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AMENDING THE WHITE MOUNTAIN APACHE TRIBE WATER RIGHTS QUANTIFICATION ACT OF 2010 TO CLARIFY THE USE OF AMOUNTS IN THE WMAT SETTLEMENT FUND

MARCH 21, 2017.—Ordered to be printed

Mr. HOEVEN, from the Committee on Indian Affairs,
submitted the following

R E P O R T

[To accompany S. 140]

[Including cost estimate of the Congressional Budget Office]

The Committee on Indian Affairs, to which was referred the bill (S. 140) to amend the White Mountain Apache Tribe Water Rights Quantification Act of 2010 to clarify the use of amounts in the WMAT Settlement Fund, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The purpose of the bill is to clarify the authorized purposes of the White Mountain Apache Tribe (WMAT or Tribe) Settlement Fund authorized in Title III of the Claims Resolution Act, Public Law 111-291 (the “Act”).

BACKGROUND

Title III of the Act resolved the White Mountain Apache Tribe’s water related claims against the United States, the State of Arizona, and certain state parties. In consideration for the Tribe waiving its water related claims against the federal government and state parties, the Act authorized funding for the construction of the White Mountain Apache Rural Water System (the “Rural Water System”), which will bring desperately needed drinking water to the Tribe and its members. The Act also establishes the creation of the WMAT Settlement Fund that can be used, for among other things, “water-related economic development projects”.

In order to complete the Rural Water System, it may be necessary for the Tribe to use the existing authorization provided for in Section 312(b) for water-related economic development projects. Since the Rural Water System will serve a number of water-related economic activities from housing to hydropower, it falls within the authorized uses provided for in Section 312(b)(2)(C)(i)(III). Notwithstanding the flexibility in current law, the Department of the Interior has indicated, from its perspective, it is unclear whether the Settlement Fund can be used for the Rural Water System.

NEED FOR THE LEGISLATION

A technical amendment is necessary to clarify that authorization authority exists in Section 312(b) for the costs associated with completion of the WMAT Rural Water System—as long as it falls within the existing authorization level.

If this issue is not resolved, the completion of the Rural Water System project will be threatened, thereby increasing the ultimate cost to the United States and delaying delivery of desperately needed drinking water to the White Mountain Apache Tribe and its members.

LEGISLATIVE HISTORY

The measure, S. 140, was introduced on January 12, 2017, by Senator Jeff Flake, with Senator John McCain as an original co-sponsor. The bill was referred to the Committee on Indian Affairs. On February 8, 2017, the Committee met at a business meeting to consider the bill, and ordered that the bill, without amendment, be reported favorably to the Senate.

In the 114th Congress, similar legislation was introduced, S. 2959, on May 19, 2016, by Senator McCain, with Senator Flake as an original co-sponsor. The bill was referred to the Committee on Indian Affairs. This Committee held a hearing on the bill on June 29, 2016. On September 7, 2016, the Committee met at a business meeting to consider the bill, and ordered that the bill, as amended, be reported favorably to the Senate. This amendment clarified that the planning, design, and construction of the Rural Water System were authorized uses of the WMAT Settlement Fund.

On September 29, 2016, the Senate passed S. 2959 by unanimous consent. The Senate-passed bill contained an additional technical amendment which struck an unnecessary cross-reference to the cost-overrun account in section 312(e)(4) of the White Mountain Apache Tribe Water Rights Quantification Act of 2010. The bill was received by the House of Representatives and referred to the Committee on Natural Resources, Subcommittee on Water, Power, and Oceans of the House of Representatives. No further action was taken on the bill.

The House companion bill in the 114th Congress was H.R. 5433, introduced on June 9, 2016, by Representative Kirkpatrick and co-sponsored by Representative Gosar. The House bill, H.R. 5433, was referred to the House Committee on Natural Resources. The House took no further action on this bill.

SECTION-BY-SECTION ANALYSIS FOR S. 140

Section 1 clarifies that the Tribe may use amounts in the WMAT Settlement Fund authorized in section 312(b) for the planning, design, and construction of the Rural Water System.

COST AND BUDGETARY CONSIDERATIONS

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 140, a bill to amend the White Mountain Apache Tribe Water Rights Quantification Act of 2010 to clarify the use of amounts in the WMAT Settlement Fund.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Robert Reese.

Sincerely,

KEITH HALL.

Enclosure.

S. 140 would amend the White Mountain Apache Tribe Water Rights Quantification Act of 2010 to clarify that the White Mountain Apache Tribe (WMAT) is authorized to use amounts from the WMAT settlement fund, as established by that act, to plan, design, and construct a rural water system. Under current law, almost \$79 million is authorized to be appropriated to that settlement fund. S. 140 would expand the uses of the fund but would not authorize the appropriation of any additional funding. As of February 2017, no funds have been appropriated to the settlement fund.

CBO estimates that implementing S. 140 would not affect the federal budget. Enacting the bill would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

CBO estimates that enacting S. 140 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

S. 140 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act. The White Mountain Apache Tribe would benefit from authorizations in the bill to use existing settlement funds for planning, design, and construction of a rural water system. Any costs to the tribe would result from complying with conditions of assistance.

EXECUTIVE COMMUNICATIONS

The Committee has received no communication from the Executive Branch regarding S. 140.

REGULATORY AND PAPERWORK IMPACT STATEMENT

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires each report accompanying a bill to evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill. The Committee believes that S. 140 will have a minimal impact on regulatory or paperwork requirements.

CHANGES IN EXISTING LAW

In accordance with subsection 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by S. 140, as ordered reported, are shown as follows (existing law proposed to be

omitted is enclosed in black brackets, new matter is printed in italic):

SEC. 307. AUTHORIZATION OF WMAT RURAL WATER SYSTEM.

(a) **IN GENERAL.**—Consistent with subsections (a), *(b)(2)* and (e) of section 312 and subsection (h) of this section, the Secretary, acting through the Bureau, shall plan, design, and construct the WMAT rural water system to divert, store, and distribute water from the North Fork of the White River to the Tribe that shall consist of—

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SEC. 312. FUNDING.

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(b) WMAT SETTLEMENT AND MAINTENANCE FUNDS.—

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(2) WMAT SETTLEMENT FUND.—

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

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(C) USE OF FUNDS.—

(i) **IN GENERAL.**—The Tribe shall use amounts in the WMAT Settlement Fund for any of the following purposes:

- (I) Fish production, including hatcheries.
- (II) Rehabilitation of recreational lakes and existing irrigation systems.
- (III) Water-related economic development projects, *including the planning, design, and construction of the WMAT rural water system, in accordance with section 307(a).*
- (IV) Protection, restoration, and economic development of forest and watershed health.