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PROVIDING FOR THE USE AND DISTRIBUTION OF THE FUNDS AWARDED TO THE WESTERN SHOSHONE IDENTIFIABLE GROUP UNDER INDIAN CLAIMS COMMISSION DOCKET NUMBERS 326–A–1, 326–A–3, 326–K, AND FOR OTHER PURPOSES

OCTOBER 3, 2002.—Ordered to be printed

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

R E P O R T

[To accompany S. 958]

The Committee on Indian Affairs, to which was referred the bill (S. 958) to provide for the use and distribution of the funds awarded to the Western Shoshne identifiable group under Indian Claims Commission Docket Numbers 326–A–1, 326–A–3, 326–K, and for other purposes, 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. 958, the Western Shoshone Claims Distribution Act, is to provide for the distribution of judgment awards granted to the Western Shoshone Indians in Docket Number 326–K before the Indian Claims Commission (Docket No. 326–K) and Docket Nos. 326–A–1 and 326–A–3 before the United States Court of Claims (Docket Nos. 326–A–1 and 326–A–3), together with all accrued interest. Funds under Docket No. 326–K are to be awarded on a per capita basis to eligible Western Shoshones who have at least ¼ degree of Western Shoshone blood, are citizens of the United States, and are living on the date of enactment of this legislation, provided however that any individual who has or is eligible to receive a per capita payment from any other similar judgment fund shall not be eligible to receive payment under this legislation. Funds under Docket Nos. 326–A–1 and 326–A–3 are to be placed in a trust fund to be established in the Treasury of the United States for the benefit of Western Shoshone members and to be

known as the Western Shoshone Educational Trust Fund (Educational Trust Fund). Interest income from the Educational Trust Fund shall be distributed as educational grants to eligible individual Western Shoshone members and may also be used to pay the expenses of the Administrative Committee established to oversee the distribution of such educational grants and assistance.

BACKGROUND

The Shoshone are an Indian people living mostly in the Great Basin of western North America. In 1863 the Western Bands of the Shoshone Nation signed a peace treaty with the United States at Ruby Valley, in what is now central Nevada.[1] This treaty granted the United States certain rights within the area claimed by these bands, extending from the Snake River Valley of Idaho through Nevada and Utah to southern California. Certain individual Western Shoshone Indians filed a claim for the alleged loss of their lands with the Indian Claims Commission, *Western Shoshone Identifiable Group* v. *United States,* Docket No. 326–K. The Indian Claims Commission held the Western Shoshone were "deprived of their lands" in the nineteenth century by "gradual encroachment of whites, settlers and others." Based on this finding, in 1979 the United States Court of Claims awarded about $27 million (the 1872 value of the lands allegedly taken, without payment of pre-judgment interest); post-judgment interest has been accruing since 1979. Additional funds are derived from related proceeding (Docket Nos. 326–A–1 and 326–A–3). No distribution of these funds has yet occurred. As of October 2, 2002, Docket No. 326–K held $138,701,112.40, and Docket Nos. 326–A–1 and 326–A–3 (collectively) held $1,349,491.00.

LEGISLATIVE HISTORY

S. 958 was introduced on May 24, 2001, by Senator Reid, for himself and Senator Ensign, and was referred to the Committee on Indian Affairs. The Committee held a hearing on S. 958 on August 2, 2002.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTE

The Committee on Indian Affairs, in an open business meeting on September 25, 2002, by voice vote approved S. 958, with an amendment in the nature of a substitute, and ordered the bill, as amended, to be reported favorably to the Senate.

SECTION-BY-SECTION ANALYSIS

Section 1.—Short title

Section 1 cites the short title of S. 958 as the "Western Shoshone Claims Distribution Act."

Section 2.—Distribution of Docket 326–K funds

Section 2 provides for the distribution of the funds appropriated in satisfaction of the judgment award granted to the Western Shoshone Indians in Docket No. 326–K before the Indian Claims Com-

[1] Treaty with the Western Shoshone (also known as the Treaty of Ruby Valley), 18 Stat. 689 (Oct. 1, 1863; ratified June 26, 1866), reprinted in II Kappler, Indian Affairs: Laws and Treaties 851–53 (1904).

mission, including interest earned. The Secretary of the Interior (Secretary) is directed to establish a Western Shoshone Judgment Roll consisting of all Western Shoshones who have a least 1/4 degree of Western Shoshone blood, are citizens of the United States, and are living on the date of enactment of this legislation, provided however that any individual found by the Secretary to be eligible to receive a per capita award from any other judgment fund awarded by the Indian Claims Commission, the United States Claims Court, or the United States Court of Federal Claims, funds for which are appropriated before the date of the enactment of this legislation shall not be eligible for enrollment under this legislation. The Secretary is directed to publish rules and regulations in the Federal Register governing the establishment of the Western Shoshone Judgment Roll and to utilize any documents acceptable to the Secretary in establishing proof of eligibility. The Secretary's determination on all applications for enrollment shall be final. The Secretary shall distribute 100 percent of the funds in Docket No. 326–K on a per capita basis, in equal portions among persons listed on the Roll. Payments shall be made directly to living competent adults who have reached the age of 19 years on the date of the distribution, whereas payments shall be distributed to the heirs and legatees of deceased eligible individuals in accordance with regulations prescribed by the Secretary. Payments to legally incompetent individuals shall be administered pursuant to regulations and procedures established by the Secretary pursuant to section 3(b)(3) of Public Law 93–134 (25 U.S.C. § 1403(b)(3)). The shares of minors and individuals under the age of 19 years on the distribution date shall be held by the Secretary in supervised individual Indian money accounts, to be disbursed over a period of 4 years in payments equaling 25 percent of the principal, plus interest earned on that portion of the per capita share; the first such payment shall be disbursed to legally competent individuals upon reaching the age of 18, subsequent payments to be disbursed within 90 days of the individual's following three birthdays. Per capita shares shall not be subject to Federal or State income tax and shall not be considered to be income or resources or be used as a basis for denying financial assistance or other benefits under the Social Security Act (42 U.S.C. §§ 301 et seq.) or any other Federal or Federally assisted program. Per capita shares unpaid after 6 years, and the interest thereon, together with any other residual principal and interest funds remaining in Docket No. 326–K after completion of its distribution shall be added to the principal of the Western Shoshone Educational Trust Fund established pursuant to § 3, except that the 6-year period shall not begin as to the per capita share of a minor until the minor reaches the age of majority.

Section 3.—Distribution of Dockets 326–A–1 and 3236–A–3

Section 3 provides that funds awarded in Docket Nos. 326–A–1 and 326–A–3, together with accrued interest thereon and certain unclaimed funds from Docket No. 326–K, are to be placed in a trust fund entitled the "Western Shoshone Educational Trust Fund" (Educational Trust Fund), the assets of which are to be invested pursuant to 25 U.S.C. § 162a. The interest from the Educational Trust Fund is to be used to provide educational assistance grants for individual Western Shoshone members (i.e., eligible individuals

who are listed on the Western Shoshone Judgment Roll and their lineal descendants) as directed by an Administrative Committee (Committee) consisting of 1 representative each of the Western Shoshone Te-Moak Tribe, Duckwater Shoshone Tribe, Yomba Shoshone Tribe, Ely Shoshone Tribe, Western Shoshone Committee of the Duck Valley Reservation, the Fallon Band of Western Shoshone, and the "at large community." The members of the Committee shall be appointed for 4 year terms. The Secretary shall consult with the Committee on the management and investment of the assets of the Educational Trust Fund, and the Committee is authorized to disburse the income in accordance with the terms of this legislation. The Committee shall develop written rules and procedures to govern its actions, subject to approval by the Secretary, and may pay its operating expenses as provided in the legislation. The Committee shall employ a certified public accountant to prepare an annual financial statement and shall distribute that financial statement, together with a list of individuals receiving grants or assistance, to organizations represented on the Committee and, upon request, to individual Western Shoshone members.

Section 4.—Definitions

Section 4 provides definitions for the terms "Administrative Committee" or "Committee," "Secretary," "Trust Fund," and "Western Shoshone Members."

Section 5.—Regulations

Section 5 provides that the Secretary may promulgate regulations necessary to carry out this legislation.

COST AND BUDGETARY CONSIDERATIONS

At the time of filing this report, the cost estimate of the Congressional Budget Office on S. 958 has not yet been received. Compliance with Senate Rule XXVI, paragraph 11(a) is therefore impracticable at this time.

EXECUTIVE COMMUNICATIONS

The Committee received written testimony for the Bureau of Indian Affairs, Department of the Interior, for the hearing held on August 2, 2002. The written testimony from the Administration is as follows:

STATEMENT OF NEAL A. MCCALEB, ASSISTANT SECRETARY FOR INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR

Good morning, Mr. Chairman and Members of the Committee. Thank you for the opportunity to present the views of the Department of the Interior on S. 958, a bill entitled "The Western Shoshone Claims Distribution Act."

The distribution of the Western Shoshone judgment funds is a long-standing issue that needs to be settled. The judgment funds stem from two claims that were filed by the Te-Moak Bans of Western Shoshone in the Indian Claims Commission in 1951. One is an aboriginal land claim that was concluded in 1979 in Docket 326–K for

$26.1 million. The other is an accounting claim. Several issues in the accounting claim were handled separately and resulted in two awards. The first award in the accounting claim was for approximately $823,000, and Congress appropriate funds to pay the claim in 1992. The second award was for $29,000, and funds were appropriated in 1995 to pay the claim. The accounting claims were in Dockets 326–A–1 and 326–A–3.

Since 1980, numerous attempts have been made on reach agreement on the disposition of the Western Shoshone judgment funds. The most recent attempt began in March 1998, the Western Shoshone Steering Committee (WSSC), which is composed of individuals that are tribal members at various reservations in Nevada. With the approval of the Te-Moak Tribal Council, the WSSC has worked over the past four years investigating if the Western Shoshone people were favor of a judgment fund distibution.

Since 1980, when the BIA held its first Hearing of Record on the distribution of the land claims judgment funds, a large segment of the Western Shosehone people have indicated that they are in favor of the judgment fund distribution. In the meantime, it's important to note that the tribunal councils of the four successor Western Shoshone tribes (Te-Moak, Ely, Duckwater and Yomba) have mostly opposed the distribution of the judgment funds because they wanted the Western Shoshone aboriginal lands returned. Although the tribal governments were unanimous in their opposition in the early 1990's, since 1997, three of the four tribal councils have modified their position to support the distribution of the judgment funds.

The Te-Moak Tribal Council enacted Resolution No. 97–TM–10 on March 6, 1997, adopting a plan for the distribution of these funds and requested the Department to support it. That resolution was rescinded by the next tribal council in the summer of 2000, but the current tribal council rescinded that action in January of this year and reinstated the 1997 resolution. The Duckwater Shoshone Tribal Council enacted Resolution No. 09–D–12 on March 18, 1998, supporting the Western Shoshone claims distribution proposal. On March 10, 1999, they enacted Resolution No. 99–D–07 reaffirming the earlier resolution supporting the Western Shoshone Claims distribution proposal. The Ely Tribal Council enacted Resolution No. 2001–EST–44 on October 9, 2001, supporting S. 958 and H.R. 2851. We have been advised that the Yomba Tribal Council continues to oppose the distribution. Several other tribes with enrolled tribal members that would be eligible to share in the judgment fund distribution under S. 958 have also enacted resolutions supporting the distribution. Those tribes are Duck Valley, Fallon and Fort McDermitt. The Shoshone-Paiute Tribal Business Council of Duck Valley withdrew its support of S. 958 by Resolution No. 2002–SPR–012, dated November 13, 2001. However, the Western Shoshones of Duck Valley continue to support the bill.

We support the enactment of S. 958 because we believe that it reflects the wishes of the vast majority of the Western Shoshone people. We are also pleased that three of the four successor tribes have expressed their support of the distribution, as well as two other tribes with a significant number of tribal members of Western Shoshone descent.

Section 2 of S. 958 proposes to distribute the Western Shoshone land claims funds that were awarded in Docket 326–K, one hundred percent (100%) per capita to approximately 6,500 individuals who have at least one-quarter (¼) degree of Western Shoshone Blood. The current balance of this fund, including interest, is $137,286,774. This section appears to be in accord with the wishes of the Western Shoshone people.

Section 3 proposes to use the principal portion of the Western Shoshone accounting claims funds awarded in Dockets 326–A–1 and 326–A–3 for a non-expendable Trust Fund. The interest and investment income will be available for educational grants and other forms of educational assistance to individual Western Shoshone members that are enrolled under Section 2 of this Act, and to their lineal descendants. The principal fund totals $754,136. The interest fund totals $591,845. This section appears to be in accord with the wishes of the Western Shoshone people.

We understand that many of the beneficiaries of this treaty continue to believe in their rights under the Treaty of Ruby Valley and this subsection acts as a savings clause for whatever rights remain in effect. We are concerned that some tribes or individuals may believe that Article 5 of the Treaty (land provisions) remains in effect. To be safe, the clause should read, "Receipt of a share of the funds under this subsection shall not alter any treaty rights, or the final decisions of the Federal Courts regarding those rights, pursuant to the "1863 Treaty of Ruby Valley," inclusive * * *."

This concludes my prepared statement. We are submitting a report to be included into the record that gives a detailed history of the Western Shoshone claims. I will be happy to answer any questions the Committee may have.

REGULATORY IMPACT STATEMENT

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires that each report accompanying a bill evaluate the regulatory paperwork impact that would be incurred in carrying out the bill. The Committee believes that the regulatory impact of S. 958 will be minimal.

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

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