

105TH CONGRESS
2D SESSION

H. R. 3557

To subject the United States to payment of fees and costs in proceedings relating to State water rights adjudications.

IN THE HOUSE OF REPRESENTATIVES

MARCH 25, 1998

Mr. SMITH of Oregon (for himself, Mr. SKEEN, Mr. CRAPO, and Mr. HASTINGS of Washington) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To subject the United States to payment of fees and costs in proceedings relating to State water rights adjudications.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Water Adjudication
5 Fee Fairness Act of 1998.”

6 **SEC. 2. FINDINGS.**

7 The Congress finds the following:

8 (1) Generally, water allocation in the United
9 States is based upon an appropriation system, under
10 which water users’ rights are quantified under State

1 law. These rights carry designated priority dates
2 which establish the relative right to water from a
3 source. Most States, especially in the West, have de-
4 veloped judicial proceedings, known as general
5 stream adjudications, to quantify and document
6 these relative rights, including the rights to water
7 claimed by the United States Government.

8 (2) State general stream adjudications are typi-
9 cally complicated, expensive civil court actions that
10 can involve hundreds or even thousands of claim-
11 ants. However, such adjudications give certainty to
12 water rights, provide direction for water administra-
13 tion, and reduce conflict over water allocation and
14 water usage. Those claiming and establishing rights
15 to water, including Federal agencies, are the pri-
16 mary beneficiaries of State general stream adjudica-
17 tion proceedings.

18 (3) The Congress recognized the benefits of the
19 State general stream adjudication system, and by
20 adoption of section 208 of the Department of Jus-
21 tice Appropriation Act, 1953 (43 U.S.C. 666, popu-
22 larly known as the “McCarran Amendment”), re-
23 quired the United States to submit to State court
24 jurisdiction and to file claims in State general
25 stream adjudication proceedings.

1 (4) Water rights claims by Federal agencies are
2 typically the largest and most complex claims in
3 State general stream adjudications. However, the
4 United States Supreme Court, in the case United
5 States v. Idaho, 508 U.S. 1 (1992), determined that
6 under the McCarran Amendment the United States
7 is not required to pay administrative fees or judicial
8 costs in State general stream adjudication proceed-
9 ings.

10 (5) Some Federal agencies, realizing they are
11 not required to pay State fees, may file numerous
12 water rights claims to either improve their negotiat-
13 ing position or to so increase the adjudication bur-
14 den that the State must terminate its adjudication
15 rather than attempt to deal with the avalanche of
16 United States claims.

17 (6) Since Federal agency water rights claims
18 are among the most difficult to adjudicate, and since
19 the United States is not required to pay the fees
20 paid by non-Federal claimants, the burden of fund-
21 ing these proceedings unfairly shifts to the private
22 water users and State taxpayers. The requirement
23 that States process Federal Government water
24 rights claims without reimbursement constitutes an
25 unfunded mandate on States.

1 (7) The lack of Federal Government funding to
2 support State water rights adjudications in relation
3 to the complexity of the claims involved has pro-
4 duced significant delays in completion of State gen-
5 eral stream adjudications. These delays inhibit the
6 ability of both the States and Federal agencies to
7 protect private and public property interests. Also,
8 failure to complete the final adjudication of claims
9 to water restricts the ability of resource managers to
10 determine how much unappropriated water is avail-
11 able to satisfy environmental and economic develop-
12 ment demands.

13 **SEC. 3. APPLICATION OF FEES AND COSTS FOR FEDERAL**
14 **WATER CLAIMS IN WATER USE RIGHTS PRO-**
15 **CEEDINGS.**

16 (a) IN GENERAL.—In any administrative or judicial
17 proceeding for the adjudication or administration of rights
18 to the use of water in which the United States is a party,
19 the United States shall be subject to administrative fees,
20 claiming fees, and the imposition of judicial costs to the
21 same extent as a private party to the proceeding.

22 (b) APPLICATION.—Subsection (a) shall apply to pro-
23 ceedings pending on, or initiated after, the date of enact-
24 ment of this Act.

○