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H.R. 1065—White Mountain Apache Tribe Water Rights Quantification Act of 2009

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Order of Business: The bill is expected to be considered on Thursday, January 21, 2010 under a structured rule. The rule (H.Res.1017) provides for one hour of debate equally divided and controlled by the majority and minority, waives all points of order against consideration of the bill except those arising under clause 9 or 10 of rule XXI, provides an amendment in the nature of a substitute to be adopted, and one motion to recommit.

Summary: Authorizing approximately \$292 million, H.R. 1065 requires the Department of Interior to construct a rural water system and to protect and restore tribal lakes and forests, conduct certain economic development projects, and operate and maintain the rural water system for the Apache Tribe. Specifically, the bill lists a number of findings claiming prolonged litigation to quantify the water rights of the Tribe might be a lengthy and costly process. H.R. 1065 requires the Secretary of the Interior to execute an agreement that will permanently resolve certain damage claims and all water rights claims of the Tribe.

The bill would require the water rights of the tribe to be held in trust by the federal government and provide certain reallocations to the tribe for water acquired by the Interior Secretary through the relinquishment of the Harquahala Valley Irrigation District.

The legislation creates a \$114 million settlement fund within the Department of Treasury to establish a rural water system construction fund in order for the tribe to maintain water infrastructure. CBO expects that those funds would be appropriated near the beginning of fiscal year 2016 when the settlement is scheduled to be enforced.

The bill requires the Secretary of Interior to publish operating criteria, procedures, authorization levels, and measures of the success of each rural water project. If the Secretary failed to publish the findings, the bill would require that the settlement be repealed.

H.R. 1065 authorizes an additional \$50 million to establish a White Mountain Apache Tribe Maintenance Fund. The funding was originally designated for Indian safety and health programs.

Additionally, the bill authorizes the appropriation of up to \$25 million for rural water system cost overruns on the reservation.

Finally, the bill allows the Secretary of Interior to provide assistance to help the tribe plan, construct, and operate the rural water system project.

Additional Information: The White Mountain Apache tribe reservation consists of 1.67 million acres of federal trust land in east-central Arizona. The Tribe's Fort Apache Indian Reservation was established by an Executive Order on November 9, 1871. The settlement would resolve outstanding water claims by allocating to the tribe 52,000 acre feet per year: 27,000 acre feet will be from the watersheds of the Salt and Little Colorado rivers, and 25,000 acre feet from the Central Arizona Project.

The tribe and 18 other parties have been in legal disputes over water rights, and have signed a settlement agreement resolving the twenty-five year dispute in northeast Arizona. The United States would become a party to that agreement upon enactment of H.R. 1065. The Tribe's senior water rights claims have an affect on people who are dependent on the Salt River basin for water which is the primary source of water for the Tribe, the Phoenix metropolitan area, and the Salt River Reclamation Project.

Potential Conservative Concerns: While this bill attempts to resolve outstanding Indian water rights claims, some conservatives have expressed concern that Congress lacks sufficient information to assess whether the authorization level of this bill is appropriate. Some conservatives have argued that prematurely reaching a settlement on the claims will increase U.S. liability than compared to existing law.

The Ranking Republican of the House Water and Power Subcommittee, Tom McClintock (R-CA), sent a letter to the Department of Justice asking for opinions its opinion on this legislation. They responded last night in a joint letter with the Department of Interior (DOI) that stated: "settlement would be preferable to litigation of these claims, although we do continue to have certain concerns with each of the pending settlements."

The DOI testified in the Natural Resources Committee last year that "before the Administration can support a settlement, there must be a thorough analysis of the costs it would entail and the benefits to be received in order to assess the appropriateness of the proposed federal contribution."

Some conservative have stated that without transparent and consistent answers from the Administration, they cannot support H.R. 1065 – especially with the large amount of taxpayer funding necessary to reach a settlement. Congress should not spend hundreds of millions of American taxpayer dollars until there is sufficient information.

Committee Action: On February 13, 2009, the bill was referred to the Committee on Natural Resources. On September 30, 2009, the committee held a mark-up and ordered the bill to be reported as amended by a voice vote.

Administration Position: The DOJ and DOI submitted a letter stating "settlement would be preferable to litigation." However, the Department of Interior testified last year the Administration did not support similar legislation to H.R. 1065.

Cost to Taxpayers: Assuming appropriation of the necessary amounts, CBO estimates that implementing H.R. 1065 would increase discretionary spending by \$134 million over the 2010-2019 period, and \$66 million after 2019.

Additionally, the bill would increase direct spending by \$125 million over the 2016-2019 period, and by \$22 million after 2019 for the construction of a rural water system on tribal lands.

Does the Bill Expand the Size and Scope of the Federal Government? Yes.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates? Yes. H.R. 1065 contains intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) because it would require the tribe to enact a tribal water code and prohibit it from objecting to the drilling or use of some wells. CBO estimates that the cost of complying with those mandates would be small and far below the threshold established in UMRA (\$69 million in 2009, adjusted annually for inflation).

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits? Committee Report 111-391 states H.R. 1065 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

Constitutional Authority: Committee Report 111-391 sites Article I, section 8 of the Constitution of the United States grants Congress the authority to enact this bill.

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