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PYRAMID LAKE PAIUTE TRIBE—FISH SPRINGS RANCH SETTLEMENT ACT

JULY 17, 2014.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. HASTINGS of Washington, from the Committee on Natural Resources, submitted the following

R E P O R T

[To accompany H.R. 3716]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 3716) to ratify a water settlement agreement affecting the Pyramid Lake Paiute Tribe, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE BILL

The purpose of H.R. 3716 is to ratify a water settlement agreement affecting the Pyramid Lake Paiute Tribe.

BACKGROUND AND NEED FOR LEGISLATION

H.R. 3716 approves a settlement between the Pyramid Lake Paiute Tribe (The Tribe) and the Fish Springs Ranch (Fish Springs) while decreasing federal liability related to the federal government's trust relationship with tribes. The bill also protects a private water project that is already constructed and reasonably compensates the Tribe with private funds for any actual or potential resource loss. Since the settlement involves a trust resource, however, it requires federal authorization to take effect. Unlike other pending water rights settlements, the legislation accomplishes this without the use of American taxpayer dollars. The bill does not constitute or include an earmark in violation of the Rules of the House of Representatives. The bill is distinguished from water rights settlement proposals that would violate the earmark definition in House Rules by directing federal funds to "an entity" or are

"targeted to a specific State, locality or Congressional district" (clause 9 of rule XXI.) The bill also does not relate to or resolve federally reserved water right claims (also known as Winters Doctrine rights).

The settlement involves the Pyramid Lake Indian Reservation, which is located 35 miles northeast of Reno, Nevada, in the arid counties of Washoe, Lyon, and Storey. The reservation is 475,000 acres, approximately 112,000 of which are covered by Pyramid Lake. The lake is entirely within the boundary of the Tribe's reservation and is a critical source of water for the Tribe for fishing, economic development, and Tribal tradition.

Fish Springs is a majority-owned subsidiary of Vidler Water Company which locates, aggregates, and develops water rights in agricultural markets for municipal and industrial uses. In 2005, the Bureau of Land Management (BLM) issued a final Environmental Impact Statement (EIS) analyzing the impacts of a Vidler water pipeline project crossing federal lands to provide groundwater from the neighboring Honey Lake Valley of Nevada to the northern Reno area. In 2006, BLM issued a Record of Decision for a water pipeline right of way across public lands for Fish Springs to access water rights.

The Tribe opposed this action asserting, among other things, that approval of the project would allow Fish Springs to draw down water in the Honey Lake Valley through groundwater pumping, which in turn could reduce available supplies on the Pyramid Lake Reservation in violation of the Tribe's rights. The Tribe appealed the BLM's decision to the Department of the Interior Board of Land Appeals and sued the agency in federal court, alleging that the EIS did not meet requirements under the National Environmental Policy Act (NEPA) and that the grant of the right-of-way would violate the trust responsibility of the United States. The U.S. District Court issued a preliminary injunction against BLM and the Interior Department in 2007 after concluding that the Tribe had shown a strong probability of succeeding on the merits of its NEPA claim. Fish Springs and the Tribe subsequently reached a settlement in 2007 which led to the dismissal of the appeal.

The settlement involves two parts. The first part allows the Fish Springs project to go forward. The project has now been constructed and the first part of the settlement has been completed. While the Tribe had the authority to agree to this part of the settlement without federal approval, it did not provide water rights security for Fish Springs. The second part of the settlement will provide for such security and was supplemented in 2013 with a simplified agreement titled "Pyramid Lake Paiute Tribe—Fish Springs Ranch 2013 Supplement to the 2007 Settlement Agreement."

However, the second part of the settlement requires enacted federal legislation for approval. It effectively provides that the Tribe will subordinate its water rights and any groundwater rights it could establish in the future to Fish Springs' right to pump up to 14,108 acre feet of groundwater. The Tribe also agreed to waive potential claims against Fish Springs and the U.S. for damages related to its claims to groundwater and potential impacts to the Pyramid Lake Reservation resulting from Fish Springs' groundwater

pumping actions. The Tribe would receive $3.6 million plus interest from Fish Springs as a result of granting such waivers.

Through enactment of H.R. 3716, the U.S. would extinguish any claims it may have on behalf of the Tribe to the same extent that the Tribe waives its claims against Fish Springs. This means that the U.S. would have no right of its own or obligation on behalf of the Tribe to assert claims waived by the Tribe under the 2013 agreement and the legislation. As provided by the legislation, the Tribe also agrees to waive its claims against the U.S. relating to trust responsibilities for the claims waived as a part of the agreement and the U.S. would bear no liability for the claims waived by the Tribe. The legislation authorizes the Tribe to grant the waivers against both Fish Springs and the U.S. and the bill's provisions would take effect after those waivers are signed and Fish Springs pays the Tribe the $3.6 million plus accrued interest as mentioned above.

COMMITTEE ACTION

H.R. 3716 was introduced on December 12, 2013, by Congressman Mark E. Amodei (R-NV). The bill was referred to the Committee on Natural Resources, and within the Committee to the Subcommittee on Water and Power. On June 10, 2014, the Subcommittee on Water and Power held a hearing on the bill. On June 19, 2014, the Natural Resources Committee met to consider the bill. The Subcommittee on Water and Power was discharged by unanimous consent. No amendments were offered and the bill was adopted and ordered favorably reported to the House of Representatives by unanimous consent.

SECTION-BY-SECTION ANALYSIS

Section 1. Short Title; Table of contents

Section 1 provides the short title and lists the table of contents.

Section 2. Definitions

Section 2 defines key terms.

Section 3. Ratification of agreement

Section 3 ratifies the 2013 agreement between the parties.

Section 4. Wavier and releases of claims

Section 4 provides a waiver and release of certain claims by the Tribe against Fish Springs; a reservation of rights and retention of certain claims by the Tribe against Fish Springs; a waiver and release of certain claims by the Tribe against the U.S.; and a reservation of rights and retention of certain claims by the Tribe against the U.S. This section also extinguishes any claims the U.S. might have on behalf of the Tribe when the waivers become effective and provides that the U.S. will bear no liability for the claims waived by the Tribe. The waivers become effective when they are signed by the Tribe, and Fish Springs makes the payment to the Tribe. The U.S. retains all rights it has to enforce the terms of the right-of-way across federal lands, with the exception that it may not assert a claim on the Tribe's behalf that has been extinguished.

Section 5. Satisfaction of claims

Section 5 provides that the benefits provided to the Tribe under the 2013 agreement and this Act shall be considered full satisfaction of all claims the Tribe waived and released under section 4 and pursuant to the agreement and any claims that the U.S. might make on behalf of the Tribe that are extinguished under section 4. This section also provides that if the Tribe fails to execute the waivers and releases as authorized by this Act within 60 days after the date of enactment, the Act and the agreement are void.

Section 6. Beneficiaries to agreement

Section 6 states that the parties to the 2013 agreement shall be limited to: 1) the parties to the Agreement listed within; 2) any municipal water purveyor that provides Fish Springs project water for wholesale or retail water service to the area serviced by the Fish Springs project; 3) any water purveyor that obtains the right to use project water for purposes other than serving retail or wholesale customers; and 4) any assignee of water rights credits for project water pursuant to the terms of the 2006 banking trust agreement between Fish Springs and neighboring Washoe County.

Section 7. Jurisdiction

Section 7 provides that jurisdiction over any civil actions relating to the enforcement of the agreement or the Act shall be vested in the United States District Court for the District of Nevada.

Section 8. Environmental compliance

Section 8 retains the applicability of environmental laws, including the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, the Safe Drinking Water Act, the Federal Water Pollution Control Act, and the Solid Waste Disposal Act.

Section 9. Miscellaneous provisions

Section 9 covers miscellaneous matters, including provisions that ensure that nothing in the Act establishes a quantified reserved water right or claim as against any party other than Fish Springs and the Tribe.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Natural Resources' oversight findings and recommendations are reflected in the body of this report.

COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. Clause 3(d)(1) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out this bill. However, clause 3(d)(2)(B) of that Rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974. Under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and

section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of the Congressional Budget Office:

H.R. 3716—Pyramid Lake Paiute Tribe—Fish Springs Ranch Settlement Act

H.R. 3716 would ratify a settlement agreement between the Fish Springs Ranch LLC and the Pyramid Lake Paiute Tribe in the state of Nevada. The bill would authorize the tribe to grant waivers to Fish Springs pursuant to the settlement agreement. H.R. 3716 also would waive any claims against the federal government related to the settlement agreement.

CBO estimates that implementing the legislation would have no effect on the federal budget. The federal government is not a party to the settlement agreement between Fish Springs and the tribe, and implementing the legislation would not increase operating costs for the Department of the Interior. Enacting H.R. 3716 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

H.R. 3716 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

On July 9, 2014, CBO transmitted a cost estimate for S. 1818, the Pyramid Lake Paiute Tribe—Fish Springs Ranch Settlement Act, as ordered reported by the Senate Committee on Indian Affairs on May 21, 2014. The two bills are identifical, and the CBO cost estimates are the same.

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

2. Section 308(a) of Congressional Budget Act. As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this bill does not contain any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures. CBO estimates that implementing the legislation would have no effect on the federal budget. The federal government is not a party to the settlement agreement between Fish Springs and the tribe, and implementing the legislation would not increase operating costs for the Department of the Interior.

3. General Performance Goals and Objectives. As required by clause 3(c)(4) of Rule XIII, the general performance goal or objective of this bill is to ratify a water settlement agreement affecting the Pyramid Lake Paiute Tribe.

EARMARK STATEMENT

This bill does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined under clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives.

COMPLIANCE WITH PUBLIC LAW 104–4

This bill contains no unfunded mandates.

COMPLIANCE WITH H. RES. 5

Directed Rule Making. The Chairman does not believe that this bill directs any executive branch official to conduct any specific rule-making proceedings.

Duplication of Existing Programs. This bill does not establish or reauthorize a program of the federal government known to be duplicative of another program. Such program was not included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139 or identified in the most recent Catalog of Federal Domestic Assistance published pursuant to the Federal Program Information Act (Public Law 95–220, as amended by Public Law 98–169) as relating to other programs.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

CHANGES IN EXISTING LAW

If enacted, this bill would make no changes in existing law.

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