

**Statement of Letty Belin  
Counselor to the Deputy Secretary  
U.S. Department of the Interior  
Before the  
Committee on Indian Affairs  
U.S. Senate**

**On  
S. 2959, To Amend the White Mountain Apache Tribe Water Rights Quantification Act of  
2010 to clarify the use of amounts in the WMAT Settlement Fund**

**June 29, 2016**

Chairman Barrasso, Vice Chairman Tester and members of the Committee, I am Letty Belin, Counselor to the Deputy Secretary at the Department of the Interior (Department). I am pleased to provide the views of the Department on S. 2959, a bill to amend the White Mountain Apache Tribe Water Rights Quantification Act of 2010 to clarify the use of amounts in the WMAT Settlement Fund. The Department supports the ongoing efforts to implement the White Mountain Apache Tribe settlement; however, we do not have sufficient information to develop a position on S. 2959 at this time.

**Background**

Over six years ago, this Administration supported and Congress enacted, four Indian water rights settlements for seven tribes that resolved well over a century of litigation and bitter disputes in the Claims Resolution Act of 2010 (PL 111-291). Our support for these four settlements demonstrated that settling Indian water rights disputes was and remains a high priority for this Administration.

Since the enactment of the Claims Resolution Act, the Department has diligently been working on implementing the four settlements to support the maintenance of permanent water supplies and enhance economic security for five Pueblos in New Mexico, the Crow Tribe of Montana, the Taos Pueblo, and the White Mountain Apache Tribe (WMAT) of Arizona. We are here today to discuss the WMAT settlement.

The WMAT settlement, as authorized by Title III of the Claims Resolution Act, settles the water rights among the Tribe and non-federal parties, including the State of Arizona, local water and power districts, local towns, and conservation districts. The Act authorizes design and construction of the WMAT rural water system that consists of a dam and storage reservoir, pumping plant, distribution system and water treatment facilities.

Appropriated funds made available under the White Mountain Apache Tribe Rural Water System Loan Authorization Act (PL 110-390), are currently being used to implement the WMAT settlement. On September 30, 2011, the Bureau of Reclamation awarded a PL 93-638 contract to the Tribe in the amount of \$11.8 million (indexed), which allowed the Tribe to move forward with the initial planning, engineering, and design of the WMAT rural water system, as well as to work on the requisite environmental impact statement (EIS). Through this contract, the Tribe has

awarded three major engineering contracts, for 30 percent designs of each project component, including Miner Flat Dam, treatment plant, and distribution system. A fourth contract was awarded for preparation of an EIS. Thirty percent designs for the treatment plant and distribution system, including pumping plants are complete. Thirty percent design of the dam and reservoir continues along with preparation of the EIS. Final design on all components will commence subsequent to completion of the EIS and issuance of a Record of Decision.

## **S. 2959**

S. 2959 would amend the White Mountain Apache Tribe Water Rights Quantification Act of 2010 to authorize funding from the WMAT Settlement Fund for the completion of the WMAT rural water system, including carrying out activities relating to the operation, maintenance, or replacement of the WMAT rural water system. The core of the settlement is the WMAT rural water system and the Act authorized approximately \$126 million in mandatory spending for the Secretary of the Interior to carry out its planning, engineering, design, environmental compliance, and construction. The mandatory funding for construction is separate and apart from the WMAT Settlement Fund at issue in S. 2959. For this reason, I will now discuss briefly the history of the WMAT Settlement Fund authorization.

In the 113<sup>th</sup> Congress, legislation approving the WMAT Settlement (S. 313) was amended in Committee to authorize \$113.5 million for a WMAT Settlement Fund. The Administration subsequently submitted - through then-Commissioner of the Bureau of Reclamation Michael L. Connor – a views letter regarding S. 313 as reported by the Committee expressing concerns about the WMAT Settlement Fund. In response to the concerns of the Administration, the Claims Resolution Act ultimately reduced the WMAT Settlement Fund by \$35 million in order to create a “Cost Overrun Subaccount,” to be administered by the Secretary in order to ensure that the WMAT rural water system would be completed with the funds specifically authorized and capped for its construction. The remaining \$78.5 million originally included in the WMAT Settlement Fund remained available as discretionary appropriations. This \$78.5 million in discretionary funding, plus any potential unobligated amounts of the Cost Overrun Subaccount, may be used for fish production, including hatcheries; rehabilitation of recreational lakes and existing irrigation systems; water-related economic development project; and protection, restoration, and economic development of forest and watershed health..

The Department is aware that the Tribe has identified challenges and potential cost-overruns associated with the design of the rural water delivery system, specifically Miner Flat Dam. However, the Bureau of Reclamation (Reclamation) has not been provided with the necessary design and cost estimate data to make a determination on the final project design of the WMAT rural water system. Under the Act, Reclamation is required, in consultation with the Tribe, to make changes to the design to ensure that the final design meets Reclamation standards; is cost effective; and may be constructed within the mandatory appropriations provided in the Act. Without necessary information from the Tribe on current design and cost estimate data, Reclamation is unable to make any determinations related to the feasibility of the design or cost of the system, or any potential cost overruns. Because of the history of the Cost Overrun Subaccount’s establishment and because Reclamation has not yet received the necessary design and cost estimate data, the Department cannot evaluate whether S. 2959 is needed to complete

the WMAT rural water system. However, we are hopeful that this hearing will advance the implementation of this important settlement, and we look forward to working with the Tribe to ensure Reclamation receives the relevant information to advance the WMAT rural water system.

Also, while we recognize the intent of S. 2959, we have identified some technical concerns with the language that we look forward to working with the bill sponsor and the Committee to resolve. Specifically, we would like to clarify how the use of the phrase “in accordance with subsection (e)(4)” would interact with the Cost Overrun Subaccount in in Section 312(e) if S. 2959 were to be enacted.

This concludes my statement, and I look forward to answering any questions at the appropriate time.