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SENATE

{ REPORT
{ 106-415

AMENDING THE ACT ENTITLED “AN ACT RELATING TO THE WATER RIGHTS OF THE AK-CHIN INDIAN COMMUNITY” TO CLARIFY CERTAIN PROVISIONS CONCERNING THE LEASING OF SUCH WATER RIGHTS, AND FOR OTHER PURPOSES

SEPTEMBER 19, 2000.—Ordered to be printed

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

REPORT

[To accompany H.R. 2647]

The Committee on Indian Affairs to which was referred the bill (H.R. 2647) to amend the act entitled “An Act relating to the water rights of the Ak-Chin Indian Community” to clarify certain provisions concerning the leasing of such water rights, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The purpose of H.R. 2647 is to amend An Act Relating to the Water Rights of the Ak-Chin Indian Community, P.L. 98-530, to clarify certain provisions concerning the leasing of such water rights, and for other purposes.

BACKGROUND

The Ak-Chin Indian Reservation was established by Executive Order in 1912 for Pima and Tohono O’odham Indians in the State of Arizona. The reservation consists of approximately 22,000 acres located 30 miles south of Phoenix in central Arizona. Historically, the Ak-Chin Indian Community (Community) met its needs for domestic and agricultural water with ground water pumped from beneath the reservation. However, increasing agricultural development adjacent to the reservation, spurred by the Federal Government’s need for cotton and other commodities to supply America’s armed forces in World War II, also increased the demand for ground water and resulted in a dramatic decline in the water table

under the reservation. The declining water table in turn resulted in greatly increased pumping costs that made farming on the reservation uneconomic and threatened the viability of the Ak-Chin Indian Community.

In response to what became an emergency situation, in 1978 the Congress enacted the Ak-Chin Water Rights Settlement (P.L. 95-328), which authorized the Secretary of the Interior to construct a well field and pipeline system to deliver a temporary supply of water to the reservation until reliable, long-term sources of water could be secured for the Community. However, after the Secretary subsequently discovered that legal availability of the intended source of the temporary supply of water was questionable and that the cost of the planned well field was prohibitively high, the Secretary and the Community renegotiated the terms of the settlement. In 1984, the Congress enacted P.L. 98-530, which amended the 1978 settlement to provide for the Community to receive a permanent supply of Colorado River water delivered through the works of the Central Arizona Project (CAP). In 1992, the Congress enacted section 10 of the P.L. 102-497, which amended the 1984 settlement to authorize the Community to lease portions of its CAP water within Maricopa, Pinal and Pima Counties, but limited the term of any lease to 100 years. However, the 1992 amendment did not authorize the Community to extend a lease beyond the initial 100-year term.

The Administration has expressed technical and generalized substantive concerns about H.R. 2647. In an April 14, 2000 letter to the Community, Deputy Secretary David Hayes raised these concerns and indicated the Department's desire to forestall further action on the bill in light of "broader regulatory and Indian leasing issues in Arizona." He also offered to continue work with the parties on this issue and included a proposed amendment to the bill. Like the Department, the Committee recognizes that such concerns need to be balanced against the Community's desire to take whatever actions are necessary to protect its own interests. The Committee recognizes that the Department's concerns are relevant, especially because other options are available for addressing this apparent conflict between Federal and State law. Amending a Federal statute, especially a statute memorializing an Indian water rights settlement, is not always the best means for resolving similar impasses. Obviously this should encourage parties to explore alternative approaches for resolving such disputes because the enactment of amendments is not a certainty.

SUMMARY OF PROVISIONS

Section 1. Constitutional authority

Section 1 of the bill references the language from Article I, section 8, of the U.S. Constitution which refers to Congressional authority to regulate commerce with Indian tribes.

Section 2. Technical amendment to Ak-Chin Water Use Act of 1984

Subsection (a) provides a short title for this section.

Subsection (b) amends Public Law 98-530, as amended, to all apply to leases, options to renew leases, renewals of options to lease, exchanges of water, and temporary disposal of water as long

as three conditions are met. First, the initial lease term may not be for more than 100 years, with no permanent alienation of the tribal water right. Second, such agreements must be accepted and ratified by a resolution of the Community Council. Finally, the lease must be approved and executed by the Secretary.

Subsection (c) approves a lease agreement between the Community, the United States, and Del Webb Corporation dated December 14, 1996, along with an amendment to that agreement dated January 7, 1999. The Secretary is authorized and directed to execute the amendment.

LEGISLATIVE HISTORY

On July 29, 1999, Representative Shadegg introduced H.R. 2647, which was referred to the Subcommittee on Water and Power of the House Committee on Resources. A companion measure, S. 1913, was introduced in the Senate on November 10, 1999 by Senator Lott, for himself and Senators McClain and Kyl. On February 10, 2000, a hearing was held on H.R. 2647 by the Subcommittee on Water and Power of the House Resources Committee. On March 9, 2000, H.R. 2647 was favorably reported by the Subcommittee. On April 5, 2000 the bill was favorably reported by the House Resources Committee. On May 5, 2000, the House of Representatives voted to suspend the rules and pass H.R. 2647 as introduced. On May 10, 2000, H.R. 2647 was received in the Senate and referred to the Committee on Indian Affairs. On June 29, 2000, H.R. 2647 was considered by the Committee at an open business meeting.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTE

The Committee on Indian Affairs, in an open business session on July 17, 2000, by voice vote ordered the bill, H.R. 2647, reported favorably to the Senate.

SECTION-BY-SECTION ANALYSIS

Section 1. Describes the Constitutional basis for Congressional authority over Indian Affairs.

Section 2. Provides an amendment to the Act of October 19, 1984, P.L. 98-530, as follows:

Subsection (a) provides a short title.

Subsection (b) amends the 1994 Act by authorizing lease extension and options to lease, as long as they are approved by the Secretary of Interior. The December 14, 1996 option and lease between the Community, the United States, and Del Webb Corporation is approved. This subsection also authorizes and directs the Secretary to approve an amendment dated January 7, 1999.

COST AND BUDGETARY CONSIDERATIONS

The cost estimate for, H.R. 2647, as provided by the Congressional Budget Office, is set forth below:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, August 2, 2000.

Hon. BEN NIGHTHORSE CAMPBELL,
Chairman, Committee on Indian Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2647, the Ak-Chin Water Use Amendments Act of 2000.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Lanette Keith.

Sincerely,

STEVEN M. LIEBERMAN
(For Dan L. Crippen, Director).

Enclosure.

H.R. 2647—Ak-Chin Water Use Amendments Act of 2000

H.R. 2647 would allow the Ak-Chin Indian Community in Arizona to extend and renew leases of its settlement water for off-reservation use. Under current law, such leases may not exceed 100 years. In addition, the act would ratify and approve a lease agreement among the Ak-Chin Indian Community, the United States, and the Del Webb Corporation.

Based on information from the Bureau of Indian Affairs, CBO expects that H.R. 2647 would have no significant effect on the agency's administrative costs. Therefore, we estimate that any impact on discretionary spending as a result of this legislation would be negligible. CBO estimates that implementing H.R. 2647 would have no effect on direct spending or receipts, because any income resulting from additional leases would be paid directly to the Ak-Chin Community. Hence, pay-as-you-go procedures would not apply to the act.

H.R. 2647 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

On April 18, 2000, CBO transmitted a cost estimate for H.R. 2647, the Ak-Chin Water Use Amendments Act of 1999, as ordered reported by the House Committee on Resources. The two versions of the legislation are very similar and our cost estimates are identical.

The CBO staff contact is Lanette Keith. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

EXECUTIVE COMMUNICATIONS

The views of the Administration on are set forth in the following letter from Deputy Secretary of Interior David J. Hayes, to Delia M. Carlyle, Chairman of the Ak-Chin Indian Community dated on April 14, 2000:

THE DEPUTY SECRETARY
OF THE INTERIOR,
Washington, DC, April 14, 2000.

Re H.R. 2647, Ak Chin Indian community water use amendments

DELIA M. CARLYLE,
Chairman, Ak Chin Indian Community,
Maricopa, AZ.

DEAR CHAIRMAN CARLYLE: This is to follow up on our March 24, 2000, meeting regarding the Department of the Interior's concerns about H.R. 2647, the Ak Chin Indian Community Water Use Amendments. I appreciate the time you and your attorneys spent with us discussing this difficult matter. While we have differing views about the bill and its potential effects on the Community and other tribes in Arizona, I believe our dialogue was productive.

While I am disappointed that the Community feels it must press forward with its bill before the Department is able to resolve broader regulatory and Indian leasing issues in Arizona, I certainly understand and appreciate the Community's need to take the action it feels necessary to protect its interests.

I would like to continue working with the Community to see if there is any way that we can reach a compromise on H.R. 2647. I do not believe that it is appropriate for the Department and the Community to continue to be at odds over this issue.

In the interests of continued discussions, I am interested in your thoughts on possible changes to H.R. 2647 along the lines set forth in the enclosure to this letter. Such changes would have the benefit of allowing the Community and Del Webb to immediately proceed with proposed lease extensions, but would avoid, at least for the time being, the more controversial issue of the need for 100 year renewal periods in light of Arizona's recent interpretation of its Assured Water Supply regulations.

Thank you again for your time and attention to this matter. I am hopeful that together we can find a way forward that protects the interests of the Ak Chin Community, but does not raise complications for other tribes that have not yet been able to achieve the benefits of a water rights settlement.

Sincerely,

DAVID J. HAYES.

Enclosure.

PROPOSED AMENDMENTS TO H.R. 2647

1. Delete subsections 2(a) and 2(b). Amend subsection 2(c) as follows:

Notwithstanding the provisions the Act of October 19, 1984 (Public Law 98-530; 98 Stat. 2698), as amended by section 10 of the Act of October 24, 1992 (Public Law 102-497; 106 Stat. 3258), the option and lease agreement among the Ak Chin Indian Community, the United States of America, and the Del Webb Corporation, dated as of December 14, 1996, and the Amendment Number One thereto among the Ak Chin Indian Community, the United States of America, and the Del Webb Corporation, dated as of January 7, 1999, are hereby ratified and approved. The Secretary of the Interior is hereby authorized [and directed] to execute Amendment Number

One [not later than 60 days after the date of the enactment of this Act].

REGULATORY IMPACT STATEMENT

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires each report accompany a bill to evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill H.R. 2647. The Committee finds that the regulatory impact of H.R. 2647 will be negligible.

CHANGES IN EXISTING LAW

In compliance with subsection 12 of the rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill are required to be set forth in the accompanying Committee report. The Committee states that enactment of H.R. 2647 will result in the following changes in existing law.

SECTION 2 OF THE ACT OF OCTOBER 19, 1984

AN ACT Relating to the water rights of the Ak-Chin Indian Community

SEC. 2. (a) * * *

* * * * *

[(j) The Ak-Chin Indian Community (hereafter in this Act referred to as the "Community") shall have the right to devote the permanent water supply provided for by this Act to any use, including agricultural, municipal, industrial, commercial, mining, recreational or other beneficial use, in the areas initially designated as the Pinal, Phoenix and Tucson Active Management Areas pursuant to the Arizona Groundwater Management Act of 1980, laws 1980, fourth special session, chapter 1. The community is authorized to lease or enter into an option to lease, extend leases, exchange or temporarily dispose of water to which it is entitled for beneficial use in the areas initially designated as the Pinal, Phoenix and Tucson Active Management Areas pursuant to the Arizona Groundwater Management Act of 1980, laws 1980, fourth special session, chapter 1: Provided, That the term of any such lease shall not exceed 100 years and the Community may not permanently alienate any water right. In the event the Community leases, extends leases, exchanges or temporarily disposes of water, such action shall be pursuant to a contract that has been accepted and ratified by a resolution of the Ak-Chin Indian Community Council and approved and executed by the Secretary.]

(j)(1) The Ak-Chin Indian Community (hereafter in this Act referred to as the "Community") shall have the right to devote the permanent water supply provided for by this Act to any use, including agricultural, municipal, industrial, commercial, mining, recreational, or other beneficial use, in the areas initially designated as the Pinal, Phoenix, and Tucson Active Management Areas pursuant to the Arizona Groundwater Management Act of 1980, laws 1980, fourth special session, chapter 1. The Community is authorized to lease or enter into options to lease, to renew options to lease, to extend the initial terms of leases for the same or a lesser term as the initial term of the lease, to renew leases for the same or a

lesser term as the initial term of the lease, to exchange or temporarily dispose of water to which it is entitled for the beneficial use in the areas initially designated as the Pinal, Phoenix, and Tucson Active Management Areas pursuant to the Arizona Groundwater Management Act of 1980, laws 1980, fourth special session, chapter 1.

(2) Notwithstanding paragraph (1), the initial term of any lease entered into under this subsection shall not exceed 100 years and the Community may not permanently alienate any water right. In the event the Community leases, enters into an option to lease, renews an option to lease, extends a lease, renews a lease, or exchanges or temporarily disposes of water, such action shall only be valid pursuant to a contract that has been accepted and ratified by a resolution of the Ak-Chin Indian Community Council and approved and executed by the Secretary.

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