

110TH CONGRESS
2D SESSION

H. R. 5293

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 22 (legislative day, SEPTEMBER 17), 2008

Received

AN ACT

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.

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

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Shoshone-Paiute
3 Tribes of the Duck Valley Reservation Water Rights Set-
4 tlement Act”.

5 **SEC. 2. FINDINGS.**

6 Congress finds that—

7 (1) it is the policy of the United States, in ac-
8 cordance with the trust responsibility of the United
9 States to Indian tribes, to promote Indian self-deter-
10 mination and economic self-sufficiency and to settle
11 Indian water rights claims without lengthy and cost-
12 ly litigation, if practicable;

13 (2) quantifying rights to water and development
14 of facilities needed to use tribal water supplies is es-
15 sential to the development of viable Indian reserva-
16 tion economies and the establishment of a perma-
17 nent reservation homeland;

18 (3) uncertainty concerning the extent of the
19 Shoshone-Paiute Tribes’ water rights has resulted in
20 limited access to water and inadequate financial re-
21 sources necessary to achieve self-determination and
22 self-sufficiency;

23 (4) in 2006, the Tribes, the State of Idaho, the
24 affected individual water users, and the United
25 States resolved all tribal claims to water rights in
26 the Snake River Basin Adjudication through a con-

1 sent decree entered by the District Court of the
2 Fifth Judicial District of the State of Idaho, requiring
3 no further Federal action to quantify the Tribes'
4 water rights in the State of Idaho;

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

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

13 (A) take many years;

14 (B) entail great expense;

15 (C) continue to limit the access of the
16 Tribes to water, with economic and social con-
17 sequences;

18 (D) prolong uncertainty relating to the
19 availability of water supplies; and

20 (E) seriously impair long-term economic
21 planning and development for all parties to the
22 litigation;

23 (7) after many years of negotiation, the Tribes,
24 the State, and the upstream water users have en-
25 tered into a settlement agreement to resolve perma-

1 nently all water rights of the Tribes in the State;
2 and

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

6 **SEC. 3. PURPOSES.**

7 The purposes of this Act are—

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

11 (A) the United States;

12 (B) the State;

13 (C) the Tribes; and

14 (D) the upstream water users;

15 (2) to achieve a fair, equitable, and final settle-
16 ment of all claims of the Tribes, members of the
17 Tribes, and the United States on behalf of the
18 Tribes and members of Tribes to the waters of the
19 East Fork of the Owyhee River in the State;

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

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

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

7 SEC. 4. DEFINITIONS.

8 In this Act:

1 (4) MAINTENANCE FUND.—The term “Mainte-
2 nance Fund” means the Shoshone-Paiute Tribes Op-
3 eration and Maintenance Fund established by sec-
4 tion 8(c)(1).

21 (9) TRIBES.—The term “Tribes” means the
22 Shoshone-Paiute Tribes of the Duck Valley Reserva-
23 tion.

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

11 (a) IN GENERAL.—Except as provided in subsection
12 (c) and except to the extent that the Agreement otherwise
13 conflicts with provisions of this Act, the Agreement is ap-
14 proved, ratified, and confirmed.

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

18 (c) EXCEPTION FOR TRIBAL WATER MARKETING.—
19 Notwithstanding any language in the Agreement to the
20 contrary, nothing in this Act authorizes the Tribes to use
21 or authorize others to use tribal water rights off the Res-
22 ervation, other than use for storage at Wild Horse Res-
23 ervoir for use on tribal land and for the allocation of 265
24 acre feet to upstream water users under the Agreement,
25 or use on tribal land off the Reservation.

1 (d) ENVIRONMENTAL COMPLIANCE.—Execution of
2 the Agreement by the Secretary under this section shall
3 not constitute major Federal action under the National
4 Environmental Policy Act (42 U.S.C. 4321 et seq.). The
5 Secretary shall carry out all environmental compliance re-
6 quired by Federal law in implementing the Agreement.

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

12 **SEC. 6. TRIBAL WATER RIGHTS.**

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

15 (b) ADMINISTRATION.—

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

22 (2) INTERIM ADMINISTRATION.—The Secretary
23 shall regulate the tribal water rights during the pe-
24 riod beginning on the date of enactment of this Act

1 and ending on the date on which the Tribes enact
2 a water code under paragraph (1).

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

6 **SEC. 7. DUCK VALLEY INDIAN IRRIGATION PROJECT.**

7 (a) STATUS OF THE DUCK VALLEY INDIAN IRRIGA-
8 TION PROJECT.—Nothing in this Act shall affect the sta-
9 tus of the Duck Valley Indian Irrigation Project under
10 Federal law.

11 (b) CAPITAL COSTS NONREIMBURSABLE.—The cap-
12 ital costs associated with the Duck Valley Indian Irriga-
13 tion Project as of the date of enactment of this Act, in-
14 cluding any capital cost incurred with funds distributed
15 under this Act for the Duck Valley Indian Irrigation
16 Project, shall be nonreimbursable.

17 **SEC. 8. DEVELOPMENT AND MAINTENANCE FUNDS.**

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

20 (1) the Development Fund; and
21 (2) the Maintenance Fund.

22 (b) DEVELOPMENT FUND.—

23 (1) ESTABLISHMENT.—There is established in
24 the Treasury of the United States a fund to be

1 known as the “Shoshone-Paiute Tribes Water
2 Rights Development Fund”.

3 (2) USE OF FUNDS.—

4 (A) PRIORITY USE OF FUNDS FOR REHA-
5 BILITATION.—The Tribes shall use amounts in
6 the Development Fund to—

7 (i) rehabilitate the Duck Valley Indian
8 Irrigation Project; or

9 (ii) for other purposes under subpara-
10 graph (B), provided that the Tribes have
11 given written notification to the Secretary
12 that—

13 (I) the Duck Valley Indian Irri-
14 gation Project has been rehabilitated
15 to an acceptable condition; or

16 (II) sufficient funds will remain
17 available from the Development Fund
18 to rehabilitate the Duck Valley Indian
19 Irrigation Project to an acceptable
20 condition after expending funds for
21 other purposes under subparagraph
22 (B).

23 (B) OTHER USES OF FUNDS.—Once the
24 Tribes have provided written notification as
25 provided in subparagraph (A)(ii)(I) or

1 (A)(ii)(II), the Tribes may use amounts from
2 the Development Fund for any of the following
3 purposes:

4 (i) To expand the Duck Valley Indian
5 Irrigation Project.

6 (ii) To pay or reimburse costs in-
7 curred by the Tribes in acquiring land and
8 water rights.

9 (iii) For purposes of cultural preserva-
10 tion.

11 (iv) To restore or improve fish or
12 wildlife habitat.

13 (v) For fish or wildlife production,
14 water resource development, or agricultural
15 development.

16 (vi) For water resource planning and
17 development.

18 (vii) To pay the costs of—

19 (I) designing and constructing
20 water supply and sewer systems for
21 tribal communities, including a water
22 quality testing laboratory;

23 (II) other appropriate water-re-
24 lated projects and other related eco-
25 nomic development projects;

1 (III) the development of a water
2 code; and

3 (IV) other costs of implementing
4 the Agreement.

10 (A) \$9,000,000; and

16 (c) MAINTENANCE FUND.—

24 (A) operation, maintenance, and replace-
25 ment costs of the Duck Valley Indian Irrigation

1 Project and other water-related projects funded
2 under this Act; or

3 (B) operation, maintenance, and replace-
4 ment costs of water supply and sewer systems
5 for tribal communities, including the operation
6 and maintenance costs of a water quality test-
7 ing laboratory.

8 (3) AUTHORIZATION OF APPROPRIATIONS.—For
9 each of fiscal years 2009 through 2013, there is au-
10 thorized to be appropriated to the Secretary for de-
11 posit in the Maintenance Fund an amount equal to
12 the sum of—

13 (A) \$3,000,000; and

14 (B) the interest that would have accrued
15 during the preceding fiscal year on balances
16 held in the Maintenance Fund, as calculated
17 using the applicable rate for interest-bearing
18 obligations of the United States.

19 (d) ESTIMATE OF ACCRUED INTEREST.—The Presi-
20 dent's budget submission shall include an estimate of the
21 amount of interest that would have accrued under the sub-
22 sections (b)(3)(B), (c)(3)(B), and (e)(2).

23 (e) ADDITIONAL AUTHORIZATION OF APPROPRIA-
24 TIONS OF INTEREST.—

(B) the date of completion of the event described in section 9(d)(2).

15 (f) AVAILABILITY OF AMOUNTS FROM FUNDS.—
16 Amounts made available under subsections (b)(3), (c)(3),
17 and (e) shall be available for expenditure or withdrawal
18 only after the effective date as set forth in section 9(d).

19 (g) ADMINISTRATION OF FUNDS.—Upon completion
20 of the actions described in section 9(d), the Secretary, in
21 accordance with the American Indian Trust Fund Man-
22 agement Reform Act of 1994 (25 U.S.C. 4001 et seq.)
23 shall manage the Funds, including by investing amounts
24 from the Funds in accordance with the Act of April 1,

1 1880 (25 U.S.C. 161), and the first section of the Act
2 of June 24, 1938 (25 U.S.C. 162a).

3 (h) EXPENDITURES AND WITHDRAWAL.—

4 (1) TRIBAL MANAGEMENT PLAN.—

5 (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.).

11 (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).

19 (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.

6 (2) EXPENDITURE PLAN.—

12 (B) DESCRIPTION.—The expenditure plan
13 shall describe the manner in which, and the
14 purposes for which, amounts of the Tribes re-
15 maining in the Funds will be used.

16 (C) APPROVAL.—On receipt of an expendi-
17 ture plan under subparagraph (A), the Sec-
18 retary shall approve the plan if the Secretary
19 determines that the plan is reasonable and con-
20 sistent with this Act and the Agreement.

21 (D) ANNUAL REPORT.—For each Fund,
22 the Tribes shall submit to the Secretary an an-
23 nual report that describes all expenditures from
24 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.

12 (i) NO PER CAPITA PAYMENTS.—No amount from
13 the Funds (including any amounts appropriated under
14 subsections (b)(3)(B), (c)(3)(B), and (e)(1) for interest in-
15 come that would have accrued to the Funds) shall be dis-
16 tributed to a member of the Tribes on a per capita basis.

17 SEC. 9. TRIBAL WAIVER AND RELEASE OF CLAIMS.

18 (a) WAIVER AND RELEASE OF CLAIMS BY TRIBES
19 AND UNITED STATES ACTING AS TRUSTEE FOR
20 TRIBES.—In return for recognition of the Tribes' water
21 rights and other benefits as set forth in the Agreement
22 and this Act, the Tribes, on behalf of themselves and their
23 members, and the United States acting in its capacity as
24 trustee for the Tribes are authorized to execute a waiver
25 and release of—

18 (b) WAIVER AND RELEASE OF CLAIMS BY TRIBES

19 AGAINST UNITED STATES.—The Tribes, on behalf of
20 themselves and their members, are authorized to execute
21 a waiver and release of—

22 (1) all claims against the United States, its
23 agencies, or employees, relating in any manner to
24 claims for water rights in or water of the States of
25 Nevada and Idaho that the United States acting in

1 its capacity as trustee for the Tribes asserted, or
2 could have asserted, in any proceeding, including
3 pending proceedings before the Nevada State Engi-
4 neer to determine the extent and nature of the water
5 rights of the Tribes in the East Fork of the Owyhee
6 River in Nevada, or the Snake River Basin Adju-
7 dication in Idaho;

8 (2) all claims against the United States, its
9 agencies, or employees relating in any manner to
10 damages, losses, or injuries to water, water rights,
11 land, or other resources due to loss of water or
12 water rights (including damages, losses or injuries to
13 fishing and other similar rights due to loss of water
14 or water rights; claims relating to interference with,
15 diversion or taking of water; or claims relating to
16 failure to protect, acquire, replace, or develop water,
17 water rights or water infrastructure) within the
18 States of Nevada and Idaho that first accrued at
19 any time up to and including the effective date;

20 (3) all claims against the United States, its
21 agencies, or employees relating to the operation,
22 maintenance, or rehabilitation of the Duck Valley
23 Indian Irrigation Project that first accrued at any
24 time up to and including the date upon which the
25 Tribes notify the Secretary as provided in section

1 8(b)(2)(A)(ii)(I) that the rehabilitation of the Duck
2 Valley Indian Irrigation Project under this Act to an
3 acceptable level has been accomplished;

4 (4) all claims against the United States, its
5 agencies, or employees relating in any manner to the
6 litigation of claims relating to the Tribes' water
7 rights in pending proceedings before the Nevada
8 State Engineer to determine the extent and nature
9 of the water rights of the Tribes in the East Fork
10 of the Owyhee River in Nevada or the Snake River
11 Basin Adjudication in Idaho; and

12 (5) all claims against the United States, its
13 agencies, or employees relating in any manner to the
14 negotiation, execution, or adoption of the Agree-
15 ment, exhibits thereto, the decree referred to in sub-
16 section (d)(2), or this Act.

17 (c) RESERVATION OF RIGHTS AND RETENTION OF
18 CLAIMS.—Notwithstanding the waivers and releases au-
19 thorized in this Act, the Tribes on their own behalf and
20 the United States acting in its capacity as trustee for the
21 Tribes retain—

22 (1) all claims for enforcement of the Agree-
23 ment, the decree referred to in subsection (d)(2), or
24 this Act, through such legal and equitable remedies

1 as may be available in the decree court or the appropriate Federal court;

3 (2) all rights to acquire a water right in a State
4 to the same extent as any other entity in the State,
5 in accordance with State law, and to use and protect
6 water rights acquired after the date of enactment of
7 this Act;

8 (3) all claims relating to activities affecting the
9 quality of water including any claims the Tribes
10 might have under the Comprehensive Environmental
11 Response, Compensation, and Liability Act of 1980
12 (42 U.S.C. 9601 et seq.) (including claims for damages
13 to natural resources), the Safe Drinking Water
14 Act (42 U.S.C. 300f et seq.), the Federal Water Pollution
15 Control Act (33 U.S.C. 1251 et seq.), and the
16 regulations implementing those Acts; and

17 (4) all rights, remedies, privileges, immunities,
18 and powers not specifically waived and released pursuant
19 to this Act.

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

1 (1) the Agreement and the waivers and releases
2 authorized and set forth in subsections (a) and (b)
3 have been executed by the parties and the Secretary;

11 (e) FAILURE TO PUBLISH STATEMENT OF FIND-
12 INGS.—If the Secretary does not publish a statement of
13 findings under subsection (d) by March 31, 2016—

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

20 (f) TOLLING OF CLAIMS.—

21 (1) IN GENERAL.—Each applicable period of
22 limitation and time-based equitable defense relating
23 to a claim described in this section shall be tolled for
24 the period beginning on the date of enactment of
25 this Act and ending on the date on which the

1 amounts authorized to be appropriated under sub-
2 sections (b)(3) and (c)(3) of section 8 are appro-
3 priated.

4 (2) EFFECT OF SUBPARAGRAPH.—Nothing in
5 this subparagraph revives any claim or tolls any pe-
6 riod of limitation or time-based equitable defense
7 that expired before the date of enactment of this
8 Act.

9 **SEC. 10. MISCELLANEOUS.**

10 (a) GENERAL DISCLAIMER.—The parties to the
11 Agreement expressly reserve all rights not specifically
12 granted, recognized, or relinquished by—

13 (1) the settlement described in the Agreement;
14 or
15 (2) this Act.

16 (b) LIMITATION OF CLAIMS AND RIGHTS.—Nothing
17 in this Act—

18 (1) establishes a standard for quantifying—
19 (A) a Federal reserved water right;
20 (B) an aboriginal claim; or
21 (C) any other water right claim of an In-
22 dian tribe in a judicial or administrative pro-
23 ceeding;

24 (2) affects the ability of the United States, act-
25 ing in its sovereign capacity, to take actions author-

1 ized by law, including any laws relating to health,
2 safety, or the environment, including the Com-
3 prehensive Environmental Response, Compensation,
4 and Liability Act of 1980 (42 U.S.C. 9601 et seq.),
5 the Safe Drinking Water Act (42 U.S.C. 300f et
6 seq.), the Federal Water Pollution Control Act (33
7 U.S.C. 1251 et seq.), the Solid Waste Disposal Act
8 (42 U.S.C. 6901 et seq.) (commonly known as the
9 “Resource Conservation and Recovery Act of
10 1976”), and the regulations implementing those
11 Acts;

12 (3) affects the ability of the United States to
13 take actions, acting in its capacity as trustee for any
14 other Tribe, Pueblo, or allottee;

15 (4) waives any claim of a member of the Tribes
16 in an individual capacity that does not derive from
17 a right of the Tribes; or

18 (5) limits the right of a party to the Agreement
19 to litigate any issue not resolved by the Agreement
20 or this Act.

21 (c) ADMISSION AGAINST INTEREST.—Nothing in this
22 Act constitutes an admission against interest by a party
23 in any legal proceeding.

24 (d) RESERVATION.—The Reservation shall be—

1 (1) considered to be the property of the Tribes;

2 and

5 (e) JURISDICTION.—

10 (2) CIVIL OR REGULATORY JURISDICTION.—
11 Nothing in the Agreement or this Act impairs or im-
12 pedes the exercise of any civil or regulatory author-
13 ity of the United States, the State, or the Tribes.

14 (3) CONSENT TO JURISDICTION.—The United
15 States consents to jurisdiction in a proper forum for
16 purposes of enforcing the provisions of the Agree-
17 ment.

18 (4) EFFECT OF SUBSECTION.—Nothing in this
19 subsection confers jurisdiction on any State court
20 to—

Passed the House of Representatives September 17,
2008.

Attest: **LORRAINE C. MILLER,**
Clerk.