6,888.50 acre-feet per year (AFY). The 6,888.5 AFY diversionary right is made up of the Nation's entitlement to 1,200 AFY of water from the Central Arizona Project, 3,410.25 AFY of water from the C.C. Cragin Reservoir, 684.48 AFY of water pumped on the Nation's Reservation, and water rights acquired when certain lands were added to the Reservation.

Section 103 of H.R. 8949 would require the Secretary to plan, design, and construct the Túńłíńńíhoh Water Infrastructure Project (Project), consisting of the Cragin-Verde Pipeline Project (Pipeline) and the Yavapai-Apache Nation Drinking Water System Project (Drinking Water System). H.R. 8949 requires that the Pipeline be constructed to deliver no less than 6,836.92 AFY of water from the C.C. Cragin Dam and Reservoir for use by the Nation on its Reservation and up to an additional 1,912.18 AFY for use by water users in Yavapai County if they elect to contract for such water. The Pipeline would be owned by the United States and become part of the Salt River Federal Reclamation Project, and upon substantial completion, the Salt River Project Agricultural Improvement and Power District and Salt River Valley Water Users' Association (collectively, called SRP) would assume responsibility for the care, operation, and maintenance of the Pipeline. The cost of care, operation, and maintenance during construction would be borne by the Secretary, and upon substantial completion would be the responsibility of the Nation and any later to be determined project beneficiaries. Lands within the United States Forest Service needed for construction of the Pipeline would be withdrawn for that purpose.

In addition to constructing the Pipeline, H.R. 8949 would require the Secretary to plan, design, and construct the Drinking Water System, including a water treatment plant capable of treating up to approximately 2,250 AFY from the Pipeline, and distribution lines to various delivery points on the Reservation. In addition, the bill would authorize the Secretary to increase the capacity of the Drinking Water System to treat additional water for use by communities in the Verde Valley, if those communities pay incremental construction cost and OM&R. Upon substantial completion, title to, and responsibility for operation and maintenance of the Drinking Water System would transfer to the Nation. H.R. 8949 would allow for the Nation to plan, design, and construct the drinking water system pursuant to the Indian Self-Determination and Education Assistance Act.

H.R. 8949 establishes a non-trust interest-bearing Implementation Fund for use by the Secretary to plan, design and construct the Project and to reimburse SRP for the proportional capital and costs and OM&R of the C.C. Cragin Dam and Reservoir associated with the Cragin water allocated to the Nation. H.R. 8949 provides a combination of mandatory and discretionary funding for construction of the Pipeline (\$731,059,000 in mandatory funding) and the Drinking Water System (\$152,490,000 in mandatory funding). In the event this mandatory funding is insufficient to complete the Project, the bill authorizes the appropriation of "such sums as are necessary" for completion. In addition, H.R. 8949 authorizes the appropriation of such sums as necessary for the OM&R of the Project until the date of substantial completion.

H.R. 8949 establishes a trust fund of \$156 million that the Nation could use for: implementing the Settlement; expanding the drinking water system; constructing water infrastructure, including

additional wells; planning, designing, and constructing wastewater treatment and reuse facilities; paying OM&R; and participating in watershed restoration activities in the Verde Valley watershed.

Under H.R. 8949, the United States Geological Service would be required to continue to operate and maintain certain gaging stations on the Verde River with an authorization for appropriations of “such sums as may be necessary” for this purpose.

H.R. 8949 also clarifies which lands make up the Nation’s existing Reservation and identifies specific parcels to be taken into trust for Nation and added to the Reservation.

Finally, H.R. 8949 would require the Secretary of Agriculture to finalize a land exchange with the Nation and to “work expeditiously” to transfer 40 acres of Forest Service land to the Town of Camp Verde.

### **III. Department of the Interior Position on H.R. 8949**

The Department supports the goals of H.R. 8949 and appreciates the recent efforts of the settlement parties to reach a settlement within an expedited timeframe. However, the Department has some concerns with, and questions concerning, H.R. 8949. We are committed to working with the Nation, the settlement parties, and the Subcommittee to find a path forward on outstanding issues.

In particular, the Department has concerns with H.R. 8949’s mandate to plan, design, and construct the Project. As an initial matter, the bill would require the Secretary to construct the Pipeline and Drinking Water System with capacities that greatly exceed the Nation’s projected domestic, commercial, municipal, and light industrial (DCMI) needs as contained in claims filed in the Gila River Adjudication both by the Nation and the United States as trustee.

Additionally, the Department has significant concerns with the requirement that the Secretary “upsize” the Pipeline to transport water to be used by Verde Valley communities that have not committed to receiving such water or paying for their fair share of the capital costs of the Pipeline. In prior Indian water rights settlements that provided for infrastructure to serve both Tribal and non-Tribal communities, the non-Tribal communities committed to use and pay for a portion of the cost of such infrastructure.

Finally, with respect to the Drinking Water System, the Department has not had sufficient time to review plans for that system, having just received plans from the Nation on July 9, 2024.

In addition to concerns about the size and scope of the Project, the Department has concerns about the Project costs. The Pipeline’s design and cost are based, in part, on a Value Planning Study (“Study”) prepared by the Department, with input from the Nation and SRP. The purpose of the Study was not to provide a reliable estimate of the actual costs of a project, but instead to facilitate the comparison of various alternatives. 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. Accordingly, the Department expects the mandatory funding provided for the Pipeline will be insufficient and we would like work with the Nation to identify cost-savings and alternatives to address the cost gap. With respect to the drinking water system, the Department must evaluate the recently received cost basis submitted by the Tribe. The authorization for "such sums as are necessary" raises concerns for the Department. The Department lacks information on other aspects of the proposed settlement and costs, along with some significant legal questions with some provisions in the bill, and looks forward to continuing to work with the sponsors and Tribe to resolve those issues.

In addition to the specific concerns discussed above, the Department notes H.R. 8949 requires other technical changes.

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In sum, the Department supports the goals of H.R. 8949 and commends the Yavapai-Apache Nation and the State parties for the significant progress made on this settlement in recent months. The Department is committed to continuing to work with the Nation and the bill sponsors to address the Department's concerns.

## **H.R. 8953, Crow Tribe Water Rights Settlement Amendments Act of 2024**

H.R. 8953 would amend the Crow Tribe Water Rights Settlement Act of 2010 (Pub. L. 111-291; 124 Stat. 3097) (Settlement Act). The Department supports H.R. 8953 and recommends an amendment to the bill, which we have discussed with the Crow Tribe, that would ensure that trust fund expenditures prioritize providing clean drinking water over land acquisitions.

### **I. Background**

The Settlement Act authorized \$460 million, indexed to inflation, as follows: \$378.224 million, for the Bureau of Reclamation to plan, design and construct two major projects on the Crow Reservation and \$81.776 million held in trust by the BIA for Settlement implementation, O&M of the systems, and development of clean energy. The two projects are: (1) the rehabilitation and improvement of the Crow Irrigation Project (CIP), and (2) the design and construction of a Municipal, Rural, and Industrial (MR&I) water system. Both projects were to be designed and constructed as generally described in detailed engineering reports prepared by consultants to the Tribe and cited in the Settlement Act. In addition, the Settlement Act gave the Tribe a 15-year exclusive right to construct hydropower facilities at the Yellowtail Afterbay Dam, a Bureau of Reclamation facility. That exclusive right expires in 2025.

### **II. Proposed Amendment**

H.R. 8953 would amend the Settlement Act by establishing a non-trust fund account to allow the Bureau of Reclamation to continue work on rehabilitation of the CIP and a new MR&I projects trust fund to be used by the Tribe for (i) planning, permitting, designing, engineering, constructing, reconstructing, replacing, rehabilitating, operating, or repairing water production, treatment, or delivery infrastructure, including for domestic and municipal use or wastewater infrastructure; (ii) purchasing on-Reservation land with water rights; and (iii) complying with applicable environmental laws. The amendments do not increase the funding for the Settlement Act but merely change the way some funds are held and expended. If enacted as written, it is our interpretation that while the Amendment would repeal Section 406 in its entirety, funding for the MR&I projects trust fund would not exceed \$246,381,000, as indexed, as provided in section 414(b) of the Settlement Act (which would be redesignated as 415(b) pursuant to H.R. 8953).

When the Settlement Act was enacted, it did not provide for the creation of a non-trust interest-bearing account for funds appropriated for project construction. Subsequent Indian water rights settlements have provided for such accounts to allow funds to accrue interest while projects are being planned, designed, and constructed. Because the Settlement Act did not provide this authorization, the Department and the Tribe instead opened a joint-signature account with a private bank for the investment of settlement funds. While this has allowed the funding to earn interest, it has come with costs associated with maintaining a private bank account. The Tribe now seeks to establish a non-trust interest-bearing account in Treasury so it can enjoy the benefits of earning interest without having to pay management fees to a private banking institution. H.R. 8953 would authorize the establishment of a non-trust interest-bearing account in Treasury to receive the funds already appropriated and yet to be appropriated for CIP

rehabilitation. Reclamation would continue to be the lead agency responsible for the planning, design, and construction of CIP rehabilitation features.

With respect to the MR&I system, H.R. 8953 would convert this portion of the Settlement Act from an infrastructure-based settlement to a trust fund-based settlement. H.R. 8953 would direct the Secretary to establish in the existing Crow Tribe Water Rights Settlement Trust Fund a new “MR&I Projects” account. The Tribe could then use funds from this account for several authorized purposes: plan, design, and construct MR&I systems; plan, design, and construct wastewater treatment facilities; and purchase on-Reservation land with water rights. H.R. 8953 would provide the Tribe with flexibility and discretion to plan, design, and construct the MR&I and wastewater systems that it believes will best serve communities on its Reservation.

Finally, H.R. 8953 would extend by five years the period during which the Tribe has the exclusive right to develop hydropower at the Yellowtail Afterbay Dam, to 2030.

The Department supports H.R. 8953. Allowing the Tribe to use the funding authorized for a large, centralized MR&I system to instead build smaller MR&I projects will allow it to make decisions regarding how, when, and where to develop water infrastructure on the Reservation. This approach is consistent with Tribal sovereignty and self-determination. We would like to work with the Tribe and the Committee, however, to include language in H.R. 8953 to ensure that trust fund expenditures prioritize providing clean drinking water over land acquisitions. The expansion of the authorized uses from a single use (MR&I) to multiple uses, including wastewater projects and purchases of land with water rights, will necessarily reduce the amount of funding available for badly needed drinking water systems on the Reservation. Provisions prioritizing funding for MR&I would ensure safe, reliable drinking water for the Tribe. After testifying on H.R. 8953’s companion bill in the Senate, S. 4442, the Department coordinated with the Tribe to provide technical assistance to the Senate to address this concern.