

114TH CONGRESS  
1ST SESSION

# S. 438

To provide for the repair, replacement, and maintenance of certain Indian irrigation projects.

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## IN THE SENATE OF THE UNITED STATES

FEBRUARY 10, 2015

Mr. BARRASSO (for himself, Mr. TESTER, Mr. HATCH, Mr. ENZI, and Mr. DAINES) introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

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## A BILL

To provide for the repair, replacement, and maintenance of certain Indian irrigation projects.

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 “Ir-  
5 rigation Rehabilitation and Renovation for Indian Tribal  
6 Governments and Their Economies Act” or the “IRRI-  
7 GATE Act”.

8 (b) TABLE OF CONTENTS.—The table of contents of  
9 this Act is as follows:

Sec. 1. Short title; table of contents.  
Sec. 2. Definitions.

## TITLE I—INDIAN IRRIGATION FUND

- Sec. 101. Establishment.
- Sec. 102. Deposits to Fund.
- Sec. 103. Expenditures from Fund.
- Sec. 104. Investments of amounts.
- Sec. 105. Transfers of amounts.
- Sec. 106. Termination.

TITLE II—REPAIR, REPLACEMENT, AND MAINTENANCE OF  
CERTAIN INDIAN IRRIGATION PROJECTS

- Sec. 201. Repair, replacement, and maintenance of certain Indian irrigation projects.
- Sec. 202. Eligible projects.
- Sec. 203. Requirements and conditions.
- Sec. 204. Study of Indian irrigation program and project management.
- Sec. 205. Tribal consultation and user input.
- Sec. 206. Allocation among projects.

1 **SEC. 2. DEFINITIONS.**

2 In this Act:

3 (1) **FUND.**—The term “Fund” means the In-  
4 dian Irrigation Fund established by section 101.

5 (2) **INDIAN TRIBE.**—The term “Indian tribe”  
6 has the meaning given the term in section 4 of the  
7 Indian Self-Determination and Education Assistance  
8 Act (25 U.S.C. 450b).

9 (3) **SECRETARY.**—The term “Secretary” means  
10 the Secretary of the Interior, acting through the  
11 Commissioner of Reclamation.

12 **TITLE I—INDIAN IRRIGATION**  
13 **FUND**

14 **SEC. 101. ESTABLISHMENT.**

15 There is established in the Treasury of the United  
16 States a fund, to be known as the “Indian Irrigation  
17 Fund”, consisting of—

1           (1) such amounts as are deposited in the Fund  
2           under section 103; and

3           (2) any interest earned on investment of  
4           amounts in the Fund under section 105.

5 **SEC. 102. DEPOSITS TO FUND.**

6           (a) IN GENERAL.—For each of fiscal years 2015  
7 through 2036, the Secretary of the Treasury shall deposit  
8 in the Fund \$35,000,000 of the revenues that would oth-  
9 erwise be deposited for the fiscal year in the reclamation  
10 fund established by the first section of the Act of June  
11 17, 1902 (32 Stat. 388, chapter 1093).

12          (b) AVAILABILITY OF AMOUNTS.—Amounts depos-  
13 ited in the Fund under subsection (a) shall be used, sub-  
14 ject to appropriation, to carry out this Act.

15 **SEC. 103. EXPENDITURES FROM FUND.**

16          (a) IN GENERAL.—Subject to subsection (b), for each  
17 of fiscal years 2015 through 2036, the Secretary may, to  
18 the extent provided in advance in appropriations Acts, ex-  
19 pend from the Fund, in accordance with this Act, not more  
20 than the sum of—

21           (1) \$35,000,000; and

22           (2) the amount of interest accrued in the Fund.

23          (b) ADDITIONAL EXPENDITURES.—The Secretary  
24 may expend more than \$35,000,000 for any fiscal year  
25 referred to in subsection (a) if the additional amounts are

1 available in the Fund as a result of a failure of the Sec-  
2 retary to expend all of the amounts available under sub-  
3 section (a) in 1 or more prior fiscal years.

4 **SEC. 104. INVESTMENTS OF AMOUNTS.**

5 (a) IN GENERAL.—The Secretary shall invest such  
6 portion of the Fund as is not, in the judgment of the Sec-  
7 retary, required to meet current withdrawals.

8 (b) CREDITS TO FUND.—The interest on, and the  
9 proceeds from the sale or redemption of, any obligations  
10 held in the Fund shall be credited to, and form a part  
11 of, the Fund.

12 **SEC. 105. TRANSFERS OF AMOUNTS.**

13 (a) IN GENERAL.—The amounts required to be  
14 transferred to the Fund under this title shall be trans-  
15 ferred at least monthly from the general fund of the  
16 Treasury to the Fund on the basis of estimates made by  
17 the Secretary of the Treasury.

18 (b) ADJUSTMENTS.—Proper adjustment shall be  
19 made in amounts subsequently transferred to the extent  
20 prior estimates are in excess of or less than the amounts  
21 required to be transferred.

22 **SEC. 106. TERMINATION.**

23 On September 30, 2036—

24 (1) the Fund shall terminate; and

1           (2) the unexpended and unobligated balance of  
2       the Fund shall be transferred to the reclamation  
3       fund established by the first section of the Act of  
4       June 17, 1902 (32 Stat. 388, chapter 1093).

5 **TITLE    II—REPAIR,    REPLACE-**  
6 **MENT, AND MAINTENANCE OF**  
7 **CERTAIN INDIAN IRRIGATION**  
8 **PROJECTS**

9 **SEC. 201. REPAIR, REPLACEMENT, AND MAINTENANCE OF**  
10 **CERTAIN INDIAN IRRIGATION PROJECTS.**

11       (a) IN GENERAL.—The Secretary shall establish a  
12 program to address the deferred maintenance needs of In-  
13 dian irrigation projects that—

14           (1) create risks to public or employee safety or  
15       natural or cultural resources; and

16           (2) unduly impede the management and effi-  
17       ciency of the Indian irrigation program.

18       (b) FUNDING.—Consistent with section 103, the Sec-  
19 retary shall use or transfer to the Bureau of Indian Af-  
20 fairs not less than \$35,000,000 of amounts in the Fund,  
21 plus accrued interest, for each of fiscal years 2015  
22 through 2036 to carry out maintenance, repair, and re-  
23 placement activities for 1 or more of the Indian irrigation  
24 projects described in section 202 (including any struc-

tures, facilities, equipment, or vehicles used in connection with the operation of those projects).

**SEC. 202. ELIGIBLE PROJECTS.**

The projects eligible for funding under section 201(b) are the Indian irrigation projects in the western United States that, on the date of enactment of this Act—

(1) are owned by the Federal Government, as listed in the Federal inventory required by Executive Order 13327 (40 U.S.C. 121 note; relating to Federal real property asset management);

(2) are managed by the Bureau of Indian Affairs (including projects managed under contracts or compacts pursuant to the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.); and

(3) have deferred maintenance documented by the Bureau of Indian Affairs.

**SEC. 203. REQUIREMENTS AND CONDITIONS.**

Not later than 120 days after the date of enactment of this Act and as a precondition to amounts being expended from the Fund to carry out this title, the Secretary, in consultation with the Assistant Secretary for Indian Affairs, the Commissioner of Reclamation, and representatives of affected Indian tribes, shall develop and submit to Congress—

1           (1) programmatic goals to carry out this title  
2       that—

3           (A) would enable the completion of repair-  
4       ing, replacing, improving, or performing main-  
5       tenance on projects as expeditiously as possible;

6           (B) facilitate or improve the ability of the  
7       Bureau of Indian Affairs to carry out the mis-  
8       sion of the Bureau of Indian Affairs in oper-  
9       ating a project; and

10          (C) ensure that the results of government-  
11       to-government consultation required under sec-  
12       tion 205 be addressed; and

13          (2) funding prioritization criteria to serve as a  
14       methodology for distributing funds under this title,  
15       that take into account—

16          (A) the extent to which deferred mainte-  
17       nance of qualifying irrigation projects poses a  
18       threat to public or employee safety or health;

19          (B) the extent to which deferred mainte-  
20       nance poses a threat to natural or cultural re-  
21       sources;

22          (C) the extent to which deferred mainte-  
23       nance poses a threat to the ability of the Bu-  
24       reau of Indian Affairs to carry out the mission

1 of the Bureau of Indian Affairs in operating the  
2 project;

3 (D) the extent to which repairing, replac-  
4 ing, improving, or performing maintenance on a  
5 facility or structure will—

6 (i) improve public or employee safety,  
7 health, or accessibility;

8 (ii) assist in compliance with codes,  
9 standards, laws, or other requirements;

10 (iii) address unmet needs; and

11 (iv) assist in protecting natural or cul-  
12 tural resources;

13 (E) the methodology of the rehabilitation  
14 priority index of the Secretary, as in effect on  
15 the date of enactment of this Act;

16 (F) the potential economic benefits of the  
17 expenditures on job creation and general eco-  
18 nomic development in the affected tribal com-  
19 munities;

20 (G) the ability of the qualifying project to  
21 address tribal, regional, and watershed level  
22 water supply needs; and

23 (H) such other factors as the Secretary de-  
24 termines to be appropriate to prioritize the use  
25 of available funds that are, to the fullest extent

1 practicable, consistent with tribal and user rec-  
2 ommendations received pursuant to the con-  
3 sultation and input process under section 205.

4 **SEC. 204. STUDY OF INDIAN IRRIGATION PROGRAM AND**  
5 **PROJECT MANAGEMENT.**

6 (a) TRIBAL CONSULTATION AND USER INPUT.—Be-  
7 fore beginning to conduct the study required under sub-  
8 section (b), the Secretary shall—

9 (1) consult with the Indian tribes that have ju-  
10 risdiction over the land on which an irrigation  
11 project eligible to receive funding under section 202  
12 is located; and

13 (2) solicit and consider the input, comments,  
14 and recommendations of the landowners served by  
15 the irrigation project.

16 (b) STUDY.—Not later than 2 years after the date  
17 of enactment of this Act, the Secretary of the Interior,  
18 acting through the Assistant Secretary for Indian Affairs,  
19 shall complete a study that evaluates options for improv-  
20 ing programmatic and project management and perform-  
21 ance of irrigation projects managed and operated in whole  
22 or in part by the Bureau of Indian Affairs.

23 (c) REPORT.—On completion of the study under sub-  
24 section (b), the Secretary of the Interior, acting through  
25 the Assistant Secretary for Indian Affairs, shall submit

1 to the Committees on Energy and Natural Resources and  
 2 Indian Affairs of the Senate and the Committee on Nat-  
 3 ural Resources of the House of Representatives a report  
 4 that—

5 (1) describes the results of the study; and

6 (2) includes recommendations for improving  
 7 programmatic and project management and per-  
 8 formance in each qualifying project area and for the  
 9 program as a whole.

10 (d) FUNDING.—Of the amounts authorized to be ex-  
 11 pended from the Fund, \$1,000,000 shall be made available  
 12 during fiscal year 2015 to carry out this section, to remain  
 13 available until expended.

14 **SEC. 205. TRIBAL CONSULTATION AND USER INPUT.**

15 Before expending funds on an Indian irrigation  
 16 project pursuant to section 201 and not later than 60 days  
 17 after the date of enactment of this Act, the Secretary  
 18 shall—

19 (1) consult with the Indian tribe that has juris-  
 20 diction over the land on which an irrigation project  
 21 eligible to receive funding under section 202 is lo-  
 22 cated; and

23 (2) solicit and consider the input, comments,  
 24 and recommendations of the landowners served by  
 25 the irrigation project.

1 **SEC. 206. ALLOCATION AMONG PROJECTS.**

2 (a) IN GENERAL.—Subject to subsection (b), to the  
3 maximum extent practicable, the Secretary shall ensure  
4 that, for each of fiscal years 2015 through 2036, each In-  
5 dian irrigation project eligible for funding under section  
6 202 that has critical maintenance needs receives part of  
7 the funding under section 201 to address critical mainte-  
8 nance needs.

9 (b) PRIORITY.—In allocating amounts under section  
10 201(b), in addition to considering the funding priorities  
11 described in section 203, the Secretary shall give priority  
12 to eligible Indian irrigation projects serving more than 1  
13 Indian tribe within an Indian reservation and to projects  
14 for which funding has not been made available during the  
15 15-year period ending on the day before the date of enact-  
16 ment of this Act under any other Act of Congress that  
17 expressly identifies the Indian irrigation project or the In-  
18 dian reservation of the project to address the deferred  
19 maintenance, repair, or replacement needs of the Indian  
20 irrigation project.

21 (c) CAP ON FUNDING.—

22 (1) IN GENERAL.—Subject to paragraph (2), in  
23 allocating amounts under section 201(b), the Sec-  
24 retary shall allocate not more than \$15,000,000 to  
25 any individual Indian irrigation project described in  
26 section 202 during any consecutive 3-year period.

1           (2) EXCEPTION.—Notwithstanding the cap de-  
2       scribed in paragraph (1), if the full amount under  
3       section 201(b) cannot be fully allocated to eligible  
4       Indian irrigation projects because the costs of the  
5       remaining activities authorized in section 201(b) of  
6       an irrigation project would exceed the cap described  
7       in paragraph (1), the Secretary may allocate the re-  
8       maining funds to eligible Indian irrigation projects  
9       in accordance with this title.

10       (d) BASIS OF FUNDING.—Any amounts made avail-  
11    able under this section shall be nonreimbursable.

12       (e) APPLICABILITY OF ISDEAA.—The Indian Self-  
13    Determination and Education Assistance Act (25 U.S.C.  
14    450 et seq.) shall apply to activities carried out under this  
15    section.

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