

105TH CONGRESS
1ST SESSION

S. 402

To approve a settlement agreement between the Bureau of Reclamation and the Oroville-Tonasket Irrigation District.

IN THE SENATE OF THE UNITED STATES

MARCH 5, 1997

Mr. GORTON (for himself and Mrs. MURRAY) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

A BILL

To approve a settlement agreement between the Bureau of Reclamation and the Oroville-Tonasket Irrigation District.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Oroville-Tonasket
5 Claim Settlement and Conveyance Act”.

6 **SEC. 2. PURPOSES.**

7 The purposes of this Act are to authorize the Sec-
8 retary of the Interior to implement the provisions of the
9 negotiated Settlement Agreement including conveyance of

1 the Project Irrigation Works, identified as not having na-
2 tional importance, to the District, and for other purposes.

3 **SEC. 3. DEFINITIONS.**

4 As used in this Act:

5 (1) The term “Secretary” means the Secretary
6 of the Interior.

7 (2) The term “Reclamation” means the United
8 States Bureau of Reclamation.

9 (3) The term “district” or “Oroville-Tonasket
10 Irrigation District” means the project beneficiary or-
11 ganized and operating under the laws of the State
12 of Washington, which is the operating and repay-
13 ment entity for the Project.

14 (4) The term “project” means the Oroville-
15 Tonasket unit extension, Okanogan-Similkameen di-
16 vision, Chief Joseph Dam Project, Washington, con-
17 structed and rehabilitated by the United States
18 under the Act of September 28, 1976 (Public Law
19 94–423, 90 Stat. 1324), previously authorized and
20 constructed under the Act of October 9, 1962 (Pub-
21 lic Law 87–762, 76 Stat. 761), under the Federal
22 reclamation laws (including the Act of June 17,
23 1902 (ch. 1093, 32 Stat. 388), and Acts supple-
24 mentary thereto or amendatory thereof).

1 (5) The term “Project Irrigation Works”
2 means—

3 (A) those works actually in existence and
4 described in subarticle 3(a) of the Repayment
5 Contract, excluding Wildlife Mitigation Facili-
6 ties, and depicted on the maps held by the Dis-
7 trict and Reclamation, consisting of the realty
8 with improvements and real estate interests;

9 (B) all equipment, parts, inventories, and
10 tools associated with the Project Irrigation
11 Works realty and improvements and currently
12 in the District’s possession; and

13 (C) all third party agreements.

14 (6) (A) The term “Basic Contract” means Re-
15 payment Contract No. 14–06–100–4442, dated De-
16 cember 26, 1964, as amended and supplemented, be-
17 tween the United States and the District;

18 (B) the term “Repayment Contract” means Re-
19 payment Contract No. 0–07–10–W0242, dated No-
20 vember 28, 1979, as amended and supplemented, be-
21 tween the United States and the District; and

22 (C) the term “third party agreements” means
23 existing contractual duties, obligations, and respon-
24 sibilities that exist because of all leases, licenses, and

1 easement with third-parties related to the Project Ir-
2 rigation Works, or the lands or rights-of-way for the
3 Project Irrigation Works, but excepting power ar-
4 rangements with the Bonneville Power Administra-
5 tion.

6 (7) The term “Wildlife Mitigation Facilities”
7 means—

8 (A) land, improvements, or easements, or
9 any combination thereof, secured for access to
10 such lands, acquired by the United States
11 under the Fish and Wildlife Coordination Act
12 (16 U.S.C. 661–667e); and

13 (B) all third party agreements associated
14 with the land, improvements, or easements re-
15 ferred to in subparagraph (A).

16 (8) The term “Indian Trust Lands” means ap-
17 proximately 61 acres of lands identified on land clas-
18 sification maps on file with the District and Rec-
19 lamation beneficially owned by the Confederated
20 Tribes of the Colville Reservation (Colville Tribes) or
21 by individual Indians, and held in trust by the Unit-
22 ed States for the benefit of the Colville Tribes in ac-
23 cordance with the Executive Order of April 9, 1872.

24 (9) The term “Settlement Agreement” means
25 the Agreement made and entered on April 15, 1996,

1 between the United States of America acting
2 through the Regional Director, Pacific Northwest
3 Region, Bureau of Reclamation, and the Oroville-
4 Tonasket Irrigation District.

5 (10) The term “operations and maintenance”
6 means normal and reasonable care, control, oper-
7 ation, repair, replacement and maintenance.

8 **SEC. 4. AGREEMENT AUTHORIZATION.**

9 The Settlement Agreement is approved and the Sec-
10 retary of Interior is authorized to conduct all necessary
11 and appropriate investigations, studies, and required Fed-
12 eral actions to implement the Settlement Agreement.

13 **SEC. 5. CONSIDERATION AND SATISFACTION OF OUT-**
14 **STANDING OBLIGATIONS.**

15 (a) CONSIDERATION TO UNITED STATES.—Consider-
16 ation by the district to the United States in accordance
17 with the Settlement Agreement approved by this Act shall
18 be—

19 (1) payment of \$350,000 by the district to the
20 United States;

21 (2) assumption by the district of full liability
22 and responsibility and release of the United States
23 of all further responsibility, obligations, and liability
24 for removing irrigation facilities constructed and re-
25 habilitated by the United States under the Act of

1 October 9, 1962 (Public Law 87–762, 76 Stat. 761),
2 or referenced in section 201 of the Act of September
3 28, 1976 (Public Law 94–423, 90 Stat. 1324), and
4 identified in Article 3(a)(8) of the Repayment Con-
5 tract;

6 (3) assumption by the district of sole and abso-
7 lute responsibility for the operations and mainte-
8 nance of the Project Irrigation Works;

9 (4) release and discharge by the district as to
10 the United States from all past and future claims,
11 whether now known or unknown, arising from or in
12 any way related to the Project, including any arising
13 from the Project Irrigation Works constructed pur-
14 suant to the 1964 Basic Contract or the 1979 Re-
15 payment Contract;

16 (5) assumption by the District of full respon-
17 sibility to indemnify and defend the United States
18 against any third party claims associated with any
19 aspect of the Project, except for that claim known
20 as the Grillo Claim, government contractor construc-
21 tion claims accruing at any time, and any other suits
22 or claims filed as of the date of the Settlement
23 Agreement; and

1 (6) continued obligation by the district to de-
2 liver water to and provide for operation and mainte-
3 nance of the Wildlife Mitigation Facilities at its own
4 expense in accordance with the Settlement Agree-
5 ment.

6 (b) RESPONSIBILITIES OF THE UNITED STATES.—

7 In return the United States shall—

8 (1) release and discharge the district's obliga-
9 tion, including any delinquent or accrued payments,
10 or assessments of any nature under the 1979 Repay-
11 ment Contract, including the unpaid obligation of
12 the 1964 Basic Contract;

13 (2) transfer title of the Project Irrigation
14 Works to the district;

15 (3) assign to the District all third party agree-
16 ments associated with the Project Irrigation Works;

17 (4) continue power deliveries provided under
18 section 6 of this Act; and

19 (5) assume full responsibility to indemnify and
20 defend the district against any claim known as the
21 Grillo Claim, government contractor construction
22 claims accruing at any time, and any other suits or
23 claims filed against the United States as of the date
24 of the Settlement Agreement.

1 (c) PROJECT CONSTRUCTION COSTS.—The transfer
2 of title authorized by this Act shall not affect the timing
3 or amount of the obligation of the Bonneville Power Ad-
4 ministration for the repayment of construction costs in-
5 curred by the Federal Government under section 202 of
6 the Act of September 28, 1976 (90 Stat. 1325) that the
7 Secretary of the Interior has determined to be beyond the
8 ability of irrigators to pay. The obligation shall remain
9 charged to and be returned to the Reclamation Fund as
10 provided for in section 2 of the Act of June 14, 1966 (80
11 Stat. 200), as amended by section 6 of the Act of Septem-
12 ber 7, 1966 (80 Stat. 707).

13 **SEC. 6. POWER.**

14 Nothing in this Act shall be construed as having any
15 affect on power arrangements under Public Law 94–423
16 (90 Stat. 1324). The United States shall continue to pro-
17 vide to the district power and energy for irrigation water
18 pumping for the project, including Dairy Point Pumping
19 Plant. However, the amount and term of reserved power
20 shall not exceed, respectively—

21 (1) 27,100,000 kilowatt hours per year; and

22 (2) 50 years commencing October 18, 1990.

23 The rate that the district shall pay the Secretary for such
24 reserved power shall continue to reflect full recovery of
25 Bonneville Power Administration transmission costs.

1 **SEC. 7. CONVEYANCE.**

2 (a) CONVEYANCE OF INTERESTS OF UNITED
3 STATES.—Subject to valid existing rights, the Secretary
4 is authorized to convey all right, title, and interest, with-
5 out warranties, of the United States in and to all Project
6 Irrigation Works to the district. In the event a significant
7 cultural resource or hazardous waste site is identified, the
8 Secretary is authorized to defer or delay transfer of title
9 to any parcel until required Federal action is completed.

10 (b) RETENTION OF TITLE TO WILDLIFE MITIGATION
11 FACILITIES.—The Secretary will retain title to the Wild-
12 life Mitigation Facilities. The District shall remain obli-
13 gated to deliver water to and provide for the operations
14 and maintenance of the Wildlife Mitigation Facilities at
15 its own expense in accordance with the Settlement Agree-
16 ment.

17 (c) RESERVATION.—The transfer of rights and inter-
18 ests pursuant to subsection (a) shall reserve to the United
19 States all oil, gas, and other mineral deposits and a per-
20 petual right to existing public access open to public fish-
21 ing, hunting and other outdoor recreation purposes, and
22 such other existing public uses.

23 **SEC. 8. REPAYMENT CONTRACT.**

24 Upon conveyance of title to the Project Irrigation
25 Works notwithstanding any parcels delayed in accordance
26 with section 7(a), the 1964 Basic Contract, and the 1979

1 Repayment Contract between the District and Reclama-
2 tion, shall be terminated and of no further force or effect.

3 **SEC. 9. INDIAN TRUST RESPONSIBILITIES.**

4 The district shall remain obligated to deliver water
5 under appropriate water service contracts to Indian Trust
6 Lands upon request from the owners or lessees of such
7 land.

8 **SEC. 10. LIABILITY.**

9 Upon completion of the conveyance of Project Irriga-
10 tion Works under this Act, the District shall—

11 (1) be liable for all acts or omissions relating to
12 the operation and use of the Project Irrigation
13 Works that occur before or after the conveyance ex-
14 cept for the Grillo Claim, government contractor
15 construction claims accruing at any time, and any
16 other suits or claims filed as of the date of the Set-
17 tlement Agreement;

18 (2) absolve the United States and its officers
19 and agents of responsibility and liability for the de-
20 sign and construction including latent defects associ-
21 ated with the project; and

22 (3) assume responsibility to indemnify and de-
23 fend the United States against all claims whether
24 now known or unknown and including those of third
25 party claims associated with, arising from, or in any

1 way related to, the project except for the Grillo
 2 Claim, government contractor construction claims
 3 accruing at any time, and any other suits or claims
 4 filed as of the date of the Settlement Agreement.

5 **SEC. 11. CERTAIN ACTS NOT APPLICABLE AND TERMI-**
 6 **NATION OF MANDATES.**

7 (a) RECLAMATION LAWS.—All mandates imposed by
 8 the Reclamation Act of 1902, and all Acts supplementary
 9 thereto or amendatory thereof, including the Reclamation
 10 Reform Act of 1982, upon the Project Irrigation Works
 11 shall be terminated upon the completion of the transfers
 12 as provided by this Act and the Settlement Agreement.

13 (b) RELATIONSHIP TO OTHER LAWS.—The transfer
 14 of title authorized by this Act shall not—

15 (1) be subject to the provisions of chapter 5 of
 16 title 5, United States Code (commonly known as the
 17 “Administrative Procedures Act”); or

18 (2) be considered a disposal of surplus property
 19 under the Federal Property and Administrative
 20 Services Act of 1949 (40 U.S.C. 471 et seq.) And
 21 the Surplus Property Act of 1944 (50 U.S.C. App.
 22 1601 et seq.).

23 (c) DEAUTHORIZATION.—Effective upon the transfer
 24 of title to the district under this section, that portion of
 25 the Oroville-Tonasket Unit Extension, Okanogan-

1 Similkameen Division, Chief Joseph Dam Project, Wash-
2 ington referred to in section 7(a) as the Project Irrigation
3 Works is hereby deauthorized. After transfer of title, the
4 district shall not be entitled to receive any further Rec-
5 lamation benefits pursuant to the Reclamation Act of
6 June 17, 1902, and Acts supplementary thereto or amend-
7 atory thereof.

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