



Legislative Bulletin.....June 5, 2003

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S. 222 — Zuni Indian Tribe Water Rights Settlement Act of 2003 (Sen. Kyl)

Order of Business: The bill is scheduled for consideration on Thursday, June 5th, under a closed rule. A motion to suspend the rules and pass the bill failed on Tuesday, June 3rd, after Democrats announced that they would not support passing any legislation until the House considered their proposal related to the child tax credit. The vote on the motion to suspend failed by a vote of 244 YEAS to 188 NAYS (2/3rd affirmative vote required to suspend the rules), with four Republicans voting NAY. Vote Tally: <http://clerkweb.house.gov/cgi-bin/vote.exe?year=2003&rollnumber=230>

Summary: S. 222 ratifies the provisions of a settlement agreement entered into by the Zuni Indian Tribe, the State of Arizona, the Salt River Project, Tucson Electric Power Company, and others involved in a dispute over water rights for the Little Colorado River basin.

The bill authorizes \$19.25 million to the Zuni Indian Tribe Water Rights Fund, which is established in the Treasury and managed by the Secretary of the Interior. The \$19.25 million is to be allocated as follows:

- \$3.5 million for FY04 for the acquisition of at least 2,350 acre-feet per year of water rights and associated lands; and
- \$5.25 million per year in FY04-06 to restore, rehabilitate, and maintain the Zuni Heaven Reservation.

The tribe may only make withdrawals from the Fund after the Secretary has approved a tribal management plan that certifies the funds will be used for the purposes laid out in the bill. The tribe must also submit an annual report to the Secretary describing all expenditures from the Fund for that year.

Upon meeting the conditions of the settlement agreement and requirements in the bill, land specified in the bill would be taken into trust for the Zuni Tribe by the Secretary of the Interior. If these conditions are not met, the settlement agreement would be void.

S. 222 further releases the United States from any potential damage claims that might be asserted by the Tribe and relieves the federal government of the obligation to litigate the Tribe's water rights claims. The federal government would retain its ability to initiate enforcement actions (as necessary) in the future to protect the environment and water quality in the area.

Additional Background: The dispute over water rights for the Little Colorado River basin has been in litigation since 1979. On June 7, 2002, the parties entered into a settlement agreement to resolve the dispute.

Further background from the Department of the Interior:

The Little Colorado River (LCR) Basin covers an area of approximately 17.2 million acres or 26,964 square miles in northeastern Arizona and northwestern New Mexico. The main stem of the Little Colorado River is entirely in Arizona. Therefore, this adjudication deals only with claims inside the borders of Arizona. Five different Indian tribes have reservations, or pending claims to reservation lands, within the Basin: the Navajo Nation, Hopi Tribe, Zuni Tribe, San Juan Southern Paiute Tribe and the White Mountain Apache Tribe.

The Settlement Agreement at issue here concerns only the Zuni Tribe's relatively small water right claims at the Zuni Heaven Reservation located in the southeastern section of the Basin, at the confluence of the Zuni and Little Colorado Rivers. Zuni Heaven is a unique reservation created fairly recently to accommodate the religious and cultural practices of the Zuni. The main Zuni reservation, in contrast, is located in New Mexico. The majority of the Zuni members reside on the main reservation.

According to Zuni religious beliefs, a lake formerly located on the Zuni Heaven Reservation is a window into heaven. That lake and the surrounding wetlands disappeared in recent history due to upstream diversions and groundwater pumping in the surrounding areas. The Settlement Agreement provides the Tribe with the water and land to restore the lake for use in future religious ceremonies.

The Zuni Heaven Reservation was established by Congress in 1984 through Public Law 98-498 and expanded in 1990 through Public Law 101-486 to further the religious and cultural needs of the Tribe. That legislation established the land base of the Reservation within the Tribe's aboriginal territory and facilitated the Tribe's regular pilgrimage from New Mexico to Arizona by authorizing the United States to obtain easements along the pilgrimage route.

Since 1979, water rights in the Little Colorado River basin have been the subject of an Arizona state general stream adjudication. The United States filed a water rights claim on behalf of the Zuni Tribe in the state proceeding for water rights to Zuni Heaven.

S. 222 passed the Senate by unanimous consent on March 13.

Committee Action: The bill was referred to the Committee on Resources on March 17 and while it was not considered, the Subcommittee on Water and Power marked-up H.R. 495 (legislation identical to S. 222) and reported the bill by voice vote on April 3.

Administration Position: The Administration supports S. 222.

Cost to Taxpayers: The Congressional Budget Office estimates that S. 222 will cost \$19 million over the 2004-2006 period.

Does the Bill Create New Federal Programs or Rules?: The bill ratifies a water settlement agreement and establishes a new Zuni Indian Tribe Water Rights Fund in the Treasury.

Constitutional Authority: A committee report citing constitutional authority is not available.

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S. 273 — Grand Teton National Park Land Exchange Act (Sen. Thomas)

Order of Business: The bill is scheduled for consideration on Thursday, June 5th, under a closed rule. A motion to suspend the rules and pass the bill failed on Tuesday, June 3rd, after Democrats announced that they would not support passing any legislation until the House considered their proposal related to the child tax credit. The vote on the motion to suspend failed by a vote of 217 YEAS to 198 NAYS (2/3rd affirmative vote required to suspend the rules), with six Republicans voting NAY. Vote Talley: <http://clerkweb.house.gov/cgi-bin/vote.exe?year=2003&rollnumber=231>

Summary: S. 273 authorizes the Secretary of the Interior to acquire 1,406 acres of state land within the boundary of the Grand Teton National Park in Wyoming through donation, purchase, or exchange. The bill also provides for an appraisal process and authorizes “such sums as may be necessary” to carry out the purposes of the bill.

Additional Background: The State of Wyoming was given scattered parcels of land when granted statehood for the benefit of state schools. Some of these lands were within what has now become Grand Teton National Park. The size of the park is currently 310,000 acres. The federal government owns 50.6 percent of the land in Wyoming, according to the General Services Administration.

The Senate passed S. 273 by unanimous consent on April 3rd.

Both the House and Senate passed legislation similar to S. 273 in the 107th Congress (S. 1105). The House passed the bill by voice vote on September 24, 2002, with provisions in addition to those in the original Senate-passed text unrelated to the Grand Teton land exchange. The House and Senate did not resolve the differences between the bills before the 107th Congress adjourned.

Committee Action: The bill was referred to the House Committee on Resources on April 7, but was not considered.

Administration Position: The Administration supports the bill.

Cost to Taxpayers: The Congressional Budget Office estimates that S. 273 will cost \$1 million in FY04.

Does the Bill Create New Federal Programs or Rules?: The bill authorizes the acquisition of land in the Grand Teton National Park.

Constitutional Authority: A committee report for S. 273 is not available. However, the committee report for S. 1105 in the 107th Congress (House Report 107-639) cited Article I, Section 8 (without citing a specific clause) and Article IV, Section 3 (power to dispose of and make all needed rules and regulations respecting the territory or property belonging to the United States).

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H.R. 1474—Check Clearing for the 21st Century Act (Hart)

Order of Business: The bill is scheduled to be considered on Thursday, June 5th, subject to an open rule (H.Res. 256) that makes any germane amendment in order.

Summary: H.R. 1474 would make a substitute check the legal equivalent of an original check for all purposes, including any provision of any federal or state law, as long as the substitute check:

- accurately represents all of the information on the front and back of the original check as of the time the original check was truncated; and
- bears the legend: “This is a legal copy of your check. You can use it the same way you would use the original check.”

A substitute check is a paper reproduction of the original check that:

- contains an image of the front and back of the original check;
- bears the line at the bottom of a check containing such items as the bank routing number, customer account number, and check number (subject to certain exceptions);
- conforms, in paper stock, dimension, and otherwise, with generally applicable industry standards for substitute checks; and
- is suitable for automated processing in the same manner as the original check.

In short, H.R. 1474 would facilitate the electronic transfer of check images, which can then be turned into substitute checks, eliminating the need for physical transfer of the original check.

No prior agreement with a bank would be required before depositing or otherwise presenting a substitute check. Banks that transfer substitute checks would have to indemnify transferees and other parties in the transfer for the amount of the checks, interest, and costs (including reasonable attorneys’ fees) associated with recovering funds from bad substitute checks (with exceptions for cases in which the original paper check is available).

The bill would also set procedures for a consumer to file expedited claims for recredit on a substitute check that was not credited to the consumer’s account. A bank would have ten business days to complete an investigation of a recredit claim before at least partially

recrediting a consumer's account (as detailed in the bill). Recredited funds would have to be available on the next business day after recrediting, subject to certain exceptions (mainly regarding customers who have bad banking habits, like overdrafting). A bank could reverse a recredit upon discovery of a proper crediting of a substitute check (and upon notification to the customer). Banks would also have to notify customers about recredits made to them and reasons for rejecting bad claims for recredit.

Analogously, the bill would establish expedited recredit procedures for banks to make claims against indemnifying banks and would set statutes of limitation for both bank and individual claims. Banks could agree to vary the recredit procedures in the bill.

Delays by a bank beyond the time limits prescribed in this legislation would be excused if the delays were caused by interruption of communication or computer facilities, suspension of payments by another bank, war, emergency conditions, failure of equipment, or other circumstances beyond the control of a bank and if the bank used such diligence as the circumstances require.

All banks would be required to provide to all customers a brief notice about substitute checks that describes:

- the process of check substitution and how the process may be different than the check clearing process with which the consumer may be familiar; and
- a description of the consumer recredit rights when a consumer believes in good faith that a substitute check was not properly charged to the consumer's account.

The Board of Governors of the Federal Reserve System would be charged with clarifying or implementing (by regulation) the provisions of this bill and with monitoring the extent to which:

- original checks are converted to substitute checks in the check collection and return process; and
- checks are collected and returned electronically rather than in paper form.

This legislation would supersede all existing federal and state laws on substitute checks and other such matters addressed here and would take effect 18 months after enactment.

Amendments: (NOTE: Under an open rule new amendments may be offered without notice.)

Hart (Amendment #1): In section 1, insert ``or the `Check 21 Act' " before the period at the end. It appears the intent of the amendment is to add a shorter title to the short title.

Committee Action: On May 14, 2003, the Subcommittee on Financial Institutions and Consumer Credit marked up and reported the bill to the full Financial Services Committee. On May 21, 2003, the full Committee marked up and favorably reported the bill to the full House.

Administration Position: Though no Administration position is available, on April 8, 2003, the Vice Chairman of the Board of Governors of the Federal Reserve System testified before

the House Financial Services Committee in favor of H.R. 1474.
<http://financialservices.house.gov/media/pdf/040803rf.pdf>

Cost to Taxpayers: CBO estimates that H.R. 1474 would have a “negligible” effect on federal revenues through its effects on the Federal Reserve's income and expenses from its check processing operations. The Federal Reserve remits its net income to the Treasury, and those payments are classified as governmental receipts, or revenues, in the federal budget. CBO estimates that H.R. 1474 would have a negligible effect on the Federal Reserve's net income and, hence, on federal revenues.

Does the Bill Create New Federal Programs or Rules?: Yes, the bill would create a new negotiable instrument (the substitute check) and supersede any existing federal and state laws on substitute checks and check transfers.

Constitutional Authority: The Financial Services Committee, in House Report 108-132, cites constitutional authority in Article I, Section 8, Clause 1 (relating to the defense and general welfare of the United States), and Clause 3 (relating to the power to regulate foreign and interstate commerce).

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H.Con.Res. 190—To establish a joint committee to review House and Senate rules, joint rules, and other matters assuring continuing representation and congressional operations for the American people (Dreier)

Order of Business: The bill is scheduled to be considered on Thursday, June 5th, under a unanimous consent agreement.

Summary: H.Con.Res. 190 would establish a twenty-member House-Senate committee to study the procedures that should be adopted by the House of Representatives, the Senate, and the Congress for:

- ensuring the continuity and authority of Congress during times of crisis;
- improving congressional procedures necessary for the enactment of measures affecting homeland security during times of crisis; and
- enhancing the ability of each chamber to cooperate effectively with the other body on major and consequential issues related to homeland security.

Membership selection for the committee would be as follows:

- Ten Members of the House of Representatives: five from the majority party to be appointed by the Speaker of the House, including the chairman of the Committee on Rules, who shall serve as co-chairman, and five from the minority party to be appointed by the Speaker of the House (after consultation with the Minority Leader); and

- Ten Members of the Senate: five from the majority party, including the chairman of the Committee on Rules and Administration, who shall serve as co-chairman, and five from the minority party, to be appointed by the Majority Leader of the Senate (after consultation with the Minority Leader).

Vacancies on the committee would not affect the power of the remaining members to execute the functions of the committee and would be filled in the same manner as the original selection.

The committee could make no recommendation except upon the majority vote of the members from each chamber. Any recommendation that only affects matters related solely to one chamber could only be made and voted on by members of the committee from that chamber and, upon its adoption by a majority of such members, would be considered to have been adopted as a full committee recommendation.

The House-Senate committee would be required to submit to the Speaker of the House of Representatives and to the Majority Leader of the Senate an interim report not later than January 31, 2004, and a final report not later than May 31, 2004, of the results of the study.

The committee would cease to exist no later than May 31, 2004.

Committee Action: On May 22, 2003, the resolution was referred to the Rules Committee. On June 4th, the resolution was reported by the Rules Committee in House Report 108-141.

Cost to Taxpayers: The resolution would authorize no new expenditure.

Does the Bill Create New Federal Programs or Rules?: The resolution would create a temporary House-Senate committee.

Constitutional Authority: Though House Report 108-141 was not available at press time, Article I, Section 5, Clause 2 grants each House of Congress the power to “determine the Rules of its Proceedings....”

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