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### AUTHORIZING LEASES OF UP TO 99 YEARS FOR LANDS HELD IN TRUST FOR OHKAY OWINGEH PUEBLO

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DECEMBER 16, 2010.—Ordered to be printed

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

### R E P O R T

[To accompany S. 3903]

The Committee on Indian Affairs, to which was referred the bill (S. 3903), a bill to authorize leases of up to 99 years for lands held in trust for Ohkay Owingeh Pueblo, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

#### PURPOSE

The purpose of S. 3903 is to amend the *Act of August 9, 1955*, to authorize the Ohkay Owingeh Pueblo to obtain 99-year lease authority for land held in trust for the Pueblo.

#### BACKGROUND

Since the enactment of the *Act of June 30, 1834*, 4 Stat. 730, codified as 25 U.S.C. §177, and predecessor statutes, land transactions with Indian tribes were prohibited unless specifically authorized by Congress. This law is commonly known as the Non-Intercourse Act.

Congress later enacted the *Act of August 9, 1955*, codified at 25 U.S.C. §415, commonly known as the Long-Term Leasing Act, to overcome the prohibitions of the Non-Intercourse Act. The Long-Term Leasing Act requires that surface leases of Indian lands be approved by the Secretary of the Interior and limited to lease terms of up to 25 years.

As business opportunities and economic considerations changed over time, leases longer than 25 years were desired. To facilitate economic development on trust lands, over the years, a number of

tribes have obtained exceptions to the Long-Term Leasing Act in order to enter into leases for terms longer than 25 years. Since 1955, over 40 tribes have obtained these exceptions to the Long-Term Leasing Act and have authority to enter into surface leases for terms as long as 99 years.

S. 3903 would further amend the Long-Term Leasing Act by adding the Ohkay Owingeh Pueblo to the list of tribes authorized to enter into long-term leases of up to 99 years.

#### LEGISLATIVE HISTORY

S. 3903 was introduced on September 29, 2010, by Senator Udall of New Mexico for himself and Senator Bingaman. The bill was referred to the Committee on Indian Affairs and a business meeting was held on November 18, 2010. A House companion bill, H.R. 4276 was introduced on December 10, 2009, by Representative Luján for himself and Representative Heinrich. H.R. 4276 was referred to the House Committee on Natural Resources.

On November 18, 2010, the Committee on Indian Affairs held a Business Meeting at which S. 3903 was considered. An amendment was offered by Senator Dorgan on behalf of Senator Udall of New Mexico. The amendment was accepted and the bill was ordered to be reported.

#### SUMMARY OF AMENDMENT

The amendment was technical amendment filed by Senator Udall of New Mexico to remove subsection (b) which applied the newly authorized 99-year lease authority to any existing surface leases entered into or renewed after the date of enactment. This language was removed since this authority would be granted upon enactment of the bill.

#### SECTION-BY-SECTION ANALYSIS OF S. 1448 AS AMENDED

##### *Section 1. Leases of restricted land*

This section amends subsection (a) of the first section of the Act of August 9, 1955, in the second sentence by inserting “and lands held in trust for Ohkay Owingeh Pueblo” after “of land on the Devils Lake Sioux Reservation”.

#### COMMITTEE RECOMMENDATION

On November 18, 2010, at an open business meeting, the Committee approved S. 3903, with amendment, by voice vote. The Committee ordered the bill reported to the full Senate with the recommendation that the bill, as amended, do pass.

#### COST AND BUDGETARY CONSIDERATIONS

The following cost estimate, as provided by the Congressional Budget Office, dated December 1, 2010, was prepared for S. 3903:

*S. 3903—A bill to authorize leases of up to 99 years for lands held in trust for Ohkay Owingeh Pueblo*

S. 3903 would authorize the Ohkay Owingeh Pueblo to lease lands held in trust for up to 99 years. Under current law, the Pueblo can lease trust lands to schools, businesses, and public entities

for 25-year terms, subject to the approval of the Bureau of Indian Affairs (BIA).

CBO estimates that implementing S. 3903 would have no significant impact on the federal budget. Any additional proceeds from such leases would accrue to the owners of the trust land and would have no effect on the federal budget. CBO also estimates that implementing the bill would have a negligible effect on BIA's workload. Enacting S. 3903 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

S. 3903 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

The CBO staff contact for this estimate is Jeff LaFave. The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

#### REGULATORY AND PAPERWORK 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 and paperwork impact that would be incurred in carrying out the bill. The Committee has concluded that the regulatory and paperwork impact of S. 3903 should be de minimis.

#### EXECUTIVE COMMUNICATIONS

The Committee has received no official communication from the Administration on the provisions of S. 3903.

#### CHANGES IN EXISTING LAW

In compliance with subsection 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by S. 3903, as ordered to be reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new language to be added in italic, existing law to which no change is proposed is shown in roman):

*25 U.S.C. 415(a). Authorized purposes; term; approval by Secretary.*

#### ACT OF AUGUST 9, 1955

(a) Authorized purposes; term; approval by Secretary

Any restricted Indian lands, whether tribally, or individually owned, may be leased by the Indian owners, with the approval of the Secretary of the Interior, for public, religious, educational, recreational, residential, or business purposes, including the development or utilization of natural resources in connection with operations under such leases, for grazing purposes, and for those farming purposes which require the making of a substantial investment in the improvement of the land for the production of specialized crops as determined by said Secretary. All leases so granted shall be for a term of not to exceed twenty-five years, except leases of land located outside the boundaries of Indian reservations in the State of New Mexico, leases of land on the Agua Caliente (Palm Springs) Reservation, the Dania Reservation, the Pueblo of Santa Ana (with the exception of the lands known as the "Santa Ana Pueblo

Spanish Grant”), . . . and leases to the Devils Lake Sioux Tribe, or any organization of such tribe, of land on the Devils Lake Sioux Reservation, *land held in trust for the Ohkay Owingeh Pueblo*, which may be for a term of not to exceed ninety-nine years, and except leases of land for grazing purposes which may be for a term of not to exceed ten years.

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