

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Veterans' Compensation Cost-of-Living Adjustment Act of 1996".

**SEC. 2. INCREASE IN COMPENSATION RATES AND LIMITATIONS.**

(a) *IN GENERAL.*—(1) The Secretary of Veterans Affairs shall, as provided in paragraph (2), increase, effective December 1, 1996, the rates of and limitations on Department of Veterans Affairs disability compensation and dependency and indemnity compensation.

(2) The Secretary shall increase each of the rates and limitations in sections 1114, 1115(1), 1162, 1311, 1313, and 1314 of title 38, United States Code, that were increased by the amendments made by the Veterans' Compensation Cost-of-Living Adjustment Act of 1995 (Public Law No. 104-57; 109 Stat. 555). This increase shall be made in such rates and limitations as in effect on November 30, 1996, and shall be by the same percentage that benefit amounts payable under title II of the Social Security Act (42 U.S.C. 401 et seq.) are increased effective December 1, 1996, as a result of a determination under section 215(i) of such Act (42 U.S.C. 415(i)).

(b) *SPECIAL RULE.*—The Secretary may adjust administratively, consistent with the increases made under subsection (a)(2), the rates of disability compensation payable to persons within the purview of section 10 of Public Law 85-857 (72 Stat. 1263) who are not in receipt of compensation payable pursuant to chapter 11 of title 38, United States Code.

(c) *PUBLICATION REQUIREMENT.*—At the same time as the matters specified in section 215(i)(2)(D) of the Social Security Act (42 U.S.C. 415(i)(2)(D)) are required to be published by reason of a determination made under section 215(i) of such Act during fiscal year 1996, the Secretary shall publish in the Federal Register the rates and limitations referred to in subsection (a)(2) as increased under this section.

The title was amended so as to read:

To increase, effective as of December 1, 1996, the rates of disability compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation for survivors of certain service-connected disabled veterans, and for other purposes.

#### WILDLIFE SUPPRESSION AIRCRAFT TRANSFER ACT OF 1996

Mr. LOTT. Mr. President, I ask unanimous consent that the Armed Services Committee be discharged from S. 2078 and, further, that the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

The legislative clerk read as follows:

A bill (S. 2078) to authorize the sale of excess Department of Defense aircraft to facilitate the suppression of wildfire.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO. 5406

(Purpose: To authorize the sale of excess Department of Defense aircraft to facilitate the suppression of wildfire)

Mr. LOTT. Senator KEMPTHORNE has an amendment at the desk. I ask for its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

The legislative clerk read as follows:

The Senator from Mississippi [Mr. LOTT] for Mr. KEMPTHORNE, for himself, Mr. BINGAMAN, Mr. CRAIG and Mr. KYL proposes an amendment numbered 5406.

Mr. LOTT. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE.**

This act may be cited as the "Wildfire Suppression Aircraft Transfer Act of 1996".

**SEC. 2. AUTHORITY TO SELL AIRCRAFT AND PARTS FOR WILDFIRE SUPPRESSION PURPOSES.**

(a) *AUTHORITY.*—(1) Notwithstanding section 202 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 483) and subject to subsections (b) and (c), the Secretary of Defense may, during the period beginning on October 1, 1996, and ending on September 30, 2000, sell the aircraft and aircraft parts referred to in paragraph (2) to persons or entities that contract with the Federal Government for the delivery of fire retardant by air in order to suppress wildfire.

(2) Paragraph (1) applies to aircraft and aircraft parts of the Department of Defense that are determined by the Secretary to be—

(A) excess to the needs of the Department; and

(B) acceptable for commercial sale.

(b) *CONDITIONS OF SALE.*—Aircraft and aircraft parts sold under subsection (a)—

(1) may be used only for the provision of airtanker services for wildfire suppression purposes; and

(2) may not be flown or otherwise removed from the United States unless dispatched by the National Interagency Fire Center in support of an international agreement to assist in wildfire suppression efforts or for other purposes jointly approved by the Secretary of Defense and the Secretary of Agriculture in writing in advance.

(c) *CERTIFICATION OF PERSONS AND ENTITIES.*—The Secretary of Defense may sell aircraft and aircraft parts to a person or entity under subsection (a) only if the Secretary of Agriculture certifies to the Secretary of Defense, in writing, before the sale that the person or entity is capable of meeting the terms and conditions of a contract to deliver fire retardant by air.

(d) *REGULATIONS.*—(1) As soon as practicable after the date of the enactment of this Act, the Secretary of Defense shall, in consultation with the Secretary of Agriculture and the Administrator of General Services, prescribe regulations relating to the sale of aircraft and aircraft parts under this section.

(2) The regulations shall—

(A) ensure that the sale of the aircraft and aircraft parts is made at fair market value (as determined by the Secretary of Defense) and, to the extent practicable, on a competitive basis;

(B) require a certification by the purchaser that the aircraft and aircraft parts will be used only in accordance with the conditions set forth in subsection (b);

(C) establish appropriate means of verifying and enforcing the use of the aircraft and aircraft parts by the purchaser and other end users in accordance with the conditions set forth in subsections (b) and (e); and

(D) ensure, to the maximum extent practicable, that the Secretary consults with the Administrator of General Services and with the heads of appropriate departments and agencies of the Federal Government regard-

ing alternative requirements for such aircraft and aircraft parts before the sale of such aircraft and aircraft parts under this section.

(e) *ADDITIONAL TERMS AND CONDITIONS.*—The Secretary of Defense may require such other terms and conditions in connection with each sale of aircraft and aircraft parts under this section as the Secretary considers appropriate for such sale. Such terms and conditions shall meet the requirements of the regulations prescribed under subsection (d).

(f) *REPORT.*—Not later than March 31, 2000, the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives a report on the Secretary's exercise of authority under this section. The report shall set forth—

(1) the number and type of aircraft sold under the authority, and the terms and conditions under which the aircraft were sold;

(2) the persons or entities to which the aircraft were sold; and

(3) an accounting of the current use of the aircraft sold.

(g) *CONSTRUCTION.*—Nothing in this section may be construed as affecting the authority of the Administrator of the Federal Aviation Administration under any other provision of law.

Mr. LOTT. Mr. President, I ask unanimous consent that the amendment be agreed to, that the bill be deemed read a third time and passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill be printed at the appropriate place in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment (No. 5406) was agreed to.

The bill (S. 2078), as amended, was deemed read the third time and passed.

#### SETTLEMENT OF THE NAVAJO- HOPI LAND DISPUTE

Mr. LOTT. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of calendar No. 582, S. 1973.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

A bill (S. 1973) to provide for the settlement of the Navajo-Hopi land dispute, and for other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Indian Affairs, with an amendment to strike all after the enacting clause and inserting in lieu thereof the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Navajo-Hopi Land Dispute Settlement Act of 1996".

**SEC. 2. FINDINGS.**

The Congress finds that—

(1) it is in the public interest for the Tribe, Navajos residing on the Hopi Partitioned Lands, and the United States to reach a peaceful resolution of the longstanding disagreements between the parties under the Act commonly known as the "Navajo-Hopi Land Settlement Act of 1974" (Public Law 93-531; 25 U.S.C. 6400 et seq.);

(2) it is in the best interest of the Tribe and the United States that there be a fair and final settlement of certain issues remaining in connection with the Navajo-Hopi Land Settlement Act of 1974, including the full and final settlement of the multiple claims that the Tribe has against the United States;

(3) this Act, together with the Settlement Agreement executed on December 14, 1995, and the Accommodation Agreement (as incorporated by the Settlement Agreement), provide the authority for the Tribe to enter agreements with eligible Navajo families in order for those families to remain residents of the Hopi Partitioned Lands for a period of 75 years, subject to the terms and conditions of the Accommodation Agreement;

(4) the United States acknowledges and respects—

(A) the sincerity of the traditional beliefs of the members of the Tribe and the Navajo families residing on the Hopi Partitioned Lands; and  
(B) the importance that the respective traditional beliefs of the members of the Tribe and Navajo families have with respect to the culture and way of life of those members and families;

(5) this Act, the Settlement Agreement, and the Accommodation Agreement provide for the mutual respect and protection of the traditional religious beliefs and practices of the Tribe and the Navajo families residing on the Hopi Partitioned Lands; and

(6) the Tribe is encouraged to work with the Navajo families residing on the Hopi Partitioned Lands to address their concerns regarding the establishment of family or individual burial plots for deceased family members who have resided on the Hopi Partitioned Lands.

### SEC. 3. DEFINITIONS.

Except as otherwise provided in this Act, for purposes of this Act, the following definitions shall apply:

(1) ACCOMMODATION.—The term "Accommodation" has the meaning provided that term under the Settlement Agreement.

(2) HOPI PARTITIONED LANDS.—The term "Hopi Partitioned Lands" means lands located in the Hopi Partitioned Area, as defined in section 168.1(g) of title 25, Code of Federal Regulations (as in effect on the date of enactment of this Act).

(3) NAVAJO PARTITIONED LANDS.—The term "Navajo Partitioned Lands" has the meaning provided that term in the proposed regulations issued on November 1, 1995, at 60 Fed. Reg. 55506.

(4) NEW LANDS.—The term "New Lands" has the meaning provided that term in section 700.701(b) of title 25, Code of Federal Regulations.

(5) SECRETARY.—The term "Secretary" means the Secretary of the Interior.

(6) SETTLEMENT AGREEMENT.—The term "Settlement Agreement" means the agreement between the United States and the Hopi Tribe executed on December 14, 1995.

(7) TRIBE.—The term "Tribe" means the Hopi Tribe.

### SEC. 4. RATIFICATION OF SETTLEMENT AGREEMENT.

The United States approves, ratifies, and confirms the Settlement Agreement.

### SEC. 5. CONDITIONS FOR LANDS TAKEN INTO TRUST.

The Secretary shall take such action as may be necessary to ensure that the following conditions are met prior to taking lands into trust for the benefit of the Tribe pursuant to the Settlement Agreement:

(1) SELECTION OF LANDS TAKEN INTO TRUST.—

(A) PRIMARY AREA.—In accordance with section 7(a) of the Settlement Agreement, the primary area within which lands acquired by the Tribe may be taken into trust by the Secretary for the benefit of the Tribe under the Settlement Agreement shall be located in northern Arizona.

(B) REQUIREMENTS FOR LANDS TAKEN INTO TRUST IN THE PRIMARY AREA.—Lands taken into

trust in the primary area referred to in subparagraph (A) shall be—

(i) land that is used substantially for ranching, agriculture, or another similar use; and

(ii) to the extent feasible, in contiguous parcels.

(2) ACQUISITION OF LANDS.—Before taking any land into trust for the benefit of the Tribe under this section, the Secretary shall ensure that—

(A) at least 85 percent of the eligible Navajo heads of household (as determined under the Settlement Agreement) have entered into an accommodation or have chosen to relocate and are eligible for relocation assistance (as determined under the Settlement Agreement); and

(B) the Tribe has consulted with the State of Arizona concerning the lands proposed to be placed in trust, including consulting with the State concerning the impact of placing those lands into trust on the State and political subdivisions thereof resulting from the removal of land from the tax rolls in a manner consistent with the provisions of part 151 of title 25, Code of Federal Regulations.

(3) PROHIBITION.—The Secretary may not, pursuant to the provisions of this Act and the Settlement Agreement, place lands, any portion of which are located within or contiguous to a 5-mile radius of an incorporated town (as that term is defined by the Secretary) in northern Arizona, into trust for benefit of the Tribe without specific statutory authority.

### SEC. 6. ACQUISITION THROUGH CONDEMNATION OF CERTAIN INTERSPERSED LANDS.

(a) IN GENERAL.—

(1) ACTION BY THE SECRETARY.—

(A) IN GENERAL.—The Secretary shall take action as specified in subparagraph (B), to the extent that the Tribe, in accordance with section 7(b) of the Settlement Agreement—

(i) acquires private lands; and

(ii) requests the Secretary to acquire through condemnation interspersed lands that are owned by the State of Arizona and are located within the exterior boundaries of those private lands in order to have both the private lands and the State lands taken into trust by the Secretary for the benefit of the Tribe.

(B) ACQUISITION THROUGH CONDEMNATION.—With respect to a request for an acquisition of lands through condemnation made under subparagraph (A), the Secretary shall, upon the recommendation of the Tribe, take such action as may be necessary to acquire the lands through condemnation and, with funds provided by the Tribe, pay the State of Arizona fair market value for those lands in accordance with applicable Federal law, if the conditions described in paragraph (2) are met.

(2) CONDITIONS FOR ACQUISITION THROUGH CONDEMNATION.—The Secretary may acquire lands through condemnation under this subsection if—

(A) that acquisition is consistent with the purpose of obtaining not more than 500,000 acres of land to be taken into trust for the Tribe;

(B) the State of Arizona concurs with the United States that the acquisition is consistent with the interests of the State; and

(C) the Tribe pays for the land acquired through condemnation under this subsection.

(b) DISPOSITION OF LANDS.—If the Secretary acquires lands through condemnation under subsection (a), the Secretary shall take those lands into trust for the Tribe in accordance with this Act and the Settlement Agreement.

(c) PRIVATE LANDS.—The Secretary may not acquire private lands through condemnation for the purpose specified in subsection (a)(2)(A).

### SEC. 7. ACTION TO QUIET POSSESSION.

If the United States fails to discharge the obligations specified in section 9(c) of the Settlement Agreement with respect to voluntary relocation of Navajos residing on Hopi Partitioned Lands, or section 9(d) of the Settlement Agreement, relating to the implementation of sections 700.137 through 700.139 of title 25, Code of Federal Reg-

ulations, on the New Lands, including failure for reason of insufficient funds made available by appropriations or otherwise, the Tribe may bring an action to quiet possession that relates to the use of the Hopi Partitioned Lands after February 1, 2000, by a Navajo family that is eligible for an accommodation, but fails to enter into an accommodation.

### SEC. 8. PAYMENT TO STATE OF ARIZONA.

(a) AUTHORIZATION OF APPROPRIATIONS.—Subject to subsection (b), there are authorized to be appropriated to the Department of the Interior \$250,000 for fiscal year 1998, to be used by the Secretary of the Interior for making a payment to the State of Arizona.

(b) PAYMENT.—The Secretary shall make a payment in the amount specified in subsection (a) to the State of Arizona after an initial acquisition of land from the State has been made by the Secretary pursuant to section 6.

### SEC. 9. 75-YEAR LEASING AUTHORITY.

The first section of the Act of August 9, 1955 (69 Stat. 539, chapter 615; 25 U.S.C. 415) is amended by adding at the end the following new subsections:

"(c) LEASES INVOLVING THE HOPI TRIBE AND THE HOPI PARTITIONED LANDS ACCOMMODATION AGREEMENT.—Notwithstanding subsection (a), a lease of land by the Hopi Tribe to Navajo Indians on the Hopi Partitioned Lands may be for a term of 75 years, and may be extended at the conclusion of the term of the lease.

"(d) DEFINITIONS.—For purposes of this section—

"(1) the term 'Hopi Partitioned Lands' means lands located in the Hopi Partitioned Area, as defined in section 168.1(g) of title 25, Code of Federal Regulations (as in effect on the date of enactment of this subsection); and

"(2) the term 'Navajo Indians' means members of the Navajo Tribe."

### SEC. 10. REAUTHORIZATION OF THE NAVAJO-HOPI RELOCATION HOUSING PROGRAM.

Section 25(a)(8) of Public Law 93-531 (25 U.S.C. 640d-24(a)(8)) is amended by striking "1996, and 1997" and inserting "1996, 1997, 1998, 1999, and 2000".

Mr. KYL. Mr. President, at this point, I ask the distinguished Chairman of the Committee on Indian Affairs, the senior Senator from Arizona, Senator McCain, to engage in a colloquy.

Mr. MCCAIN. Mr. President, I would be glad to engage Senator KYL for purposes of a colloquy.

Mr. KYL. As you know, the general authority of the Secretary to take land in trust was struck down as unconstitutional by the U.S. Court of Appeals for the Eighth Circuit in the case of United States Department of the Interior, et al. versus State of South Dakota and City of Oacoma. Does the authority for the Secretary to take newly acquired lands in trust pursuant to the settlement agreement and this act rely on that general authority?

Mr. MCCAIN. No. The authority for the Secretary of the Interior to take newly acquired lands in trust for the Hopi Tribe pursuant to the settlement agreement is granted solely pursuant to this act.

Mr. KYL. What is the Chairman's understanding of the process that the Secretary will use to consider requests to take newly acquired lands in trust for the Hopi Tribe pursuant to the settlement agreement and this act?

Mr. MCCAIN. The settlement agreement provides that the Secretary will

consider the Tribe's request for trust status for any lands it acquires, subject to all existing applicable laws and regulations, including the National Environmental Policy Act and 25 Code of Federal Regulations 151, and provided that any environmental problems identified as a result of compliance with the National Environmental Policy Act are mitigated to the satisfaction of the Secretary.

Mr. KYL. Does this act establish a Federal reserved right to the use of groundwater on the newly acquired trust lands?

Mr. MCCAIN. No. Language in the act is explicit that nothing in the act establishes a Federal reserved right to groundwater. The act sets forth the attributes of the Hopi water rights on the newly acquired lands and provides how conflicts that may arise shall be resolved.

Mr. KYL. Does the Senator agree that the water rights granted by this act to the Hopi Tribe on newly acquired trust lands are not Federal reserved water rights, but instead are Federal statutory rights granted solely by this legislation as part of a unique settlement tailored to the unique circumstances surrounding the Navajo-Hopi land dispute?

Mr. MCCAIN. I agree with the Senator. The legislation makes clear that water rights on newly acquired trust land that are specifically granted by this act are Federal water rights granted by Congress. They are Federal statutory water rights, not Federal reserved water rights.

Mr. KYL. Does the Senator agree that, as a matter of longstanding Congressional policy, Congress recognizes the principle that State water law governs the allocation and use of water within a State, subject to the Federal Government's power to reserve and establish water rights for the purposes associated with Federal lands and Indian reservations?

Mr. MCCAIN. I agree.

Mr. KYL. Does the Senator agree that the fact that Congress sees fit to grant these water rights in this act reflects the circumstances unique to the Navajo-Hopi dispute, and does not reflect any intention by the Congress to depart from its general policy with respect to the primacy of State water law?

Mr. MCCAIN. I agree with the Senator.

Mr. KYL. Mr. President, the Navajo-Hopi Land Dispute Settlement Act, S. 1973, represents the culmination of several years' worth of very difficult negotiations involving the Navajo and Hopi Tribes, Navajo families residing on Hopi Partitioned Lands, the U.S. Departments of Interior and Justice, the State of Arizona, and representatives of the tribes' non-Indian neighbors in Arizona.

The bill, and the settlement agreement that it ratifies, are the result of good faith efforts by all parties. Taken together, they may well represent the

last, best chance to resolve this land dispute with a minimum of pain and disruption to members of the Indian tribes.

Still, this is not a perfect agreement, and I must say for the record that I am not entirely convinced that it will fully resolve the land dispute. The very basis of the settlement is the 75-year leases that the Hopi Tribe will offer to Navajo families who still reside on the HPL and who wish to remain there. By its own design, the settlement carries with it the prospect that the dispute will arise again in 75 years when those leases expire.

The question is, what will happen if the Hopi Tribe does not extend the leases in 75 years, and our successors find that the problem not only remains, but that the number of Navajos in the area has increased significantly? Will the United States be asked to commit hundreds of millions more taxpayer dollars to another painful relocation program? Even though the Hopi indicate now that, if the United States fulfills its obligations under the settlement, it will have fulfilled all of its obligations to the tribe in this matter, what will the obligations of the United States really be 75 years from now—when individuals yet unborn have assumed leadership of the tribes, the Congress, the administration, and the State and local governments?

I caution anyone to be under no illusion that we are permanently settling the land dispute. I suspect that Congress will be asked to find some other way to resolve it—maybe even sooner than 75 years from now. Nevertheless, I am willing to allow this agreement to go forward, in large part because the Hopi Chairman, Ferrell Secakuku, has given me his word that the agreement is in the best interest of the Hopi people and that the tribe will do its best to accommodate Navajo families who wish to remain on the HPL.

I am also willing to allow it to go forward because changes made during the course of the Senate's consideration have made it at least somewhat more likely that the settlement will succeed. For example, we have made parts of the agreement contingent upon 85 percent of the Navajo families signing the lease agreements or accepting relocation benefits. That will ensure some degree of finality before the benefits of resolution—namely, the granting of trust status to lands acquired by the Hopi—are awarded. It will also ensure that a significant majority of the Navajo families are willing participants in the arrangement—something that will improve the prospects of long-term success.

We have also included language to minimize the effect on the tribe's non-Indian neighbors. For example, we say that the taking in trust of any lands, any portion of which falls within a 5-mile radius of an incorporated city or town, will require the specific approval of Congress. We authorize the capitalization of a fund to compensate local

governments for any loss of tax revenues resulting from the taking of lands in trust. We codify the understandings in the agreement about the location and character of lands that can be taken in trust, and codify the rights of the State of Arizona with regard to State lands that the Hopi may acquire.

Mr. President, the bill includes important language regarding rights to water on any newly acquired trust lands, and of course, water is the most critical issue for others in Arizona who may be affected by the settlement. In fact, it was the issue of water rights that has proven to be one of the most difficult to resolve.

Initially, the agreement and the bill were silent on the issue, suggesting that Congress might have been creating a new unquantified Federal reserved water right in this legislation. It is my view that such a right is not implicit in the taking of land in trust; any water rights that exist, exist only as Congress specifically provides in statute.

With that in mind, language in the bill clearly spells out what water rights will exist on the newly acquired trust lands. Although the language is not as I would have written it, it is largely acceptable to water users in Arizona who are most likely to be affected by the implementation of the settlement, with the exception of the city of Flagstaff.

In that regard, Chairman Ferrell Secakuku of the Hopi Tribe sent a letter dated September 23, 1996, to Mayor Bavasi of Flagstaff, pledging that it is not the intent of the Hopi Tribe, as part of the settlement of the land dispute, to affect adversely the city's water use.

I ask unanimous consent that the chairman's letter and a copy of a letter clarifying the city's understanding of the tribe's position be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

THE HOPI TRIBE,  
September 23, 1996.

Hon. CHRISTOPHER BAVASI,  
City of Flagstaff,  
Flagstaff, AZ.

DEAR CHRIS: I am writing in response to conversations Lee Storey has had with Scott Canty and Tim Atkeson regarding the City of Flagstaff and the Lake Mary water drainage. It is my understanding that the City of Flagstaff has an interest in the unappropriated surface water in the Lake Mary water drainage and is concerned that the Hopi Tribe may assert a federal claim to that water. It is not the intent of the Hopi Tribe, as part of the settlement of the land dispute, to affect adversely the City's interest in that water. Accordingly, I would invite you and the City Council to meet with me and the Hopi Tribe over the next few weeks to develop a mechanism whereby the City's interests can be accommodated. Please let me know your schedule so that we can resolve this issue satisfactorily.

Sincerely,

FERRELL SECAKUKU,  
Chairman of the Hopi Tribe.

CITY OF FLAGSTAFF,  
September 24, 1996.

Hon. JON KYL,  
Hon. JOHN MCCAIN,  
U.S. Senate,  
Washington, DC.

DEAR SENATOR KYL AND SENATOR MCCAIN: The Flagstaff City Council met at 12:30 p.m. today to consider its position on Senate Bill 1973, taking into consideration the letter received by Major Chris Bavasi from Hopi Chairman Ferrell Secakuku. Based on assurance made by Chairman Secakuku's letter, the City Council instructed me to convey its support for SB 1973. It is important to note that a message received from Tim Atkeson, Legal Counsel for the Hopi Tribe, through Lee Storey, was vital to the Council's decision. Mr. Atkeson confirmed by phone with Lee Storey that Chairman Secakuku's letter is intended to cover all of Flagstaff's water use, and not be limited to the Lake Mary watershed.

The Council also relied heavily on your intention to comment during Senate consideration that passage is supported with the understanding that the Hopi Tribe will work with the City of Flagstaff to formalize a legal and binding instrument to implement their commitment not to adversely affect the City's water rights/water supply.

The Council also understands that you will commit to join with the City of Flagstaff and the Hopi Tribe to secure the appropriate legal instrument between the two.

Thank you very much for your consideration.

Sincerely,

DAVID W. WILCOX,  
City manager.

Mr. KYL. The chairman pledged in his letter to meet with Mayor Bavasi within the next few weeks to develop a mechanism whereby the city's interests can be accommodated, and I take the chairman at his word that the tribe will not adversely affect the city's interest. It is based on the chairman's assurances that I am not seeking additional language in the bill at this time.

I am sending letters to both the chairman and the mayor encouraging them to meet expeditiously on the matter and come to resolution, and I will look forward to early progress reports from them.

Mr. President, let me address for a moment specific language in the bill. Subsection 12(a)(1)(A) permits the reasonable use of groundwater pumped on newly acquired trust lands; provisions in section 12(h) of the bill make it clear, however, that this should not be construed as establishing a Federal reserved right to ground water.

Another provision allows the Hopi to maintain all rights to the use of surface water on such lands that exist under State law on the date of acquisition, and it allows the tribe to make any further beneficial use, on newly acquired trust lands, of surface water which is unappropriated on the date that each parcel of newly acquired trust lands is taken into trust.

These rights are constrained. With respect to ground water, the bill requires the tribe to recognize as valid all uses of ground water which may be made from wells, or their subsequent replacements, in existence on the date each parcel of newly acquired trust

land is acquired. The tribe shall not object to such ground water uses on the basis of water rights associated with the newly acquired trust lands. The tribe agrees to limit any objection only to the impact on newly acquired trust lands of ground water uses which are initiated after the date the lands affected are taken in trust, and only on grounds allowed by State law as it exists when the objection is made.

Let me say that again—objection can be made only on grounds allowed by State law when the objection is made.

The tribe further agrees not to object to ground water uses that affect the tribe's right to surface water established under subsection 12(a)(1)(C) when those ground water uses are initiated before the tribe initiates its beneficial use of surface water pursuant to that subsection.

The tribe further agrees to recognize as valid all uses of surface water in existence on or prior to the date each parcel of newly acquired trust land is acquired, and shall not object to such surface-water uses on the basis of water rights associated with the newly acquired trust lands. The tribe may enforce the priority of its rights to surface water against junior surface water rights, but only to the extent that the exercise of those junior rights interferes with the actual use of the tribe's senior surface water rights.

Mr. President, the creation of the limited right to the beneficial use of unappropriated surface water that is created here—and I emphasize the language included in section 12(h) that says explicitly that such a right is not a Federal reserved water right—can interfere with the rights of others who lawfully put water to beneficial use in the State after the passage of this bill, and that is the problem.

The tribe could, for example, assert a senior right to such unappropriated surface water many years from now, having never put the water to beneficial use, while others, including cities and towns in northern Arizona, and private parties, have floated bonds, made investments, and made other economic development plans based on water that is available in the interim and lawfully put to beneficial use.

Moreover, the creation of even a limited right to water for new lands acquired by the Hopi could undermine the entire Little Colorado River adjudication should the tribe assert the right many years in the future, after the adjudication process has been completed.

The fact is, there is no need to create any additional water right, even the limited right that is included here. The settlement allows the Hopi to choose any land the tribe wishes, including land with very secure and senior water rights. Those rights may well be senior to the bill's limited right, with its priority date that the lands are taken in trust.

The tribe can choose to buy land with very good State-law water rights,

or none at all. It should not, however, be allowed to secure existing State-law rights and even a limited right to some additional amount of water.

Nevertheless, I am willing to allow the legislation to go forward first, because, according to the Arizona Department of Water Resources, the amount of unappropriated water in this instance is negligible; second, because the Hopi Tribe has agreed to try to accommodate the city of Flagstaff's further concerns; third, because the right is carefully defined and limited by section 12(b); and fourth, because language in section 12(h) makes it explicit that nothing in this legislation shall imply that a Federal reserved water right is created or that State law shall not apply.

AMENDMENT NOS. 5407, 5408, 5409, 5410, AND 5411

Mr. LOTT. Mr. President, I understand that Senator MCCAIN has five amendments at the desk as follows: Amendment No. 5407, regarding trust lands; amendment No. 5408, a technical change; amendment No. 5409, an additional finding; amendment No. 5410 relating to expeditious action; amendment No. 5411, statutory interpretation and water rights.

The amendments (Nos. 5407, 5408, 5409, 5410, and 5411) are as follows:

AMENDMENT NO. 5407

(Purpose: To provide a definition of newly acquired trust lands)

On page 13, between lines 20 and 21, insert the following:

(8) NEWLY ACQUIRED TRUST LANDS.—The term "newly acquired trust lands" means lands taken into trust for the Tribe within the State of Arizona pursuant to this Act or the Settlement Agreement.

AMENDMENT NO. 5408

(Purpose: To provide a technical change)

On page 15, line 18, strike "town (as that term is)" and insert "town or city (as those terms are)".

AMENDMENT NO. 5409

(Purpose: To provide an additional finding)

On page 12, line 12, strike "and".  
On page 12, line 18, strike the period and insert "; and".

On page 12, between lines 18 and 19, insert the following:

(7) neither the Navajo Nation nor the Navajo families residing upon Hopi Partitioned Lands were parties to or signers of the Settlement Agreement between the United States and the Hopi Tribe.

AMENDMENT NO. 5410

(Purpose: To direct the Secretary to take lands into trust in an expeditious manner)

On page 15, between lines 20 and 21, insert the following:

(4) EXPEDITIOUS ACTION BY THE SECRETARY.—Consistent with all other provisions of this Act, the Secretary is directed to take lands into trust under this Act expeditiously and without undue delay.

AMENDMENT NO. 5411

(Purpose: To provide for statutory interpretation and water rights)

On page 19, after line 15, add the following:  
**SEC. 11. EFFECT OF THIS ACT ON CASES INVOLVING THE NAVAJO NATION AND THE HOPI TRIBE.**

Nothing in this Act or the amendments made by this Act shall be interpreted or

deemed to preclude, limit, or endorse, in any manner, actions by the Navajo Nation that seek, in court, an offset from judgments for payments received by the Hopi Tribe under the Settlement Agreement.

#### SEC. 12. WATER RIGHTS.

##### (a) IN GENERAL.—

(1) WATER RIGHTS.—Subject to the other provisions of this section, newly acquired trust lands shall have only the following water rights:

(A) The right to the reasonable use of groundwater pumped from such lands.

(B) All rights to the use of surface water on such lands existing under State law on the date of acquisition, with the priority date of such right under State law.

(C) The right to make any further beneficial use on such lands which is unappropriated on the date each parcel of newly acquired trust lands is taken into trust. The priority date for the right shall be the date the lands are taken into trust.

(2) RIGHTS NOT SUBJECT TO FORFEITURE OR ABANDONMENT.—The Tribe's water rights for newly acquired trust lands shall not be subject to forfeiture or abandonment arising from events occurring after the date the lands are taken into trust.

##### (b) RECOGNITION AS VALID USES.—

(1) GROUNDWATER.—With respect to water rights associated with newly acquired trust lands, the Tribe, and the United States on the Tribe's behalf, shall recognize as valid all uses of groundwater which may be made from wells (or their subsequent replacements) in existence on the date each parcel of newly acquired trust land is acquired and shall not object to such groundwater uses on the basis of water rights associated with the newly acquired trust lands. The Tribe, and the United States on the Tribe's behalf, may object only to the impact of groundwater uses on newly acquired trust lands which are initiated after the date the lands affected are taken into trust and only on grounds allowed by the State law as it exists when the objection is made. The Tribe, and the United States on the Tribe's behalf, shall not object to the impact of groundwater uses on the Tribe's right to surface water established pursuant to subsection (a)(3) when those groundwater uses are initiated before the Tribe initiates its beneficial use of surface water pursuant to subsection (a)(3).

(2) SURFACE WATER.—With respect to water rights associated with newly acquired trust lands, the Tribe, and the United States on the Tribe's behalf, shall recognize as valid all uses of surface water in existence on or prior to the date each parcel of newly acquired trust land is acquired and shall not object to such surface water uses on the basis of water rights associated with the newly acquired trust lands, but shall have the right to enforce the priority of its rights against all junior water rights the exercise of which interfere with the actual use of the Tribe's senior surface water rights.

(3) RULE OF CONSTRUCTION.—Nothing in paragraph (1) or (2) shall preclude the Tribe, or the United States on the Tribe's behalf, from asserting objections to water rights and uses on the basis of the Tribe's water rights on its currently existing trust lands.

(c) APPLICABILITY OF STATE LAW ON LANDS OTHER THAN NEWLY ACQUIRED LANDS.—The Tribe, and the United States on the Tribe's behalf, further recognize that State law applies to water uses on lands, including subsurface estates, that exist within the exterior boundaries of newly acquired trust lands and that are owned by any party other than the Tribe.

(d) ADJUDICATION OF WATER RIGHTS ON NEWLY ACQUIRED TRUST LANDS.—The Tribe's water rights on newly acquired trust lands

shall be adjudicated with the rights of all other competing users in the court now presiding over the Little Colorado River Adjudication, or if that court no longer has jurisdiction, in the appropriate State or Federal court. Any controversies between or among users arising under Federal or State law involving the Tribe's water rights on newly acquired trust lands shall be resolved in the court now presiding over the Little Colorado River Adjudication, or, if that court no longer has jurisdiction, in the appropriate State or Federal court. Nothing in this subsection shall be construed to affect any court's jurisdiction; provided, that the Tribe shall administer all water rights established in subsection (a).

(e) PROHIBITION.—Water rights for newly acquired trust lands shall not be used, leased, sold, or transported for use off of such lands or the Tribe's other trust lands, provided that the Tribe may agree with other persons having junior water rights to subordinate the Tribe's senior water rights. Water rights for newly acquired trust lands can only be used on those lands or other trust lands of the Tribe located within the same river basin tributary to the main stream of the Colorado River.

(f) SUBSURFACE INTERESTS.—On any newly acquired trust lands where the subsurface interest is owned by any party other than the Tribe, the trust status of the surface ownership shall not impair any existing right of the subsurface owner to develop the subsurface interest and to have access to the surface for the purpose of such development.

(g) STATUTORY CONSTRUCTION WITH RESPECT TO WATER RIGHTS OF OTHER FEDERALLY RECOGNIZED INDIAN TRIBES.—Nothing in this section shall affect the water rights of any other federally recognized Indian tribe with a priority date earlier than the date the newly acquired trust lands are taken into trust.

(h) STATUTORY CONSTRUCTION.—Nothing in this section shall be construed to determine the law applicable to water use on lands owned by the United States, other than on the newly acquired trust lands. The granting of the right to make beneficial use of unappropriated surface water on the newly acquired trust lands with a priority date such lands are taken into trust shall not be construed to imply that such right is a Federal reserved water right. Nothing in this section or any other provision of this Act shall be construed to establish any Federal reserved right to groundwater. Authority for the Secretary to take land into trust for the Tribe pursuant to the Settlement Agreement and this Act shall be construed as having been provided solely by the provisions of this Act.

Mr. LOTT. Mr. President, I ask unanimous consent that the amendments be agreed to, en bloc, and the committee amendment, as amended, be agreed to, the bill be deemed read a third time and passed, as amended, the motion to reconsider be laid on the table, and that any statements relating to the bill be printed at the appropriate place in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendments (Nos. 5407, 5408, 5409, 5410, and 5411) were agreed to.

The committee amendment, as amended, was agreed to.

The bill (S. 1973), as amended, was agreed to, as follows:

S. 1973

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### SECTION 1. SHORT TITLE.

This Act may be cited as the "Navajo-Hopi Land Dispute Settlement Act of 1996".

#### SEC. 2. FINDINGS.

The Congress finds that—

(1) it is in the public interest for the Tribe, Navajos residing on the Hopi Partitioned Lands, and the United States to reach a peaceful resolution of the longstanding disagreements between the parties under the Act commonly known as the "Navajo-Hopi Land Settlement Act of 1974" (Public Law 93-531; 25 U.S.C. 640d et seq.);

(2) it is in the best interest of the Tribe and the United States that there be a fair and final settlement of certain issues remaining in connection with the Navajo-Hopi Land Settlement Act of 1974, including the full and final settlement of the multiple claims that the Tribe has against the United States;

(3) this Act, together with the Settlement Agreement executed on December 14, 1995, and the Accommodation Agreement (as incorporated by the Settlement Agreement), provide the authority for the Tribe to enter agreements with eligible Navajo families in order for those families to remain residents of the Hopi Partitioned Lands for a period of 75 years, subject to the terms and conditions of the Accommodation Agreement;

(4) the United States acknowledges and respects—

(A) the sincerity of the traditional beliefs of the members of the Tribe and the Navajo families residing on the Hopi Partitioned Lands; and

(B) the importance that the respective traditional beliefs of the members of the Tribe and Navajo families have with respect to the culture and way of life of those members and families;

(5) this Act, the Settlement Agreement, and the Accommodation Agreement provide for the mutual respect and protection of the traditional religious beliefs and practices of the Tribe and the Navajo families residing on the Hopi Partitioned Lands;

(6) the Tribe is encouraged to work with the Navajo families residing on the Hopi Partitioned Lands to address their concerns regarding the establishment of family or individual burial plots for deceased family members who have resided on the Hopi Partitioned Lands; and

(7) neither the Navajo Nation nor the Navajo families residing upon Hopi Partitioned Lands were parties to or signers of the Settlement Agreement between the United States and the Hopi Tribe.

#### SEC. 3. DEFINITIONS.

Except as otherwise provided in this Act, for purposes of this Act, the following definitions shall apply:

(1) ACCOMMODATION.—The term "Accommodation" has the meaning provided that term under the Settlement Agreement.

(2) HOPI PARTITIONED LANDS.—The term "Hopi Partitioned Lands" means lands located in the Hopi Partitioned Area, as defined in section 168.1(g) of title 25, Code of Federal Regulations (as in effect on the date of enactment of this Act).

(3) NAVAJO PARTITIONED LANDS.—The term "Navajo Partitioned Lands" has the meaning provided that term in the proposed regulations issued on November 1, 1995, at 60 Fed. Reg. 55506.

(4) NEW LANDS.—The term "New Lands" has the meaning provided that term in section 700.701(b) of title 25, Code of Federal Regulations.

(5) SECRETARY.—The term "Secretary" means the Secretary of the Interior.

(6) SETTLEMENT AGREEMENT.—The term "Settlement Agreement" means the agreement between the United States and the Hopi Tribe executed on December 14, 1995.

(7) **TRIBE.**—The term “Tribe” means the Hopi Tribe.

(8) **NEWLY ACQUIRED TRUST LANDS.**—The term “newly acquired trust lands” means lands taken into trust for the Tribe within the State of Arizona pursuant to this Act or the Settlement Agreement.

**SEC. 4. RATIFICATION OF SETTLEMENT AGREEMENT.**

The United States approves, ratifies, and confirms the Settlement Agreement.

**SEC. 5. CONDITIONS FOR LANDS TAKEN INTO TRUST.**

The Secretary shall take such action as may be necessary to ensure that the following conditions are met prior to taking lands into trust for the benefit of the Tribe pursuant to the Settlement Agreement:

(1) **SELECTION OF LANDS TAKEN INTO TRUST.**—

(A) **PRIMARY AREA.**—In accordance with section 7(a) of the Settlement Agreement, the primary area within which lands acquired by the Tribe may be taken into trust by the Secretary for the benefit of the Tribe under the Settlement Agreement shall be located in northern Arizona.

(B) **REQUIREMENTS FOR LANDS TAKEN INTO TRUST IN THE PRIMARY AREA.**—Lands taken into trust in the primary area referred to in subparagraph (A) shall be—

(i) land that is used substantially for ranching, agriculture, or another similar use; and

(ii) to the extent feasible, in contiguous parcels.

(2) **ACQUISITION OF LANDS.**—Before taking any land into trust for the benefit of the Tribe under this section, the Secretary shall ensure that—

(A) at least 85 percent of the eligible Navajo heads of household (as determined under the Settlement Agreement) have entered into an accommodation or have chosen to relocate and are eligible for relocation assistance (as determined under the Settlement Agreement); and

(B) the Tribe has consulted with the State of Arizona concerning the lands proposed to be placed in trust, including consulting with the State concerning the impact of placing those lands into trust on the State and political subdivisions thereof resulting from the removal of land from the tax rolls in a manner consistent with the provisions of part 151 of title 25, Code of Federal Regulations.

(3) **PROHIBITION.**—The Secretary may not, pursuant to the provisions of this Act and the Settlement Agreement, place lands, any portion of which are located within or contiguous to a 5-mile radius of an incorporated town or city (as those terms are defined by the Secretary) in northern Arizona, into trust for benefit of the Tribe without specific statutory authority.

(4) **EXPEDITIOUS ACTION BY THE SECRETARY.**—Consistent with all other provisions of this Act, the Secretary is directed to take lands into trust under this Act expeditiously and without undue delay.

**SEC. 6. ACQUISITION THROUGH CONDEMNATION OF CERTAIN INTERSPERSED LANDS.**

(a) **IN GENERAL.**—

(1) **ACTION BY THE SECRETARY.**—

(A) **IN GENERAL.**—The Secretary shall take action as specified in subparagraph (B), to the extent that the Tribe, in accordance with section 7(b) of the Settlement Agreement—

(i) acquires private lands; and

(ii) requests the Secretary to acquire through condemnation interspersed lands that are owned by the State of Arizona and are located within the exterior boundaries of those private lands in order to have both the private lands and the State lands taken into trust by the Secretary for the benefit of the Tribe.

(B) **ACQUISITION THROUGH CONDEMNATION.**—With respect to a request for an acquisition of lands through condemnation made under subparagraph (A), the Secretary shall, upon the recommendation of the Tribe, take such action as may be necessary to acquire the lands through condemnation and, with funds provided by the Tribe, pay the State of Arizona fair market value for those lands in accordance with applicable Federal law, if the conditions described in paragraph (2) are met.

(2) **CONDITIONS FOR ACQUISITION THROUGH CONDEMNATION.**—The Secretary may acquire lands through condemnation under this subsection if—

(A) that acquisition is consistent with the purpose of obtaining not more than 500,000 acres of land to be taken into trust for the Tribe;

(B) the State of Arizona concurs with the United States that the acquisition is consistent with the interests of the State; and

(C) the Tribe pays for the land acquired through condemnation under this subsection.

(b) **DISPOSITION OF LANDS.**—If the Secretary acquires lands through condemnation under subsection (a), the Secretary shall take those lands into trust for the Tribe in accordance with this Act and the Settlement Agreement.

(c) **PRIVATE LANDS.**—The Secretary may not acquire private lands through condemnation for the purpose specified in subsection (a)(2)(A).

**SEC. 7. ACTION TO QUIET POSSESSION.**

If the United States fails to discharge the obligations specified in section 9(c) of the Settlement Agreement with respect to voluntary relocation of Navajos residing on Hopi Partitioned Lands, or section 9(d) of the Settlement Agreement, relating to the implementation of sections 700.137 through 700.139 of title 25, Code of Federal Regulations, on the New Lands, including failure for reason of insufficient funds made available by appropriations or otherwise, the Tribe may bring an action to quiet possession that relates to the use of the Hopi Partitioned Lands after February 1, 2000, by a Navajo family that is eligible for an accommodation, but fails to enter into an accommodation.

**SEC. 8. PAYMENT TO STATE OF ARIZONA.**

(a) **AUTHORIZATION OF APPROPRIATIONS.**—Subject to subsection (b), there are authorized to be appropriated to the Department of the Interior \$250,000 for fiscal year 1998, to be used by the Secretary of the Interior for making a payment to the State of Arizona.

(b) **PAYMENT.**—The Secretary shall make a payment in the amount specified in subsection (a) to the State of Arizona after an initial acquisition of land from the State has been made by the Secretary pursuant to section 6.

**SEC. 9. 75-YEAR LEASING AUTHORITY.**

The first section of the Act of August 9, 1955 (69 Stat. 539, chapter 615; 25 U.S.C. 415) is amended by adding at the end the following new subsections:

“(c) **LEASES INVOLVING THE HOPI TRIBE AND THE HOPI PARTITIONED LANDS ACCOMMODATION AGREEMENT.**—Notwithstanding subsection (a), a lease of land by the Hopi Tribe to Navajo Indians on the Hopi Partitioned Lands may be for a term of 75 years, and may be extended at the conclusion of the term of the lease.

“(d) **DEFINITIONS.**—For purposes of this section—

“(1) the term ‘Hopi Partitioned Lands’ means lands located in the Hopi Partitioned Area, as defined in section 168.1(g) of title 25, Code of Federal Regulations (as in effect on the date of enactment of this subsection); and

“(2) the term ‘Navajo Indians’ means members of the Navajo Tribe.”.

**SEC. 10. REAUTHORIZATION OF THE NAVAJO-HOPI RELOCATION HOUSING PROGRAM.**

Section 25(a)(8) of Public Law 93-531 (25 U.S.C. 640d-24(a)(8)) is amended by striking “1996, and 1997” and inserting “1996, 1997, 1998, 1999, and 2000”.

**SEC. 11. EFFECT OF THIS ACT ON CASES INVOLVING THE NAVAJO NATION AND THE HOPI TRIBE.**

Nothing in this Act or the amendments made by this Act shall be interpreted or deemed to preclude, limit, or endorse, in any manner, actions by the Navajo Nation that seek, in court, an offset from judgments for payments received by the Hopi Tribe under the Settlement Agreement.

**SEC. 12. WATER RIGHTS.**

(a) **IN GENERAL.**—

(1) **WATER RIGHTS.**—Subject to the other provisions of this section, newly acquired trust lands shall have only the following water rights:

(A) The right to the reasonable use of groundwater pumped from such lands.

(B) All rights to the use of surface water on such lands existing under State law on the date of acquisition, with the priority date of such right under State law.

(C) The right to make any further beneficial use on such lands which is unappropriated on the date each parcel of newly acquired trust lands is taken into trust. The priority date for the right shall be the date the lands are taken into trust.

(2) **RIGHTS NOT SUBJECT TO FORFEITURE OR ABANDONMENT.**—The Tribe’s water rights for newly acquired trust lands shall not be subject to forfeiture or abandonment arising from events occurring after the date the lands are taken into trust.

(b) **RECOGNITION AS VALID USES.**—

(1) **GROUNDWATER.**—With respect to water rights associated with newly acquired trust lands, the Tribe, and the United States on the Tribe’s behalf, shall recognize as valid all uses of groundwater which may be made from wells (or their subsequent replacements) in existence on the date each parcel of newly acquired trust land is acquired and shall not object to such groundwater uses on the basis of water rights associated with the newly acquired trust lands. The Tribe, and the United States on the Tribe’s behalf, may object only to the impact of groundwater uses on newly acquired trust lands which are initiated after the date the lands affected are taken into trust and only on grounds allowed by the State law as it exists when the objection is made. The Tribe, and the United States on the Tribe’s behalf, shall not object to the impact of groundwater uses on the Tribe’s right to surface water established pursuant to subsection (a)(3) when those groundwater uses are initiated before the Tribe initiates its beneficial use of surface water pursuant to subsection (a)(3).

(2) **SURFACE WATER.**—With respect to water rights associated with newly acquired trust lands, the Tribe, and the United States on the Tribe’s behalf, shall recognize as valid all uses of surface water in existence on or prior to the date each parcel of newly acquired trust land is acquired and shall not object to such surface water uses on the basis of water rights associated with the newly acquired trust lands, but shall have the right to enforce the priority of its rights against all junior water rights the exercise of which interfere with the actual use of the Tribe’s senior surface water rights.

(3) **RULE OF CONSTRUCTION.**—Nothing in paragraph (1) or (2) shall preclude the Tribe, or the United States on the Tribe’s behalf, from asserting objections to water rights and

uses on the basis of the Tribe's water rights on its currently existing trust lands.

(c) **APPLICABILITY OF STATE LAW ON LANDS OTHER THAN NEWLY ACQUIRED LANDS.**—The Tribe, and the United States on the Tribe's behalf, further recognize that State law applies to water uses on lands, including subsurface estates, that exist within the exterior boundaries of newly acquired trust lands and that are owned by any party other than the Tribe.

(d) **ADJUDICATION OF WATER RIGHTS ON NEWLY ACQUIRED TRUST LANDS.**—The Tribe's water rights on newly acquired trust lands shall be adjudicated with the rights of all other competing users in the court now presiding over the Little Colorado River Adjudication, or if that court no longer has jurisdiction, in the appropriate State or Federal court. Any controversies between or among users arising under Federal or State law involving the Tribe's water rights on newly acquired trust lands shall be resolved in the court now presiding over the Little Colorado River Adjudication, or, if that court no longer has jurisdiction, in the appropriate State or Federal court. Nothing in this subsection shall be construed to affect any court's jurisdiction; provided, that the Tribe shall administer all water rights established in subsection (a).

(e) **PROHIBITION.**—Water rights for newly acquired trust lands shall not be used, leased, sold, or transported for use off of such lands or the Tribe's other trust lands, provided that the Tribe may agree with other persons having junior water rights to subordinate the Tribe's senior water rights. Water rights for newly acquired trust lands can only be used on those lands or other trust lands of the Tribe located within the same river basin tributary to the main stream of the Colorado River.

(f) **SUBSURFACE INTERESTS.**—On any newly acquired trust lands where the subsurface interest is owned by any party other than the Tribe, the trust status of the surface ownership shall not impair any existing right of the subsurface owner to develop the subsurface interest and to have access to the surface for the purpose of such development.

(g) **STATUTORY CONSTRUCTION WITH RESPECT TO WATER RIGHTS OF OTHER FEDERALLY RECOGNIZED INDIAN TRIBES.**—Nothing in this section shall affect the water rights of any other federally recognized Indian tribe with a priority date earlier than the date the newly acquired trust lands are taken into trust.

(h) **STATUTORY CONSTRUCTION.**—Nothing in this section shall be construed to determine the law applicable to water use on lands owned by the United States, other than on the newly acquired trust lands. The granting of the right to make beneficial use of unappropriated surface water on the newly acquired trust lands with a priority date such lands are taken into trust shall not be construed to imply that such right is a Federal reserved water right. Nothing in this section or any other provision of this Act shall be construed to establish any Federal reserved right to groundwater. Authority for the Sec-

retary to take land into trust for the Tribe pursuant to the Settlement Agreement and this Act shall be construed as having been provided solely by the provisions of this Act.

#### ORDERS FOR FRIDAY, SEPTEMBER 27, 1996

Mr. LOTT. Mr. President, I now ask unanimous consent that when the Senate completes its business today, it stand in adjournment until the hour over 9:30 a.m., Friday, September 27, further, that immediately following the prayer, the Journal of proceedings be deemed approved to date, no resolutions come over under the rule, the call of the calendar be dispensed with, and the morning hour be deemed to have expired, and the time for the two leaders be reserved for their use later in the day, and that there then be a period for the transaction of morning business not to exceed beyond the hour of 12 noon with Senators permitted to speak for up to 5 minutes each, with the exception of the following Senators for the times designated: Senator MCCAIN for 20 minutes, Senator COHEN for 45 minutes, Senator D'AMATO for 10 minutes, Senator NUNN for 30 minutes, and Senator BIDEN for 20 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### PROGRAM

Mr. LOTT. Mr. President, following morning business, the Senate may be asked to turn to consideration of any of the following: the Presidio parks bill conference report, the FAA conference report—I am very pleased we do have these conferences completed now, and, of course, they will be available in the morning—the FAA conference report, the Coast Guard conference report, or possibly begin consideration of the omnibus appropriations bill making continuing appropriations for fiscal year 1997. Therefore, rollcall votes can be expected throughout the day and possibly late into the night tomorrow night, because it is possible that we may be able to come to an agreement on these matters, perhaps even an agreement on the continuing resolution. Work will go forward tonight, maybe throughout the night between Senators and Congressmen, particularly on the Appropriations Committee, senior staff and the administration, to continue to make progress.

I announce to my colleagues that I believe good progress is being made.

We are not there yet, but it is a very voluminous bill, and I am convinced all parties are working in good faith. It is possible we could reach agreement tomorrow on all of these matters. I hope that happens. But if not, we will continue to move conference reports and to move forward on cloture motions if they are necessary.

There is a possibility for a weekend session in light of the fact that funding for various parts of the Government are not yet in place for the new fiscal year that starts next Tuesday. We will either have to be in session this weekend, getting our agreement completed, or have some sort of an agreement entered into as to exactly how we will get it going before Monday night at midnight.

#### ORDER FOR ADJOURNMENT

Mr. LOTT. If there is no further business to come before the Senate, I now ask that the Senate stand in adjournment under the previous order following the remarks of the Senator from Illinois, Senator MOSELEY-BRAUN.

The PRESIDING OFFICER. The Senator from Illinois is recognized.

Ms. MOSELEY-BRAUN. Mr. President, I thank the Chair.

(The remarks of Ms. MOSELEY-BRAUN pertaining to the introduction of S. 2132 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. McCAIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. McCAIN. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. McCAIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

The PRESIDING OFFICER. Under the previous order, the Senate now stands adjourned until 9:30, Friday morning, September 27, 1996.

Thereupon, at 7:34 p.m., the Senate adjourned until Friday, September 27, 1996, at 9:30 a.m.