



REP. TOM PRICE, M.D. (R-GA), CHAIRMAN
 PAUL TELLER, EXECUTIVE DIRECTOR
 424 CANNON HOUSE OFFICE BUILDING
 WASHINGTON, DC 20515

rsc.price.house.gov ph (202) 226-9717 / fax (202) 226-1633

Legislative Bulletin.....January 21, 2010

Contents:

H.R. 3342—Aamodt Litigation Settlement Act

**H.R. 3342 - Aamodt Litigation Settlement Act
 (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: Authorizing a total of \$174.3 million, H.R. 3342 ratifies the water settlement between New Mexico and the “Four Pueblo” tribes by making the United States a party to the agreement and requires the planning, design and construction of a rural regional water system. In addition, the bill provides the Pueblos with a trust fund to subsidize the maintenance and replacement costs of the system to operate and maintain water related infrastructure other than the regional system facilities in the Rio Grande River Basin.

Specifically, the bill would require the construction of a regional water system in the Rio Grande River Basin in New Mexico to divert water to the Pueblos and to the Santa Fe County Water Utility. The legislation directs the United States to hold the water rights secured in trust for the Four Pueblo tribes and provides the regional water system with the authority to divert up to 4,000 acre-feet of consumptive use of water. CBO estimates that constructing the water system would cost \$53 million over the 2010-2014 period and an additional \$75 million after 2014. In addition, the legislation authorizes \$5 million for DOI to pay operation and maintenance costs associated with certain portions of the regional water system prior to their conveyance to the Pueblos. The bill would authorize \$5.4 million in appropriations for the U.S. government to acquire water rights on behalf of the Pueblos

H.R. 3342 also establishes an Aamodt Settlement Pueblos’ Fund and authorizes the appropriation of \$57.5 million to be deposited into the Fund. The bill requires the Four Pueblo tribes to submit to the Secretary for approval a tribal management plan and to outline the proposed uses of the Fund.

The bill requires the Pueblos to execute a waiver and release all past, present or future claims to surface and groundwater rights of the Pueblos, or the U.S. on behalf of the Pueblos, could have asserted in the Aamodt case.

Additional Information: The Aamodt litigation has been a forty-three year process and involves over 2,500 defendants. The case seeks to adjudicate and quantify water rights in the Rio Pojoaque basin, immediately north of Santa Fe, New Mexico, which is the homeland of the “Four Pueblos” of Tesuque, Nambe, Pojoaque and San Ildefonso. The water basin claimed irrigated acreage calls for the diversion of 16,200 acre-feet per year. According to the committee, the basin is largely rural and agricultural, although residential development is increasing. Sources of employment include the Los Alamos National Laboratory, businesses in the City of Santa Fe, and increasingly the Pueblos or their commercial enterprises.

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: “much of the cost information contained in the engineering report was arrived at three years ago, none of the costs have been indexed, and the total project cost cannot be relied upon. These additional costs would become the responsibility of the United States.”

Some conservative have stated that without transparent and consistent answers from the Administration, they cannot support H.R. 3342 – 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 24, 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. 3342.

Cost to Taxpayers: According to CBO, implementing H.R. 3342 would cost \$71 million over the 2010-2014 period, and \$128 million after 2014, subject to appropriation.

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? Potentially; if the Secretary of the Interior acquires property through *eminent domain* in order to construct the regional water system under the proposed settlement, the bill

would impose a private-sector mandate as defined in UMRA. The cost of the mandate would be the fair market value of the property and any expenses incurred by the owners in transferring that property to the federal government.

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits? Committee Report 111-390 states H.R. 3342 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 111-390 states Article I, section 8 of the Constitution of the United States grants Congress the authority to enact this bill.

RSC Staff Contact: Bruce F. Miller, bruce.miller@mail.house.gov, (202)-226-9720.
