

110<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 5293

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IN THE SENATE OF THE UNITED STATES

SEPTEMBER 22 (legislative day, SEPTEMBER 17), 2008

Received

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## AN ACT

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

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

1 **SECTION 1. SHORT TITLE.**

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

5 **SEC. 2. FINDINGS.**

6 Congress finds that—

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

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

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

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

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

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

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

13 (A) take many years;

14 (B) entail great expense;

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

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

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

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

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

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

6 **SEC. 3. PURPOSES.**

7 The purposes of this Act are—

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

11 (A) the United States;

12 (B) the State;

13 (C) the Tribes; and

14 (D) the upstream water users;

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

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

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

1           (5) to require the Secretary to perform all obli-  
2           gations of the Secretary under the Agreement and  
3           this Act; and

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

7 **SEC. 4. DEFINITIONS.**

8           In this Act:

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

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

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

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

5           (5) RESERVATION.—The term “Reservation”  
6           means the Duck Valley Reservation established by  
7           the Executive order dated April 16, 1877, as ad-  
8           justed pursuant to the Executive order dated May 4,  
9           1886, and Executive order numbered 1222 and  
10          dated July 1, 1910, for use and occupation by the  
11          Western Shoshones and the Paddy Cap Band of Pai-  
12          utes.

13          (6) SECRETARY.—The term “Secretary” means  
14          the Secretary of the Interior.

15          (7) STATE.—The term “State” means the State  
16          of Nevada.

17          (8) TRIBAL WATER RIGHTS.—The term “tribal  
18          water rights” means rights of the Tribes described  
19          in the Agreement relating to water, including  
20          groundwater, storage water, and surface water.

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

1           (10) UPSTREAM WATER USER.—The term “up-  
2           stream water user” means a non-Federal water user  
3           that—

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

6                   (B) is a signatory to the Agreement as a  
7                   party to the East Fork of the Owyhee River ad-  
8                   judication.

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

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

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

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

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

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

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

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

15 (b) ADMINISTRATION.—

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

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

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

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

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

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

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

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

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

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

22 (b) DEVELOPMENT FUND.—

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

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

3 (2) USE OF FUNDS.—

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

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

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

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

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

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

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

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

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

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

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

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

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

18 (vii) To pay the costs of—

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

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

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

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

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

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

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

16 (c) MAINTENANCE FUND.—

17 (1) ESTABLISHMENT.—There is established in  
18 the Treasury of the United States a fund to be  
19 known as the “Shoshone-Paiute Tribes Operation  
20 and Maintenance Fund”.

21 (2) USE OF FUNDS.—The Tribes shall use  
22 amounts in the Maintenance Fund to pay or provide  
23 reimbursement for—

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

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

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

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

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

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

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

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

1           (1) IN GENERAL.—There is authorized to be  
2           appropriated an amount equal to the additional in-  
3           terest that would have accrued on amounts in the  
4           Funds during the period beginning on the date of  
5           completion of the event described in section 9(d)(3)  
6           and ending on the later of—

7                   (A) the date of completion of the event de-  
8                   scribed in section 9(d)(1); or

9                   (B) the date of completion of the event de-  
10                  scribed in section 9(d)(2).

11           (2) CALCULATION.—The interest authorized to  
12           be appropriated under paragraph (1) shall be cal-  
13           culated using the applicable rate for interest-bearing  
14           obligations of the United States.

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

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

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

3 (h) EXPENDITURES AND WITHDRAWAL.—

4 (1) TRIBAL MANAGEMENT PLAN.—

5 (A) IN GENERAL.—The Tribes may with-  
6 draw all or part of amounts in the Funds on  
7 approval by the Secretary of a tribal manage-  
8 ment plan as described in the American Indian  
9 Trust Fund Management Reform Act of 1994  
10 (25 U.S.C. 4001 et seq.).

11 (B) REQUIREMENTS.—In addition to the  
12 requirements under the American Indian Trust  
13 Fund Management Reform Act of 1994 (25  
14 U.S.C. 4001 et seq.), the tribal management  
15 plan shall require that the Tribes spend any  
16 amounts withdrawn from the Funds in accord-  
17 ance with the purposes described in subsection  
18 (b)(2) or (c)(2).

19 (C) ENFORCEMENT.—The Secretary may  
20 take judicial or administrative action to enforce  
21 the provisions of any tribal management plan to  
22 ensure that any amounts withdrawn from the  
23 Funds under the plan are used in accordance  
24 with this Act and the Agreement.

1 (D) LIABILITY.—If the Tribes exercise the  
2 right to withdraw amounts from the Funds,  
3 neither the Secretary nor the Secretary of the  
4 Treasury shall retain any liability for the ex-  
5 penditure or investment of the amounts.

6 (2) EXPENDITURE PLAN.—

7 (A) IN GENERAL.—The Tribes shall sub-  
8 mit to the Secretary for approval an expendi-  
9 ture plan for any portion of the amounts in the  
10 Funds that the Tribes do not withdraw under  
11 the tribal management plan.

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

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

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

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

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

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

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

1           (1) all claims for water rights in the State of  
2 Nevada that the Tribes, or the United States acting  
3 in its capacity as trustee for the Tribes, asserted, or  
4 could have asserted, in any proceeding, including  
5 pending proceedings before the Nevada State Engi-  
6 neer to determine the extent and nature of the water  
7 rights of the Tribes in the East Fork of the Owyhee  
8 River in Nevada, up to and including the effective  
9 date, except to the extent that such rights are recog-  
10 nized in the Agreement or this Act; and

11           (2) all claims for damages, losses or injuries to  
12 water rights or claims of interference with, diversion  
13 or taking of water rights (including claims for injury  
14 to lands resulting from such damages, losses, inju-  
15 ries, interference with, diversion, or taking of water  
16 rights) within the State of Nevada that first accrued  
17 at any time up to and including the effective date.

18           (b) WAIVER AND RELEASE OF CLAIMS BY TRIBES  
19 AGAINST UNITED STATES.—The Tribes, on behalf of  
20 themselves and their members, are authorized to execute  
21 a waiver and release of—

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

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

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

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

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

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

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

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

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

1 as may be available in the decree court or the appro-  
2 priate Federal court;

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

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

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

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

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

4           (2) the Fourth Judicial District Court, Elko  
5           County, Nevada, has issued a judgment and decree  
6           consistent with the Agreement from which no fur-  
7           ther appeal can be taken; and

8           (3) the amounts authorized under subsections  
9           (b)(3) and (c)(3) of section 8 have been appro-  
10          priated.

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

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

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

20          (f) TOLLING OF CLAIMS.—

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

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

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

9 **SEC. 10. MISCELLANEOUS.**

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

13 (1) the settlement described in the Agreement;

14 or

15 (2) this Act.

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

18 (1) establishes a standard for quantifying—

19 (A) a Federal reserved water right;

20 (B) an aboriginal claim; or

21 (C) any other water right claim of an In-  
22 dian tribe in a judicial or administrative pro-  
23 ceeding;

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

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

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

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

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

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

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

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

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

5           (e) JURISDICTION.—

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

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

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

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

21                 (A) interpret Federal law regarding the  
22                 health, safety, or the environment or determine  
23                 the duties of the United States or other parties  
24                 pursuant to such Federal law; or

1 (B) conduct judicial review of a Federal  
2 agency action.

Passed the House of Representatives September 17,  
2008.

Attest: LORRAINE C. MILLER,  
*Clerk.*