

SHOSHONE-PAIUTE TRIBES OF THE DUCK VALLEY
RESERVATION WATER RIGHTS SETTLEMENT ACT

JULY 31, 2008.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed

Mr. RAHALL, from the Committee on Natural Resources,
submitted the following

R E P O R T

[To accompany H.R. 5293]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 5293) to approve the settlement of the water rights claims of the Shoshone-Paiute Tribes of the Duck Valley Reservation in Nevada, to require the Secretary of the Interior to carry out the settlement, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Shoshone-Paiute Tribes of the Duck Valley Reservation Water Rights Settlement Act”.

SEC. 2. FINDINGS.

Congress finds that—

(1) it is the policy of the United States, in accordance with the trust responsibility of the United States to Indian tribes, to promote Indian self-determination and economic self-sufficiency and to settle Indian water rights claims without lengthy and costly litigation, if practicable;

(2) quantifying rights to water and development of facilities needed to use tribal water supplies is essential to the development of viable Indian reservation economies and the establishment of a permanent reservation homeland;

(3) uncertainty concerning the extent of the Shoshone-Paiute Tribes’ water rights has resulted in limited access to water and inadequate financial resources necessary to achieve self-determination and self-sufficiency;

(4) in 2006, the Tribes, the State of Idaho, the affected individual water users, and the United States resolved all tribal claims to water rights in the Snake River Basin Adjudication through a consent decree entered by the District

Court of the Fifth Judicial District of the State of Idaho, requiring no further Federal action to quantify the Tribes' water rights in the State of Idaho;

(5) as of the date of enactment of this Act, proceedings to determine the extent and nature of the water rights of the Tribes in the East Fork of the Owyhee River in Nevada are pending before the Nevada State Engineer;

(6) final resolution of the Tribes' water claims in the East Fork of the Owyhee River adjudication will—

- (A) take many years;
- (B) entail great expense;
- (C) continue to limit the access of the Tribes to water, with economic and social consequences;
- (D) prolong uncertainty relating to the availability of water supplies; and
- (E) seriously impair long-term economic planning and development for all parties to the litigation;

(7) after many years of negotiation, the Tribes, the State, and the upstream water users have entered into a settlement agreement to resolve permanently all water rights of the Tribes in the State; and

(8) the Tribes also seek to resolve certain water-related claims for damages against the United States.

SEC. 3. PURPOSES.

The purposes of this Act are—

(1) to resolve outstanding issues with respect to the East Fork of the Owyhee River in the State in such a manner as to provide important benefits to—

- (A) the United States;
- (B) the State;
- (C) the Tribes; and
- (D) the upstream water users;

(2) to achieve a fair, equitable, and final settlement of all claims of the Tribes, members of the Tribes, and the United States on behalf of the Tribes and members of Tribes to the waters of the East Fork of the Owyhee River in the State;

(3) to ratify and provide for the enforcement of the Agreement among the parties to the litigation;

(4) to resolve the Tribes' water-related claims for damages against the United States;

(5) to require the Secretary to perform all obligations of the Secretary under the Agreement and this Act; and

(6) to authorize the actions and appropriations necessary to meet the obligations of the United States under the Agreement and this Act.

SEC. 4. DEFINITIONS.

In this Act:

(1) **AGREEMENT.**—The term “Agreement” means the agreement entitled the “Agreement to Establish the Relative Water Rights of the Shoshone-Paiute Tribes of the Duck Valley Reservation and the Upstream Water Users, East Fork Owyhee River” and signed in counterpart between, on, or about September 22, 2006, and January 15, 2007 (including all attachments to that Agreement).

(2) **DEVELOPMENT FUND.**—The term “Development Fund” means the Shoshone-Paiute Tribes Water Rights Development Fund established by section 8(b)(1).

(3) **EAST FORK OF THE OWYHEE RIVER.**—The term “East Fork of the Owyhee River” means the portion of the east fork of the Owyhee River that is located in the State.

(4) **MAINTENANCE FUND.**—The term “Maintenance Fund” means the Shoshone-Paiute Tribes Operation and Maintenance Fund established by section 8(c)(1).

(5) **RESERVATION.**—The term “Reservation” means the Duck Valley Reservation established by the Executive order dated April 16, 1877, as adjusted pursuant to the Executive order dated May 4, 1886, and Executive order numbered 1222 and dated July 1, 1910, for use and occupation by the Western Shoshones and the Paddy Cap Band of Paiutes.

(6) **SECRETARY.**—The term “Secretary” means the Secretary of the Interior.

(7) **STATE.**—The term “State” means the State of Nevada.

(8) **TRIBAL WATER RIGHTS.**—The term “tribal water rights” means rights of the Tribes described in the Agreement relating to water, including groundwater, storage water, and surface water.

(9) **TRIBES.**—The term “Tribes” means the Shoshone-Paiute Tribes of the Duck Valley Reservation.

(10) **UPSTREAM WATER USER.**—The term “upstream water user” means a non-Federal water user that—

- (A) is located upstream from the Reservation on the East Fork of the Owyhee River; and
- (B) is a signatory to the Agreement as a party to the East Fork of the Owyhee River adjudication.

SEC. 5. APPROVAL, RATIFICATION, AND CONFIRMATION OF AGREEMENT; AUTHORIZATION.

(a) **IN GENERAL.**—Except as provided in subsection (c) and except to the extent that the Agreement otherwise conflicts with provisions of this Act, the Agreement is approved, ratified, and confirmed.

(b) **SECRETARIAL AUTHORIZATION.**—The Secretary is authorized and directed to execute the Agreement as approved by Congress.

(c) **EXCEPTION FOR TRIBAL WATER MARKETING.**—Notwithstanding any language in the Agreement to the contrary, nothing in this Act authorizes the Tribes to use or authorize others to use tribal water rights off the Reservation, other than use for storage at Wild Horse Reservoir for use on tribal land and for the allocation of 265 acre feet to Upstream Water Users under the Agreement, or use on tribal land off the Reservation.

(d) **ENVIRONMENTAL COMPLIANCE.**—Execution of the Agreement by the Secretary under this section shall not constitute major Federal action under the National Environmental Policy Act (42 U.S.C. 4321 et seq.). The Secretary shall carry out all environmental compliance required by Federal law in implementing the Agreement.

(e) **PERFORMANCE OF OBLIGATIONS.**—The Secretary and any other head of a Federal agency obligated under the Agreement shall perform actions necessary to carry out an obligation under the Agreement in accordance with this Act.

SEC. 6. TRIBAL WATER RIGHTS.

(a) **IN GENERAL.**—Tribal water rights shall be held in trust by the United States for the benefit of the Tribes.

(b) **ADMINISTRATION.**—

(1) **ENACTMENT OF WATER CODE.**—Not later than 3 years after the date of enactment of this Act, the Tribes, in accordance with the provision of the Tribes' constitution and subject to the approval of the Secretary, shall enact a water code to administer tribal water rights.

(2) **INTERIM ADMINISTRATION.**—The Secretary shall regulate the tribal water rights during the period beginning on the date of enactment of this Act and ending on the date on which the Tribes enact a water code under paragraph (1).

(c) **TRIBAL WATER RIGHTS NOT SUBJECT TO LOSS.**—The tribal water rights shall not be subject to loss by abandonment, forfeiture, or nonuse.

SEC. 7. DUCK VALLEY INDIAN IRRIGATION PROJECT.

(a) **STATUS OF THE DUCK VALLEY INDIAN IRRIGATION PROJECT.**—Nothing in this Act shall affect the status of the Duck Valley Indian Irrigation Project under Federal law.

(b) **CAPITAL COSTS NONREIMBURSABLE.**—The capital costs associated with the Duck Valley Indian Irrigation Project as the date of enactment of this Act, including any capital cost incurred with funds distributed under this Act for the Duck Valley Indian Irrigation Project, shall be nonreimbursable.

SEC. 8. DEVELOPMENT AND MAINTENANCE FUNDS.

(a) **DEFINITION OF FUNDS.**—In this section, the term “Funds” means—

- (1) the Development Fund; and
- (2) the Maintenance Fund.

(b) **DEVELOPMENT FUND.**—

(1) **ESTABLISHMENT.**—There is established in the Treasury of the United States a fund to be known as the “Shoshone-Paiute Tribes Water Rights Development Fund”.

(2) **USE OF FUNDS.**—The Tribes shall use amounts in the Development Fund to rehabilitate and, if the Tribes choose, to expand the Duck Valley Indian Irrigation Project, or for any of the following purposes:

- (A) To pay or reimburse costs incurred by the Tribes in acquiring land and water rights.
- (B) For purposes of cultural preservation.
- (C) To restore or improve fish or wildlife habitat.
- (D) For fish or wildlife production, water resource development, or agricultural development.
- (E) For water resource planning and development.
- (F) To pay the costs of—
 - (i) designing and constructing water supply and sewer systems for tribal communities, including a water quality testing laboratory;
 - (ii) other appropriate water-related projects and other related economic development projects;

- (iii) the development of a water code; and
- (iv) other costs of implementing the Agreement.

(3) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary for deposit in the Development Fund \$9,000,000 for each of fiscal years 2008 through 2012.

(c) MAINTENANCE FUND.—

(1) ESTABLISHMENT.—There is established in the Treasury of the United States a fund to be known as the “Shoshone-Paiute Tribes Operation and Maintenance Fund”.

(2) USE OF FUNDS.—The Tribes shall use amounts in the Maintenance Fund to pay or provide reimbursement for—

(A) operation, maintenance, and replacement costs of the Duck Valley Indian Irrigation Project and other water-related projects funded under this Act; or

(B) operation, maintenance, and replacement costs of water supply and sewer systems for tribal communities, including the operation and maintenance costs of a water quality testing laboratory.

(3) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary for deposit in the Maintenance Fund \$3,000,000 for each of fiscal years 2008 through 2012.

(d) AVAILABILITY OF AMOUNTS FROM FUND.—Amounts made available under subsections (b)(3) and (c)(3) shall be available for expenditure or withdrawal only after the effective date as set forth in section 9(d).

(e) ADMINISTRATION OF FUNDS.—The Secretary, in accordance with the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4001 et seq.) shall manage the Funds, including by investing amounts from the Funds in accordance with the Act of April 1, 1880 (25 U.S.C. 161), and the first section of the Act of June 24, 1938 (25 U.S.C. 162a).

(f) EXPENDITURES AND WITHDRAWAL.—

(1) TRIBAL MANAGEMENT PLAN.—

(A) IN GENERAL.—The Tribes may withdraw all or part of amounts in the Funds on approval by the Secretary of a tribal management plan as described in the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4001 et seq.).

(B) REQUIREMENTS.—In addition to the requirements under the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4001 et seq.), the tribal management plan shall require that the Tribes spend any amounts withdrawn from the Funds in accordance with the purposes described in subsection (b)(2) or (c)(2).

(C) ENFORCEMENT.—The Secretary may take judicial or administrative action to enforce the provisions of any tribal management plan to ensure that any amounts withdrawn from the Funds under the plan are used in accordance with this Act and the Agreement.

(D) LIABILITY.—If the Tribes exercise the right to withdraw amounts from the Funds, neither the Secretary nor the Secretary of the Treasury shall retain any liability for the expenditure or investment of the amounts.

(2) EXPENDITURE PLAN.—

(A) IN GENERAL.—The Tribes shall submit to the Secretary for approval an expenditure plan for any portion of the amounts in the Funds that the Tribes do not withdraw under the tribal management plan.

(B) DESCRIPTION.—The expenditure plan shall describe the manner in which, and the purposes for which, amounts of the Tribes remaining in the Funds will be used.

(C) APPROVAL.—On receipt of an expenditure plan under subparagraph (A), the Secretary shall approve the plan if the Secretary determines that the plan is reasonable and consistent with this Act and the Agreement.

(D) ANNUAL REPORT.—For each Fund, the Tribes shall submit to the Secretary an annual report that describes all expenditures from the Fund during the year covered by the report.

(3) FUNDING AGREEMENT.—Notwithstanding any other provision of this Act, on receipt of a request from the Tribes, the Secretary shall include an amount from funds made available under this section in the funding agreement of the Tribes under title IV of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 458aa et seq.), for use in accordance with subsections (b)(2) and (c)(2). No amount made available under this Act may be requested until the waivers under section 9(a) take effect.

(g) NO PER CAPITA PAYMENTS.—No amount from the Funds (including any interest income accruing to the Funds) shall be distributed to a member of the Tribes on a per capita basis.

SEC. 9. TRIBAL WAIVER AND RELEASE OF CLAIMS.

(a) **WAIVER AND RELEASE OF CLAIMS BY TRIBES AND UNITED STATES AS TRUSTEE FOR TRIBES.**—The Tribes and the United States on behalf of the Tribes, are authorized to execute a waiver and release of—

(1) all claims for water rights in, or for waters of, the East Fork of the Owyhee River that the Tribes, or the United States as trustee for the Tribes, asserted or could have asserted in any court proceeding; and

(2) all claims for damages, losses, or injuries to water rights in the East Fork Owyhee River, including claims of interference, diversion, or taking of water that the Tribes, or the United States as trustee for the Tribes, asserted or could have asserted in any court proceedings.

(b) **WAIVER AND RELEASE OF CLAIMS AGAINST THE UNITED STATES.**—The Tribes are authorized to execute a waiver and release of—

(1) all claims against the United States, its agencies, or employees, for water rights in, or waters of, the East Fork of the Owyhee River that the United States asserted or could have asserted in any court proceeding;

(2) all claims for damages, losses, or injuries to water rights, including claims of interference, diversion, or taking of water, or claims for failure to protect, acquire, or develop water or water rights within the East Fork of the Owyhee River, and claims for fishing rights under any Executive order to the extent that an injury to such a right resulted from a reduction in the quantity of water available in the East Fork Owyhee River; that accrued on or before the effective date specified in subsection (d), that the Tribes have asserted or could have asserted against the United States, its agencies, or employees in any court proceedings; and

(3) all claims arising out of the negotiation and adoption of the Agreement.

(c) **RETENTION OF RIGHTS.**—Notwithstanding the waivers and releases set forth in subsections (a) and (b), the Tribes and their members and the United States as trustee for the Tribes and their members, shall retain—

(1) all claims for enforcement of the Agreement, the Final Consent Decree, or this Act, through such legal and equitable remedies as may be available in any court of competent jurisdiction;

(2) all rights to use and protect water rights acquired pursuant to any state law;

(3) all claims relating to activities affecting the quality of water;

(4) all rights to land outside the Reservation; and

(5) all rights, remedies, privileges, immunities, and powers not specifically waived and released under the terms of the Agreement or this Act.

(d) **EFFECTIVE DATE.**—Notwithstanding anything in the Agreement to the contrary, the waivers by the Tribes, or the United States on behalf of the Tribes, under this section shall take effect on the date on which the Secretary publishes in the Federal Register a statement of findings that includes a finding that—

(1) the Secretary has executed the Agreement as approved by Congress;

(2) all parties to the Agreement have executed the Agreement;

(3) the Fourth Judicial District Court, Elko County, Nevada has issued a judgment and decree consistent with the Agreement from which no further appeal can be taken; and

(4) the amounts authorized under subsections (b)(3) and (c)(3) of section 8 have been appropriated.

(e) **FAILURE TO PUBLISH STATEMENT OF FINDINGS.**—If the Secretary does not publish a statement of findings under subsection (d) by December 31, 2015—

(1) the Agreement and this Act shall not take effect; and

(2) any funds and interest accrued thereon that have been appropriated under this Act shall immediately revert to the general fund of the United States Treasury.

(f) **TOLLING OF CLAIMS.**—

(1) **IN GENERAL.**—Each applicable period of limitation and time-based equitable defense relating to a claim described in this section shall be tolled for the period beginning on the date of enactment of this Act and ending on the date on which the amounts authorized to be appropriated under subsections (b)(3) and (c)(3) of section 8 are appropriated.

(2) **EFFECT OF SUBPARAGRAPH.**—Nothing in this subparagraph revives any claim or tolls any period of limitation or time-based equitable defense that expired before the date of enactment of this Act.

(3) **FUTURE ACQUISITION OF WATER RIGHTS.**—Nothing in the Agreement or this Act precludes the Tribes, or the United States as trustee for the Tribes, from acquiring a water right in a state to the same extent as any other entity in the state, in accordance with state law.

SEC. 10. MISCELLANEOUS.

- (a) **GENERAL DISCLAIMER.**—The parties to the Agreement expressly reserve all rights not specifically granted, recognized, or relinquished by—
- (1) the settlement described in the Agreement; or
 - (2) this Act.
- (b) **LIMITATION OF CLAIMS AND RIGHTS.**—Nothing in this Act—
- (1) establishes a standard for quantifying—
 - (A) a Federal reserved water right;
 - (B) an aboriginal claim; or
 - (C) any other water right claim of an Indian tribe in a judicial or administrative proceeding; or
 - (2) limits the right of a party to the Agreement to litigate any issue not resolved by the Agreement or this Act.
- (c) **ADMISSION AGAINST INTEREST.**—Nothing in this Act constitutes an admission against interest by a party in any legal proceeding.
- (d) **RESERVATION.**—The Reservation shall be shall be—
- (1) considered to be the property of the Tribes; and
 - (2) permanently held in trust by the United States for the sole use and benefit of the Tribes.
- (e) **JURISDICTION.**—
- (1) **SUBJECT MATTER JURISDICTION.**—Nothing in the Agreement or this Act restricts, enlarges, or otherwise determines the subject matter jurisdiction of any Federal, State, or tribal court.
 - (2) **CIVIL OR REGULATORY JURISDICTION.**—Nothing in the Agreement or this Act impairs or impedes the exercise of any civil or regulatory authority of the United States, the State, or the Tribes.
 - (3) **CONSENT TO JURISDICTION.**—The United States consents to jurisdiction in a proper forum for purposes of enforcing the provisions of the Agreement.
 - (4) **EFFECT OF SUBSECTION.**—Nothing in this subsection confers jurisdiction on any State court to—
 - (A) enforce Federal environmental laws relating to the duties of the United States under this Act; or
 - (B) conduct judicial review of a Federal agency action.

PURPOSE OF THE BILL

The purpose of H.R. 5293 is to approve the settlement of the water rights claims of the Shoshone-Paiute Tribes of the Duck Valley Reservation in Nevada, to require the Secretary of the Interior to carry out the settlement, and for other purposes.

BACKGROUND AND NEED FOR LEGISLATION

The Duck Valley Reservation is the homeland of the Shoshone-Paiute Tribes (Tribes). The Reservation straddles the Idaho-Nevada border along the East Fork of the Owyhee River, a tributary to the Snake River. The Reservation was established by Executive Order on April 16th, 1877, and expanded by Executive Orders dated May 4, 1886 and July 1, 1910. The Reservation encompasses approximately 290,000 acres within the States of Nevada and Idaho.

The Owyhee Project on the main stem of the Owyhee River is a Bureau of Reclamation Project that irrigates more than 100,000 acres of land in eastern Oregon and western Idaho.

The Tribes' primary source of income is agriculture made possible by the Duck Valley Indian Irrigation Project, owned by the Bureau of Indian Affairs (BIA) and operated by the Tribes under a self-governance compact. The Project's primary water storage facility, the Wild Horse Reservoir, was originally built in 1930 and rebuilt in 1960. Despite the rebuilding, inadequate maintenance has led to an unstable infrastructure, resulting in an increased federal liability.

The Tribes have asserted claims to their federal reserved water rights in both Nevada and Idaho state courts. The State of Idaho

sought to resolve these claims by initiating the Snake River Basin Adjudication (SRBA) in 1987. The United States filed claims in Idaho's SRBA, and the Tribe's water rights were resolved by a consent decree entered in the Snake River Basin Adjudication on December 12, 2006 (the resolution of the Tribes' Idaho claims does not require Congressional ratification). The Nevada agreement was reached during a stay of that state's adjudicative process and requires Congressional action. H.R. 5293 would ratify the Nevada agreement.

The State of Nevada, and water users in Nevada will provide the Tribes with 111,476 acre-feet of surface water from the Owyhee River, storage water in the Wild Horse Reservoir, all water flows originating from springs and creeks on the Reservation, and 2,606 acre-feet of ground water, plus perennial yield. At the same time, the agreement protects the use of water by irrigators upstream (south) of the Reservation.

COMMITTEE ACTION

H.R. 5293 was introduced on February 7, 2008 by Rep. Dean Heller (R-NV). The bill was referred to the Committee on Natural Resources, and within the Committee to the Subcommittee on Water and Power. On March 13, 2008 the Subcommittee held a hearing on the bill.

On July 15, 2008, the Subcommittee met to mark up the bill. Ranking Member Cathy McMorris Rodgers (R-WA) offered an amendment in the nature of a substitute that clarified the water rights of upstream users. The amendment was adopted by unanimous consent and the bill, as amended, was then forwarded to the Full Committee. On July 16, 2008, the Full Natural Resources Committee met to consider the bill. H.R. 5293, as amended, was favorably reported to the House of Representatives by unanimous consent.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

Section 1 provides that this Act may be cited as the "Shoshone-Paiute Tribes of the Duck Valley Reservation Water Rights Settlement Act."

Section 2. Findings

Section 2 describes the findings for Congressional action and recognizes that this bill would seek to resolve tribal water-related, monetary claims for damages against the United States.

Section 3. Purposes

Section 3 states the purposes of this Act. Specifically, the Act will resolve outstanding water rights issues with respect to the East Fork of the Owyhee River and pending water-related, tribal claims for damages against the United States. The bill will also require the Secretary of the Interior perform all obligations under the Agreement and Act.

Section 4. Definitions

Section 4 provides definitions for the terms used in the bill.

Section 5. Approval, ratification, and confirmation of agreement

Section 5 ratifies the agreement referred to in the legislation and known as the “Agreement to Establish the Relative Water Rights of the Shoshone-Paiute Tribes of the Duck Valley Reservation and the Upstream Water Users, East Fork Owyhee River”. This section also authorizes and directs the Secretary to execute the Agreement as approved by Congress, including any and all environmental compliance required by federal law.

Section 6. Tribal water rights

Section 6 states that tribal water rights will be held in trust by the United States, through the Secretary of the Interior, for the benefit of the Tribes. The Act requires the Tribes to enact a tribal water code to administer tribal water rights, no later than three years after enactment of this bill. The Secretary will regulate the tribal water rights until the Tribes enact their water code. The bill provides that the Tribes’ water rights cannot be lost by abandonment, forfeiture, or nonuse.

Section 7. Duck Valley Indian Irrigation Project

Section 7 states that nothing in this Act will affect the Federal Duck Valley Indian Irrigation Project. This section also states that the federal government shall not seek reimbursement for capital costs incurred in support of the Project.

Section 8. Development and Maintenance Funds

Subsection (a) authorizes and outlines the creation of the Shoshone-Paiute Tribes Water Rights Development Fund and the Shoshone-Paiute Tribes Operation and Maintenance Fund.

Subsection (b) states that the Shoshone-Paiute Tribes’ Water Rights Development Fund will be established within the Treasury of the United States and administered by the Secretary of the Interior. The bill authorizes the appropriation of \$9 million annually in the Development Fund for five fiscal years for a total of \$45 million. The Tribes must use funds from the 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.

Subsection (c) provides that the Shoshone-Paiutes’ Operation and Maintenance Fund will be established within the Treasury of the United States and administered by the Secretary of the Interior. The bill authorizes the appropriation of \$3 million annually, for five fiscal years, for a total of \$15 million to this Fund. The tribes must use the Maintenance Fund to operate and maintain the Duck Valley Indian Irrigation Project and water-related projects authorized under the Act. Funds can also be spent to operate, maintain and replace the water supply and sewer systems for tribal communities. The bill, as ordered reported by the Committee, does not specifically allocate any funds to the rehabilitation of the Duck Valley Irrigation Project and it is unclear if the United States will be responsible for any future rehabilitation claims. The Committee expects this to be resolved prior to floor consideration.

Subsections (d–g) provide that under the Act, 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. The Tribes may withdraw all or part of the funds but must submit a tribal management plan that must be approved by the Secretary of the Interior. Neither the Secretary of the Interior nor the Secretary of the Treasury are liable for how monies withdrawn from the fund are spent or invested. In addition, the Tribes must submit an expenditure plan that must be approved by the Secretary for any payment or reimbursement of costs. The Tribes are required to submit an annual report to the Secretary that describes all costs. No part of the funds shall be distributed on a per capita basis to tribal members.

The Committee notes that the Administration and the Tribes have not come into agreement on the cost of the Settlement. In testimony on the Senate companion bill, the Administration asserted that the federal contribution to the settlement should be \$9.3 million, in contrast to the \$60 million proposed in the legislation. In House testimony on the bill, Majel Russell, Principal Deputy Assistant Secretary of Indian Affairs for the Department of the Interior, said that the Tribes were offered almost \$40 million from the federal negotiation team as an unofficial offer. The Administration argues that their internal guidance requires settlements to contain non-federal cost sharing “proportionate to the benefits received by the non-federal parties,” and must “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.”

The Tribes assert that the change in cost was due to a change in the interpretation and implementation of the Criteria and Procedures for the Participation of the Federal Government in Negotiations for the Settlement of Indian Water Rights Claims (“Criteria”). The Tribes also contend that the Administration’s proposed federal contribution of \$9.3 million only reflects the federal liability, but does not include the cost of settlement implementation. H.R. 2535 supports the Tribe’s contention that the \$60 million reflects both the federal liability and the cost of implementing the settlement.

Section 9. Tribal waiver of claims

Section 9 outlines the waivers and release of claims by the Tribes and the United States, acting as trustee, against parties to the settlement agreement, and a waiver and release of claims by the Tribes against the United States as stated in the settlement agreement and other water-related claims for damages. The waiver of claims against the United States related to water rights in section 9 is understood to encompass claims for damages to tribal resources due to loss of water or water rights, including damages, losses, or injuries to hunting, gathering, or cultural rights as well as the fishing rights that are explicitly waived.

Subsection (a) states that the Tribes and the 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 accrued before the effective date specified in subsection (d).

Subsection (c) provides for the retention of certain rights and claims notwithstanding the waivers set forth in Subsections 9(a) and 9(b).

Subsections (d–f) provide that 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 Act shall not take effect and any appropriated funds shall be returned to the Treasury. These subsections also describe the rights retained by the Tribes and the United States and the process for tolling claims.

Section 10. Miscellaneous

Section 10 includes provisions on the limits of claims and rights not waived in the agreement, the Act, or other ongoing matters specified in the Act. 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 Act.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Natural Resources' oversight findings and recommendations are reflected in the body of this report.

CONSTITUTIONAL AUTHORITY STATEMENT

Article I, section 8 of the Constitution of the United States grants Congress the authority to enact this bill.

COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out this bill. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974.

2. Congressional Budget Act. As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this bill does not contain any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

3. General Performance Goals and Objectives. As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill is to approve the settlement of the water rights claims of the Shoshone-Paiute Tribes of the Duck Valley Reservation in

Nevada, to require the Secretary of the Interior to carry out the settlement, and for other purposes.

4. Congressional Budget Office Cost Estimate. Under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of the Congressional Budget Office:

H.R. 5293—Shoshone-Paiute Tribes of the Duck Valley Reservation Water Rights Settlement Act

Summary: H.R. 5293 would ratify a water rights agreement among the Shoshone-Paiute Tribes of the Duck Valley Reservation, individual water users, and Nevada concerning the East Fork of the Owyhee River. The bill also would create two trust funds to settle the tribes' claims against the United States for compromising tribal water rights and failing to maintain the Duck Valley Irrigation Project. Under the bill, amounts in the funds could not be spent until certain requirements have been met.

Assuming appropriation of the authorized amounts to the funds, CBO estimates that implementing H.R. 5293 could cost \$48 million in 2012. Enacting H.R. 5293 also would increase direct spending by \$6 million in 2012 for interest payments to the tribe. Enacting the bill would not affect 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 (\$68 million in 2008, adjusted annually for inflation). Furthermore, appropriations resulting from authorizations contained in the bill could be used to pay for any such costs.

H.R. 5293 contains no private-sector mandates as defined in UMRA.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 5293 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—					
	2009	2010	2011	2012	2013	2009–2013
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
Authorization Level	12	12	12	12	0	48
Estimated Outlays	0	0	0	48	0	48
CHANGES IN DIRECT SPENDING						
Estimated Budget Authority	*	1	2	2	0	6
Estimated Outlays	0	0	0	6	0	6

Note.—* = Less than \$500,000; amounts may not sum to totals due to rounding.

Basis of estimate: For this estimate, CBO assumes that H.R. 5293 will be enacted near the beginning of fiscal year 2009 and that the entire amounts authorized will be appropriated for each fiscal year. In the fall of 2006, the Shoshone-Paiute Tribes of the Duck Valley Indian Reservation, the state of Nevada, and several individual water users signed an agreement to settle a water rights

dispute concerning the East Fork of the Owyhee River. Currently, the United States is not a party to this agreement. However, enactment of H.R. 5293 would approve and ratify the agreement and authorize the Secretary of the Interior to execute the settlement and other responsibilities under the bill. CBO assumes that, by fiscal year 2012, all parties will have executed the components of the agreement as specified under the bill.

Changes in spending subject to appropriation

H.R. 5293 would authorize the appropriation of \$12 million a year over the 2009–2012 period, for two trust funds for the Shoshone-Paiute Tribes as part of the water rights settlement. Of that amount, \$9 million a year would be authorized to be appropriated for the Shoshone Paiute Tribes Water Rights Development Fund 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. Another \$3 million a year over the same time period would be authorized to be appropriated for the Shoshone-Paiute Tribes Water Rights Operation and Maintenance Fund for similar activities.

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 2009 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 three years would be considered intragovernmental and would have no net effect on the federal budget.

When the conditions for final settlement have been met in 2012, control over the use of the trust funds would be transferred to the tribe and the budget would record an expenditure of \$48 million in that year. Subsequent use of the funds would have no effect on the federal budget. Should the Secretary not publish a statement of findings by December 31, 2015, the agreement would not take effect and any funds appropriated would be returned to the general fund of the Treasury.

Changes in direct spending

The Secretary of the Interior would be required to invest the amounts appropriated to the trust funds until those funds are expended. CBO estimates that interest earnings over the 2009–2012 period would total \$6 million and would be recorded as a federal outlay in 2012. Such outlays would be direct spending. Subsequently, the funds would be considered nonbudgetary, and any future interest payments would not be considered part of the federal budget. Should the Secretary not publish a statement of findings by December 31, 2015, the agreement would not take effect, and any interest payments would not be made.

Estimated impact on state, local, and tribal governments: H.R. 5293 would require the tribes to adopt water policies that would govern tribal water rights as detailed in the agreement. That re-

quirement would be an intergovernmental mandate as defined in UMRA because it would place a statutory requirement on the tribe 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 (\$68 million in 2008, 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: H.R. 5293 contains no private-sector mandates as defined in UMRA.

Previous CBO estimate: On August 8, 2007, CBO transmitted a cost estimate for S. 462, the Shoshone-Paiute Tribes of the Duck Valley Reservation Water Rights Settlement Act, as ordered reported by the Senate Committee on Indian Affairs on July 19, 2007. Although the bills are very similar, our estimates of costs are different. Our estimate of discretionary spending under H.R. 5293 is lower because we now assume a later enactment date for the legislation. Also, CBO now considers that tribal interest payments under both pieces of legislation would increase direct spending rather than discretionary spending (as we estimated under S. 462). Those interest payments under H.R. 5293 would increase direct spending by \$6 million. That estimate applies to S. 462 as well.

Estimate prepared by: Federal costs: Leigh Angres; Impact on State, Local, and Tribal Governments: Melissa Merrell; and Impact on the Private Sector: Amy Petz.

Estimate approved by: Theresa Gullo, Deputy Assistant Director for Budget Analysis.

COMPLIANCE WITH PUBLIC LAW 104-4

This bill contains no unfunded mandates.

EARMARK STATEMENT

H.R. 5293 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e) or 9(f) of rule XXI.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

CHANGES IN EXISTING LAW

If enacted, this bill would make no changes in existing law.

