

ADDITIONAL VIEWS OF
THE HONORABLE TOM McCLINTOCK

On September 30, 2009, the Full Natural Resources Committee marked up H.R. 3342, the Aamodt Litigation Settlement Act. This bill, sponsored by Congressman Ben Ray Lujan (D–NM), authorizes the Secretary of the Interior to approve the settlement of water rights claims of five Pueblo Indian Tribes located in the Pojoaque River Basin, New Mexico.

This bill rightly attempts to resolve longstanding Indian water rights claims, but Congress lacks sufficient information to assess whether the \$199 million authorized in this legislation is appropriate. Therefore, as Ranking Republican of the House Water and Power Subcommittee, I have serious fiscal concerns with this well-intended bill.

Another area of concern I have is that this legislation does not have support from all non-Indian water users. The Pojoaque Basin Water Alliance has raised some very serious concerns regarding the protection of private property rights and the proper governing structure set forth in the legislation. While some of these concerns were raised during a legislative hearing held on H.R. 3342, it is still important to acknowledge that support for H.R. 3342 is not unanimous.

It is important that Congress play a role in settling Indian water rights claims, some of which comprise the oldest standing litigation in the federal court system. Settling legal claims not only resolves litigation but also can help establish water supply certainty for water users on and off-reservations.

However, Congress still must answer key questions when it considers these and other settlements and should not be just a rubber stamp. For example, one of the most important questions involving a settlement—especially when American taxpayer dollars will be used—is whether resolving the litigation will be advantageous to the federal government compared to its liability under current law. That question has not been answered for H.R. 3342.

If Congress were the board of directors of a private corporation deciding whether to approve a negotiated legal settlement, we would be guilty of breaching our fiduciary responsibility to stockholders if we made that decision without consulting legal counsel regarding the company's financial exposure in litigation should the settlement not be accepted.

Since this question remains unanswered, Congress is forced to be the arbitrator between sides involved in the litigation. This is a role Congress should not be forced to assume without sufficient information. Given the astounding fact that the current Administration has expressed general fiscal and other reservations about this bill, Congress should ask for and deserves answers. As part of this, Department of the Interior was asked for its views on the bill as

passed by the Natural Resources Committee. The Department's response to Congress, which is attached, clearly indicates there are numerous issues that still need to be resolved.

I also sent a letter on September 25, 2009, to the Department of Justice asking for opinions on this legislation. The letter specifically asks the Attorney General to provide his view on the "likelihood that the recipients of water rights and funds transferred by these settlements would prevail on the merits of their claims and whether these settlement amounts represent a net benefit to the taxpayers as compared to the consequences and costs of litigation." To date, I have not received a response to this letter, and I fundamentally believe that Congress needs this and other answers before moving forward with spending nearly 200 million American taxpayer dollars.

My request is based on precedent. In an appearance before the Natural Resources Committee on legislation resolving Colville Indian claims, a Clinton Administration Justice Department official testified in 1994, "[T]he Federal government is not that well postured for a victory on this claim which has been pending for over 40 years. Absent the settlement, we could well litigate it for another ten years and the outcome could easily be a significant cost to the taxpayers and the public." This testimony was very helpful in moving that legislation forward. According to the Congressional Research Service, Justice Department officials have testified about additional settlements pending before Congress, so there is no reason why this Congress should act without similar information on this bill.

Without these transparent answers and the amount of taxpayer funding in this bill—estimated by the Congressional Budget Office as \$71 million in 2010–2014 and \$128 million after 2014—I have serious concerns with the way this Congress and the Obama Administration are moving forward on H.R. 3342, and on Indian water rights settlement bills in general.

TOM MCCLINTOCK.