

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

**March 23, 2022**

**Introduction**

Aanii (hello) and good afternoon, Chairman Schatz, Vice Chair Murkowski, and members of the Committee. My name is Bryan Newland, and I serve as the Assistant Secretary for Indian Affairs at the U.S. Department of the Interior (Department).

Thank you for the opportunity to present the Department's views on S. 3773, a bill to authorize leases of up to 99 years for land held in trust for the Confederated Tribes of the Chehalis Reservation, S. 3168, the White Mountain Apache Water Settlement Act Amendment, S. 3308, the Colorado River Indian Tribes Water Resiliency Act of 2021, S. 3443, the MOWA Band of Choctaw Indian Recognition Act, and S. 3789, a bill to amend the Native American Tourism and Improving Visitor Experience Act to authorize grants to Indian tribes, tribal organizations, and Native Hawaiian organizations, and for other purposes.

**S. 3773, a bill to authorize leases of up to 99 years for land held in trust for the Confederated Tribes of the Chehalis Reservation**

Since the enactment of the Non-Intercourse Act of June 30, 1834, 4 Stat. 730, codified as 25 U.S.C. § 177, and predecessor statutes, land transactions with Indian tribes were prohibited unless specifically authorized by Congress. The Act of August 9, 1955, or the Long-Term Leasing Act (LTLA), codified at 25 U.S.C. § 415, provides the authority for Indian tribes to enter into surface leases with third parties with the approval of the Secretary of the Interior. The Act limits lease agreement terms to 25 years with an option to renew for an additional 25 years.

Since 1955, Indian tribes have engaged in a diverse array of activities to facilitate economic development, and many have required lease agreements for terms longer than 50 years on their lands. Authorizing Indian tribes to lease their trust lands for terms longer than the 50-year maximum requires Congress to amend the LTLA to add tribes' names to it. Since its enactment in 1955, Congress has added 59 Indian tribes to the LTLA for this purpose. The most recent addition to the LTLA was signed into law in 2018 for the Crow Tribe of Montana as section 206 of the Indian Tribal Energy and Self-Determination Act Amendments of 2017 (Pub. L. 115–325) and the most recent standalone legislation was in 2011 for lands held in trust for Ohkay Owingeh Pueblo (Pub. L. 111–381.)

In order to develop supply chain infrastructure, the Confederated Tribes of the Chehalis Reservation are seeking financing to make improvements to an existing facility located on tribal trust land to secure a lease of the facility with an outside entity. The financing required for the project requires a lease agreement term of at least 86 years. S. 3773 provides for an amendment to include the trust lands of the Confederated Tribes of the Chehalis Reservation on the list of

tribes in the LTLA so that the Tribes will have the flexibility to enter into leases of up to 99 years to finance this and future economic development projects.

The Department supports this change as it would facilitate economic development opportunities for the Tribes.

**S. 3168, a bill to amend the White Mountain Apache Tribe Water Rights Quantification Act of 2010 to modify the enforceability date for certain provisions, and for other purposes**

The Department supports ongoing efforts to implement the White Mountain Apache Tribe Water Rights Quantification Act of 2010, Pub. L. 111-291, tit. III, 124 Stat. 3064, 3073-96, *amended by* Pub. L. 115-227, 132 Stat. 1626 (2018), *amended by* Pub. L. 116-94, div. C., tit. II, § 206, 133 Stat. 2534, 2669 (2019) (Quantification Act). We would like to work with the Tribe and the sponsors to craft a bill that we can fully support.

**Background**

The Quantification Act approved the White Mountain Apache Tribe Water Rights Quantification Agreement (Quantification Agreement) settling the White Mountain Apache Tribe's (WMAT) water rights in Arizona. The Quantification Act authorizes the design and construction of the WMAT rural water system, consisting of a dam and storage reservoir, pumping plant, distribution system and water treatment facilities. The WMAT rural water system will address the significant water infrastructure needs on the Reservation.

The Quantification Act established several funds and subaccounts to assist in its implementation. Two funds were established in Treasury: the WMAT Settlement Fund and the WMAT Maintenance Fund; and two subaccounts in the Lower Colorado River Basin Development Fund: the WMAT Water Rights Settlement Subaccount (Settlement Subaccount) and the WMAT Cost Overrun Subaccount (Cost Overrun Subaccount). The Tribe may use funds in the Settlement Subaccount to plan, design, and construct the WMAT rural water system. Following amendments in 2018, the WMAT Settlement Fund may also be used for planning, design and construction of the WMAT rural water system and other water-related projects. The Cost Overrun Subaccount may be used to complete, operate, and maintain the WMAT rural water system if Settlement Subaccount funds are insufficient. The Tribe may use the WMAT Maintenance Fund to operate, maintain, and replace the WMAT rural water system after title to the system transfers to the Tribe.

The Settlement Subaccount was authorized to consist of \$126,193 million (indexed) in mandatory appropriations and the Cost Overrun Subaccount was authorized to consist of \$24 million (indexed) from mandatory appropriations and \$11 million (indexed) of discretionary appropriations. The Quantification Act authorized \$78.5 million (indexed) for deposit in the WMAT Settlement Fund. In 2011, mandatory appropriations for the Settlement Subaccount and Cost Overrun Subaccount were placed into those subaccounts. In 2022, the Department announced the allocation of \$109,106 million from the Indian Water Rights Completion Fund, established by the Bipartisan Infrastructure Law, to the WMAT Settlement Fund.

The Quantification Agreement, including waivers, will not become enforceable until certain conditions are satisfied. One of those conditions is the issuance of a record of decision by the Secretary approving construction of the WMAT rural water project. The Secretary must publish

in the *Federal Register* a statement of findings that all conditions for enforceability have been satisfied by no later than April 30, 2023, or the Quantification Act will be repealed by operation of law. Currently, Miner Flat Dam is the only project component that is not yet designed to a thirty percent design level, the level of design usually necessary for environmental compliance activities to move forward and enforceability of the Quantification Act to be reached.

During the design of Miner Flat Dam, the Tribe identified significant concerns about unanticipated seepage. Reclamation worked closely with the Tribe to better define, characterize, and understand seepage at the proposed site for Miner Flat Dam. Currently, efforts to design Miner Flat Dam are still ongoing, however significant cost increases above the originally authorized amounts have been identified because of measures necessary to address the unanticipated seepage. The increased costs above the originally authorized funds available for construction and the rapidly approaching enforceability date are the impetus for S. 3168. The extent of the increased cost is unknown at this time, but it is anticipated to significantly exceed originally authorized funding sourced identified in the originally enacted Quantification Act.

### **S. 3168**

S. 3168 would amend the White Mountain Apache Tribe Water Rights Quantification Act of 2010 to extend by two years the deadline for the Secretary of the Interior to publish in the *Federal Register* a statement of findings that enumerated conditions precedent to enforceability of the settlement have occurred. S. 3168 would also authorize an additional \$250 million to be added to the Cost Overrun Subaccount for the design and construction of the WMAT rural water system, including Miner Flat Dam.

The Department agrees with the Tribe that there are significant challenges and cost gaps associated with the design of the WMAT rural water delivery system, specifically Miner Flat Dam. The Bureau of Reclamation and the Tribe have been working to reach agreement on the final project design and cost estimates of Miner Flat Dam, but work remains to be done. At this time, the Department cannot determine whether the additional \$250 million proposed by S. 3168 would provide sufficient funding to complete the WMAT rural water system. In addition, S. 3168 raises questions about the timing of indexing for newly authorized appropriations. The Department would like to resolve those questions with the Tribe and the bill sponsors.

The Department supports the intent of S. 3168 to provide the means to complete a needed rural water supply project for the Tribe. We agree and support an amendment that would extend the enforceability date of the Quantification Act to 2025. We are committed to working with the Tribe, the bill sponsors, and this committee to develop a more reliable cost estimate and to clarify indexing of any additional appropriations.

### **S. 3308, Colorado River Indian Tribes Water Resiliency Act of 2021**

The Colorado River Indian Tribes' (CRIT) Reservation is located in Arizona and California. The United States Supreme Court in *Arizona v. California*, 547 U.S. 150 (2006), quantified CRIT's water rights from the Colorado River for the California and Arizona portions of the Reservation separately. In Arizona, the Reservation has a decreed right to divert 662,402 acre-feet per year of Colorado River water or to the consumptive use required for irrigation of 99,375 acres and

satisfaction of related uses, whichever (diversion or consumptive use) is less, with priority dates from 1865 to 1874. CRIT historically has diverted about 90 percent of this entitlement.

Since at least 2016, CRIT has been seeking legislation that would authorize leasing, exchanging, and storing a portion of its decreed water rights located in Arizona to off-Reservation users, similar to the rights to lease Central Arizona Project Water in Arizona granted to Tribes under various Indian water rights settlements in Arizona. CRIT worked closely with the State of Arizona and non-Indian water users to craft legislation that would address concerns over this proposed use of decreed water rights. Those efforts culminated in S. 3308.

### **S. 3308**

S. 3308 would authorize CRIT to enter into agreements to lease, exchange, or store a portion of its decreed water rights in Arizona, subject to certain conditions. The bill requires several agreements to be entered into with the State and the United States as conditions precedent to entering into any lease, exchange or storage agreement. First, CRIT must enter into an agreement with the State outlining notice, information sharing, and collaboration requirements that will apply to any lease, exchange, or storage agreement into which CRIT may enter. Second, CRIT, the State, and the Secretary of the Interior must enter into an agreement establishing the procedural, technical, and accounting methodologies for any lease, exchange, or storage agreement CRIT may enter into. Finally, S. 3308 directs the Secretary to approve or disapprove any lease, exchange, or storage agreement, or modifications to the same, so long as it is consistent with S. 3308 and the agreement.

S. 3308 provides that only that portion of CRIT's water right that was consumptively used in Arizona four of the five years immediately preceding a proposed agreement would be available for lease, exchange, or storage. In addition, the agreements could be entered into only for use in the Lower Basin portion of the State and could not exceed a term of 100 years. CRIT would be responsible for negotiating all agreements, payments would be made directly to CRIT, and the Secretary would have no trust responsibility with respect to funds paid to CRIT.

S. 3308 is the result of many years of negotiations between the CRIT and the State and its water users. Enactment of S. 3308 is consistent with principles of self-determination and Tribal sovereignty. The Department supports the right of all Tribes to achieve economic value from their water rights and supports S. 3308.

### **S. 3443, MOWA Band of Choctaw Indians Recognition Act**

S. 3443 would provide federal recognition for the MOWA Band of Choctaw Indians (MOWA Band). The legislation would also designate a service area and require the Secretary of the Interior to take up to 3,223 acres into trust for the MOWA Band within that service area.

Federal acknowledgment of an Indian tribe officially recognizes the sovereign nation-to-nation relationship the United States shares with the indigenous tribes that have inhabited our country since time immemorial. There are two methods by which tribes can attain federal recognition:

through Congress or through the Department's administrative process. Both processes are legitimate avenues for a tribe to obtain federal recognition.

On May 19, 1983, the MOWA Band submitted a letter of intent to the Department petitioning for federal recognition under 25 C.F.R. Part 83. The Department evaluated the MOWA Band's petition under the prior regulations at 25 C.F.R. § 83.10(e) (1994) which provided for an expedited finding on a single criterion when the documented petition and response to the technical assistance letter indicates that there is little or no evidence that the petitioner can meet the mandatory criteria. The Department found that the MOWA Band could not meet the criteria requiring that the petitioner descend from a historical Indian tribe or from historical Indian tribes which combined and functioned as a single autonomous political entity. On December 16, 1997, the Department issued a negative determination on the MOWA Band's petition under Part 83.

The MOWA Band now seeks recognition through the legislative process. While the Department's previous determination on the Band's application may differ from the present views of Congress, we recognize that Congress has plenary power over Indian Affairs and retains the authority to federally recognize tribes through legislation. The Department respects the MOWA Band's choice to seek recognition through the legislative process. At this time the Department neither opposes nor supports this legislation.

**S. 3789, a bill to amend the Native American Tourism and Improving Visitor Experience Act to authorize grants to Indian tribes, tribal organizations, and Native Hawaiian organizations, and for other purposes.**

S. 3789 would amend the Native American Tourism and Improving Visitors Experience (NATIVE) Act (P.L. 114-221) by creating a new section 6 (redesignating the current section 6 as section 7) that would allow the Director of the Bureau of Indian Affairs to make grants to Indian Tribes and tribal organizations, and the Director of the Office of Native Hawaiian Relations to make grants to Native Hawaiian organizations. The NATIVE Act, signed into law in 2016, requires the Department of Commerce, the Department of the Interior, and federal agencies with recreational travel or tourism functions to update their management plans to include Indian tribes, tribal organizations, and Native Hawaiian organizations. The Department supports this bill.

**Conclusion**

Chairman Schatz, Vice Chair Murkowski, and Members of the Committee, thank you for the opportunity to provide the Department's views on these important bills. I look forward to answering any questions.