

110TH CONGRESS
1ST SESSION

S. 462

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

IN THE SENATE OF THE UNITED STATES

JANUARY 31, 2007

Mr. REID (for himself and Mr. ENSIGN) introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

A BILL

To approve the settlement of the water rights claims of the Shoshone-Paiute Tribes of the Duck Valley Indian 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 Duck Valley Water Rights Settlement Act”.

6 **SEC. 2. FINDINGS.**

7 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 right to water of the Shoshone-Paiute Tribes has
14 limited the access of the Tribes to water and finan-
15 cial resources necessary to achieve self-determination
16 and 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 implement the
24 Tribes' 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 are pending before the
4 Nevada State Engineer;

5 (6) final resolution through litigation of the
6 water claims of the Tribes will—

7 (A) take many years;

8 (B) entail great expense;

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

12 (D) prolong uncertainty relating to the
13 availability of water supplies; and

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

17 (7) after many years of negotiation, the United
18 States, the Tribes, the State, and the upstream
19 water users have entered into a settlement agree-
20 ment to resolve permanently all water rights of the
21 Tribes in the State; and

22 (8) the Tribes have certain water-related claims
23 for damages against the United States.

24 **SEC. 3. PURPOSES.**

25 The purposes of this Act are—

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

(A) the United States;

(B) the State;

(C) the Tribes; and

(D) the upstream water users;

(2) to achieve a fair, equitable, and final settlement of all claims of the Tribes, members of the Tribes, and the United States on behalf of the Tribes to the East Fork of the Owyhee River in the State;

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

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

(5) to require the Secretary to perform all obligations of the Secretary under the Agreement and this Act; and

(6) 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. 4. DEFINITIONS.

In this Act:

1 (1) AGREEMENT.—The term “Agreement”
 2 means the agreement entitled the “Agreement to Es-
 3 tablish the Relative Water Rights of the Shoshone-
 4 Paiute Tribes of the Duck Valley Indian Reservation
 5 and the Upstream Water Users, East Fork Owyhee
 6 River” (including all attachments to that agree-
 7 ment).

8 (2) DEVELOPMENT FUND.—The term “Devel-
 9 opment Fund” means the Shoshone-Paiute Tribes
 10 Water Rights Development Fund established by sec-
 11 tion 7(b)(1).

12 (3) EAST FORK OF THE OWYHEE RIVER.—The
 13 term “East Fork of the Owyhee River” means the
 14 portion of the east fork of the Owyhee River that is
 15 located in the State.

16 (4) MAINTENANCE FUND.—The term “Mainte-
 17 nance Fund” means the Shoshone-Paiute Tribes Op-
 18 eration and Maintenance Fund established by sec-
 19 tion 7(c)(1).

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

22 (6) STATE.—The term “State” means the State
 23 of Nevada.

24 (7) TRIBAL WATER RIGHT.—The term “tribal
 25 water right” means a right of the Tribes described

1 in the Agreement relating to water, including
 2 groundwater, storage water, and surface water.

3 (8) TRIBES.—The term “Tribes” means the
 4 Shoshone-Paiute Tribes of the Duck Valley Indian
 5 Reservation.

6 (9) UPSTREAM WATER USER.—The term “up-
 7 stream water user” means an individual water user
 8 that—

9 (A) is located upstream from the Duck
 10 Valley Indian Reservation on the East Fork of
 11 the Owyhee River; and

12 (B) is a signatory to the Agreement.

13 **SEC. 5. APPROVAL, RATIFICATION, AND CONFIRMATION OF**
 14 **AGREEMENT.**

15 (a) IN GENERAL.—Except as provided in section 1f
 16 of article III of the Agreement, and except to the extent
 17 that the Agreement otherwise conflicts with this Act, the
 18 Agreement is approved, ratified, and confirmed.

19 (b) PERFORMANCE OF OBLIGATIONS.—The Sec-
 20 retary and any other head of a Federal agency obligated
 21 under the Agreement shall perform any action necessary
 22 to carry out an obligation under the Agreement in accord-
 23 ance with this Act.

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

2 (a) IN GENERAL.—The Secretary shall hold the tribal
3 water rights in trust on behalf of the United States for
4 the benefit of the Tribes.

5 (b) ADMINISTRATION.—

6 (1) ENACTMENT OF WATER CODE.—Not later
7 than 3 years after the date of enactment of this Act,
8 the Tribes shall enact a water code to administer
9 tribal water rights.

10 (2) INTERIM ADMINISTRATION.—The Secretary
11 shall regulate the tribal water rights during the pe-
12 riod beginning on the date of enactment of this Act
13 and ending on the date on which the Tribes enact
14 a water code under paragraph (1).

15 (c) LOSS OF TRIBAL WATER RIGHTS.—The tribal
16 water rights shall not be subject to loss by abandonment,
17 forfeiture, or nonuse.

18 **SEC. 7. DEVELOPMENT AND MAINTENANCE FUNDS.**

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

21 (1) the Development Fund; and

22 (2) the Maintenance Fund.

23 (b) DEVELOPMENT FUND.—

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

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

(2) USE OF FUNDS.—The Tribes shall use amounts in the Development Fund—

(A) to pay or reimburse costs incurred by the Tribes in acquiring land and water rights;

(B) for purposes of cultural preservation;

(C) to restore or improve fish or wildlife habitat;

(D) for fish or wildlife production, water resource development, agricultural development, rehabilitation, and expansion of the Duck Valley Irrigation Project;

(E) for water resource planning and development; or

(F) to pay the costs of designing and constructing water supply and sewer systems for tribal communities, including—

(i) a water quality testing laboratory;

(ii) other appropriate water-related projects and other related economic development projects;

(iii) the development of a water code;

and

1 (iv) other costs of implementing the
2 Agreement.

3 (3) AUTHORIZATION OF APPROPRIATIONS.—

4 There is authorized to be appropriated to the Sec-
5 retary for deposit in the Development Fund
6 \$9,000,000 for each of fiscal years 2008 through
7 2012.

8 (c) MAINTENANCE FUND.—

9 (1) ESTABLISHMENT.—There is established in
10 the Treasury of the United States a fund to be
11 known as the “Shoshone-Paiute Tribes Operation
12 and Maintenance Fund”.

13 (2) USE OF FUNDS.—The Tribes shall use
14 amounts in the Maintenance Fund to pay or provide
15 reimbursement for the costs of—

16 (A) operation and maintenance of the
17 Duck Valley Irrigation Project and other water-
18 related projects funded under this Act; or

19 (B) water supply and sewer systems for
20 tribal communities, including the operation and
21 maintenance costs of a water quality testing
22 laboratory.

23 (3) AUTHORIZATION OF APPROPRIATIONS.—

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

1 \$3,000,000 for each of fiscal years 2008 through
2 2012.

3 (d) ADMINISTRATION OF FUNDS.—

4 (1) IN GENERAL.—The Secretary, in accord-
5 ance with the American Indian Trust Fund Manage-
6 ment Reform Act of 1994 (25 U.S.C. 4001 et seq.),
7 this Act, and the Agreement, shall manage the
8 Funds, including by investing amounts from the
9 Funds in accordance with—

10 (A) the Act of April 1, 1880 (25 U.S.C.
11 161); and

12 (B) the first section of the Act of June 24,
13 1938 (25 U.S.C. 162a).

14 (2) DISTRIBUTIONS.—

15 (A) WITHDRAWALS.—

16 (i) IN GENERAL.—During any fiscal
17 year, the Tribes may withdraw amounts
18 from the Funds if the Secretary approves
19 a plan of the Tribes to withdraw amounts
20 under section 202 of the American Indian
21 Trust Fund Management Reform Act of
22 1994 (25 U.S.C. 4022).

23 (ii) PLAN TO WITHDRAW AMOUNTS.—

24 (I) INCLUSION.—In addition to
25 any information required under sec-

tion 202 of the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4022), a plan of the Tribes to withdraw amounts under this subparagraph shall include a requirement that the Tribes spend the amounts withdrawn from the Funds during a fiscal year for 1 or more uses described in subsection (b)(2) or (c)(2).

(II) ENFORCEMENT.—The Secretary may take administrative or judicial action to enforce a plan of the Tribes to withdraw amounts.

(B) REMAINING AMOUNTS.—

(i) IN GENERAL.—On approval of an expenditure plan submitted by the Tribes under clause (ii), the Secretary shall distribute to the Tribes amounts in the Funds not withdrawn by the Tribes during the preceding fiscal year.

(ii) EXPENDITURE PLAN.—

(I) IN GENERAL.—For each fiscal year, the Tribes shall submit to the Secretary for approval an expendi-

1 ture plan for amounts described in
2 clause (i).

3 (II) INCLUSIONS.—An expendi-
4 ture plan under subclause (I) shall in-
5 clude—

6 (aa) an accounting by the
7 Tribes of any funds withdrawn
8 by the Tribes from the Funds
9 during the preceding fiscal year,
10 including a description of any use
11 by the Tribes of the funds and
12 the amount remaining in the
13 Funds for the preceding fiscal
14 year; and

15 (bb) a description of the
16 means by which the Tribes will
17 use any amount distributed
18 under this subparagraph.

19 (iii) APPROVAL.—The Secretary shall
20 approve an expenditure plan under this
21 subparagraph if the Secretary determines
22 that the plan is—

23 (I) reasonable; and

24 (II) consistent with this Act and
25 the Agreement.

1 (C) LIMITATIONS.—

2 (i) TIMING.—No amount from the
3 Funds (including any interest income ac-
4 cruing to the Funds) shall be distributed
5 until the waivers under section 8(a) take
6 effect.

7 (ii) NO PER CAPITA DISTRIBUTIONS.—No amount from the Funds (in-
8 cluding any interest income accruing to the
9 Funds) shall be distributed to a member of
10 the Tribes on a per capita basis.
11

12 (3) FUNDING AGREEMENT.—Notwithstanding
13 any other provision of this Act, on receipt of a re-
14 quest from the Tribes, the Secretary shall include an
15 amount appropriated under this subsection in the
16 funding agreement of the Tribes under title IV of
17 the Indian Self-Determination and Education Assist-
18 ance Act (25 U.S.C. 458aa et seq.), for use in ac-
19 cordance with subsections (b)(2) and (c)(2).

20 (4) LIABILITY.—The Secretary and the Sec-
21 retary of the Treasury shall not retain any liability
22 for the expenditure or investment of amounts dis-
23 tributed to the Tribes under this subsection.

24 (5) CAPITAL COSTS NONREIMBURSABLE.—The
25 capital costs associated with the Duck Valley Indian

1 Irrigation Project as of the date of enactment of this
2 Act, including any capital cost incurred with funds
3 distributed under this subsection for that project,
4 shall be permanently nonreimbursable.

5 **SEC. 8. TRIBAL WAIVER OF CLAIMS.**

6 (a) WAIVERS.—

7 (1) IN GENERAL.—Except as otherwise pro-
8 vided in the Agreement and this Act, the Tribes, and
9 the United States on behalf of the Tribes, waive and
10 release—

11 (A) all claims to water in the East Fork of
12 the Owyhee River and all claims to injury relat-
13 ing to that water; and

14 (B) all claims against the State, any agen-
15 cy or political subdivision of the State, or any
16 person, entity, or corporation relating to injury
17 to a right of the Tribe under any Executive
18 order entered on behalf of the Tribes, to the ex-
19 tent that the injury—

20 (i) resulted from a flow modification
21 or a reduction in the quantity of water
22 available; and

23 (ii) accrued on or before the effective
24 date of the Agreement.

1 (2) ENFORCEMENT OF WAIVERS.—A waiver of
 2 a claim under this subsection by the Tribes, or the
 3 United States on behalf of the Tribes, shall be en-
 4 forceable in the appropriate forum.

5 (3) EFFECTIVE DATE.—A waiver by the Tribes,
 6 or the United States on behalf of the Tribes, of a
 7 claim under this subsection shall take effect on the
 8 date on which the Secretary publishes in the Federal
 9 Register a statement of findings that includes a
 10 finding that—

11 (A) all parties to the Agreement have exe-
 12 cuted the Agreement;

13 (B) a decree acceptable to each party to
 14 the Agreement has been entered by the Fourth
 15 Judicial District Court, Elko County, Nevada;
 16 and

17 (C) the Agreement has been ratified under
 18 section 5(a).

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

21 (1) IN GENERAL.—In consideration of perform-
 22 ance by the United States of all actions required by
 23 the Agreement and this Act, including the authoriza-
 24 tion of appropriations under subsections (b)(3) and
 25 (c)(3) of section 7, the Tribe shall execute a waiver

1 and release of any claim against the United States
2 for—

3 (A) a water right in the East Fork of the
4 Owyhee River;

5 (B) an injury to a right described in sub-
6 paragraph (A);

7 (C) breach of trust—

8 (i) for failure to protect, acquire, or
9 develop a water right that accrued on or
10 before the effective date of a waiver under
11 this subsection; or

12 (ii) arising out of the negotiation or
13 adoption of the Agreement; or

14 (D) a fishing right under any Executive
15 order, to the extent that an injury to such a
16 right—

17 (i) resulted from a reduction in the
18 quantity of water available in the East
19 Fork of the Owyhee River; and

20 (ii) accrued on or before the effective
21 date of a waiver under this subsection.

22 (2) EFFECTIVE DATE.—

23 (A) IN GENERAL.—The waiver under para-
24 graph (1) takes effect on the date on which the
25 amounts authorized to be appropriated under

1 subsections (b)(3) and (c)(3) of section 7 are
2 distributed to the Tribes.

3 (B) TOLLING OF CLAIMS.—

4 (i) IN GENERAL.—Each applicable pe-
5 riod of limitation and time-based equitable
6 defense relating to a claim described in
7 paragraph (1) shall be tolled for the period
8 beginning on the date of enactment of this
9 Act and ending on the date on which the
10 amounts authorized to be appropriated
11 under subsections (b)(3) and (c)(3) of sec-
12 tion 7 are distributed to the Tribes.

13 (ii) EFFECT OF SUBPARAGRAPH.—

14 Nothing in this subparagraph revives any
15 claim or tolls any period of limitation or
16 time-based equitable defense that expired
17 before the date of enactment of this Act.

18 (c) RETENTION OF RIGHTS.—

19 (1) IN GENERAL.—The Tribes shall retain all
20 rights not waived by the Tribes, or the United
21 States on behalf of the Tribes, in the Agreement or
22 this Act.

23 (2) CLAIMS OUTSIDE RESERVATION.—Nothing
24 in the Agreement or this Act shall be considered to

1 be a waiver by the Tribes of any claim to a right on
 2 land outside the Duck Valley Indian Reservation.

3 (3) FUTURE ACQUISITION OF WATER RIGHTS.—

4 Nothing in the Agreement or this Act precludes the
 5 Tribes, or the United States as trustee for the
 6 Tribes, from acquiring a water right in the State to
 7 the same extent as any other entity in the State, in
 8 accordance with State law.

9 **SEC. 9. 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; or

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

4 (c) ADMISSION AGAINST INTEREST.—Nothing in this
 5 Act shall be considered to be an admission against interest
 6 by a party in any legal proceeding.

7 (d) DUCK VALLEY RESERVATION.—The Duck Valley
 8 Indian Reservation established by the Executive order
 9 dated April 16, 1877, as adjusted pursuant to the Execu-
 10 tive order dated May 4, 1886, and Executive order num-
 11 bered 1222 and dated July 1, 1910, for use and occupa-
 12 tion by the Western Shoshones and the Paddy Cap Band
 13 of Paiutes shall be—

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

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

18 (e) JURISDICTION.—

19 (1) SUBJECT MATTER JURISDICTION.—Nothing
 20 in the Agreement or this Act restricts, enlarges, or
 21 otherwise determines the subject matter jurisdiction
 22 of any Federal, State, or tribal court.

23 (2) CIVIL OR REGULATORY JURISDICTION.—
 24 Nothing in the Agreement or this Act impairs or im-

1 pedes the exercise of any civil or regulatory author-
2 ity of the United States, the State, or the Tribes.

3 (3) CONSENT TO JURISDICTION.—The United
4 States consents to jurisdiction in a proper forum for
5 purposes of enforcing the provisions of the Agree-
6 ment.

7 (4) EFFECT OF SUBSECTION.—Nothing in this
8 subsection confers jurisdiction on any State court
9 to—

10 (A) enforce Federal environmental laws re-
11 lating to the duties of the United States under
12 this Act; or

13 (B) conduct judicial review of a Federal
14 agency action in accordance with this Act.

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