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SENATE

{ REPORT
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TO MAKE TECHNICAL CORRECTIONS TO THE NAVAJO WATER RIGHTS SETTLEMENT IN THE STATE OF NEW MEXICO, AND FOR OTHER PURPOSES

AUGUST 26, 2014.—Ordered to be printed

Filed, under authority of the order of the Senate August 25
(legislative day, August 21), 2014

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

R E P O R T

[To accompany S. 1447]

The Committee on Indian Affairs, to which was referred the bill (S. 1447) to make technical corrections to certain Native American water rights settlements in the State of New Mexico, and for other purposes, having considered the same, reports favorably thereon with an amendment and an amendment to the title and recommends that the bill, as amended, do pass.

PURPOSE

The purpose of S. 1447 is to make technical corrections to the Navajo-Gallup Water Supply Project, as established by the Omnibus Public Land Management Act of 2009, Public Law 111-11, 43 U.S.C. 407 note.

BACKGROUND

S. 1447 would make technical amendments to the Navajo-Gallup Water Supply Project, which was authorized in the Omnibus Public Land Management Act of 2009. The Act directed the Secretary of the Interior to design, construct, operate and maintain a water supply project that would provide water to the Navajo Nation, the Jicarilla Apache Nation, and the City of Gallup, New Mexico. The Act provided that the Navajo Nation would pay for any costs of operations and maintenance of the Project facilities that are allocable

to the Navajo Nation after a 10-year grace period that is triggered by the first delivery of project water. The original Act also allowed, in error, 2 percent and 4 percent of authorized funding to be used for cultural protection and fish and wildlife facilities, respectively. This original allocation was a reversal of the parties' original intent.

The Act also approved the water rights Settlement Agreement between the Navajo Nation, the United States, and the State of New Mexico. A separate Contract between the Navajo Nation and the United States was also incorporated as part of the Settlement Agreement. The Act also set forth certain deadlines that must be met regarding implementation of the Settlement Agreement and Contract, and, if those deadlines were not met, provided the stream adjudication court the authority to nullify the Settlement Agreement. The current statutory language also implies that the state stream adjudication court would have jurisdiction to nullify the Contract between the Navajo Nation and the United States, which was not the intent of the parties.

Finally, the Act limited certain authorized funding to include only the construction or rehabilitation of certain wells. The Act did not include the necessary authorization for the planning or design of those projects.

NEED FOR LEGISLATION

Clarifying ambiguities in the Omnibus Public Land Management Act of 2009 and aligning statutory provisions with the original intent of the stakeholders can only be accomplished by Congressional action.

LEGISLATIVE HISTORY

S. 1447 was introduced on August 1, 2013, by Senator Tom Udall and Senator Martin Heinrich. The bill was referred to the Committee on Indian Affairs. On September 10, 2013, the Committee held a hearing on the bill. On June 11, 2014, the Committee met at a business meeting to consider the bill. Two amendments were offered, and the bill, as amended, was ordered to be reported favorably to the Senate.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

This Act may be cited as the "Navajo Water Settlement Technical Corrections Act."

Section 2. Navajo water settlement

Sections 2(a) and 2(b) correct several misspellings and incorrect internal references within the Omnibus Public Land Management Act of 2009. Section 2(c) clarifies that the Nation can take delivery of non-project water but it is responsible for the associated operation and maintenance costs. Section 2(d) expands the current funding authorization for "construction and rehabilitation" to also expressly include the planning and design phases of construction and rehabilitation. Section 2(d) also fixes an error in the Act which prescribed, in error, 2 percent and 4 percent funding for cultural resource protection and fish and wildlife facilities, respectively. Sec-

tion 2(d) switches the percentage allocations to properly address the original intent of the parties. Finally, Section 2(e) clarifies that the Court presiding over the stream adjudication has jurisdiction to nullify the Water Rights Settlement Agreement, but not the contract supplying water to the parties.

SUMMARY OF THE AMENDMENTS

Senator Udall of New Mexico filed two amendments to S. 1447. One amendment removed the provisions of the bill, as introduced, that would have made technical amendments to the Taos Pueblo Indian Water Rights Settlement Act and the Aamodt Litigation Settlement Act. This left S. 1447 as amending only portions of the existing Navajo-Gallup Water Supply Project. The second amendment renamed the title of the bill to reflect this change.

COST AND BUDGETARY CONSIDERATIONS

The following cost estimate, as provided by the Congressional Budget Office, dated July 18, 2014, was prepared for S. 1447:

JULY 18, 2014.

Hon. JON TESTER,
Chairman, Committee on Indian Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1447, the New Mexico Navajo Water Settlements Technical Corrections Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Aurora Swanson.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

S. 1447—New Mexico Navajo Water Settlement Technical Corrections Act

S. 1447 would amend the Navajo Settlement Act to authorize the Bureau of Reclamation to participate in planning of groundwater well projects for the Navajo Nation in New Mexico. The bill also would clarify the intent of certain provisions of that act and shift some authorized spending among authorized activities. Based on information from the Bureau of Reclamation, CBO estimates that implementing the legislation would not affect the federal budget. Because enacting S. 1447 would not affect revenues or direct spending, pay-as-you-go procedures do not apply.

Under current law, the bureau is authorized to construct and rehabilitate groundwater wells and related pipeline facilities to distribute groundwater for municipal use by the Navajo Nation. S. 1447 would authorize the bureau to participate in the planning and design of those projects. Based on information from the bureau, those activities would be accommodated under the existing authorization ceiling for this project.

The bill would clarify that the Navajo Nation can take delivery of non-project water but is responsible for the associated operation and maintenance costs. S. 1447 also would reallocate a portion of spending for fish and wildlife facilities to the preservation of ar-

chaeological resources near the project. Those changes would not affect federal spending.

S. 1447 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

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

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. 1447 will have a minimal impact on regulatory or paperwork requirements.

EXECUTIVE COMMUNICATIONS

The Committee has received no communications from the Executive Branch regarding S. 1447.

CHANGES IN EXISTING LAW

On June 11, 2014, the Committee on Indian Affairs unanimously approved a motion by Chairman Tester to waive the Cordon rule. Thus, in the opinion of the committee, it is necessary to dispense with subsection 12 of rule XXVI of the Standing Rules of the Senate in order to expedite the business of the Senate.