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SENATE

{ REPORT
114-41

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

MAY 11, 2015.—Ordered to be printed

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

R E P O R T

[To accompany S. 501]

The Committee on Indian Affairs, to which was referred the bill (S. 501) to make technical corrections to the Navajo water rights settlement in the State of New Mexico, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The purpose of S. 501 is to make technical corrections to the Navajo-Gallup Water Supply Project, as established by the Omnibus Public Land Management Act of 2009, 43 U.S.C. 407 note, Pub. Law No. 111-11.

BACKGROUND

This legislation, S. 501, would make technical amendments to the Navajo-Gallup Water Supply Project (Project), which was authorized in the Omnibus Public Land Management Act of 2009 (Act). That 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.

That Act further provided that the Navajo Nation would pay for any costs of operations and maintenance of the Project facilities 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 authorized, in error, 2 percent and 4 percent of the total

Project funding to be used for cultural protection and fish and wildlife facilities, respectively. This 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 set forth certain deadlines that must be met in implementing 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 funding authorization for the planning or design of those projects which are necessary components of construction and rehabilitation.

NEED FOR LEGISLATION

This bill is needed to clarify ambiguities in the Omnibus Public Land Management Act of 2009 regarding this Project and aligns statutory provisions with the original intent of the stakeholders. These technical corrections can only be accomplished by Congressional action.

LEGISLATIVE HISTORY

This measure, S. 501, was introduced on February 12, 2015, by Senators Udall and Heinrich. The bill was referred to the Committee on Indian Affairs. No hearing was held on the bill this Congress. On February 25, 2015, the Committee met at a business meeting to consider the bill. No amendments were offered and the bill was ordered to be reported favorably to the Senate.

The House companion bill is H.R. 1406 and was introduced on March 17, 2015, by Representative Luján. The bill, H.R. 1406, was referred to the House Committee on Natural Resources, and within the Committee to the Subcommittee on Water, Power, and Oceans.

In the 113th Congress, Senators Udall and Heinrich introduced a bill which contained provisions similar to S. 501 and additional provisions affecting other settlement Acts: the Taos Pueblo Indian Water Rights Settlement Act and Aamodt Litigation Settlement Act. The bill, S. 1447, was referred to the Committee on Indian Affairs. On September 10, 2013, the Committee held a hearing on the bill at which the Administration testified in support of only the Navajo Nation water settlement provisions. On June 11, 2014, the Committee met at a business meeting to consider the bill. Two amendments were offered. One amendment struck the Taos Pueblo Indian Water Rights Settlement Act and Aamodt Litigation Settlement Act provisions, leaving only the Navajo Nation water settlement provisions. The other amendment changed the title of the bill.

The bill, as amended, was ordered to be reported favorably to the Senate. No further action took place on the bill.

SECTION-BY-SECTION ANALYSIS FOR S. 501

Section 1—Short title

This Act may be cited as the “New Mexico 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 Navajo Nation can take delivery of non-project water, but it is responsible for the associated operation and maintenance costs.

Section 2(d) addresses the current funding authorization for construction and rehabilitation by expressly including the planning and design phases of construction and rehabilitation. Section 2(d) also corrects an error in the Act which prescribed 2 percent and 4 percent funding for cultural resource protection and fish and wildlife facilities, respectively. Section 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 the jurisdiction to nullify the Water Rights Settlement Agreement, but not the Contract supplying water to the parties.

COST AND BUDGETARY CONSIDERATIONS

The following cost estimate, as provided by the Congressional Budget Office, dated March 19, 2015, was prepared for S. 501:

MARCH 19, 2015.

Hon. JOHN BARRASSO,
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. 501, the New Mexico Navajo Water Settlement 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. 501 would amend the Navajo Settlement Act to authorize the Bureau of Reclamation to use funds for planning and designing certain groundwater well projects for the Navajo Nation in New Mexico. The bill also would clarify certain provisions of that act and shift some spending among authorized activities. Based on information from the bureau, CBO estimates that implementing the legislation would have no significant effect on the federal budget. Because enacting S. 501 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 for municipal and domestic use by the Navajo Nation. The bureau is also authorized to plan and design groundwater wells subject to the availability of funding for those activities from local sponsors. S. 501 would clarify the bureau's authority to allocate federal resources for those purposes. Based on information from the bureau, those activities could be accommodated under the existing authorization ceilings for those projects.

The bill would clarify that the Navajo Nation can take delivery of nonproject water but is responsible for any associated operation and maintenance costs. S. 501 also would reallocate a portion of authorized spending for certain groundwater well projects from fish and wildlife facilities to the preservation of archaeological resources near those projects. CBO estimates those changes would have no significant effect on federal spending.

S. 501 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. 501 will have a minimal impact on regulatory or paperwork requirements.

EXECUTIVE COMMUNICATIONS

The Committee has received no communications from the Executive Branch regarding S. 501.

CHANGES IN EXISTING LAW

In accordance with subsection 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by S. 501, as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic):

43 U.S.C. § 407 (Omnibus Public Land Management Act of 2009)

§ 10302. Definitions

In this subtitle:

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(2) **ABEYTA ADJUDICATION.**—The term ‘Abeyta adjudication’ means the general stream adjudication that is the subject of the civil actions entitled ‘State of New Mexico v. Abeyta and State of New Mexico v. [Arrellano] *Arrellano*’, Civil Nos. 7896–BB (D.N.M) and 7939–BB (D.N.M.) (consolidated).

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(27) **STREAM ADJUDICATION.**—The term ‘stream adjudication’ means the general stream adjudication that is the subject of

New Mexico v. United States, et al., No. [75–185] 75–184 (11th Jud. Dist., San Juan County, New Mexico) (involving claims to waters of the San Juan River and the tributaries of that river).

§ 10603(c)(2)(A). Delivery and Use of Navajo-Gallup Water Supply Project Water

* * * * *

(i) a part of, and charged against, the available consumptive use apportionment made to the State of Arizona by Article III(a) of the Compact and to the Upper Basin by Article III(a) of the Colorado River Compact, in which case any water so diverted by the Project into the Lower Basin for use within the State of Arizona shall not be credited as water reaching Lee Ferry pursuant to [Article III(c)] *Articles III(c)* and III(d) of the Colorado River Compact; or

(ii) subject to subparagraph (B), a part of, and charged against, the consumptive use apportionment made to the Lower Basin by Article III(a) of the Colorado River Compact, in which case it shall—

* * * * *

(II) be credited as water reaching Lee Ferry pursuant to [Article III(c)] *Articles III(c)* and III(d) of the Colorado River Compact; and

§ 10604(f)(1). Project Contracts

(f) TEMPORARY WAIVERS OF PAYMENTS.—

(1) IN GENERAL.—On the date on which the Secretary declares a section of the Project to be substantially complete and delivery of *Project* water generated by and through that section of the Project can be made to the Nation, the Secretary may waive, for a period of not more than 10 years, the operation, maintenance, and replacement costs allocable to the Nation for that section of the Project that the Secretary determines are in excess of the ability of the Nation to pay.

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§ 10609. Authorization of Appropriations

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(b) APPROPRIATIONS FOR CONJUNCTIVE USE WELLS.—

(1) SAN JUAN WELLS.—There is authorized to be appropriated to the Secretary for the [construction and rehabilitation] *planning, design, construction, rehabilitation*, and operation and maintenance of conjunctive use wells under section 10606(b) \$30,000,000, as adjusted under paragraph (3), for the period of fiscal years 2009 through 2019.

(2) WELLS IN THE LITTLE COLORADO AND RIO GRANDE BASINS.—There are authorized to be appropriated to the Secretary for the [construction and rehabilitation] *planning, design, construction, rehabilitation*, and operation and maintenance of conjunctive use wells under section 10606(c) such

sums as are necessary for the period of fiscal years 2009 through 2024.

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(e) CULTURAL RESOURCES.—

(1) IN GENERAL.—The Secretary may use not more than [2 percent] 4 percent of amounts made available under subsections (a), (b), and (c) for the survey, recovery, protection, preservation, and display of archaeological resources in the area of a Project facility or conjunctive use well.

(f) FISH AND WILDLIFE FACILITIES.—

(1) IN GENERAL.—In association with the development of the Project, the Secretary may use not more than [4 percent] 2 percent of amounts made available under subsections (a), (b), and (c) to purchase land and construct and maintain facilities to mitigate the loss of, and improve conditions for the propagation of, fish and wildlife if any such purchase, construction, or maintenance will not affect the operation of any water project or use of water.

§ 10701(e). Agreement

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(e) NULLIFICATION.—

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(2) REVOCABILITY OF AGREEMENT, CONTRACT AND AUTHORIZATIONS.—

(A) PETITION.—If the Nation determines that a deadline described in paragraph (1)(A) is not substantially met, the Nation may submit to the court in the stream adjudication a petition to enter an order terminating the Agreement [and Contract].

(B) TERMINATION.—On issuance of an order to terminate the Agreement [and Contract] under subparagraph (A)—

- (i) the Trust Fund shall be terminated;
- (ii) the balance of the Trust Fund shall be deposited in the general fund of the Treasury;
- (iii) the authorizations for construction and rehabilitation of water projects under this subtitle shall be revoked and any Federal activity related to that construction and rehabilitation shall be suspended; and
- (iv) this part and parts I and III shall be null and void.

(3) CONDITIONS NOT CAUSING NULLIFICATION OF SETTLEMENT.—

(A) IN GENERAL.—If a condition described in subparagraph (B) occurs, the Agreement [and Contract] shall not be nullified or terminated.