
**Agriculture & Natural Resources
Committee**

HB 2564

Brief Description: Authorizing a pilot program for the settlement of water rights.

Sponsors: Representatives McCoy, Linville, Conway, Rockefeller, Sullivan, McDermott, Ormsby, Hunt, Lovick, Moeller, Kenney, McIntire, Kagi and Clibborn.

Brief Summary of Bill

- Directs the state to participate in a pilot process to determine and quantify federal reserved water rights.

Hearing Date: 1/28/04

Staff: Caroleen Dineen (786-7156).

Background:

In 1907 the United States Supreme Court determined that the federal government may reserve water rights and exempt these water rights from appropriation under state water law. *Winters v. United States*, 207 U.S. 564 (1907). These federal reserved water rights include rights held by the United States for the government and in trust for Indian tribes.

Federal law, however, allows federal reserved rights to be adjudicated in a state court under certain circumstances. By what is known as the McCarran Amendment, the United States consented to joinder of the United States as a defendant in a comprehensive state water rights adjudication. 43 U.S.C. § 666. The McCarran Amendment applies to water rights claims made by the United States for the government and to Indian tribal water rights claims made by the United States or Indian tribes. *Arizona v. San Carlos Apache Tribe*, 463 (U.S. 545 (1983); *Colorado River Water Conservation District v. United States*, 424 U.S. 800 (1976).

The Morris K. Udall Foundation (Udall Foundation) is a federal executive branch agency focused on, among other issues, environmental studies and public policy conflict resolution. The Udall Foundation created the U.S. Institute for Environmental Conflict Resolution (the Institute) in 1988 to assist in the resolution of federal environmental, natural resources, and public lands conflicts and controversies. Among other activities, the Institute reviews requests from state and local governments, tribes, and non-governmental organizations for services related to multi-party conflict resolution processes involving federal agencies or interests. The Institute provides services such as conflict assessment, assisted negotiation and mediation, facilitation, and dispute

system design and evaluation. The Institute may provide some funding for participation in this type of process. Examples of projects for which the Institute has provided services and funding include the Sun River total maximum daily load (TMDL) resolution and the Puget Sound Salmon Forum's conflict assessment associated with drainage systems in Washington's Skagit River Valley.

The Western Justice Center Foundation (WJCF) is an organization providing advocacy, education, research, and public policy development related to peaceful conflict resolution. The WJCF partnered with the Institute in the design of a pilot project to mediate complex environmental disputes in a district court in Oregon. In addition, the WJCF developed a joint project with the Ninth Circuit and the Institute to increase mediation of environmental disputes in federal courts. The WJCF conducts this project under contract with the Institute and works with judicial personnel, an expert panel, and Institute staff.

Summary of Bill:

The state is directed to participate in a federally sanctioned and facilitated pilot process to determine and quantify water rights claims of Indian tribes and the United States. Specifically, the state must participate in the federal pilot negotiation scoping process, development of alternatives, timeliness, decision-making process, development of funding alternatives, and mediation.

The state must establish a negotiating team within the Office of the Governor to participate in this process. A general fund appropriation of \$200,000 is made to the Office of the Governor for the fiscal year ending July 1, 2005. The appropriation is to pay the costs of forming and operating the negotiating team and an equitable share of the costs of facilitation by the United States Institute.

Legislative findings are included relating to the need for greater certainty and security regarding water rights based on federal and state law. Legislative intent is specified for the state to participate in the federal negotiation and settlement process.

Appropriation: None.

Fiscal Note: Requested on 1/26/04.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.