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TECHNICAL CORRECTION TO THE SHOSHONE-PAIUTE TRIBES OF THE  
DUCK VALLEY RESERVATION WATER RIGHTS SETTLEMENT ACT OF 2023

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JULY 26, 2023.—Ordered to be printed

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

### R E P O R T

[To accompany S. 950]

[Including cost estimate of the Congressional Budget Office]

The Committee on Indian Affairs, to which was referred the bill (S. 950) 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. 950 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

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.<sup>1</sup> 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.<sup>2</sup>

Specifically, the Settlement 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 Fund<sup>3</sup> and \$15 million was deposited into a Maintenance Fund.<sup>4</sup> Pursuant to the Settlement Act, the settlement funds began to be appropriated on October 1, 2009, and the Department immediately began investing the funds, earning interest.

#### NEED FOR LEGISLATION

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.<sup>5</sup> In February 2016, the Department opined that this “enforceability date” was the earliest date upon which the settlement funds could be invested per the terms of the settlement.<sup>6</sup> Accordingly, the Department

<sup>1</sup> Pub. L. 111–11 §§ 10801–10809 (2009).

<sup>2</sup> 81 Fed. Reg. 4063–4064 (Jan. 25, 2016).

<sup>3</sup> *Supra*, note 1 at § 10807(b)(3).

<sup>4</sup> *Supra*, note 1 at § 10807(c)(3).

<sup>5</sup> 81 Fed. Reg. 4063–4064 (Jan. 25, 2016); Pub. L. No. 111–11 § 10808(d).

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

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.<sup>7</sup> In fact, only five Tribes are subject to this unusual restriction, and the Department supports reimbursement in all five of these cases.<sup>8</sup>

#### SUMMARY OF THE BILL

As amended, S. 950 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. 950 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. 950 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 2023.”

##### *Section 2—Authorization of payment of interest on Trust Funds established under settlement*

This section amends section 10807(b)(3) of the Omnibus Public Lands Management Act of 2009 (P.L. 111–11) to add a new subparagraph that authorizes an appropriation of \$5,124,902.12 for deposit into the Development Fund.

#### LEGISLATIVE HISTORY

Senators Cortez-Masto (D–NV), Crapo (R–ID), Risch (R–ID), and Rosen (D–NV), introduced S. 950 on March 22, 2023. The Senate Committee on Indian Affairs met at a duly convened business meeting to consider S. 950. Senator Cortez Masto untimely filed one amendment, which struck language in Section 2 of the bill providing for cost-indexing of the amount to be deposited in the Development Fund to reflect changes since January 25, 2016. With the concurrence of the Vice Chair, the Chairman waived Committee

<sup>7</sup> See 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.”).

<sup>8</sup> See, *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”).

Rule 5(c) and the Committee considered the amendment, which was adopted. S. 950, as amended, was ordered reported favorably by voice vote.

*117th Congress.* Senators Cortez Masto (D–NV), Crapo (R–ID), Risch (R–ID), and Rosen (D–NV) 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 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 15, 2022, S. 648 was placed on the Senate Legislative Calendar. No further action on the bill took place prior to adjournment.

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 on the bill took place prior to adjournment.

*116th Congress.* Senators Cortez Masto (D–NV), Crapo (R–ID), Risch (R–ID), and Rosen (D–NV) 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

<b>S. 950, Technical Correction to the Shoshone-Paiute Tribes of the Duck Valley Reservation Water Rights Settlement Act of 2023</b>			
<b>As ordered reported by the Senate Committee on Indian Affairs on March 29, 2023</b>			
By Fiscal Year, Millions of Dollars	2023	2023-2028	2023-2033
Direct Spending (Outlays)	0	0	0
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	0	0	0
<b>Spending Subject to Appropriation (Outlays)</b>	<b>0</b>	<b>5</b>	<b>5</b>
Increases <i>net direct spending</i> in any of the four consecutive 10-year periods beginning in 2034?	No	Statutory pay-as-you-go procedures apply? No	
Increases <i>on-budget deficits</i> in any of the four consecutive 10-year periods beginning in 2034?	No	<b>Mandate Effects</b>	
		Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No

S. 950 would authorize the appropriation of \$5.125 million for the Department of the Interior to deposit specified interest payments into the Shoshone-Paiute Tribes Water Rights Development

Fund. The fund was established pursuant to the Shoshone-Paiute Tribes of the Duck Valley Reservation Water Rights Settlement Act of 2009 to rehabilitate water infrastructure projects located on the reservation in Idaho and Nevada.

The settlement agreement was effective in 2016 and ownership of the fund was transferred to the tribes and is held in trust by the federal government. Assuming the appropriation of authorized amount, CBO estimates that enacting the legislation would cost \$5 million and that the full amount would be deposited into the fund in 2024.

The CBO staff contact for this estimate is Aurora Swanson. The estimate was reviewed by Ann E. Futrell, Senior Adviser for Budget Analysis.

PHILLIP L. SWAGEL,  
*Director, Congressional Budget Office.*

#### 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. 950 will have minimal impact on regulatory or paperwork requirements.

#### EXECUTIVE COMMUNICATIONS

The Committee has received no communications from the Executive Branch regarding S. 950.

#### CHANGES IN EXISTING LAW

On February 9, 2023, 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.