

Calendar No. 476

113TH CONGRESS
2D SESSION

S. 1818

To ratify a water settlement agreement affecting the Pyramid Lake Paiute Tribe, and for other purposes.

IN THE SENATE OF THE UNITED STATES

DECEMBER 12 (legislative day, DECEMBER 11), 2013

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

JULY 22, 2014

Reported by Mr. TESTER, without amendment

A BILL

To ratify a water settlement agreement affecting the Pyramid Lake Paiute Tribe, 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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Pyramid Lake Paiute Tribe - Fish Springs Ranch Settle-
6 ment Act”.

1 (b) TABLE OF CONTENTS.—The table of contents for
 2 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Definitions.
- Sec. 3. Ratification of agreement.
- Sec. 4. Waiver and releases of claims.
- Sec. 5. Satisfaction of claims.
- Sec. 6. Beneficiaries to agreement.
- Sec. 7. Jurisdiction.
- Sec. 8. Environmental compliance.
- Sec. 9. Miscellaneous provisions.

3 **SEC. 2. DEFINITIONS.**

4 In this Act:

5 (1) ORIGINAL AGREEMENT.—The term “Original
 6 Agreement” means the “Pyramid Lake Paiute
 7 Tribe Fish Springs Ranch Settlement Agreement”
 8 dated May 30, 2007, entered into by the Tribe and
 9 Fish Springs (including all exhibits to that agree-
 10 ment).

11 (2) AGREEMENT.—The term “Agreement”
 12 means the Pyramid Lake Paiute Tribe-Fish Springs
 13 Ranch 2013 Supplement to the 2007 Settlement
 14 Agreement dated November 20, 2013, entered into
 15 by the Tribe and Fish Springs, and all exhibits to
 16 that Agreement.

17 (3) ENVIRONMENTAL IMPACT STATEMENT.—
 18 The term “environmental impact statement” means
 19 the final environmental impact statement for the
 20 North Valleys Rights-of-Way Projects prepared by

1 the Bureau of Land Management (70 Fed. Reg.
2 68473).

3 (4) FINAL PAYMENT DATE.—The term “final
4 payment date” means 30 days after the date on
5 which the Tribe executes the waivers, as authorized
6 in section 4, on or before which Fish Springs shall
7 pay to the Tribe the \$3,600,000 and accumulated
8 interest pursuant to subparagraph 4.2 of the Agree-
9 ment.

10 (5) FISH SPRINGS.—The term “Fish Springs”
11 means the Fish Springs Ranch, LLC, a Nevada lim-
12 ited liability company (or a successor in interest).

13 (6) FISH SPRINGS WATER RIGHTS.—The term
14 “Fish Springs water rights” means the 14,108 acre
15 feet of water available to Fish Springs pursuant to
16 certificates of water rights issued to Fish Springs or
17 its predecessors in interest by the State Engineer for
18 the State of Nevada, copies of which are attached as
19 Exhibit “G” to the Original Agreement.

20 (7) ADDITIONAL FISH SPRINGS WATER
21 RIGHTS.—The term “additional Fish Springs water
22 rights” means the rights to pump and transfer up
23 to 5,000 acre feet per year of Fish Springs water
24 rights in excess of 8,000 acre feet per year, up to
25 a total of 13,000 acre feet per year, pursuant to

1 Ruling No. 3787 signed by the State Engineer for
2 the State of Nevada on March 1, 1991, and Supple-
3 mental Ruling on Remand No. 3787A signed by the
4 State Engineer for the State of Nevada on October
5 9, 1992.

6 (8) HONEY LAKE VALLEY BASIN.—The term
7 “Honey Lake Valley Basin” means the Honey Lake
8 Valley Hydrographic Basin described as Nevada Hy-
9 drographic Water Basin 97.

10 (9) PROJECT.—The term “Project” means the
11 project for pumping within Honey Lake Valley
12 Basin and transfer outside of the basin by Fish
13 Springs of not more than 13,000 acre feet per year
14 of Fish Springs water rights, including—

15 (A) not more than 8,000 acre feet as de-
16 scribed in the environmental impact statement
17 (but not the Intermountain Water Supply, Ltd.,
18 Project described in the environmental impact
19 statement) and the record of decision;

20 (B) up to the 5,000 acre feet of additional
21 Fish Springs water rights; and

22 (C) the rights and approvals for Fish
23 Springs to pump and transfer up to said
24 13,000 acre feet of groundwater per year.

1 (10) RECORD OF DECISION.—The term “record
2 of decision” means the public record of the decision
3 of the District Manager of the United States Bureau
4 of Land Management’s Carson City District in the
5 State of Nevada issued on May 31, 2006, regarding
6 the environmental impact statement and the Project.

7 (11) SECRETARY.—The term “Secretary”
8 means the Secretary of the Interior (or a designee
9 of the Secretary).

10 (12) TRIBE.—The term “Tribe” means the
11 Pyramid Lake Paiute Tribe of Indians organized
12 under section 16 of the Act of June 18, 1934 (com-
13 monly known as the “Indian Reorganization Act”;
14 25 U.S.C. 476).

15 (13) TRUCKEE RIVER OPERATING AGREE-
16 MENT.—The term “Truckee River Operating Agree-
17 ment” means—

18 (A) the September 6, 2008, Truckee River
19 Operating Agreement negotiated for the pur-
20 pose of carrying out the terms of the Truckee-
21 Carson-Pyramid Lake Water Rights Settlement
22 Act (Public Law 101–618); and

23 (B) any final, signed version of the Truck-
24 ee River Operating Agreement that becomes ef-

1 fective under the terms of the Truckee-Carson-
2 Pyramid Lake Water Rights Settlement Act.

3 **SEC. 3. RATIFICATION OF AGREEMENT.**

4 (a) IN GENERAL.—Except to the extent that a provi-
5 sion of the Agreement conflicts with this Act, the Agree-
6 ment is authorized and ratified.

7 (b) WAIVER AND RETENTION OF CLAIMS.—Notwith-
8 standing any provision of the Agreement, any waiver or
9 retention of a claim by the Tribe relating to the Agreement
10 shall be carried out in accordance with section 4.

11 (c) COMPLIANCE WITH APPLICABLE LAW.—This sec-
12 tion, the Original Agreement, and the Agreement satisfy
13 all applicable requirements of section 2116 of the Revised
14 Statutes (25 U.S.C. 177).

15 **SEC. 4. WAIVER AND RELEASES OF CLAIMS.**

16 (a) WAIVER AND RELEASE OF CLAIMS BY TRIBE
17 AGAINST FISH SPRINGS.—In return for benefits to the
18 Tribe as set forth in the Original Agreement, the Agree-
19 ment, and this Act, the Tribe, on behalf of itself and the
20 members of the Tribe, is authorized to execute a waiver
21 and release against Fish Springs of the following:

22 (1) All rights under Federal, State, and other
23 law to challenge the validity, characteristics, or exer-
24 cise of the Project or use of Fish Springs water
25 rights (including additional Fish Springs water

1 rights), including the right to assert a senior priority
2 against or to place a call for water on the Project
3 or Fish Springs water rights (including additional
4 Fish Springs water rights) regardless of the extent
5 to which the Tribe has a water right or in the future
6 establishes a water right that is senior to the Project
7 or Fish Springs water rights (including additional
8 Fish Springs water rights).

9 (2) All claims for damages, losses, or injuries to
10 the Tribe's water rights or claims of interference
11 with, diversion of, or taking of the Tribe's water
12 rights, including—

13 (A) claims for injury to lands or resources
14 resulting from such damages, losses, injuries, or
15 interference with, diversion of, or taking of trib-
16 al water rights under the Agreement or Original
17 Agreement; and

18 (B) claims relating to the quality of water
19 underlying the Pyramid Lake Indian Reserva-
20 tion that are related to use of Fish Springs
21 water rights (including additional Fish Springs
22 water rights) by the Project or the implementa-
23 tion or operation of the Project in accordance
24 with the Agreement or Original Agreement.

1 (3) All claims that would impair, prevent, or
2 interfere with one or more of the following:

3 (A) Implementation of the Project pursu-
4 ant to the terms of the Agreement or Original
5 Agreement.

6 (B) Deliveries of water by the Project pur-
7 suant to the terms of—

8 (i) the Agreement;

9 (ii) the Original Agreement; or

10 (iii) the February 28, 2006, Water
11 Banking Trust Agreement between Washoe
12 County and Fish Springs.

13 (C) Assignments of water rights credits
14 pursuant to the terms of the February 28,
15 2006, Water Banking Trust Agreement be-
16 tween Washoe County and Fish Springs.

17 (4) All claims against Fish Springs relating in
18 any manner to the negotiation or adoption of the
19 Agreement or the Original Agreement.

20 (b) RESERVATION OF RIGHTS AND RETENTION OF
21 CLAIMS BY TRIBE AGAINST FISH SPRINGS.—The Tribe,
22 on its own behalf and on behalf of the members of the
23 Tribe, shall retain against Fish Springs the following:

24 (1) All claims for enforcement of the Agree-
25 ment, the Original Agreement or this Act through

1 such remedies as are available in the U.S. District
2 Court for the District of Nevada.

3 (2) Subject to the right of Fish Springs to
4 carry out the Project, and subject to the waiver and
5 release by the Tribe in subsection (a)—

6 (A) the right to assert and protect any
7 right of the Tribe to surface or groundwater
8 and any other trust resource, including the
9 right to assert a senior priority against or to
10 place a call for water on any water right other
11 than against the Project or Fish Springs water
12 rights;

13 (B) all rights to establish, claim or acquire
14 a water right in accordance with applicable law
15 and to use and protect any water right acquired
16 after the date of the enactment of this Act that
17 is not in conflict with the Agreement, the Original
18 Agreement or this Act; and

19 (C) all other rights, remedies, privileges,
20 immunities, powers, and claims not specifically
21 waived and released pursuant to this Act and
22 the Agreement.

23 (3) The right to enforce—

24 (A) the Tribe's rights against any party to
25 the Truckee River Operating Agreement;

1 (B) the Tribe's rights against any party to
2 the Truckee River Water Quality Settlement
3 Agreement; and

4 (C) whatever rights exist to seek compli-
5 ance with any permit issued to any wastewater
6 treatment or reclamation facility treating waste-
7 water generated by users of Project water.

8 (4) The right to seek to have enforced the
9 terms of any permit or right-of-way across Federal
10 lands issued to Fish Springs for the Project and
11 Project water.

12 (c) WAIVER AND RELEASE OF CLAIMS BY THE TRIBE
13 AGAINST THE UNITED STATES.—In return for the bene-
14 fits to the Tribe as set forth in the Agreement, the Orig-
15 inal Agreement, and this Act, the Tribe, on behalf of itself
16 and the members of the Tribe, is authorized to execute
17 a waiver and release of all claims against the United
18 States, including the agencies and employees of the United
19 States, related to the Project and Fish Springs water
20 rights (including additional Fish Springs water rights)
21 that accrued at any time before and on the date that Fish
22 Springs makes the payment to the Tribe as provided in
23 paragraph 4 of the Agreement for damages, losses or inju-
24 ries that are related to—

1 (1) the Project, Fish Springs water rights (in-
2 cluding additional Fish Springs water rights), and
3 the implementation, operation, or approval of the
4 Project, including claims related to—

5 (A) loss of water, water rights, land, or
6 natural resources due to loss of water or water
7 rights (including damages, losses, or injuries to
8 hunting, fishing, and gathering rights due to
9 loss of water, water rights or subordination of
10 water rights) resulting from the Project or Fish
11 Springs water rights (including additional Fish
12 Springs water rights);

13 (B) interference with, diversion, or taking
14 of water resulting from the Project; or

15 (C) failure to protect, acquire, replace, or
16 develop water, water rights, or water infrastruc-
17 ture as a result of the Project or Fish Springs
18 water rights (including additional Fish Springs
19 water rights);

20 (2) the record of decision, the environmental
21 impact statement, the Agreement or the Original
22 Agreement;

23 (3) claims the United States, acting as trustee
24 for the Tribe or otherwise, asserted, or could have

1 asserted in any past proceeding related to the
2 Project;

3 (4) the negotiation, execution, or adoption of
4 the Agreement, the Original Agreement, or this Act;

5 (5) the Tribe's use and expenditure of funds
6 paid to the Tribe under the Agreement or the Original
7 Agreement;

8 (6) the Tribe's acquisition and use of land
9 under the Original Agreement; and

10 (7) the extinguishment of claims, if any, and
11 satisfaction of the obligations of the United States
12 on behalf of the Tribe as set forth in subsection (e).

13 (d) RESERVATION OF RIGHTS AND RETENTION OF
14 CLAIMS BY TRIBE AGAINST THE UNITED STATES.—Not-
15 withstanding the waivers and releases authorized in this
16 Act, the Tribe, on behalf of itself and the members of the
17 Tribe, shall retain against the United States the following:

18 (1) All claims for enforcement of this Act
19 through such legal and equitable remedies as are
20 available in the U.S. District Court for the District
21 of Nevada.

22 (2) The right to seek to have enforced the
23 terms of any permit or right-of-way across Federal
24 lands issued to Fish Springs for the Project and
25 Project water.

1 (3) Subject to the right of Fish Springs to
2 carry out the Project, all other rights, remedies,
3 privileges, immunities, powers, and claims not spe-
4 cifically waived and released pursuant to this Act
5 and the Agreement.

6 (e) EXTINGUISHMENT OF WAIVED AND RELEASED
7 CLAIMS.—Upon execution of the waiver and releases by
8 the Tribe pursuant to subsections (a) and (c) and upon
9 final payment by Fish Springs pursuant to the terms of
10 the Agreement, the United States acting on behalf of the
11 Tribe shall have no right or obligation to bring or assert
12 any claims waived and released by the Tribe as set forth
13 in subsection (a). Upon the effective date of the waivers
14 and releases of claims authorized, the waived and released
15 claims as set forth in subsection (a) are extinguished.

16 (f) NO UNITED STATES LIABILITY FOR WAIVED
17 CLAIMS.—The United States shall bear no liability for
18 claims waived and released by the Tribe pursuant to this
19 Act.

20 (g) UNITED STATES RESERVATION OF RIGHTS.—
21 Nothing in this Act shall affect any rights, remedies, privi-
22 leges, immunities, or powers of the United States, includ-
23 ing the right to enforce the terms of the right-of-way
24 across Federal lands for the Project granted by the Sec-
25 retary to Fish Springs pursuant to the Federal Lands Pol-

1 icy and Management Act of 1976 (43 U.S.C. 1701 et
2 seq.), with the exception that the United States may not
3 assert any claim on the Tribe's behalf that is extinguished
4 pursuant to subsection (e).

5 (h) EFFECTIVE DATE OF WAIVERS AND RELEASES
6 OF CLAIMS.—The waivers and releases authorized under
7 subsections (a) and (c) shall take effect on the day Fish
8 Springs makes the payment to the Tribe as provided in
9 subparagraph 4.2 of the Agreement.

10 **SEC. 5. SATISFACTION OF CLAIMS.**

11 (a) IN GENERAL.—The benefits provided to the Tribe
12 under the Agreement, the Original Agreement, and this
13 Act shall be considered to be full satisfaction of all claims
14 of the Tribe waived and released pursuant to section 4
15 and pursuant to the Original Agreement and any claims
16 the United States might make on behalf of the Tribe that
17 are extinguished pursuant to section 4.

18 (b) EFFECT OF FAILURE TO EXECUTE WAIVERS
19 AND RELEASES.—If the Tribe fails to execute the waivers
20 and releases as authorized by this Act within 60 days after
21 the date of the enactment of this Act, this Act and the
22 Agreement shall be null and void.

23 **SEC. 6. BENEFICIARIES TO AGREEMENT.**

24 (a) REQUIREMENT.—The beneficiaries to the Agree-
25 ment shall be limited to—

1 (1) the parties to the Agreement;

2 (2) any municipal water purveyor that provides
3 Project water for wholesale or retail water service to
4 the area serviced by the Project;

5 (3) any water purveyor that obtains the right to
6 use Project water for purposes other than serving
7 retail or wholesale customers; and

8 (4) any assignee of Water Rights Credits for
9 Project water pursuant to the terms of the February
10 28, 2006, Water Banking Trust Agreement between
11 Washoe County and Fish Springs.

12 (b) PROHIBITION.—Except as provided in subsection
13 (a), nothing in the Agreement or this Act provides to any
14 individual or entity third-party beneficiary status relating
15 to the Agreement.

16 **SEC. 7. JURISDICTION.**

17 Jurisdiction over any civil action relating to the en-
18 forcement of the Agreement, the Original Agreement, or
19 this Act shall be vested in the United States District Court
20 for the District of Nevada.

21 **SEC. 8. ENVIRONMENTAL COMPLIANCE.**

22 Nothing in this Act precludes the United States or
23 the Tribe, when delegated regulatory authority, from en-
24 forcing Federal environmental laws, including—

1 (1) the Comprehensive Environmental Re-
2 sponse, Compensation, and Liability Act of 1980 (42
3 U.S.C. 9601 et seq.) including claims for damages
4 for harm to natural resources;

5 (2) the Safe Drinking Water Act (42 U.S.C.
6 300f et seq.);

7 (3) the Federal Water Pollution Control Act
8 (33 U.S.C. 1251 et seq.);

9 (4) the Solid Waste Disposal Act (42 U.S.C.
10 6901 et seq.); and

11 (5) any regulation implementing one or more of
12 the Acts listed in paragraphs (1) through (4).

13 **SEC. 9. MISCELLANEOUS PROVISIONS.**

14 (a) NO ESTABLISHMENT OF STANDARD.—Nothing in
15 this Act establishes a standard for the quantification of
16 a Federal reserved water right or any other claim of an
17 Indian tribe other than the Tribe in any other judicial or
18 administrative proceeding.

19 (b) OTHER CLAIMS.—Nothing in the Agreement, the
20 Original Agreement, or this Act quantifies or otherwise
21 adversely affects any water right, claim, or entitlement to
22 water, or any other right of any Indian tribe, band, or
23 community other than the Tribe.

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