

**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**

Thank you for the opportunity to present the Department of the Interior's (Department) testimony on the following bills concerning Indian water rights settlements.

At the core of the United States' trust and treaty obligations is our responsibility to ensure that Indian Tribes have the right to continue to exist in their homelands. Everyone should understand that water is essential to meet this obligation. Without access to water in their homelands, Tribes cannot remain in their homelands, and we cannot fulfill our most solemn obligation to American Indian and Alaska Native people.

The Biden Administration recognizes that water is a sacred and valuable resource for Tribal Nations and that long-standing water crises continue to undermine public health and economic development in Indian Country. This Administration strongly supports the resolution of Indian water rights claims through negotiated settlements. Indian water settlements help to ensure that Tribal Nations have safe, reliable water supplies; improve environmental and health concerns on reservations; enable economic growth; promote Tribal sovereignty and self-sufficiency; and help advance the United States' trust relationship with Tribes. At the same time, water rights settlements have the potential to end decades of controversy and contention among Tribal Nations and neighboring communities and promote cooperation in the management of water resources.

Indian water rights settlements play a pivotal role in this Administration's commitment to putting equity at the center of everything we do to improve the lives of everyday people—including Tribal Nations. We have a clear charge from President Biden and Secretary Haaland to improve water access and water quality on Tribal lands. Access to water is fundamental to human

existence, economic development, and the future of communities—especially Tribal communities.

To that end, the Biden Administration’s policy on negotiated Indian water settlements continues to be based on the following principles: the United States will participate in settlements consistent with its legal and moral trust responsibilities to Tribal Nations; Tribes should receive equivalent benefits for rights, which they, and the United States as trustee, may release as part of the settlement; Tribes should realize value from confirmed water rights resulting from a settlement; and settlements should contain appropriate cost-sharing proportionate to the benefits received by all parties benefiting from the settlement. In addition, settlements should provide finality and certainty to all parties involved.

Congressional enactment of these settlements should be considered within the context of all Tribal priorities and the availability of all resources. That is why the Administration encourages Congress to consider mandatory funding for this and other pending Indian water rights settlements, which was also requested in the 2025 President’s Budget, included in the enacted Bipartisan Infrastructure Law, and already proposed in some of the bills we are discussing today.

### **H.R. 1304, Rio San José and Rio Jemez Water Settlements Act of 2023**

H.R. 1304 would approve and provide authorizations to carry out the settlement of certain water rights claims of the Acoma, Laguna, Jemez, and Zia Pueblos (Pueblos) in New Mexico.

## **I. Background**

### **A. Historical Context**

Like other Pueblos in New Mexico, the Pueblos of Acoma, Laguna, Jemez, and Zia Pueblos were agricultural people living in established villages when the Spanish explorers first came to New Mexico. Before the Pueblos’ lands became part of the United States, they fell under the jurisdiction first of Spain, and later of Mexico, both of which recognized and protected the rights of Pueblos to use water. When the United States asserted its sovereignty over Pueblo lands and what is now the State of New Mexico, it did so under the terms of the Treaty of Guadalupe Hidalgo, which protected rights recognized by prior sovereigns, including Pueblo rights.

### **B. Acoma and Laguna Pueblos and Their Water Resources**

The Rio San Jose, located in west-central New Mexico and west of Albuquerque, is a tributary of the Rio Puerco, which flows into the Rio Grande. The area is also home to the Pueblos of Acoma and Laguna. In total, the Pueblos hold approximately 1.064 million acres (over 563,000 acres for Acoma Pueblo and over 501,000 acres for Laguna Pueblo).

While there were small communities established by Spain and Mexico on smaller tributaries of the Rio San Jose, there were no mainstem upstream users disrupting the Pueblos’ water use until the United States’ acquisition of the territory. The United States’ establishment of Fort Wingate near Ojo del Gallo spring in 1862, and subsequent use of the area by the Village of San Rafael,

resulted in the diversion of spring flow that had previously provided a significant contribution to Rio San Jose flows and had been available to both Pueblos. Acequias on Rio San Jose tributaries began diverting water from the system in the late 19th century to the detriment of the Pueblos. Non-Indian water users' construction of a dam on Bluewater Creek, above and upstream of Acoma Pueblo, also reduced flows to the Rio San Jose, impacting both Pueblos. As the non-Indian water users began to irrigate more and more acreage, they turned to groundwater. This groundwater pumping siphoned off water that would have flowed as surface water in the Rio San Jose for the Pueblos' use.

Groundwater depletions in the Rio San Jose basin increased after uranium was discovered in the Grants Mineral Belt in the 1950s. The uranium was located in the same rock formations where water was stored, and that water supplied perennial springs within the basin, many of which contributed to Rio San Jose flows. These aquifers, and those located above them, were dewatered by mining companies, resulting in depleted spring flow contributions to the Rio San Jose. Uranium milling facilities also consumed large amounts of groundwater. The growth of this mining economy and the concomitant growth of non-Indian communities, such as the City of Grants, increased water use in the Rio San Jose basin to the detriment of the Pueblos.

The long-term pumping of groundwater and unimpeded diversion of surface water by non-Indian water users has resulted in significant impacts to the water supply. Even if the Pueblos were able to successfully curtail the water use of non-Indian junior users as part of the ongoing adjudication, the Rio San Jose system would not recover to provide the historic flow levels for the two Pueblos for several decades.

In 1983, general stream adjudication of the Rio San Jose (to resolve the dispute over the water rights of Acoma Pueblo and Laguna Pueblo, as well as the Navajo Nation) was initiated in New Mexico. Negotiations regarding potential settlement of the Pueblos' water rights claims have been ongoing since 1993, when the United States established teams to negotiate comprehensive settlements of all the Navajo Nation's and Pueblos' water rights in the Rio San Jose basin. H.R. 1304 addresses the water rights of the Pueblos of Acoma and Laguna. Separate legislation, H.R. 8945, addresses the rights of the Navajo Nation.

### **C. Jemez and Zia Pueblos and Their Water Resources**

The Rio Jemez basin, located in north-central New Mexico and to the northwest of Albuquerque, is a major tributary of the Rio Grande and is home to the Pueblos of Jemez and Zia. In total, the Pueblos hold nearly 250,000 acres (approximately 89,600 acres for Jemez Pueblo and 160,000 acres for Zia Pueblo).

The Rio Jemez basin is an arid region of New Mexico, and drought is a common occurrence that has impacted, and continues to impact, the Pueblos. Recent effects of global warming and climate change are exacerbating these effects and surface water supplies are dwindling. Historic increases in water use by non-Indians impacted, and continue to impact, the Pueblos' ability to access adequate surface and groundwater supplies. Increased groundwater pumping by non-Indians, pursuant to permits issued by the State of New Mexico, make the Pueblos' access to groundwater supplies increasingly difficult.

Since 1996, Jemez and Zia Pueblos and non-Indian water users have been operating under a negotiated irrigation rotation agreement. The lack of a reliable water supply continues to impact the Pueblos' ability to sustain their agricultural practices and to move forward with water development projects to benefit the Pueblos and their members.

The general stream adjudication of the Rio Jemez (to resolve the water rights of the Pueblos of Jemez, Zia, and Santa Ana) began in 1983. Negotiations to resolve the water rights of the Pueblos also began in 1983. Jemez and Zia Pueblos reached a settlement of their water rights, but the Santa Ana Pueblo has elected to continue to litigate its water rights claims.

## **II. Proposed Acoma and Laguna Pueblos Settlement Legislation**

Acoma and Laguna Pueblos, the State of New Mexico, and non-Indian water users executed a settlement agreement in 2022, quantifying the two Pueblos' water rights and resolving other key issues, including the requirements and parameters of a possible future project to import water to Pueblo lands. The United States is not a signatory to the settlement agreement.

Title I of H.R. 1304 would resolve all of the Acoma and Laguna Pueblos' water rights claims in the Rio San Jose basin in New Mexico; ratify and confirm the water rights settlement agreement among the Pueblos, the State of New Mexico, and non-Indian water users; authorize the Secretary of the Interior to sign the settlement; and authorize funds to implement the settlement agreement. In addition, the Pueblos are conditionally settling their claims in the Rio Salado (Acoma Pueblo) and Rio Puerco (Laguna Pueblo) basins.

Title I of H.R. 1304 would ratify and confirm the Pueblos' water rights to over 20,000 acre-feet per year (AFY)—7,982 AFY for Acoma Pueblo and 12,263 AFY for Laguna Pueblo—from various surface water and groundwater resources on each Pueblo. These amounts include 1,300 AFY of future groundwater use for economic development for each Pueblo.

Title I of H.R. 1304 would also protect non-Indian water users, as the Acoma and Laguna Pueblos would agree not to make priority calls for their senior rights against the water rights of junior non-Indian users in existence at the time that the settlement becomes enforceable. In addition, the Pueblos would agree to promulgate Pueblo water codes, which will govern permitting of uses of the Pueblos' water rights; provide processes for protests by parties affected by Pueblo permitting decisions; and ensure that water use under a Pueblo permit does not impair existing surface and groundwater rights.

Finally, Title I of H.R. 1304 would establish trust funds for both Pueblos totaling \$850 million, to be indexed. Acoma Pueblo would receive \$311.75 million, and Laguna Pueblo would receive \$493.25 million. The Pueblos could use their trust funds to develop water infrastructure on Pueblo lands as they determine necessary and on their own timeframe. In addition, \$45 million is to be allocated to both Pueblos jointly to use for repairs at the existing Acomita Dam.

Of the monies that would go to each Pueblo individually, \$40 million could be spent on operation, maintenance, and repair of Pueblo water infrastructure for domestic, commercial, municipal, and industrial uses (\$14 million for Acoma Pueblo and \$26 million for Laguna

Pueblo) and \$5 million could be spent on feasibility studies for water supply infrastructure to serve Pueblo domestic, commercial, municipal, and industrial water uses (\$1.75 million for Acoma Pueblo and \$3.25 million for Laguna Pueblo). The remaining \$760 million (\$296 million for Acoma Pueblo and \$464 million for Laguna Pueblo) could be used by the Pueblos for: acquiring water rights or water supply; planning, permitting, designing, engineering, constructing, operating, rehabilitating, and repairing water production, treatment, or delivery infrastructure; Pueblo water rights management and administration; watershed protection and enhancement; support of agriculture; water-related Pueblo community welfare and economic development; costs relating to implementation of the settlement; and environmental compliance in development and construction of infrastructure. The State of New Mexico has also agreed to contribute just over \$36 million to provide for the benefit of non-Indian water users, including \$500,000 for a fund to mitigate impairment to non-Indian domestic well and livestock well users resulting from new or changed Pueblo water uses.

### **III. Proposed Jemez and Zia Pueblos Settlement Legislation**

Jemez and Zia Pueblos, the State of New Mexico, and non-Indian water users executed a settlement agreement in 2022, quantifying the rights of the Pueblos and resolving other key issues, including the requirements and parameters of a possible future Augmentation Project, which the Pueblos and non-Indian water users may construct to improve infrastructure and provide groundwater to firm up the irrigation water supply for certain agricultural acreage. The United States is not a signatory to the settlement agreement.

Title II of H.R. 1304 would resolve all of the Jemez and Zia Pueblos' water rights claims in the Rio Jemez Basin in New Mexico; ratify and confirm the water rights settlement agreement among the Pueblos, the State of New Mexico, and non-Indian water users and authorize the Secretary of the Interior to sign the settlement agreement; and authorize funds to implement the settlement agreement.

Title II of H.R. 1304 ratifies and confirms the Jemez and Zia Pueblos' water rights to over 9,000 acre-feet per year (AFY)—6,055 AFY for Jemez Pueblo and 3,699.4 AFY for Zia Pueblo—from various surface water and groundwater sources on each Pueblo. These amounts include 1,200 AFY of future groundwater use for economic development for each Pueblo.

Title II of H.R. 1304 also protects non-Indian water users, as the Jemez and Zia Pueblos would agree to not make priority calls for their senior rights on all decreed water rights of junior non-Indian users. In addition, the Pueblos would agree to promulgate Pueblo water codes, which will govern permitting of uses of the Pueblos' water rights; provide processes for protests by parties affected by Pueblo permitting decisions; and ensure that water use under a Pueblo permit does not impair existing surface and groundwater rights.

Finally, Title II of H.R. 1304 establishes Trust Funds for both Pueblos totaling \$490 million, to be indexed, (\$290 million for Jemez Pueblo and \$200 million for Zia Pueblo). The Pueblos could use their trust funds to develop water infrastructure on Pueblo lands as they determine necessary and on their own timeframe. Monies in the fund could be used by the Jemez and Zia Pueblos for: planning, permitting, designing, engineering, constructing, operating, maintaining, and repairing

water production, treatment, delivery infrastructure, and the Augmentation Project; Pueblo water rights management and administration; watershed protection and enhancement; support of agriculture; water-related Pueblo community welfare and economic development; costs relating to implementation of the settlement; and environmental compliance in development and construction of infrastructure. The State of New Mexico has also agreed to contribute just over \$20 million to provide for the benefits of non-Indian water users, including \$500,000 for a fund to mitigate impairment to non-Indian domestic well and livestock well users resulting from new or changed Pueblo water uses.

#### **IV. Department of the Interior Position on H.R. 1304**

The Department is pleased to support H.R. 1304. This bill is the result of over three decades of good-faith negotiations to reach consensus on key issues. The Department looks forward to continued discussions with the U.S. Department of Agriculture (USDA), regarding USDA's role in implementing Title I of the bill. Finally, the Department has been working with the settlement parties on some minor technical changes to the bill that would clarify some issues and conform it more closely to other pending Indian water rights settlements in New Mexico. We look forward to working with the settlement parties and the Subcommittee on these technical changes.

H.R. 1304 is designed to meet all four Pueblos' current and long-term needs for water by providing trust funds that could be used by the Pueblos according to their needs and their own decisions. Rather than committing the Pueblos or the United States to construct specific water infrastructure projects, H.R.1304 would allow the Pueblos to make decisions regarding how, when, and where to develop water infrastructure. This approach to settlement is consistent with Tribal sovereignty and self-determination, and with our trust responsibilities, and will help to ensure that the Pueblos can maintain their way of life.

**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. 6599 would amend the Omnibus Public Land Management Act of 2009 and the Claims Resolution Act of 2010 to authorize funding for deposit into the Navajo Nation Water Resources Development Trust Fund, the Taos Pueblo Water Development Fund, and the Aamodt Settlement Pueblos' Fund equivalent to the amounts that would have accrued to the trust funds if the Department had the authority to invest the funds upon appropriation.

In the 111th Congress, four Indian water rights settlements (the Taos Pueblo Indian Water Rights Settlement Act, Pub. L. No. 111-291; the Aamodt Litigation Settlement Act, Pub. L. No. 111-291; the Duck Valley settlement, Pub. L. No. 111-11; and the Crow Tribe Water Rights Settlement Act of 2010, Pub. L. No. 111-291) included provisions authorizing an investment of monies into the settlement trust funds after the enforceability date. The enforceability date is effective when the Secretary finds that all conditions for the full effectiveness and enforceability of the settlement had occurred and publishes that finding in the Federal Register. The Northwestern New Mexico Rural Water Projects Act, Pub. L. No. 111-11, (Navajo Settlement), also allowed for the investment of monies into the Navajo Nation Resources Development Trust Fund, only upon a specified date certain ten years after the enactment date.

These provisions prohibited the Department from investing trust fund monies before the enforceability date or a date certain. However, the Department mistakenly started investing trust fund monies when they were appropriated, which was before the enforceability date. When the Department discovered this error, the Department's Solicitor's Office determined that the interest amounts earned prior to the date that the funds were authorized to be invested were contrary to the Antideficiency Act and, in accordance with 31 U.S.C. § 3302, must be returned to Treasury. The Department then returned all interest monies accrued prior to the authorized date back to Treasury.

The issue that H.R. 6599 addresses is a provision in certain Indian water rights settlements that prohibited investment until the enforceability date was reached. This provision is not common in Indian water rights settlements. Similar provisions appeared in other settlements enacted in 2009-2010, including the Crow Tribe Water Rights Settlement Act of 2010; the Taos Pueblo Indian Water Rights Settlement Act; the Aamodt Litigation Settlement Act; and the Navajo-Gallup Water Supply Project and Navajo Nation Water Rights. In each of these settlements, funds were inadvertently invested and returned to Treasury. The Department supported similar legislation to resolve this issue, and thus supports H.R. 6599 to correct this issue for the Northwestern New Mexico Rural Water Projects Act, the Taos Pueblo Indian Water Rights Settlement Act, and the Aamodt Litigation Settlement Act.

## **H.R. 8685, Ohkay Owingeh Rio Chama Water Rights Settlement Act of 2024**

H.R. 8685 would approve and provide authorizations to carry out the settlement of all water rights claims of the Ohkay Owingeh in the Rio Chama basin in New Mexico.

### **I. Background**

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

Like other Pueblos in New Mexico, Ohkay Owingeh were agricultural people living in established villages when the Spanish explorers first came to New Mexico. Before Ohkay Owingeh's lands became part of the United States, they fell under the jurisdiction first of Spain, and later of Mexico, both of which recognized and protected the rights of the Pueblos to use water. When the United States asserted its sovereignty over Pueblo lands and what is now the State of New Mexico, it did so under the terms of the Treaty of Guadalupe Hidalgo, which protected rights recognized by prior sovereigns, including Ohkay Owingeh's rights.

#### **B. Ohkay Owingeh and the Rio Chama**

The Rio Chama, located in north-central New Mexico and to the northwest of Albuquerque, is a major tributary of the Rio Grande. The river originates in Colorado, just above the New Mexico border, and runs about 130 miles to its confluence with the Rio Grande. Ohkay Owingeh, located 28 miles north of Santa Fe, has approximately 13,244 acres in the Rio Chama, Rio Grande, and Rio Santa Cruz basins. Ohkay Owingeh has approximately 2,880 enrolled members, of which about 2,205 reside on Ohkay Owingeh lands.

Ohkay Owingeh is located in an arid region of New Mexico, and drought is a common occurrence that has impacted, and continues to impact, Ohkay Owingeh lands. Since time immemorial, Ohkay Owingeh has made use of the water in the Rio Chama basin. However, the supply of water in the Rio Chama available to Ohkay Owingeh has been reduced over time by diversions by neighboring non-Indian water users. Consequently, Ohkay Owingeh is facing water shortages that impact its ability to provide sustainable water for its current and future water needs. Additionally, a portion of Ohkay Owingeh's lands lie within the "bosque," or forested habitat, along the Rio Chama and Rio Grande, which is of great historical and cultural significance to Ohkay Owingeh. The bosque areas within Ohkay Owingeh's lands were altered as a result of flood control and irrigation projects constructed by the United States on both the Rio Chama and Rio Grande in the mid-1900s. Recent effects of global warming and climate change are exacerbating these effects and surface water supplies are dwindling. Ohkay Owingeh seeks funding as part of the proposed settlement to remedy the damage to its lands that lie within these bosque areas and to also develop Ohkay Owingeh's water resources for various uses, including domestic and municipal purposes for current and future population.

In the late 1940s, a general stream adjudication of the Rio Chama was initiated in New Mexico state court and was eventually removed to Federal District Court in 1969. Negotiations regarding potential settlement of Ohkay Owingeh's water rights claims have been ongoing since 2015, when the United States established a negotiation team.

## II. Proposed Ohkay Owingeh Settlement Legislation

H.R. 8685 would resolve all of Ohkay Owingeh's water rights claims in the Rio Chama basin in New Mexico; ratify and confirm the water rights settlement agreement signed in 2023 by Ohkay Owingeh, the State of New Mexico, and non-Indian water users; authorize the Secretary of the Interior to sign the settlement agreement; and provide funding to implement the settlement.

H.R. 8685 would ratify and confirm Ohkay Owingeh's water rights to approximately 1,756 acre-feet per (AFY) from surface water and groundwater sources. These amounts include 771 AFY of future groundwater use for economic development and an important right to 250 AFY of water to provide for bosque health and restoration on Ohkay Owingeh lands, as well as water to continue irrigated farming in the Rio Chama basin.

H.R. 8685 would also protect non-Indian water users, as Ohkay Owingeh would not make priority calls for its senior rights against other settlement parties, owners of domestic wells and livestock rights, and any non-signatory water users who cooperate in shortage sharing. In addition, Ohkay Owingeh would promulgate a water code, which would govern permitting of uses of its water; provide processes for protests by parties affected by Ohkay Owingeh permitting decisions; and ensure that water use under an Ohkay Owingeh permit would not impair existing surface and groundwater rights.

Finally, H.R. 8685 would establish a trust fund totaling \$745 million, to be indexed, that Ohkay Owingeh could use to develop water infrastructure as it determines necessary and on its own timeframe. Monies in the fund could be used for:

- 1) Planning, permitting, designing, engineering, constructing, reconstructing, replacing, rehabilitating, operating, or repairing water production, treatment, or delivery infrastructure, including for domestic and municipal supply or wastewater infrastructure;
- 2) Planning, permitting, designing, engineering, constructing, reconstructing, replacing, rehabilitating, operating, or repairing water production, treatment, or delivery infrastructure, acquisition of water, or on-farm improvements for irrigation, livestock, and support of agriculture;
- 3) Planning, permitting, designing, engineering, constructing, reconstructing, replacing, rehabilitating, operating, monitoring, or other measures for watershed and endangered species habitat protection, bosque restoration or improvement (including any required cost shares for and allowable contributions to a Federal project or program), land and water rights acquisition, water-related Ohkay Owingeh community welfare and economic development, and costs relating to implementation of the settlement agreement;
- 4) The management and administration of water rights; and
- 5) Ensuring environmental compliance for projects developed with settlement funds.

The State of New Mexico would contribute \$131 million to provide for benefits to non-Indian water users, including \$500,000 for a fund to mitigate impairment to non-Indian domestic and livestock well users resulting from new or changed water uses by Ohkay Owingeh.

### **III. Department of the Interior Position on H.R. 8685**

The Department is pleased to support H.R. 8685. This bill is the result of multiple decades of litigation and nearly a decade of good-faith negotiations to reach consensus on key issues. H.R. 8685 is designed to meet Ohkay Owingeh's current and long-term needs for water by providing a trust fund to be used by Ohkay Owingeh according to its needs and its own decisions. Rather than committing Ohkay Owingeh or the United States to construct specific water infrastructure projects, the bill would allow Ohkay Owingeh to make decisions regarding how, when, and where to develop water infrastructure. H.R. 8685 would also allow Ohkay Owingeh to restore and protect its culturally important bosque lands. This approach to settlement is consistent with Tribal sovereignty and self-determination, and with our trust responsibilities, and will help to ensure that Ohkay Owingeh can maintain its way of life.

## **H.R. 8920, Tule River Tribe Reserved Water Rights Settlement Act of 2024**

H.R. 8920 would approve and provide authorizations to carry out the settlement of all water rights claims in the State of California of the Tule River Tribe.

### **I. Background – the Tule River Reservation and the Tribe**

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

The aboriginal territory of the ancestors of the Tule River Tribe, the Yokuts, encompassed most of what is now the San Joaquin Valley, an agricultural mainstay in California. The influx of non-Indians into the Tribe’s ancestral lands in the 1850s, after the discovery of gold and California statehood, created tremendous conflict with the Yokuts and left them dispossessed, displaced, and without title to a homeland.

The quest to provide a permanent homeland for the Yokuts’ descendants, the Tule River Tribe, was fraught with difficulties and setbacks. First, the United States attempted to rectify Tribal dispossession by negotiating the Treaty of Paint Creek, which would have created the Tule River Reservation in the San Joaquin Valley near present-day Porterville, California. However, this Treaty, along with other California treaties, was never ratified by the Senate. The United States’ second attempt to secure a homeland for the Tribe was the creation in 1856 of the “Tule River Indian Farm,” later referred to the “Madden Farm,” out of the public domain. The subsequent patenting of the farm to an unscrupulous Indian agent deprived the Tribe of title to those lands.

In 1872, the California Superintendent of Indian Affairs was ordered to find a reservation for the Tribe. A tract of 48,000 acres of steep and rocky terrain in the foothills of the Sierra Nevada Mountains was proclaimed by the Executive Order of January 9, 1873, as the Tule River Indian Reservation. In 1874, the Indian Agent at the Tule River Agency described the Reservation as containing “no first-rate tillable land” with only “about 200 acres of such as might be termed passably good for agricultural purposes, and that not lying in one body.” Except for some timber land in the mountains in the extreme east of the Reservation, the balance of the Reservation was said to be “utterly valueless ... consisting of rough, rocky mountains.” Unsurprisingly, members of the Tribe were reluctant to leave the productive land they were farming at the Madden Farm to locate to the Reservation. When, by 1876, only six families had moved to the Reservation, the remaining Tule River Indians at the Madden Farm were forcibly removed to the Reservation. Now nearly 150 years later, the Tribe continues to search for an adequate and secure water supply for the domestic and municipal needs of its members.

#### **B. The Reservation Today**

Today, the Tribe’s Reservation remains located on the western slope of the Sierra Nevada Mountains, in south-central California, 75 miles south of Fresno and 45 miles north of Bakersfield and is comprised of over 55,000 acres of tribal trust lands. The topography is generally steep, with elevations ranging from about 900 feet to 7,500 feet above sea level. Most of the inhabited land is along the lower reach of the South Fork Tule River on the western side of the Reservation.

The primary sources of employment on the Reservation are the Tribe's Eagle Mountain Casino, the Tribal government, and the Tule River Indian Health Center. The Tribe is in the process of relocating the Eagle Mountain Casino, due in part to water shortages, to trust lands in the City of Porterville.

### **C. Water Resources of the Tule River Reservation**

The Reservation is located almost entirely in the South Fork Tule River drainage basin. Because the Reservation is located in the Sierra Nevada headwaters of the river, there are no upstream diverters on the river above the Tribe. The South Fork Tule River, which is the primary water source on the Reservation, is flashy (flows are high during spring runoff and decrease during the summer and fall months) and subject to extended periods of drought. Groundwater is very limited due to both water quantity and quality issues.

The major water use on the Reservation is for domestic and municipal purposes. Less than 5 percent of the Reservation is suitable for agriculture, though some members graze livestock in various locations. In dry years, which are increasingly common (including this year), the Tribe has had to truck-in water and donate bottled water to its members for domestic and municipal purposes due to water shortages, with members sometimes relying on bottled water for months at a time. These shortages affect Tribal members in multiple ways, including precluding them from cooking and bathing or from going to work or attending school. In the hottest part of summer, the Tribe has to open its government buildings to provide refuge for elders that rely on water for the cooling systems in their homes. This lack of reliable water supply results in interruptions to critical services, including education programs, emergency services, elder care, and the Tribe's justice center and government functions. It has also contributed to a housing shortage that impacts the number of Tribal members who can reside on the Reservation.

## **II. Proposed Tule River Tribe Settlement Legislation**

Negotiations regarding potential settlement of the Tribe's water rights claims have been ongoing since 1996, when the United States established a team to negotiate a comprehensive settlement of all the Tribe's water rights in California. Over the course of the negotiations, the United States conducted numerous studies examining options for water development on the Reservation. The studies point to water storage as a key component of a reliable water supply.

Relying on these studies, and other studies the Tribe conducted on its own, the Tribe and the downstream water users reached a 2007 Agreement. That Agreement sets-out water allocation between the parties and addresses how water release schedules will be determined for any future water storage project the Tribe may construct on the South Fork Tule River. The 2007 Agreement identified a possible location for water storage and included operational rules for a reservoir at that location but allowed the Tribe to choose a different site if the planned site proved infeasible. The Tribe's efforts to finalize plans for the reservoir's location are ongoing. If the Tribe selects an alternative site, the parties will need to establish operational rules, which are relevant for delineating the Tribe's water right. The 2007 Agreement was amended for technical issues in 2009. The United States is not a signatory to either the 2007 Agreement or the 2009 technical amendments.

H.R. 8920 would resolve all of the Tribe's water rights claims in California; ratify and confirm the Tule River Tribe water rights settlement agreement among the Tribe and most downstream water users, and authorize the Secretary of the Interior to sign the agreement; provide a mechanism for the parties to obtain federal court approval of a settlement that would bind all water users in the basin; authorize funds for water development projects to implement the settlement agreement; and transfer various lands into trust for the Tribe.

H.R. 8920 would ratify and confirm a Tribal water right, which includes the right to up to 5,828 acre-feet per year of water flows from the South Fork Tule River, as described in the 2007 Agreement. The 2007 Agreement provided that the Tribal water right would be administered in accordance with agreed-upon operational rules for the water storage facility that the Tribe was to build, rather than according to priority date. If the parties could not agree upon operational rules, the 2007 Agreement contemplated that the parties could submit competing proposals to the court, which would be charged with assessing which proposal better satisfied the criteria set forth in the Agreement. In addition, the Tribal water right, as described in the 2007 Agreement and ratified by H.R. 8920, would also include the right to divert and use certain amounts of water from springs on the Reservation and the right to use groundwater on the Reservation, subject to some restrictions. H.R. 8920 would also establish a process to authorize the parties to file suit in Federal District Court in California, for the purpose of entering a decree approving the Tribe's Federal reserved water right, consistent with the 2007 Agreement, and binding all water users in the basin.

H.R. 8920 would establish a Trust Fund of \$568 million, to be indexed. \$518 million of the trust fund could be used to develop water infrastructure on its Reservation, as the Tribe determines necessary and on its own timeframe. The remainder of trust fund (\$50 million) could only be used to pay OM&R for water projects developed by the Tribe.

H.R. 8920 also would transfer approximately 825.66 acres of Bureau of Land Management land, 1,837.46 acres of fee land owned by the Tribe, and approximately 9,037 acres of Forest Service land to the United States, to be held in trust for the Tribe.

### **III. Department of the Interior Position on H.R. 8920**

The Department supports H.R. 8920.

H.R. 8920 is designed to meet the Tribe's current and long-term needs for water by providing a trust fund to be used by the Tribe according to its needs and its own decisions. Rather than committing the Tribe or the United States to construct specific water infrastructure projects, H.R. 8920 would allow the Tribe to make decisions regarding how, when, and where to develop water infrastructure on its Reservation. This approach to settlement is consistent with Tribal sovereignty and self-determination, and with our trust responsibilities, and will help ensure that the Tribe can maintain a viable homeland on its Reservation.

## **H.R. 8951, Zuni Indian Tribe Water Rights Settlement Act of 2024**

H.R. 8951 would approve and provide authorizations to carry out the settlement of certain water rights claims of the Zuni Tribe in the Zuni River basin in New Mexico.

### **I. Background**

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

Like other Pueblos in New Mexico, the Zuni Tribe were agricultural people living in established villages when the Spanish explorers first came to New Mexico. Before the Zuni Tribe's lands became part of the United States, they fell under the jurisdiction first of Spain, and later of Mexico, both of which recognized and protected the rights of Pueblos to use water. When the United States asserted its sovereignty over Pueblo lands in what is now the State of New Mexico, it did so under the terms of the Treaty of Guadalupe Hidalgo, which protected rights recognized by prior sovereigns, including Pueblo rights.

#### **B. The Zuni Tribe and Zuni Basin Water Resources**

The Zuni Tribe has approximately 448,000 acres in west-central New Mexico, approximately 32 miles south of Gallup, New Mexico, and approximately 15,000 acres in east-central Arizona. All of the Zuni Tribe's main villages are in New Mexico and the Tribe has approximately 11,800 enrolled members, of which about 9,323 reside on the Tribe's lands.

The Zuni River basin, located in west-central New Mexico, is a tributary to the Little Colorado River. The river originates in the western slopes of the Zuni Mountains in New Mexico and flows for about 90 miles in a southwesterly direction through the Zuni Reservation and joins the Little Colorado River, a tributary to the Colorado River, in Arizona.

The Zuni Tribe is located in an arid region of New Mexico, and drought is a common occurrence that has impacted, and continues to impact, the Tribe. Since time immemorial, the Zuni Tribe has made use of the water in the Zuni River basin. However, the supply of water in the Zuni River available to the Zuni Tribe has been reduced over time from diversions by neighboring non-Indian water users, including Ramah Dam on Cebolla Creek, which lies upstream of the Zuni Tribe. In addition, irrigation infrastructure constructed by the Department of the Interior many years ago needs to be rehabilitated and reconstructed. While the Zuni Tribe has senior water rights 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 Zuni Tribe seeks funding as part of the proposed settlement to rehabilitate the irrigation structures on its lands and to develop the Tribe's water resources for various uses, including domestic and municipal purposes, for current and future Tribal populations.

In 2001, after a failed adjudication in state court, the United States filed suit in Federal court to adjudicate water rights in the Zuni River basin in New Mexico. The adjudication will resolve the water rights claims of non-Indians, the Zuni Tribe, the Navajo Nation, and allottees.

Negotiations originally began in 1990 and were renewed in 2013, when the United States revived its team to negotiate a comprehensive settlement of the Tribal water rights in the Zuni River basin. The Zuni Tribe has reached settlement of its claims in the basin, but the Navajo Nation has not.

## **II. Proposed Zuni Tribe Settlement Legislation**

The Zuni Tribe and the State of New Mexico executed a settlement agreement in 2023, quantifying the rights of the Tribe and reaching agreement on other key issues. The Ramah Land and Irrigation Company, comprised of non-Indian water users upstream of the Zuni Tribe and the owner and operator of Ramah Dam, signed a letter of support for the settlement agreement in 2023, as well. The United States is not a signatory to the 2023 settlement agreement.

H.R. 8951 would resolve all of the Zuni Tribe's water rights claims in the Zuni River basin in New Mexico; ratify and confirm the water rights settlement agreement among the Tribe and the State of New Mexico; authorize the Secretary of the Interior to sign the settlement agreement; and authorize funds to implement the settlement.

H.R. 8951 would ratify and confirm the Zuni Tribe's water rights to approximately 24,809 acre-feet per year (AFY) from surface water and groundwater sources on the Pueblo, as well as 22,453 acre-feet in existing reservoir and stock pond storage. These amounts include 5,000 AFY of groundwater use for past, present, and future uses, including economic development for the Zuni Tribe. In addition, pursuant to the settlement agreement, the State closed both the Zuni River basin and the Zuni Salt Lake and Sanctuary to any future appropriations of groundwater and surface water in June and July 2023, (with the exception of new livestock and domestic wells, which will be limited to 0.5 acre-feet per year).

H.R. 8951 would also protect non-Indian water users, as the Zuni Tribe would agree to not make priority calls against non-Tribal adjudicated water rights as long as the water rights holder does not object to the Zuni's Tribe's settlement.

Finally, H.R. 8951 would establish a Trust Fund for the Zuni Tribe, totaling \$685 million, to be indexed: (1) \$655.5 million in a Water Rights Settlement Trust Account and (2) \$29.5 million in a Operation, Maintenance, & Replacement Trust Account. The Zuni Tribe could use these Trust Funds to develop water infrastructure as it determines necessary and on its own timeframe. Monies in the Water Rights Settlement Trust Account could be used by the Zuni Tribe for:

- 1) Planning, permitting, designing, engineering, constructing, reconstructing, replacing, rehabilitating, operating, or repairing water production, treatment, or delivery infrastructure, including for domestic and municipal supply, or wastewater infrastructure;
- 2) Planning, permitting, designing, engineering, constructing, reconstructing, replacing, rehabilitating, operating, or repairing water production, treatment, or delivery infrastructure, acquisition of water, or on-farm improvements for irrigation, livestock, and support of agriculture;

- 3) Planning, permitting, designing, engineering, constructing, reconstructing, replacing, rehabilitating, operating, monitoring, or other measures for watershed and endangered species habitat protection and enhancement, land and water rights acquisition, water-related Tribal community welfare and economic development, and costs relating to the implementation of the settlement agreement;
- 4) Ensuring environmental compliance in the development and construction of projects under the legislation; and
- 5) Tribal water rights management and administration.

The State of New Mexico would contribute \$1.25 million to provide for benefits of non-Indian water users. The State's commitment includes \$500,000 for a fund to mitigate impairment to non-Indian livestock and domestic well rights resulting from new or changed water uses by the Zuni Tribe and \$750,000 to develop monitoring programs to assess impacts to the Zuni Salt Lake, which has significant cultural importance to the Zuni Tribe and other Tribes and Pueblos.

There are 15 allotments within or near Zuni lands that total approximately 2,213 acres. The water rights of these allotments would not be settled at this time but would be adjudicated later in the on-going adjudication. H.R. 8951 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.

Title II of H.R. 8951 would provide for protections for the Zuni Salt Lake, a lake outside the Zuni basin that has great spiritual and cultural meaning to the Zuni Tribe and other Pueblos and Tribes in New Mexico. The legislation would transfer approximately 4,822 acres of land surrounding the Lake and managed by the Bureau of Land Management (BLM) into trust for the Zuni Tribe upon the enforceability date of the settlement. In addition, the legislation would withdraw approximately 92,364 acres of BLM land near the Zuni Salt Lake and impose various restrictions on the management of those lands to protect the Lake and its cultural values. The withdrawal would include all BLM lands that are within the closure order the State of New Mexico issued in July of 2023, closing the area around the Zuni Salt Lake and Sanctuary to any new appropriations of groundwater or surface water (with the exception of new livestock and domestic wells, which will be limited to 0.5 acre-feet per year).

### **III. Department of the Interior Position on H.R. 8951**

The Department of the Interior is pleased to support H.R. 8951. This bill is the result of decades of litigation and over a decade of good-faith negotiations. H.R. 8951 is designed to meet the Zuni Tribe's current and long-term needs for water by providing Trust Funds to be used by the Tribe according to its needs and its own determinations. Rather than committing the Zuni Tribe or the United States to construct specific water infrastructure projects, the bill would allow the Tribe to make decisions regarding how, when, and where to develop water infrastructure on Zuni lands. This approach to settlement is consistent with Tribal sovereignty and self-determination, and with our trust responsibilities, and will help to ensure that the Zuni Tribe can maintain its way of life.

**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. 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 more than 400,000 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.

\* \* \*

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.

**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.