

CLAIMS RESOLUTION ACT



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CLAIMS RESOLUTION ACT OF 2010

- The four water settlements included in the Settlements Act are:
 - the White Mountain Apache Tribe Water Rights Quantification Act (Arizona),
 - the Crow Tribe Water Rights Settlements Act (Montana),
 - the Aamodt Litigation Settlement Act (New Mexico), and
 - the Taos Pueblo Indian Water Rights Settlements Act (New Mexico).

- The four settlements will provide permanent water supplies to the White Mountain Apache Tribe, the Crow Tribe, the Taos Pueblo and the Aamodt case pueblos, including the Pojoaque, Tesuque, San Ildefonso, and Nambe pueblos in New Mexico.

Bills Were Initially Introduced Separately

- The four water settlements bills were introduced as stand alone bills.
- No Senator, however, would let the other bills move if their bill(s) did not move. Essentially, there was a standoff.
 - The power of the “hold”.
- Therefore, a decision was made to package the bills together into one bill.

STRANGE BEDFELLOWS

- As a result, the Settlements Act had bipartisan support in the Senate and the House.
- Sen. Kyl (R-AZ), Sen. McCain (R-AZ), Rep. Kirkpatrick (D-AZ), Rep. Shadegg (R-AZ), Rep. Flake (R-AZ), Rep. Pastor (D-AZ), Rep. Grijalva (D-AZ), Rep. Franks (R-AZ), Rep. Mitchell (D-AZ), Rep. Giffords (D-AZ), and Rep. Franks (R-AZ) sponsored the White Mountain Apache Tribe's water settlement; Sen. Tester (D-MT), Sen. Baucus (D-MT), and Rep. Rehberg (R-MT) sponsored the Crow settlement; and Sen. Bingaman (D-NM), Sen. Udall (D-NM), Rep. Lujan (D-NM), and Rep. Heinrich (D-NM) sponsored the Aamodt and Taos settlements.

HURDLES TO PASSAGE

- Federal Spending
- “Earmark” Issue
- Value



FEDERAL SPENDING

- ALL DIRECT AND DISCRETIONARY FEDERAL SPENDING WAS OFFSET
 - The Act complied with the Pay-As-You-Go (PAYGO) Act, which requires that any direct spending and revenue provisions in a bill not increase the federal deficit.
 - Two types of federal spending:
 - “Discretionary Spending” is controlled by annual appropriations acts, which fund "routine activities commonly associated with such federal government functions as running executive branch agencies, congressional offices and agencies, and international operations of the government." D. Andrew Austin, and Mindy Levit, Cong. Research Serv., Title I, *Trends in Discretionary Spending*, CRS Report RL34424, p. 1 (June 10, 2009). A bill with discretionary spending merely authorizes an appropriation. It does not actually appropriate any funds.
 - Direct spending is generally established in permanent law and "includes federal government spending on entitlement programs as well as other budget outlays controlled by laws other than appropriation acts." D. Andrew Austin, and Mindy Levit, Cong. Research Serv., *Mandatory Spending Since 1962*, CRS Report, RL33074, p. 1 (February 16, 2010).
 - If direct spending is included in a bill, the funding becomes available automatically. Unlike discretionary spending, it is not contingent on the annual appropriations process.

“OFFSETS”

- The Settlements Act contained both discretionary and direct spending.
 - In order to comply with PAYGO, all of the direct spending in the legislation was "offset", which means that the direct spending authorized in the settlements was matched either by a commensurate reduction in existing direct spending programs or by an increase in revenue to the United States Treasury.
 - In order to address the budgetary concerns of a few key Senators, the discretionary spending authorized in the Settlements Act was offset by reducing existing discretionary spending elsewhere. Specifically, the Settlements Act reduced the existing authorization level for Indian water settlements contained in Title VI of the Tom Lantos and Henry J. Hyde United States Global Leadership Against HIV/AIDS, Tuberculosis, and Malaria Reauthorization Act of 2008.



CBO ESTIMATE

- **Estimate of the Statutory Pay-As-You-Go Effects for H.R. 4783, the Claims Resolutions Act of 2010, as passed by the Senate on November 19, 2010**

- (As transmitted to CBO on November 18, 2010--CEL10874)

- November 23, 2010

- By Fiscal Year, in Millions of Dollars

- 2011 - 2011 -

| 2011 | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 |
|------|------|------|------|------|------|------|------|
| | 2019 | 2020 | 2015 | 2020 | | | |

- **Net Increase or Decrease (-) in the Deficit**

| Statutory Pay-As-You-Go Impact | 2,057 | -729 | -442 | 206 | | | | |
|--------------------------------|-------|------|------|-----|--------|------|-------|----|
| | 362 | 411 | 282 | 102 | -2,055 | -193 | 1,453 | -1 |

- [Total Budget Authority for the six settlements was approximately \$5.476 billion.]

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- Sources: Congressional Budget Office and the staff of the Joint Committee on Taxation.

- Note: Components may not sum to totals because of rounding.

ADMINISTRATION SUPPORT

- The Administration ultimately supported all four settlements after a number of changes were made to satisfy its concerns.
- **Cobell and Pigford II:** The water settlements were attached to two other settlements strongly supported by the Administration - the *Cobell* lawsuit brought by Native Americans and the *Pigford II* discrimination lawsuit brought by African-American farmers. Because both of these settlements were priorities of President Obama, the Settlement Act's sponsors had assistance from the Administration in
 - moving the Settlements Act.



Earmarks

- Some argued that the settlements were “earmarks” or “congressionally directed spending”.
- Certain members of Congress claimed that water settlements were earmarks because they authorize spending for a particular tribe in a specific state. Anti-earmark groups such as the Citizens Against Government Waste, however, rejected this argument because of the unique legal nature of Indian water settlements.[1]



- [1] Talking Points Memo, dated November 24, 2010, available at <http://tpmdc.talkingpointsmemo.com/2010/11/did-jon-kyl-score-a-200m-earmark-three-days-after-ban.php>.

CONGRESSIONALLY DIRECTED SPENDING

- “Congressionally Directed Spending” is defined in the Senate as “a provision or report language included primarily at the request of a Senator providing, authorizing, or recommending a specific amount of discretionary budget authority, credit authority, or other spending authority for a contract, loan, loan guarantee, grant, loan authority, or other expenditure with or to an entity, or targeted to a specific State, locality or Congressional district, other than through a statutory or administrative formula-driven or competitive award process.” Standing Rules of the Senate, Rule XLIV, paragraph 5(a).
- The House definition is virtually the same. Rules of the House of Representatives, Rule XXI, clause 9(e).

Question of Value

- In 2010, then-ranking member McClintock of the House Subcommittee on Water and Power, Rep. Tom McClintock (R-CA) asked the United States Department of Justice (DOJ) whether the four water settlements included in the Settlements Act represent a net benefit to taxpayers when balanced against the "consequences and cost of litigation."
- DOJ did not directly answer Mr. McClintock's question because it presumably did not want to admit any potential liability to the tribes. Instead, in a response to McClintock dated January 19, 2010, DOJ stated that the consequences and costs of litigation "are not susceptible to quantification."

PASSAGE

Ultimately, because of the unique and novel way the bills were packaged and offset, the Settlements Act was able to pass both the Senate and the House, and was signed into law on December 8, 2010.



QUESTIONS?