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110TH CONGRESS, 1st Session | HOUSE OF REPRESENTATIVES | REPORT 110–484

AMENDING THE ARIZONA WATER SETTLEMENTS ACT TO MODIFY THE REQUIREMENTS FOR THE STATEMENT OF FINDINGS

DECEMBER 11, 2007.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. RAHALL, from the Committee on Natural Resources, submitted the following

R E P O R T

[To accompany H.R. 3739]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 3739) to amend the Arizona Water Settlements Act to modify the requirements for the statement of findings, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE BILL

The purpose of H.R. 3739 is to amend the Arizona Water Settlements Act to modify the requirements for the statement of findings in section 302(b)(5).

BACKGROUND AND NEED FOR LEGISLATION

The Arizona Water Settlements Act (P.L. 108–451) resolves important water rights claims for the Gila River Indian Community (GRIC). The Act also includes in Title III the Southern Arizona Water Rights Settlement, which resolves important water rights claims for the Tohono O'odham Nation (Nation). The Secretary of the Interior must publish a notice in the Federal Register by December 31, 2007 that the conditions in sections 207(c) and 302(b)(5) of the Arizona Water Settlements Act respectively have been satisfied in order for the settlements to become enforceable.

H.R. 3739 would amend the conditions set forth in section 302(b)(5) of the Arizona Water Settlements Act by striking the last ten words of the section, including the phrase, "final and non-

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appealable." Unless the law is amended as provided in H.R. 3739, the Nation believes that some may argue that the "final and nonappealable" language may make it unlikely that the legal requirements of section 302(b)(5) can be met in time for the Secretary to publish required findings in the Federal Register before December 31, 2007.

The "final and nonappealable" requirement is a potential obstacle to enforceability of the settlement because while section 305(b) of P.L. 108–451 requires an Arizona trial court to approve the settlement and decree, such approval is not final and nonappealable until it is upheld on appeal by the Arizona Supreme Court. On November 30, 2007, the Arizona Supreme Court did approve the trial court's approval of the Tohono O'dham Settlement and Decree. However, some may argue that even such approval by the Arizona State Supreme Court may not be considered final and nonappealable because the decision of the Arizona State Supreme Court can also be taken to the United States Supreme Court under a writ of certiorari. Removal of the "final and nonappealable" language would eliminate any argument that the water settlement could not be finalized without waiting for a ruling from the United States Supreme Court on petition for a writ of certiorari by an objecting party to the settlement.

An objection to the Tohono O'odham settlement agreement was filed by the neighboring Pascua Yaqui Tribe in December, 2006. The Pascua Yaqui Tribe claimed that implementation of the Tohono O'odham settlement would adversely affect the water rights of the Pascua Yaqui. The Superior Court for Maricopa County approved the Tohono O'odham settlement and dismissed the Pascua Yaqui Tribe's objection on July 9, 2007.

The Pascua Yaqui Tribe's motion to reconsider to the Superior Court was denied by the trial court on August 28, 2007, and the Pasqua Yaqui Tribe and the Tohono O'odham Nation both filed appeals to the Arizona State Supreme Court. The Arizona Supreme Court ordered that filings of any legal reviews or appeals be completed by November 1, 2007. On November 30, 2007, the Arizona Supreme Court issued its opinion affirming the trial court's approval of the Tohono O'odham judgment and decree. The ruling concluded that the arguments raised by the Pascua Yaqui "do not depend on the settlement agreement" and that nothing in the settlement leaves the Pascua Yaqui "any worse off with regard to the water available to satisfy its claims than it is now." However, because Pascua Yaqui has a right to file for a writ of certiorari before the United States Supreme Court, which some may argue is a form of appeal for purposes of the statutory requirement of "final and nonappealable" and because the U.S. Supreme Court will not be able to rule on any such writ of certiorari before the statutory deadline for the settlement to reach enforceability (December 31, 2007), some may therefore argue that it is possible that the settlement would not attain "final and nonappealable" status until after the statutory deadline has passed.

In addition, the United States District Court for the District of Arizona in separate litigation relating to the amount of reimbursable costs of the construction of the Central Arizona Project denied on November 20, 2007 the Pascua Yaqui's motion to intervene to oppose settlement of the litigation. The U.S. District Court also

filed an order that has the effect of removing the linkages tying the enforceability of the three titles of the 2004 Arizona Water Settlements Act to each other.

The Nation has decided to pursue H.R. 3739 as a legislative solution to ensure that it will meet that December 31, 2007 deadline in the 2004 Arizona Water Settlements Act.

COMMITTEE ACTION

H.R. 3739 was introduced on October 3, 2007 by Rep. Raul Grijalva (D–AZ). The bill was referred to the Committee on Natural Resources, and within the Committee to the Subcommittee on Water and Power. The Subcommittee on Water and Power held a hearing on H.R. 3739 on October 24, 2007. On November 15, 2007, the Full Natural Resources Committee met to consider the bill. The Subcommittee on Water and Power was discharged from further consideration of the bill, and H.R. 3739 was then ordered favorably reported by unanimous consent to the House of Representatives.

SECTION-BY-SECTION ANALYSIS

Section 1. Modification to requirements for statement of findings

Section 1 would amend The Arizona Water Settlements Act (Public Law 108–451; 118 Stat. 3571) to strike the last ten words of section 302(b)(5). Section 302(b)(5) requires, that before the settlement can take effect, the legal documents that implement the settlement agreement must be approved by the State court having jurisdiction over the Gila River adjudication proceedings, and "that judgment and decree have become final and nonappealable." This "final and nonappealable" language does not appear in any of the other titles of the Arizona Water Settlements Act and is considered by many to be a product of a piecemeal legislative drafting process.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

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

CONSTITUTIONAL AUTHORITY STATEMENT

Article I, section 8 of the Constitution of the United States grants Congress the authority to enact this bill.

COMPLIANCE WITH HOUSE RULE XIII

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

2. Congressional Budget Act. As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this bill does not

contain any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

3. General Performance Goals and Objectives. This bill does not authorize funding and therefore, clause 3(c)(4) of rule XIII of the Rules of the House of Representatives does not apply.

4. Congressional Budget Office Cost Estimate. Under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of the Congressional Budget Office:

H.R. 3739—A bill to amend the Arizona Water Settlements Act to modify the requirements for the statement of findings

H.R. 3739 would amend the Arizona Water Settlements Act to modify requirements for a statement of findings by the Secretary of the Interior. The Arizona Water Settlements Act was enacted to settle several water disputes in the state of Arizona between the federal government and various state, tribal, and nongovernmental entities. Title III of that act approved the Southern Arizona Water Rights Settlement Amendments Act of 2004, which provided for a settlement between the Tohono O'odham tribe and the federal government. The Arizona Water Settlements Act will become effective on December 31, 2007, pending the publication of a specific statement of findings by the Secretary in the Federal Register.

CBO estimates that implementing H.R. 3739 would have no significant effect on the federal budget. We expect that all titles of the Arizona Water Settlements Act will become effective on December 31, 2007, and our projection of the costs associated with implementing those titles would not be affected by this bill's enactment. Enacting the bill also would not affect direct spending or revenues.

H.R. 3739 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reforms Act and would impose no costs on state, local, or tribal governments.

The CBO staff contact for this estimate is Tyler Kruzich. This estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

COMPLIANCE WITH PUBLIC LAW 104–4

This bill contains no unfunded mandates.

EARMARK STATEMENT

H.R. 3739 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e) or 9(f) of rule XXI.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

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

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omit-

ted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SECTION 302 OF THE ARIZONA WATER SETTLEMENTS ACT

SEC. 302. SOUTHERN ARIZONA WATER RIGHTS SETTLEMENT EFFECTIVE DATE.

(a) * * *

(b) EFFECTIVE DATE.—This title and the amendments made by this title take effect as of the enforceability date, which is the date the Secretary publishes in the Federal Register a statement of findings that—

(1) * * *

* * * * * * *

(5) the judgment and decree attached to the Tohono O'odham settlement agreement as exhibit 17.1 has been approved by the State court having jurisdiction over the Gila River adjudication [proceedings, and that judgment and decree have become final and nonappealable;] *proceedings;*

* * * * * * *

(c) FAILURE TO PUBLISH STATEMENT OF FINDINGS.—If the Secretary does not publish a statement of findings under [subsection (a)] *subsection (b)* by December 31, 2007—

(1) the 1982 Act shall remain in full force and effect;

(2) this title shall not take effect; and

(3) any funds made available by the State under this title that are not expended, together with any interest on those funds, shall immediately revert to the State.

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