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TO SETTLE LAND CLAIMS WITHIN THE FORT HALL RESERVATION

AUGUST 2, 2012.—Ordered to be printed

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

R E P O R T

[To accompany S. 1065]

[Including cost estimate of the Congressional Budget Office]

The Committee on Indian Affairs, to which was referred the bill (S. 1065) to settle land claims within the Fort Hall Reservation, having considered the same, reports favorably thereon, and recommends that the bill, as amended, do pass.

PURPOSE

The purpose of S. 1065 is to settle pending land claim disputes occurring between the Shoshone-Bannock Indian Tribes of the Fort Hall Indian Reservation and certain non-Indian landowners.

BACKGROUND

The Fort Hall Reservation was established by Executive Order in 1867 and confirmed in the Fort Bridger Treaty of 1868. The Blackfoot River was deemed to be the northern boundary of the Fort Hall Reservation. The land disputes in question arose as a consequence of the realignment of the Blackfoot River by the Corps of Engineers in 1964 to address flow and periodic flooding problems. Following the realignment, 25 parcels of land (approximately 37.04 acres of individually and tribally-owned land), once on the south side of the river, ended up on the north side, outside of the reservation boundary, and 19 parcels (approximately 31.01 acres) of land owned by non-Indians, once on the north side of the river, ended up on the south side, within that boundary. Over the years, these parcels of land have remained idle due to lack of access.

In the late 1980s, the Snake River Basin Adjudication began decreeing water rights on all streams and rivers within the Snake River Basin in Idaho, which includes the Blackfoot River basin. Several non-Indian landowners whose lands were affected by the realignment of the Blackfoot River asserted claims that their place of use was on the Fort Hall Reservation. The Shoshone-Bannock Tribes filed objections to those claims which resulted in litigation currently pending as part of the Snake River Basin Adjudication.

NEED FOR THE LEGISLATION

S. 1065 embodies the terms of a negotiated settlement among the parties, including the Shoshone-Bannock Tribes, the non-Indian litigants, and the State of Idaho. Congressional approval of the settlement is required to extinguish claims and title to land, place land into trust and appropriate funds. Further, without legislation the pending legal proceedings will resume, resulting in lengthy and costly litigation for all affected parties.

S. 1065 would resolve the land ownership disputes and extinguish claims relating to the ownership of lands and associated water rights. These disputes and claims would be resolved by conveying title to the lands within the Reservation to the United States to hold in trust for the Tribe or Indian allottee, and by conveying title to the lands outside the reservation boundaries to the Black River Flood Control District No. 7 for re-conveyance to the non-Indian landowners.

The legislation would authorize \$700,000 to compensate both the Indian and non-Indian landowners for years of trespass, the value of their lands, and certain expenses that have been incurred. Generally, the compensation would be divided as follows: (1) \$263,406 to be deposited into a tribal trust fund account from which amounts shall be distributed to the Tribes for activities related to construction of natural resources facilities, water resources needs, economic development, and land acquisition; (2) \$230,489 to be paid into individual Indian money accounts for the allottees; (3) \$165,550 to be provided to the Blackfoot River Flood Control District No. 7 for distribution to the non-Indian landowners on a pro rata, per acre basis and for associated administrative expenses; (4) Attorneys' fees to be paid to the attorneys for the tribes and the non-Indian landowners in an amount not to exceed \$35,000; and (5) any remaining funds to be divided equally between the tribes and the non-Indian landowners.

LEGISLATIVE HISTORY

Earlier versions of this bill were introduced in the 111th Congress (S. 2802, which was approved by the Committee and reported with amendments in December of 2010, and H.R. 4613). On May 25, 2011, Senator Crapo, for himself and Senator Risch, introduced S. 1065, which was referred to the Committee on Indian Affairs.

On December 8, 2011, the Committee on Indian Affairs convened a business meeting to consider S. 1065 and other measures. The Committee approved the bill, by voice vote, and ordered the bill reported to the full Senate with the recommendation that the bill, as amended, do pass. However, before the bill was reported, the Committee considered it again at a business meeting held on June 28, 2012, primarily to correct a problem relating to the effective date

created by the wording of section 13 of the bill as introduced. At that business meeting, the Committee approved a substitute amendment and again ordered that the bill, as amended, be reported favorably to the full Senate.

SUMMARY OF THE AMENDMENT

The substitute amendment offered at the June 28 business meeting by Senator Crapo includes technical changes to the bill approved in the business meeting of December 8, 2011 (primarily to ensure that exhibits and other references in the bill were correctly stated and referenced as well as grammatical corrections and a change relating to the confirmation year of the Second Treaty of Fort Bridger), as well as amendments (1) striking section 13 of the bill (relating to the effective date), (2) in section 4, making the section effective upon payment of the funds appropriated under section 12; (3) clarifying the attorneys' fees provisions in section 8; and (4) in section 12, clarifying the funding distribution requirements.

SECTION-BY-SECTION OF S. 1065 AS AMENDED

Section 1. Short title

The short title of the Act is the "Blackfoot River Land Settlement Act of 2012."

Section 2. Findings; purposes

This section sets out the findings that led to the introduction of this Act. The findings include the policy of the United States to promote tribal self-determination and encourage the resolution of disputes over settlement claims; a background of the Shoshone-Bannock Tribes and the Fort Hall Reservation; references to the 1964 Corp of Engineers flood protection project on the Blackfoot River, which realigned the River so that certain parcels of non-Indian land ended up being located within the reservation boundaries and certain Indian lands ended up located outside of the reservation boundaries; affected parties have filed claims in the Snake River Basin Adjudication seeking water rights based on the realignment of the Blackfoot River; and that this Act would represent an agreement among parties and distribute funds as specified.

Section 2 also states that the purpose of the Act is to resolve the disputes resulting from the realignment of the Blackfoot River by the Corps of Engineers in 1964, and to achieve a fair, equitable, and final settlement of all claims arising from those disputes.

Section 3. Definitions

This section defines the key terms in this Act. The defined terms are "Allottee," "Indian land," "Non-Indian acquiring Indian land," "Non-Indian land," "Non-Indian landowner," "Realigned River," "Reservation," "River," "Secretary," and "Tribes."

Section 4. Release of claims to certain Indian and Non-Indian owned lands

Section 4(a) provides that, on the deposit of all amounts into the tribal trust fund account and the allottee trust fund account under section 7 and the disbursement to non-Indian landowners under section 12, all existing and future claims with respect to the Indian

land and the non-Indian land and all right, title, and interest that the Tribes, allottees, non-Indian acquiring Indian land, and non-Indian landowners may have had to that land shall be extinguished; any interest of the Tribes, the allottees, or the United States, acting as trustee for the Tribes or allottees, in the Indian land shall be extinguished under section 2116 of the Revised Statutes (commonly known as the “Indian Trade and Intercourse Act”); and the Tribes, allottees, and non-Indian land-owners waive and release all claims that the Tribes, allottees, and non-Indian landowners may have asserted against the United States arising out of any interest in the Indian land or non-Indian owned land affected by the realignment of the Blackfoot River by the Corp of Engineers.

To the extent any interest in non-Indian land transferred into trust pursuant to section 5 violates section 2116 of the Revised Statutes (commonly known as the “Indian Trade and Intercourse Act”), that transfer shall be valid, subject to the condition that the transfer is consistent with all other applicable Federal Laws.

Section 4(b) states that on the deposit of all amounts into the tribal trust fund account and allottee trust fund account, and the disbursement to non-Indian landowners, the Secretary is authorized to execute and file any appropriate documents as necessary to carry out this act.

Section 5. Land to be placed into trust for tribes

Section 5 states that effective on the date on which the amounts appropriated under section 12 are distributed, the non-Indian land shall be considered to be held in trust by the United States for the benefit of the Tribes.

Section 6. Trust land to be converted to fee land

This section provides that on the date on which the amounts appropriated pursuant to section 12 are distributed in accordance with that section to the tribal trust fund account and the allottee trust account, the Indian land shall be transferred to the Blackfoot River Flood Control District No. 7 for conveyance to the non-Indians acquiring Indian land.

Section 7. Tribal trust fund account and allottee trust account

Section 7(a) establishes in the Treasury of the United States an account, to be known as the “tribal trust fund account”, consisting of such amounts as are deposited in the account under section 12(b)(1). The Secretary of the Treasury shall invest amounts in the tribal trust fund account for the benefit of the Tribes, in accordance with applicable laws and regulations. The Secretary of the Treasury shall distribute amounts in the tribal trust fund account to the Tribes pursuant to a budget adopted by the Tribes that describes the amounts required by the Tribes; and the intended uses of the amounts. The Tribes may use amounts in the tribal trust fund account (including interest earned on those amounts), without fiscal year limitation, for activities related to construction of a natural resources facility; water resources needs; economic development; land acquisition; and other such purposes as the Tribes determine to be appropriate.

Section 7(b) establishes in the Treasury of the United States an account to be known as the “allottee trust account”, consisting of

such amounts as are deposited in the account under section 12(b)(2). Not later than 60 days after the date on which amounts are deposited into the allottee trust account, the Secretary of the Treasury shall deposit the amounts into individual Indian money accounts for the allottees. The Secretary of the Treasury shall invest amounts in the individual Indian money accounts under paragraph (2) in accordance with applicable laws and regulations.

Section 8. Attorneys' fees

This section states that the Secretary of the Interior shall pay to the attorneys of the Tribes and the non-Indian landowners such attorneys' fees as are approved by the Tribes and the non-Indian landowners, but the total amount of attorneys' fees paid by the Secretary shall not exceed \$35,000.

Section 9. Effect on original reservation boundary

This section confirms that nothing in the Act affects the original boundaries of the Reservation as established by Executive Order in 1867 and confirmed by Treaty in 1868.

Section 10. Effect on Tribal Water Rights

This section confirms that nothing in the Act extinguishes or conveys any water rights of the Tribes as established in the "1990 Fort Hall Indian Water Rights Agreement," ratified by section 4 of the Fort Hall Indian Water Rights Act of 1990 (Pub. L. 101-602).

Section 11. Disclaimers regarding claims

This section confirms that nothing in the Act affects the sovereign claim of the State of Idaho to title in and to the beds and banks of the Blackfoot River under the equal footing doctrine; affects any action by the State of Idaho to establish that title under the Quiet Title Act; affects the ability of the Tribes or the United States to claim ownership of the beds and banks of the River; or extinguishes or conveys any water rights of non-Indian landowners or the claims of such landowners to water rights in the Snake River Water Basin adjudication.

Section 12. Funding

This section authorizes appropriations in the amount of \$700,000 to be distributed among the Tribes, the allottees, attorneys, and the Blackfoot River Flood Control District No. 7 in the following manner: (1) \$263,406 to be deposited into the tribal trust fund account; (2) \$230,489 to be deposited into the allottee trust account; (3) \$165,550 to be deposited into the Blackfoot River Flood Control District No. 7 for distribution to the non-Indian landowners and associated administrative expenses; and (4) not more than \$35,000 shall be made available to the Secretary to distribute to the attorneys of the Tribes and the non-Indian landowners for attorneys' fees. Any remaining amounts after distributions under paragraphs (1) through (4) of subsection (b) of section 12 and Section 8 shall be split equally between the Blackfoot River Flood Control District No. 7 and the Tribes and used by the Blackfoot River Flood Control District No. 7 and the Tribes for administrative expenses. This section also states that funds distributed under this Act shall not be used for per capita payments to tribal members.

COMMITTEE RECOMMENDATION

The bill was considered by the Committee at a business meeting held on June 28, 2012. The Committee approved a substitute amendment and ordered that the bill, as amended, be reported favorably to the full Senate.

COST AND BUDGETARY CONSIDERATIONS

The following cost estimate was prepared for S. 1065 as amended, as provided by the Congressional Budget Office on July 25, 2012:

S. 1065—Blackfoot River Land Settlement Act of 2012

S. 1065 would authorize the appropriation of \$700,000 to settle a land dispute between the Shoshone-Bannock Tribes and certain non-Indian landowners in southeastern Idaho. Based on information from the Department of the Interior (DOI) and assuming the availability of appropriated funds, CBO estimates that implementing the legislation would cost \$700,000 over the 2013–2017 period. Enacting the legislation would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

Under the bill, DOI would exchange 37 acres of Indian trust land for 31 acres of private land that would be held in trust for the Shoshone-Bannock Tribes. The bill also would authorize the appropriation of \$700,000 to settle certain claims made against the federal government. Of those amounts, about \$400,000 would be paid to individual Indian and private landowners as compensation for damages resulting from certain federal activities that affected use of land. An additional \$260,000 would be held in trust for the Shoshone-Bannock Tribes by the U.S. Treasury. The tribes would have the authority to spend those amounts at their discretion. Finally, up to \$35,000 of the authorized amounts would be available to pay attorneys' fees for the tribes and the non-Indian landowners.

By requiring the exchange of lands through federal statute, S. 1065 would impose both intergovernmental and private-sector mandates, as defined in the Unfunded Mandates Reform Act (UMRA), on tribal and nontribal land owners. The bill would terminate rights to certain parcels of land surrounding the Blackfoot River, and extinguish any past, present, or future claims on that land. The cost of the mandates would be the forgone damages that could have been collected through legal actions related to clarifying title to the property and the net value of the land being exchanged by the federal government. Any foregone damages are not likely to be significant. In a market study used by DOI, the value of the land is estimated to be less than \$500,000. Therefore, CBO estimates that the aggregate cost of the mandates would fall well below the annual threshold established in UMRA for both intergovernmental and private-sector mandates (\$73 million and \$146 million, respectively, in 2012, adjusted annually for inflation).

On January 17, 2012, CBO transmitted a cost estimate for S. 1065, the Blackfoot River Land Settlement Act of 2011, as ordered reported by the Senate Committee on Indian Affairs on December 8, 2011. The two versions of the legislation are similar and the CBO cost estimates are the same.

The CBO staff contacts for this estimate are Martin von Gnechten (for federal costs), Melissa Merrell (for the intergovernmental impact), and Marin Randall (for the private-sector impact). The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

EXECUTIVE COMMUNICATIONS

The Committee has received no executive communications on S. 1065. However, the Committee did receive a letter dated August 2, 2010, from the Assistant Secretary—Indian Affairs regarding the version of this bill introduced in the 111th Congress, S. 2802. That letter is described in the Executive Communications section of Senate Report 111–356.

REGULATORY AND PAPERWORK IMPACT STATEMENT

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires each report accompanying a bill to evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill. The Committee believes that S. 1065 will have a minimal impact on regulatory or paperwork requirements.

CHANGES IN EXISTING LAW

In compliance with subsection 12 of rule XXVI of the Standing Rules of the Senate, the Committee finds that the enactment of S. 1065 will not make any changes in existing law.