

## Calendar No. 31

108TH CONGRESS }  
*1st Session* }

SENATE

{ REPORT  
108-18

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### APPROVING THE SETTLEMENT OF THE WATER RIGHTS CLAIMS OF THE ZUNI INDIAN TRIBE IN APACHE COUNTY, ARIZONA, AND FOR OTHER PURPOSES

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MARCH 10, 2003.—Ordered to be printed

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

### R E P O R T

[To accompany S. 222]

The Committee on Indian Affairs, to which was referred the bill (S. 222) to approve the settlement of the water rights claims of the Zuni Indian Tribe in Apache County, Arizona, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

#### PURPOSE

The purpose of the bill is to resolve all claims in the Zuni Indian Tribe to water rights in the Little Colorado River basin and elsewhere in Arizona and to provide resources to restore riparian wetlands on the Zuni Heaven Reservation that are of great religious and cultural significance to the tribe and its members.

#### BACKGROUND

Congress considered the history of the Zuni Indian Tribe in detail when it enacted the Zuni Claims Settlement Act of 1990, P.L. 101 486 (104 Stat. 1174). As the House Committee on Interior and Insular Affairs noted in its report, H. Rep. 101 727, 101st Cong., 2nd Sess. (1990), on a companion bill (H.R. 4143) to the legislation that was enacted into law (S. 2203), the Zuni Tribe and its probable ancestors—the Anasazi and Mogollon—inhabited an area as large as 15 million acres in what is now the States of Arizona and New Mexico.

This area was inhabited as early as 500 B.C., and between 1250 A.D. and 1540 A.D. large pueblos were constructed in this area. By 1450 A.D., this was a cultural and economic center for the Zuni,

who used the entire 15 million acres for hunting, gathering, and farming as well as other life-sustaining activities. Spanish explorers learned of the Zuni and the “Kingdom of Cibola” in the late 1530s, and the first major contract with Europeans took place when Coronado’s expedition encountered the Zuni as he searched for Cibola’s “Seven Cities of Gold”.

Spanish missionaries recorded the cultivation of corn by the Zuni in 1581, and an expedition in 1583 noted the Zuni’s irrigation and hunting practices. In 1598, Spain officially recognized the Zuni Province when the Zuni acknowledged Spanish sovereignty over them. Under Spanish law, the Zuni retained ownership of their lands and were treated as autonomous and self-governing notwithstanding the overriding sovereignty of Spain. The Zuni maintained their autonomy under the government of Mexico after that nation achieved its independence from Spain in 1821. The 1848 Treaty of Guadalupe Hidalgo offered the Zuni the same legal protections they had received under Spanish and Mexican rule.

Subsequently, however, the Zuni were deprived of all but about 3 percent of the land they had earlier controlled. In 1877, the Zuni Reservation was established by executive order, consisting of 408,000 acres of land in McKinley and Valencia Counties in western New Mexico. Notwithstanding this diminution of their lands, the Zuni have continued to make religious pilgrimages from their reservation in New Mexico to the area now included within the Zuni Heaven Reservation in Arizona. See, *United States on behalf of the Zuni Tribe of New Mexico v. Platt*, 730 F. Supp. 318, 318 21 (D. N.M. 1990).

The Zuni Heaven Reservation was recognized by statute in 1984, P.L. 98 408, 98 Stat. 1533 (1984), as amended by P.L. 101 486, 104 Stat. 1174 (1990), to protect long-standing religious and subsistence activities by the Zuni Indian Tribe on certain lands in Apache County, Arizona, located upstream of the confluence of the Little Colorado and Zuni Rivers.

The rights of all water users in the basin of the Little Colorado River in Arizona have been in litigation since 1979 before the Superior Court of the State of Arizona in and for the County of Apache in an action captioned *In re The General Adjudication of All Rights to Use Water in the Little Colorado River*.

Public policy favors the resolution of such claims by means of negotiated settlements, rather than through lengthy and costly litigation. After more than four years of negotiations amongst representatives of the United States, the Zuni Tribe, the State of Arizona, the Salt River Project, Tucson Electric Power Company, local irrigation companies, and neighboring non-Indian communities located in the Little Colorado River basin, on June 7, 2002, the parties entered into a settlement agreement (Settlement Agreement) to resolve all of the tribe’s claims to water rights, to assist the tribe in acquiring surface water rights, to provide for the tribe’s use of groundwater, and to provide for the restoration of riparian wetlands of great cultural and religious significance to the tribe.

The proposed legislation ratifies and confirms that Settlement Agreement, and authorizes the appropriation of funds necessary to carry out its terms. The legislation also approves, ratifies, and confirms various related agreements among the parties. Because of the unique nature of the Zuni Heaven Reservation and the purposes

for which it was established, the terms of the Settlement Agreement and the provisions of S. 222 which seek to implement the Settlement Agreement in some instances represent a departure from standard principles of Federal-Indian law.

The Committee recognizes these unique circumstances and the history which gives rise to them, and further recognizes that the provisions of the Settlement Agreement and the implementing legislation are intended to address the unique circumstances as well as the respective positions of the parties to the Settlement Agreement, and are not intended to establish a precedent for other settlements of tribal claims to land and water rights.

#### LEGISLATIVE HISTORY

S. 222 was introduced on January 28, 2003, by Senator Kyl, for himself and Senator McCain, and was referred to the Committee on Indian Affairs. On February 26, 2003, the Committee ordered the bill favorably reported to the Senate with the recommendation that the Senate do pass S. 222.

#### COMMITTEE RECOMMENDATION AND TABULATION OF VOTE

The Committee on Indian Affairs, in an open business meeting on February 26, 2003, by voice vote approved S. 222 and ordered the bill to be reported favorably to the Senate.

#### *Section-by-Section Analysis*

Section 1.—Short title. Section 1 cites the short title of the bill as the Zuni Indian Tribe Water Rights Settlement Act of 2003.

Section 2.—Findings and purposes. Section 2(a) sets forth 9 Congressional findings that provide the rationale and basis for the decision by all parties, including the United States, to resolve the tribal water claims by negotiated settlement. Section 2(b) describes the purposes of S. 222, which include to approve, ratify, and confirm the Settlement Agreement entered into by the tribe and neighboring non-Indians, to authorize and direct the Secretary of the Interior (Secretary) to execute and perform the Settlement Agreement and related waivers, to authorize and direct the United States to take legal title to certain lands and to hold such lands in trust for the benefit of the tribe, and to authorize the actions, agreements, and appropriations as provided for in the Settlement Agreement S. 222.

Section 3.—Definitions. Section 3 provides 11 definitions for terms employed in the bill. These terms are: “Eastern LCR Basin”, “Fund”, “Intergovernmental Agreement”, “Pumping Protection Agreement”, “Reservation” or “Zuni Heaven Reservation”, “Secretary”, “Settlement Agreement”, “SRP”, “TEP”, “Tribe”, “Zuni Indian Tribe” or “Zuni Tribe”, and “Zuni Lands”.

Section 4.—Authorizations, ratifications, and confirmations. Section 4(a) approves, ratifies, confirms, and declares to be valid the Settlement Agreement, to the extent it does not conflict with the provisions of S. 222. It also authorizes and directs the Secretary to execute the Settlement Agreement and any necessary amendments thereto to make the Settlement Agreement consistent with this legislation.

Section 4(b) authorizes the appropriation, to the Zuni Indian Tribe Water Rights Fund established in 6(a), \$19,250,000, to be al-

located by the Secretary as follows: \$3,500,000 in FY2004 for the acquisition of at least 2,350 acre-feet per year of water rights and associated lands and for related activities, the acquisition to be completed by the deadline set forth in 9(b), and \$15,750,000, to be appropriated in three equal installments in FY2004, 2005, and 2006, to restore, rehabilitate, and maintain the Zuni Heaven Reservation, including the Sacred Lake, wetlands, and riparian areas.

The Committee has been advised by the parties that in the event the deadline set forth in the Settlement Agreement is in conflict with the schedule of funding set forth in this subsection, the Settlement Agreement will be amended to conform to the provisions of S. 222.

Section 4(c) provides that, except as provided in 9, the following three agreements, including amendments, are approved, ratified, confirmed, and declared to be valid: the agreement between the Salt River Project Agricultural Improvement and Power District, the tribe, and the United States on behalf of the tribe dated June 7, 2002; the agreement between Tucson Electric Power Company, the tribe, and the United States on behalf of the tribe dated June 7, 2002; and the agreement between the Arizona State Land Department, the tribe, and the United States on behalf of the tribe dated June 7, 2002.

Section 5.—Trust lands Section 5(a) provides that, upon satisfaction of conditions set forth in paragraph 6.2 of the Settlement Agreement and the requirements of 9(a), the Secretary shall take the legal title to certain lands identified in this subsection into trust for the benefit of the tribe.

Section 5(b) provides that, following the acquisition by the tribe of certain lands identified in this subsection and upon satisfaction of conditions set forth in paragraph 6.2 of the Settlement Agreement and the requirements of 9(a), the Secretary shall take the legal title to those lands into trust for the benefit of the tribe.

Section 5(c) provides that, following the acquisition by the tribe of certain lands identified in this subsection and upon satisfaction of conditions set forth in paragraph 6.2 of the Settlement Agreement and the requirements of 9(a), the Secretary shall take the legal title to those lands into trust for the benefit of the tribe and shall make such lands part of the Zuni Indian Tribe Reservation.

Section 5(d) provides that the Secretary shall have no discretion regarding the acquisitions described in subsection (a), (b), and (c).

Section 5(e) provides that no lands within Arizona, other than the land described in subsection (a), (b), and (c), shall hereafter be taken into trust by the United States for the benefit of the tribe except by authority of an Act of Congress enactment after the date of enactment of this legislation and specifically authorizing the taking of lands into trust by the benefit of the tribe.

Section 5(f) provides that any written certification by the Secretary under subparagraph 6.2.B of the Settlement Agreement constitutes final agency action under the Administrative Procedures Act and is reviewable as provided under chapter 7 of title 5, United States Code.

Section 5(g) provides that lands taken into trust pursuant to subsection (a), (b), or (c) shall not have Federal reserved rights to surface water or groundwater. Section 5(h) provides that water rights and uses for lands taken into trust pursuant to subsection (a) or

(c) must be determined under subparagraph 4.1.A and article 5 of the Settlement Agreement. The tribe retains any rights or claims to water associated with lands taken into trust pursuant to subsection (b) under State law, subject to the terms of the Settlement Agreement.

Section 5(i) provides that water rights appurtenant to lands taken into trust pursuant to subsections (a), (b), or (c) shall not be subject to forfeiture and abandonment. Section 5(j) provides that, with respect to lands taken into trust pursuant to subsection (a) and (b), the tribe shall make payments in lieu of all current and future State, county, and local ad valorem property taxes that would otherwise be applicable to those lands if they were not in trust.

Section 5(k) provides that the tribe is authorized to enter the Intergovernmental Agreement with Apache County, Arizona, and the State of Arizona identified in 3(3) and any intergovernmental agreement required to be entered into by the tribe under the terms of the Intergovernmental Agreement. The scope of the intergovernmental agreements to be entered into by the tribe under the terms of the Intergovernmental Agreement is as set forth in subparagraph 6.2.A of the Settlement Agreement.

Section 5(l) provides that the Secretary shall acknowledge the terms of any intergovernmental agreement entered into by the tribe under this section and shall not, in any administrative or judicial action, seek to abrogate the terms of any such intergovernmental agreement consistent with subparagraph 6.2.A of the Settlement Agreement and S. 2743.

The subsection further provides that if the United States is permitted to intervene in a judicial action commenced during a dispute over any intergovernmental agreement entered under this section, the United States shall not remove the action to the Federal courts, except that the United States may seek removal if the action concerns the Secretary's action regarding the issuance of rights-of-way under 8(c), the authority of a Federal agency to administer programs or the issuance of a permit under the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), the Safe Drinking Water Act (42 U.S.C. 300f et seq.), the Clean Air Act (42 U.S.C. 7401 et seq.), or any other Federal law specifically addressed in intergovernmental agreements, or if the intergovernmental agreement is inconsistent with a Federal law for the protection of civil rights, public health, or welfare.

Section 5(m) provides that nothing in this legislation shall be construed to affect the application of the Act of May 25, 1918 (25 U.S.C. 211) within the State of Arizona. Section 5(m) does not affect the application of *Jicarilla Apache Tribe v. State of New Mexico*, 742 F. Supp. 1487 (D. N.M. 1990), in the State of New Mexico, or the application of *Masayeva v. Zah*, 792 F. Supp. 1165 (D. Ariz. 1992), in the State of Arizona.

Section 5(n) provides that nothing in this section repeals, modifies, amends, changes, or otherwise affects the Secretary's obligation to the tribe pursuant to P.L. 98 408, 98 Stat. 1533, as amended by the Zuni Claims Settlement Act of 1990, P.L. 101 486, 104 Stat. 1174.

Section 6.—Development fund Section 6(a) establishes the Zuni Indian Tribe Water Rights Development Fund (Fund) in the Treas-

ury of the United States, to be managed and invested by the Secretary and to consist of funds appropriated under section 4(b), the appropriation to be contributed by the State of Arizona pursuant to paragraph 7.6 of the Settlement Agreement, and any other funds paid to the Secretary on behalf of the Zuni Tribe pursuant to the Settlement Agreement.

Section 6(b) provides that the Secretary, in the management, investment, and disbursement of the Fund, shall comply with the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4001 et seq.), S. 222, and the Settlement Agreement.

Section 6(c) provides that investment of the assets of the Fund by the Secretary shall comply with the Act of April 1, 1880 (25 U.S.C. 161), the first section of the Act of June 24, 1938 (25 U.S.C. 162a), and subsection (b).

Section 6(d) provides that funds appropriated pursuant to 4(b)(2) and funds contributed by the State of Arizona pursuant to paragraph 7.6 of the Settlement Agreement shall be available for expenditure or withdrawal only after the requirements of 9(a) have been met.

Section 6(e) provides that the tribe may make withdrawals from the Fund only after the Secretary has approved a tribal management plan as described in the 1994 Trust Reform Act which requires that funds be spent only for the purposes set forth in 4(b).

The Secretary is authorized to take judicial or administrative action to enforce the requirement that the assets of the Fund be used only in accordance with the provisions of S. 222. Neither the Secretary or the Secretary of the Treasury shall have any liability for the expenditure or investment of monies withdrawn from the Fund (the inclusion of this provision is not intended to suggest, however, that existing law does not fully protect the United States from liability under these circumstances, as it is the Committee's view that 25 U.S.C. 4022(c) would provide such protection). The tribe is to submit an expenditure plan for approval by the Secretary as to any monies held in the Fund that are not withdrawn pursuant to this subsection. The plan is to describe the manner in which, and the purposes for which, such monies will be used. The Secretary determines that the plan is reasonable and is consistent with the provisions of S. 222.

The tribe is to submit to the Secretary an annual report describing all expenditures from the Fund during the period of the report. Section 6(f) provides that notwithstanding subsection (e), funds authorized to be appropriated pursuant to 4(b)(1) shall be available for use upon appropriation in accordance with 4(b)(1) and shall be distributed by the Secretary to the tribe upon receipt by the Secretary of a written notice from the tribe and a tribal council resolution describing the purposes for which the funds will be used.

In the event the requirements of 9(a) are not met and the Settlement Agreement becomes null and void pursuant to 9(b), the United States may set off any funds expended or withdrawn from the amount appropriated pursuant to 4(b)(1), together with any accrued interest, against any claims asserted by the tribe against the United States relating to water rights of the Zuni Heaven Reservation. Any water rights acquired with funds described in this subsection are to be credited; against any water rights secured for the Zuni Heaven Reservation by the tribe, or by the United States on

behalf of the tribe, in the Little Colorado River General Stream Adjudication or in any future settlement of claims for those water rights. Section 6(g) provides that no part of the Fund shall be distributed on a per capita basis to members of the tribe.

Section 7.—Claims extinguishment; waivers and releases. Section 7(a) provides that the benefits realized by the tribe and its members under this legislation, including retention of any claims and rights, shall constitute full satisfaction of all members' claims for water rights under Federal, State, and other laws (including claims rights in groundwater, surface water, and effluent) for Zuni Lands (as defined in 3(11)) from time immemorial through the effective date set forth in 9(a), and for injuries during that period to such rights (including also claims for damages for deprivation of water rights and for changes to underground water tables) under Federal, State, and other laws.

The legislation is not intended to recognize or establish any right of a member of the tribe to water on the Zuni Heaven Reservation.

Section 7(b) authorizes the tribe, on behalf of itself and its members, and the Secretary, on behalf of the United States in its capacity as trustee for the tribe and its members, as part of their obligations under the Settlement Agreement, to execute a waiver and release of claims against the State of Arizona, any agency or political subdivision thereof, or any other person under Federal, State, or other law, for:

(1) Past, present, and future claims (from time immemorial to the effective date set forth in 9(a) and any time thereafter) to water rights (including groundwater, surface water, and effluent) for Zuni Lands, except as provided in article 5 of the Settlement Agreement;

(2) Past and present claims (to the effective date set forth in 9(a)) for injuries to water rights (including also claims for damages for deprivation of water rights and changes to underground water tables); and

(3) Past, present, and future claims for water rights and injuries to water rights (including also claims for damages for deprivation of water rights and changes to underground water tables) for lands outside of the Zuni Lands but located within the Little Colorado River basin in Arizona and based upon aboriginal occupancy of lands by the tribe and its predecessors.

Section 7(c) authorizes the tribe, as part of the performance of its obligations under the Settlement Agreement, to execute a waiver and release (subject to paragraphs 11.4 and 11.6 of the Settlement Agreement) for claims against the United States (acting in its capacity as trustee for the tribe and its members or otherwise acting in their behalf), its agencies, officials, and employees, for:

(1) Past, present, and future claims (from time immemorial to the effective date set forth in 9(a) and any time thereafter) to water rights for Zuni lands (including groundwater, surface water, and effluent) and any claims for damages for deprivation of such water rights;

(2) Past and present claims (to the effective date set forth in 9(a)) for injuries to and deprivation of such water rights for Zuni Lands; and

(3) Past, present, and future claims for water rights (including groundwater, surface water, and effluent) as well as for in-

injuries to and claims for deprivation of such water rights for lands outside the Zuni Lands but located within the Little Colorado River basin in Arizona and based upon aboriginal occupancy of lands by the tribe and its predecessors.

Section 7(d)(1) authorizes the tribe, on behalf of itself and its members, to waive and release all claims against the State of Arizona, its agencies and political subdivisions, and any other person under Federal, State, or other law for claims of interference with the trust responsibility of the United States to the tribe arising out of the negotiation of the Settlement Agreement or S. 222, as well as all claims against those same entities (subject to paragraphs 11.4, 11.6, and 11.7 of the Settlement Agreement) for past and present claims, including natural resource damage claims under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) (CERCLA), the Oil Pollution Act of 1990 (33 U.S.C. 2701 et seq.) (OPA), or any other applicable statute, for injury to water quality accruing from time immemorial through the effective date set forth in 9(a) for lands within the Little Colorado River basin in the State of Arizona.

The tribe is also authorized to waive future claims, including natural resource claims under CERCLA, OPA, or any other applicable statute, for lands within the Eastern Little Colorado River [LCR] basin (as defined in 3(1) caused by the lawful diversion or use of surface water, the lawful withdrawal of water (except within the Zuni Protection Area as provided in article 5 of the Settlement Agreement), the parties' performance of any obligations under the Settlement Agreement, the discharge of oil associated with routine physical or mechanical maintenance of wells or diversion structures not inconsistent with applicable law, the discharge of oil associated with routine start-up and operation of well pumps not inconsistent with applicable law, or any combination thereof.

Section 7(d)(2) authorizes the tribe, on behalf of itself and its members, to waive its right to request that the United States bring any claims for injuries to water quality under the natural resource damage provisions of CERCLA, OPA, or any other applicable statute, for lands within the Little Colorado River basin in the State of Arizona accruing from time immemorial through the effective date set forth in 9(a), as well as future claims for injuries or threat of injuries to water quality under the natural resource damage provisions of CERCLA, OPA, or any other applicable statute, for lands within the Eastern LCR basin caused by the lawful diversion or use of surface water, the lawful withdrawal of water (except within the Zuni Protection Area as provided in article 5 of the Settlement Agreement), the parties' performance of any obligations under the Settlement Agreement, the discharge of oil associated with routine physical or mechanical maintenance of wells or diversion structures not inconsistent with applicable law, the discharge of oil associated with routine start-up and operation of well pumps not inconsistent with applicable law, or any combination thereof.

Section 7(d)(3) provides that notwithstanding the waivers of future water quality claims authorized in paragraphs (1)(B)(ii) and (2)(B) of this subsection, the tribe, on behalf of itself and its members, retains any statutory claims for injury or threat of injury to water quality under CERCLA and OPA as described in subpara-

graphs 11.4(D)(3) and (4) of the Settlement Agreement that accrue at least 30 years after the effective date set forth in 9(a).

Section 7(e) provides that the United States, as part of the performance of its obligations under the Settlement Agreement, waives and releases past and present claims (subject to the limitations set forth in paragraphs 11.4, 11.6, and 11.7 of the Settlement Agreement) against the State of Arizona, its agencies and political subdivisions, and any other entity for: past and present common law claims accruing from time immemorial to the effective date set forth in 9(a) arising for or relating to water quality in which the injury asserted is to the tribe's interest in water, trust land, and natural resources in the Little Colorado River basin in the State of Arizona; and all past and present natural resource damage claims accruing through the effective date set forth in 9(a) based on injury or threat to natural resources in the Little Colorado River basin in Arizona, but only for those cases in which the United States, or any Federal official, would act on behalf of the tribe as a natural resource trustee pursuant to the Natural Resource Contingency Plan as set forth in 40 CFR 300.600(b)(2) on the effective date of this legislation under 9(a).

This subsection further provides that the United States, subject to the retentions set forth in paragraphs 11.4, 11.6 and 11.7 of the Settlement Agreement, also waives and releases future common law claims against the State of Arizona, its agencies and political subdivisions, and any other entity arising from or relating to water quality in which the injury asserted is to the tribe's interest in water, trust land, and natural resources in the Eastern LCR basin in Arizona accruing after the effective date described in 9(a) and caused by the lawful diversion or use of surface water, the lawful withdrawal of water (except within the Zuni Protection Area as provided in article 5 of the Settlement Agreement), the parties' performance of any obligations under the Settlement Agreement, the discharge of oil associated with routine physical or mechanical maintenance of wells or diversion structures not inconsistent with applicable law, the discharge of oil associated with routine start-up and operation of well pumps not inconsistent with applicable law, or any combination thereof.

Section 7(f) provides that, subject to subsection (b) and (e), nothing in S. 222 or the Settlement Agreement affects any right of the United States, or the State of Arizona, to take any actions (including enforcement actions) under any laws (including regulations) relating to human health, safety, and the environment.

Section 8.—Miscellaneous provisions Section 8(a) provides for the waiver of the sovereign immunity of the United States and the Tribe (except as to claims for money damages not specifically provided for in the Settlement Agreement) in the event any party to the Settlement Agreement or a Pumping Protection Agreement files a lawsuit only resulting to the interpretation or enforcement of this legislation, certain agreements identified in 4(c), or a Pumping Protection Agreement. This subsection also provides for a waiver of Federal and tribal immunity, with the same limitation, if a landowner or water user in the Little Colorado River basin in Arizona files a lawsuit only relating to directly to the interpretation or enforcement of Article 11 of the Settlement Agreement, the rights of de minimis users in subparagraph 4.2.D of the Settlement

Agreement, or the rights of underground water users under Article 5 of the Settlement Agreement.

The tribe is authorized to waive its sovereign immunity from suit in the superior Court of Apache County, Arizona (except with claims for monetary awards not specially authorized in the Intergovernmental Agreement) for the limited purposes of enforcing the terms of the Intergovernmental Agreement and any intergovernmental agreement required to be entered into by the tribe under the terms of the Intergovernmental Agreement. Although the text of the legislation does not address the issue of a waiver of the sovereign immunity of the State of Arizona, the waiver of tribal sovereign immunity set forth therein is grounded in assurances made to the Committee that the tribe has adequate and reciprocal judicial remedies against the State.

The Committee views S. 222 as a contract, and the availability of the tribe of such remedies is a basic assumption of that contract.

Section 8(b) provides that, with respect to water rights made available under the Settlement Agreement and used on the Zuni Heaven Reservation, such rights shall be held in trust by the United States in perpetuity and shall not be subject to forfeiture or abandonment. The subsection further provides that State law shall not apply to water uses on the Zuni Heaven Reservation, and that water rights and uses on the Zuni Heaven Reservation shall not be subject to State law or regulation, except that the court with jurisdiction over the decree entered pursuant to the Settlement Agreement of the Norviel Decree Court may assess administrative fees for delivery of this water.

Section 8(c) provides that land taken into trust pursuant to 5(a) and 5(b) shall be subject to existing easements and rights-of-way and that, notwithstanding any other provision of law, the Secretary, in consultation with the tribe, shall grant additional rights-of-way or expansions of existing rights-of-way for roads, utilities, and other accommodations to adjoining landowners if the proposed right-of-way: (1) is necessary to the needs of the applicant; (2) will not cause significant and substantial harm to the Tribe's wetland restoration project or religious practices; and (3) will comply with the procedures in part 169 of title 25, Code of Federal Regulations (where not inconsistent with this subsection) and with other generally applicable Federal laws unrelated to the acquisition of interests across trust lands.

Section 8(d) provides that the United States shall not seek reimbursement of costs arising out of the implementation of S. 222 or of the Settlement Agreement against any Indian-owned land within the tribe's Reservation, or make any assessment against such lands in regard to such costs.

Section 8(e) provides that, except as provided in paragraph 5.3 of the Settlement Agreement (recognizing the tribe's use of 1,500 acre-feet per annum of groundwater), neither S. 222 nor the Settlement Agreement create any vested right to groundwater under Federal or State law, or any priority to the use of groundwater under Federal or State law that would be superior to any other right or use of groundwater. Notwithstanding this limitation, the rights of parties to the intergovernmental agreements referred to in 4(c)(1), (2), or (3) and in paragraph 5.8 of the Settlement Agreement, as among themselves shall be as stated in those agreements.

Section 8(f) provides that nothing in the Settlement Agreement or in S. 2223 quantifies or otherwise affects the water rights, claims, or entitlements to water of any Indian tribe, band, or community, other than the Zuni Indian Tribe.

Section 8(g) provides that execution of the Settlement Agreement shall not constitute major Federal action under the National Environmental Policy Act, 42 U.S.C. 4321 et seq. (NEPA), however the Secretary shall comply with NEPA and shall carry out any other necessary compliance during the implementation of this settlement.

Section 9.—Effective date for waiver and release authorizations. Section 9(a) provides that the waiver and release authorizations contained in 7(b) and 7(c) shall become effective as of the date the Secretary publishes in the Federal Register a statement of all of the following findings:

(1) That this legislation has been enacted in a form approved by the parties in paragraph 3.1.A of the Settlement Agreement;

(2) That the funds authorized by 4(b) have been appropriated and deposited into the Fund;

(3) That the State of Arizona has appropriated and deposited into the Fund the amount required by paragraph 7.6 of the Settlement Agreement;

(4) That the tribe has either purchased or acquired the right to purchase at least 2,350 acre-feet per annum or surface water rights, or waived this condition pursuant to paragraph 3.2 of the Settlement Agreement;

(5) That, pursuant to subparagraph 3.1.D of the Settlement Agreement, the severance and transfer of surface water rights that the tribe owns or has a right to purchase have been conditionally approved, or that the tribe has waived this condition as provided in paragraph 3.2 of the Settlement Agreement;

(6) That, pursuant to subparagraph 3.1.E of the Settlement Agreement, the tribe and Lyman Water Company have executed an agreement relating to the severance and transfer of surface water rights acquired by the tribe and the United States, the pass-through, use, or storage of the tribe's surface water rights in Lyman Lake, and the operation of Lyman Dam;

(7) That, pursuant to subparagraph 3.1.F of the Settlement Agreement, all parties to the Settlement Agreement have agreed and stipulated to certain Arizona Game and Fish abstracts of water uses;

(8) That, pursuant to subparagraph 3.1.G of the Settlement Agreement, all parties to the Settlement Agreement have agreed to the location of an observation well and that well has been installed;

(9) That, pursuant to subparagraph 3.1.H of the Settlement Agreement, the tribe, Apache County, Arizona, and the State of Arizona have executed an Intergovernmental Agreement that satisfies all of the conditions in paragraph 6.2 of the Settlement Agreement;

(10) That the tribe has acquired title to a particular section of land adjacent to the Zuni Heaven Reservation;

(11) That the Settlement Agreement has been modified if and to the extent that it is in conflict with this legislation and such modification has been agreed to by all the parties to the Settlement Agreement; and

(12) That a court of competent jurisdiction has approved the Settlement Agreement by a final judgment and decree. Section 9(b) provides that if the publication in the Federal Register required under subsection (a) has not occurred by December 31, 2006, sections 4 and 5, and any agreements entered into pursuant thereto (including the Settlement Agreement and the Intergovernmental Agreement) shall not thereafter be effective and shall be null and void. This subsection further provides that any funds and the interest accrued thereon appropriated pursuant to 4(b)(2) shall revert to the Treasury, and any funds and the interest accrued thereon appropriated pursuant to paragraph 7.6 of the Settlement Agreement shall revert to the State of Arizona.

COST AND BUDGETARY CONSIDERATIONS

On February 27, 2003, the cost estimate of the Congressional Budget Office was received and a copy of that estimate follows:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, February 27, 2003.*

Hon. BEN NIGHTHORSE CAMPBELL,  
*Chairman, Committee on Indian Affairs,*  
*U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 222, the Zuni Indian Tribe Water Rights Settlement Act of 2003.

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

Sincerely,

DOUGLAS HOLTZ-EAKIN,  
*Director.*

Enclosure.

*S. 222—Zuni Indian Tribe Water Rights Settlement Act of 2003*

Summary: S. 222 would approve and ratify a water rights settlement agreement between the Zuni Indian Tribe, the surrounding community, and the State of Arizona. The bill would authorize the appropriation of funds to the Department of the Interior (DOI) to implement the agreement, but most of those funds could not be spent until the agreement is approved by all parties involved and certain other conditions have been met. S. 222 would create the Zuni Indian Tribe Water Rights Development Fund and would allow the tribe to spend amounts deposited in the fund (including interest earnings) without further appropriation.

Based on information from DOI, CBO estimates that implementing S. 222 would cost \$19 million over the 2004–2006 period, assuming appropriation of the authorized amounts. Enacting S. 222 would not affect direct spending or revenues.

S. 222 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA). Any costs or duties imposed by this bill upon state, local, or tribal governments would be those assumed by them voluntarily as parties to the settlement agreement.

Estimated cost to the Federal Government: The estimated budgetary impact of S. 222 is shown in the following table. The costs of this legislation fall within budget function 450 (community and regional development).

	By fiscal year, in millions of dollars—					
	2003	2004	2005	2006	2007	2008
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
Authorization Level .....	0	9	5	5	0	0
Estimated Outlays .....	0	2	2	15	0	0

Basis of estimate: S. 222 would authorize the appropriation of a total of \$19 million over the 2004–2006 period to be deposited in the Zuni Indian Tribe Water Rights Development Fund to satisfy a settlement agreement between the Zuni Indian Tribe, the surrounding community, and the state of Arizona. For purposes of this estimate, CBO assumes that the amounts authorized for each year would be appropriated as specified in the bill.

Within that total authorization, S. 222 would authorize the appropriation of \$5 million each year over the 2004–2006 period to deposit in Zuni Indian Tribe Water Rights Development Fund to benefit the Zuni tribe. Funds would be used to restore, rehabilitate, and maintain the Zuni Heaven Reservation and could not be spent by the tribe until the settlement is agreed to by all parties and certain conditions are met. Unless all conditions of the settlement are met by December 31, 2006, any funds appropriated to implement S. 222 would be returned to the Treasury.

Trust funds that are held and managed in a fiduciary capacity by the federal government on behalf of Indian tribes are treated as nonfederal entities. As a result, outlays would be recorded on the budget in the year that all funds are provided to the tribe and the settlement agreement is final. Therefore, CBO estimates that this provision would cost \$15 million in fiscal year 2006. Once the settlement is final and those amounts are recorded as outlays, subsequent use by the tribe would be nonbudgetary (that is, it would have no further impact on the federal budget).

S. 222 also would authorize the appropriation of \$4 million in fiscal year 2004 for the Zuni tribe to purchase water rights and associated land in Arizona. Based on information from the tribe, CBO estimates that the tribe would complete this purchase by the end of fiscal year 2005. If the settlement agreement does not go into effect by the deadline, the \$4 million provided for water rights and land acquisition would not be returned to the Treasury. Consequently, CBO estimates that this provision would cost \$4 million over the 2004–2005 period, assuming the appropriation of the specified amounts.

Intergovernmental and private-sector impact: S. 222 contains no intergovernmental or private-sector mandates as defined in UMRA. Any costs or duties imposed by this bill upon state, local, or tribal governments would be those assumed by them voluntarily as parties to the settlement agreement.

Estimate prepared by: Federal costs: Julie Middleton; Impact on State, Local, and Tribal Governments: Marjorie Miller; and Impact on Private Sector: Cecil McPherson.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

EXECUTIVE COMMUNICATIONS

On February 26, 2003, in a letter to Chairman Campbell, the Department of Interior expressed its support for S. 222. A copy of that letter follows:

U.S. DEPARTMENT OF THE INTERIOR,  
OFFICE OF THE SECRETARY,  
*Washington, DC, February 25, 2003.*

Hon. BEN NIGHTHORSE CAMPBELL,  
*Chairman, Committee on Indian Affairs,  
U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The Department of the Interior understands the Committee will be marking up S. 222, the "Zuni Indian Tribe Water Rights Settlement Act of 2003." S. 222 is nearly identical to S. 2743, the "Zuni Indian Tribe Water Rights Settlement Act of 2002," as reported during the 107th Congress. The Administration supported S. 2743 as reported and is pleased this important legislation has been reintroduced during this Congress.

S. 222 is the product of a cooperative effort over the last five years among the Zuni Tribe, the State of Arizona, the United States, the Salt River Project and many other local water users. The bill would approve and authorize federal participation in the main settlement agreement, which includes three subsidiary agreements with individual parties. When fully implemented, this agreement would constitute a final settlement of the water rights claims of the Zuni Tribe and the United States' claims on behalf of Zuni. This settlement involves significant cost sharing and cooperation among the federal government and the state and local parties.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

DAVID L. BERNHARDT,  
*Director, Office of Congressional and  
Legislative Affairs and Counselor to the Secretary.*

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. 222 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. 222 will not result in any changes in existing law.