

**STATEMENT FOR THE RECORD  
SECRETARY'S INDIAN WATER RIGHTS OFFICE  
U.S. DEPARTMENT OF THE INTERIOR  
HOUSE NATURAL RESOURCES  
SUBCOMMITTEE ON WATER, OCEANS, AND WILDLIFE**

Thank you for the opportunity to provide the Department of the Interior's views on H.R. 1869, the Technical Correction to the Shoshone-Paiute Tribes of the Duck Valley Reservation Water Rights Settlement Act of 2021.

**H.R. 1869**

H.R. 1869 would amend the Shoshone-Paiute Tribes of the Duck Valley Reservation Water Rights Settlement Act to authorize funding equivalent to interest payments that would have been earned between October 1, 2009 and January 25, 2016 if the Department had then had the authority to invest the funds. The Department supports H.R. 1869.

**The Shoshone-Paiute Tribes of the Duck Valley Reservation Water Rights Settlement**

**Background**

The Duck Valley Reservation, home to the Shoshone-Paiute Tribes (Tribes), straddles the Idaho-Nevada border along the Owyhee River, a tributary to the Snake River. The Reservation was established by Executive Order on April 16, 1877 and expanded by Executive Orders on May 4, 1886 and July 1, 1910. The State of Idaho initiated the Snake River Basin Adjudication (SRBA) in 1987. Soon thereafter, the State of Nevada reopened its adjudication of the Owyhee River, a tributary to the Snake River, an adjudication originally initiated in 1924. Both of these adjudications involve the water rights of the Tribes. The United States filed claims in Idaho's SRBA and Nevada's Owyhee River adjudication on behalf of the Tribes.

At the request of the Parties, a Federal Negotiation Team was formed, and a settlement was reached. In 2009, Congress enacted the Shoshone-Paiute Tribes of the Duck Valley Reservation Water Rights Settlement as part of the Omnibus Lands Act of 2009 (Duck Valley Settlement Act). The legislation authorized \$60 million across two Trust Funds to rehabilitate the Duck Valley Indian Irrigation Project, which is owned by the Bureau of Indian Affairs and operated by the Tribes under a Self-Governance compact, and for other activities. Under the legislation, the Trust Funds could only be invested and earn interest on the "enforceability" date which is the date that the Secretary published a statement in the Federal Register finding that all conditions for full effectiveness and enforceability of the settlement had occurred. The deadline to publish the statement of findings was March 31, 2016, and the Secretary published it on January 25, 2016.

Under the Duck Valley Settlement Act, the Secretary had no authority to invest the Trust Funds until January 25, 2016. However, the Department mistakenly began investing funds as they were appropriated and transferred to the Department. The Department's Solicitor's Office determined that the amounts earned prior to January 25, 2016 were contrary to the Antideficiency Act and, in

accordance with 31 U.S.C. § 3302, must be returned to the Federal Treasury. Accordingly, the Department returned to the Treasury all interest accrued before January 25, 2016.

H.R. 1869 would authorize the appropriation of the interest that would have accrued on balances in the Trust Funds during the period beginning on October 1, 2009 (when the funds were initially appropriated), and ending on January 25, 2016 (the enforceability date), for deposit into the Trust Funds.

### **Department's Views**

The provision in the 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. In each of these settlements, funds were inadvertently invested and were returned to Treasury. In total for the five settlements, over \$11 million was returned to the Federal Treasury. The Department supports H.R. 1869 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.

### **Conclusion**

The Department appreciates this Subcommittee's efforts to resolve this issue for the Tribes and would like to work with Congress to similarly resolve the issue for all other tribes with water rights settlements enacted in 2009 and 2010. Thank you again for the opportunity to appear before the Subcommittee today to provide the Department's views on this legislation. We look forward to continuing working with the Subcommittee in support of Indian water rights settlements.