

110TH CONGRESS
2D SESSION

H. R. 5293

To approve the settlement of the water rights claims of the Shoshone-Paiute Tribes of the Duck Valley Reservation in Nevada, to require the Secretary of the Interior to carry out the settlement, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 7, 2008

Mr. HELLER of Nevada introduced the following bill; which was referred to the Committee on Natural Resources

A BILL

To approve the settlement of the water rights claims of the Shoshone-Paiute Tribes of the Duck Valley Reservation in Nevada, to require the Secretary of the Interior to carry out the settlement, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

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

7 **SEC. 2. FINDINGS.**

8 Congress finds that—

1 (1) it is the policy of the United States, in ac-
2 cordance with the trust responsibility of the United
3 States to Indian tribes, to promote Indian self-deter-
4 mination and economic self-sufficiency and to settle
5 Indian water rights claims without lengthy and cost-
6 ly litigation, if practicable;

7 (2) quantifying rights to water and development
8 of facilities needed to use tribal water supplies is es-
9 sential to the development of viable Indian reserva-
10 tion economies and the establishment of a perma-
11 nent reservation homeland;

12 (3) uncertainty concerning the extent of the
13 Shoshone-Paiute Tribes' water rights has resulted in
14 limited access to water and inadequate financial re-
15 sources necessary to achieve self-determination and
16 self-sufficiency;

17 (4) in 2006, the Tribes, the State of Idaho, the
18 affected individual water users, and the United
19 States resolved all tribal claims to water rights in
20 the Snake River Basin Adjudication through a con-
21 sent decree entered by the District Court of the
22 Fifth Judicial District of the State of Idaho, requir-
23 ing no further Federal action to quantify the Tribes'
24 water rights in the State of Idaho;

1 (5) as of the date of enactment of this Act, pro-
2 ceedings to determine the extent and nature of the
3 water rights of the Tribes in the East Fork of the
4 Owyhee River in Nevada are pending before the Ne-
5 vada State Engineer;

6 (6) final resolution of the Tribes' water claims
7 in the East Fork of the Owyhee River adjudication
8 will—

9 (A) take many years;

10 (B) entail great expense;

11 (C) continue to limit the access of the
12 Tribes to water, with economic and social con-
13 sequences;

14 (D) prolong uncertainty relating to the
15 availability of water supplies; and

16 (E) seriously impair long-term economic
17 planning and development for all parties to the
18 litigation;

19 (7) after many years of negotiation, the Tribes,
20 the State, and the upstream water users have en-
21 tered into a settlement agreement to resolve perma-
22 nently all water rights of the Tribes in the State;
23 and

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

4 **SEC. 3. PURPOSES.**

5 The purposes of this Act are—

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

9 (A) the United States;

10 (B) the State;

11 (C) the Tribes; and

12 (D) the upstream water users;

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

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

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

22 (5) to require the Secretary to perform all obli-
23 gations of the Secretary under the Agreement and
24 this Act; and

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

4 **SEC. 4. DEFINITIONS.**

5 In this Act:

6 (1) **AGREEMENT.**—The term “Agreement”
7 means the agreement entitled the “Agreement to Es-
8 tablish the Relative Water Rights of the Shoshone-
9 Paiute Tribes of the Duck Valley Reservation and
10 the Upstream Water Users, East Fork Owyhee
11 River” and signed in counterpart between, on, or
12 about September 22, 2006, and January 15, 2007
13 (including all attachments to that Agreement).

14 (2) **DEVELOPMENT FUND.**—The term “Devel-
15 opment Fund” means the Shoshone-Paiute Tribes
16 Water Rights Development Fund established by sec-
17 tion 8(b)(1).

18 (3) **EAST FORK OF THE OWYHEE RIVER.**—The
19 term “East Fork of the Owyhee River” means the
20 portion of the east fork of the Owyhee River that is
21 located in the State.

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

1 (5) RESERVATION.—The term “Reservation”
2 means the Duck Valley Reservation established by
3 the Executive order dated April 16, 1877, as ad-
4 justed pursuant to the Executive order dated May 4,
5 1886, and Executive order numbered 1222 and
6 dated July 1, 1910, for use and occupation by the
7 Western Shoshones and the Paddy Cap Band of Pai-
8 utes.

9 (6) SECRETARY.—The term “Secretary” means
10 the Secretary of the Interior.

11 (7) STATE.—The term “State” means the State
12 of Nevada.

13 (8) TRIBAL WATER RIGHTS.—The term “tribal
14 water rights” means rights of the Tribes described
15 in the Agreement relating to water, including
16 groundwater, storage water, and surface water.

17 (9) TRIBES.—The term “Tribes” means the
18 Shoshone-Paiute Tribes of the Duck Valley Reserva-
19 tion.

20 (10) UPSTREAM WATER USER.—The term “up-
21 stream water user” means a non-Federal water user
22 that—

23 (A) is located upstream from the Reserva-
24 tion on the East Fork of the Owyhee River; and

1 (B) is a signatory to the Agreement as a
2 party to the East Fork of the Owyhee River ad-
3 judication.

4 **SEC. 5. APPROVAL, RATIFICATION, AND CONFIRMATION OF**
5 **AGREEMENT; AUTHORIZATION.**

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

10 (b) SECRETARIAL AUTHORIZATION.—The Secretary
11 is authorized and directed to execute the Agreement as
12 approved by Congress.

13 (c) EXCEPTION FOR TRIBAL WATER MARKETING.—
14 Notwithstanding any language in the Agreement to the
15 contrary, nothing in this Act authorizes the Tribes to use
16 or authorize others to use tribal water rights off the Res-
17 ervation, other than use for storage at Wild Horse Res-
18 ervoir or use on tribal land off the Reservation.

19 (d) ENVIRONMENTAL COMPLIANCE.—Execution of
20 the Agreement by the Secretary under this section shall
21 not constitute major Federal action under the National
22 Environmental Policy Act (42 U.S.C. 4321 et seq.). The
23 Secretary shall carry out all environmental compliance re-
24 quired by Federal law in implementing the Agreement.

1 (e) PERFORMANCE OF OBLIGATIONS.—The Secretary
2 and any other head of a Federal agency obligated under
3 the Agreement shall perform actions necessary to carry
4 out an obligation under the Agreement in accordance with
5 this Act.

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

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

9 (b) ADMINISTRATION.—

10 (1) ENACTMENT OF WATER CODE.—Not later
11 than 3 years after the date of enactment of this Act,
12 the Tribes, in accordance with the provision of the
13 Tribes' constitution and subject to the approval of
14 the Secretary, shall enact a water code to administer
15 tribal water rights.

16 (2) INTERIM ADMINISTRATION.—The Secretary
17 shall regulate the tribal water rights during the pe-
18 riod beginning on the date of enactment of this Act
19 and ending on the date on which the Tribes enact
20 a water code under paragraph (1).

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

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

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

6 (b) CAPITAL COSTS NONREIMBURSABLE.—The cap-
7 ital costs associated with the Duck Valley Indian Irriga-
8 tion Project as the date of enactment of this Act, including
9 any capital cost incurred with funds distributed under this
10 Act for the Duck Valley Indian Irrigation Project, shall
11 be nonreimbursable.

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

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

15 (1) the Development Fund; and

16 (2) the Maintenance Fund.

17 (b) DEVELOPMENT FUND.—

18 (1) ESTABLISHMENT.—There is established in
19 the Treasury of the United States a fund to be
20 known as the “Shoshone-Paiute Tribes Water
21 Rights Development Fund”.

22 (2) USE OF FUNDS.—The Tribes shall use
23 amounts in the Development Fund to rehabilitate
24 and, if the Tribes choose, to expand the Duck Valley
25 Indian Irrigation Project, or for any of the following
26 purposes:

1 (A) To pay or reimburse costs incurred by
2 the Tribes in acquiring land and water rights.

3 (B) For purposes of cultural preservation.

4 (C) To restore or improve fish or wildlife
5 habitat.

6 (D) For fish or wildlife production, water
7 resource development, or agricultural develop-
8 ment.

9 (E) For water resource planning and de-
10 velopment.

11 (F) To pay the costs of—

12 (i) designing and constructing water
13 supply and sewer systems for tribal com-
14 munities, including a water quality testing
15 laboratory;

16 (ii) other appropriate water-related
17 projects and other related economic devel-
18 opment projects;

19 (iii) the development of a water code;
20 and

21 (iv) other costs of implementing the
22 Agreement.

23 (3) AUTHORIZATION OF APPROPRIATIONS.—

24 There is authorized to be appropriated to the Sec-
25 retary for deposit in the Development Fund

1 \$9,000,000 for each of fiscal years 2008 through
2 2012.

3 (c) MAINTENANCE FUND.—

4 (1) ESTABLISHMENT.—There is established in
5 the Treasury of the United States a fund to be
6 known as the “Shoshone-Paiute Tribes Operation
7 and Maintenance Fund”.

8 (2) USE OF FUNDS.—The Tribes shall use
9 amounts in the Maintenance Fund to pay or provide
10 reimbursement for—

11 (A) operation, maintenance, and replace-
12 ment costs of the Duck Valley Indian Irrigation
13 Project and other water-related projects funded
14 under this Act; or

15 (B) operation, maintenance, and replace-
16 ment costs of water supply and sewer systems
17 for tribal communities, including the operation
18 and maintenance costs of a water quality test-
19 ing laboratory.

20 (3) AUTHORIZATION OF APPROPRIATIONS.—

21 There is authorized to be appropriated to the Sec-
22 retary for deposit in the Maintenance Fund
23 \$3,000,000 for each of fiscal years 2008 through
24 2012.

1 (d) AVAILABILITY OF AMOUNTS FROM FUND.—
2 Amounts made available under subsections (b)(3) and
3 (c)(3) shall be available for expenditure or withdrawal only
4 after the effective date as set forth in section 9(d).

5 (e) ADMINISTRATION OF FUNDS.—The Secretary, in
6 accordance with the American Indian Trust Fund Man-
7 agement Reform Act of 1994 (25 U.S.C. 4001 et seq.)
8 shall manage the Funds, including by investing amounts
9 from the Funds in accordance with the Act of April 1,
10 1880 (25 U.S.C. 161), and the first section of the Act
11 of June 24, 1938 (25 U.S.C. 162a).

12 (f) EXPENDITURES AND WITHDRAWAL.—

13 (1) TRIBAL MANAGEMENT PLAN.—

14 (A) IN GENERAL.—The Tribes may with-
15 draw all or part of amounts in the Funds on
16 approval by the Secretary of a tribal manage-
17 ment plan as described in the American Indian
18 Trust Fund Management Reform Act of 1994
19 (25 U.S.C. 4001 et seq.).

20 (B) REQUIREMENTS.—In addition to the
21 requirements under the American Indian Trust
22 Fund Management Reform Act of 1994 (25
23 U.S.C. 4001 et seq.), the tribal management
24 plan shall require that the Tribes spend any
25 amounts withdrawn from the Funds in accord-

1 ance with the purposes described in subsection
2 (b)(2) or (c)(2).

3 (C) ENFORCEMENT.—The Secretary may
4 take judicial or administrative action to enforce
5 the provisions of any tribal management plan to
6 ensure that any amounts withdrawn from the
7 Funds under the plan are used in accordance
8 with this Act and the Agreement.

9 (D) LIABILITY.—If the Tribes exercise the
10 right to withdraw amounts from the Funds,
11 neither the Secretary nor the Secretary of the
12 Treasury shall retain any liability for the ex-
13 penditure or investment of the amounts.

14 (2) EXPENDITURE PLAN.—

15 (A) IN GENERAL.—The Tribes shall sub-
16 mit to the Secretary for approval an expendi-
17 ture plan for any portion of the amounts in the
18 Funds that the Tribes do not withdraw under
19 the tribal management plan.

20 (B) DESCRIPTION.—The expenditure plan
21 shall describe the manner in which, and the
22 purposes for which, amounts of the Tribes re-
23 maining in the Funds will be used.

24 (C) APPROVAL.—On receipt of an expendi-
25 ture plan under subparagraph (A), the Sec-

1 retary shall approve the plan if the Secretary
2 determines that the plan is reasonable and con-
3 sistent with this Act and the Agreement.

4 (D) ANNUAL REPORT.—For each Fund,
5 the Tribes shall submit to the Secretary an an-
6 nual report that describes all expenditures from
7 the Fund during the year covered by the report.

8 (3) FUNDING AGREEMENT.—Notwithstanding
9 any other provision of this Act, on receipt of a re-
10 quest from the Tribes, the Secretary shall include an
11 amount from funds made available under this sec-
12 tion in the funding agreement of the Tribes under
13 title IV of the Indian Self-Determination and Edu-
14 cation Assistance Act (25 U.S.C. 458aa et seq.), for
15 use in accordance with subsections (b)(2) and (c)(2).
16 No amount made available under this Act may be
17 requested until the waivers under section 9(a) take
18 effect.

19 (g) NO PER CAPITA PAYMENTS.—No amount from
20 the Funds (including any interest income accruing to the
21 Funds) shall be distributed to a member of the Tribes on
22 a per capita basis.

23 **SEC. 9. TRIBAL WAIVER AND RELEASE OF CLAIMS.**

24 (a) WAIVER AND RELEASE OF CLAIMS BY TRIBES
25 AND UNITED STATES AS TRUSTEE FOR TRIBES.—The

1 Tribes and the United States on behalf of the Tribes, are
2 authorized to execute a waiver and release of—

3 (1) all claims for water rights in, or for waters
4 of, the East Fork of the Owyhee River that the
5 Tribes, or the United States as trustee for the
6 Tribes, asserted or could have asserted in any court
7 proceeding; and

8 (2) all claims for damages, losses, or injuries to
9 water rights in the East Fork Owyhee River, includ-
10 ing claims of interference, diversion, or taking of
11 water that the Tribes, or the United States as trust-
12 ee for the Tribes, asserted or could have asserted in
13 any court proceedings.

14 (b) WAIVER AND RELEASE OF CLAIMS AGAINST THE
15 UNITED STATES.—The Tribes are authorized to execute
16 a waiver and release of—

17 (1) all claims against the United States, its
18 agencies, or employees, for water rights in, or waters
19 of, the East Fork of the Owyhee River that the
20 United States asserted or could have asserted in any
21 court proceeding;

22 (2) all claims for damages, losses, or injuries to
23 water rights, including claims of interference, diver-
24 sion, or taking of water, or claims for failure to pro-
25 tect, acquire, or develop water or water rights within

1 the East Fork of the Owyhee River, and claims for
2 fishing rights under any Executive order to the ex-
3 tent that an injury to such a right resulted from a
4 reduction in the quantity of water available in the
5 East Fork Owyhee River; that accrued on or before
6 the effective date specified in subsection (d), that
7 the Tribes have asserted or could have asserted
8 against the United States, its agencies, or employees
9 in any court proceedings; and

10 (3) all claims arising out of the negotiation and
11 adoption of the Agreement.

12 (c) RETENTION OF RIGHTS.—Notwithstanding the
13 waivers and releases set forth in subsections (a) and (b),
14 the Tribes and their members and the United States as
15 trustee for the Tribes and their members, shall retain—

16 (1) all claims for enforcement of the Agree-
17 ment, the Final Consent Decree, or this Act,
18 through such legal and equitable remedies as may be
19 available in any court of competent jurisdiction;

20 (2) all rights to use and protect water rights ac-
21 quired pursuant to any state law;

22 (3) all claims relating to activities affecting the
23 quality of water;

24 (4) all rights to land outside the Reservation;
25 and

1 (5) all rights, remedies, privileges, immunities,
2 and powers not specifically waived and released
3 under the terms of the Agreement or this Act.

4 (d) EFFECTIVE DATE.—Notwithstanding anything in
5 the Agreement to the contrary, the waivers by the Tribes,
6 or the United States on behalf of the Tribes, under this
7 section shall take effect on the date on which the Secretary
8 publishes in the Federal Register a statement of findings
9 that includes a finding that—

10 (1) the Secretary has executed the Agreement
11 as approved by Congress;

12 (2) all parties to the Agreement have executed
13 the Agreement;

14 (3) the Fourth Judicial District Court, Elko
15 County, Nevada has issued a judgment and decree
16 consistent with the Agreement from which no fur-
17 ther appeal can be taken; and

18 (4) the amounts authorized under subsections
19 (b)(3) and (c)(3) of section 8 have been appro-
20 priated.

21 (e) FAILURE TO PUBLISH STATEMENT OF FIND-
22 INGS.—If the Secretary does not publish a statement of
23 findings under subsection (d) by December 31, 2015—

24 (1) the Agreement and this Act shall not take
25 effect; and

1 (2) any funds and interest accrued thereon that
2 have been appropriated under this Act shall imme-
3 diately revert to the general fund of the United
4 States Treasury.

5 (f) TOLLING OF CLAIMS.—

6 (1) IN GENERAL.—Each applicable period of
7 limitation and time-based equitable defense relating
8 to a claim described in this section shall be tolled for
9 the period beginning on the date of enactment of
10 this Act and ending on the date on which the
11 amounts authorized to be appropriated under sub-
12 sections (b)(3) and (c)(3) of section 8 are appro-
13 priated.

14 (2) EFFECT OF SUBPARAGRAPH.—Nothing in
15 this subparagraph revives any claim or tolls any pe-
16 riod of limitation or time-based equitable defense
17 that expired before the date of enactment of this
18 Act.

19 (3) FUTURE ACQUISITION OF WATER RIGHTS.—
20 Nothing in the Agreement or this Act precludes the
21 Tribes, or the United States as trustee for the
22 Tribes, from acquiring a water right in a state to
23 the same extent as any other entity in the state, in
24 accordance with state law.

1 **SEC. 10. MISCELLANEOUS.**

2 (a) **GENERAL DISCLAIMER.**—The parties to the
3 Agreement expressly reserve all rights not specifically
4 granted, recognized, or relinquished by—

5 (1) the settlement described in the Agreement;

6 or

7 (2) this Act.

8 (b) **LIMITATION OF CLAIMS AND RIGHTS.**—Nothing
9 in this Act—

10 (1) establishes a standard for quantifying—

11 (A) a Federal reserved water right;

12 (B) an aboriginal claim; or

13 (C) any other water right claim of an In-
14 dian tribe in a judicial or administrative pro-
15 ceeding; or

16 (2) limits the right of a party to the Agreement
17 to litigate any issue not resolved by the Agreement
18 or this Act.

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

22 (d) **RESERVATION.**—The Reservation shall be shall
23 be—

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

25 and

1 (2) permanently held in trust by the United
2 States for the sole use and benefit of the Tribes.

3 (e) JURISDICTION.—

4 (1) SUBJECT MATTER JURISDICTION.—Nothing
5 in the Agreement or this Act restricts, enlarges, or
6 otherwise determines the subject matter jurisdiction
7 of any Federal, State, or tribal court.

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

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

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

19 (A) enforce Federal environmental laws re-
20 lating to the duties of the United States under
21 this Act; or

22 (B) conduct judicial review of a Federal
23 agency action.

○