

Union Calendar No. 6

105TH CONGRESS
1ST Session

H. R. 412

[Report No. 105-8]

A BILL

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

MARCH 10, 1997

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

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IN THE HOUSE OF REPRESENTATIVES

JANUARY 9, 1997

Mr. HASTINGS of Washington introduced the following bill; which was referred to the Committee on Resources

MARCH 10, 1997

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[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on January 9, 1997]

A BILL

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

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

3 **SECTION 1. SHORT TITLE.**

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

1 **SEC. 2. PURPOSES.**

2 *The purposes of this Act are to authorize the Secretary*
3 *of the Interior to implement the provisions of the negotiated*
4 *Settlement Agreement including conveyance of the Project*
5 *Irrigation Works, identified as not having national impor-*
6 *tance, to the District, and for other purposes.*

7 **SEC. 3. DEFINITIONS.**

8 *As used in this Act:*

9 (1) *The term “Secretary” means the Secretary of*
10 *the Interior.*

11 (2) *The term “Reclamation” means the United*
12 *States Bureau of Reclamation.*

13 (3) *The term “District” or “Oroville-Tonasket*
14 *Irrigation District” means the project beneficiary or-*
15 *ganized and operating under the laws of the State of*
16 *Washington, which is the operating and repayment*
17 *entity for the Project.*

18 (4) *The term “Project” means the Oroville-*
19 *Tonasket unit extension, Okanogan-Similkameen di-*
20 *vision, Chief Joseph Dam Project, Washington, con-*
21 *structed and rehabilitated by the United States under*
22 *the Act of September 28, 1976 (Public Law 94–423,*
23 *90 Stat. 1324), previously authorized and constructed*
24 *under the Act of October 9, 1962 (Public Law 87–762,*
25 *76 Stat. 761), under the Federal reclamation laws*
26 *(including the Act of June 17, 1902 (ch. 1093, 32*

1 *Stat. 388), and Acts supplementary thereto or amend-*
2 *atory thereof).*

3 (5) *The term “Project Irrigation Works”*
4 *means—*

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

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

15 (C) *all third party agreements.*

16 (6)(A) *The term “Basic Contract” means Repay-*
17 *ment Contract No. 14–06–100–4442, dated December*
18 *26, 1964, as amended and supplemented, between the*
19 *United States and the District;*

20 (B) *the term “Repayment Contract” means Re-*
21 *payment Contract No. 00–7–10–W0242, dated No-*
22 *vember 28, 1979, as amended and supplemented, be-*
23 *tween the United States and the District; and*

1 (C) *the term “third party agreements” means ex-*
2 *isting contractual duties, obligations, and responsibil-*
3 *ities that exist because of all leases, licenses, and ease-*
4 *ments with third-parties related to the Project Irriga-*
5 *tion Works, or the lands or rights-of-way for the*
6 *Project Irrigation Works, but excepting power ar-*
7 *rangements with the Bonneville Power Administra-*
8 *tion.*

9 (7) *The term “Wildlife Mitigation Facilities”*
10 *means—*

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

16 (B) *all third party agreements associated*
17 *with the land, improvements, or easements re-*
18 *ferred to in subparagraph (A).*

19 (8) *The term “Indian Trust Lands” means ap-*
20 *proximately 61 acres of lands identified on land clas-*
21 *sification maps on file with the District and Rec-*
22 *lamation beneficially owned by the Confederated*
23 *Tribes of the Colville Reservation (Colville Tribes) or*

1 *by individual Indians, and held in trust by the Unit-*
2 *ed States for the benefit of the Colville Tribes in ac-*
3 *cordance with the Executive Order of April 9, 1872.*

4 (9) *The term “Settlement Agreement” means the*
5 *Agreement made and entered on April 15, 1996, be-*
6 *tween the United States of America acting through*
7 *the Regional Director, Pacific Northwest Region, Bu-*
8 *reau of Reclamation, and the Oroville-Tonasket Irri-*
9 *gation District.*

10 (10) *The term “operations and maintenance”*
11 *means normal and reasonable care, control, operation,*
12 *repair, replacement, and maintenance.*

13 **SEC. 4. AGREEMENT AUTHORIZATION.**

14 *The Settlement Agreement is approved and the Sec-*
15 *retary of the Interior is authorized to conduct all necessary*
16 *and appropriate investigations, studies, and required Fed-*
17 *eral actions to implement the Settlement Agreement.*

18 **SEC. 5. CONSIDERATION AND SATISFACTION OF OUT-**
19 **STANDING OBLIGATIONS.**

20 (a) *CONSIDERATION TO UNITED STATES.—Consider-*
21 *ation by the District to the United States in accordance*
22 *with the Settlement Agreement approved by this Act shall*
23 *be—*

24 (1) *payment of \$350,000 by the District to the*
25 *United States;*

1 (2) *assumption by the District of full liability*
2 *and responsibility and release of the United States of*
3 *all further responsibility, obligations, and liability for*
4 *removing irrigation facilities constructed and reha-*
5 *bilitated by the United States under the Act of Octo-*
6 *ber 9, 1962 (Public Law 87-762, 76 Stat. 761), or*
7 *referenced in section 201 of the Act of September 28,*
8 *1976 (Public Law 94-423, 90 Stat. 1324), and iden-*
9 *tified in Article 3(a)(8) of the Repayment Contract;*

10 (3) *assumption by the District of sole and abso-*
11 *lute responsibility for the operations and maintenance*
12 *of the Project Irrigation Works;*

13 (4) *release and discharge by the District as to*
14 *the United States from all past and future claims,*
15 *whether now known or unknown, arising from or in*
16 *any way related to the Project, including any arising*
17 *from the Project Irrigation Works constructed pursu-*
18 *ant to the 1964 Basic Contract or the 1979 Repay-*
19 *ment Contract;*

20 (5) *assumption by the District of full responsibil-*
21 *ity to indemnify and defend the United States*
22 *against any third party claims associated with any*
23 *aspect of the Project, except for that claim known as*
24 *the Grillo Claim, government contractor construction*
25 *claims accruing at any time, and any other suits or*

1 *claims filed as of the date of the Settlement Agree-*
2 *ment; and*

3 *(6) continued obligation by the District to de-*
4 *liver water to and provide for operations and mainte-*
5 *nance of the Wildlife Mitigation Facilities at its own*
6 *expense in accordance with the Settlement Agreement.*

7 *(b) RESPONSIBILITIES OF UNITED STATES.—In re-*
8 *turn the United States shall—*

9 *(1) release and discharge the District’s obliga-*
10 *tion, including any delinquent or accrued payments,*
11 *or assessments of any nature under the 1979 Repay-*
12 *ment Contract, including the unpaid obligation of the*
13 *1964 Basic Contract;*

14 *(2) transfer title of the Project Irrigation Works*
15 *to the District;*

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

18 *(4) continue power deliveries provided under sec-*
19 *tion 6 of this Act; and*

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

1 (c) *PROJECT CONSTRUCTION COSTS.*—*The transfer of*
2 *title authorized by this Act shall not affect the timing or*
3 *amount of the obligation of the Bonneville Power Adminis-*
4 *tration for the repayment of construction costs incurred by*
5 *the Federal government under section 202 of the Act of Sep-*
6 *tember 28, 1976 (90 Stat. 1324, 1326) that the Secretary*
7 *of the Interior has determined to be beyond the ability of*
8 *the irrigators to pay. The obligation shall remain charged*
9 *to, and be returned to the Reclamation Fund as provided*
10 *for in section 2 of the Act of June 14, 1966 (80 Stat. 200)*
11 *as amended by section 6 of the Act of September 7, 1966*
12 *(80 Stat. 707, 714).*

13 **SEC. 6. POWER.**

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

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

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

23 *The rate that the District shall pay the Secretary for such*
24 *reserved power shall continue to reflect full recovery of Bon-*
25 *neville Power Administration transmission costs.*

1 **SEC. 7. CONVEYANCE.**

2 (a) *CONVEYANCE OF INTERESTS OF UNITED*
3 *STATES.—Subject to valid existing rights, the Secretary is*
4 *authorized to convey all right, title, and interest, without*
5 *warranties, of the United States in and to all Project Irri-*
6 *gation Works to the District. In the event a significant cul-*
7 *tural resource or hazardous waste site is identified, the Sec-*
8 *retary is authorized to defer or delay transfer of title to*
9 *any parcel until required Federal action is completed.*

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

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

22 **SEC. 8. REPAYMENT CONTRACT.**

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

1 *Repayment Contract between the District and Reclamation,*
2 *shall be terminated and of no further force or effect.*

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

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

7 **SEC. 10. LIABILITY.**

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

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

17 *(2) absolve the United States and its officers and*
18 *agents of responsibility and liability for the design*
19 *and construction including latent defects associated*
20 *with the Project; and*

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

1 *related to, the Project except for the Grillo Claim, gov-*
2 *ernment contractor construction claims accruing at*
3 *any time, and any other suits or claims filed as of*
4 *the date of the Settlement Agreement.*

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

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

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

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

18 (2) *be considered a disposal of surplus property*
19 *under the Federal Property and Administrative Serv-*
20 *ices Act of 1949 (40 U.S.C. 471 et seq.) and the Sur-*
21 *plus Property Act of 1944 (50 U.S.C. App. 1601 et*
22 *seq.).*

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

1 *Division, Chief Joseph Dam Project, Washington, referred*
2 *to in section 7(a) as the Project Irrigation Works is hereby*
3 *deauthorized. After transfer of title, the District shall not*
4 *be entitled to receive any further Reclamation benefits pur-*
5 *suant to the Reclamation Act of June 17, 1902, and Act*
6 *supplementary thereto or amendatory thereof.*