

**STATEMENT OF  
BRYAN NEWLAND  
ASSISTANT SECRETARY FOR INDIAN AFFAIRS  
UNITED STATES DEPARTMENT OF THE INTERIOR  
BEFORE THE  
UNITED STATES SENATE  
COMMITTEE ON INDIAN AFFAIRS**

**September 25, 2024**

**S. 4633, Northeastern Arizona Indian Water Rights Settlement Act of 2024  
S. 4643, Zuni Indian Tribe Water Rights Settlement Act of 2024  
S. 4705, Yavapai-Apache Nation Water Rights Settlement Act of 2024  
S. 4998, Navajo Nation Rio San José Stream System Water Rights Settlement Act of 2024  
S. 4444, Crow Revenue Act**

Chairman Schatz, Vice Chairman Murkowski, and members of the Committee. My name is Bryan Newland, and I am the Assistant Secretary for Indian Affairs at the Department of the Interior (Department). Thank you for the opportunity to present testimony on the following bills concerning Indian water rights settlements and S. 4444, the Crow Revenue Act.

**Indian Water Rights Settlements Bills**

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.

### **S. 4633, Northeastern Arizona Indian Water Rights Settlement Act of 2024**

S. 4633, 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 S. 4633 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. S. 4633 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**

S. 4633 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.

S. 4633 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, S. 4633 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, S. 4633 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, S. 4633 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, S. 4633 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.

S. 4633 would also address water rights for allotments in various ways. With respect to the 11

Hopi allotments at Moenkopi, S. 4633 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.

S. 4633 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. S. 4633 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, S. 4633 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. S. 4633 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, S. 4633 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.

S. 4633 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 S. 4633 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"). S. 4633 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.

S. 4633 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 S. 4633 currently uncertain given the authorization for appropriation of "such sums as are necessary."

S. 4633 would establish three trust funds: Navajo Nation Trust Fund, Hopi Tribe Trust Fund, and San Juan Southern Paiute Tribe Trust Fund. S. 4633 would establish a \$2,746,700,000 trust fund for the Navajo Nation. Of this amount, \$2,369,200,000 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.

S. 4633 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.

S. 4633 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 S. 4633**

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 diligently working with the Tribes and settlement parties to address outstanding issues in S. 4633 as currently drafted. The Department, the Tribes and the settlement parties have made progress on the Federal issues identified below and are effectively working towards an amendment in the nature of a substitute before markup on this bill. The parties have made significant progress with S. 4633 and the Department believes this settlement is on a trajectory to completion this term.

#### Federal Contribution

S. 4633 establishes an Implementation Fund to be used by the Secretary, acting through the Bureau of Reclamation, to plan, design, and construct the Pipeline. S. 4633 provides \$1.715 billion in mandatory appropriations for this purpose. If the Pipeline cannot be completed for \$1.715 billion, S. 4633 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 S. 4633 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 S. 4633 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, as S. 4633 is currently drafted, whether the trust funds would be used for this purpose is uncertain.

#### Operations Agreements

S. 4633 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, S. 4633 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. S. 4633 is ambiguous as to who determines whether it is “necessary” for the Navajo Nation to amend its code. The Department recommends that S. 4633 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, S. 4633 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.

S. 4633 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

S. 4633 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 S. 4633, the Department is working closely with the Navajo Nation on technical modifications 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 S. 4633 provides that the amounts of energy needed to deliver water to the Tribes shall be acquired by the Tribes. As drafted, S. 4633 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 continues to work with the Tribes to address this issue.

#### Limited Waiver of Sovereign Immunity

Section 18 of S. 4633 includes waivers of the sovereign immunity of the United States that the Administration believes are overbroad and could trigger unnecessary and expensive litigation. The settlement agreement and S. 4633 provide enforceable assurances that both the Tribes and the United States as trustee for the Tribes will comply with the waivers that they are providing for off-Reservation water use by non-Indians. The sovereign immunity waivers in Section 18 with respect to non-parties to the settlement agreement would not further the purposes of the settlement or contribute to its finality.

#### Miscellaneous

While this testimony highlights the most pressing of the Department's concerns with S. 4633, it

is important to note that Departmental review of S. 4633 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 S. 4633 and supports nearly all of the key terms in this legislation. The Department will continue to 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.

## **S. 4643, Zuni Indian Tribe Water Rights Settlement Act of 2024**

S. 4643 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.

S. 4643 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.

S. 4643 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).

S. 4643 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, S. 4643 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. S. 4643 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 S. 4643 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 S. 4643**

The Department of the Interior is pleased to support S. 4643. This bill is the result of decades of litigation and over a decade of good-faith negotiations. S. 4643 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.

## **S. 4705, Yavapai-Apache Nation Water Rights Settlement Act of 2024**

S. 4705, 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 S. 4705 and is committed to working with the Nation and the Committee to resolve the Department’s concerns with S. 4705 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, nearly half 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**

S. 4705 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.

S. 4705 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 S. 4705 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). S. 4705 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, S. 4705 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 and significantly expanded land base to be added to the Reservation by S. 4705. 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. S. 4705 would allow for the Nation to plan, design, and construct the drinking water system pursuant to the Indian Self-Determination and Education Assistance Act.

S. 4705 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, S. 4705 authorizes the appropriation of such sums as necessary for the OM&R of the Project until the date of substantial completion.

S. 4705 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 S. 4705, 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.

S. 4705 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, S. 4705 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 S. 4705**

The Department supports the goals of S. 4705 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, S. 4705. We are continuing to work with the Nation and the settlement parties on issues of Federal concern. As information is provided by the Nation and the settlement parties, the Department is analyzing it and engaging in discussions with the Nation and settlement parties.

In particular, the Department has concerns with S. 4705’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. For instance, the Department is concerned that S. 4705 includes overbroad sovereign immunity waivers that could trigger unnecessary and expensive litigation. The waivers of sovereign immunity with respect to non-parties to the settlement agreement would not further the purposes of the settlement or contribute to its finality. We look 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 S. 4705 requires other technical changes.

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In sum, the Department supports the goals of S. 4705 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.

## **S. 4998, Navajo Nation Rio San José Stream System Water Rights Settlement Act of 2024**

S. 4998, 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 (S. 595) is currently pending to resolve the water rights claims of Acoma and Laguna in the Rio San José basin. If both S. 595 and S. 4998 are enacted, all Tribal water rights claims in the Rio San José basin would be resolved. S. 4998 would also approve a conditional settlement of Navajo Nation claims in the Rio Puerco basin.

S. 4998 would ratify and confirm the Navajo Nation's water rights to approximately 2,355 acre-foot 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.

S. 4998 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 S. 4998 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. S. 4998 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 S. 4998. This bill in combination with S. 595 would settle all Tribal rights in the Rio San José Basin, bringing stability to the basin for all water users. S. 4998 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.

## **S. 4444, Crow Revenue Act**

S. 4444 involves the conveyance of surface and mineral estate in Montana involving the Bureau of Land Management (BLM), the Crow Tribe of Montana, and a private party. The bill requires, within 60 days of enactment, the relinquishment of the Federal coal lease associated with Signal Peak Energy's Bull Mountains Mine near Roundup, Montana; the conveyance by the Joe and Barbara Hope Mineral Trust (Hope Family Trust) of approximately 4,660 acres of private mineral estate located within the boundaries of the Crow Indian Reservation in Bighorn County, Montana, to the Crow Tribe of Montana; and the conveyance of approximately 4,530 acres of mineral estate and approximately 940 acres of surface estate managed by the BLM in Musselshell County, Montana (the Bull Mountains Tracts), to the Hope Family Trust.

In addition, the bill states that the mineral estate conveyed by the Hope Family Trust to the Crow Tribe shall not be subject to state or local taxation and shall be held in trust by the United States for the benefit of the Tribe, upon the Tribe's request. Finally, S. 4444 requires that the Crow Tribe notify the Secretary of the Interior when the Tribe and the Hope Family Trust have agreed on a formula for revenue sharing from development of the minerals conveyed to the Tribe, should they be developed at a later date.

### ***Analysis***

Under President Biden's and Secretary Haaland's leadership, the Department is committed to strengthening the government-to-government relationship with Tribal Nations. We believe that Tribal sovereignty and self-governance, as well as honoring the Federal trust and treaty responsibility to Tribal Nations, must be the cornerstones of Federal Indian policy. In addition, the Department is committed to managing public lands and minerals to protect the treaty, trust, religious, subsistence, and cultural interests of Federally recognized Tribes, consistent with our mission and applicable Federal law. By placing lands into trust status through the Department, Tribes are able to reacquire lands within or near their reservations, establish a land base, and clarify jurisdiction over their territories and lands including mineral estates.

The Department supports the bill's goals of addressing inholdings within the boundaries of the Crow Indian Reservation and providing an additional source of revenue for the Crow Tribe. We would like to work with the Sponsor on several modifications to improve the bill. First, we recommend that the conveyances be subject to valid existing rights, as is standard, to ensure that they do not inadvertently result in Federal takings issues under the Fifth Amendment. In addition, we suggest that language be added to the bill that expressly states that the parcels to be conveyed are withdrawn from location, entry, and patent under the U.S. mining laws as of the date of enactment. Including a withdrawal provision for parcels will ensure that no new mining claims are located between enactment and finalization of the conveyances.

The Department also notes that it is unclear whether the Sponsor intends for the required Federal coal lease relinquishment to be consistent with the BLM's coal leasing regulations. For example, under the lease provision referenced in section 3(a)(1) of the bill, the lease relinquishment would be required to follow all applicable regulations. This means that, if enacted, a lease relinquishment cannot occur until the lessee has met all financial obligations associated with the lease, all

profitable portions of the leased coal deposit have been mined, and all required reclamation has been completed successfully, as determined by the BLM and the Montana Department of Environmental Quality. As currently drafted, the BLM would be unable to relinquish the lease as directed within the timeframe provided by the bill.

We would like to work with the Sponsor to ensure that the parcels to be conveyed under the bill are of equal value; to provide sufficient time to comply with any applicable laws; and to ensure that public access to nearby BLM-managed public lands is maintained after the conveyance.

The Department would also like to work with the Sponsor to clarify the provision regarding revenue sharing between the Tribe and the Hope Family Trust. As currently drafted, the bill does not appear to specifically require that a revenue sharing agreement be developed. In addition, based on local media coverage associated with the bill, it appears that the Sponsor may have intended for the revenue sharing agreement to cover the mineral estate conveyed to the Hope Family Trust, not the mineral estate conveyed to the Crow Tribe. The Department recommends that the Sponsor amend the bill to address these issues to provide certainty to the Crow Tribe.

We also recommend technical amendments to clarify various terms and exempt the United States from any responsibility for future reclamation efforts associated with the Bull Mountain Tracts, as they would be conveyed into private ownership. The Department looks forward to working with the Sponsor on such modifications as the bill moves forward through Congress.