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SENATE

{ REPORT
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TO DIRECT THE SECRETARY OF THE INTERIOR TO PROVIDE A LOAN TO
THE WHITE MOUNTAIN APACHE TRIBE FOR USE IN PLANNING, ENGI-
NEERING, AND DESIGNING A CERTAIN WATER SYSTEM PROJECT

SEPTEMBER 24 (legislative day, SEPTEMBER 17, 2008.—Ordered to be printed

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

R E P O R T

[To accompany S. 3128]

The Committee on Indian Affairs, to which was referred the bill (S. 3128) to direct the Secretary of the Interior to provide a loan to the White Mountain Apache Tribe for use in planning, engineering, and designing a certain water system project, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill, as amended, do pass.

PURPOSE

The purpose of S. 3128 is to authorize a Federal loan to the White Mountain Apache Tribe for the planning, engineering, and design of a dam, reservoir, and pipeline, which will be used to provide drinking water to the Tribe.

BACKGROUND AND HISTORY

S. 3128 authorizes and directs the Secretary of the Interior to provide a Federal loan to the White Mountain Apache Tribe for the planning, engineering, and design of the Miner Flat Project, which will be used to provide drinking water to the Tribe. The Tribe, which is located on the Fort Apache Indian Reservation in Arizona, has approximately 15,000 members. The majority of the Reservation's residential areas are served by a relatively small well field, but production from the wells has declined significantly over the last few years. As a result, the Tribe has experienced drinking water shortages during the summer months. In order to temporarily alleviate this drinking water shortage, the Tribe has constructed a small diversion project on the north fork of the White River. This diversion project, however, is only a temporary solution.

The Miner Flat Project, consisting of a small dam, reservoir and pipeline, has been determined to be the best option to meet the Tribe's basic drinking water needs and is estimated to cost approximately \$128 million.

Although funding from the Arizona Water Settlements Act is available to assist with the Tribe's planning efforts for the Miner Flat Project, the funds are not available until the year 2013. Delaying planning, engineering, and design efforts until 2013 would not only delay the Project's completion, but would also increase overall Project costs due to inflation. The Federal loan authorized by S. 3128 will allow Project construction to begin more quickly and keep inflationary costs to a minimum, potentially saving millions of dollars. Funding for the construction of the project will be an essential part of the settlement of the Tribe's water claims in Arizona.

The United States, in its capacity as trustee for the White Mountain Apache Tribe, filed claims to water in two Arizona adjudication proceedings and asserted the right to water associated with the headwaters of the Salt River. These claims are pending and will ultimately be decided by the courts. The Salt River, the headwaters of which originate on the Fort Apache Reservation, serves as a water source for many of Arizona's water users. Over the past several years, Salt River Project, Roosevelt Water Conservation District, several other irrigation districts, and many Arizona cities have engaged in water rights settlement negotiations with the Tribe with the goal of permanently quantifying the Tribe's water rights and eliminating water supply uncertainty associated with the pending adjudication proceedings. The settlement of the Tribe's claims is nearly finalized.

On September 11, 2008, Senator Kyl introduced the White Mountain Apache Tribe Water Rights Quantification Act (S. 3473) to permanently quantify the Tribe's water rights. The quantification legislation, among other things, confirms the Tribe's settlement and authorizes federal funding for the construction of the Miner Flat Project. S. 3128 facilitates settlement of the Tribe's water rights by providing loan funds of \$9.8 million to allow the Tribe to further the Miner Flat Project's planning, design, and engineering work.

LEGISLATIVE HISTORY

S. 3128 was introduced on June 12, 2008 by Senator Kyl and was referred to the Committee on Indian Affairs. On September 23, 2008, the Committee ordered the bill favorably reported to the Senate with the recommendation that the Senate do pass S. 3128 with an amendment in the nature of a substitute.

SUMMARY OF THE AMENDMENT

During an open business meeting on September 23, 2008, the Committee considered and approved an amendment in the nature of a substitute to S. 3128. In the underlying version of S. 3128, the loan for the Miner Flat Project would be repaid from the funds set aside in the Arizona Water Settlements Act for future Indian water settlements (see P.L. 108-451, Sec. 107). The proposed amendment in the nature of a substitute would make the loan repayable over a term of 25 years and strike the repayment provision relating to the funding in the Arizona Water Settlements Act.

SECTION-BY-SECTION ANALYSIS

Sec. 1. Short title

Section 1 cites the short title of the bill as the White Mountain Apache Tribe Rural Water System Loan Authorization Act.

Sec. 2. Definitions

Section 2 provides three definitions for terms used in the bill. These terms are: “Miner Flat Project,” “Secretary,” and “Tribe.”

Sec. 3. Miner Flat Project loan

Section 3(a) authorizes and directs the Secretary to loan to the White Mountain Apache Tribe \$9,800,000, adjusted, as appropriate, based on ordinary fluctuations in engineering cost indices, to carry out the planning, engineering, and design of the Miner Flat Project. The loan is subject to the availability of appropriations.

Section 3(b) provides the terms and conditions of the federal loan at a zero percent interest rate with a repayment term of 25 years, beginning on January 1, 2013.

Section 3(c) directs the Secretary, subject to section 4, to administer the planning, engineering, and design of the Miner Flat Project.

Sec. 4. Planning, engineering, and design

Section 4(a) directs the Secretary to offer to enter into a cooperative agreement with the Tribe no later than 90 days after the Act’s enactment. It provides that the cooperative agreement shall address the parties’ rights, responsibilities and liabilities in relation to the planning, engineering, and design of the Miner Flat Project and shall require compliance with all federal environmental laws. Section 4(b) provides that the Indian Self-Determination and Education Assistance Act’s requirements apply to the Miner Flat Project planning, engineering, and design activities.

Sec. 5. Authorization of appropriations

Section 5 authorizes the appropriation of sums as are necessary to carry out the Act.

COMMITTEE RECOMMENDATION

On September 23, 2008, the Committee on Indian Affairs convened a business meeting to consider S. 3128, and other measures. During the business meeting, the Committee voted, by a voice vote, to report S. 3128 favorably, with an amendment, to the full Senate with a recommendation that it do pass.

COST AND BUDGETARY CONSIDERATIONS

On September 24, 2008, the Committee transmitted this bill to the Congressional Budget Office and requested it to conduct an estimate of the costs incurred in carrying out its provisions. The Committee will publish in the Congressional Record information on 5-year projections for S. 3128 when such information is available from the Congressional Budget Office.

REGULATORY IMPACT STATEMENT

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact that would be incurred in carrying out S. 3128. The Committee believes that the regulatory impact of S. 3128 will be minimal.

EXECUTIVE COMMUNICATIONS

There have been no executive communications received by the Committee with regards to this legislation. However, on Thursday, September 11, 2008, testimony was provided by Mr. Kris Polly from the U.S. Department of the Interior to the Senate Committee on Indian Affairs hearing on S. 3128. Mr. Polly stated that until a final settlement of the Tribe's claims has been reached and enacted by Congress, the Department does not support the Federal government providing consideration for, or a contribution to a possible future litigation settlement. Mr. Polly stated that this would essentially authorize loan forgiveness as no non-Federal contributions would be repaid to the United States Treasury. The Department believes that the need for reliable and safe drinking water on the Reservation is not in question and the project proposed by the Tribe may be the best way to address the need. However, the Department stated that more analysis needed to be done to determine the best course of action. As such, the Administration testified that S. 3128 is premature. Ultimately, the Administration did not support the bill but has stated that it is committed to working with the Tribe and other settlement parties to reach a final and fair settlement of the Tribe's water rights claims.

Chairman Dorgan, at the request of Senator Kyl, offered an amendment at the September 11, 2008 business meeting, which was adopted by voice vote and intended to address the concerns of the Department.

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. 3128 will not result in any changes in existing law.