

Calendar No. 531

109TH CONGRESS }
2d Session }

SENATE

{ REPORT
{ 109-291

AMENDING THE SHIVWITS BAND OF THE PAIUTE INDIAN TRIBE OF UTAH
WATER RIGHTS SETTLEMENT ACT TO ESTABLISH AN ACQUISITION
FUND FOR THE WATER RIGHTS AND HABITAT ACQUISITION PROGRAM

JULY 24, 2006.—Ordered to be printed

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

R E P O R T

[To accompany S. 3501]

The Committee on Indian Affairs, to which was referred the bill (S. 3501) to amend the Shivwits Band of the Paiute Indian Tribe of Utah Water Rights Settlement Act to establish an acquisition fund for the water rights and habitat acquisition program, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The bill to amend the Shivwits Band of the Paiute Indian Tribe of Utah Water Rights Settlement Act, P.L. 106-263 (114 Stat. 737, August 18, 2000), corrects deficient language in Section 10(f) of the Settlement Act. Section 10(f) authorized \$3 million to be placed in a trust fund to implement a water rights and habitat acquisition program for the Santa Clara river basin in Utah but the language was insufficient to accomplish the intent of the provision. S. 3501 corrects the language deficiency, allowing Department of the Interior to establish the trust fund.

BACKGROUND

The Shivwits Band of the Paiute Indian Tribe of Utah Water Rights Settlement Act, P.L. 106-263 (114 Stat. 737, August 18, 2000), ratified a negotiated settlement of the Shivwits Band of Paiute Indians' claims to water rights in the Santa Clara River. Section 10(f) of the Act authorized the Secretary of the Interior to establish a water rights and habitat acquisition program in the Virgin River Basin primarily for the benefit of native plant and animal species in the Santa Clara River Basin listed under the Endan-

gered Species Act and secondarily for the benefit of listed species in the Virgin River Basin. However, when the Department of the Interior attempted to implement the provision in Section 10(f), to deposit and maintain the \$3.0 million in an interest bearing account, the Department of Treasury advised the Department of the Interior that the language in Section 10(f) was insufficient for this purpose. The Department of the Interior, based on guidance from the Department of Treasury, provided proposed legislation to correct the deficiency in the original statutory language.

The Committee received communication from the Department of the Interior, dated May 10, 2005, on Senate Bill 536. S. 536, the Native American Omnibus Act of 2005 contained separate provisions dealing with a variety of topics related to Indians or Indian tribes. The Department included a request to introduce legislation for Shivwits as an additional technical correction.

LEGISLATIVE HISTORY

S. 3501 was introduced on June 13, 2006, by Senator McCain and was referred to the Committee on Indian Affairs. On June 22, 2006, S. 3501 was unanimously passed out of the Committee and ordered reported without amendment.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTE

On June 22, 2006, the Committee, in an open business session, considered S. 3501. By a unanimous voice vote, the Committee ordered the bill reported favorably to the full Senate with the recommendation that the bill do pass.

SECTION-BY-SECTION ANALYSIS

Section 1

This section amends section 10(f) of the Shivwits Band of the Paiute Indian Tribe of Utah Water Rights Settlement Act, P.L. 106-263 (114 Stat. 737, August 18, 2000). This amendment adds a new subsection (g) that establishes the Acquisition Fund, specifies the type of investments that may be made, and requires any income from the investments be credited to the Acquisition Fund.

COST AND BUDGETARY CONSIDERATIONS

The Congressional Budget Office cost estimate for S. 3501 is set forth below:

S. 3501—A bill to amend the Shivwits Band of the Paiute Indian Tribe of Utah Water Rights Settlement Act to establish an acquisition fund for the water rights and habitat acquisition program

S. 3501 would amend the Shivwits Band of the Paiute Indian Tribe of Utah Water Rights Settlement Act to establish a special fund for the water rights and habitat acquisition program created by that act. The acquisition program would use the resources in the special fund for the conservation and recovery of native plant or animal species in the Santa Clara River Basin. The bill would appropriate \$3 million to the new special fund. (Under current law, that amount is authorized to be appropriated to obtain water rights

and real property.) As a result, CBO estimates that S. 3501 would increase direct spending by \$3 million over the 2007–2016 period.

S. 3501 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.

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

REGULATORY AND PAPERWORK IMPACT STATEMENT

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires that each report accompanying a bill to evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill. The Committee has concluded that the regulatory and paperwork impact should be minimal.

EXECUTIVE COMMUNICATIONS

The Committee has not received official executive communications on S. 3501.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, DC., May 10, 2005.

Hon. JOHN MCCAIN,
*Chairman, Committee on Indian Affairs,
U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: This letter sets forth the views of the Department of the Interior on S. 536, a bill “to make technical corrections to laws relating to Native Americans, and for other purposes.” We support the enactment of S. 536 as ordered reported by the Senate Committee on Indian Affairs on March 9, 2005. However, the Department suggests the following amendments be made to the bill.

Section 101. Indian Financing Act amendments

Section 101 of the bill would amend the Indian Financing Act of 1974 with the intent of expediting the implementation of a secondary market for loans guaranteed under the Bureau of Indian Affairs Loan Guaranty Program. We request the following amendment be made to this section which will allow Indian and non-Indian lenders to loan money to Indian-owned businesses. This will allow the Bureau of Indian Affairs (BIA) to provide financial assistance to a broader number of American Indians and Alaska Natives.

We suggest that Section 101(d) be amended to read:

(d) Loans Ineligible for Guaranty or Insurance.—Section 206 of the Indian Financing Act of 1974 (25 U.S.C. 1486) is amend by inserting “(not including an eligible Community Development Finance Institution)” after “Government”.

The Administration has some additional concerns regarding compensation of secondary market fiscal agents and funding for the cost of administering the secondary market, which we look forward to discussing with the Committee.

Section 104. Indian Pueblo Land Act amendments

Section 104 provides for the Indian Pueblo Land Act amendments to clarify criminal jurisdiction with the exterior boundaries of the Pueblo owned land grants. Criminal jurisdiction within the Pueblo grants has long been a problem for many of the Pueblos, the counties and cities in which they are located, and the U.S. Attorney's office. We support the legislative attempt to clarify the jurisdictional issues. However, we suggest sections 20(b) and (c) be amended because it does not precisely track the allocation of jurisdiction applicable in Indian country generally under the Indian Civil Rights Act (ICRA). The ICRA recognizes the inherent jurisdiction of tribes over any person who is an "Indian." This definition would ensure that Pueblo would have jurisdiction over certain persons who are not enrolled members of a tribe, such as minor children who have not yet been enrolled as a member.

In subsection (b) by adding a "," after Pueblo and by striking "of another Indian tribe" and inserting in lieu thereof "non-member Indian".

In subsection (d) by striking "a member of an Indian tribe" and inserting in lieu thereof "an Indian".

Section 105. Prairie Island Land Conveyance

Section 105 would take land including all improvements, cultural resources, and sites on the land, into trust for the Prairie Island Indian Community. We suggest striking the words "all improvements" from Sec. 105(a) so it reads as follows:

(a) In General.—The Secretary of the Army shall convey all right, title, and interest of the United States in and to the land described in subsection (b), including cultural resources, and sites on the land, subject to the flowage and sloughing easement described in subsection (d) and to the conditions stated in subsection (f), to the Secretary, to be—* * *

The Department feels this change is necessary to address any uncertainty about the Government having a fiduciary obligation to repair and maintain any acquired improvements.

In addition, section 105 would require a boundary survey to be conducted no later than 5 years after the date of conveyance. The boundary survey should be required prior to the conveyance, to avoid any disputes or the need for corrections after the conveyance has occurred.

Section 106. Binding arbitration for Gila River Indian Community reservation contracts

This section would provide the Gila River Indian Community the authority to enter into binding arbitration agreements for any lease or contract the tribe may enter into affecting the tribe's land. We want to make it clear that it is our view that this section would not require the United States to enter into binding arbitration or waive the sovereign immunity of the United States.

Section 111. Indian Arts and Crafts

The Department requests that the amendments to the Indian Arts and Crafts Act (Act) include a provision authorizing the Indian Arts and Craft Board (Board) to recommend the Secretary impose administrative fines for violations of the Act. Administrative

finances would be imposed for those violations that would not otherwise be serious enough to warrant a full civil or criminal action being pursued by the United States Attorney General. Many other federal agencies, including those within the Department, have the authority to levy administrative fines. Granting the Board similar authority would allow it to take action in meritorious cases for which the Attorney General is unlikely to devote resources.

In addition, the Department requests that any amounts recovered as a result of an administrative fine or civil action, after making reimbursements contemplated in this section, be paid to the Indian Arts and Crafts Board for statutorily mandated nonenforcement activities such as trademark protection and the promotion of authentic Indian Arts and Crafts.

The Department supports extending investigative authority to other federal law enforcement agencies. To facilitate the usefulness of that, we suggest the Committee clarify a potential jurisdictional issue that may arise. Specifically, BIA law enforcement may not investigate outside of Indian country. When off reservation, the Officer may only "observe" a violation rather than continue his investigation without contacting the appropriate federal enforcement agency, in most cases the FBI. The investigating officer should be granted the authority to be able to cross jurisdictions for the express purpose of enforcing the Indian Arts and Crafts Act. For example, BIA law enforcement officers should be granted the authority to specifically investigate violations of the Indian Arts and Crafts Act outside of Indian country. The Department will work with the Department of Justice on this expansion of jurisdictional authority.

Section 111(b)(7) states in part that the Department shall promulgate regulations which includes a definition of "Indian product" and "examples of each Indian product". The regulations currently provide such a list. Therefore, this provision should be deleted. However if this provision remains, the phrase "examples of each Indian product" should be amended to "examples of Indian products" so that the published list does not become an exclusive list that courts interpret as precluding action for items that may not be specifically included on the list. In addition, the Department is concerned that the amended definitions do not include a definition for "product of a particular Indian tribe or Indian arts and crafts organization." Excluding products of a particular Indian tribe or Indian arts and crafts organization could potentially remove the right of a tribe to protect their cultural heritage by using their tribal name in the description of a particular art or craft work for which their Tribe specializes in or is particularly known for.

The Department requests an additional conforming amendment be made to the Indian Arts and Crafts Act. The trademark provision, section 102 of the Act, permits the Board to register any trademark owned by the Government in the U.S. Patent and Trademark Office (USPTO) without charge and assign it and the goodwill associated with it to an individual Indian or Indian tribe without charge. The Act, however, does not permit the board to register trademarks owned by individual Indian artists, artisans, tribes, and businesses for arts and crafts marketing purposes. Under the Lanham Act, the party registering the trademark must also own the mark. Therefore, if the Board attempted to register

a trademark owned, for example, by a Navajo tribal arts and crafts enterprise, the application would be denied. Therefore, the word “government” should be struck in order to allow the Board to act as an agent and file without charge trademark registration applications with the USPTO for trademarks that are owned by an individual Indian, Indian tribe, or Indian arts and crafts organization.

Finally, the Department of Justice advises that there may be constitutional concerns with section 111(b), which would amend section 6 of the Act by defining the term “Indian tribe” to include “an Indian group that has been formally recognized as an Indian tribe by . . . (i) a State legislature; (ii) a State commission; or (iii) another similar organization vested with State legislative tribal recognition authority.” Section 111(c) would add the same definition to 18 U.S.C. 1159(c). Under the Constitution, only the federal government has authority to recognize Indian tribes. See, e.g., *McClanahan v. Arizona State Tax Comm’n*, 411 U.S. 164, 172 n.7 (1973) (source of Federal authority over Indian matters “derives from Federal responsibility for regulating commerce with Indian tribes and for treaty making”). In the absence of such federal recognition, the term “Indian tribe” might be viewed as a racial classification subject to strict scrutiny under *Adarand Constructors, Inc. v. Pena*, 515 U.S. 200, 235 (1995), rather than the more deferential review accorded to classifications based on membership in a federally recognized Indian tribe under *Morton v. Mancari*, 417 U.S. 535 (1974). The part of this definition relating to recognition by state entities should be deleted.

Section 114. Research and educational activities

Section 114 would add an additional authorized use of funds (research and educational activities relating to Native Hawaiian law) to the Education for Native Hawaiians program, which is administered by the Department of Education. The Department of Education objects to this amendment. The purpose of the program should continue to be to strengthen educational programs and services for Native Hawaiians (pre-K through postsecondary), in order to raise the educational achievement of that population. This additional authorized activity, research on Native Hawaiian law, would be for a different purpose and thus has the potential to dilute the impact of the program. Moreover, the Department of Education has already received earmarked funding, through the fiscal year 2005 omnibus appropriations act, to establish a center of education in Native Hawaiian law at the University of Hawaii. The proposed amendment to allow for the support of research and education in Native Hawaiian law would, in other words, be enacted after the appropriation of funding for such research and education (and most likely after the Department of Education has made a grant for the new center). Therefore, this provision is unnecessary.

Section 121. Definition of Indian student count

Section 121 amends the definition of “Indian student count” used in the formula by which the Department of Education calculates awards to tribally-controlled postsecondary vocational and technical institutions under the Carl D. Perkins Vocational and Technical Education Act. Education has advised that it is developing the Indian student count data needed to calculate the FY 2005 awards,

and is concerned that if the definitional changes were to go into effect in FY 2005, they would likely delay the FY 2005 grants. In order to prevent any the disruption of the award of these grants, Education recommends that section 121 be amended to clarify that its definition changes would take effect beginning in FY 2006.

Section 122. Native Nations leadership, management, and policy

Section 122 would amend the Morris K. Udall Scholarship and Excellence in National Environmental and Native American Public Policy Act of 1992 (20 U.S.C. 5602). The Department of Justice advises that there may be constitutional concerns with the amendment to the Morris K. Udall Scholarship Act of 1992, 20 U.S.C. 5605(a)(1). The amendment to subparagraph (C) would permit awards to members of state-recognized tribes. As stated above, Department of Justice is concerned that this may be viewed as a racial classification subject to strict scrutiny under *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 235 (1995), rather than the more deferential review accorded to classifications based on membership in a federally recognized Indian tribe under *Morton v. Mancari*, 417 U.S. 535 (1974). Therefore, the Department of Justice recommends that Section 122(c)(C)(iii) be deleted.

Section 132. Border preparedness on indian land

Section 132 would amend Subtitle D of Title IV of the Homeland Security Act of 2002 (6 U.S.C. 251 et seq.) by adding a new Section 447 entitled “Border Preparedness Pilot Program on Indian Land.” The Department of the Interior supports the amendments outlined in the new Section 447. By specifically including Indian tribes, it enhances their ability to protect the border integrity of the United States. However, the Department of Homeland Security recommends the following amendments:

Proposed section 447(a)(2): The Department of Homeland Security believes that the proposed definition of Indian tribe would preclude the participation of Alaska Native organizations. Therefore, the Department of Homeland Security recommends amending the definition to read as follows:

(2) INDIAN TRIBE.—The term ‘Indian tribe’ means all Indian entities listed in the Federal Register list of Indian entities recognized as eligible to receive services from the United States, published pursuant to section 104 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 479a–1).

Proposed Section 447(b) and (c)(1): The Department of Homeland Security conducts preparedness programs, such as the proposed pilot program, through its Office of Domestic Preparedness. To ensure that the tribes are treated equitably and provided access to the full range of preparedness programs, the Department of Homeland Security recommends that the matter preceding paragraph (1) of subsection (b) be amended by striking “Under Secretary for Board and Transportation Security” and inserting “Office of Domestic Preparedness”. The Department of Homeland Security recommends that a similar amendment be made to proposed section (c)(1).

Finally, to clarify jurisdiction, the Department of Homeland Security recommends that proposed section 447 be amended by redesignating proposed subsection (e) as proposed subsection (f); and

after proposed subsection (d), by inserting the following new subsection:

“(e) LIMITATION.—Nothing in this section shall be construed as a grant of statutory authority to an Indian tribe, tribal organization, or tribal government to exercise any authority vested in the Secretary of Homeland Security or enforce any customs, immigration, or maritime law.”

TITLE II—OTHER AMENDMENTS TO LAWS RELATING TO NATIVE
AMERICANS

Section 211. Navajo Health Contracting

Section 211 would require that the Navajo Health Foundation/Sage Memorial Hospital at Ganado, AZ, be considered a tribal contractor under the Indian Self-Determination and Education Assistance Act (ISDEAA) for purposes of extending Federal Tort Claims Act (FTCA) coverage to contract employees, to provide access to the Federal sources of supply, and to make patient records eligible for storage by Federal Records Centers to the same extent and in the same manner as other Department of Health and Human Services patient records.

If enacted, this section would allow Navajo Nation Health Foundation (NHF) access to these services and benefits. This access to benefits and services would continue until such time as the NHF’s current funding is adjusted by Congress to allow them to fully negotiate a contract under ISDEAA. This provision would establish a precedent for tribes/tribal organizations seeking to negotiate an ISDEAA contract to seek legislative authorization to select certain provisions in the ISDEAA that would be applied to them until such time as they are able to complete all requirements required in the ISDEAA.

The Department of Health and Human Services is concerned that this provision circumvents the contracting requirements of the ISDEAA and selectively makes provisions applicable to the Navajo Health Foundation. In addition, the Department of Justice is concerned with selectively extending FTCA coverage to entities that do not meet the full set of requirements under the ISDEAA. For these reasons, the Department of Health and Human Services and Department of Justice recommend that section 211 be deleted.

Section 221. Probate Reform

The Department recommends some additional amendments be made to the American Indian Probate Reform Act (AIPRA). We recommend adding a new subsection (g) to section 221 that would delete the paragraph in AIPRA regarding Family Cemetery Plots. The Department does not hold or manage any cemetery plots in trust status. Therefore, they would not be subject to the Department’s probate procedures. Family cemetery plot probate issues fall outside the jurisdiction of the federal government.

(g) RULE OF CONSTRUCTION.—subsection (i) of Section 207 of the Indian Land Consolidation Act (25 U.S.C. 2206) (as amended by section 3(d) of the American Indian Probate Reform Act of 2004 (Public Law 108–374) is amended by striking paragraph (7).

In addition, we request the following technical amendments be included in this section:

- Under Partition of highly fractionated Indian lands, section 2204(d)(2)(I)(iii)(IV)(aa) should be amended by striking “less” and inserting in lieu thereof “more”.
- Under Descent and distribution, estate planning—
 - section 2206(f)(2)(A) should be amended by striking “advise”
 - section 2206(f)(2)(B) should be amended by striking “among” and inserting in lieu thereof “as authorized by the Secretary for” general rules governing probate, section 2206(k)(2)(A)(ii)(I) should be amended by striking “date of enactment” and inserting in lieu thereof “effective date”.

Additional amendments

The Department also suggests additional amendments be added to S. 536. We recommend the following two amendments to the Shivwits Water Rights Settlement and the Individuals with Disabilities Education Act be added to the end of Title II. We also recommend two new titles be added to the bill that would provide a technical correction to address the decisions in *Youpee v. Babbitt* and *DuMarce v. Norton* and give the Secretary the authority to address unclaimed property.

Subtitle D—Shivwits water rights settlement

Section 10 of P.L. 106–263 authorizes a water rights and habitat acquisition program for the Santa Clara and Virgin Rivers as a safety net to address environmental consequences of the water settlement agreement that may not have been evident at the time of enactment. Congress appropriated the \$3.0 million authorized to be appropriated by Section 10. When the Department attempted to implement the provision in Section 10, which was intended to maintain the \$3.0 in an interest bearing account, the Treasury Department advised that the language in Section 10 was insufficient for this purpose. Based on guidance from the Treasury Department, the proposed technical amendment was developed to correct the deficiency in the original statutory language.

Section 10 of the Shivwits Band of the Paiute Indian Tribe of Utah Water Rights Settlement Act of August 18, 2000, Public Law 106–263 (114 Stat.737), is amended by:

(1) Deleting the second sentence in subsection 10(f) (114 Stat. 744) which reads: “The Secretary is authorized to deposit and maintain this appropriation in an interest bearing account, said interest to be used for the purposes of this section.”

(2) Adding the following subsection 10(g):

“(g) ESTABLISHMENT OF ACQUISITION FUND.—There is established in the Treasury of the United States a fund to be known as the Santa Clara Water Rights and Habitat Acquisition Fund (hereinafter called the “Acquisition Fund”). The Secretary shall deposit into the Acquisition Fund the funds appropriated pursuant to subsection (f). The Acquisition Fund principal and any income thereon shall be managed in accordance with this section 10.”

(3) Adding the following subsection 10(h):

“(h) INVESTMENT OF ACQUISITION FUND.—The Secretary of the Interior may request the Secretary of the Treasury to invest such portion of the Acquisition Fund as is not, in the Secretary of the Interior’s judgment, required to meet the current needs of the

fund. Such investments shall be made by the Secretary of the Treasury in public debt securities with maturities suitable to the needs of the fund, as determined by the Secretary of the Interior, and bearing interest at a rate determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturity.”

Subtitle E—Individuals with Disabilities Education Improvement Act

Section 611(e)(1)(A) of the Individuals with Disabilities Education Act (IDEA), as amended by Public Law 108–446, the Individuals with Disabilities Education Improvement Act of 2004 allows states and outlying areas to reserve money for state administrative purposes, but omitted language allowing the Secretary of the Interior to reserve money for state administrative purposes. While arguably the Department of Education can permit this use of funds in regulations, the support for this use would be more clearly supported if it were included in the statute. The suggested addition to section 611(e)(1)(A) provided below, would clarify that the Secretary of the Interior is not barred from reserving a portion of the Special Education, Part B dollars, for administrative costs, similar to all states and outlying areas that also receive these dollars.

In addition, section 611(h)(1)(A), now imposes statutory deadlines as to when the Department of the Interior is to distribute the IDEA Part B dollars they receive. This provision is unlike any requirement imposed on any state or outlying area. This provision requires the Secretary of the Interior to distribute these dollars without first determining what the need is at each school, or without looking first to the dollars appropriated to the Department of the Interior for special education services. Therefore, the Department of the Interior will no longer be able to use the individual need of each student as the basis for the distribution of the Part B dollars or ensure that funding given to the schools is being used properly. Therefore, the Department recommends the deletion of section 611(h)(1)(A)(i) and (ii), which would allow the Secretary of the Interior to distribute IDEA Part B dollars based on student need and removes the distribution dates.

Section 611 of the Individuals with Disabilities Education Act is amended by:

(1) Adding subsection (iii) to section 611(e)(1)(A):

“(iii) The Secretary of the Interior may reserve for each fiscal year not more than 5 percent of the amount the Department of the Interior receives under (h)(1)(A) for the fiscal year or \$800,000 (adjusted in accordance with subparagraph B), whichever is greater.”

(2) Deleting in section 611(h)(1)(A) the following sentence: “Of the amounts described in the preceding sentence—(i) 80 percent shall be allocated to such schools by July 1 of that fiscal year; and (ii) 20 percent shall be allocated to such schools by September 30 of that fiscal year.”

Youpee and Sisseton-Wahpeton

A new title should be added to S. 536 that would provide a technical correction to address the decisions in *Youpee v. Babbitt* and *DuMarce v. Norton*. The United States Supreme Court in *Youpee*

held the escheat provision of the Indian Land Consolidation Act as unconstitutional. In *DuMarce*, the District Court for the District of South Dakota found unconstitutional a statute under which any interest of less than two and a half acres would automatically escheat to the Sisseton Wahpeton Sioux Tribe. As a result of these two decisions, the Department is faced with having to revest interests that escheated under both statutes back to the rightful heir. We request that a new title be added declaring that any interest that escheated pursuant to these Acts be vested in the tribe to which they escheated unless they have been revested in the name of the heirs of the allottee by the Secretary since the escheatment. The provision should provide that the escheat of those interests to the tribes involved a taking by the United States and should provide compensation to the heirs of those escheated interests.

Unclaimed property

Under state law, a state may sell or auction off certain personal property that has not been claimed by an owner within a certain amount of time, usually within 5 years. This is not the case with inactive Individual Indian Money accounts or real property interests. Often times the whereabouts of account owners are unknown to the Department because account holders do not respond to our requests for address information and our repeated attempts to locate them have been unsuccessful. This may be because the small amount in their account does not make such effort worthwhile. However, the Department must account for every interest regardless of size and we do not have the authority to stop administering accounts where whereabouts of the owner are unknown. We must have the authority to close these small accounts and restore economic value to the assets if the owner does not claim their interest within a certain amount of time. If the owner does not come forward, the revenue generated from the interest should be held in a general holding account against which claims could be made in the future if the owner's whereabouts become known or used to further the fractionation program.

Conclusion

The Department looks forward to working with the Committee on addressing the above issues. The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

MATT EAMES,
Director, Office of Congressional and Legislative Affairs.

CHANGES IN EXISTING LAW

In compliance with subsection 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill S. 3501, as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new language to be added in italic, existing law to which no change is proposed is shown in roman):

Sec.10 Water Rights and Habitat Acquisition Program.

* * * * *

(f) AUTHORIZATION.—There is authorized to be appropriated from the Land and Water Conservation Fund for fiscal years prior to the fiscal year of 2004, a total of \$3,000,000 for the water rights and habitat acquisition program authorized in this section. [The Secretary is authorized to deposit and maintain this appropriation in an interest bearing account, said interest to be used for the purposes of this section.] The funds authorized to be appropriated by this section shall not be in lieu of or supersede any other commitments by Federal, State, or local agencies. The funds appropriated pursuant to this section shall be available until expended, and shall not be expended for the purpose set forth in subsection (a)(2) until the Secretary has evaluated the effectiveness of the instream flow required and provided by the Santa Clara Project Agreement, and has assured that the appropriations authorized in this section are first made available for the purpose set forth in subsection (a)(1).

1(g) ACQUISITION FUND.—

1(1) ESTABLISHMENT.—There is established in the Treasury of the United States a fund to be known as the ‘Santa Clara Water Rights and Habitat Acquisition Fund’ (referred to in this section as the ‘Acquisition Fund’), consisting of—

“(A) such amounts as are appropriated to the Acquisition Fund under paragraph (2); and

“(B) any income earned on investment of amounts in the Acquisition Fund under paragraph (4).

“(2) TRANSFERS TO ACQUISITION FUND.—There are appropriated to the Acquisition Fund amounts equivalent to amounts made available under subsection (f).

“(3) EXPENDITURES FROM ACQUISITION FUND.—On request by the Secretary, the Secretary of the Treasury shall transfer from the Acquisition Fund to the Secretary such amounts as the Secretary determines to be necessary to carry out this section.

“(4) INVESTMENT OF AMOUNTS.—

“(A) IN GENERAL.—On request by the Secretary, the Secretary of the Treasury shall invest such portion of the Acquisition Fund as is not, in the judgment of the Secretary, required to meet current withdrawals.

“(B) OBLIGATIONS.—Investments may be made only in public debt securities with maturities suitable to the needs of the Acquisition Fund, as determined by the Secretary, that bear interest at a rate determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturity.

“(C) ACQUISITION OF OBLIGATIONS.—For the purpose of investments under subparagraph (A), obligations may be acquired—

“(i) on original issue at the issue price; or

“(ii) by purchase of outstanding obligations at the market price.

“(D) SALE OF OBLIGATIONS.—Any obligation acquired by the Acquisition Fund may be sold by the Secretary of the Treasury at the market price.

“(E) CREDITS TO ACQUISITION FUND.—The income on, and the proceeds from the sale or redemption of, any obligations held in the Acquisition Fund shall be credited to, and form a part of, the Acquisition Fund.

“(5) TRANSFERS OF AMOUNTS.—

“(A) IN GENERAL.—The amounts required to be transferred to the Acquisition Fund under this subsection shall be transferred at least monthly from the general fund of the Treasury to the Acquisition Fund on the basis of estimates made by the Secretary of the Treasury.

“(B) ADJUSTMENTS.—Proper adjustment shall be made in amounts subsequently transferred to the extent prior estimates were in excess of or less than the amounts required to be transferred.

“(6) MANAGEMENT.—The Acquisition Fund (including the principal of the Acquisition Fund and any interest generated on that principal) shall be managed in accordance with this section.”.

