

are heavy. In the last week, we lost two people from New Jersey. We are now over 1,200 who have died in the course of that fight.

But again, TOM DASCHLE, and I think all of us here, have to continue to fight for what is right. We can endure our differences here. I will tell you what we cannot endure. We cannot endure the bitterness that exists across the dividing line here. We cannot endure the vitriol that is constant in this room of ours. We cannot endure the anger that exists. We have a cause that is greater than all of us.

I am not saying it all comes flowing this way, but I am saying it is unpleasant. I have now had 22 years since I arrived. It is now 22 years since I arrived in the Senate. I remember different days. I remember days when you could disagree and still be able to say hello without grimacing when you saw one of your colleagues. Lord willing, I hope TOM DASCHLE taught us some of that, with his graciousness, his characteristic willingness to listen and to understand and get back to you when a problem existed.

So, Mr. President, I am going to yield the floor, but I do want to talk about our other colleagues who are retiring in a few minutes. There are a lot of good people here on both sides of the aisle.

We are going to miss all of our friends over here, but I am going to miss DON NICKLES. I have had a lot of fights with him, but I know he always knew where he wanted to go. I respected that.

PETER FITZGERALD, newer among us, but a gentleman to be noted, and BEN NIGHTHORSE CAMPBELL comes from a State I love. I have two grandchildren there. He is a decent fellow. We are going to miss all of them. I will talk about them later.

I yield the floor.

The PRESIDING OFFICER. The Senator from Idaho is recognized.

Mr. CRAIG. Mr. President, I know this is a time of recognition of our retiring Members on both the Republican and Democratic sides. If I can step in for a moment, we have cleared a variety of bills to be moved at this time. I will proceed to do that.

The PRESIDING OFFICER. The Senator is recognized for that purpose.

#### THE CALENDAR

Mr. CRAIG. Mr. President, I ask unanimous consent that the Senate proceed to the en bloc consideration of the following Indian Affairs bills: Calendar Nos. 697, H.R. 2912; 777, S. 2605; 795, S. 519; 710, S. 1530; 654, S. 1996; 787, S. 1438.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CRAIG. Mr. President, I ask unanimous consent that the amendments at the desk, where applicable, be agreed to, the committee amendments, where applicable, be agreed to, the bills be read a third time and passed, the

title amendments, where applicable, be agreed to, and the motions to reconsider be laid upon the table, en bloc, and that any statements relating to the bills be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### SOVEREIGN RIGHTS OF THE OSAGE TRIBE

The bill (H.R. 2912) to reaffirm the inherent sovereign rights of the Osage Tribe to determine its membership and form of government, was considered, ordered to a third reading, read the third time, and passed.

H.R. 2912

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### SECTION 1. REAFFIRMATION OF CERTAIN RIGHTS OF THE OSAGE TRIBE.

(a) FINDINGS.—The Congress finds as follows:

(1) The Osage Tribe is a federally recognized tribe based in Pawhuska, Oklahoma.

(2) The Osage Allotment Act of June 28, 1906 (34 Stat. 539), states that the "legal membership" of the Osage Tribe includes the persons on the January 1, 1906 roll and their children, and that each "member" on that roll is entitled to a headright share in the distribution of funds from the Osage mineral estate and an allotment of the surface lands of the Osage Reservation.

(3) Today only Osage Indians who have a headright share in the mineral estate are "members" of the Osage Tribe.

(4) Adult Osage Indians without a headright interest cannot vote in Osage government elections and are not eligible to seek elective office in the Osage Tribe as a matter of Federal law.

(5) A principal goal of Federal Indian policy is to promote tribal self-sufficiency and strong tribal government.

(b) REAFFIRMATION OF CERTAIN RIGHTS OF THE OSAGE TRIBE.—

(1) MEMBERSHIP.—Congress hereby clarifies that the term "legal membership" in section 1 of the Act entitled, "An Act For the division of lands and funds of the Osage Indians in Oklahoma Territory, and for other purposes", approved June 28, 1906 (34 Stat. 539), means the persons eligible for allotments of Osage Reservation lands and a pro rata share of the Osage mineral estate as provided in that Act, not membership in the Osage Tribe for all purposes. Congress hereby reaffirms the inherent sovereign right of the Osage Tribe to determine its own membership, provided that the rights of any person to Osage mineral estate shares are not diminished thereby.

(2) GOVERNMENT.—Notwithstanding section 9 of the Act entitled, "An Act For the division of lands and funds of the Osage Indians in Oklahoma Territory, and for other purposes", approved June 28, 1906 (34 Stat. 539), Congress hereby reaffirms the inherent sovereign right of the Osage Tribe to determine its own form of government.

(3) ELECTIONS AND REFERENDA.—At the request of the Osage Tribe, the Secretary of the Interior shall assist the Osage Tribe with conducting elections and referenda to implement this section.

#### SNAKE RIVER WATER RIGHTS ACT OF 2004

The Senate proceeded to consider the bill (S. 2605) to direct the Secretary of

the Interior and the heads of other Federal agencies to carry out an agreement resolving major issues relating to the adjudication of water rights in the Snake River Basin, Idaho, and for other purposes, which was reported from the Committee on Indian Affairs, as follows:

[Strike the part shown in black brackets and insert the part shown in italic.]

S. 2605

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### [SECTION 1. SHORT TITLE.

[This Act may be cited as the "Snake River Water Rights Act of 2004".

#### [SEC. 2. PURPOSES.

[The purposes of this Act are—

[(1) to resolve some of the largest outstanding issues with respect to the Snake River Basin Adjudication in Idaho in such a manner as to provide important benefits to the United States, the State of Idaho, the Nez Perce Tribe, the allottees, and citizens of the State;

[(2) to achieve a fair, equitable, and final settlement of all claims of the Nez Perce Tribe, its members, and allottees and the United States on behalf of the Tribe, its members, and allottees to the water of the Snake River Basin within Idaho;

[(3) to authorize, ratify, and confirm the Agreement among the parties submitted to the Snake River Basin Adjudication Court and provide all parties with the benefits of the Agreement;

[(4) to direct—

[(A) the Secretary, acting through the Bureau of Reclamation, the Bureau of Land Management, the Bureau of Indian Affairs, and other agencies; and

[(B) the heads of other Federal agencies authorized to execute and perform actions necessary to carry out the Agreement;

to perform all of their obligations under the Agreement and this Act; and

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

#### [SEC. 3. DEFINITIONS.

[In this Act:

[(1) AGREEMENT.—The term "Agreement" means the document titled "Mediator's Term Sheet" dated April 20, 2004, and submitted on that date to the SRBA Court in SRBA Consolidated Subcase 03-10022 and SRBA Consolidated Subcase 67-13701, with all appendices to the document.

[(2) ALLOTTEE.—The term "allottee" means a person that holds a beneficial real property interest in an Indian allotment that is—

[(A) located within the Nez Perce Reservation; and

[(B) held in trust by the United States.

[(3) CONSUMPTIVE USE RESERVED WATER RIGHT.—The term "consumptive use reserved water right" means the Federal reserved water right of 50,000 acre-feet per year, as described in the Agreement, to be decreed to the Tribe and the allottees, with a priority date of 1855.

[(4) PARTIES.—The term "parties" means the United States, the State, the Tribe, and any other entity or person that submitted, or joined in the submission, of the Agreement to the SRBA Court on April 20, 2004.

[(5) SECRETARY.—The term “Secretary” means the Secretary of the Interior.

[(6) SNAKE RIVER BASIN.—The term “Snake River Basin” means the geographic area in the State described in paragraph 3 of the Commencement Order issued by the SRBA Court on November 19, 1987.

[(7) SPRINGS OR FOUNTAINS WATER RIGHT.—The term “springs or fountains water right” means the Tribe’s treaty right of access to and use of water from springs or fountains on Federal public land within the area ceded by the Tribe in the Treaty of June 9, 1863 (14 Stat. 647), as recognized under the Agreement.

[(8) SRBA.—The term “SRBA” means the Snake River Basin Adjudication litigation before the SRBA Court styled as In re Snake River Basin Adjudication, Case No. 39576.

[(9) SRBA COURT.—The term “SRBA Court” means the District Court of the Fifth Judicial District of the State of Idaho, In and For the County of Twin Falls in re Snake River Basin Adjudication.

[(10) STATE.—The term “State” means the State of Idaho.

[(11) TRIBE.—The term “Tribe” means the Nez Perce Tribe.

#### **[SEC. 4. APPROVAL, RATIFICATION, AND CONFIRMATION OF AGREEMENT.]**

[(a) IN GENERAL.—Except to the extent that the Agreement conflicts with the express provisions of this Act, the Agreement is approved, ratified, and confirmed.

[(b) EXECUTION AND PERFORMANCE.—The Secretary and the other heads of Federal agencies with obligations under the Agreement shall execute and perform all actions, consistent with this Act, that are necessary to carry out the Agreement.

#### **[SEC. 5. BUREAU OF RECLAMATION WATER USE.]**

[(a) IN GENERAL.—As part of the overall implementation of the Agreement, the Secretary shall take such actions consistent with the Agreement, this Act, and water law of the State as are necessary to carry out the Snake River Flow Component of the Agreement.

[(b) MITIGATION FOR CHANGE OF USE OF WATER.—

[(1) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary \$2,000,000 for a 1-time payment to local governments to mitigate for the change of use of water acquired by the Bureau of Reclamation under section III.C.6 of the Agreement.

[(2) DISTRIBUTION OF FUNDS.—Funds made available under paragraph (1) shall be distributed by the Secretary to local governments in accordance with a plan provided to the Secretary by the State.

[(3) PAYMENTS.—Payments by the Secretary shall be made on a pro rata basis as water rights are acquired by the Bureau of Reclamation.

#### **[SEC. 6. BUREAU OF LAND MANAGEMENT LAND TRANSFER.]**

[(a) TRANSFER.—

[(1) IN GENERAL.—The Secretary shall transfer land selected by the Tribe under paragraph (2) to the Bureau of Indian Affairs to be held in trust for the Tribe.

[(2) LAND SELECTION.—The land transferred shall be selected by the Tribe from a list of parcels of land managed by the Bureau of Land Management that are available for transfer, as depicted on the map entitled “North Idaho BLM Land Eligible for Selection by the Nez Perce Tribe” dated May 2004, on file with the Director of the Bureau of Land Management, not including any parcel designated on the map as being on the Clearwater River or Lolo Creek.

[(3) MAXIMUM VALUE.—The land selected by the Tribe for transfer shall be limited to a maximum value in total of not more than

\$7,000,000, as determined by an independent appraisal of fair market value prepared in accordance with the Uniform Standards of Professional Appraisal Practice and the Uniform Appraisal Standards for Federal Land Acquisitions.

[(b) EXISTING RIGHTS AND USES.—

[(1) IN GENERAL.—On any land selected by the Tribe under subsection (a)(2), any use in existence on the date of transfer under subsection (a) under a lease or permit with the Bureau of Land Management, including grazing, shall remain in effect until the date of expiration of the lease or permit, unless the holder of the lease or permit requests an earlier termination of the lease or permit, in which case the Secretary shall grant the request.

[(2) AVAILABILITY OF AMOUNTS.—Amounts that accrue to the United States under a lease or permit described in paragraph (1) from sales, bonuses, royalties, and rentals relating to any land transferred to the Tribe under this section shall be made available to the Tribe by the Secretary in the same manner as amounts received from other land held by the Secretary in trust for the Tribe.

[(c) DATE OF TRANSFER.—No land shall be transferred to the Tribe under this section until the waivers and releases under section 10 take effect.

#### **[SEC. 7. WATER RIGHTS.]**

[(a) HOLDING IN TRUST.—

[(1) IN GENERAL.—The consumptive use reserved water right shall be held in trust by the United States for the benefit of the Tribe and allottees.

[(2) SPRINGS OR FOUNTAINS WATER RIGHT.—The springs or fountains water right of the Tribe shall be held in trust by the United States for the benefit of the Tribe.

[(b) WATER CODE.—

[(1) IN GENERAL.—The consumptive use reserved water right shall be subject to section 7 of the Act of February 8, 1887 (25 U.S.C. 381; 24 Stat. 390, chapter 119).

[(2) ENACTMENT OF WATER CODE.—Not later than 3 years after the date of enactment of this Act, the Tribe shall enact a water code, subject to any applicable provision of law, that—

[(A) manages, regulates, and controls the consumptive use reserved water right; and

[(B) includes, subject to approval of the Secretary—

[(i) a process by which an allottee, or any successor in interest to an allottee, may request and be provided with an allocation of water for irrigation use on allotted land of the allottee; and

[(ii) a due process system for the consideration and determination of any request by an allottee, or any successor in interest to an allottee, for an allocation of water, including a process for appeal and adjudication of denied or disputed distributions of water and for resolution of contested administrative decisions.

[(3) RIGHTS OF ALLOTTEES.—Any provision of the water code and any amendments to the water code that affect the rights of the allottees shall be subject to the approval of the Secretary, and no such provision or amendment shall be valid until approved by the Secretary.

[(4) INTERIM ADMINISTRATION.—The Secretary shall administer the consumptive use reserved water right until such date as the water code described in paragraph (2) has been enacted by the Tribe and approved by the Secretary.

[(c) SATISFACTION OF CLAIMS.—

[(1) IN GENERAL.—The water rights and other benefits granted or confirmed by the Agreement and this Act shall be in full satisfaction of all claims for water rights and injuries to water rights of the allottees.

[(2) SATISFACTION OF ENTITLEMENTS.—Any entitlement to water of any allottee under Federal law shall be satisfied out of the consumptive use reserved water right.

[(d) ABANDONMENT, FORFEITURE, OR NON-USE.—The consumptive use reserved water right and the springs or fountains water right shall not be subject to loss by abandonment, forfeiture, or nonuse.

[(e) LEASE OF WATER.—

[(1) IN GENERAL.—The Tribe, without further approval of the Secretary, may lease water to which the Tribe is entitled under the consumptive use reserved water right through any State water bank in the same manner and subject to the same rules and requirements that govern any other lessor of water to the water bank.

[(2) FUNDS.—Any funds accruing to the Tribe from any lease under paragraph (1) shall be the property of the Tribe, and the United States shall have no trust obligation or other obligation to monitor, administer, or account for any consideration received by the Tribe under any such lease.

#### **[SEC. 8. TRIBAL FUNDS.]**

[(a) DEFINITION OF FUND.—In this section, the term “Fund” means—

[(1) the Nez Perce Tribe Water and Fisheries Fund established under subsection (b)(1); and

[(2) the Nez Perce Tribe Domestic Water Supply Fund established under subsection (b)(2).

[(b) ESTABLISHMENT.—There are established in the Treasury of the United States—

[(1) a fund to be known as the “Nez Perce Tribe Water and Fisheries Fund”, to be used to pay or reimburse costs incurred by the Tribe in acquiring land and water rights, restoring or improving fish habitat, or for fish production, agricultural development, cultural preservation, water resource development, or fisheries-related projects; and

[(2) a fund to be known as the “Nez Perce Domestic Water Supply Fund”, to be used to pay the costs for design and construction of water supply and sewer systems for tribal communities, including a water quality testing laboratory.

[(c) MANAGEMENT OF THE FUNDS.—The Secretary shall manage the Funds, make investments from the Funds, and make amounts available from the Funds for distribution to the Tribe consistent with the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4001 et seq.), this Act, and the Agreement.

[(d) INVESTMENT OF THE FUNDS.—The Secretary shall invest amounts in the Funds in accordance with—

[(1) the Act of April 1, 1880 (25 U.S.C. 161; 21 Stat. 70, chapter 41);

[(2) the first section of the Act of June 24, 1938 (25 U.S.C. 162a; 52 Stat. 1037, chapter 648); and

[(3) subsection (c).

[(e) AVAILABILITY OF AMOUNTS FROM THE FUNDS.—Amounts made available under subsection (h) shall be available for expenditure or withdrawal only after the waivers and releases under section 10 take effect.

[(f) EXPENDITURES AND WITHDRAWAL.—

[(1) TRIBAL MANAGEMENT PLAN.—

[(A) IN GENERAL.—The Tribe 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 Tribe spend any amounts withdrawn from the Funds in accordance with the purposes described in subsection (b).

[(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 Tribe exercises 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 Tribe shall submit to the Secretary for approval an expenditure plan for any portion of the amounts made available under subsection (h) that the Tribe does not withdraw under this subsection.

[(B) DESCRIPTION.—The expenditure plan shall describe the manner in which, and the purposes for which, amounts of the Tribe 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 Tribe shall submit to the Secretary an annual report that describes all expenditures from the Fund during the year covered by the report.

[(g) NO PER CAPITA PAYMENTS.—No part of the principal of the Funds, or of the income accruing in the Funds, shall be distributed to any member of the Tribe on a per capita basis.

[(h) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated—

[(1) \$60,100,000 to the Nez Perce Tribe Water and Fisheries Fund; and

[(2) \$23,000,000 to the Nez Perce Tribe Domestic Water Supply Fund.

#### **[SEC. 9. SALMON AND CLEARWATER RIVER BASINS HABITAT FUND.]**

[(a) ESTABLISHMENT OF FUND.—

[(1) IN GENERAL.—There is established in the Treasury of the United States a fund to be known as the "Salmon and Clearwater River Basins Habitat Fund" (referred to in this section as the "Fund"), to be administered by the Secretary.

[(2) ACCOUNTS.—There is established within the Fund—

[(A) an account to be known as the "Nez Perce Tribe Salmon and Clearwater River Basins Habitat Account", which shall be administered by the Secretary for use by the Tribe subject to the same provisions for management, investment, and expenditure as the funds established by section 8; and

[(B) an account to be known as the "Idaho Salmon and Clearwater River Basins Habitat Account", which shall be administered by the Secretary and provided to the State as provided in the Agreement and this Act.

[(b) USE OF THE FUND.—

[(1) IN GENERAL.—The Fund shall be used to supplement amounts made available under other law for habitat protection and restoration in the Salmon and Clearwater River basins, including projects and programs intended to protect and restore listed fish and their habitat in the Salmon and Clearwater basins, as specified in the Agreement and this Act.

[(2) NO ALLOCATION REQUIREMENT.—The use of the Fund shall not be subject to the allocation procedures under section 6(d)(1) of the Endangered Species Act of 1973 (16 U.S.C. 1535(d)(1)).

[(3) RELEASE OF FUNDS.—The Secretary shall release funds from the Clearwater River Basins Habitat Account in accordance with section 6(d)(2) of the Endangered Species Act (16 U.S.C. 1535(d)(2)).

[(c) AVAILABILITY OF AMOUNTS IN THE FUND.—Amounts made available under subsection (d) shall be available for expenditure or withdrawal only after the waivers and releases under section 10(a) take effect.

[(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated—

[(1) \$12,666,670 to the Nez Perce Tribe Salmon and Clearwater River Basins Habitat Account; and

[(2) \$25,333,330 to the Idaho Salmon and Clearwater River Basins Habitat Account.

#### **[SEC. 10. TRIBAL WAIVER AND RELEASE OF CLAIMS.]**

[(a) WAIVER AND RELEASE OF CLAIMS IN GENERAL.—

[(1) CLAIMS TO WATER RIGHTS; CLAIMS FOR INJURIES TO WATER RIGHTS OR TREATY RIGHTS.—Except as otherwise provided in this Act, the United States on behalf of the Tribe and the allottees, and the Tribe, waive and release—

[(A) all claims to water rights within the Snake River Basin (as defined in section 3(b));

[(B) all claims for injuries to such water rights; and

[(C) all claims for injuries to the treaty rights of the Tribe to the extent that such injuries result or resulted from flow modifications or reductions in the quantity of water available that accrued at any time up to and including the effective date of the settlement, and any continuation thereafter of any such claims, against the State, any agency or political subdivision of the State, or any person, entity, corporation, municipal corporation, or quasi-municipal corporation.

[(2) CLAIMS BASED ON REDUCED WATER QUALITY OR REDUCTIONS IN WATER QUANTITY.—The United States on behalf of the Tribe and the allottees, and the Tribe, waive and release any claim, under any treaty theory, based on reduced water quality resulting directly from flow modifications or reductions in the quantity of water available in the Snake River Basin against any party to the Agreement or this Act.

[(3) NO FUTURE ASSERTION OF CLAIMS.—No water right claim that the Tribe or the allottees have asserted or may in the future assert outside the Snake River Basin shall require water to be supplied from the Snake River Basin to satisfy the claim.

[(4) EFFECT OF WAIVERS AND RELEASES.—The waivers and releases by the United States and the Tribe under this subsection—

[(A) shall be permanent and enforceable; and

[(B) shall survive any subsequent termination of any component of the settlement described in the Agreement or this Act.

[(5) EFFECTIVE DATE.—The waivers and releases under this subsection take effect on the date on which the Secretary causes to be published in the Federal Register a statement of findings that the actions set forth in section IV.L of the Agreement—

[(A) have been completed, including issuance of a judgment and decree by the SRBA court from which no further appeal may be taken; and

[(B) have been determined by the United States on behalf of the Tribe and the allottees, the Tribe, and the State of Idaho to be consistent in all material aspects with the Agreement.

[(b) WAIVER AND RELEASE OF CLAIMS AGAINST THE UNITED STATES.—

[(1) IN GENERAL.—In consideration of performance by the United States of all actions required by the Agreement and this Act, including the appropriation of all funds authorized under sections 8(h) and 9(d)(1), the Tribe shall execute a waiver and release of the United States from—

[(A) all claims for water rights within the Snake River Basin, injuries to such water

rights, or breach of trust claims for failure to protect, acquire, or develop such water rights that accrued at any time up to and including the effective date determined under paragraph (2);

[(B) all claims for injuries to the Tribe's treaty fishing rights, to the extent that such injuries result or resulted from reductions in the quantity of water available in the Snake River Basin;

[(C) all claims of breach of trust for failure to protect Nez Perce springs or fountains treaty rights reserved in article VIII of the Treaty of June 9, 1863 (14 Stat. 651); and

[(D) all claims of breach of trust arising out of the negotiation of or resulting from the adoption of the Agreement.

[(2) EFFECTIVE DATE.—The waiver and release contained in this subsection take effect on the date on which the funds authorized under sections 8(h) and 9(d)(1) of this Act have been appropriated as authorized by this Act.

[(c) RETENTION OF RIGHTS.—

[(1) IN GENERAL.—The Tribe shall retain all rights not specifically waived or released in the Agreement or this Act.

[(2) DWORSHAK PROJECT.—Nothing in the Agreement or this Act constitutes a waiver by the Tribe of any claim against the United States relating to non-water-based injuries resulting from the construction and operation of the Dworshak Project.

[(3) FUTURE ACQUISITION OF WATER RIGHTS.—Nothing in the Agreement or this Act precludes the Tribe, or the United States as trustee for the Tribe, from purchasing or otherwise acquiring water rights in the future to the same extent as any other entity the State.

#### **[SEC. 11. MISCELLANEOUS.]**

[(a) GENERAL DISCLAIMER.—The parties expressly reserve all rights not specifically granted, recognized, or relinquished by the settlement described in the Agreement or this Act.

[(b) DISCLAIMER REGARDING OTHER AGREEMENTS AND PRECEDENT.—

[(1) IN GENERAL.—Except as expressly provided in this Act, nothing in this Act amends, supersedes, or preempts any State law, Federal law, Tribal law, or interstate compact that pertains to the Snake River or its tributaries.

[(2) NO ESTABLISHMENT OF STANDARD.—Nothing in this Act—

[(A) establishes any standard for the quantification of Federal reserved water rights or any other Indian water claims of any other Indian tribes in any other judicial or administrative proceeding; or

[(B) limits the rights of the parties to litigate any issue not resolved by the Agreement or this Act.

[(3) NO ADMISSION AGAINST INTEREST.—Nothing in this Act constitutes an admission against interest against any party in any legal proceeding.

[(c) TREATY RIGHTS.—Nothing in the Agreement or this Act impairs the treaty fishing, hunting, pasturing, or gathering rights of the Tribe except to the extent expressly provided in the Agreement or this Act.

[(d) OTHER CLAIMS.—Nothing in the Agreement or this Act quantifies or otherwise affects the water rights, claims, or entitlements to water, or any other treaty right, of any Indian tribe, band, or community other than the Tribe.

[(e) RECREATION ON DWORSHAK RESERVOIR.—

[(1) IN GENERAL.—In implementing the provisions of the Agreement and this Act relating to the use of water stored in Dworshak Reservoir for flow augmentation purposes, the heads of the Federal agencies involved in

the operational Memorandum of Agreement referred to in the Agreement shall implement a flow augmentation plan beneficial to fish and consistent with the Agreement.

[(2) CONTENTS OF PLAN.—The flow augmentation plan may include provisions beneficial to recreational uses of the reservoir through maintenance of the full level of the reservoir for prolonged periods during the summer months.]

[(f) JURISDICTION.—

[(1) NO EFFECT ON 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) CONSENT TO JURISDICTION.—The United States consents to jurisdiction in a proper forum for purposes of enforcing the provisions of the Agreement.]

[(3) EFFECT OF SUBSECTION.—Nothing in this subsection confers jurisdiction on any State court to—

[(A) enforce Federal environmental laws regarding the duties of the United States; or

[(B) conduct judicial review of Federal agency action.]

#### SECTION 1. SHORT TITLE.

This Act may be cited as the “Snake River Water Rights Act of 2004”.

#### SEC. 2. PURPOSES.

The purposes of this Act are—

(1) to resolve some of the largest outstanding issues with respect to the Snake River Basin Adjudication in Idaho in such a manner as to provide important benefits to the United States, the State of Idaho, the Nez Perce Tribe, the allottees, and citizens of the State;

(2) to achieve a fair, equitable, and final settlement of all claims of the Nez Perce Tribe, its members, and allottees and the United States on behalf of the Tribe, its members, and allottees to the water of the Snake River Basin within Idaho;

(3) to authorize, ratify, and confirm the Agreement among the parties submitted to the Snake River Basin Adjudication Court and provide all parties with the benefits of the Agreement;

(4) to direct—

(A) the Secretary, acting through the Bureau of Reclamation, the Bureau of Land Management, the Bureau of Indian Affairs, and other agencies; and

(B) the heads of other Federal agencies authorized to execute and perform actions necessary to carry out the Agreement;

to perform all of their obligations under the Agreement and this Act; and

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

#### SEC. 3. DEFINITIONS.

In this Act:

(1) AGREEMENT.—The term “Agreement” means the document titled “Mediator’s Term Sheet” dated April 20, 2004, and submitted on that date to the SRBA Court in SRBA Consolidated Subcase 03–10022 and SRBA Consolidated Subcase 67–13701, with all appendices to the document.

(2) ALLOTTEE.—The term “allottee” means a person that holds a beneficial real property interest in an Indian allotment that is—

(A) located within the Nez Perce Reservation; and

(B) held in trust by the United States.

(3) CONSUMPTIVE USE RESERVED WATER RIGHT.—The term “consumptive use reserved water right” means the Federal reserved water right of 50,000 acre-feet per year, as described in the Agreement, to be decreed to the United States in trust for the Tribe and the allottees, with a priority date of 1855.

(4) PARTIES.—The term “parties” means the United States, the State, the Tribe, and any

other entity or person that submitted, or joined in the submission of, the Agreement to the SRBA Court on April 20, 2004.

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

(6) SNAKE RIVER BASIN.—The term “Snake River Basin” means the geographic area in the State described in paragraph 3 of the Commencement Order issued by the SRBA Court on November 19, 1987.

(7) SPRINGS OR FOUNTAINS WATER RIGHT.—The term “springs or fountains water right” means the Tribe’s treaty right of access to and use of water from springs or fountains on Federal public land within the area ceded by the Tribe in the Treaty of June 9, 1863 (14 Stat. 647), as recognized under the Agreement.

(8) SRBA.—The term “SRBA” means the Snake River Basin Adjudication litigation before the SRBA Court styled as *In re Snake River Basin Adjudication*, Case No. 39576.

(9) SRBA COURT.—The term “SRBA Court” means the District Court of the Fifth Judicial District of the State of Idaho, In and For the County of Twin Falls in *re Snake River Basin Adjudication*.

(10) STATE.—The term “State” means the State of Idaho.

(11) TRIBE.—The term “Tribe” means the Nez Perce Tribe.

#### SEC. 4. APPROVAL, RATIFICATION, AND CONFIRMATION OF AGREEMENT.

(a) IN GENERAL.—Except to the extent that the Agreement conflicts with this Act, the Agreement is approved, ratified, and confirmed.

(b) EXECUTION AND PERFORMANCE.—The Secretary and the other heads of Federal agencies with obligations under the Agreement shall execute and perform all actions, consistent with this Act, that are necessary to carry out the Agreement.

#### SEC. 5. BUREAU OF RECLAMATION WATER USE.

(a) IN GENERAL.—As part of the overall implementation of the Agreement, the Secretary shall take such actions consistent with the Agreement, this Act, and water law of the State as are necessary to carry out the Snake River Flow Component of the Agreement.

(b) MITIGATION FOR CHANGE OF USE OF WATER.—

(1) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary \$2,000,000 for a 1-time payment to local governments to mitigate for the change of use of water acquired by the Bureau of Reclamation under section III.C.6 of the Agreement.

(2) DISTRIBUTION OF FUNDS.—Funds made available under paragraph (1) shall be distributed by the Secretary to local governments in accordance with a plan provided to the Secretary by the State.

(3) PAYMENTS.—Payments by the Secretary shall be made on a pro rata basis as water rights are acquired by the Bureau of Reclamation.

#### SEC. 6. BUREAU OF LAND MANAGEMENT LAND TRANSFER.

(a) TRANSFER.—

(1) IN GENERAL.—The Secretary shall transfer land selected by the Tribe under paragraph (2) to the Bureau of Indian Affairs to be held in trust for the Tribe.

(2) LAND SELECTION.—The land transferred shall be selected by the Tribe from a list of parcels of land managed by the Bureau of Land Management that are available for transfer, as depicted on the map entitled “North Idaho BLM Land Eligible for Selection by the Nez Perce Tribe” dated May 2004, on file with the Director of the Bureau of Land Management, not including any parcel designated on the map as being on the Clearwater River or Lolo Creek.

(3) MAXIMUM VALUE.—The land selected by the Tribe for transfer shall be limited to a maximum value in total of not more than \$7,000,000, as determined by an independent appraisal of fair market value prepared in accordance with the Uniform Standards of Professional Ap-

praisal Practice and the Uniform Appraisal Standards for Federal Land Acquisitions.

(b) EXISTING RIGHTS AND USES.—

(1) IN GENERAL.—On any land selected by the Tribe under subsection (a)(2), any use in existence on the date of transfer under subsection (a) under a lease or permit with the Bureau of Land Management, including grazing, shall remain in effect until the date of expiration of the lease or permit, unless the holder of the lease or permit requests an earlier termination of the lease or permit, in which case the Secretary shall grant the request.

(2) AVAILABILITY OF AMOUNTS.—Amounts that accrue to the United States under a lease or permit described in paragraph (1) from sales, bonuses, royalties, and rentals relating to any land transferred to the Tribe under this section shall be made available to the Tribe by the Secretary in the same manner as amounts received from other land held by the Secretary in trust for the Tribe.

(c) DATE OF TRANSFER.—No land shall be transferred to the Bureau of Indian Affairs to be held in trust for the Tribe under this section until the waivers and releases under section 10(a) take effect.

(d) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There is authorized to be appropriated to the Secretary \$200,000 for 1-time payments to local governments to mitigate for the transfer of land by the Bureau of Land Management to the Tribe under section I.F of the Agreement.

(2) PAYMENTS.—Payments under paragraph (1) shall be made on a pro rata basis as parcels of land are acquired by the Tribe.

#### SEC. 7. WATER RIGHTS.

(a) HOLDING IN TRUST.—

(1) IN GENERAL.—The consumptive use reserved water right shall—

(A) be held in trust by the United States for the benefit of the Tribe and allottees as set forth in this section; and

(B) be subject to section 7 of the Act of February 8, 1887 (25 U.S.C. 381).

(2) SPRINGS OR FOUNTAINS WATER RIGHT.—The springs or fountains water right of the Tribe shall be held in trust by the United States for the benefit of the Tribe.

(3) ALLOTTEES.—Allottees shall be entitled to a just and equitable allocation of the consumptive use reserved water right for irrigation purposes.

(b) WATER CODE.—

(1) ENACTMENT OF WATER CODE.—Not later than 3 years after the date of enactment of this Act, the Tribe shall enact a water code, subject to any applicable provision of law, that—

(A) manages, regulates, and controls the consumptive use reserved water right so as to allocate water for irrigation, domestic, commercial, municipal, industrial, cultural, or other uses; and

(B) includes, subject to approval of the Secretary—

(i) a due process system for the consideration and determination of any request by an allottee, or any successor in interest to an allottee, for an allocation of such water for irrigation purposes on allotted land, including a process for an appeal and adjudication of denied or disputed distribution of water and for resolution of contested administrative decisions; and

(ii) a process to protect the interests of allottees when entering into any lease under subsection (e).

(2) SECRETARIAL APPROVAL.—Any provision of the water code and any amendments to the water code that affect the rights of the allottees shall be subject to approval by the Secretary, and no such provision or amendment shall be valid until approved by the Secretary.

(3) INTERIM ADMINISTRATION.—The Secretary shall administer the consumptive use reserved water right until such date as the water code described in paragraph (2) has been enacted by

the Tribe and the Secretary has approved the relevant portions of the water code.

(c) EXHAUSTION OF REMEDIES.—Before asserting any claim against the United States under section 7 of the Act of February 8, 1887 (25 U.S.C. 381) or other applicable law, a claimant shall exhaust remedies available under the Tribe's water code and Tribal law.

(d) PETITION TO THE SECRETARY.—Following exhaustion of remedies in accordance with subsection (c), a claimant may petition the Secretary for relief.

(e) SATISFACTION OF CLAIMS.—

(1) IN GENERAL.—The water rights and other benefits granted or confirmed by the Agreement and this Act shall be in full satisfaction of all claims for water rights and injuries to water rights of the allottees.

(2) SATISFACTION OF ENTITLEMENTS.—Any entitlement to water of any allottee under Federal law shall be satisfied out of the consumptive use reserved water right.

(3) COMPLETE SUBSTITUTION.—The water rights, resources, and other benefits provided by this Act are a complete substitution for any rights that may have been held by, or any claims that may have been asserted by, allottees within the exterior boundaries of the Reservation before the date of enactment of this Act.

(f) ABANDONMENT, FORFEITURE, OR NONUSE.—The consumptive use reserved water right and the springs or fountains water right shall not be subject to loss by abandonment, forfeiture, or nonuse.

(g) LEASE OF WATER.—

(1) IN GENERAL.—Subject to the water code, the Tribe, without further approval of the Secretary, may lease water to which the Tribe is entitled under the consumptive use reserved water right through any State water bank in the same manner and subject to the same rules and requirements that govern any other lessor of water to the water bank.

(2) FUNDS.—Any funds accruing to the Tribe from any lease under paragraph (1) shall be the property of the Tribe, and the United States shall have no trust obligation or other obligation to monitor, administer, or account for any consideration received by the Tribe under any such lease.

#### SEC. 8. TRIBAL FUNDS.

(a) DEFINITION OF FUND.—In this section, the term "Fund" means—

(1) the Nez Perce Tribe Water and Fisheries Fund established under subsection (b)(1); and

(2) the Nez Perce Tribe Domestic Water Supply Fund established under subsection (b)(2).

(b) ESTABLISHMENT.—There are established in the Treasury of the United States—

(1) a fund to be known as the "Nez Perce Tribe Water and Fisheries Fund", to be used to pay or reimburse costs incurred by the Tribe in acquiring land and water rights, restoring or improving fish habitat, or for fish production, agricultural development, cultural preservation, water resource development, or fisheries-related projects; and

(2) a fund to be known as the "Nez Perce Domestic Water Supply Fund", to be used to pay the costs for design and construction of water supply and sewer systems for tribal communities, including a water quality testing laboratory.

(c) MANAGEMENT OF THE FUNDS.—The Secretary shall manage the Funds, make investments from the Funds, and make amounts available from the Funds for distribution to the Tribe consistent with the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4001 et seq.), this Act, and the Agreement.

(d) INVESTMENT OF THE FUNDS.—The Secretary shall invest amounts in the Funds in accordance with—

(1) the Act of April 1, 1880 (25 U.S.C. 161; 21 Stat. 70, chapter 41);

(2) the first section of the Act of June 24, 1938 (25 U.S.C. 162a; 52 Stat. 1037, chapter 648); and

(3) subsection (c).

(e) AVAILABILITY OF AMOUNTS FROM THE FUNDS.—Amounts made available under subsection (h) shall be available for expenditure or withdrawal only after the waivers and releases under section 10(a) take effect.

(f) EXPENDITURES AND WITHDRAWAL.—

(1) TRIBAL MANAGEMENT PLAN.—

(A) IN GENERAL.—The Tribe 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 Tribe spend any amounts withdrawn from the Funds in accordance with the purposes described in subsection (b).

(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 Tribe exercises 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 Tribe shall submit to the Secretary for approval an expenditure plan for any portion of the amounts made available under subsection (h) that the Tribe does not withdraw under this subsection.

(B) DESCRIPTION.—The expenditure plan shall describe the manner in which, and the purposes for which, amounts of the Tribe 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 Tribe shall submit to the Secretary an annual report that describes all expenditures from the Fund during the year covered by the report.

(g) NO PER CAPITA PAYMENTS.—No part of the principal of the Funds, or of the income accruing in the Funds, shall be distributed to any member of the Tribe on a per capita basis.

(h) AUTHORIZATION OF APPROPRIATIONS.—

(1) to the Nez Perce Tribe Water and Fisheries Fund—

(A) for fiscal year 2007, \$7,830,000;

(B) for fiscal year 2008, \$4,730,000;

(C) for fiscal year 2009, \$7,380,000;

(D) for fiscal year 2010, \$10,080,000;

(E) for fiscal year 2011, \$11,630,000;

(F) for fiscal year 2012, \$9,450,000; and

(G) for fiscal year 2013, \$9,000,000; and

(2) to the Nez Perce Tribe Domestic Water Supply Fund—

(A) for fiscal year 2007, \$5,100,000;

(B) for fiscal year 2008, \$8,200,000;

(C) for fiscal year 2009, \$5,550,000;

(D) for fiscal year 2010, \$2,850,000; and

(E) for fiscal year 2011, \$1,300,000.

#### SEC. 9. SALMON AND CLEARWATER RIVER BASINS HABITAT FUND.

(a) ESTABLISHMENT OF FUND.—

(1) IN GENERAL.—There is established in the Treasury of the United States a fund to be known as the "Salmon and Clearwater River Basins Habitat Fund" (referred to in this section as the "Fund"), to be administered by the Secretary.

(2) ACCOUNTS.—There is established within the Fund—

(A) an account to be known as the "Nez Perce Tribe Salmon and Clearwater River Basins Habitat Account", which shall be administered by the Secretary for use by the Tribe subject to

the same provisions for management, investment, and expenditure as the funds established by section 8; and

(B) an account to be known as the "Idaho Salmon and Clearwater River Basins Habitat Account", which shall be administered by the Secretary and provided to the State as provided in the Agreement and this Act.

(b) USE OF THE FUND.—

(1) IN GENERAL.—The Fund shall be used to supplement amounts made available under any other law for habitat protection and restoration in the Salmon and Clearwater River Basins in Idaho, including projects and programs intended to protect and restore listed fish and their habitat in those basins, as specified in the Agreement and this Act.

(2) RELEASE OF FUNDS.—The Secretary shall release funds from the Idaho Salmon and Clearwater River Basins Habitat Account in accordance with section 6(d)(2) of the Endangered Species Act (16 U.S.C. 1535(d)(2)).

(3) NO ALLOCATION REQUIREMENT.—The use of the Fund shall not be subject to the allocation procedures under section 6(d)(1) of the Endangered Species Act of 1973 (16 U.S.C. 1535(d)(1)).

(c) AVAILABILITY OF AMOUNTS IN THE FUND.—Amounts made available under subsection (d) shall be available for expenditure or withdrawal only after the waivers and releases under section 10(a) take effect.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated—

(1) to the Nez Perce Tribe Salmon and Clearwater River Basins Habitat Account, \$2,533,334 for each of fiscal years 2007 through 2011; and

(2) to the Idaho Salmon and Clearwater River Basins Habitat Account, \$5,066,666 for each of fiscal years 2007 through 2011.

#### SEC. 10. TRIBAL WAIVER AND RELEASE OF CLAIMS.

(a) WAIVER AND RELEASE OF CLAIMS IN GENERAL.—

(1) CLAIMS TO WATER RIGHTS; CLAIMS FOR INJURIES TO WATER RIGHTS OR TREATY RIGHTS.—Except as otherwise provided in this Act, the United States on behalf of the Tribe and the allottees, and the Tribe, waive and release—

(A) all claims to water rights within the Snake River Basin (as defined in section 3);

(B) all claims for injuries to such water rights; and

(C) all claims for injuries to the treaty rights of the Tribe to the extent that such injuries result or resulted from flow modifications or reductions in the quantity of water available that accrued at any time up to and including the effective date of the settlement, and any continuation thereafter of any such claims, against the State, any agency or political subdivision of the State, or any person, entity, corporation, municipal corporation, or quasi-municipal corporation.

(2) CLAIMS BASED ON REDUCED WATER QUALITY OR REDUCTIONS IN WATER QUANTITY.—The United States on behalf of the Tribe and the allottees, and the Tribe, waive and release any claim, under any treaty theory, based on reduced water quality resulting directly from flow modifications or reductions in the quantity of water available in the Snake River Basin against any party to the Agreement.

(3) NO FUTURE ASSERTION OF CLAIMS.—No water right claim that the Tribe or the allottees have asserted or may in the future assert outside the Snake River Basin shall require water to be supplied from the Snake River Basin to satisfy the claim.

(4) EFFECT OF WAIVERS AND RELEASES.—The waivers and releases by the United States and the Tribe under this subsection—

(A) shall be permanent and enforceable; and

(B) shall survive any subsequent termination of any component of the settlement described in the Agreement or this Act.

(5) EFFECTIVE DATE.—The waivers and releases under this subsection shall take effect on the date on which the Secretary causes to be

published in the Federal Register a statement of findings that the actions set forth in section IV.L of the Agreement—

(A) have been completed, including issuance of a judgment and decree by the SRBA court from which no further appeal may be taken; and

(B) have been determined by the United States on behalf of the Tribe and the allottees, the Tribe, and the State of Idaho to be consistent in all material aspects with the Agreement.

(b) WAIVER AND RELEASE OF CLAIMS AGAINST THE UNITED STATES.—

(1) IN GENERAL.—In consideration of performance by the United States of all actions required by the Agreement and this Act, including the appropriation of all funds authorized under sections 8(h) and 9(d)(1), the Tribe shall execute a waiver and release of the United States from—

(A) all claims for water rights within the Snake River Basin, injuries to such water rights, or breach of trust claims for failure to protect, acquire, or develop such water rights that accrued at any time up to and including the effective date determined under paragraph (2);

(B) all claims for injuries to the Tribe's treaty fishing rights, to the extent that such injuries result or resulted from reductions in the quantity of water available in the Snake River Basin;

(C) all claims of breach of trust for failure to protect Nez Perce springs or fountains treaty rights reserved in article VIII of the Treaty of June 9, 1863 (14 Stat. 651); and

(D) all claims of breach of trust arising out of the negotiation of or resulting from the adoption of the Agreement.

(2) EFFECTIVE DATE.—

(A) IN GENERAL.—The waiver and release contained in this subsection shall take effect on the date on which the amounts authorized under sections 8(h) and 9(d)(1) are appropriated.

(B) PERIODS OF LIMITATION; EQUITABLE CLAIMS.—

(i) IN GENERAL.—All periods of limitation and time-based equitable defenses applicable to the claims set forth in paragraph (1) are tolled for the period between the date of enactment of this Act until the earlier of—

(1) the date on which the amounts authorized under sections 8(h) and 9(d)(1) are appropriated; or

(II) October 1, 2017.

(ii) EFFECT OF SUBPARAGRAPH.—This subparagraph neither revives any claim nor tolls any period of limitation or time-based equitable defense that may have expired before the date of enactment of this Act.

(3) DEFENSE.—The making of the amounts of appropriations authorized under sections 8(h) and 9(d)(1) shall constitute a complete defense to any claim pending in any court of the United States on the date on which the appropriations are made.

(c) RETENTION OF RIGHTS.—

(1) IN GENERAL.—The Tribe shall retain all rights not specifically waived or released in the Agreement or this Act.

(2) DWORSHAK PROJECT.—Nothing in the Agreement or this Act constitutes a waiver by the Tribe of any claim against the United States resulting from the construction and operation of the Dworshak Project (Project PWI 05090), other than those specified in subparagraphs (A) and (B) of subsection (b)(1).

(3) FUTURE ACQUISITION OF WATER RIGHTS.—Nothing in the Agreement or this Act precludes the Tribe or allottees, or the United States as trustee for the Tribe or allottees, from purchasing or otherwise acquiring water rights in the future to the same extent as any other entity in the State.

## SEC. 11. MISCELLANEOUS.

(a) GENERAL DISCLAIMER.—The parties expressly reserve all rights not specifically granted, recognized, or relinquished by the settlement described in the Agreement or this Act.

(b) DISCLAIMER REGARDING OTHER AGREEMENTS AND PRECEDENT.—

(1) IN GENERAL.—Subject to section 9(b)(3), nothing in this Act amends, supersedes, or preempts any State law, Federal law, Tribal law, or interstate compact that pertains to the Snake River Basin.

(2) NO ESTABLISHMENT OF STANDARD.—Nothing in this Act—

(A) establishes any standard for the quantification of Federal reserved water rights or any other Indian water claims of any other Indian tribes in any other judicial or administrative proceeding; or

(B) limits the rights of the parties to litigate any issue not resolved by the Agreement or this Act.

(3) NO ADMISSION AGAINST INTEREST.—Nothing in this Act constitutes an admission against interest against any party in any legal proceeding.

(c) TREATY RIGHTS.—Nothing in the Agreement or this Act impairs the treaty fishing, hunting, pasturing, or gathering rights of the Tribe except to the extent expressly provided in the Agreement or this Act.

(d) OTHER CLAIMS.—Nothing in the Agreement or this Act quantifies or otherwise affects the water rights, claims, or entitlements to water, or any other treaty right, of any Indian tribe, band, or community other than the Tribe.

(e) RECREATION ON DWORSHAK RESERVOIR.—

(1) IN GENERAL.—In implementing the provisions of the Agreement and this Act relating to the use of water stored in Dworshak Reservoir for flow augmentation purposes, the heads of the Federal agencies involved in the operational Memorandum of Agreement referred to in the Agreement shall implement a flow augmentation plan beneficial to fish and consistent with the Agreement.

(2) CONTENTS OF PLAN.—The flow augmentation plan may include provisions beneficial to recreational uses of the reservoir through maintenance of the full level of the reservoir for prolonged periods during the summer months.

(f) JURISDICTION.—

(1) NO EFFECT ON 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) CONSENT TO JURISDICTION.—The United States consents to jurisdiction in a proper forum for purposes of enforcing the provisions of the Agreement.

(3) EFFECT OF SUBSECTION.—Nothing in this subsection confers jurisdiction on any State court to—

(A) enforce Federal environmental laws regarding the duties of the United States; or

(B) conduct judicial review of Federal agency action.

## MEANING OF SECTION 4

Ms. CANTWELL. Mr. President, I say to Senator CAMPBELL, as chairman of the Indian Affairs Committee upon which I serve, I appreciate his leadership in helping this important bill become law. I support S. 2605 and believe it codifies a fair and equitable settlement of Snake River Basin water rights in Idaho. However, I am concerned that the bill currently pending before the Senate may have inadvertently altered the rights of my constituents and obligations of the downstream States of Washington and Oregon in the application and implementation of Federal environmental laws.

Therefore, I have a few questions to ask regarding the effect of section 4 of S. 2605 and the agreement, as expressed in the Mediator's Term Sheet, that S. 2605 would approve. Specifically, I am

concerned about (1) whether some inference might be drawn from the language in section 4(a) of the act that, by approving, ratifying and confirming the agreement, Congress has in effect altered the obligation of Federal agencies to consult under section 7 of the Endangered Species Act; (2) whether the act might be interpreted to require that Federal agencies implement the agreement without taking into consideration the interests of other affected States; and (3) whether the act or the agreement might be construed to alter any obligations that the parties might have under the Clean Water Act, particularly in relation to the protection of federally approved State water quality standards of downstream States.

I noticed that these three specific issues were not expressly addressed in the report of the Committee on Indian Affairs that has been filed and accompanies the substitute amendment.

Mr. CAMPBELL. These three issues were not specifically addressed in the report issued by the committee, although the part of the report that discusses the meaning of section 4(a) of the substitute amendment does make the point, and fairly clearly I think, that there is no intent to alter or amend Federal environmental laws like the Endangered Species Act and the Clean Water Act or to somehow limit the rights of persons or organizations to pursue any remedies that are otherwise available to them under such laws. The three precise issues you mention were not deliberately omitted from discussion in the report—to the contrary, they were not discussed in the report simply because those specific issues, as you have articulated them, were not aired during or after the hearing held on this legislation and, in fact, arose only after the amendment in the nature of a substitute was reported to the Senate on October 7, 2004.

Ms. CANTWELL. As the principal sponsor and architect of the substitute amendment approved by the Senate Committee on Indian Affairs, what was the intent about the meaning of the substitute amendment and the agreement it would approve with respect to those three issues?

Mr. CAMPBELL. My intent with respect to all three of the issues that the Senator has mentioned is consistent with my intent regarding the meaning of section 4 of the substitute amendment and the agreement itself—that is, neither the substitute amendment nor the agreement should be interpreted to somehow restrict the rights of any State, person or organization to pursue remedies otherwise available under Federal environmental laws such as the Clean Water Act and the Endangered Species Act.

I would point out that neither the substitute amendment nor the agreement should be read to create, enlarge or limit any obligation of Federal agencies to consult under section 7 of the Endangered Species Act. Also, the



intent behind the substitute amendment is that Federal agencies implement the terms of the agreement and any applicable Federal laws with due consideration of both the interests of the parties and those of other affected States so that no interests are prejudiced. Finally, neither the substitute amendment nor the agreement should be interpreted to create or alter any obligations of the parties under the Clean Water Act with respect to the protection of federally approved State water quality standards of downstream States. However, with that I do not mean to imply or suggest that any such obligations exist or do not exist.

Ms. CANTWELL. I thank the Senator for clarifying these important matters.

Mr. CAMPBELL. I thank the Senator for her inquiry.

Mr. CRAPO. Speaking as the subcommittee chairman with jurisdiction over the Endangered Species Act and the Clean Water Act, I concur in the clarifications expressed by my colleagues.

The committee amendment in the nature of a substitute was agreed to.

The bill (S. 2605), as amended, was read the third time and passed.

#### INDIAN TRIBAL DEVELOPMENT CORPORATION FEASIBILITY ACT OF 2004

The Senate proceeded to consider the bill (S. 519) to establish a Native American-owned financial entity to provide financial services to Indian tribes, Native American organizations, and Native Americans, and for other purposes, which had been reported from the Committee on Indian Affairs, with an amendment to strike all after the enacting clause and insert in lieu thereof the following:

(Strike the part shown in black brackets and insert the part shown in italic.)

S. 519

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### **[SECTION 1. SHORT TITLE; TABLE OF CONTENTS.]**

[(a) **SHORT TITLE.**—This Act may be cited as the “Native American Capital Formation and Economic Development Act of 2003”.

[(b) **TABLE OF CONTENTS.**—The table of contents of this Act is as follows:

- [Sec. 1. Short title; table of contents.
- [Sec. 2. Findings.
- [Sec. 3. Purposes.
- [Sec. 4. Definitions.

#### **[TITLE I—NATIVE AMERICAN CAPITAL DEVELOPMENT CORPORATION]**

- [Sec. 101. Establishment of the Corporation.
- [Sec. 102. Authorized assistance and service functions.
- [Sec. 103. Native American lending services grant.
- [Sec. 104. Audits.
- [Sec. 105. Annual housing and economic development reports.
- [Sec. 106. Advisory Council.

#### **[TITLE II—CAPITALIZATION OF CORPORATION]**

- [Sec. 201. Capitalization of the Corporation.
- #### **[TITLE III—REGULATION, EXAMINATION, AND REPORTS]**

- [Sec. 301. Regulation, examination, and reports.

- [Sec. 302. Authority of the Secretary of Housing and Urban Development.

#### **[TITLE IV—FORMATION OF NEW CORPORATION]**

- [Sec. 401. Formation of new corporation.
- [Sec. 402. Adoption and approval of merger plan.
- [Sec. 403. Consummation of merger.
- [Sec. 404. Transition.
- [Sec. 405. Effect of merger.

#### **[TITLE V—OTHER NATIVE AMERICAN FUNDS]**

- [Sec. 501. Native American Economies Diagnostic Studies Fund.
- [Sec. 502. Native American Economic Incubation Center Fund.

#### **[TITLE VI—AUTHORIZATIONS OF APPROPRIATIONS]**

- [Sec. 601. Native American financial institutions.
- [Sec. 602. Corporation.
- [Sec. 603. Other Native American funds.

#### **[SEC. 2. FINDINGS.]**

[Congress finds that—

[(1) there is a special legal and political relationship between the United States and the Indian tribes, as grounded in treaties, the Constitution, Federal statutes and court decisions, executive orders, and course of dealing;

[(2) despite the availability of abundant natural resources on Indian land and a rich cultural legacy that accords great value to self-determination, self-reliance, and independence, Native Americans suffer rates of unemployment, poverty, poor health, substandard housing, and associated social ills to a greater degree than any other group in the United States;

[(3) the economic success and material well-being of Native Americans depends on the combined efforts and resources of the United States, Indian tribal governments, the private sector, and individuals;

[(4) the poor performance of moribund Indian economies is due in part to the near-complete absence of private capital and private capital institutions; and

[(5) the goals of economic self-sufficiency and political self-determination for Native Americans can best be achieved by making available the resources and discipline of the private market, adequate capital, and technical expertise.

#### **[SEC. 3. PURPOSES.]**

[The purposes of this Act are—

[(1) to establish an entity dedicated to capital development and economic growth policies in Native American communities;

[(2) to provide the necessary resources of the United States, Native Americans, and the private sector on endemic problems such as fractionated and unproductive Indian land;

[(3) to provide a center for economic development policy and analysis with particular emphasis on diagnosing the systemic weaknesses with, and inhibitors to greater levels of investment in, Native American economies;

[(4) to establish a Native-owned financial entity to provide financial services to Indian tribes, Native American organizations, and Native Americans; and

[(5) to improve the material standard of living of Native Americans.

#### **[SEC. 4. DEFINITIONS.]**

[In this Act:

[(1) **ALASKA NATIVE.**—The term “Alaska Native” has the meaning given the term “Native” in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602).

[(2) **BOARD.**—The term “Board” means the Board of Directors of the Corporation.

[(3) **CAPITAL DISTRIBUTION.**—The term “capital distribution” has the meaning given the term in section 1303 of the Federal Housing Enterprise Financial Safety and Soundness Act of 1992 (12 U.S.C. 4502).

[(4) **CHAIRPERSON.**—The term “Chairperson” means the chairperson of the Board.

[(5) **CORPORATION.**—The term “Corporation” means the Native American Capital Development Corporation established by section 101(a)(1)(A).

[(6) **COUNCIL.**—The term “Council” means the Advisory Council established under section 106(a).

[(7) **DESIGNATED MERGER DATE.**—The term “designated merger date” means the specific calendar date and time of day designated by the Board under this Act.

[(8) **DEPARTMENT OF HAWAIIAN HOME LANDS.**—The term “Department of Hawaiian Home Lands” means the agency that is responsible for the administration of the Hawaiian Homes Commission Act, 1920 (42 Stat. 108 et seq.).

[(9) **FUND.**—The term “Fund” means the Community Development Financial Institutions Fund established under section 104 of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4703).

[(10) **INDIAN TRIBE.**—The term “Indian tribe” has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

[(11) **MERGER PLAN.**—The term “merger plan” means the plan of merger adopted by the Board under this Act.

[(12) **NATIVE AMERICAN.**—The term “Native American” means—

[(A) a member of an Indian tribe; or

[(B) a Native Hawaiian.

[(13) **NATIVE AMERICAN FINANCIAL INSTITUTION.**—The term “Native American financial institution” means a person (other than an individual) that—

[(A) qualifies as a community development financial institution under section 103 of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4702);

[(B) satisfies—

[(i) requirements established by subtitle A of title I of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4701 et seq.); and

[(ii) requirements applicable to persons seeking assistance from the Fund;

[(C) demonstrates a special interest and expertise in serving the primary economic development and mortgage lending needs of the Native American community; and

[(D) demonstrates that the person has the endorsement of the Native American community that the person intends to serve.

[(14) **NATIVE AMERICAN LENDER.**—The term “Native American lender” means a Native American governing body, Native American housing authority, or other Native American financial institution that acts as a primary mortgage or economic development lender in a Native American community.

[(15) **NATIVE HAWAIIAN.**—The term “Native Hawaiian” has the meaning given the term in section 201 of the Hawaiian Homes Commission Act, 1920 (42 Stat. 108).

[(16) **NEW CORPORATION.**—The term “new corporation” means the corporation formed in accordance with title IV.

[(17) **SECRETARY.**—The term “Secretary” means the Secretary of Housing and Urban Development.

[(18) **TOTAL CAPITAL.**—The term “total capital” has the meaning given the term in section 1303 of the Federal Housing Enterprise Financial Safety and Soundness Act of 1992 (12 U.S.C. 4502).