

MESCALERO APACHE TRIBE LEASING
AUTHORIZATION ACT

DECEMBER 1, 2011.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. HASTINGS of Washington, from the Committee on Natural
Resources, submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany H.R. 1461]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 1461) to authorize the Mescalero Apache Tribe to lease adjudicated water rights, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE BILL

The purpose of H.R. 1461 is to authorize the Mescalero Apache Tribe to lease adjudicated water rights.

BACKGROUND AND NEED FOR LEGISLATION

The Mescalero Apache Tribe consists of approximately 3,000 members in south central New Mexico. After a series of court cases and litigation beginning in 1975 with the State of New Mexico suing the United States in state court, the state court finally determined that Mescalero Tribe was entitled to consumptive water right of 2,322.4 acre feet per year. However, under current law (25 U.S.C. 117), a tribe cannot lease its water without authorizing legislation from Congress. H.R. 1461 would authorize the Mescalero

Apache Tribe to lease its adjudicated water rights for no more than 99 years.

COMMITTEE ACTION

H.R. 1461 was introduced on April 8, 2011, by Congressman Stevan Pearce (R–NM). The bill was referred to the Committee on Natural Resources, and within the Committee to the Subcommittee on Indian and Alaska Native Affairs. On September 22, 2011, the Subcommittee held a hearing on the bill. On October 5, 2011, the Full Natural Resources Committee met to consider the bill. The Subcommittee on Indian and Alaska Native Affairs was discharged by unanimous consent. No amendments were offered, and the bill was ordered favorably reported to the House of Representatives by unanimous consent.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Natural Resources' oversight findings and recommendations are reflected in the body of this report.

COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. Clause 3(d)(1) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out this bill. However, clause 3(d)(2)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974. Under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of the Congressional Budget Office:

H.R. 1461—Mescalero Apache Tribe Leasing Authorization Act

H.R. 1461 would allow the Mescalero Apache Tribe of New Mexico to enter into a lease or other temporary conveyance of its water rights. H.R. 1461 would prevent the Mescalero Apache Tribe from permanently forfeiting their water rights and would authorize leases of no more than 99 years.

Based on information from the Department of the Interior, CBO expects that the legislation would have no significant impact on the agency's administrative costs. H.R. 1461 would have no effect on direct spending or revenues because any income resulting from additional leases would be paid directly to the Mescalero Apache Tribe. Therefore, pay-as-you-go procedures do not apply.

H.R. 1461 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

CBO staff contact for this estimate is Martin von Gnechten. The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

2. Section 308(a) of Congressional Budget Act. As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this bill does not contain any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures. Based on information from the Department of the Interior, CBO expects that the legislation would have no significant impact on the agency's administrative costs. H.R. 1461 would have no effect on direct spending or revenues because any income resulting from additional leases would be paid directly to the Mescalero Apache Tribe. Therefore, pay-as-you-go procedures do not apply.

3. General Performance Goals and Objectives. As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill is to authorize the Mescalero Apache Tribe to lease adjudicated water rights.

EARMARK STATEMENT

This bill does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined under clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives.

COMPLIANCE WITH PUBLIC LAW 104-4

This bill contains no unfunded mandates.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

CHANGES IN EXISTING LAW

If enacted, this bill would make no changes in existing law.

ADDITIONAL VIEWS

H.R. 1461 would authorize the Mescalero Apache Tribe of New Mexico to lease its adjudicated water rights for up to 99 years. The Tribe intends to lease water to communities in Southeastern New Mexico that are in need of additional supplies due to severe drought. Revenue generated by such leasing would be used to improve tribal government services, such as senior care, infrastructure development, and academic scholarships. Congressional approval of tribal water rights is required before a tribe may lease its water rights.

The Administration testified at a September 22, 2011 hearing on the bill that its policy on approval of water leases should parallel aspects of its policies on approving leases of land. Accordingly, the Administration recommended including language in the bill that requires the Tribe to develop a water code and submit it to the Secretary of the Interior for approval. The Tribe would be unable to lease its water rights until such code is approved. The Administration also recommended that language be added clarifying that the bill applies to water leases off the Tribe's reservation.

Because federal regulations governing the approval process for tribal water codes do not currently exist, and the need for language clarifying that the bill would apply only to off-reservation leases is unclear, we agreed to move the bill forward without amendment. Minority staff intends to work with Majority staff and the Administration to address these issues prior to floor consideration of the bill.

EDWARD J. MARKEY.
RUSH HOLT.
DALE E. KILDEE.
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