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**Legislative Bulletin.....January 21, 2010**

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**H.R. 3254**—Taos Pueblo Indian Water Rights Settlement Act

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 (Rep. Luján, D-NM)**

**Order of Business:** The bill is expected to be considered on Thursday, January 21, 2010, under a structured rule. The rule (H.Res.1017) provides for one hour of debate equally divided and controlled by the majority and minority, waives all points of order against consideration of the bill except those arising under clause 9 or 10 of rule XXI, provides an amendment in the nature of a substitute to be adopted, and one motion to recommit.

**Summary:** H.R. 3254 would ratify a settlement agreement between the Taos Pueblo and the state of New Mexico. The bill would authorize a total of \$121 million over the FY 2010 - 2016 period to construct and rehabilitate water infrastructure and preserve environmentally sensitive lands in the Taos Valley.

Specifically, the legislation authorizes \$10 million to require the Secretary of Interior to provide non-reimbursable grants and technical assistance for Pueblo water infrastructure and watershed enhancement. Additionally, the bill authorizes \$58 million to establish the Taos Pueblo Water Development Fund within the United States Treasury to pay for or reimburse the costs incurred by the Pueblo. The bill directs the Secretary to provide financial assistance in the form of non-reimbursable grants to eligible non-Pueblo entities to plan, permit, design, and construct the Mutual-Benefit Projects in accordance with the settlement. The bill provides for a 75 percent non-reimbursable federal share and a 25 percent non-federal cost share. The bill also establishes and authorizes \$33 million for a mutual benefit projects fund to provide grants to local governments other than the Taos for projects intended to mitigate the impact of diverting water from present uses to execute the settlement.

The bill directs the Secretary to enter into repayment contracts for the delivery of certain amounts of San Juan-Chama Project Water, and waives the entirety of the Pueblo's share of construction costs for the San Juan-Chama Project as non-reimbursable. The bill requires the Pueblo and the United States to execute waivers and releases in its capacity as trustee for the Pueblo tribes' mainstream or tributary waters.

**Additional Information:** In 2006, the Taos Pueblo in New Mexico and several other parties signed a settlement and H.R. 3254 would make the United State government a party agreement

resolving a water-rights dispute in the Taos Valley. The bill would ratify a settlement agreement between the Taos Pueblo and the state of New Mexico related to the adjudication of the Rio Pueblo de Taos and Rio Hondo stream systems. The agreement would leave the tribe with 12,152 acre-feet of water per year in exchange for 4,678 remaining acres for their own in order to be used for non-Indian purposes. The Taos Pueblo reside approximately 70 miles north of Santa Fe New Mexico and have a population of around 2500 people. The pueblo's multi-storied adobe buildings have been continuously inhabited for over 1,000 years.

**Potential Conservative Concerns:** While this bill attempts to resolve outstanding Indian water rights claims, some conservatives have expressed concern that Congress lacks sufficient information to assess whether the authorization level of this bill is appropriate. Some conservatives have argued that prematurely reaching a settlement on the claims will increase U.S. liability than compared to existing law.

The Ranking Republican of the House Water and Power Subcommittee, Tom McClintock (R-CA), sent a letter to the Department of Justice asking for opinions its opinion on this legislation. They responded last night in a joint letter with the Department of Interior (DOI) that stated: “settlement would be preferable to litigation of these claims, although we do continue to have certain concerns with each of the pending settlements.”

The DOI testified in the Natural Resources Committee last year that they were: “concerned about the large Federal contribution in the trust fund and believe there should be further discussion with the parties about the activities included in this part of the settlement,” and could not support the bill at the time because of this and other concerns.

Some conservative have stated that without transparent and consistent answers from the Administration, they cannot support H.R. 3254 – especially with the large amount of taxpayer funding necessary to reach a settlement. Congress should not spend hundreds of millions of American taxpayer dollars until there is sufficient information.

**Committee Action:** On July 17, 2009, the bill was referred to the Committee on Natural Resources. On September 30, 2009, the committee held a mark-up and ordered the bill to be reported as amended by a voice vote.

**Administration Position:** The DOJ and DOI submitted a letter stating “settlement would be preferable to litigation.” However, the Department of Interior testified last year the Administration did not support similar legislation to H.R. 3254.

**Cost to Taxpayers:** According to CBO, implementing H.R. 3254 would cost \$25 million over the 2010-2014 period and an additional \$114 million to be spent beginning in fiscal year 2017 (as specified by the proposed settlement agreement), assuming appropriation of the necessary amounts.

**Does the Bill Expand the Size and Scope of the Federal Government?** No.

**Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?** No.

**Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?** Committee Report 111-395 states H.R. 3254 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

**Constitutional Authority:** Committee Report 111-395 states Article I, section 8 of the Constitution of the United States grants Congress the authority to enact this bill.

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