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**STATEMENT  
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CHAIR OF THE INDIAN WATER RIGHTS SETTLEMENT WORKING GROUP  
UNITED STATES DEPARTMENT OF THE INTERIOR  
BEFORE THE SENATE COMMITTEE ON INDIAN AFFAIRS  
ON EFFORTS TO SETTLE THE WATER RIGHTS CLAIMS  
OF THE SHOSHONE-PAIUTE TRIBES OF THE DUCK VALLEY INDIAN  
RESERVATION  
September 29, 2005**

Good morning Mr. Chairman and members of the Committee. I appreciate the opportunity to appear before this Committee today to discuss the Department of the Interior's role in ongoing efforts to settle the water rights claims of the Shoshone-Paiute Tribes of the Duck Valley Indian Reservation. I wish to emphasize from the outset that the Department of the Interior's support of negotiated settlements as an approach to resolving Indian water rights claims has not changed. For over 20 years, Tribes, States, local parties, and the Federal government have recognized that when possible negotiated Indian water rights settlements are preferable to protracted litigation over Indian water rights claims. In addition to defining the extent of tribal water rights, negotiations allow settlement parties to develop creative solutions to water use problems. Rather than pitting neighbor against neighbor in a zero-sum legal battle, water settlement negotiations engage local stakeholders in forward-looking discussions, seeking solutions that will stimulate economic development, enhance environmental quality, and provide a platform for improved relationships between Tribes and other local entities.

The Administration remains committed to supporting the settlement process and ensuring that such settlements fulfill the Government's responsibilities to Tribes while also protecting the interests of the taxpaying public. To that end, we are engaged in an

effort to make the position of the United States concerning Indian water rights settlements more transparent and consistent.

Given that the Committee asked us to speak about the effect of the Department's Indian water rights settlement policies on the proposed Duck Valley settlement, this testimony will proceed in two parts. First I will talk about the Executive Branch's guidelines for participation in Indian water rights negotiations. Then I will review the particulars of the Duck Valley settlement. The major substantive disagreement now is over the appropriate level of Federal, State, and local financing for this settlement. The Administration believes that the proposed Duck Valley settlement is representative of a pattern that has become all too common in Indian water rights settlements, whereby extended negotiations result in an agreement that would produce important benefits for the Tribes, States, and local stakeholders, except that the parties are unable to agree on the appropriate size of the Federal and non-Federal contributions. The Shoshone-Paiute Tribes' water rights are being litigated in both Idaho and Nevada; trial is scheduled in the Idaho case for spring of 2006. Nonetheless, the Administration hopes that we will be able to work with the Committee and the parties to resolve the outstanding issues in order to accomplish this settlement before the litigation schedule overtakes the settlement process.

### **The Role of the Criteria and Procedures**

The Administration remains committed to the longstanding policy guidance on Indian water settlements, found at 55 Fed. Reg. 9223 (1990), *Criteria and Procedures for*

*the Participation of the Federal Government in Negotiations for the Settlement of Indian Water Rights Claims* (“Criteria”). The Criteria provide guidance on the appropriate level of Federal contribution to settlements, incorporating consideration of calculable legal exposure plus costs related to Federal trust or programmatic responsibilities.

The Criteria call for settlements to contain non-Federal cost-sharing proportionate to the benefits received by the non-Federal parties, and specify that the total cost of a settlement to all parties should not exceed the value of the existing claims as calculated by the Federal Government. These principles are set out in the Criteria so that all non-Federal parties have a basic framework for understanding the Executive Branch’s position.

Equally important, the Criteria address a number of other issues, such as the need to structure settlements to promote economic efficiency on reservations and tribal self-sufficiency, and the goal of seeking long-term harmony and cooperation among all interested parties. The Criteria also set forth consultation procedures within the Executive Branch to ensure that all interested Federal agencies have an opportunity to collaborate at throughout the settlement process.

### **The Proposed Duck Valley Reservation Settlement**

The Duck Valley reservation, home to the Shoshone-Paiute 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<sup>th</sup>, 1877, and expanded by Executive Orders on May 4, 1886 and July 1, 1910. The reservation remains unallotted, meaning that the Tribes control the entire area within the Reservation boundaries. The

downstream Owyhee Project, a Bureau of Reclamation Project that irrigates more than 100,000 acres of land in eastern Oregon and western Idaho, has blocked anadromous fish passage and ended what was once a valuable on-reservation fishery. The Tribes' primary source of income at the present time is the irrigated agriculture made possible by the BIA-operated Duck Valley Irrigation Project.

The State of Idaho opened 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, the adjudication of which was originally initiated in 1924. Both of these adjudications involve the water rights of the Shoshone-Paiute Tribes of the Duck Valley Indian Reservation. At the request of the Parties, a Federal Negotiation Team was formed in 1990. The United States filed claims in Idaho's SRBA in 1993 on behalf of the Shoshone-Paiute Tribes and amended those claims in 1998. The United States also filed claims in Nevada's Owyhee River adjudication in 1994 on behalf of the Duck Valley Tribes, and amended those claims in 1998.

After over a decade of negotiations, and with the participation of a Federal Team, the Shoshone-Paiute Tribes have come close to agreement with the States of Idaho and Nevada and affected water users on the water allocation aspects of settlement agreements. The settlement parties are generally in agreement as to the water rights element of the proposed settlement but a few concerns remain to be resolved. The overarching settlement issue, however, involves the appropriate Federal and State contributions to the proposed settlement.

Unfortunately, the non-Federal parties to the proposed Duck Valley settlement have a very different assessment from the Administration of both the benefits from

settlement to the non-Federal parties and the litigation risk from claims that the Tribes might assert against the Federal government. Based on the Federal assessment of the relative benefits and liabilities, non-Federal parties should be contributing substantially to the cost of the settlement. This is based on significant litigation cost savings by the States as well as the benefit of settlement to non-Indian water users, who stand to secure water rights through settlement that would be subject to limitation were the Tribal claims to be litigated. Non-Indian water users would also benefit from provisions of the settlement. The State cost share would not necessarily be in the form of cash; one option that could be explored would be in-kind services provided by the State natural resource agencies to support the Tribes' water or other resource development. As the Agreements currently stand, however, the level of cost share by the non-Federal parties is significantly lower than the Administration can support.

### **Conclusion**

The Administration hopes that the parties can come to an agreement on an appropriate cost share, so that together we can achieve a settlement allowing the Tribes to put their water to economically beneficial use. Water resource development would further the U.S. goal of Tribal self-sufficiency and sovereignty.

If the parties can come to an agreement on cost share, the Administration wishes to emphasize an additional procedural point. Before legislation is introduced in Congress, agreements between the settling parties and the States of Idaho and Nevada should be finalized. Otherwise, in the absence of agreements that can be specifically

identified, it will be unclear what Congress is being asked to ratify through legislation. If legislation is introduced for this settlement, it should reference specific definitions of the agreements between the settling parties and the States of Idaho and Nevada, including the title of the agreements, the agreement dates, as well as specification of any attachments that are to be approved through this legislation. Legislative ratification of unfinished agreements has led to significant problems in the implementation of past settlements.

In summary, with appropriate cost sharing, the proposed Duck Valley settlement has the potential to generate significant benefits for the Tribes, States, and affected water users. Consultations among the Department of the Interior, the Department of Justice and the Office of Management and Budget are ongoing. The Administration will continue to work with affected parties and members of Congress to reach an appropriate resolution of these settlement claims.