

S 2605

Snake River Water Rights Act of 2004

Congress: 108 (2003–2005, Ended)

Chamber: Senate

Policy Area: Native Americans

Introduced: Jun 24, 2004

Current Status: Referred to the House Committee on Resources.

Latest Action: Referred to the House Committee on Resources. (Nov 20, 2004)

Official Text: <https://www.congress.gov/bill/108th-congress/senate-bill/2605>

Sponsor

Name: Sen. Craig, Larry E. [R-ID]

Party: Republican • State: ID • Chamber: Senate

Cosponsors (1 total)

Cosponsor	Party / State	Role	Date Joined
Sen. Crapo, Mike [R-ID]	R · ID		Jun 24, 2004

Committee Activity

Committee	Chamber	Activity	Date
Indian Affairs Committee	Senate	Reported By	Oct 7, 2004
Natural Resources Committee	House	Referred to	Nov 20, 2004

Subjects & Policy Tags

Policy Area:

Native Americans

Related Bills

Bill	Relationship	Last Action
108 HR 4981	Related bill	Aug 12, 2004: Executive Comment Requested from Interior.

(This measure has not been amended since it was reported to the Senate on October 7, 2004. The summary of that version is repeated here.)

Snake River Water Rights Act of 2004 - (Sec. 4) Approves, ratifies, and confirms the Mediator's Term Sheet dated April 20, 2004 (the Agreement) to resolve the Snake River Basin Adjudication litigation involving the United States, the Nez Perce Tribe (the Tribe), and the State of Idaho. Requires the Secretary of the Interior and the heads of other Federal agencies to execute and perform all actions that are necessary to carry out the Agreement.

(Sec. 5) Directs the Secretary of the Interior to take necessary actions consistent with the Agreement, this Act, and water law of the State to carry out the Snake River Flow Component of the Agreement.

Authorizes appropriations to the Secretary for a one-time payment to local governments to mitigate for the change of use of water acquired by the Bureau of Reclamation under the Component.

(Sec. 6) Requires the Secretary to transfer land selected by the Tribe to the Bureau of Indian Affairs to be held in trust for the Tribe.

Authorizes appropriations to the Secretary for a one-time payment to local governments to mitigate for such land transfer.

(Sec. 7) Provides that the consumptive use and the springs or fountains water rights shall be held in trust by the United States for the benefit of the Tribe. Requires the Tribe to enact a water code, to be approved by the Secretary, that: (1) manages, regulates, and controls the consumptive use reserved water right so as to allocate water for irrigation, domestic, commercial, municipal, industrial, cultural, or other uses; (2) includes a due process system for the consideration and determination of any request by an allottee (who holds a beneficial real property interest in an Indian allotment located within the Nez Perce Reservation, and held in trust by the United States), or any successor in interest, for an allocation of such water for irrigation purposes on allotted land, including a process for an appeal and adjudication of denied or disputed distribution of water and for resolution of contested administrative decisions; and (3) includes a process to protect the interests of allottees when entering into any lease of entitlement water through a State water bank.

Prescribes requirements for water claims, including exhaustion of remedies, petition to the Secretary, and satisfaction of claims and entitlements.

Declares that the water rights, resources, and other benefits provided by this Act are a complete substitution for any rights that may have been held by, or any claims that may have been asserted by, allottees within the exterior boundaries of the Reservation before the enactment of this Act.

Declares that the consumptive use reserved water right and the springs or fountains water right shall not be subject to loss by abandonment, forfeiture, or nonuse.

Authorizes the Tribe, subject to the water code but without further approval of the Secretary, to lease water to which the Tribe is entitled under the consumptive use reserved water right through any State water bank in the same manner and subject to the same rules and requirements that govern any other lessor of water to the water bank. Makes any funds accruing to the Tribe from such a lease the Tribe's property. Denies the United States any trust obligation or other obligation to monitor, administer, or account for any consideration received by the Tribe under any such lease.

(Sec. 8) Establishes: (1) the Nez Perce Tribe Water and Fisheries Fund for the Tribe to acquire land and water rights,

restore or improve fish habitat, or for fish production, agricultural development, cultural preservation, water resource development, or fisheries-related projects; and (2) the Nez Perce Domestic Water Supply Fund to pay for the design and construction of water supply and sewer systems for tribal communities. Prescribes requirements for management and investment of the Funds by the Secretary.

Authorizes the Tribe to withdraw all or part of amounts in the Funds on approval by the Secretary of a tribal management plan as described in the American Indian Trust Fund Management Reform Act of 1994. States that such a plan shall require that the Tribe spend any amounts withdrawn from the Funds in accordance with the stated purposes of the Funds.

Authorizes the Secretary to take judicial or administrative action to enforce the provisions of any tribal management plan to ensure that amounts withdrawn from the Funds under the plan are used in accordance with this Act and the Agreement.

Declares that, if the Tribe exercises the right to withdraw amounts from the Funds, neither the Secretary nor the Secretary of the Treasury shall retain any liability for their expenditure or investment.

Requires the Tribe to submit to the Secretary for approval an expenditure plan for any portion of appropriations made available that the Tribe does not withdraw.

Requires the Secretary to approve an expenditure plan upon receipt of it if the Secretary determines that it is reasonable and consistent with this Act and the Agreement.

Prohibits any per capita distribution to any member of the Tribe of any part of the principal of the Funds, or of the income accruing in them.

Authorizes appropriations for FY 2007 through 2013 for the Water and Fisheries Fund, and for FY 2007 through 2011 for the Domestic Water Supply Fund.

(Sec. 9) Establishes the Salmon and Clearwater River Basins Habitat Fund, consisting of the Nez Perce Tribe Salmon and Clearwater River Basins Habitat Account and the Idaho Salmon and Clearwater River Basins Habitat Account, to pay for habitat protection and restoration in the Salmon and Clearwater River basins.

States that the Fund shall be used to supplement amounts made available under any other law for habitat protection and restoration in the Salmon and Clearwater River Basins in Idaho, including projects and programs intended to protect and restore listed fish and their habitat in those basins, as specified in the Agreement and this Act.

Exempts the use of the Fund from certain allocation procedures of the Endangered Species Act of 1973.

Authorizes appropriations to the two Accounts of the Fund for FY 2007 through 2011.

(Sec. 10) Declares that the United States, on behalf of the Tribe and the allottees, and the Tribe waive and release all claims: (1) to water rights within the Snake River Basin; (2) for injuries to such water rights; and (3) for injuries to the treaty rights of the Tribe, to the extent that such injuries result or resulted from flow modifications or reductions in the quantity of water available that accrued at any time up to and including the effective date of the settlement, and any continuation thereafter of any such claims, against the State, any agency or political subdivision of the State, or any person, entity, corporation, municipal corporation, or quasi-municipal corporation.

Declares that the United States, on behalf of the Tribe and the allottees, and the Tribe waive and release any claim against any party to the Agreement, under any treaty theory, based on reduced water quality resulting directly from flow modifications or reductions in the quantity of water available in the Snake River Basin.

Declares that no water right claim that the Tribe or the allottees have asserted, or may in the future assert, outside the Snake River Basin shall require the supply of water from the Snake River Basin to satisfy the claim.

Directs the Tribe, in consideration of U.S. performance of all actions required by the Agreement and this Act, including the appropriation of all authorized funds, to execute a waiver and release of the United States from all claims: (1) for water rights within the Snake River Basin, injuries to such water rights, or breach of trust claims for failure to protect, acquire, or develop such water rights that accrued at any time up to and including the effective date of waivers and releases under this Act; (2) for injuries to the Tribe's treaty fishing rights, to the extent that they result or resulted from reductions in the quantity of water available in the Snake River Basin; (3) of breach of trust for failure to protect Nez Perce springs or fountains treaty rights reserved in the Treaty of June 9, 1863; and (4) of breach of trust arising out of the negotiation of or resulting from the adoption of the Agreement.

Tolls all periods of limitation and time-based equitable defenses applicable to these claims for the period between the enactment of this Act and the earlier of: (1) the date on which the amounts authorized for the Funds established by this Act are appropriated; or (2) October 1, 2017.

Declares that the Tribe shall retain all rights not specifically waived or released in the Agreement or this Act.

States that nothing in the Agreement or this Act: (1) constitutes a waiver by the Tribe of any claim against the United States resulting from the construction and operation of the Dworshak Project (Project PWI 05090), other than those specified in this Act; or (2) precludes the Tribe or allottees, or the United States as their trustee, from purchasing or otherwise acquiring water rights in the future to the same extent as any other entity in the State.

(Sec. 11) Requires the heads of the Federal agencies involved in the operational Memorandum of Agreement referred to in the Agreement, in implementing the provisions of the Agreement and this Act relating to the use of water stored in Dworshak Reservoir for flow augmentation purposes, to implement a flow augmentation plan beneficial to fish and consistent with the Agreement.

Declares that nothing in this Act confers jurisdiction on any State court to: (1) enforce Federal environmental laws regarding the duties of the United States; or (2) conduct judicial review of a Federal agency action.

Actions Timeline

- **Nov 20, 2004:** Referred to the Subcommittee on Water and Power.
- **Nov 20, 2004:** Message on Senate action sent to the House.
- **Nov 20, 2004:** Received in the House.
- **Nov 20, 2004:** Referred to the House Committee on Resources.
- **Nov 19, 2004:** Passed/agreed to in Senate: Passed Senate with an amendment by Unanimous Consent.(consideration: CR S11566-11584; text as passed Senate: CR S11569-11571; text of measure as reported in Senate: CR S11566-11569)
- **Nov 19, 2004:** Passed Senate with an amendment by Unanimous Consent. (consideration: CR S11566-11584; text as passed Senate: CR S11569-11571; text of measure as reported in Senate: CR S11566-11569)
- **Oct 7, 2004:** Committee on Indian Affairs. Reported by Senator Campbell with an amendment in the nature of a substitute. With written report No. 108-389.
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- **Oct 7, 2004:** Placed on Senate Legislative Calendar under General Orders. Calendar No. 777.
- **Sep 22, 2004:** Committee on Indian Affairs. Ordered to be reported with an amendment in the nature of a substitute favorably.
- **Jul 20, 2004:** Committee on Indian Affairs. Hearings held. Hearings printed: S.Hrg. 108-636.
- **Jun 24, 2004:** Introduced in Senate
- **Jun 24, 2004:** Read twice and referred to the Committee on Indian Affairs.