

Calendar No. 664

111TH CONGRESS
2D SESSION**S. 2802**

To settle land claims within the Fort Hall Reservation.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 19, 2009

Mr. CRAPO (for himself and Mr. RISCH) introduced the following bill; which
was read twice and referred to the Committee on Indian Affairs

DECEMBER 1, 2010

Reported by Mr. DORGAN, with amendments

[Omit the part struck through and insert the part printed in *italic*]**A BILL**

To settle land claims within the Fort Hall Reservation.

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 “Blackfoot River Land
 5 Settlement Act of 2009”.

6 **SEC. 2. FINDINGS; PURPOSES.**

7 (a) FINDINGS.—Congress finds that—

1 (1) it is the policy of the United States to pro-
2 mote tribal self-determination and economic self-suf-
3 ficiency and encourage the resolution of disputes
4 over historical claims through mutually agreed-upon
5 settlements between Indian tribes and the United
6 States;

7 (2) the Shoshone-Bannock Tribes, a federally
8 recognized Indian tribe with tribal headquarters at
9 Fort Hall, Idaho—

10 (A) adopted a tribal constitution and by-
11 laws on March 31, 1936, that were approved by
12 the Secretary of the Interior on April 30, 1936,
13 pursuant to the Act of June 18, 1934 (25
14 U.S.C. 461 et seq.) (commonly known as the
15 “Indian Reorganization Act”);

16 (B) has entered into various treaties with
17 the United States, including the Second Treaty
18 of Fort Bridger, executed on July 3, 1868; and

19 (C) has maintained a continuous govern-
20 ment-to-government relationship with the
21 United States since the earliest years of the
22 Union;

23 (3)(A) in 1867, President Andrew Johnson des-
24 ignated by Executive order the Fort Hall Reserva-

1 tion for various bands of Shoshone and Bannock In-
2 dians;

3 (B) the Reservation is located near the cities of
4 Blackfoot and Pocatello in southeastern Idaho; and

5 (C) article 4 of the Second Treaty of Fort
6 Bridger secured the Reservation as a “permanent
7 home” for the Shoshone-Bannock Tribes;

8 (4)(A) according to the Executive order referred
9 to in paragraph (3)(A), the Blackfoot River, as the
10 river existed in its natural state—

11 (i) is the northern boundary of the Res-
12 ervation; and

13 (ii) flows in a westerly direction along that
14 northern boundary; and

15 (B) within the Reservation, land use in the
16 River watershed is dominated by—

17 (i) rangeland;

18 (ii) dry and irrigated farming; and

19 (iii) residential development;

20 (5)(A) in 1964, the Corps of Engineers com-
21 pleted a local flood protection project on the River—

22 (i) authorized by section 204 of the Flood
23 Control Act of 1950 (64 Stat. 170); and

24 (ii) sponsored by the Blackfoot River Flood
25 Control District No. 7;

1 (B) the project consisted of building levees, re-
 2 placing irrigation diversion structures, replacing
 3 bridges, and channel realignment; and

4 (C) the channel realignment portion of the
 5 project severed various parcels of land located con-
 6 tiguous to the River along the boundary of the Res-
 7 ervation, resulting in Indian land being located
 8 north of the Realigned River and non-Indian land
 9 being located south of the Realigned River;

10 (6) beginning in 1999, the Cadastral Survey
 11 Office of the Bureau of Land Management con-
 12 ducted surveys of—

13 (A) 25 parcels of Indian land; and

14 (B) 19 parcels of non-Indian land;

15 (7) ~~in 1988~~, many non-Indian landowners and
 16 non-Indians acquiring Indian land *have* filed claims
 17 in the Snake River Basin Adjudication seeking water
 18 rights that included a place of use on Indian land;
 19 and

20 (8) the enactment of this Act and the distribu-
 21 tion of funds in accordance with section 12(b) would
 22 represent an agreement among—

23 (A) the Tribes;

24 (B) the allottees;

1 (C) the non-Indians acquiring Indian land;
 2 and

3 (D) the non-Indian landowners.

4 (b) PURPOSES.—The purposes of this Act are—

5 (1) to resolve the disputes resulting from re-
 6 alignment of the River by the Corps of Engineers
 7 during calendar year 1964 pursuant to the project
 8 described in subsection (a)(5)(A); and

9 (2) to achieve a fair, equitable, and final settle-
 10 ment of all claims and potential claims arising from
 11 those disputes.

12 **SEC. 3. DEFINITIONS.**

13 In this Act:

14 (1) ALLOTTEE.—The term “allottee” means an
 15 heir of an original allottee of the Reservation who
 16 owns an interest in a parcel of land that is—

17 (A) held in trust by the United States for
 18 the benefit of the Tribes or allottee; and

19 (B) located north of the Realigned River
 20 within the exterior boundaries of the Reserva-
 21 tion.

22 (2) INDIAN LAND.—The term “Indian land”
 23 means any parcel of land that is—

24 (A) held in trust by the United States for
 25 the benefit of the Tribes or the allottees;

1 (B) located north of the Realigned River;
 2 and

3 (C) identified in ~~exhibit C~~ *exhibit A* of the
 4 survey of the Bureau of Land Management en-
 5 titled “Survey of the Blackfoot River of 2002 to
 6 2005”, which is located at—

7 (i) the Fort Hall Indian Agency office
 8 of the Bureau of Indian Affairs; and

9 (ii) the Blackfoot River Flood Control
 10 District No. 7, 75 East Judicial, Black-
 11 foot, Idaho.

12 (3) NON-INDIAN ACQUIRING INDIAN LAND.—
 13 The term “non-Indian acquiring Indian land” means
 14 any individual or entity that—

15 (A) has acquired or plans to acquire In-
 16 dian land; and

17 (B) is included on the ~~listed~~ *list* contained
 18 in exhibit C of the survey referred to in para-
 19 graph (2)(C).

20 (4) NON-INDIAN LAND.—The term “non-Indian
 21 land” means any parcel of fee land that is—

22 (A) located south of the Realigned River;
 23 and

24 (B) identified in exhibit B of the survey re-
 25 ferred to in paragraph (2)(C).

1 (5) NON-INDIAN LANDOWNER.—The term
2 “non-Indian landowner” means any individual who
3 holds fee title to non-Indian land.

4 (6) REALIGNED RIVER.—The term “Realigned
5 River” means that portion of the River that was re-
6 aligned by the Corps of Engineers during calendar
7 year 1964 pursuant to the project described in sec-
8 tion ~~2(a)(5)~~ 2(a)(5)(A).

9 (7) RESERVATION.—The term “Reservation”
10 means the Fort Hall Reservation established by Ex-
11 ecutive order during calendar year 1867 *and con-*
12 *firmed by treaty during calendar year 1868.*

13 (8) RIVER.—The term “River” means the
14 Blackfoot River located in the State of Idaho.

15 (9) SECRETARY.—The term “Secretary” means
16 the Secretary of the Interior.

17 (10) TRIBES.—The term “Tribes” means the
18 Shoshone-Bannock Tribes.

19 **SEC. 4. EXTINGUISHMENT OF CLAIMS AND TITLE.**

20 Except as provided in sections 5 and 6, effective be-
21 ginning on the date on which the amounts appropriated
22 pursuant to section 12 are distributed in accordance with
23 that section, all claims and all past, present, and future
24 right, title, and interest in and to the Indian land and
25 non-Indian land shall be extinguished.

1 **SEC. 5. LAND TO BE PLACED INTO TRUST FOR TRIBES.**

2 Effective beginning on the date on which the amounts
3 appropriated pursuant to section 12 are distributed in ac-
4 cordance with that section to the Blackfoot River Flood
5 Control District No. 7, the non-Indian land shall be con-
6 sidered to be held in trust by the United States for the
7 benefit of the Tribes.

8 **SEC. 6. TRUST LAND TO BE CONVERTED TO FEE LAND.**

9 Effective beginning on the date on which the amounts
10 appropriated pursuant to section 12 are distributed in ac-
11 cordance with that section to the tribal trust fund account
12 and the allottee trust account, the Indian land shall be
13 transferred to the Blackfoot River Flood Control District
14 No. 7 for conveyance to the non-Indians acquiring Indian
15 land.

16 **SEC. 7. TRIBAL TRUST FUND ACCOUNT AND ALLOTTEE**
17 **TRUST ACCOUNT.**

18 (a) TRIBAL TRUST FUND ACCOUNT.—

19 (1) ESTABLISHMENT.—There is established in
20 the Treasury of the United States an account, to be
21 known as the “tribal trust fund account”, consisting
22 of such amounts as are deposited in the account
23 under section 12(b)(1).

24 (2) INVESTMENT.—The Secretary of the Treas-
25 ury shall invest amounts in the tribal trust fund ac-

1 count for the benefit of the Tribes, in accordance
2 with applicable laws and regulations.

3 (3) DISTRIBUTION.—The Secretary of the
4 Treasury shall distribute amounts in the tribal trust
5 fund account to the Tribes pursuant to a budget
6 adopted by the Tribes that describes—

7 (A) the amounts required by the Tribes;
8 and

9 (B) the intended uses of the amounts, in
10 accordance with paragraph (4).

11 (4) USE OF FUNDS.—The Tribes may use
12 amounts in the tribal trust fund account (including
13 interest earned on those amounts), without fiscal
14 year limitation, for activities relating to—

15 (A) construction of a natural resources fa-
16 cility;

17 (B) water resources needs;

18 (C) economic development;

19 (D) land acquisition; and

20 (E) such other purposes as the Tribes de-
21 termine to be appropriate.

22 (b) ALLOTTEE TRUST ACCOUNT.—

23 (1) ESTABLISHMENT.—There is established in
24 the Treasury of the United States an account, to be
25 known as the “allottee trust account”, consisting of

1 such amounts as are deposited in the account under
2 section 12(b)(2).

3 (2) DEPOSIT INTO IIMS.—Not later than 60
4 days after the date on which amounts are deposited
5 in the allottee trust account under section 12(b)(2),
6 the Secretary of the Treasury shall deposit the
7 amounts into individual Indian money accounts for
8 the allottees.

9 (3) INVESTMENT.—The Secretary of the Treas-
10 ury shall invest amounts in the individual Indian
11 money accounts under paragraph (2) in accordance
12 with applicable laws and regulations.

13 **SEC. 8. ATTORNEYS FEES.**

14 (a) IN GENERAL.—Subject to subsection (b), of the
15 amounts appropriated pursuant to section 12(a), the Sec-
16 retary shall pay to the attorneys of the Tribes and the
17 non-Indian landowners such attorneys fees as are ap-
18 proved by the Tribes and the non-Indian landowners.

19 (b) LIMITATION.—The total amount of attorneys fees
20 paid by the Secretary under subsection (a) shall not exceed
21 2 percent of the amounts distributed to the Tribes,
22 allottees, and the non-Indian landowners under section
23 12(b).

1 **SEC. 9. EFFECT ON ORIGINAL RESERVATION BOUNDARY.**

2 Nothing in this Act affects the original boundary of
3 the Reservation, as established by Executive order during
4 calendar year 1867 and confirmed by treaty during cal-
5 endar year 1868.

6 **SEC. 10. EFFECT ON TRIBAL WATER RIGHTS.**

7 Nothing in this Act extinguishes or conveys any water
8 right of the Tribes, as established in the agreement enti-
9 tled “1990 Fort Hall Indian Water Rights Agreement”
10 and ratified by section 4 of the Fort Hall Indian Water
11 Rights Act of 1990 (Public Law 101–602; 104 Stat.
12 3060).

13 **SEC. 11. DISCLAIMERS REGARDING CLAIMS.**

14 Nothing in this Act—

15 (1) affects in any manner the sovereign claim
16 of the State of Idaho to title in and to the beds and
17 banks of the River under the equal footing doctrine
18 of the Constitution of the United States;

19 (2) affects any action by the State of Idaho to
20 establish that title under section 2409a of title 28,
21 United States Code (commonly known as the “Quiet
22 Title Act”);

23 (3) affects the ability of the Tribes or the
24 United States to claim ownership of the beds and
25 banks of the River; or

1 (4) extinguishes or conveys any water rights of
 2 non-Indian landowners or the ~~claims of the~~ *claims of*
 3 *such* landowners to water rights in the Snake River
 4 Basin Adjudication.

5 **SEC. 12. FUNDING.**

6 (a) AUTHORIZATION OF APPROPRIATIONS.—There is
 7 authorized to be appropriated to carry out this Act
 8 \$1,000,000.

9 (b) DISTRIBUTION.—After the date on which all at-
 10 torneys fees are paid under section 8, the amount appro-
 11 priated pursuant to subsection (a) shall be distributed
 12 among the Tribes, the allottees, and the Blackfoot River
 13 Flood Control District No. 7 as follows:

14 (1) Twenty-eight percent shall be deposited into
 15 the tribal trust fund account established by section
 16 7(a)(1).

17 (2) Twenty-five percent shall be deposited into
 18 the allottee trust account established by section
 19 7(b)(1).

20 (3) Forty-seven percent shall be provided to the
 21 Blackfoot River Flood Control District No. 7 for—

22 (A) distribution to the non-Indian land-
 23 owners on a pro rata, per-acre basis; and

24 (B) associated administrative expenses.

1 (c) PER CAPITA PAYMENTS PROHIBITED.—No
2 amount received by the Tribes under this Act shall be dis-
3 tributed to a member of the Tribes on a per capita basis.

4 **SEC. 13. EFFECTIVE DATE.**

5 This Act takes effect on the date on which the
6 amount described in section 12(a) is appropriated.

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