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A BILL TO APPROVE THE SETTLEMENT OF THE WATER RIGHTS CLAIMS OF THE SHOSHONE-PAIUTE TRIBES OF THE DUCK VALLEY INDIAN RESERVATION IN NEVADA, TO REQUIRE THE SECRETARY OF THE INTERIOR TO CARRY OUT THE SETTLEMENT, AND FOR OTHER PURPOSES

JULY 10 (legislative day, JULY 9), 2008.—Ordered to be printed

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

R E P O R T

[To accompany S. 462]

The Committee on Indian Affairs, to which was referred the bill (S. 462) to approve the settlement of the water rights claims of the Shoshone-Paiute Tribes of the Duck Valley Indian Reservation in Nevada, to require the Secretary of the Interior to carry out the settlement, and for other purposes, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill as amended do pass.

PURPOSE

The purpose of S. 462, as amended, is to approve the settlement of the water rights claims of the Shoshone-Paiute Tribes of the Duck Valley Reservation.

BACKGROUND

Between 1877 and 1910, three presidents established reservation lands in Idaho and Nevada for the Western Shoshone and Paiute peoples.[1] The Executive Orders form a reservation that encompasses approximately 290,000 acres located nearly equally within both states. With the exception of one small parcel, the United States holds the entire reservation in trust for the Shoshone-Paiute Tribes. There are no allotments.

There are three primary sources of water on the reservation:

[1] April 16, 1877, Executive Order, Pres. Hayes (securing lands for the Western Shoshone peoples); May 4, 1886, Executive Order, Pres. Cleveland (securing lands for the Paddy Cap Band of Paiutes); July 1, 1910, Executive Order, Pres. Taft (securing lands for water needs by Shoshone and Paiutes living on the Duck Valley Reservation).

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(1) The East Fork of the Owyhee River, which flows primarily through the State of Nevada;

(2) Blue Creek, a tributary to the Owyhee River that flows through the reservation until it meets the Owyhee on the Idaho side of the reservation; and

(3) Mary's Creek, located in the northeastern part of the reservation, flowing northeasterly through the Reservation into Idaho.

The Tribes have used these waters for agriculture, livestock, fishing and domestic purposes. Since 1862, regular reports from Indian Affairs Commissioners and later agents of the Bureau of Indian Affairs record the agricultural and livestock activities of Shoshone and Paiute Indians living in the Duck Valley area of the Owyhee River and on the reservation. According to a "Survey of Conditions of the Indians in the United States," a 1932 field hearing of the U.S. Senate Committee on Indian Affairs focused on the agriculture and grazing activities and water needs on the Duck Valley Reservation.[2] While irrigation ditches and modest dams had been used with some success in taming the Owyhee River's spring flows, the need for water storage was cited as early as 1889.[3] The hearing record provides a detailed accounting of the Tribe's historic use of water and demand for in-stream, ground, and storage rights along the East Fork of the Owyhee River; the Tribes' and the Department of the Interior's efforts to secure water rights for the Tribe and develop the Duck Valley Indian Irrigation Project; and the Bureau of Reclamation's interests in protecting water to support the Owyhee Project in Oregon.[4]

Until recently, none of the Tribes' water rights from the three primary water sources were quantified, despite the Tribes' consistent water use. The Shoshones and Paiutes residing on the reservation have been irrigators since the 1860s. Since the 1880s, Interior officials conducted a survey of water storage needs, secured additional lands for a storage reservoir, and conducted studies on the impacts of an Indian irrigation project on the downriver Owyhee Project. In the 1930s, the federal government authorized and implemented the Duck Valley Indian Irrigation Project to provide water storage along the East Fork of the Owyhee River for irrigation and stock water purposes on the Duck Valley Reservation. The Wild Horse Reservoir, located south and upstream of the reservation, is the storage reservoir of the Duck Valley Indian Irrigation Project. Originally built in 1937, the reservoir was reconstructed in 1970.

Although the Shoshone-Paiute Tribes' water rights had not been quantified, individuals along the Owyhee River, Blue Creek, and Mary's Creek secured surface and ground water rights under the prior appropriation doctrine or through state permits.[5] As early as

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[2] *Survey of Conditions of the Indians in the United States Before a Subcommittee of the Committee on Indian Affairs,* 72nd Cong., 1st Sess., Part 28, Nevada 14807–15189 (1934).

[3] *Survey,* p. 14933.

[4] *Survey,* pp. 14895–15035. Pursued for decades and first authorized in 1924, the Bureau of Reclamation's Owyhee Project is a comprehensive dam, canal, and pumping system in the Owyhee and Snake River Basins to irrigate lands in eastern Idaho and western Oregon. *See* Eric Stene, *The Owyhee Project,* Bureau of Reclamation History Program, Denver, CO (1996), *http://www.usbr.gov/dataweb/projects/oregon/Owyhee/history.html.*

[5] Both the States of Nevada and Idaho recognized water rights under the doctrine of prior appropriation, commonly understood as the "first in time" to appropriate water for beneficial use established the "first right" to protect that use against other appropriators. *See* James Dav-

1924, the Department of the Interior's Office of Indian Affairs and Bureau of Reclamation and the Department of Justice conducted inter-agency deliberations on whether to pursue a water rights adjudication on behalf of the Tribes based on the United States Supreme Court's decision in *Winters* v. *United States*.[6] According to the Office of Indian Affairs, upstream users and other individuals were interfering with the Tribes' traditional agricultural and stock uses.[7] In 1931, the Department of Justice prepared a draft bill of complaint at the insistence of the Office of Indian Affairs, but the Bureau of Reclamation requested that the adjudication be withheld for further study of the impacts an Indian project would have on the downstream Owyhee Project.[8] The complaint was not filed, and the Owyhee and the Duck Valley Indian Irrigation Projects were completed in the 1930s without the Tribes' or individual water rights being adjudicated.

Efforts were reinitiated in the late 1980s to quantify the water rights of various users of the three sources of water on the Reservation through actions before the Idaho state court and the Nevada Division of Water Resources.

Multi-State adjudications to quantify tribal water rights and other claims

In 1998, the United States, as trustee for the Tribes, filed a claim in an Idaho state court, as part of the Snake River Basin Adjudication, for a water right in the Blue Creek and St. Mary's Creek.[9] The Tribes, on their own behalf, later intervened in the claim. In 2006, the State of Idaho's Fifth District Court entered a final decree that approved a consent decree and partial final decrees agreed to by the United States, the Tribes, the State of Idaho, and two individual water rights holders.[10] The decrees quantified the parties' disputed water rights, including federal reserved water rights for the Tribes. No further federal action was necessary with respect to this adjudication.

The Snake River Basin Adjudication did not address the Tribes' claims against the United States for monetary damages.

In 1989, the Nevada State Engineer reinitiated proceedings to determine all water rights to the use of surface and ground water along the East Fork of the Owyhee River.[11] The water rights holders, with rights upstream from the Duck Valley reservation, claimed rights under Nevada's law of prior appropriation or state-issued permits to instream water rights to the Owyhee River. The Tribes claimed surface rights to the River, having an 1877 priority date, and water storage rights in Nevada.

In the late 1990s, the parties, including the United States as trustee for the Tribes, initiated negotiations to settle the adjudication by agreement, and the State Engineer and Nevada court

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enport, *Nevada Water Law* (Colorado River Commission of Nevada, 2003). As early as 1905 in Nevada and 1903 in Idaho, the states began regulating water rights by issuing permits.

[6] 207 U.S. 564, 28 S.Ct. 207, 52 L.Ed. 340 (1908).

[7] *Survey,* pp. 14938–14940.

[8] *Ibid.*

[9] The Snake River Basin Adjudication is a "statutorily-created lawsuit to inventory all surface and ground water rights in the Snake River system," with its records and background available at *http://www.srba.state.id.us.*

[10] *In re Snake River Basin Adjudication,* Case No. 39576, Subcases 51–02002, et al.; 51–12756, et al.; and 51–12604, et al. (Fifth Dist. Idaho 2006).

[11] *East Owyhee River Adjudication,* Nevada Division of Water Resources, State Engineer (1924, pending).

stayed the adjudication for purposes of settlement rather than continue with administrative and judicial proceedings. For more than ten years, the parties and the United States worked towards a settlement agreement. After years of participation and leadership in negotiating an agreement and after making significant progress in drafting a settlement agreement, the United States withdrew from the settlement negotiations.

In 2005, the Tribes, the State, and the upstream users reached and executed an agreement. The United States did not sign the agreement. According to testimony provided to the Committee by W. Patrick Ragsdale, Director of the Bureau of Indian Affairs at the Department of the Interior, the Department disagrees with some provisions of the agreement. According to Mr. Ragsdale, neither the final settlement amount nor the State of Nevada's cost-share are sufficient to meet the Department's *Criteria and Procedures for the Participation of the Federal Government in Negotiations for the Settlement of Indian Water Rights Claims.*[12] The Committee notes, however, that the Department has supported a water rights settlement where, after applying the *Criteria and Procedures*, no state contribution was required.[13]

The settlement agreement addresses the claims pending in the adjudication. The agreement quantifies the Tribes' surface and groundwater rights, and provides that the Tribe will administer these rights under a tribal water code. The agreement provides that the Nevada State Engineer will quantify the upstream water users' rights, which will include domestic and stock water uses, and administer these rights. The parties agreed to an implementation plan to coordinate the administration of water rights, particularly during a time of water shortage. Under the agreement, the State is required to provide gauging, a recording station, and a water commissioner to implement and administer the settlement, at an estimated cost of nearly $1 million.[14]

Tribal claims against the United States

While the Snake River Basin Adjudication did not address the Tribes' claims against the federal government, the Tribes sought to resolve their claims against the United States in the Nevada adjudication and through federal legislation.

The Tribes' claimed the United States had compromised the Tribes' water rights, failed to maintain and complete the Duck Valley Indian Irrigation Project, and destroyed tribal resources, including the Tribes' historic salmon runs. According to the appointed Federal Negotiation Team, the United States bore some responsibility for the Tribes' loss of on-reservation fishing and reduced the reservation's irrigable acreage by locating the Wild Horse Reservoir

[12] *Criteria and Procedures for the Participation of the Federal Government in Negotiations for the Settlement of Indian Water Rights Claim,* 55 Fed. Reg. 9223–01, 1990 WL 325541 (1990).

[13] For example, the Department's *Criteria and Procedures* were applied during the water rights negotiation and settlement between the United States, State of Idaho, and the Nez Perce Tribe. The final agreement and law did not include a federal, cost-share. Pub. L. 108–447, 118 Stat. 2809, 3431.

[14] The Department failed to acknowledge the State of Nevada's nearly $1 million combined monetary and non-monetary contribution towards implementing the settlement agreement. The Committee acknowledges the State's contribution to quantify the upstream water rights' holders and administer aspects of the agreement. The State's contribution is appropriate compared to the significant federal obligation to the Tribes and the few upstream rights holders who benefit from the Duck Valley Indian Irrigation Project.

15 miles upstream from the reservation and for failing to maintain and complete the Duck Valley Indian Irrigation Project.

During the settlement negotiations with the State and upstream water users, the Tribes and the United States discussed the amount of the federal liability to the Tribes for failing to observe its trust responsibilities and obligations. According to testimony offered at the Committee's April 2007 hearing, the parties had made progress towards a settlement amount to compensate the Tribes for their estimated historic losses and anticipated programmatic expenses, such as developing the tribal water code. The Tribes initially calculated the federal liability at more than $100 million. During the settlement negotiations, the federal water negotiating team suggested the claims could be settled for more than $40 million. Mr. Ragsdale, however, testified that the United States Office of Management and Budget calculated the final federal burden at less than $10 million—$30 million less than the United States had indicated before the negotiating team withdrew from the settlement talks. The parties were unable to continue settlement negotiations given the United States' final determination of its liability.

As represented by U.S. Senator Harry Reid in his testimony before this Committee, U.S. Senators Ensign, Craig and Crapo joined him in drafting a bill to authorize a $60 million settlement amount. This amount represents less than the Tribes' historic losses and estimated future expenditures and yet is greater than the federal government's final estimated obligations and potential liability. The bill would ratify the settlement agreement signed by the parties, make the United States a party to the agreement, and resolve the Tribes' breach of trust and other claims for monetary damages against the United States.

SUMMARY OF THE AMENDMENT IN THE NATURE OF A SUBSTITUTE

At its July 19, 2007 business meeting, the Committee adopted an amendment in the nature of a substitute to S. 462. Like the original bill, the amendment in the nature of a substitute federally approves, ratifies, and confirms a settlement agreement reached by parties to the East Fork of the Owyhee River adjudication pending before the Nevada Division of Water Resources and resolves the Tribes' claims for money damages against the United States.

At the Committee's April 26, 2007 hearing, the Department of the Interior expressed concerns with S. 462 as introduced. In response, the bill's sponsors, the Tribes, the States of Nevada and Idaho, the upstream water users, and the Department addressed these concerns by adding Section 7, describing the Duck Valley Indian Irrigation Project, and making significant changes to renumbered Section 8, the Development and Maintenance Funds, and Section 9, the Waivers and Release of Claims. The amendment also includes a number of minor and technical changes to clarify the Act and the intentions of its sponsors. While the substitute amendment addresses many of the Department's concerns, the Department continues to oppose the bill as amended.

LEGISLATIVE BACKGROUND

S. 462 was introduced on January 31, 2007, by Senator Harry Reid, for himself and Senator John Ensign, and was referred to the Committee on Indian Affairs. On April 26, 2007, the Committee

held a hearing on S. 462. At an open business meeting on July 17, 2007, the Committee approved S. 462, with an amendment in the nature of a substitute. Senators Craig and Crapo became co-sponsors of the bill on July 19, 2007.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTE

At an open business meeting held July 19, 2007, the Committee on Indian Affairs, by a voice vote, adopted S. 462, with an amendment in the nature of a substitute and ordered the bill favorably reported to the Senate, with the recommendation that the Senate do pass S. 462 as reported.

SECTION-BY-SECTION ANALYSIS OF S. 462, AS AMENDED

Section 1. Title

This section provides the title of the Act, which is the Shoshone-Paiute Tribes of the Duck Valley Reservation Water Rights Settlement Act.

Section 2. Findings

Section 2 describes the basis for Congressional action. The Tribes, the State of Nevada, and the upstream individual water users have agreed to end more than a decade of state-law adjudication of water rights of all interested parties along the East Fork of the Owyhee River, Nevada. This bill supports federal policy to settle Indian water rights claims without lengthy and costly litigation and bring certainty to the water rights of tribes. This bill would also seek to settle tribal water-related claims for monetary damages against the United States.

Section 3. Purposes

This section states that the bill will resolve outstanding issues related to the East Fork of the Owyhee River and will ratify the agreement reached by all parties to the East Fork Owyhee River adjudication and the United States. The Act will also resolve pending water-related Tribal claims for damages against the United States, and require that the Secretary of the Interior perform all obligations of the Secretary under the Agreement and this Act.

Section 4. Definitions

This section defines important terms used in the Act.

Section 5. Approval, ratification, and confirmation of agreement

This section ratifies the entire agreement, with an exception, and authorizes the Secretary of the Interior to perform the obligations ordered in the Act; these obligations include environmental compliance required by federal law.

While the Tribes may store water at Wild Horse Reservoir and use tribal water rights on tribal land off the reservation, the section states that the bill does not approve, ratify or confirm provisions in the Settlement Agreement that would appear to allow the Tribes to otherwise market tribal water rights off the Reservation.

Section 6. Tribal water rights

This section states that the Secretary of the Interior shall hold the Tribes' water rights in trust and that water rights cannot be lost by abandonment, forfeiture, or nonuse. The bill, like the Settlement Agreement, requires the Tribes to enact a tribal water code to administer tribal water rights. This action constitutes an intergovernmental mandate under the Unfunded Mandates Reform Act (UMRA), though the cost to implement the provision is well below the UMRA's threshold.

Section 7. Duck Valley Indian Irrigation Project

This section affirms the current status of the federal Duck Valley Indian Irrigation Project and states that the federal government shall not seek reimbursement for capital costs incurred in support of the Project.

Section 8. Development and maintenance funds

This section authorizes the creation of two funds: a Development Fund and a Maintenance Fund. The funds shall be held by the Treasury Department and administered by the Secretary of the Interior.

This section also authorizes Congress to appropriate $9 million annually, for five fiscal years, for the Development Fund. The Tribes must use funds from the $45 million Development Fund for water resource planning and development; for projects related to rehabilitating or expanding the Duck Valley Irrigation Project, such as for water resource development and agricultural development; for cultural preservation; for restoring or improving fish or wildlife habitat; and for designing and constructing water supply and sewer systems for tribal communities.

Section 8 authorizes Congress to appropriate $3 million annually, for five fiscal years, for the Maintenance Fund. The Tribes must use funds from the $15 million Maintenance Fund to operate and maintain the Duck Valley Indian Irrigation Project and water-related projects authorized under the bill or to operate, maintain and replace the water supply and sewer systems for tribal communities.

The Secretary of the Interior is required to manage and invest both funds according to the American Indian Trust Fund Management Reform Act of 1994. Upon reaching the effective date for the bill, the Secretary must make the funds available to the Tribes. Under the bill, the Tribes can access the funds in two ways: By submitting a tribal management plan or an expenditure plan. The bill states the criteria for spending, reporting, and enforcement of both plans. Further, if requested by the Tribes, the Secretary is required to include funds in any funding agreements of the Tribes pursuant to the Indian Self-Determination Act for approved fund uses. Neither the Secretaries of Interior or Treasury retain liability for the expenditure or investment of amounts distributed to the Tribes.

The bill prohibits the payment of per capita payments to individual Indians from either fund.

Section 9. Tribal waiver of claims

This section includes a waiver and release of claims by the Tribes and the United States, acting as trustee, against parties to the set-

tlement agreement, and a waiver and release of claims by the Tribes against the United States as stated in the settlement agreement and as described during the extensive federal water negotiations.

Subsection (a) states that the Tribes and United States, as trustee, waive all claims to water rights in and damages, losses or injuries to water in the East Fork of the Owyhee River that were or could be asserted in court proceedings.

Subsection (b) describes the Tribes' waiver and release of claims against the United States. The Tribes' waiver would release any claims against the United States for a water right or injury to a water right in the East Fork of the Owyhee River, for multiple breach of trust claims, and for fishing rights that resulted from reduced quantity of water in the East Fork and claims accrued before the effective date of the section.

The waivers and release of claims become effective when the Secretary of the Interior publishes a statement of findings in the Federal Register. Should the Secretary fail to publish a statement of findings by December 31, 2015, the settlement agreement and the bill shall not take effect and any appropriated funds shall be returned to the Treasury.

This section also describes the rights retained by the Tribes and the United States and the process for tolling claims.

Section 10. Miscellaneous

This section includes provisions on the limits of claims and rights not waived in the agreement, the bill, or other ongoing matters specified in the bill. The section also confirms the status quo of tribal, state, and federal subject matter jurisdiction and regulatory authority. The section waives the United States' immunity from suit to enforce the agreement and limits State review of federal actions authorized under the bill.

COST AND BUDGETARY CONSIDERATIONS

The cost estimate for S. 462, as prepared by the Congressional Budget Office, is set forth below.

The legislation authorizes two settlement funds to be funded at a total of $12 million annually, for 5 consecutive years. Because the annually appropriated funds will be held in an account with the Secretary of the Interior, the Congressional Budget Office interprets the bill as authorizing Congress, in the final appropriations year, to appropriate interest-earned on the appropriated amounts held by the Secretary. The CBO estimates that Congress is authorized to appropriate an estimated $9 million in interest that the funds would have earned over five years.

S. 462—Shoshone-Paiute Tribes of the Duck Valley Reservation Water Rights Settlement Act

Summary: S. 462 would create two trust funds as part of a potential settlement to a water rights dispute between the Shoshone-Paiute Tribes of the Duck Valley Indian Reservation, the state of Nevada, and the federal government. Assuming appropriation of the necessary amounts, CBO estimates that implementing S. 462 could cost $69 million over the 2008–2012 period if the United States agrees to the settlement. However, the United States is not

currently a party to the settlement agreement reached by other parties involved in the dispute regarding Nevada's East Fork of the Owyhee River. If the federal government does not agree to the settlement, S. 462 would have no effect on the federal budget. Enacting S. 462 would not affect direct spending or revenues.

The bill would require the Shoshone-Paiute Tribes of the Duck Valley Indian Reservation to adopt policies governing tribal water rights. That requirement would be an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA). CBO estimates that the cost of the mandate would be small and well below the threshold established in UMRA ($66 million in 2007, adjusted annually for inflation). Furthermore, appropriations resulting from authorizations contained in the bill could be used to pay for any such costs.

S. 462 contains no private-sector mandates as defined in UMRA.

Estimated cost to the Federal Government: The estimated budgetary impact of S. 462 is shown in the following table. The costs of this legislation fall within budget function 450 (community and regional development).

	By fiscal year, in millions of dollars—				
	2008	2009	2010	2011	2012
CHANGES IN SPENDING SUBJECT TO APPROPRIATION					
Appropriations for Deposits to Trust Funds:					
Estimated Authorization Level	13	13	14	14	15
Estimated Outlays	13	13	14	14	15
Receipts and Spending of Trust Funds:					
Estimated Authorization Level	−13	−13	−14	−14	54
Estimated Outlays	−13	−13	−14	−14	54
Total Changes:					
Estimated Authorization Level	0	0	0	0	69
Estimated Outlays	0	0	0	0	69

Basis of estimate: For this estimate, CBO assumes that S. 462 will be enacted near the end of fiscal year 2007 and that the entire amounts estimated to be necessary will be appropriated for each fiscal year. Potential costs, however, hinge upon the agreement reached in the fall of 2006 by the Shoshone-Paiute Tribes of the Duck Valley Indian Reservation, the state of Nevada, and several individual water users over a water rights dispute relating to the Duck Valley Irrigation Project. Currently, the United States is not a party to this agreement. For this estimate, CBO assumes that the United States will agree to the settlement and that S. 462 would codify this potential agreement. Accordingly, CBO assumes that, by fiscal year 2012, all parties will have executed the components of the agreement as specified under the bill.

Shoshone-Paiute Tribes Water Rights Development and Maintenance Funds

S. 462 would create two trust funds for the Shoshone-Paiute Tribes as part of the water rights settlement. The bill would authorize the appropriation of $9 million a year, plus interest earnings on the unspent balance of the fund, over the 2008–2012 period for the Shoshone-Paiute Tribes Water Rights Development Fund to pay for costs to rehabilitate the Duck Valley Irrigation Project; acquire land and water rights; restore fish and wildlife habitat; develop water laws; and build sewer systems and other water-related

projects. Over the same period, the bill also would authorize the appropriation of $3 million a year, plus interest earned on unexpended balances, for the Shoshone-Paiute Tribes Water Rights Operation and Maintenance Fund for similar activities.

In total, CBO estimates that S. 462 would authorize the appropriation of $69 million to the new funds. Several conditions would have to be met to transfer control of the new trust funds to the tribes. The Secretary of the Interior would have to publish a statement of findings in the Federal Register indicating that all parties have executed the agreement, the Fourth Judicial District in Nevada would have to issue a judgment and final decree concerning the settlement, and the amounts authorized under the bill for fiscal years 2008 through 2012 would have to be appropriated. Because those conditions would not be met until the appropriations are made for 2012, deposits in the funds during the first four years would be considered intragovernmental and would have no net effect on the federal budget. When the conditions for final settlement have been met, control over the use of the trust funds would be transferred to the tribe and the budget would record an expenditure of an estimated $69 million in 2012. However, if the United States does not become a party to the agreement, control over the use of the trust funds would not be transferred and the bill would have no cost in 2012 (even if the authorized amounts were appropriated each year).

Beginning in 2012, the tribes would be able to withdraw all or part of the amounts in the funds upon the approval by the Secretary of the Interior. For any portion of amounts that are not withdrawn, the tribes would be required to submit to the Secretary an expenditure plan and subsequently would file an annual report describing their spending activities.

Estimated impact on state, local, and tribal governments: S. 462 would require the tribes to adopt water policies that would govern tribal water rights as detailed in the agreement. That requirement would be an intergovernmental mandate as defined in UMRA because it would place a statutory requirement on the tribes that is separate from provisions of the agreement. CBO estimates that the cost of the mandate would be small and well below the threshold established in UMRA ($66 million in 2007, adjusted annually for inflation). Furthermore, appropriations resulting from authorizations for the development fund could be used to pay for any such costs.

Estimated impact on the private sector: S. 462 contains no private-sector mandates as defined in UMRA.

Estimate prepared by: Federal Costs: Leigh Angres; Impact on State, Local, and Tribal Governments: Leo Lex; Impact on the Private Sector: Amy Petz.

Estimate approved by: Jeffrey Holland, Chief, Projections Unit, Budget Analysis Division.

PREEMPTION STATEMENT

Section 5(c) of the amendment in the nature of a substitute to S. 462 preempts Nevada law with respect to water marketing. The State of Nevada, State of Idaho, the Tribes and the other affected water rights holders in the Nevada adjudication support this provision.

REGULATORY IMPACT STATEMENT

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires that each report accompanying a bill evaluate the regulatory paperwork impact that would be incurred in implementing this legislation. The Committee has concluded that enactment of S. 462 will create only de minimis regulatory or paperwork burdens.

EXECUTIVE COMMUNICATIONS

The Committee has not received an official communication from the Administration on the provisions of the bill as amended. The Department of the Interior provided testimony to the Committee, which is in the hearing record.[15]

CHANGES IN EXISTING LAW

In compliance with subsection 12 of rule XXVI of the Standing Rules of the Senate, the Committee states that the enactment of S. 462 will result in no changes in existing law.

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[15] Hearing on S. 462, Shoshone-Paiute Tribes of Duck Valley Water Rights Settlement Act Before the Senate Comm. on Indian Affairs, 110th Cong. (2007), S. Hrg. 110–105 (testimony of W. Patrick Ragsdale, Director, Bureau of Indian Affairs).