

Calendar No. 306

117TH CONGRESS }
2d Session }

SENATE

{ REPORT
{ 117-93

TECHNICAL CORRECTION TO THE SHOSHONE-PAIUTE TRIBES OF THE DUCK VALLEY RESERVATION WATER RIGHTS SETTLEMENT ACT OF 2021

—————
MARCH 15, 2022.—Ordered to be printed
—————

Mr. SCHATZ, from the Committee on Indian Affairs,
submitted the following

R E P O R T

[To accompany S. 648]

[Including cost estimate of the Congressional Budget Office]

The Committee on Indian Affairs, to which was referred the bill (S. 648), to amend the Omnibus Public Land Management Act of 2009 to make a technical correction to the water rights settlement for the Shoshone-Paiute Tribes of the Duck Valley Reservation, and for other purposes, having considered the same, reports favorably thereon, with an amendment, and recommends that the bill (as amended) do pass.

PURPOSE

The purpose of S. 648 is to amend the Omnibus Public Land Management Act of 2009 to authorize payment to the Shoshone-Paiute Tribes of the Duck Valley Reservation (Tribes) in an amount equivalent to the unpaid interest that would have accrued if interest accrual were permitted on the Tribes' water settlement trust funds deposited between October 1, 2009 and January 25, 2016.

BACKGROUND AND NEED FOR LEGISLATION

The Duck Valley Reservation encompasses 290,000 acres of land on the border between Nevada and Idaho, along the East Fork of the Owyhee River, a tributary to the Snake River. The Reservation was established by executive order in 1877 and expanded by executive orders in 1886 and 1910.

The Tribes have consistently used the water sources on the Reservation for agriculture, livestock, and domestic purposes. The Reservation, however, lacks sufficient reliable infrastructure to provide dependable water for irrigation and drinking, and this lack of water infrastructure has been a chronic problem since the Reservation was first established in 1877.

Inconsistent natural flows and non-Indian settlement north and south of the Reservation in Nevada have led to chronic water stress and conflict with other water users over generations. Additionally, federal attempts to alleviate these concerns—including the Bureau of Reclamation’s nearby Owyhee Project and the Bureau of Indian Affairs’ Duck Valley Indian Irrigation Project—further complicated water storage and economic development on the Reservation.

For example, in the 1930s, the federal government authorized and built the Bureau of Indian Affairs’ Duck Valley Indian Irrigation Project (Project) to provide water storage along the East Fork of the Owyhee River for irrigation and stock water purposes on the Reservation. The Project failed to provide the Tribes complete relief because the Project’s primary water storage facility, the Wild Horse Reservoir, was located approximately 15 miles from the Reservation, which increased potential conflict with off-reservation water users and reduced the number of acres available to the Tribes for cultivation and other development opportunities. Moreover, the Project did not receive sufficient funding for the Tribes to perform adequate operation and maintenance activities pursuant to their self-governance compact. As a result, the Project facilities fell into disrepair, which led to fallow lands and sub-optimal production.

In 2009, Congress enacted the Shoshone-Paiute Tribes of the Duck Valley Reservation Water Rights Settlement (“Settlement Act”) as part of the Omnibus Lands Act of 2009.¹ The Settlement Act quantified the Tribes’ disputed water rights, including federal reserved water rights. The Settlement Act also (1) resolved the Tribes’ claims against the United States for its failure to protect the Tribes’ water rights and natural resources; (2) assisted the Tribes in their efforts to rehabilitate the Duck Valley Indian Irrigation Project; and (3) provided municipal water supplies and other critical water related projects.²

Specifically, the Act authorized a total of \$60 million to two Trust Funds for the Tribes to rehabilitate the Project and for other activities over a five-year period. Between Fiscal Years 2010–2014, \$45 million was deposited into a Development Fund³ and \$15 million was deposited into a Maintenance Fund.⁴

Pursuant to the legislation, the settlement funds began to be appropriated on October 1, 2009, and the Department immediately began investing the funds, earning interest.

Six years later, on January 25, 2016, and pursuant to the Settlement Act, the Secretary of the Interior published a notice of findings in the Federal Register making the settlement enforceable.⁵ In February of 2016, the Department opined that this “enforceability

¹Pub. L. 111–11 §§ 10801–10809 (2009).

²81 Fed. Reg. 4063–4064 (Jan. 25, 2016).

³*Supra*, note 1 at § 10807(b)(3).

⁴*Supra*, note 1 at § 10807(c)(3).

⁵81 Fed. Reg. 4063–4064 (Jan. 25, 2016); Pub. L. No. 111–11 § 10808(d).

date” was the earliest date upon which the settlement funds could be invested per the terms of the settlement.⁶

Accordingly, the Department withdrew all the interest accrued before the enforceability date and deposited it in the Federal Treasury.

The Department agrees that prohibiting investment of a Tribe’s settlement funds prior to the enforceability date is uncommon in Indian water settlements.⁷ In fact, only five Tribes are subject to this unusual restriction, and the Department supports reimbursement in all five of these cases.⁸

SUMMARY OF THE BILL

As amended, S. 648 authorizes the appropriation of \$5,124,902.12 for deposit into the Settlement Act’s Development Fund. This represents the amount of unpaid interest that would have accrued if interest accrual were permitted on the Tribes’ water settlement trust funds deposited between October 1, 2009 (when the funds were initially appropriated) and January 25, 2016 (the enforceability date). Funds appropriated under S. 648 will be used to carry out the purposes of the settlement: rehabilitating and expanding existing irrigation projects, developing fish and wildlife, conducting water resources planning, designing and constructing sewer systems, and carrying out cultural preservation activities, among other related activities.

SECTION-BY-SECTION ANALYSIS OF S. 648 AS ORDERED REPORTED

Section 1—Short title

This section sets forth the short title as the “Technical Correction to the Shoshone-Paiute Tribes of the Duck Valley Reservation Water Rights Settlement Act of 2021.”

Section 2—Authorization of payment of interest on trust funds established under settlement

Section 2(1) amends section 10807 of the Omnibus Public Lands Management Act of 2009 to reorganize the existing text and include a new subparagraph. The new subparagraph authorizes \$5,124,902.12 to be appropriated for deposit into the Development Fund.

LEGISLATIVE HISTORY

Senators Cortez Masto, Crapo, Risch, and Rosen introduced S. 648 on March 9, 2021. Both the Tribes and the Department of the Interior testified in support of the bill during a legislative hearing

⁶See Senate Committee on Indian Affairs Legislative Hearing, October 6, 2021 (Statement of Brian Thomas, Chairman, Shoshone-Paiute Tribes of the Duck Valley Reservation).

⁷See Senate Committee on Indian Affairs Legislative Hearing, October 6, 2021 (Statement of Bryan Newland Assistant Secretary for Indian Affairs, United States Department of the Interior) (stating “[t]he provision in the Duck Valley Settlement Act prohibiting investment until an enforceability date is reached is not common in Indian water rights settlements. It appears in the Duck Valley settlement and other settlements enacted in 2009–2010, including the Crow Tribe Water Rights Settlement Act of 2010, Pub. L. No. 111–291; the Taos Pueblo Indian Water Rights Settlement Act, Pub. L. No. 111–291; the Aamodt Litigation Settlement Act, Pub. L. No. 111–291; and the Navajo-Gallup Water Supply Project and Navajo Nation Water Rights, Pub. L. No. 111–11.”).

⁸See, *id.* (stating “[t]he Department supports S. 648 and, as a matter of equity, would support similar legislation to resolve this same issue in the four other Indian water rights settlements approved by Congress in 2009 and 2010”).

held by the Committee on October 6, 2021. On November 17, 2021, the Committee met at a duly convened business meeting to consider S. 648. Senator Cortez Masto timely filed one amendment in the nature of a substitute, which replaced the interest formula provision with the specific unpaid interest amount calculated by the Department of the Interior and agreed to by the Tribes. The Committee adopted the amendment and ordered S. 648, as amended, reported favorably by voice vote.

On March 12, 2021, Representative Amodei (R–NV) introduced H.R. 1869, the House companion to S. 648. On May 15, 2021, H.R. 1869 was referred to the House Natural Resources Subcommittee on Water, Oceans, and Wildlife. The Subcommittee held a hearing on June 29, 2021. No further action has been taken on the bill in the House to date.

116th Congress. Senators Cortez Masto, Crapo, Risch, and Rosen introduced a similar bill in the 116th Congress, S. 3754, on May 18, 2020. No action was taken on the bill. On July 13, 2020, Representative Amodei (R–NV) introduced H.R. 7576, the House companion to S. 3754. H.R. 7576 was referred to the House Natural Resources Subcommittee on Water, Oceans, and Wildlife on August 6, 2020. No further action on the bill took place prior to adjournment.

COST AND BUDGETARY CONSIDERATIONS

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, March 10, 2022.

Hon. BRIAN SCHATZ,
*Chairman, Committee on Indian Affairs,
U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 648, the Technical Correction to the Shoshone-Paiute Tribes of the Duck Valley Reservation Water Rights Settlement Act of 2021.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Jon Sperl.

Sincerely,

PHILLIP L. SWAGEL,
Director.

Enclosure.

Bill #, Technical Correction to the Shoshone-Paiute Tribes of the Duck Valley Reservation Water Rights Settlement Act of 2021			
As ordered reported by the Senate Committee on Indian Affairs on November 17, 2021			
By Fiscal Year, Millions of Dollars	2022	2022-2026	2022-2031
Direct Spending (Outlays)	0	0	0
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	0	0	0
Spending Subject to Appropriation (Outlays)	0	5	5
Statutory pay-as-you-go procedures apply?	No	Mandate Effects	
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2032?	No	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No

S. 648 would authorize the appropriation of \$5.125 million for the Department of the Interior (DOI) to deposit specified interest payments into the Shoshone-Paiute Tribes Water Rights Development Fund. The fund was established in 2009 under the water rights settlement agreement for the Shoshone-Paiute Tribes of the Duck Valley Reservation, located in Idaho and Nevada.

Amounts in the fund are owned by the tribes and are held in trust by the federal government. Assuming the appropriation of the authorized amount in 2023, CBO estimates that implementing the bill would cost \$5 million and that the full amount would be deposited in the fund in that year.

The CBO staff contact for this estimate is Jon Sperl. The estimate was reviewed by H. Samuel Papenfuss, Deputy Director of Budget Analysis.

On March 10, 2022, CBO replaced a version of this estimate that was transmitted earlier the same day. The updated estimate accounts for the fact that pay-as-you-go procedures do not apply under the bill and that on-budget deficits would not increase in the decades after 2032. CBO's estimate of federal costs is unchanged.

REGULATORY AND PAPERWORK IMPACT STATEMENT

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires each report accompanying a bill to evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill. The Committee believes that S. 648 will have minimal impact on regulatory or paperwork requirements.

EXECUTIVE COMMUNICATIONS

The Committee has received no communications from the Executive Branch regarding S. 648.

CHANGES IN EXISTING LAW

On February 11, 2021, the Committee unanimously approved a motion to waive subsection 12 of rule XXVI of the Standing Rules of the Senate. In the opinion of the Committee, it is necessary to

dispense with subsection 12 of rule XXVI of the Standing Rules of the Senate to expedite the business of the Senate.

