

Committee on Natural Resources

Rob Bishop, Chairman
Markup Memorandum

November 3, 2017

To: All Subcommittee on Water, Power and Oceans Members

From: Majority Committee Staff
Subcommittee on Water, Power and Oceans (x5-8331)

Mark-Up: **S. 140 (Sen. Jeff Flake, R-AZ)**, To amend the White Mountain Apache Tribe Water Rights Quantification Act of 2010 to clarify the use of amounts in the WMAT Settlement Fund.
November 7-8, 2017 at 10:00 a.m. in 1324 Longworth HOB

Bill Summary:

S. 140 amends the White Mountain Apache Tribe (WMAT) Water Rights Quantification Act of 2010 to clarify that funds from the WMAT Settlement Fund may be used to help complete the Tribe's rural water system.

Cosponsors:

Senator John McCain (R-AZ)

Background:

The Claims Resolution Act of 2010 (Claims Resolution Act or Act) (P.L. 111-291) included four Indian water rights settlements.¹ Title III of the Claims Resolution Act resolved the White Mountain Apache Tribe's (WMAT or Tribe) water related claims against the United States, the State of Arizona and a number of other state and non-federal parties. In consideration for the Tribe waiving its water related claims against the United States and other parties, the Act authorized funding for the construction of the White Mountain Apache Rural Water System (Rural Water System or System) to bring safe and reliable drinking water to the Tribe and its members.² Specifically, the Rural Water System will consist of a dam and reservoir, treatment plant, and 55 miles of pipeline to serve the community.³

¹ P.L. 111-291 (124 Stat. 3080). <https://www.gpo.gov/fdsys/pkg/PLAW-111publ291/pdf/PLAW-111publ291.pdf>

² Id., Section 307.

³ Testimony of Vice-Chairman Kasey Velasquez, Vice-Chairman of the White Mountain Apache Tribe, before the Water, Power and Oceans Subcommittee, on S. 140, November 3, 2017, p. 2.

<https://www.indian.senate.gov/sites/default/files/upload/6.29.16%20Ronnie%20Lupe%20Testimony.pdf>

The Act also established the creation of the WMAT Settlement Fund that can be used for cost-overruns for the System and “water-related economic development projects,” among other things.⁴ The Tribe and Bureau of Reclamation have been working together to complete a study to determine if additional construction activities may be required to accommodate geological conditions at the site of the dam. Accordingly, there may be additional costs incurred during construction, albeit within the Act’s authorization. The Department of the Interior (Interior) has previously indicated that it is unclear (from its perspective) whether the Settlement Fund can be used for the System’s cost overruns.⁵ The Rural Water System will serve a number of water-related activities that fit squarely within the Settlement Funds authorized purposes, primarily water for new and existing housing on the reservation, municipal and commercial needs, as well as water for existing irrigation, improvements to the Alchesay fish hatchery, and the potential for small-scale hydropower (approximately 2 megawatts).⁶

In order to ensure the completion of the Tribe’s Rural Water System, S. 140 makes a technical amendment to the Claims Resolution Act to clarify that authorization authority exists in Section 312(b) for any necessary cost-overruns associated with the WMAT Rural Water System— as long as it falls within the existing authorization level. This bill provides WMAT and Interior with the certainty that there will be sufficient funds to complete the Rural Water System.

Major Provisions/Analysis of S. 140:

Section 1 amends the White Mountain Apache Tribe Water Rights Quantification Act of 2010 (P.L. 111-291) to clarify that the Tribe may use amounts in the WMAT Settlement Fund authorized in Section 312(b) for the planning, design, and construction of the WMAT rural water system.

Cost:

According to the Congressional Budget Office, the bill “would not affect the federal budget.”⁷

Administration Position

Supports.⁸

⁴ P.L. 111-291, Section 312(b)

⁵ Testimony of Vice-Chairman Kasey Velasquez, Vice-Chairman of the White Mountain Apache Tribe, before the Water, Power and Oceans Subcommittee, on S. 140, November 3, 2017, p. 4.

<https://www.indian.senate.gov/sites/default/files/upload/6.29.16%20Ronnie%20Lupe%20Testimony.pdf>

⁶ Id.

⁷ Congressional Budget Office cost estimate for S. 140: <https://www.cbo.gov/sites/default/files/115th-congress-2017-2018/costestimate/s140.pdf>

Anticipated Amendments:

None.

Effect on Current Law (Ramseyer)

Showing Current Law as Amended by S. 140

[text to be added highlighted in yellow]

Public Law 111-291, White Mountain Apache Tribe Water Rights Quantification Act of 2010

SEC. 307. AUTHORIZATION OF WMAT RURAL WATER SYSTEM.

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

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SEC. 312. FUNDING.

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(b) WMAT SETTLEMENT AND MAINTENANCE FUNDS-

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(2) WMAT SETTLEMENT FUND-

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

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⁸ Submitted Testimony, U.S. Department of the Interior, Subcommittee on Water, Power and Oceans legislative hearing on S. 140, November 2, 2017.

(C) USE OF FUNDS-

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

(I) Fish production, including hatcheries.

(II) Rehabilitation of recreational lakes and existing irrigation systems.

(III) Water-related economic development projects, including the planning, design, and construction of the WMAT rural water system, in accordance with section 307(a).

(IV) Protection, restoration, and economic development of forest and watershed health.