

Calendar No. 397

116TH CONGRESS
1ST SESSION

S. 886

[Report No. 116–189]

To amend the Omnibus Public Land Management Act of 2009 to make
the Reclamation Water Settlements Fund permanent.

IN THE SENATE OF THE UNITED STATES

MARCH 27, 2019

Mr. UDALL (for himself, Mr. HEINRICH, and Ms. CORTEZ MASTO) introduced
the following bill; which was read twice and referred to the Committee
on Energy and Natural Resources

MAY 23 (legislative day, MAY 22), 2019

Committee discharged; referred to the Committee on Indian Affairs

DECEMBER 19, 2019

Reported by Mr. HOEVEN, with an amendment

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

A BILL

To amend the Omnibus Public Land Management Act of
2009 to make the Reclamation Water Settlements Fund
permanent.

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 “Indian Water Rights
3 Settlement Extension Act”.

4 **SEC. 2. RECLAMATION WATER SETTLEMENTS FUND.**

5 Section 10501 of the Omnibus Public Land Manage-
6 ment Act of 2009 (43 U.S.C. 407) is amended—

7 (1) in subsection (b)(1), by striking “For each
8 of fiscal years 2020 through 2029” and inserting
9 “For fiscal year 2020 and each fiscal year there-
10 after”;

11 (2) in subsection (c)—

12 (A) in paragraph (1)(A), by striking “for
13 each of fiscal years 2020 through 2034” and
14 inserting “for fiscal year 2020 and each fiscal
15 year thereafter”; and

16 (B) in paragraph (3)(C), by striking “for
17 any authorized use” and all that follows
18 through the period at the end and inserting
19 “for any use authorized under paragraph (2).”;
20 and

21 (3) by striking subsection (f).

22 **SECTION 1. SHORT TITLE.**

23 This Act may be cited as the “Indian Water Rights
24 Settlement Extension Act”.

1 **SEC. 2. RECLAMATION WATER SETTLEMENTS FUND.**

2 *Section 10501 of the Omnibus Public Land Manage-*
 3 *ment Act of 2009 (43 U.S.C. 407) is amended—*

4 *(1) in subsection (b)(1), by striking “fiscal years*
 5 *2020 through 2029” and inserting “fiscal years 2020*
 6 *through 2039”;*

7 *(2) in subsection (c)—*

8 *(A) in paragraph (1), by striking subpara-*
 9 *graph (A) and inserting the following:*

10 *“(A) EXPENDITURES.—*

11 *“(i) IN GENERAL.—Subject to subpara-*
 12 *graph (B)—*

13 *“(I) for each of fiscal years 2020*
 14 *through 2029, the Secretary may ex-*
 15 *pend from the Fund an amount not to*
 16 *exceed \$120,000,000, plus the interest*
 17 *accrued from the Fund, for the fiscal*
 18 *year in which expenditures are made*
 19 *pursuant to paragraphs (2) and (3);*
 20 *and*

21 *“(II) subject to clause (ii), for*
 22 *each of fiscal years 2030 through 2044,*
 23 *the Secretary may expend from the*
 24 *Fund an amount not to exceed*
 25 *\$120,000,000, plus the interest accrued*
 26 *in the Fund, for the fiscal year in*

1 *which expenditures are made pursuant*
 2 *to paragraph (2).*

3 “(ii) *LIMITATION.*—*Of the amount de-*
 4 *scribed in clause (i)(II) for each of fiscal*
 5 *years 2030 through 2044, the Secretary may*
 6 *expend an amount not to exceed*
 7 *\$90,000,000 for an individual Indian water*
 8 *rights settlement, unless the Secretary deter-*
 9 *mines that an expenditure of more than*
 10 *\$90,000,000 would not adversely affect the*
 11 *funding of the implementation of other con-*
 12 *gressionally approved settlement agree-*
 13 *ments.”;*

14 *(B) in paragraph (2), in the matter pre-*
 15 *ceding subparagraph (A), by striking “litigation*
 16 *involving the United States, if the settlement*
 17 *agreement or implementing legislation requires*
 18 *the Bureau of Reclamation” and inserting*
 19 *“claims concerning Indian water resources, if the*
 20 *settlement agreement or implementing legislation*
 21 *authorizes the Secretary”; and*

22 *(C) in paragraph (3)—*

23 *(i) in subparagraph (A)—*

24 *(I) in clause (i)—*

1 (aa) in subclause (I), by
 2 striking “the entire period in
 3 which the Fund is in existence”
 4 and inserting “the period of fiscal
 5 years 2020 through 2029”; and

6 (bb) in subclause (II), by in-
 7 serting “during the period of fis-
 8 cal years 2020 through 2029”
 9 after “into the Fund”; and

10 (II) in clause (ii), by inserting
 11 “or are deposited into the Fund after
 12 fiscal year 2029” after “subparagraph
 13 (B)”;

14 (ii) in subparagraph (B)—

15 (I) in clauses (i)(II)(bb),
 16 (iii)(II)(bb), and (iv)(II)(bb), by strik-
 17 ing “the entire period in which the
 18 Fund is in existence” each place it ap-
 19 pears and inserting “the period of fis-
 20 cal years 2020 through 2029”; and

21 (II) in clause (iv)(I)—

22 (aa) by striking the period at
 23 the end and inserting “; and”;

24 (bb) by striking “through an-
 25 nual appropriations, the Sec-

1 *retary” shall and inserting the*
 2 *following: “through annual appro-*
 3 *priations—*

4 *“(aa) the Secretary”; and*
 5 *(cc) by adding at the end the*
 6 *following:*

7 *“(bb) if the Indian water*
 8 *rights settlement agreement de-*
 9 *scribed in item (aa) has not been*
 10 *approved and authorized by an*
 11 *Act of Congress by December 31,*
 12 *2021—*

13 *“(AA) the amount shall*
 14 *no longer be reserved for that*
 15 *settlement under subpara-*
 16 *graph (A)(i)(II); and*

17 *“(BB) the Secretary*
 18 *shall deposit the amount that*
 19 *would have otherwise been re-*
 20 *served under subparagraph*
 21 *(A)(i)(II) for the Indian*
 22 *water rights settlement agree-*
 23 *ment into the Lower Colo-*
 24 *rado River Basin Develop-*
 25 *ment Fund established under*

section 403(a) of the Colorado River Basin Project Act (43 U.S.C. 1543(a)), with 65 percent of that amount in each fiscal year deposited into the Future Indian Water Settlement Subaccount of that Fund.”;

(iii) in subparagraph (C)—

(I) by striking “December 31, 2019” and inserting “December 31, 2021”; and

(II) by striking “for any authorized use” and inserting “for any use authorized under paragraph (2)”; and

(iv) by adding at the end the following:

“(D) SUFFICIENCY OF FUNDS.—The Secretary may use amounts in the Fund in a fiscal year for multiple settlements under subparagraph (B), without regard to the priorities described in clauses (ii) through (iv) of subparagraph (B), to ensure that sufficient funds are available to meet the enforceability date or substantial completion date of a settlement.”; and

1 (3) in subsection (f), by striking “September 30,
2 2034” and inserting “September 30, 2044”.

3 **SEC. 3. AMENDMENTS TO AAMODT LITIGATION SETTLE-**
4 **MENT ACT.**

5 (a) *DEFINITION OF 611(G) AGREEMENT.*—Section 602
6 of the Aamodt Litigation Settlement Act (Public Law 111–
7 291; 124 Stat. 3134) is amended—

8 (1) by redesignating paragraphs (1) through (23)
9 as paragraphs (2) through (24), respectively; and

10 (2) by inserting before paragraph (2) (as so re-
11 designated) the following:

12 “(1) 611(g) AGREEMENT.—The term ‘611(g)
13 Agreement’ means the agreement dated July 2, 2019,
14 to be executed by the United States, the State, the
15 Pueblos, the County, and the City pursuant to section
16 611(g).”.

17 (b) *FINAL PROJECT DESIGN.*—Section 611(b) of the
18 Aamodt Litigation Settlement Act (Public Law 111–291;
19 124 Stat. 3137) is amended, in the matter preceding para-
20 graph (1), by striking “within 90 days of” and inserting
21 “as soon as feasible after”.

22 (c) *CONSTRUCTION COSTS FOR PUEBLO WATER FA-*
23 *CILITIES.*—Section 611(f) of the Aamodt Litigation Settle-
24 ment Act (Public Law 111–291; 124 Stat. 3138) is amend-
25 ed—

1 (1) in paragraph (1)—

2 (A) in subparagraph (A), by striking
3 “\$106,400,000” and inserting “\$243,400,000”;
4 and

5 (B) by striking subparagraph (B) and in-
6 serting the following:

7 “(B) *EXCEPTION.*—Of the amount described
8 in subparagraph (A)—

9 “(i) the initial \$106,400,000 shall be
10 increased or decreased, as appropriate,
11 based on ordinary fluctuations in construc-
12 tion costs since October 1, 2006, as deter-
13 mined using applicable engineering cost in-
14 dices; and

15 “(ii) any amounts made available in
16 excess of the amount described in clause (i)
17 shall be increased or decreased, as appro-
18 priate, based on ordinary fluctuations in
19 construction costs since October 1, 2018, as
20 determined using applicable engineering
21 cost indices.”; and

22 (2) in paragraph (3), by inserting “and the
23 611(g) Agreement” after “the Cost-Sharing and Sys-
24 tem Integration Agreement”.

1 (d) *FUNDING FOR REGIONAL WATER SYSTEM.*—Sec-
 2 tion 617(a)(1)(B) of the *Aamodt Litigation Settlement Act*
 3 (Public Law 111–291; 124 Stat. 3147) is amended—

4 (1) by striking “\$50,000,000” and inserting
 5 “\$187,000,000”; and

6 (2) by striking “2024” and inserting “2028”.

7 (e) *ADJUSTMENT.*—Section 617(a)(4) of the *Aamodt*
 8 *Litigation Settlement Act* (Public Law 111–291; 124 Stat.
 9 3147) is amended by striking “since October 1, 2006, as
 10 determined using applicable engineering cost indices” and
 11 inserting “pursuant to section 611(f)(1)(B)”.

12 (f) *EXECUTION OF AGREEMENT UNDER SECTION*
 13 611(G).—Section 621 of the *Aamodt Litigation Settlement*
 14 *Act* (Public Law 111–291; 124 Stat. 3149) is amended by
 15 striking subsections (a) and (b) and inserting the following:

16 “(a) *APPROVAL.*—To the extent the *Settlement Agree-*
 17 *ment*, the *Cost-Sharing and System Integration Agreement*,
 18 and the 611(g) *Agreement* do not conflict with this title,
 19 the *Settlement Agreement*, the *Cost-Sharing and System In-*
 20 *tegration Agreement*, and the 611(g) *Agreement* (including
 21 any amendments to the *Settlement Agreement*, the *Cost-*
 22 *Sharing and System Integration Agreement*, and the 611(g)
 23 *Agreement* that are executed to make the *Settlement Agree-*
 24 *ment*, the *Cost-Sharing and System Integration Agreement*,

1 *or the 611(g) Agreement consistent with this title) are au-*
 2 *thorized, ratified, and confirmed.*

3 “(b) *EXECUTION.—To the extent the Settlement Agree-*
 4 *ment, the Cost-Sharing and System Integration Agreement,*
 5 *and the 611(g) Agreement do not conflict with this title,*
 6 *the Secretary shall execute the Settlement Agreement, the*
 7 *Cost-Sharing and System Integration Agreement, and the*
 8 *611(g) Agreement (including any amendments that are nec-*
 9 *essary to make the Settlement Agreement, the Cost-Sharing*
 10 *and System Integration Agreement, or the 611(g) Agree-*
 11 *ment consistent with this title).”.*

12 (g) *REQUIREMENTS FOR DETERMINATION OF SUB-*
 13 *STANTIAL COMPLETION OF THE REGIONAL WATER SYS-*
 14 *TEM.—Section 623(e) of the Aamodt Litigation Settlement*
 15 *Act (Public Law 111–291; 124 Stat. 3151) is amended—*

16 (1) *by striking paragraph (1) and inserting the*
 17 *following:*

18 “(1) *CRITERIA FOR SUBSTANTIAL COMPLETION*
 19 *OF REGIONAL WATER SYSTEM.—Subject to the provi-*
 20 *sions of section 611(d) concerning the extent, size, and*
 21 *capacity of the County Distribution System, the Re-*
 22 *gional Water System shall be determined to be sub-*
 23 *stantially completed if—*

24 “(A) *the infrastructure has been constructed*
 25 *capable of—*

1 “(i) *diverting, treating, transmitting,*
2 *and distributing a supply of 2,500 acre-feet*
3 *of water to the Pueblos consistent with the*
4 *Engineering Report (as amended by the*
5 *611(g) Agreement and the Operating Agree-*
6 *ment); and*

7 “(ii) *diverting, treating, and transmit-*
8 *ting the quantity of water specified in the*
9 *Engineering Report to the County Distribu-*
10 *tion System and consistent with the Engi-*
11 *neering Report (as amended by the 611(g)*
12 *Agreement and the Operating Agreement);*
13 *or*

14 “(B) *the Secretary—*

15 “(i) *issues a notice to proceed author-*
16 *izing the commencement of Phase I con-*
17 *struction of the Regional Water System by*
18 *December 31, 2019, and subsequently com-*
19 *mences construction of the Regional Water*
20 *System;*

21 “(ii) *diligently proceeds to construct*
22 *the Regional Water System in accordance*
23 *with the Engineering Report (as amended*
24 *by the 611(g) Agreement), on a schedule for*
25 *completion by June 30, 2028;*

1 “(iii) expends all of the available fund-
 2 ing provided to construct the Regional
 3 Water System under section 611(f)(1)(A), in
 4 the Cost-Sharing and System Integration
 5 Agreement, and in the 611(g) Agreement;

6 “(iv) complies with the terms of the
 7 611(g) Agreement; and

8 “(v) despite diligent efforts cannot
 9 complete construction of the Regional Water
 10 System as described in the final Engineer-
 11 ing Report (as amended by the 611(g)
 12 Agreement), due solely to the lack of addi-
 13 tional authorized funding.”;

14 (2) in paragraph (2)—

15 (A) by striking “2021” and inserting
 16 “2025”; and

17 (B) by striking “2024” and inserting
 18 “2028”;

19 (3) in paragraph (3), in the matter preceding
 20 subparagraph (A), by striking “2021” and inserting
 21 “2025”;

22 (4) in paragraph (4)(B)(ii)(II), by striking
 23 “2023” and inserting “2027”; and

24 (5) in paragraph (5)(A), by striking “2024” and
 25 inserting “2028”.

1 **SEC. 4. KICKAPOO TRIBE.**

2 (a) *DEFINITION OF UPPER DELAWARE AND TRIBU-*
 3 *TARIES WATERSHED PLAN.*—*In this section, the term*
 4 *“Upper Delaware and Tributaries Watershed Plan” means*
 5 *the plan described in the document entitled “Watershed*
 6 *Plan and Environmental Impact Statement Upper Dela-*
 7 *ware and Tributaries Watershed Atchison, Brown, Jackson,*
 8 *and Nemaha Counties, Kansas”, dated January 1994, and*
 9 *supplemented in June 1994—*

10 (1) *developed, pursuant to the Watershed Protec-*
 11 *tion and Flood Prevention Act (16 U.S.C. 1001 et*
 12 *seq.)—*

13 (A) *by the Kickapoo Tribe, certain water-*
 14 *shed and conservation districts in the State of*
 15 *Kansas, and the Department of Wildlife and*
 16 *Parks of the State of Kansas; and*

17 (B) *with the cooperation and technical as-*
 18 *sistance of the Natural Resources Conservation*
 19 *Service; and*

20 (2) *described in the report of the Committee on*
 21 *Environment and Public Works of the Senate (Senate*
 22 *Report 105–13; April 22, 1997).*

23 (b) *STUDY; RECOMMENDATIONS.*—*To support the pur-*
 24 *poses of achieving a fair, equitable, and final settlement of*
 25 *claims to water rights for the Kickapoo Tribe in the State*
 26 *of Kansas, the Secretary of Agriculture (acting through the*

1 *Chief of the Natural Resources Conservation Service), in*
2 *consultation with the Secretary of the Interior (acting*
3 *through the Director of the Secretary's Indian Water Rights*
4 *Office), shall—*

5 *(1) commence a study of the multipurpose dam*
6 *described in the Upper Delaware and Tributaries Wa-*
7 *tershed Plan; and*

8 *(2) not later than 2 years after the date of enact-*
9 *ment of this Act, make recommendations to Congress*
10 *with respect to the material alterations or changes to*
11 *the Upper Delaware and Tributaries Watershed Plan*
12 *that are necessary to effectuate, in part, the Tribal*
13 *water rights agreed to by the Kickapoo Tribe and the*
14 *State of Kansas on September 9, 2016, in the Kick-*
15 *apoo Tribe Water Rights Settlement Agreement, which*
16 *otherwise remains subject to approval and authoriza-*
17 *tion by Congress.*

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116TH CONGRESS
1ST Session

S. 886

[Report No. 116–189]

A BILL

To amend the Omnibus Public Land Management Act of 2009 to make the Reclamation Water Settlements Fund permanent.

DECEMBER 19, 2019

Reported with an amendment