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110TH CONGRESS
2D SESSION

S. 462

[Report No. 110–415]

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 SENATE OF THE UNITED STATES

JANUARY 31, 2007

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

JULY 10 (legislative day, JULY 9), 2008

Reported by Mr. DORGAN, with an amendment

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

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,*

1 **SECTION 1. SHORT TITLE.**

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

4 **SEC. 2. FINDINGS.**

5 Congress finds that—

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

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

17 (3) uncertainty concerning the extent of the
18 right to water of the Shoshone-Paiute Tribes has
19 limited the access of the Tribes to water and finan-
20 cial resources necessary to achieve self-determination
21 and self-sufficiency;

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

1 Fifth Judicial District of the State of Idaho, requiring
2 no further Federal action to implement the
3 Tribes' water rights in the State of Idaho;

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

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

10 (A) take many years;

11 (B) entail great expense;

12 (C) continue to limit the access of the
13 Tribes to water, with economic and social consequences;
14

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

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

20 (7) after many years of negotiation, the United
21 States, the Tribes, the State, and the upstream
22 water users have entered into a settlement agreement to resolve permanently all water rights of the
23 Tribes in the State; and
24

1 ~~(8) the Tribes have certain water-related claims~~
 2 ~~for damages against the United States.~~

3 **SEC. 3. PURPOSES.**

4 The purposes of this Act are—

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

8 ~~(A) the United States;~~

9 ~~(B) the State;~~

10 ~~(C) the Tribes; and~~

11 ~~(D) the upstream water users;~~

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

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

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

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

24 ~~(6) to authorize the actions and appropriations~~
 25 ~~necessary for the United States to meet the obliga-~~

1 tions of the United States under the Agreement and
 2 this Act.

3 **SEC. 4. DEFINITIONS.**

4 In this Act:

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

12 (2) DEVELOPMENT FUND.—The term “Devel-
 13 opment Fund” means the Shoshone-Paiute Tribes
 14 Water Rights Development Fund established by sec-
 15 tion 7(b)(1).

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

20 (4) MAINTENANCE FUND.—The term “Mainte-
 21 nance Fund” means the Shoshone-Paiute Tribes Op-
 22 eration and Maintenance Fund established by sec-
 23 tion 7(c)(1).

24 (5) SECRETARY.—The term “Secretary” means
 25 the Secretary of the Interior.

1 (6) STATE.—The term “State” means the State
2 of Nevada.

3 (7) TRIBAL WATER RIGHT.—The term “tribal
4 water right” means a right of the Tribes described
5 in the Agreement relating to water, including
6 groundwater, storage water, and surface water.

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

10 (9) UPSTREAM WATER USER.—The term “up-
11 stream water user” means an individual water user
12 that—

13 (A) is located upstream from the Duck
14 Valley Indian Reservation on the East Fork of
15 the Owyhee River; and

16 (B) is a signatory to the Agreement.

17 **SEC. 5. APPROVAL, RATIFICATION, AND CONFIRMATION OF**
18 **AGREEMENT.**

19 (a) IN GENERAL.—Except as provided in section 14
20 of article III of the Agreement, and except to the extent
21 that the Agreement otherwise conflicts with this Act, the
22 Agreement is approved, ratified, and confirmed.

23 (b) PERFORMANCE OF OBLIGATIONS.—The Sec-
24 retary and any other head of a Federal agency obligated
25 under the Agreement shall perform any action necessary

1 to carry out an obligation under the Agreement in accord-
 2 ance with this Act.

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

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

7 (b) **ADMINISTRATION.**—

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

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

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

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

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

23 (1) the Development Fund; and

24 (2) the Maintenance Fund.

25 (b) **DEVELOPMENT FUND.**—

1 (1) ~~ESTABLISHMENT.~~—There is established in
 2 the Treasury of the United States a fund to be
 3 known as the “Shoshone-Paiute Tribes Water
 4 Rights Development Fund”.

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

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

9 (B) for purposes of cultural preservation;

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

12 (D) for fish or wildlife production, water
 13 resource development, agricultural development,
 14 rehabilitation, and expansion of the Duck Val-
 15 ley Irrigation Project;

16 (E) for water resource planning and devel-
 17 opment; or

18 (F) to pay the costs of designing and con-
 19 structing water supply and sewer systems for
 20 tribal communities, including—

21 (i) a water quality testing laboratory;

22 (ii) other appropriate water-related
 23 projects and other related economic devel-
 24 opment projects;

- 1 (iii) the development of a water code;
 2 and
 3 (iv) other costs of implementing the
 4 Agreement.

5 ~~(3)~~ AUTHORIZATION OF APPROPRIATIONS.—

6 There is authorized to be appropriated to the Sec-
 7 retary for deposit in the Development Fund
 8 \$9,000,000 for each of fiscal years 2008 through
 9 2012.

10 ~~(c)~~ MAINTENANCE FUND.—

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

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

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

21 ~~(B)~~ water supply and sewer systems for
 22 tribal communities; including the operation and
 23 maintenance costs of a water quality testing
 24 laboratory.

1 ~~(3) AUTHORIZATION OF APPROPRIATIONS.—~~

2 There is authorized to be appropriated to the Sec-
3 retary for deposit in the Maintenance Fund
4 \$3,000,000 for each of fiscal years 2008 through
5 2012.

6 ~~(d) ADMINISTRATION OF FUNDS.—~~

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

13 ~~(A) the Act of April 1, 1880 (25 U.S.C.~~
14 ~~161); and~~

15 ~~(B) the first section of the Act of June 24,~~
16 ~~1938 (25 U.S.C. 162a).~~

17 ~~(2) DISTRIBUTIONS.—~~

18 ~~(A) WITHDRAWALS.—~~

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

1 (ii) ~~PLAN TO WITHDRAW AMOUNTS.—~~

2 (I) ~~INCLUSION.—~~In addition to
 3 any information required under sec-
 4 tion 202 of the American Indian
 5 Trust Fund Management Reform Act
 6 of 1994 (25 U.S.C. 4022), a plan of
 7 the Tribes to withdraw amounts under
 8 this subparagraph shall include a re-
 9 quirement that the Tribes spend the
 10 amounts withdrawn from the Funds
 11 during a fiscal year for 1 or more
 12 uses described in subsection (b)(2) or
 13 (c)(2).

14 (II) ~~ENFORCEMENT.—~~The Sec-
 15 retary may take administrative or ju-
 16 dicial action to enforce a plan of the
 17 Tribes to withdraw amounts.

18 (B) ~~REMAINING AMOUNTS.—~~

19 (i) ~~IN GENERAL.—~~On approval of an
 20 expenditure plan submitted by the Tribes
 21 under clause (ii), the Secretary shall dis-
 22 tribute to the Tribes amounts in the Funds
 23 not withdrawn by the Tribes during the
 24 preceding fiscal year.

25 (ii) ~~EXPENDITURE PLAN.—~~

(I) IN GENERAL.—For each fiscal year, the Tribes shall submit to the Secretary for approval an expenditure plan for amounts described in clause (i).

(II) INCLUSIONS.—An expenditure plan under subclause (I) shall include—

(aa) an accounting by the Tribes of any funds withdrawn by the Tribes from the Funds during the preceding fiscal year, including a description of any use by the Tribes of the funds and the amount remaining in the Funds for the preceding fiscal year; and

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

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

1 (I) reasonable; and
 2 (II) consistent with this Act and
 3 the Agreement.

4 (C) LIMITATIONS.—

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

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

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

23 (4) LIABILITY.—The Secretary and the Sec-
 24 retary of the Treasury shall not retain any liability

1 for the expenditure or investment of amounts dis-
 2 tributed to the Tribes under this subsection.

3 ~~(5) CAPITAL COSTS NONREIMBURSABLE.—~~The
 4 capital costs associated with the Duck Valley Indian
 5 Irrigation Project as of the date of enactment of this
 6 Act, including any capital cost incurred with funds
 7 distributed under this subsection for that project,
 8 shall be permanently nonreimbursable.

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

10 ~~(a) WAIVERS.—~~

11 ~~(1) IN GENERAL.—~~Except as otherwise pro-
 12 vided in the Agreement and this Act, the Tribes, and
 13 the United States on behalf of the Tribes, waive and
 14 release—

15 ~~(A)~~ all claims to water in the East Fork of
 16 the Owyhee River and all claims to injury relat-
 17 ing to that water; and

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

1 (i) resulted from a flow modification
 2 or a reduction in the quantity of water
 3 available; and

4 (ii) accrued on or before the effective
 5 date of the Agreement.

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

10 ~~(3) EFFECTIVE DATE.—~~A waiver by the Tribes,
 11 or the United States on behalf of the Tribes, of a
 12 claim under this subsection shall take effect on the
 13 date on which the Secretary publishes in the Federal
 14 Register a statement of findings that includes a
 15 finding that—

16 ~~(A)~~ all parties to the Agreement have exe-
 17 cuted the Agreement;

18 ~~(B)~~ a decree acceptable to each party to
 19 the Agreement has been entered by the Fourth
 20 Judicial District Court, Elko County, Nevada;
 21 and

22 ~~(C)~~ the Agreement has been ratified under
 23 section 5(a).

24 ~~(b) WAIVER AND RELEASE OF CLAIMS AGAINST THE~~
 25 ~~UNITED STATES.—~~

1 (1) IN GENERAL.—In consideration of perform-
 2 ance by the United States of all actions required by
 3 the Agreement and this Act, including the authoriza-
 4 tion of appropriations under subsections (b)(3) and
 5 (c)(3) of section 7, the Tribe shall execute a waiver
 6 and release of any claim against the United States
 7 for—

8 (A) a water right in the East Fork of the
 9 Owyhee River;

10 (B) an injury to a right described in sub-
 11 paragraph (A);

12 (C) breach of trust—

13 (i) for failure to protect, acquire, or
 14 develop a water right that accrued on or
 15 before the effective date of a waiver under
 16 this subsection; or

17 (ii) arising out of the negotiation or
 18 adoption of the Agreement; or

19 (D) a fishing right under any Executive
 20 order, to the extent that an injury to such a
 21 right—

22 (i) resulted from a reduction in the
 23 quantity of water available in the East
 24 Fork of the Owyhee River; and

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

3 ~~(2) EFFECTIVE DATE.—~~

4 ~~(A) IN GENERAL.—~~The waiver under para-
5 graph (1) takes effect on the date on which the
6 amounts authorized to be appropriated under
7 subsections (b)(3) and (c)(3) of section 7 are
8 distributed to the Tribes.

9 ~~(B) TOLLING OF CLAIMS.—~~

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

19 ~~(ii) EFFECT OF SUBPARAGRAPH.—~~
20 Nothing in this subparagraph revives any
21 claim or tolls any period of limitation or
22 time-based equitable defense that expired
23 before the date of enactment of this Act.

24 ~~(c) RETENTION OF RIGHTS.—~~

1 ~~(1) IN GENERAL.~~—The Tribes shall retain all
 2 rights not waived by the Tribes, or the United
 3 States on behalf of the Tribes, in the Agreement or
 4 this Act.

5 ~~(2) CLAIMS OUTSIDE RESERVATION.~~—Nothing
 6 in the Agreement or this Act shall be considered to
 7 be a waiver by the Tribes of any claim to a right on
 8 land outside the Duck Valley Indian Reservation.

9 ~~(3) FUTURE ACQUISITION OF WATER RIGHTS.~~—
 10 Nothing in the Agreement or this Act precludes the
 11 Tribes, or the United States as trustee for the
 12 Tribes, from acquiring a water right in the State to
 13 the same extent as any other entity in the State, in
 14 accordance with State law.

15 **SEC. 9. MISCELLANEOUS.**

16 ~~(a) GENERAL DISCLAIMER.~~—The parties to the
 17 Agreement expressly reserve all rights not specifically
 18 granted, recognized, or relinquished by—

19 ~~(1) the settlement described in the Agreement;~~
 20 or

21 ~~(2) this Act.~~

22 ~~(b) LIMITATION OF CLAIMS AND RIGHTS.~~—Nothing
 23 in this Act—

24 ~~(1) establishes a standard for quantifying—~~

25 ~~(A) a Federal reserved water right;~~

1 (B) an aboriginal claim; or

2 (C) any other water right claim of an In-
3 dian tribe in a judicial or administrative pro-
4 ceeding; or

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

8 (e) ADMISSION AGAINST INTEREST.—Nothing in this
9 Act shall be considered to be an admission against interest
10 by a party in any legal proceeding.

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

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

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

22 (e) JURISDICTION.—

23 (1) SUBJECT MATTER JURISDICTION.—Nothing
24 in the Agreement or this Act restricts, enlarges, or

otherwise determines the subject matter jurisdiction of any Federal, State, or tribal court.

~~(2) CIVIL OR REGULATORY JURISDICTION.—~~

Nothing in the Agreement or this Act impairs or impedes the exercise of any civil or regulatory authority of the United States, the State, or the Tribes.

~~(3) CONSENT TO JURISDICTION.—~~The United

States consents to jurisdiction in a proper forum for purposes of enforcing the provisions of the Agreement.

~~(4) EFFECT OF SUBSECTION.—~~Nothing in this

subsection confers jurisdiction on any State court to—

(A) enforce Federal environmental laws re-

lating to the duties of the United States under this Act; or

(B) conduct judicial review of a Federal

agency action in accordance with this Act.

SECTION 1. SHORT TITLE.

This Act may be cited as the “Shoshone-Paiute Tribes of the Duck Valley Reservation Water Rights Settlement Act”.

SEC. 2. FINDINGS.

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 costly*
6 *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 permanent*
11 *reservation homeland;*

12 (3) *uncertainty concerning the extent of the Sho-*
13 *shone-Paiute Tribes' water rights has resulted in lim-*
14 *ited 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 States*
19 *resolved all tribal claims to water rights in the Snake*
20 *River Basin Adjudication through a consent decree*
21 *entered by the District Court of the Fifth Judicial*
22 *District of the State of Idaho, requiring no further*
23 *Federal action to quantify the Tribes' water rights in*
24 *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 in*
 7 *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 Tribes*
 12 *to water, with economic and social consequences;*

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

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

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

22 (8) *the Tribes also seek to resolve certain water-*
 23 *related claims 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 and members of Tribes to the waters of 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 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” means*
 2 *the agreement entitled the “Agreement to Establish*
 3 *the Relative Water Rights of the Shoshone-Paiute*
 4 *Tribes of the Duck Valley Reservation and the Up-*
 5 *stream Water Users, East Fork Owyhee River” and*
 6 *signed in counterpart between, on, or about Sep-*
 7 *tember 22, 2006, and January 15, 2007 (including*
 8 *all attachments to that Agreement).*

9 (2) *DEVELOPMENT FUND.*—*The term “Develop-*
 10 *ment Fund” means the Shoshone-Paiute Tribes Water*
 11 *Rights Development Fund established by section*
 12 *8(b)(1).*

13 (3) *EAST FORK OF THE OWYHEE RIVER.*—*The*
 14 *term “East Fork of the Owyhee River” means the por-*
 15 *tion of the east fork of the Owyhee River that is lo-*
 16 *cated in the State.*

17 (4) *MAINTENANCE FUND.*—*The term “Mainte-*
 18 *nance Fund” means the Shoshone-Paiute Tribes Op-*
 19 *eration and Maintenance Fund established by section*
 20 *8(c)(1).*

21 (5) *RESERVATION.*—*The term “Reservation”*
 22 *means the Duck Valley Reservation established by the*
 23 *Executive order dated April 16, 1877, as adjusted*
 24 *pursuant to the Executive order dated May 4, 1886,*
 25 *and Executive order numbered 1222 and dated July*

1 1, 1910, for use and occupation by the Western Sho-
 2 shones and the Paddy Cap Band of Paiutes.

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

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

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

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

13 (10) *UPSTREAM WATER USER.*—The term “up-
 14 stream water user” means a non-Federal water user
 15 that—

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

18 (B) is a signatory to the Agreement as a
 19 party to the East Fork of the Owyhee River ad-
 20 judication.

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

23 (a) *IN GENERAL.*—Except as provided in subsection
 24 (c) and except to the extent that the Agreement otherwise

1 *conflicts with provisions of this Act, the Agreement is ap-*
 2 *proved, ratified, and confirmed.*

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

6 (c) *EXCEPTION FOR TRIBAL WATER MARKETING.—*
 7 *Notwithstanding any language in the Agreement to the con-*
 8 *trary, nothing in this Act authorizes the Tribes to use or*
 9 *authorize others to use tribal water rights off the Reserva-*
 10 *tion, other than use for storage at Wild Horse Reservoir*
 11 *or use on tribal land off the Reservation.*

12 (d) *ENVIRONMENTAL COMPLIANCE.—Execution of the*
 13 *Agreement by the Secretary under this section shall not con-*
 14 *stitute major Federal action under the National Environ-*
 15 *mental Policy Act (42 U.S.C. 4321 et seq.). The Secretary*
 16 *shall carry out all environmental compliance required by*
 17 *Federal law in implementing the Agreement.*

18 (e) *PERFORMANCE OF OBLIGATIONS.—The Secretary*
 19 *and any other head of a Federal agency obligated under*
 20 *the Agreement shall perform actions necessary to carry out*
 21 *an obligation under the Agreement in accordance with this*
 22 *Act.*

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

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

1 (b) *ADMINISTRATION.*—

2 (1) *ENACTMENT OF WATER CODE.*—Not later
3 than 3 years after the date of enactment of this Act,
4 the Tribes, in accordance with provisions of the
5 Tribes' constitution and subject to the approval of the
6 Secretary, shall enact a water code to administer trib-
7 al water rights.

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

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

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

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

20 (b) *CAPITAL COSTS NONREIMBURSABLE.*—The capital
21 costs associated with the Duck Valley Indian Irrigation
22 Project as of the date of enactment of this Act, including
23 any capital cost incurred with funds distributed under this
24 Act for the Duck Valley Indian Irrigation Project, shall be
25 nonreimbursable.

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

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

4 (1) *the Development Fund; and*

5 (2) *the Maintenance Fund.*

6 (b) *DEVELOPMENT FUND.*—

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

11 (2) *USE OF FUNDS.*—*The Tribes shall use*
 12 *amounts in the Development Fund to rehabilitate*
 13 *and, if the Tribes choose, to expand the Duck Valley*
 14 *Indian Irrigation Project, or for any of the following*
 15 *purposes:*

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

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

19 (C) *To restore or improve fish or wildlife*
 20 *habitat.*

21 (D) *For fish or wildlife production, water*
 22 *resource development, or agricultural develop-*
 23 *ment.*

24 (E) *For water resource planning and devel-*
 25 *opment.*

26 (F) *To pay the costs of—*

1 (i) *designing and constructing water*
 2 *supply and sewer systems for tribal commu-*
 3 *nities, including a water quality testing*
 4 *laboratory;*

5 (ii) *other appropriate water-related*
 6 *projects and other related economic develop-*
 7 *ment projects;*

8 (iii) *the development of a water code;*
 9 *and*

10 (iv) *other costs of implementing the*
 11 *Agreement.*

12 (3) *AUTHORIZATION OF APPROPRIATIONS.—*

13 *There is authorized to be appropriated to the Sec-*
 14 *retary for deposit in the Development Fund*
 15 *\$9,000,000 for each of fiscal years 2008 through 2012.*

16 (c) *MAINTENANCE FUND.—*

17 (1) *ESTABLISHMENT.—There is established in*
 18 *the Treasury of the United States a fund to be known*
 19 *as the “Shoshone-Paiute Tribes Operation and Main-*
 20 *tenance 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 for*
 5 *tribal communities, including the operation and*
 6 *maintenance costs of a water quality testing lab-*
 7 *oratory.*

8 (3) *AUTHORIZATION OF APPROPRIATIONS.—*
 9 *There is authorized to be appropriated to the Sec-*
 10 *retary for deposit in the Maintenance Fund*
 11 *\$3,000,000 for each of fiscal years 2008 through 2012.*

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

16 (e) *ADMINISTRATION OF FUNDS.—The Secretary, in*
 17 *accordance with the American Indian Trust Fund Manage-*
 18 *ment Reform Act of 1994 (25 U.S.C. 4001 et seq.) shall*
 19 *manage the Funds, including by investing amounts from*
 20 *the Funds in accordance with the Act of April 1, 1880 (25*
 21 *U.S.C. 161), and the first section of the Act of June 24,*
 22 *1938 (25 U.S.C. 162a).*

23 (f) *EXPENDITURES AND WITHDRAWAL.—*

24 (1) *TRIBAL MANAGEMENT PLAN.—*

1 (A) *IN GENERAL.*—*The Tribes may with-*
2 *draw all or part of amounts in the Funds on ap-*
3 *proval by the Secretary of a tribal management*
4 *plan as described in the American Indian Trust*
5 *Fund Management Reform Act of 1994 (25*
6 *U.S.C. 4001 et seq.).*

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

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

21 (D) *LIABILITY.*—*If the Tribes exercise the*
22 *right to withdraw amounts from the Funds, nei-*
23 *ther the Secretary nor the Secretary of the Treas-*
24 *ury shall retain any liability for the expenditure*
25 *or investment of the amounts.*

1 (2) *EXPENDITURE PLAN.*—

2 (A) *IN GENERAL.*—*The Tribes shall submit*
 3 *to the Secretary for approval an expenditure*
 4 *plan for any portion of the amounts in the*
 5 *Funds that the Tribes do not withdraw under the*
 6 *tribal management plan.*

7 (B) *DESCRIPTION.*—*The expenditure plan*
 8 *shall describe the manner in which, and the pur-*
 9 *poses for which, amounts of the Tribes remaining*
 10 *in the Funds will be used.*

11 (C) *APPROVAL.*—*On receipt of an expendi-*
 12 *ture plan under subparagraph (A), the Secretary*
 13 *shall approve the plan if the Secretary deter-*
 14 *mines that the plan is reasonable and consistent*
 15 *with this Act and the Agreement.*

16 (D) *ANNUAL REPORT.*—*For each Fund, the*
 17 *Tribes shall submit to the Secretary an annual*
 18 *report that describes all expenditures from the*
 19 *Fund during the year covered by the report.*

20 (3) *FUNDING AGREEMENT.*—*Notwithstanding*
 21 *any other provision of this Act, on receipt of a request*
 22 *from the Tribes, the Secretary shall include an*
 23 *amount from funds made available under this section*
 24 *in the funding agreement of the Tribes under title IV*
 25 *of the Indian Self-Determination and Education As-*

1 *sistance Act (25 U.S.C. 458aa et seq.), for use in ac-*
 2 *cordance with subsections (b)(2) and (c)(2). No*
 3 *amount made available under this Act may be re-*
 4 *quested until the waivers under section 9(a) take ef-*
 5 *fect.*

6 *(g) NO PER CAPITA PAYMENTS.—No amount from the*
 7 *Funds (including any interest income accruing to the*
 8 *Funds) shall be distributed to a member of the Tribes on*
 9 *a per capita basis.*

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

11 *(a) WAIVER AND RELEASE OF CLAIMS BY TRIBES AND*
 12 *UNITED STATES AS TRUSTEE FOR TRIBES.—The Tribes*
 13 *and the United States on behalf of the Tribes, are authorized*
 14 *to execute a waiver and release of—*

15 *(1) all claims for water rights in, or for waters*
 16 *of, the East Fork of the Owyhee River that the Tribes,*
 17 *or the United States as trustee for the Tribes, asserted*
 18 *or could have asserted in any court proceeding; and*

19 *(2) all claims for damages, losses, or injuries to*
 20 *water rights in the East Fork Owyhee River, includ-*
 21 *ing claims of interference, diversion, or taking of*
 22 *water that the Tribes, or the United States as trustee*
 23 *for the Tribes, asserted or could have asserted in any*
 24 *court proceedings.*

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

4 (1) *all claims against the United States, its*
 5 *agencies, or employees, for water rights in, or waters*
 6 *of, the East Fork of the Owyhee River that the United*
 7 *States asserted or could have asserted in any court*
 8 *proceeding;*

9 (2) *all claims for damages, losses, or injuries to*
 10 *water rights, including claims of interference, diver-*
 11 *sion, or taking of water, or claims for failure to pro-*
 12 *tect, acquire, or develop water or water rights within*
 13 *the East Fork of the Owyhee River, and claims for*
 14 *fishing rights under any Executive order to the extent*
 15 *that an injury to such a right resulted from a reduc-*
 16 *tion in the quantity of water available in the East*
 17 *Fork Owyhee River; that accrued on or before the ef-*
 18 *fective date specified in subsection (d), that the Tribes*
 19 *have asserted or could have asserted against the*
 20 *United States, its agencies, or employees in any court*
 21 *proceedings; and*

22 (3) *all claims arising out of the negotiation and*
 23 *adoption of the Agreement.*

24 (c) *RETENTION OF RIGHTS.—Notwithstanding the*
 25 *waivers and releases set forth in subsections (a) and (b),*

1 *the Tribes and their members and the United States as*
 2 *trustee for the Tribes and their members, shall retain—*

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

7 *(2) all rights to use and protect water rights ac-*
 8 *quired pursuant to any state law;*

9 *(3) all claims relating to activities affecting the*
 10 *quality of water;*

11 *(4) all rights to land outside the Reservation;*
 12 *and*

13 *(5) all rights, remedies, privileges, immunities,*
 14 *and powers not specifically waived and released*
 15 *under the terms of the Agreement or this Act.*

16 *(d) EFFECTIVE DATE.—Notwithstanding anything in*
 17 *the Agreement to the contrary, the waivers by the Tribes,*
 18 *or the United States on behalf of the Tribes, under this sec-*
 19 *tion shall take effect on the date on which the Secretary*
 20 *publishes in the Federal Register a statement of findings*
 21 *that includes a finding that—*

22 *(1) the Secretary has executed the Agreement as*
 23 *approved by Congress;*

24 *(2) all parties to the Agreement have executed the*
 25 *Agreement;*

1 (3) *the Fourth Judicial District Court, Elko*
 2 *County, Nevada has issued a judgment and decree*
 3 *consistent with the Agreement from which no further*
 4 *appeal can be taken; and*

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

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

10 (1) *the Agreement and this Act shall not take ef-*
 11 *fect; and*

12 (2) *any funds and interest accrued thereon that*
 13 *have been appropriated under this Act shall imme-*
 14 *diately revert to the general fund of the United States*
 15 *Treasury.*

16 (f) *TOLLING OF CLAIMS.—*

17 (1) *IN GENERAL.—Each applicable period of*
 18 *limitation and time-based equitable defense relating*
 19 *to a claim described in this section shall be tolled for*
 20 *the period beginning on the date of enactment of this*
 21 *Act and ending on the date on which the amounts au-*
 22 *thorized to be appropriated under subsections (b)(3)*
 23 *and (c)(3) of section 8 are appropriated.*

24 (2) *EFFECT OF SUBPARAGRAPH.—Nothing in*
 25 *this subparagraph revives any claim or tolls any pe-*

1 *riod of limitation or time-based equitable defense that*
 2 *expired before the date of enactment of this Act.*

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 Tribes,*
 6 *from acquiring a water right in a state to the same*
 7 *extent as any other entity in the state, in accordance*
 8 *with state law.*

9 **SEC. 10. MISCELLANEOUS.**

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

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

14 (2) *this Act.*

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

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

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

19 (B) *an aboriginal claim; or*

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

23 (2) *limits the right of a party to the Agreement*
 24 *to litigate any issue not resolved by the Agreement or*
 25 *this Act.*

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

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

5 (1) *considered to be the property of the Tribes;*
 6 *and*

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

9 (e) *JURISDICTION.*—

10 (1) *SUBJECT MATTER JURISDICTION.*—*Nothing*
 11 *in the Agreement or this Act restricts, enlarges, or*
 12 *otherwise determines the subject matter jurisdiction of*
 13 *any Federal, State, or tribal court.*

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

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

21 (4) *EFFECT OF SUBSECTION.*—*Nothing in this*
 22 *subsection confers jurisdiction on any State court*
 23 *to—*

1 (A) *enforce Federal environmental laws re-*
2 *lating to the duties of the United States under*
3 *this Act; or*

4 (B) *conduct judicial review of a Federal*
5 *agency action.*

Calendar No. 872

110TH CONGRESS
2^D Session

S. 462

[Report No. 110-415]

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 10 (legislative day, JULY 9), 2008

Reported with an amendment