

Public Law 105-9
105th Congress

An Act

Apr. 14, 1997
[H.R. 412]

To approve a settlement agreement between the Bureau of Reclamation and the Oroville-Tonasket Irrigation District.

Oroville-
Tonasket Claim
Settlement and
Conveyance Act.
Washington.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Oroville-Tonasket Claim Settlement and Conveyance Act".

SEC. 2. PURPOSES.

The purposes of this Act are to authorize the Secretary of the Interior to implement the provisions of the negotiated Settlement Agreement including conveyance of the Project Irrigation Works, identified as not having national importance, to the District, and for other purposes.

SEC. 3. DEFINITIONS.

As used in this Act:

(1) The term "Secretary" means the Secretary of the Interior.

(2) The term "Reclamation" means the United States Bureau of Reclamation.

(3) The term "District" or "Oroville-Tonasket Irrigation District" means the project beneficiary organized and operating under the laws of the State of Washington, which is the operating and repayment entity for the Project.

(4) The term "Project" means the Oroville-Tonasket unit extension, Okanogan-Similkameen division, Chief Joseph Dam Project, Washington, constructed and rehabilitated by the United States under the Act of September 28, 1976 (Public Law 94-423, 90 Stat. 1324), previously authorized and constructed under the Act of October 9, 1962 (Public Law 87-762, 76 Stat. 761), under the Federal reclamation laws (including the Act of June 17, 1902 (ch. 1093, 32 Stat. 388), and Acts supplementary thereto or amendatory thereof).

(5) The term "Project Irrigation Works" means—

(A) those works actually in existence and described in subarticle 3(a) of the Repayment Contract, excluding Wildlife Mitigation Facilities, and depicted on the maps held by the District and Reclamation, consisting of the realty with improvements and real estate interests;

(B) all equipment, parts, inventories, and tools associated with the Project Irrigation Works realty and

improvements and currently in the District's possession;
and

(C) all third party agreements.

(6)(A) The term "Basic Contract" means Repayment Contract No. 14-06-100-4442, dated December 26, 1964, as amended and supplemented, between the United States and the District;

(B) the term "Repayment Contract" means Repayment Contract No. 00-7-10-W0242, dated November 28, 1979, as amended and supplemented, between the United States and the District; and

(C) the term "third party agreements" means existing contractual duties, obligations, and responsibilities that exist because of all leases, licenses, and easements with third-parties related to the Project Irrigation Works, or the lands or rights-of-way for the Project Irrigation Works, but excepting power arrangements with the Bonneville Power Administration.

(7) The term "Wildlife Mitigation Facilities" means—

(A) land, improvements, or easements, or any combination thereof, secured for access to such lands, acquired by the United States under the Fish and Wildlife Coordination Act (16 U.S.C. 661-667e); and

(B) all third party agreements associated with the land, improvements, or easements referred to in subparagraph (A).

(8) The term "Indian Trust Lands" means approximately 61 acres of lands identified on land classification maps on file with the District and Reclamation beneficially owned by the Confederated Tribes of the Colville Reservation (Colville Tribes) or by individual Indians, and held in trust by the United States for the benefit of the Colville Tribes in accordance with the Executive Order of April 9, 1872.

(9) The term "Settlement Agreement" means the Agreement made and entered on April 15, 1996, between the United States of America acting through the Regional Director, Pacific Northwest Region, Bureau of Reclamation, and the Oroville-Tonasket Irrigation District.

(10) The term "operations and maintenance" means normal and reasonable care, control, operation, repair, replacement, and maintenance.

SEC. 4. AGREEMENT AUTHORIZATION.

The Settlement Agreement is approved and the Secretary of the Interior is authorized to conduct all necessary and appropriate investigations, studies, and required Federal actions to implement the Settlement Agreement.

SEC. 5. CONSIDERATION AND SATISFACTION OF OUTSTANDING OBLIGATIONS.

(a) CONSIDERATION TO UNITED STATES.—Consideration by the District to the United States in accordance with the Settlement Agreement approved by this Act shall be—

(1) payment of \$350,000 by the District to the United States;

(2) assumption by the District of full liability and responsibility and release of the United States of all further responsibility, obligations, and liability for removing irrigation facilities constructed and rehabilitated by the United States

under the Act of October 9, 1962 (Public Law 87-762, 76 Stat. 761), or referenced in section 201 of the Act of September 28, 1976 (Public Law 94-423, 90 Stat. 1324), and identified in Article 3(a)(8) of the Repayment Contract;

(3) assumption by the District of sole and absolute responsibility for the operations and maintenance of the Project Irrigation Works;

(4) release and discharge by the District as to the United States from all past and future claims, whether now known or unknown, arising from or in any way related to the Project, including any arising from the Project Irrigation Works constructed pursuant to the 1964 Basic Contract or the 1979 Repayment Contract;

(5) assumption by the District of full responsibility to indemnify and defend the United States against any third party claims associated with any aspect of the Project, except for that claim known as the Grillo Claim, government contractor construction claims accruing at any time, and any other suits or claims filed as of the date of the Settlement Agreement; and

(6) continued obligation by the District to deliver water to and provide for operations and maintenance of the Wildlife Mitigation Facilities at its own expense in accordance with the Settlement Agreement.

(b) RESPONSIBILITIES OF UNITED STATES.—In return the United States shall—

(1) release and discharge the District's obligation, including any delinquent or accrued payments, or assessments of any nature under the 1979 Repayment Contract, including the unpaid obligation of the 1964 Basic Contract;

(2) transfer title of the Project Irrigation Works to the District;

(3) assign to the District all third party agreements associated with the Project Irrigation Works;

(4) continue power deliveries provided under section 6 of this Act; and

(5) assume full responsibility to indemnify and defend the District against any claim known as the Grillo Claim, government contractor construction claims accruing at any time, and any other suits or claims filed against the United States as of the date of the Settlement Agreement.

(c) PROJECT CONSTRUCTION COSTS.—The transfer of title authorized by this Act shall not affect the timing or amount of the obligation of the Bonneville Power Administration for the repayment of construction costs incurred by the Federal government under section 202 of the Act of September 28, 1976 (90 Stat. 1324, 1326) that the Secretary of the Interior has determined to be beyond the ability of the irrigators to pay. The obligation shall remain charged to, and be returned to the Reclamation Fund as provided for in section 2 of the Act of June 14, 1966 (80 Stat. 200) as amended by section 6 of the Act of September 7, 1966 (80 Stat. 707, 714).

SEC. 6. POWER.

Nothing in this Act shall be construed as having any effect on power arrangements under Public Law 94-423 (90 Stat. 1324). The United States shall continue to provide to the District power

and energy for irrigation water pumping for the Project, including Dairy Point Pumping Plant. However, the amount and term of reserved power shall not exceed, respectively—

- (1) 27,100,000 kilowatt hours per year; and
- (2) 50 years commencing October 18, 1990.

The rate that the District shall pay the Secretary for such reserved power shall continue to reflect full recovery of Bonneville Power Administration transmission costs.

SEC. 7. CONVEYANCE.

(a) CONVEYANCE OF INTERESTS OF UNITED STATES.—Subject to valid existing rights, the Secretary is authorized to convey all right, title, and interest, without warranties, of the United States in and to all Project Irrigation Works to the District. In the event a significant cultural resource or hazardous waste site is identified, the Secretary is authorized to defer or delay transfer of title to any parcel until required Federal action is completed.

(b) RETENTION OF TITLE TO WILDLIFE MITIGATION FACILITIES.—The Secretary will retain title to the Wildlife Mitigation Facilities. The District shall remain obligated to deliver water to and provide for the operations and maintenance of the Wildlife Mitigation Facilities at its own expense in accordance with the Settlement Agreement.

(c) RESERVATION.—The transfer of rights and interests pursuant to subsection (a) shall reserve to the United States all oil, gas, and other mineral deposits and a perpetual right to existing public access open to public fishing, hunting, and other outdoor recreation purposes, and such other existing public uses.

SEC. 8. REPAYMENT CONTRACT.

Upon conveyance of title to the Project Irrigation Works notwithstanding any parcels delayed in accordance with section 7(a), the 1964 Basic Contract, and the 1979 Repayment Contract between the District and Reclamation, shall be terminated and of no further force or effect.

SEC. 9. INDIAN TRUST RESPONSIBILITIES.

The District shall remain obligated to deliver water under appropriate water service contracts to Indian Trust Lands upon request from the owners or lessees of such land.

SEC. 10. LIABILITY.

Upon completion of the conveyance of Project Irrigation Works under this Act, the District shall—

- (1) be liable for all acts or omissions relating to the operation and use of the Project Irrigation Works that occur before or after the conveyance except for the Grillo Claim, government contractor construction claims accruing at any time, and any other suits or claims filed as of the date of the Settlement Agreement;
- (2) absolve the United States and its officers and agents of responsibility and liability for the design and construction including latent defects associated with the Project; and
- (3) assume responsibility to indemnify and defend the United States against all claims whether now known or unknown and including those of third party claims associated with, arising from, or in any way related to, the Project except for the Grillo Claim, government contractor construction claims

accruing at any time, and any other suits or claims filed as of the date of the Settlement Agreement.

SEC. 11. CERTAIN ACTS NOT APPLICABLE AND TERMINATION OF MANDATES.

(a) **RECLAMATION LAWS.**—All mandates imposed by the Reclamation Act of 1902, and all Acts supplementary thereto or amendatory thereof, including the Reclamation Reform Act of 1982, upon the Project Irrigation Works shall be terminated upon the completion of the transfers as provided by this Act and the Settlement Agreement.

(b) **RELATIONSHIP TO OTHER LAWS.**—The transfer of title authorized by this Act shall not—

(1) be subject to the provisions of chapter 5 of title 5, United States Code (commonly known as the “Administrative Procedure Act”); or

(2) be considered a disposal of surplus property under the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.) and the Surplus Property Act of 1944 (50 U.S.C. App. 1601 et seq.).

(c) **DEAUTHORIZATION.**—Effective upon transfer of title to the District under this Act, that portion of the Oroville-Tonasket Unit Extension, Okanogan-Similkameen Division, Chief Joseph Dam Project, Washington, referred to in section 7(a) as the Project Irrigation Works is hereby deauthorized. After transfer of title, the District shall not be entitled to receive any further Reclamation benefits pursuant to the Reclamation Act of June 17, 1902, and Act supplementary thereto or amendatory thereof.

Approved April 14, 1997.

LEGISLATIVE HISTORY—H.R. 412:

HOUSE REPORTS: No. 105-8 (Comm. on Resources).

CONGRESSIONAL RECORD, Vol. 143 (1997):

Mar. 18, considered and passed House.

Apr. 8, considered and passed Senate.