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A BILL TO AUTHORIZE THE MESCALERO APACHE TRIBE TO LEASE ADJUDICATED WATER RIGHTS

SEPTEMBER 19, 2012.—Ordered to be printed

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

R E P O R T

[To accompany S. 134]

The Committee on Indian Affairs, to which was referred the bill (S. 134) to authorize the Mescalero Apache Tribe to lease adjudicated water rights, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The purpose of S. 134 is to authorize the Mescalero Apache Tribe to lease certain adjudicated water rights.

BACKGROUND

The Mescalero Apache Tribe (the "Tribe") owns water rights that were adjudicated to it in *State* v. *Lewis,* 116 N.M. 194, 861 P. 2d 235 (1993). The Tribe and neighboring communities experiencing water shortages have expressed an interest in leasing a portion of the Tribe's adjudicated water rights but lack the authority to do so. The Indian Non-Intercourse Act [1] has generally been understood to mandate Congressional Authorization for a tribe to lease its water rights.[2]

NEED FOR LEGISLATION

Subject to certain limitation and conditions, S. 134 would authorize the Tribe to lease or otherwise transfer all or a portion of its

[1] Codified at 25 U.S.C. § 177.
[2] *See* Felix Cohen, Cohen's Handbook of Federal Indian Law, 1193 (Nell Jessup Newton, et al. ed., 2005 ed. 2005).

adjudicated water rights to third parties for use in the State of New Mexico.

Permitting the Mescalero Apache Tribe to lease its adjudicated water rights would be mutually beneficial to the Tribe and to non-Indian communities facing water shortages by providing a mechanism whereby such communities can gain access to water and by which the Tribe may receive an economic benefit. The legislation is consistent with a federal policy of respecting Tribal sovereignty and enables local decision-making about the Tribe's water resources.

LEGISLATIVE HISTORY

On January 25, 2011, Senator Bingaman, for himself and Senator Udall of New Mexico, introduced S. 134 which was referred to the Committee. On October 20, 2011, the Committee held a legislative hearing to consider S. 134 and other measures.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

The short title of the Act is the "Mescalero Apache Tribe Leasing Authorization Act."

Section 2. Definitions

This section defines the key terms in this Act. The defined terms are "Adjudicated Water Rights," "Secretary," "State," and "Tribe."

Section 3. Authorization to lease adjudicated water rights

Section 3 states that the Tribe may lease, enter into contract with respect to, or transfer to another party, any or all of the adjudicated water rights; must comply with all state laws with respect to leasing or transferring the water rights; and may not permanently alienate any of the adjudicated water rights.

Section 3 further states that the Secretary of the Interior shall not be liable for any loss or detriment resulting from a lease, contract, or other arrangement entered into pursuant to this section; that the authority under the Act satisfies the Indian Non-Intercourse Act (25 U.S.C. 177); and that non-use by a lessee or contractor will not result in a forfeiture, abandonment, relinquishment or other loss of the Tribe's adjudicated water rights.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTE

In an open business meeting on June 28, 2012, the Committee on Indian Affairs, by voice vote, adopted S. 134 and ordered the bill reported to the Senate, with the recommendation that the Senate do pass S. 134 as reported without amendment.

COST AND BUDGETARY CONSIDERATIONS

The following cost estimate, as provided by the Congressional Budget Office, dated July 10, 2012, was prepared for S. 134:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 10, 2012.

Hon. DANIEL K. AKAKA,
Chairman, Committee on Indian Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 134, the Mescalero Apache Tribe Leasing Authorization Act.

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

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

S. 134—Mescalero Apache Tribe Leasing Authorization Act

S. 134 would authorize the Mescalero Apache Tribe of New Mexico to enter into a lease or other temporary conveyance of its water rights for up to 99 years. The bill would prohibit the Mescalero Apache Tribe from permanently forfeiting their water rights.

Based on information from the Department of the Interior, CBO expects that the legislation would have no significant impact on the agency's administrative costs. S. 134 would have no effect on direct spending or revenues because any income resulting from additional leases would be paid directly to the Mescalero Apache Tribe. Therefore, pay-as-you-go procedures do not apply.

S. 134 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. Enacting this legislation would benefit the tribe.

On October 31, 2011, CBO transmitted a cost estimate for H.R. 1461, the Mescalero Apache Tribe Leasing Authorization Act, as ordered reported by the House Committee on Natural Resources on October 5, 2011. The two bills are similar and the CBO cost estimates are the same.

The CBO staff contact for this estimate is Martin von Gnechten. The estimate was approved by Peter H. Fontaine, 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 believes that the regulatory impact of S. 134 will be minimal.

EXECUTIVE COMMUNICATIONS

The Committee has received no communications from the Executive Branch regarding S. 134.

CHANGES IN EXISTING LAW

In compliance with subsection 12 of rule XXVI of the Standing Rules of the Senate, the Committee finds that the enactment of S. 134 will not effect any changes in existing law.

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