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SENATE

{ REPORT
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A BILL TO AUTHORIZE CERTAIN TRIBES IN THE STATE OF MONTANA TO ENTER INTO A LEASE OR OTHER TEMPORARY CONVEYANCE OF WATER RIGHTS TO MEET THE WATER NEEDS OF THE DRY PRAIRIE RURAL WATER ASSOCIATION, INC.

JANUARY 24, 2006.—Ordered to be printed

Filed, under authority of the order of the Senate of January 18, 2006

Mr. MCCAIN, from the Committee on Indian Affairs,
submitted the following

R E P O R T

[To accompany S. 1219]

The Committee on Indian Affairs, to which was referred the bill (S. 1219) to authorize certain tribes in the State of Montana to enter into a lease or other temporary conveyance of water rights to meet the water needs of the Dry Prairie Rural Water Association, Inc., having considered the same reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The purpose of S. 1219 is to authorize the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana, with the approval of the Secretary of the Interior, to enter into a lease or other temporary conveyance of water rights recognized under the Fort Peck-Montana Compact with the Dry Prairie Rural Water Association, Incorporated (or any successor non-federal entity) for the purpose of meeting the Association's water needs.

BACKGROUND

The Fort Peck Reservation Rural Water System Act of 2000 (Public Law 106-382) was enacted in October 2000. The two components of the water system project include the Fort Peck Reservation Water System and the Dry Prairie Rural Water Authority, an off-Reservation water system, which are located in northeastern Montana. The Reservation has a population of approximately 10,700 people, of which approximately 5,800 are members of the Assiniboine and Sioux Tribes. The Fort Peck water system will

serve Reservation populations and the Dry Prairie Rural Water Association will serve off-Reservation populations. The project is authorized to provide municipal, rural, and industrial water to the Reservation and surrounding areas.

The Fort Peck Indian Tribes Agreement with Dry Prairie Rural Water Association, Inc. would provide authority for the Tribes of the Fort Peck Indian Reservation, Montana to enter into a lease or otherwise make a temporary conveyance to Dry Prairie, without monetary compensation to the Tribes, of a portion of the Tribes' current right to use water under a compact with the State of Montana to meet off-Reservation water supply needs. The Dry Prairie allocation would be approximately 2,300 acre feet of water. The bill further provides that the life of the lease or conveyance shall not exceed 100 years, and that the Secretary is not liable for any claim relating to any lease or transfer terms.

LEGISLATIVE HISTORY

S. 1219 was introduced June 9, 2005, by Senator Burns and was referred to the Committee on Energy and Natural Resources and to the Committee on Indian Affairs. On September 28, 2005, the Committee on Energy and Natural Resources convened a business meeting to consider S. 1219 and other measures that had been referred to it, and on that date the Committee favorably reported the bill. At a business meeting held on October 27, 2005, the Committee on Indian Affairs considered S. 1219 and on that date favorably reported the bill without amendment.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTE

On October 27, 2005, the Committee on Indian Affairs, in an open session, adopted S. 1219 by voice vote and ordered the bill reported favorably to the Senate.

SECTION-BY-SECTION ANALYSIS OF S. 1219

Section 1. Temporary conveyance of water rights to Dry Prairie Rural Water Association, Inc.

Section 1 provides the short title of the Act as the Temporary Conveyance of Water Rights to Dry Prairie Rural Water Association, Inc.

Subsection (a) In general

Subsection (a) authorizes the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana, with the approval of the Secretary, to enter into a lease or other temporary conveyance of water rights with the Dry Prairie Rural Water Association, Incorporated, in accordance with section 5 of the Fort Peck Reservation Rural Water System Act of 2000 (Public Law 106-382). The Fort Peck water rights were recognized under the Fort Peck-Montana Compact (Montana Code Annotated 85-20-201) agreed to by the State and the Tribes, approved by the Secretary of Interior, ratified by the State of Montana on May 15, 1985.

Subsection (b) Conditions of lease

With respect to lease of water rights subsection (b) states that (1) the lease or conveyance shall not exceed 100 years; (2) the lease

or conveyance may be approved by the Secretary without monetary compensation to the Tribes; and (3) the Secretary shall not be subject to liability for any claim relating to the compensation or consideration received by the Tribes under this lease or conveyance.

Subsection (c) No permanent alienation of water

Subsection (c) states that nothing in this section authorizes a permanent alienation of any water rights by the Tribes.

COST AND BUDGETARY CONSIDERATIONS

No cost estimate for S. 1219 as has been prepared by the Congressional Budget office.

REGULATORY AND PAPERWORK IMPACT STATEMENT

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires that each report accompanying a bill to evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill. The Committee has concluded that S. 1219 will reduce regulatory or paperwork requirements and impacts.

EXECUTIVE COMMUNICATION

The Committee has received an official communication from the Administration on the provisions of S. 1219.

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, DC, January 9, 2006.

Hon. JOHN MCCAIN,
Chairman, Committee on Indian Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: This letter provides the Administration's views on S. 1219, legislation to authorize certain tribes in the State of Montana to enter into a lease or other temporary conveyance of water rights to meet the needs of the Dry Prairie Rural Water Association, Inc.

The Fort Peck Reservation Rural Water System Act of 2000 (Public Law 106-382; 114 Stat. 1454) was enacted in October, 2000. The project includes the Fort Peck Reservation and Dry Prairie Rural Water Authority, which are located in northeastern Montana. The Reservation has a total population of approximately 10,700 people, of which approximately 5,800 are members of the Assiniboiné and Sioux Tribes. The water system will serve Reservation populations in or around the towns of Wolf Point, Poplar, Brockton, Fort Kipp, Oswego, and Frazer. Towns not on the Reservation include Glasgow, Scobey, Plentywood, and Culbertson which will be served by the Dry Prairie Rural Water Association. The project is authorized to provide municipal, rural, and industrial water to the Reservation and surrounding areas.

This legislation would provide authority for the Tribes of the Fort Peck Indian Reservation, Montana to enter into a lease or otherwise make a temporary conveyance of a portion of the Tribes' current right to use water to Dry Prairie to meet the off Reservation water supply needs of the Fort Peck Reservation Rural Water System without monetary compensation to the Tribes. The bill further

provides that the life of such lease or conveyance shall not exceed 100 years, and that the Secretary is not liable for any claim relating to any lease or transfer terms.

Nothing in this bill authorizes a permanent alienation or separation of any waters by the Tribes to Dry Prairie Rural Water Association, Inc. or any other non-Federal entity meeting the water needs of the Association. The ability of the Tribes to lease or convey rights to other entities is recognized under the Fort Peck-Montana Compact (Montana Code Annotated 85-20-201). Additionally, the Final Engineering Report required by P.L. 106-382 calls for the Tribes to lease water to the Dry Prairie Rural Water Association at no cost.

The Administration supports this bill, but recommends a few changes. First, given that this bill explicitly contemplates the possibility of a lease at zero cost to Dry Prairie, we recommend stronger language to establish that the Secretary will not be held liable for any losses to the Tribes arising from these lease terms. We propose that section 1(b) of the bill be amended to provide that the Secretary of the Interior shall not be "liable to any party (including any Indian tribe) for any term of, or any loss or other detriment resulting from, a lease or conveyance entered into pursuant to paragraph (a)." Second, we recommend removing the requirement for Secretarial approval of the lease. The Tribes are in the best position to determine what lease terms are in their interests, and Secretarial review would not serve its intended purpose in these circumstances. Third, we recommend that section 1(b) of the bill be amended to provide for a lease or conveyance term of up to 50 years, rather than up to 100 years, consistent with the discussion of such leases in the Fort Peck-Montana Compact (Montana Code Annotated 85-20-201, Article XIIB). We would be happy to work with the committee to address these concerns.

Because the legislation would assure a reliable, long term water supply to Dry Prairie while protecting the water rights of the Tribes, the Administration is pleased to support it with the above-mentioned changes.

Sincerely,

MARK LIMBAUGH,
Assistant Secretary for Water and Science.

CHANGES IN EXISTING LAW

In compliance with subsection 12 of rule XXVI of the Standing Rules of the Senate, the Committee states that the enactment of S. 1219 will not result in changes in existing law.

