

Union Calendar No. 529

110TH CONGRESS
2^D SESSION

H. R. 5293

[Report No. 110–815]

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

JULY 31, 2008

Additional sponsor: Ms. BERKLEY

JULY 31, 2008

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

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

[For text of introduced bill, see copy of bill as introduced on February 7, 2008]

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 Tribes*
5 *of the Duck Valley Reservation Water Rights Settlement*
6 *Act”.*

7 **SEC. 2. FINDINGS.**

8 *Congress finds that—*

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

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

20 *(3) uncertainty concerning the extent of the Sho-*
21 *shone-Paiute Tribes’ water rights has resulted in lim-*
22 *ited access to water and inadequate financial re-*
23 *sources necessary to achieve self-determination and*
24 *self-sufficiency;*

1 (4) *in 2006, the Tribes, the State of Idaho, the*
2 *affected individual water users, and the United States*
3 *resolved all tribal claims to water rights in the Snake*
4 *River Basin Adjudication through a consent decree*
5 *entered by the District Court of the Fifth Judicial*
6 *District of the State of Idaho, requiring no further*
7 *Federal action to quantify the Tribes' water rights in*
8 *the State of Idaho;*

9 (5) *as of the date of enactment of this Act, pro-*
10 *ceedings to determine the extent and nature of the*
11 *water rights of the Tribes in the East Fork of the*
12 *Owyhee River in Nevada are pending before the Ne-*
13 *vada State Engineer;*

14 (6) *final resolution of the Tribes' water claims in*
15 *the East Fork of the Owyhee River adjudication*
16 *will—*

17 (A) *take many years;*

18 (B) *entail great expense;*

19 (C) *continue to limit the access of the Tribes*
20 *to water, with economic and social consequences;*

21 (D) *prolong uncertainty relating to the*
22 *availability of water supplies; and*

23 (E) *seriously impair long-term economic*
24 *planning and development for all parties to the*
25 *litigation;*

1 (7) *after many years of negotiation, the Tribes,*
2 *the State, and the upstream water users have entered*
3 *into a settlement agreement to resolve permanently all*
4 *water rights of the Tribes in the State; and*

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

7 **SEC. 3. PURPOSES.**

8 *The purposes of this Act are—*

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

12 (A) *the United States;*

13 (B) *the State;*

14 (C) *the Tribes; and*

15 (D) *the upstream water users;*

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

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

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

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

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

7 **SEC. 4. DEFINITIONS.**

8 *In this Act:*

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

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

21 (3) *EAST FORK OF THE OWYHEE RIVER.*—The
22 term “East Fork of the Owyhee River” means the por-
23 tion of the east fork of the Owyhee River that is lo-
24 cated 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 section*
4 *8(c)(1).*

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

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

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

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

20 (9) *TRIBES.*—*The term “Tribes” means the Sho-*
21 *shone-Paiute Tribes of the Duck Valley Reservation.*

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

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

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

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

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

12 (b) *SECRETARIAL AUTHORIZATION.*—The Secretary is
13 authorized and directed to execute the Agreement as ap-
14 proved by Congress.

15 (c) *EXCEPTION FOR TRIBAL WATER MARKETING.*—
16 Notwithstanding any language in the Agreement to the con-
17 trary, nothing in this Act authorizes the Tribes to use or
18 authorize others to use tribal water rights off the Reserva-
19 tion, other than use for storage at Wild Horse Reservoir
20 for use on tribal land and for the allocation of 265 acre
21 feet to Upstream Water Users under the Agreement, or use
22 on tribal land off the Reservation.

23 (d) *ENVIRONMENTAL COMPLIANCE.*—Execution of the
24 Agreement by the Secretary under this section shall not con-
25 stitute major Federal action under the National Environ-

1 *mental Policy Act (42 U.S.C. 4321 et seq.). The Secretary*
2 *shall carry out all environmental compliance required by*
3 *Federal law in implementing the Agreement.*

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

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

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

12 (b) *ADMINISTRATION.—*

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

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

1 (c) *TRIBAL WATER RIGHTS NOT SUBJECT TO LOSS.*—
2 *The tribal water rights shall not be subject to loss by aban-*
3 *donment, forfeiture, or nonuse.*

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

5 (a) *STATUS OF THE DUCK VALLEY INDIAN IRRIGATION*
6 *PROJECT.*—*Nothing in this Act shall affect the status of the*
7 *Duck Valley Indian Irrigation Project under Federal law.*

8 (b) *CAPITAL COSTS NONREIMBURSABLE.*—*The capital*
9 *costs associated with the Duck Valley Indian Irrigation*
10 *Project as the date of enactment of this Act, including any*
11 *capital cost incurred with funds distributed under this Act*
12 *for the Duck Valley Indian Irrigation Project, shall be non-*
13 *reimbursable.*

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

15 (a) *DEFINITION OF FUNDS.*—*In this section, the term*
16 *“Funds” means—*

17 (1) *the Development Fund; and*

18 (2) *the Maintenance Fund.*

19 (b) *DEVELOPMENT FUND.*—

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

24 (2) *USE OF FUNDS.*—*The Tribes shall use*
25 *amounts in the Development Fund to rehabilitate*

1 *and, if the Tribes choose, to expand the Duck Valley*
2 *Indian Irrigation Project, or for any of the following*
3 *purposes:*

4 *(A) To pay or reimburse costs incurred by*
5 *the Tribes in acquiring land and water rights.*

6 *(B) For purposes of cultural preservation.*

7 *(C) To restore or improve fish or wildlife*
8 *habitat.*

9 *(D) For fish or wildlife production, water*
10 *resource development, or agricultural develop-*
11 *ment.*

12 *(E) For water resource planning and devel-*
13 *opment.*

14 *(F) To pay the costs of—*

15 *(i) designing and constructing water*
16 *supply and sewer systems for tribal commu-*
17 *nities, including a water quality testing*
18 *laboratory;*

19 *(ii) other appropriate water-related*
20 *projects and other related economic develop-*
21 *ment projects;*

22 *(iii) the development of a water code;*

23 *and*

24 *(iv) other costs of implementing the*
25 *Agreement.*

1 (3) *AUTHORIZATION OF APPROPRIATIONS.—*
2 *There is authorized to be appropriated to the Sec-*
3 *retary for deposit in the Development Fund*
4 *\$9,000,000 for each of fiscal years 2008 through 2012.*

5 (c) *MAINTENANCE FUND.—*

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

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

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

17 (B) *operation, maintenance, and replace-*
18 *ment costs of water supply and sewer systems for*
19 *tribal communities, including the operation and*
20 *maintenance costs of a water quality testing lab-*
21 *oratory.*

22 (3) *AUTHORIZATION OF APPROPRIATIONS.—*
23 *There is authorized to be appropriated to the Sec-*
24 *retary for deposit in the Maintenance Fund*
25 *\$3,000,000 for each of fiscal years 2008 through 2012.*

1 (d) *AVAILABILITY OF AMOUNTS FROM FUND.*—
2 *Amounts made available under subsections (b)(3) and (c)(3)*
3 *shall be available for expenditure or withdrawal only after*
4 *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 Manage-*
7 *ment Reform Act of 1994 (25 U.S.C. 4001 et seq.) shall*
8 *manage the Funds, including by investing amounts from*
9 *the Funds in accordance with the Act of April 1, 1880 (25*
10 *U.S.C. 161), and the first section of the Act of June 24,*
11 *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 ap-*
16 *proval by the Secretary of a tribal management*
17 *plan as described in the American Indian Trust*
18 *Fund Management Reform Act of 1994 (25*
19 *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 plan*
24 *shall require that the Tribes spend any amounts*
25 *withdrawn from the Funds in accordance with*

1 *the purposes described in subsection (b)(2) or*
2 *(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, nei-*
11 *ther the Secretary nor the Secretary of the Treas-*
12 *ury shall retain any liability for the expenditure*
13 *or investment of the amounts.*

14 (2) *EXPENDITURE PLAN.*—

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

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

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

1 *shall approve the plan if the Secretary deter-*
2 *mines that the plan is reasonable and consistent*
3 *with this Act and the Agreement.*

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

8 (3) *FUNDING AGREEMENT.*—*Notwithstanding*
9 *any other provision of this Act, on receipt of a request*
10 *from the Tribes, the Secretary shall include an*
11 *amount from funds made available under this section*
12 *in the funding agreement of the Tribes under title IV*
13 *of the Indian Self-Determination and Education As-*
14 *istance Act (25 U.S.C. 458aa et seq.), for use in ac-*
15 *cordance with subsections (b)(2) and (c)(2). No*
16 *amount made available under this Act may be re-*
17 *quested until the waivers under section 9(a) take ef-*
18 *fect.*

19 (g) *NO PER CAPITA PAYMENTS.*—*No amount from the*
20 *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 AND*
25 *UNITED STATES AS TRUSTEE FOR TRIBES.*—*The Tribes*

1 *and the United States on behalf of the Tribes, are authorized*
2 *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 Tribes,*
5 *or the United States as trustee for the Tribes, asserted*
6 *or could have asserted in any court proceeding; and*

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

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

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

21 (2) *all claims for damages, losses, or injuries to*
22 *water rights, including claims of interference, diver-*
23 *sion, or taking of water, or claims for failure to pro-*
24 *tect, acquire, or develop water or water rights within*
25 *the East Fork of the Owyhee River, and claims for*

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

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

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

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

19 *(2) all rights to use and protect water rights ac-*
20 *quired pursuant to any State law;*

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

23 *(4) all rights to land outside the Reservation;*
24 *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 sec-*
7 *tion 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 as*
11 *approved by Congress;*

12 (2) *all parties to the Agreement have executed the*
13 *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 further*
17 *appeal can be taken; and*

18 (4) *the amounts authorized under subsections*
19 *(b)(3) and (c)(3) of section 8 have been appropriated.*

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

23 (1) *the Agreement and this Act shall not take ef-*
24 *fect; 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 States*
4 *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 this*
10 *Act and ending on the date on which the amounts au-*
11 *thorized to be appropriated under subsections (b)(3)*
12 *and (c)(3) of section 8 are appropriated.*

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

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

1 **SEC. 10. MISCELLANEOUS.**

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

5 (1) *the settlement described in the Agreement; or*

6 (2) *this Act.*

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

9 (1) *establishes a standard for quantifying—*

10 (A) *a Federal reserved water right;*

11 (B) *an aboriginal claim; or*

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

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

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

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

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

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

1 (e) *JURISDICTION.*—

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

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

10 (3) *CONSENT TO JURISDICTION.*—*The United*
11 *States consents to jurisdiction in a proper forum for*
12 *purposes of enforcing the provisions of the Agreement.*

13 (4) *EFFECT OF SUBSECTION.*—*Nothing in this*
14 *subsection confers jurisdiction on any State court*
15 *to—*

16 (A) *enforce Federal environmental laws re-*
17 *lating to the duties of the United States under*
18 *this Act; or*

19 (B) *conduct judicial review of a Federal*
20 *agency action.*

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H. R. 5293

[Report No. 110-815]

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.

JULY 31, 2008

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