

**TESTIMONY OF
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UNITED STATES DEPARTMENT OF THE INTERIOR
BEFORE THE
SENATE COMMITTEE ON INDIAN AFFAIRS
ON
S. 1447, NEW MEXICO NATIVE AMERICAN
WATER SETTLEMENTS TECHNICAL CORRECTIONS ACT**

SEPTEMBER 10, 2013

S. 1447, the New Mexico Native American Water Settlements Technical Corrections Act, proposes amendments to three Indian water rights settlements: the Taos Pueblo Indian Water Rights Settlement Act (Public Law 111–291) (Taos Settlement Act); the Aamodt Litigation Settlement Act (Public Law 111–291) (Aamodt Settlement Act); and the Navajo water rights settlement provision of the Omnibus Public Land Management Act of 2009 (Public Law 111–11) (Navajo Settlement Act).

Some of these proposed amendments are minor, consisting of corrections in spelling and section numbering. Other amendments are more substantive and could have budgetary impacts. The Department of the Interior continues to be fully committed to implementing these Congressionally enacted water rights settlements, and we recognize and appreciate that the goal of this bill is to make targeted fixes to these statutes in order to facilitate implementation. Many of the amendments proposed in the bill are helpful and could make the work of the implementation teams on the ground much easier by eliminating unclear language in the original enacted bills.

However, at this time the Department and its sister agencies have not yet completed a full assessment of the potential impacts of this legislation, particularly the budgetary and fiscal impacts. Once we complete this analysis, if there are provisions that the Administration does not support as currently drafted, we would welcome the opportunity to work with the sponsors and bill proponents to address out concerns. The changes to each settlement proposed by S. 1447 are discussed below.

Aamodt Litigation Settlement

The Aamodt Settlement Act provides for indexing of mandatory appropriations in two places, Sections 617(a) and (c). Like the provisions in the Taos Settlement Act, discussed below, both of these provisions would allow for multiple indexing adjustments over a specified period of time - between Fiscal years 2011 and 2016. Section 3(b)(1) of S.1447 would remove these time limitations.

The Department believes that indexing continuing throughout the construction period (ending in 2024) for the municipal water system that is the center of this settlement

could help to ensure complete implementation of this settlement. The current limitations on indexing could put completion of the water system and, thus, the settlement itself, in jeopardy. However, at the same time we believe that the changes in indexing will have impacts on the Treasury and could trigger mandatory offset requirements. As noted above, the Administration is still reviewing this legislation and therefore is not taking a position on these provisions at this time.

The elimination of any reference to years for indexing of the Aamodt Settlement Pueblos' Fund in Section 3(b)(2) of S. 1447 may have a similar effect but analysis of this proposed provision is complicated by virtue of other cost adjustment provisions. Additionally, we note that section 615 of the Aamodt Settlement Act provides that the funds appropriated under section 617(c) are to be invested by the Secretary of the Interior following the date the waivers become effective under section 623 of that Act. After section 623 is triggered, the funds would be earning interest, which will help maintain the purchasing power of the funds and make indexing less necessary.

Finally, section 3(a) of the bill refers to "Section 615(c)(7)" of the Settlement Act. Because there is no section 615(c)(7) in the Act, we assume this should be a reference to "Section 615(**d**)(7)". The goal of this language seems to be to allow the Tribe to use its OM&R fund earlier in some situations, but always after the enforceability date. The Department has no objection to this particular provision.

Navajo Water Settlement

Section 4 of S. 1447 would amend the Navajo Settlement Act in several respects. The first two amendments are non-substantive in nature and are supported by the Department.

Section 4(c) of the bill would amend section 10604(f)(1) to allow the Navajo Nation to begin receiving groundwater (non-project water) through Project facilities without triggering the 10 year operation and maintenance (O&M) payment waiver provision of Section 10603(c)(2)(A) of the Settlement Act. This amendment benefits the United States in that it would prevent the Navajo Nation from requesting O&M payment waivers (which would require the Department to pay O&M costs) until Project water from the San Juan River is delivered to the Navajo Nation. The Navajo Nation has the responsibility for paying O&M costs of non-Project water delivery under Section 10602 (h) (1) of the Settlement Act.

Section 4(d)(1) of the bill would amend Section 10609 of the Settlement Act to allow funding identified for the Conjunctive Use Wells in the San Juan River Basin and in the Little Colorado and Rio Grande Basins to be used for planning and design as well as construction and rehabilitation of wells. Without the amendment only construction and rehabilitation are authorized uses of the funds. Because costs are capped, this change will have no effect on the final costs of the settlement. The Department believes that using this funding for planning and design is useful, since only a coarse level of planning, and no design work, has been done for these wells.

Section 4(d)(2) of the bill would amend the Settlement Act by increasing the amount of Project funding that can be spent on cultural resources work from two to four percent of total project costs. The Project area is rich in cultural resources and significant work must be done in this area, so the proposed increase appears to be reasonable and appropriate. Correspondingly, section 4(d)(3) would reduce the percentage of funds that may be spent on fish and wildlife facilities from four percent to two percent. Based on current information, this change also appears to be reasonable and appropriate. Both of these proposed changes are consistent with the Project cost estimate included in the FEIS and, when taken together, they do not increase the cost of the Project.

Finally, section 4(e) of the bill would correct language in the Settlement Act that, absent amendment, could be interpreted to mean that the court in the stream adjudication had jurisdiction over the Project contract between the United States and the Navajo Nation. The Department supports this clarification which comports with existing law.

Taos Pueblo Indian Water Rights

S. 1447 proposes to amend two provisions of the Taos Settlement Act. Section 2(a) of the bill would modify Section 505(f)(1) of the Taos Settlement Act by expanding the list of allowable purposes for which \$15,000,000 in “early money” provided by Section 505(f) could be used. The Section 505(f) funding made available for immediate expenditure by Taos Pueblo represents an exception to the Department of the Interior’s general policy that all settlement benefits should flow at the same time, only after settlement enforceability conditions are met.

Accordingly, the purposes for which the money could be spent under Section 505(f) were carefully negotiated with the Pueblo to make some funds available to the Pueblo for specific high priority purposes, such as protection of sacred wetlands known as the Buffalo Pasture and purchase of State-based water rights that are rapidly increasing in cost. Expanding the purposes for which “early money” can be expended removes the distinctions between Section 505(f) and Section 505(a), which sets forth the full list of allowable purposes for which the Taos Pueblo Water Development Fund can be expended once the settlement is final and enforceable. The Administration wishes to work with the Pueblo and the bill’s sponsors to determine exactly what problems the Pueblo needs to address.

The second amendment to the Taos Settlement Act is a proposed change to the indexing of mandatory appropriations for settlement funding in the current version of the Act. Section 509(c)(1) of the Act provides that mandatory appropriations are subject to indexing but allows such indexing only between fiscal years 2011 and 2016. S.1447 would remove the time limitations for indexing.

The Administration is still analyzing this amendment but believes that the changes in indexing will have impacts on the Treasury and could trigger mandatory offset requirements. Moreover, we note that section 505 of the Taos Settlement Act provides that the Fund at issue is to be invested by the Secretary of the Interior

following the enforceability date of the settlement. Therefore, the funds at issue will already be able to earn interest beginning not later than 2017, which will help maintain the purchasing power of the funds provided and make indexing less necessary.

The final amendment to the Taos Settlement Act would remove the requirement contained in Section 509(c)(2)(A)(i) that \$16,000,000 of mandatory funding for grants to non-Indian parties be transferred from Treasury between fiscal years 2011 and 2016. The full \$16,000,000 has already been transferred from Treasury to the Bureau of Reclamation and will be available for distribution upon the enforceability date of the settlement. The Department believes that the purposes of this amendment have already been achieved.

Conclusion

The Department agrees that technical amendments to the Taos, Aamodt and Navajo Settlement Acts should be made. We stand ready to work with the sponsors, the bill proponents and this Committee to craft a technical corrections bill that accomplishes the goals of the sponsors in a manner that the Administration fully supports.