

116TH CONGRESS
1ST SESSION

S. 1977

To approve the Kickapoo Tribe Water Rights Settlement Agreement, and
for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 26, 2019

Mr. MORAN introduced the following bill; which was read twice and referred
to the Committee on Indian Affairs

A BILL

To approve the Kickapoo Tribe Water Rights Settlement
Agreement, 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 “Kickapoo Tribe in Kansas Water Rights Settlement
6 Act”.

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

- Sec. 1. Short title; table of contents.
- Sec. 2. Purposes.
- Sec. 3. Definitions.
- Sec. 4. Ratification of Settlement Agreement.
- Sec. 5. Kickapoo Tribe water rights.

- Sec. 6. Effect of Settlement Agreement and Act.
 Sec. 7. Water facilities.
 Sec. 8. Waiver and release of claims; retention of claims.
 Sec. 9. Enforceability date.
 Sec. 10. Judicial proceedings.
 Sec. 11. Miscellaneous provisions.

1 **SEC. 2. PURPOSES.**

2 The purposes of this Act are—

3 (1) to achieve a fair, equitable, and final settle-
 4 ment of claims to water rights in the State of Kan-
 5 sas for—

6 (A) the Kickapoo Tribe of Indians of the
 7 Kickapoo Reservation in Kansas; and

8 (B) the United States, for the benefit of
 9 the Tribe and its members and allottees;

10 (2) to authorize, ratify, and confirm the Kick-
 11 apoo Tribe Water Rights Settlement Agreement per-
 12 taining to the Tribal water right, entered into by the
 13 Tribe and the State of Kansas, to the extent that
 14 the Settlement Agreement is consistent with this
 15 Act;

16 (3) to authorize and direct the Secretary—

17 (A) to execute the Settlement Agreement;
 18 and

19 (B) to take any other action necessary to
 20 carry out the Settlement Agreement in accord-
 21 ance with this Act; and

1 (4) to direct the Natural Resources Conserva-
2 tion Service of the Department of Agriculture to
3 take certain actions under the authority of the Wa-
4 tershed Protection and Flood Prevention Act (16
5 U.S.C. 1001 et seq.) and other actions consistent
6 with this Act.

7 **SEC. 3. DEFINITIONS.**

8 In this Act:

9 (1) ACT.—The term “Act” means the Act of
10 Congress to authorize the United States to enter
11 into the Kickapoo Tribe Water Rights Settlement
12 Agreement and to execute the obligations set forth
13 herein, and for other purposes set forth herein.

14 (2) ALLOTTED LANDS.—The term “allotted
15 lands” means lands within the boundaries of the
16 Reservation that were allotted to individual Kick-
17 apoo Tribe members in accordance with a treaty or
18 Federal statute, and that are held in trust by the
19 United States for the benefit of one or more mem-
20 bers or successors in interest thereto.

21 (3) ALLOTTEE.—The term “allottee” means an
22 individual Indian who holds a beneficial real prop-
23 erty interest in an allotment of Indian land that is—

24 (A) located within the Reservation; and

25 (B) held in trust by the United States.

1 (4) COURT.—The term “Court” means the
2 United States District Court for the District of Kan-
3 sas unless otherwise specified herein.

4 (5) DELAWARE RIVER BASIN.—The term
5 “Delaware River Basin” means that area of land,
6 depicted on the map attached as Exhibit 1 to the
7 Kickapoo Tribe Water Rights Settlement Agree-
8 ment.

9 (6) ENFORCEABILITY DATE.—The term “en-
10 forceability date” means the date on which the Sec-
11 retary publishes in the Federal Register the state-
12 ment of findings described in section 6(c).

13 (7) INDIAN TRIBE.—The term “Indian Tribe”
14 has the meaning given the term “Indian tribe” in
15 section 4 of the Indian Self-Determination and Edu-
16 cation Assistance Act (25 U.S.C. 5304).

17 (8) KANSAS WATER RIGHTS.—The term “Kan-
18 sas water rights” means a property right in the use
19 of water obtained under Kansas law.

20 (9) KICKAPOO TRIBE WATER RIGHTS SETTLE-
21 MENT AGREEMENT; SETTLEMENT AGREEMENT.—
22 The terms “Kickapoo Tribe Water Rights Settle-
23 ment Agreement” and “Settlement Agreement”
24 mean the Agreement executed by and between the

1 Tribe and the State on September 9, 2016, as
2 amended to conform to this Act, as applicable.

3 (10) MEMBER.—The term “member” means
4 any person duly enrolled as a member of the Tribe.

5 (11) RESERVATION.—The term “Reserva-
6 tion”—

7 (A) means the land depicted on the map
8 attached to the Settlement Agreement as Ex-
9 hibit 1; and

10 (B) shall be used solely for the purposes of
11 the Settlement Agreement, this Act, and any
12 judgment or decree issued by the Court approv-
13 ing the Settlement Agreement.

14 (12) SECRETARY.—The term “Secretary”
15 means the Secretary of the Interior.

16 (13) STATE.—The term “State” means the
17 Kansas State government and all of its officers,
18 agents, agencies, departments, and divisions.

19 (14) TRIBAL WATER RIGHT.—The term “Tribal
20 water right” means the water rights ratified, con-
21 firmed, and declared to be valid for the benefit of
22 the Tribe and its members and allottees, as set forth
23 and described in section 5.

24 (15) TRIBE.—The term “Tribe” means the
25 Kickapoo Tribe of Indians of the Kickapoo Reserva-

1 tion in Kansas, a federally recognized sovereign In-
2 dian Tribe that functions as a customary and tradi-
3 tional Indian Tribe, acting on behalf of itself and its
4 members, but not acting on behalf of members in
5 their capacities as allottees.

6 (16) UNITED STATES.—The term “United
7 States” means the United States of America acting
8 in its capacity as trustee for the Tribe, its members,
9 and allottees, or as specifically stated or limited in
10 any given reference herein, in which case it means
11 the United States of America acting in the capacity
12 as set forth in said reference.

13 **SEC. 4. RATIFICATION OF SETTLEMENT AGREEMENT.**

14 (a) RATIFICATION.—

15 (1) IN GENERAL.—As modified by this Act, the
16 Settlement Agreement is authorized, ratified, and
17 confirmed.

18 (2) AMENDMENTS.—Any amendment to the
19 Settlement Agreement is authorized, ratified, and
20 confirmed, to the extent such amendment is exe-
21 cuted to make the Settlement Agreement consistent
22 with this Act.

23 (b) EXECUTION.—

24 (1) IN GENERAL.—To the extent that the Set-
25 tlement Agreement does not conflict with this Act,

1 the Secretary shall execute the Settlement Agree-
2 ment, including all exhibits to, or parts of, the Set-
3 tlement Agreement requiring the signature of the
4 Secretary.

5 (2) MODIFICATIONS.—Nothing in this Act pre-
6 cludes the Secretary from approving any modifica-
7 tion to exhibits to the Settlement Agreement that is
8 consistent with this Act, to the extent the modifica-
9 tion does not otherwise require congressional ap-
10 proval under section 2116 of the Revised Statutes
11 (25 U.S.C. 177) or other applicable provision of
12 Federal law.

13 (c) ENVIRONMENTAL COMPLIANCE.—In imple-
14 menting the Settlement Agreement, the Secretary shall
15 comply with all applicable provisions of—

16 (1) the National Environmental Policy Act of
17 1969 (42 U.S.C. 4321 et seq.);

18 (2) the Endangered Species Act of 1973 (16
19 U.S.C. 1531 et seq.); and

20 (3) all other applicable Federal environmental
21 laws.

22 **SEC. 5. KICKAPOO TRIBE WATER RIGHTS.**

23 (a) INTENT OF CONGRESS.—It is the intent of Con-
24 gress to provide to each allottee benefits that are equiva-
25 lent to, or exceed, the benefits allottees possess on the day

1 before the date of enactment of this Act, taking into con-
2 sideration—

3 (1) the potential risks, cost, and time delay as-
4 sociated with litigation that would be resolved by the
5 Settlement Agreement and this Act;

6 (2) the availability of funding under this Act
7 and from other sources;

8 (3) the availability of water from the Tribal
9 water right; and

10 (4) the applicability of section 7 of the Act of
11 February 8, 1887 (25 U.S.C. 381), and this Act to
12 protect the interests of allottees.

13 (b) CONFIRMATION OF TRIBAL WATER RIGHT.—

14 (1) IN GENERAL.—A consumptive Tribal water
15 right of up to 4,705 acre-feet of water per year is
16 confirmed in accordance with the terms and condi-
17 tions of the Settlement Agreement.

18 (2) PRIORITY DATE.—Consistent with the Set-
19 tlement Agreement, the priority date of the Tribal
20 water right shall be October 24, 1832.

21 (3) USE.—The Tribe may use the Tribal water
22 right for any purpose set forth in the Settlement
23 Agreement, this Act, and applicable Federal law.

24 (c) TRUST STATUS OF TRIBAL WATER RIGHT.—The
25 Tribal water right—

1 (1) shall be held in trust by the United States
2 on behalf of the Tribe and its members and allottees
3 in accordance with this section; and

4 (2) shall not be subject to forfeiture or aban-
5 donment.

6 (d) ALLOTTEES.—

7 (1) APPLICABILITY OF ACT OF FEBRUARY 8,
8 1887.—The provisions of section 7 of the Act of Feb-
9 ruary 8, 1887 (25 U.S.C. 381), relating to the use
10 of water for irrigation purposes shall apply to the
11 Tribal water right.

12 (2) ENTITLEMENT TO WATER.—Any entitle-
13 ment to water of an allottee under Federal law shall
14 be satisfied from the Tribal water right.

15 (3) ALLOCATIONS.—An allottee shall be entitled
16 to a just and equitable allocation of water for irriga-
17 tion.

18 (4) MEMBERS.—Members who do not own in-
19 terests in allotted land shall nonetheless be entitled
20 to the use of a portion of the Tribal water right pur-
21 suant to the terms and conditions of the Kickapoo
22 Tribe Water Rights Settlement Agreement and the
23 Tribal Water Code.

24 (5) CLAIMS.—

1 (A) EXHAUSTION OF REMEDIES.—Before
2 asserting any claim against the United States
3 under section 7 of the Act of February 8, 1887
4 (25 U.S.C. 381), or any other applicable law,
5 an allottee shall exhaust remedies available
6 under the Tribal Water Code or other applica-
7 ble Tribal law.

8 (B) ACTION FOR RELIEF.—Following ex-
9 haustion of all remedies available under the
10 Tribal Water Code or other applicable tribal
11 law, an allottee may seek relief under section 7
12 of the Act of February 8, 1887 (25 U.S.C.
13 381), or other applicable law.

14 (6) AUTHORITY OF THE SECRETARY.—The Sec-
15 retary shall have the authority to protect the rights
16 of members or allottees in accordance with this sec-
17 tion.

18 (e) AUTHORITY OF TRIBE.—

19 (1) IN GENERAL.—Except as provided in para-
20 graph (3), the Tribe shall have authority to use, al-
21 locate, distribute, and lease the Tribal water right
22 for any use on the Reservation in accordance with
23 the Settlement Agreement, this Act, the Tribal
24 Water Code or other Tribal law, and applicable Fed-
25 eral law.

1 (2) OFF-RESERVATION USE.—The Tribe may
2 allocate, distribute, and lease the Tribal water right
3 for off-Reservation use in accordance with the Set-
4 tlement Agreement, subject to the approval of the
5 Secretary.

6 (3) LEASES BY ALLOTTEES.—

7 (A) IN GENERAL.—An allottee may lease
8 any interest in land held by the allottee, to-
9 gether with any water rights determined to be
10 appurtenant to that interest in land, in accord-
11 ance with the Tribal Water Code.

12 (B) OFF-RESERVATION USE.—An allottee
13 may lease any water rights determined to be
14 appurtenant to its allotment for off-Reservation
15 in accordance with the Settlement Agreement,
16 subject to the approval of the Secretary.

17 (f) TRIBAL WATER CODE.—

18 (1) IN GENERAL.—Not later than 3 years after
19 the enforceability date, the Tribe shall enact a Trib-
20 al Water Code, that provides for—

21 (A) the management, regulation, and gov-
22 ernance of all uses of the Tribal water right in
23 accordance with the Settlement Agreement and
24 this Act; and

1 (B) establishment by the Tribe of condi-
2 tions, permit requirements, and other require-
3 ments for the allocation, distribution, diversion,
4 storage, and use of the Tribal water right in ac-
5 cordance with the Settlement Agreement and
6 this Act.

7 (2) INCLUSIONS.—Subject to the approval of
8 the Secretary, the Tribal Water Code shall provide—

9 (A) that any use of water by allottees shall
10 be satisfied with water from the Tribal water
11 right;

12 (B) a process by which an allottee may re-
13 quest that the Tribe provide water for irrigation
14 purposes in accordance with this Act, including
15 the provision of water under any allottee lease
16 under section 4 of the Act of June 25, 1910
17 (25 U.S.C. 403);

18 (C) that charges for delivery of water for
19 irrigation purposes for allottees shall be as-
20 sessed in accordance with section 7 of the Act
21 of February 8, 1887 (25 U.S.C. 381);

22 (D) a due process system for the consider-
23 ation and determination by the Tribe of any re-
24 quest by a member or allottee (or a successor
25 in interest to an allottee) for an allocation of

1 water for irrigation on allotted land, including
2 a process for—

3 (i) appeal and adjudication of any de-
4 nied or disputed distribution of water; and

5 (ii) resolution of any contested admin-
6 istrative decision; and

7 (E) a requirement that any member or al-
8 lottee with a claim relating to the enforcement
9 of rights of the member or allottee under the
10 Tribal Water Code, or to the quantity of water
11 allocated to land of the allottee, shall exhaust
12 all remedies available to the member or allottee
13 under Tribal law before initiating an action
14 against the United States or petitioning the
15 Secretary pursuant to subsection (d)(5).

16 (3) ACTION BY SECRETARY.—

17 (A) IN GENERAL.—During the period be-
18 ginning on the date of enactment of this Act
19 and ending on the date on which a Tribal
20 Water Code described in paragraphs (1) and
21 (2) is enacted, the Secretary shall administer,
22 with respect to the rights of allottees, the Tribal
23 water right in accordance with this Act.

1 (B) APPROVAL.—The Tribal Water Code
2 described in paragraphs (1) and (2) shall not be
3 valid unless—

4 (i) the provisions of the Tribal Water
5 Code required by paragraph (2) are ap-
6 proved by the Secretary; and

7 (ii) each amendment to the Tribal
8 Water Code that affects a right of an allot-
9 tee is approved by the Secretary.

10 (C) APPROVAL PERIOD.—The Secretary
11 shall approve or disapprove the Tribal Water
12 Code or an amendment to the Tribal Water
13 Code within a reasonable period of time after
14 the date on which the Tribe submits the Tribal
15 Water Code or amendment to the Secretary for
16 approval.

17 (g) ADMINISTRATION.—

18 (1) NO ALIENATION.—The Tribe shall not per-
19 manently alienate any portion of the Tribal water
20 right.

21 (2) PURCHASES OR GRANTS OF LAND FROM IN-
22 DIANS.—An authorization provided by this Act for
23 the allocation, distribution, leasing, or other ar-
24 rangement entered into pursuant to this Act shall be
25 considered to satisfy any requirement for authoriza-

1 tion of the action by treaty or convention imposed by
 2 section 2116 of the Revised Statutes (25 U.S.C.
 3 177).

4 (3) PROHIBITION ON FORFEITURE.—The non-
 5 use of all or any portion of the Tribal water right
 6 by a lessee or contractor shall not result in the for-
 7 feiture, abandonment, relinquishment, or other loss
 8 of all or any portion of the Tribal water right.

9 (h) EFFECT.—Except as otherwise expressly provided
 10 in this section, nothing in this Act—

11 (1) authorizes any action by a member or allot-
 12 tee (or any successor in interest to an allottee)
 13 against any individual or entity, or against the
 14 Tribe, under Federal, State, Tribal, or local law; or

15 (2) alters or affects the status of any action
 16 pursuant to section 1491(a) of title 28, United
 17 States Code.

18 **SEC. 6. EFFECT OF SETTLEMENT AGREEMENT AND ACT.**

19 (a) ADMINISTRATION OF KANSAS WATER RIGHTS.—
 20 The State of Kansas shall administer all Kansas water
 21 rights in the Delaware River Basin in conformity with Ar-
 22 ticle 7 of the Settlement Agreement and other exhibits ref-
 23 erenced therein and attached thereto, and this Act.

24 (b) EFFECT OF SETTLEMENT AGREEMENT AND
 25 ACT.—Nothing in the Settlement Agreement or this Act—

1 (1) affects the ability of the United States, act-
2 ing as sovereign, to take action authorized by law
3 (including any laws relating to health, safety, or the
4 environment) including—

5 (A) the Comprehensive Environmental Re-
6 sponse, Compensation, and Liability Act of
7 1980 (42 U.S.C. 9601 et seq.);

8 (B) the Safe Drinking Water Act (42
9 U.S.C. 300f et seq.);

10 (C) the Federal Water Pollution Control
11 Act (33 U.S.C. 1251 et seq.); and

12 (D) any regulations implementing the Acts
13 described in subparagraphs (A) through (C);

14 (2) affects the ability of the United States to
15 take actions acting as trustee for any other Indian
16 Tribe or a member or allottee of any other Indian
17 Tribe;

18 (3) confers jurisdiction on any State court—

19 (A) to interpret Federal law regarding
20 health, safety, or the environment;

21 (B) to determine the duties of the United
22 States or any other party pursuant to a Federal
23 law regarding health, safety, or the environ-
24 ment; or

1 (C) to conduct judicial review of a Federal
2 agency action;

3 (4) waives any claim of a member of the Tribe
4 in an individual capacity that does not derive from
5 a right of the Tribe; or

6 (5) affects the requirement of any party to the
7 Settlement Agreement or any of the exhibits to the
8 Settlement Agreement to comply with the National
9 Environmental Policy Act of 1969 (42 U.S.C. 4321
10 et seq.) prior to performing the respective obliga-
11 tions of that party under the Kickapoo Tribe Water
12 Rights Settlement Agreement.

13 **SEC. 7. WATER FACILITIES.**

14 (a) IN GENERAL.—The Secretary of Agriculture, as
15 delegated to the Director of the Natural Resources Con-
16 servation Service, in consultation with the Secretary as
17 delegated to the Secretary’s Indian Water Rights Office,
18 is hereby directed—

19 (1) to commence a study of the Upper Dela-
20 ware and Tributaries Watershed Plan, as authorized
21 by the Committee on Environment and Public
22 Works of the Senate (Senate Report 105–13; April
23 22, 1997); and

24 (2) not later than 2 years after the date of en-
25 actment of this Act, to make recommendations to

1 Congress with respect to material alterations or
2 changes in the Upper Delaware and Tributaries Wa-
3 tershed Plan necessary to effectuate, in part, the
4 Tribal water right approved, ratified, and confirmed
5 by the Kickapoo Tribe Water Rights Settlement
6 Agreement and this Act.

7 (b) NO DUTY.—The enactment of this Act does not
8 impose a duty or otherwise obligate the United States to
9 appropriate funds, plan, design, or take any other action
10 to construct any infrastructure. Any appropriations for in-
11 frastructure and any matters related to the Agreement
12 and this Act will be considered by Congress following re-
13 ceipt of the recommendations for material changes or al-
14 terations in the Upper Delaware and Tributaries Water-
15 shed Plan referenced herein.

16 **SEC. 8. WAIVER AND RELEASE OF CLAIMS; RETENTION OF**
17 **CLAIMS.**

18 (a) CLAIMS BY THE TRIBE AND ITS MEMBERS AND
19 ALLOTTEES AND THE UNITED STATES ON BEHALF OF
20 THE TRIBE AND ITS MEMBERS AND ALLOTTEES.—In re-
21 turn for recognition of the Tribal water right and other
22 benefits set forth in the Settlement Agreement and this
23 Act, including the commitments of the other parties here-
24 to, the Tribe, on behalf of itself and its members and
25 allottees, and the United States acting in its capacity as

1 trustee for the Tribe and its members and allottees agree
2 to execute a waiver and release of claims against the other
3 parties to the Settlement Agreement from—

4 (1) all claims for water rights in the Delaware
5 River Basin that the Tribe or the United States act-
6 ing in its capacity as trustee for the Tribe asserted
7 or could have asserted in any proceeding up to and
8 including the date the Settlement Agreement be-
9 comes effective, except to the extent such rights are
10 recognized in the Settlement Agreement;

11 (2) all claims for damages, losses, or injuries to
12 water rights or claims of interference with, diversion,
13 or taking of water (including claims for injury to
14 lands resulting from such damages, losses, injuries,
15 interference with, diversion, or taking) in the Dela-
16 ware River Basin that accrued at any time up to
17 and including the effective date; and

18 (3) all claims against the State of Kansas, its
19 agencies, or employees.

20 (b) CLAIMS BY THE TRIBE AGAINST THE UNITED
21 STATES.—The Tribe, on behalf of itself and its members
22 and allottees, as part of the performance of the obligations
23 of the Tribe under the Settlement Agreement and this Act,
24 agrees to execute a waiver and release of the following:

1 (1) All claims against the United States, its
2 agents, or employees relating to claims for water
3 rights in or water of the Delaware River Basin that
4 the United States acting in its capacity as trustee
5 for the Tribe asserted or could have asserted in any
6 proceeding.

7 (2) All claims against the United States, its
8 agents, or employees relating to damages, losses, or
9 injuries to water, water rights, land or natural re-
10 sources due to the loss of water or water rights (in-
11 cluding damages, losses, or injuries to hunting, fish-
12 ing, gathering, or cultural rights due to the loss of
13 water or water rights, claims relating to interference
14 with, diversion, or taking of water or water rights,
15 or claims relating to failure to protect, acquire, re-
16 place, or develop water, water rights, or water infra-
17 structure) in the Delaware River Basin that first ac-
18 crued at any time up to and including the enforce-
19 ment date, except such claims are not waived until
20 such time as appropriations for water related infra-
21 structure for the Upper Delaware and Tributaries
22 Watershed Plan referenced in section 7 are paid,
23 and then to the extent of the amount of the appro-
24 priations.

1 (3) All claims against the United States, its
2 agents, or employees.

3 (c) RESERVATION AND RETENTION OF RIGHTS.—

4 Notwithstanding the waivers and releases described in this
5 section, the Tribe on behalf of itself and its members and
6 allottees, and the United States acting in its capacity as
7 trustee for the Tribe and its members and allottees, re-
8 tain—

9 (1) all claims for enforcement of the Settlement
10 Agreement;

11 (2) all claims against persons other than the
12 parties to the Settlement Agreement for damages,
13 losses, or injuries to water rights or claims of inter-
14 ference with, diversion, or taking of water (including
15 claims for injury to lands resulting from such dam-
16 ages, losses, injuries, interference with, diversion, or
17 taking) in the Delaware River Basin;

18 (3) all rights to use and protect water rights ac-
19 quired after the date of enactment of this Act;

20 (4) all claims relating to activities affecting the
21 quality of water, including claims the Tribe might
22 have under the Comprehensive Environmental Re-
23 sponse, Compensation, and Liability Act of 1980 (42
24 U.S.C. 9601 et seq.) (including claims for damages
25 to natural resources), the Safe Drinking Water Act

1 (42 U.S.C. 300f et seq.), the Federal Water Pollu-
2 tion Control Act (33 U.S.C. 1251 et seq.), and regu-
3 lations implementing those Acts;

4 (5) to the extent not waived by court order and
5 related joint stipulation that the Tribe executed with
6 the United States in 2012 as part of the litigation
7 styled *Nez Perce Tribe et al. v. Salazar et al.*, No.
8 06–cv–2239 (D.D.C. Apr. 11, 2012) all claims relat-
9 ing to damages, losses, or injuries to land or natural
10 resources not due to the loss of water or water
11 rights (including hunting, fishing, gathering, or cul-
12 tural rights); and

13 (6) all rights, remedies, privileges, immunities,
14 powers, and claims not specifically waived and re-
15 leased pursuant to the Settlement Agreement.

16 (d) EFFECT.—Nothing in the Settlement Agree-
17 ment—

18 (1) affects the ability of the United States act-
19 ing in its sovereign capacity to take actions author-
20 ized by law, including any law relating to health,
21 safety, or the environment, including the Federal
22 Water Pollution Control Act (33 U.S.C. 1251 et
23 seq.), the Comprehensive Environmental Response,
24 Compensation, and Liability Act of 1980 (42 U.S.C.
25 9601 et seq.) (including claims for damages to nat-

1 ural resources), the Safe Drinking Water Act (42
2 U.S.C. 300f et seq.), and the Solid Waste Disposal
3 Act (42 U.S.C. 6901 et seq.), and regulations imple-
4 menting those Acts;

5 (2) affects the ability of the United States to
6 take actions acting in its capacity as trustee for any
7 other Indian tribe or allottee; and

8 (3) waives any claim of a Member of the Tribe
9 in an individual capacity that does not derive from
10 a right of the Tribe.

11 **SEC. 9. ENFORCEABILITY DATE.**

12 (a) IN GENERAL.—The Settlement Agreement and
13 waivers under section 8 shall take effect and be enforce-
14 able on the date on which the Secretary publishes in the
15 Federal Register a statement of findings that—

16 (1) the Settlement Agreement, as amended to
17 conform with this Act, has been executed by the Sec-
18 retary of the Interior, the State, and the Tribe; and

19 (2) the section 8 waivers and releases, except
20 those in section 8(b)(2), have been executed.

21 (b) TERM OF THE AGREEMENT.—The term of the
22 Settlement Agreement shall commence on the effective
23 date and shall continue perpetually.

1 **SEC. 10. JUDICIAL PROCEEDINGS.**

2 Upon the date of enactment of this Act, the judicial
3 proceeding described in Article 10 of the Settlement
4 Agreement shall be and is hereby authorized to be com-
5 menced.

6 **SEC. 11. MISCELLANEOUS PROVISIONS.**

7 (a) WAIVER OF SOVEREIGN IMMUNITY BY THE
8 UNITED STATES.—Except as provided in subsections (a)
9 through (c) of section 208 of the Department of Justice
10 Appropriation Act, 1953 (43 U.S.C. 666), nothing in this
11 Act waives the sovereign immunity of the United States.

12 (b) PERFORMANCE BY THE UNITED STATES.—Per-
13 formance by the United States of its obligations under the
14 Settlement Agreement that depend upon the appropriation
15 of funds by Congress and the disbursement of such funds
16 shall be contingent on such appropriation and disburse-
17 ment. No liability that depends upon the appropriation of
18 such funds shall accrue to the United States for failure
19 to perform an obligation under the Settlement Agreement
20 where funds necessary to enable such performance are not
21 appropriated or paid.

22 (c) OTHER TRIBES NOT ADVERSELY AFFECTED.—
23 Nothing in this Act quantifies or diminishes any land or
24 water rights, or any claim or entitlement to land or water,
25 of an Indian Tribe, band, or community other than the
26 Tribe.

1 (d) LIMITATION ON CLAIMS FOR REIMBURSE-
2 MENT.—With respect to Indian land within the Reserva-
3 tion—

4 (1) the United States shall not submit against
5 any Indian-owned land located within the Reserva-
6 tion any claim for reimbursement of the cost to the
7 United States of carrying out this Act and the Set-
8 tlement Agreement; and

9 (2) no assessment of any Indian-owned land lo-
10 cated within the Reservation shall be made regard-
11 ing that cost.

12 (e) EFFECT ON CURRENT LAW.—Nothing in this sec-
13 tion affects any provision of law (including regulations)
14 in effect on the day before the date of enactment of this
15 Act with respect to pre-enforcement review of any Federal
16 environmental enforcement action.

17 (f) NO USE OF CONDEMNATION OR EMINENT DO-
18 MAIN.—Land or interests in land may not be acquired by
19 condemnation or eminent domain under this Act or for
20 the purposes of this Act.

○