

117TH CONGRESS
1ST SESSION

S. 3308

To authorize the Colorado River Indian Tribes to enter into lease or exchange agreements and storage agreements relating to water of the Colorado River allocated to the Colorado River Indian Tribes, and for other purposes.

IN THE SENATE OF THE UNITED STATES

DECEMBER 2, 2021

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

A BILL

To authorize the Colorado River Indian Tribes to enter into lease or exchange agreements and storage agreements relating to water of the Colorado River allocated to the Colorado River Indian Tribes, 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.**

4 This Act may be cited as the “Colorado River Indian
5 Tribes Water Resiliency Act of 2021”.

6 **SEC. 2. PURPOSES.**

7 The purposes of this Act are—

1 (1) to authorize the CRIT to enter into lease or
2 exchange agreements and storage agreements for the
3 economic well-being of the CRIT; and

4 (2) to authorize the Secretary to approve any
5 lease or exchange agreements or storage agreements
6 entered into by the CRIT.

7 **SEC. 3. DEFINITIONS.**

8 In this Act:

9 (1) ALLOTTEE.—The term “allottee” means an
10 individual who holds a beneficial real property inter-
11 est in an allotment of Indian land that is—

12 (A) located within the exterior boundaries
13 of the Reservation; and

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

15 (2) CONSOLIDATED DECREE.—The term “Con-
16 solidated Decree” means the decree entered by the
17 Supreme Court of the United States in *Arizona v.*
18 *California*, 547 U.S. 150 (2006).

19 (3) CONSUMPTIVE USE.—The term “consump-
20 tive use” means a portion of the decreed allocation
21 that has been consumptively used by the CRIT with-
22 in the exterior boundary of the Reservation for a
23 minimum of 4 of the 5 years immediately preceding
24 the year of delivery of a portion of the decreed allo-
25 cation according to a lease or exchange agreement or

1 storage agreement. Any verified reduction in con-
2 sumptive use pursuant to a system conservation
3 agreement, a lease or exchange agreement, or stor-
4 age agreement, or from the creation of intentionally
5 created surplus, shall be deemed to be a consumptive
6 use in the year in which the reduction occurred, if
7 the reduction is reflected in the Water Accounting
8 Report.

9 (4) CRIT.—The term “CRIT” means the Colo-
10 rado River Indian Tribes, a federally recognized In-
11 dian Tribe.

12 (5) DECREED ALLOCATION.—The term “de-
13 creed allocation” means the volume of water of the
14 mainstream of the Colorado River allocated to the
15 CRIT that is accounted for as part of the apporportion-
16 ment for the State in part I–A of the Appendix of
17 the Consolidated Decree.

18 (6) LOWER BASIN.—The term “Lower Basin”
19 has the meaning given the term in article II(g) of
20 the Colorado River Compact of 1922, as approved by
21 Congress in section 13 of the Boulder Canyon
22 Project Act (43 U.S.C. 617l), and by the Presi-
23 dential Proclamation of June 25, 1929 (46 Stat.
24 3000).

1 (7) PERSON.—The term “person” means an in-
2 dividual, a public or private corporation, a company,
3 a partnership, a joint venture, a firm, an associa-
4 tion, a society, an estate or trust, a private organiza-
5 tion or enterprise, the United States, any Indian
6 Tribe, a governmental entity, or a political subdivi-
7 sion or municipal corporation organized under, or
8 subject to, the constitution and laws of the State.

9 (8) RESERVATION.—The term “Reservation”
10 means the portion of the reservation established for
11 the CRIT that is located in the State.

12 (9) SECRETARY.—The term “Secretary” means
13 the Secretary of the Interior.

14 (10) STATE.—Except for purposes of section
15 15, the term “State” means the State of Arizona.

16 (11) STORAGE.—The term “storage” means the
17 underground storage, in accordance with State law,
18 of a portion of the consumptive use off the Reserva-
19 tion within the Lower Basin in the State.

20 (12) WATER ACCOUNTING REPORT.—The term
21 “Water Accounting Report” means the annual re-
22 port of the Bureau of Reclamation entitled the “Col-
23 orado River Accounting and Water Use Report: Ari-
24 zona, California, and Nevada” which includes the

1 compilation of records in accordance with article V
2 of the Consolidated Decree.

3 **SEC. 4. LEASE OR EXCHANGE AGREEMENTS.**

4 (a) AUTHORIZATION.—Notwithstanding section 2116
5 of the Revised Statutes (commonly known as the “Indian
6 Trade and Intercourse Act”) (25 U.S.C. 177) or any other
7 provision of law, the CRIT is authorized to, subject to the
8 approval of the Secretary under section 6(a), and has the
9 sole authority to, enter into, with any person, an agree-
10 ment to lease or exchange, or an option to lease or ex-
11 change, a portion of the consumptive use for a use off
12 the Reservation (referred to in this Act as a “lease or ex-
13 change agreement”), on the condition that the use off the
14 Reservation is located in the Lower Basin in the State.

15 (b) TERM OF LEASE OR EXCHANGE AGREEMENT.—
16 The term of any lease or exchange agreement entered into
17 under subsection (a) shall be mutually agreed, except that
18 the term shall not exceed 100 years.

19 (c) MODIFICATIONS.—Any lease or exchange agree-
20 ment entered into under subsection (a) may be renegoti-
21 ated or modified at any time during the term of the lease
22 or exchange agreement, subject to the approval of the Sec-
23 retary under section 6(a), on the condition that the term
24 of the renegotiated lease or exchange agreement does not
25 exceed 100 years.

1 (d) APPLICABLE LAW.—Any person entering into a
 2 lease or exchange agreement with the CRIT under this
 3 section shall use the water received under the lease or ex-
 4 change agreement in accordance with applicable Federal
 5 and State law.

6 **SEC. 5. STORAGE AGREEMENTS.**

7 (a) AUTHORIZATION.—Notwithstanding section 2116
 8 of the Revised Statutes (commonly known as the “Indian
 9 Trade and Intercourse Act”) (25 U.S.C. 177) or any other
 10 provision of law, the CRIT is authorized to, subject to the
 11 approval of the Secretary under section 6(a), and has the
 12 sole authority to, enter into an agreement, including with
 13 the Arizona Water Banking Authority (or successor agen-
 14 cy or entity), for the storage of a portion of the consump-
 15 tive use, or the water received under an exchange pursuant
 16 to an exchange agreement under section 4, at 1 or more
 17 underground storage facilities or groundwater savings fa-
 18 cilities off the Reservation (referred to in this Act as a
 19 “storage agreement”), on the condition that the facility
 20 shall be located in the Lower Basin in the State.

21 (b) APPLICABLE LAW.—Any storage agreement en-
 22 tered into under this section shall be in accordance with
 23 applicable Federal and State law.

24 (c) DELEGATION OF RIGHTS.—The CRIT may assign
 25 or sell any longterm storage credits accrued as a result

1 of a storage agreement, on the condition that the assign-
 2 ment or sale is in accordance with applicable State law.

3 **SEC. 6. APPROVAL BY THE SECRETARY.**

4 (a) AUTHORIZATION.—The Secretary shall approve
 5 or disapprove any lease or exchange agreement, or any
 6 modification to a lease or exchange agreement, or any
 7 storage agreement.

8 (b) REQUIREMENTS.—

9 (1) IN GENERAL.—The Secretary shall not ap-
 10 prove any lease or exchange agreement, or any modi-
 11 fication to a lease or exchange agreement, or any
 12 storage agreement that is not in compliance with—

13 (A) this Act; and

14 (B) the agreement entered into between
 15 the CRIT, the State, and the Secretary under
 16 section 9(a).

17 (2) PERMANENT ALIENATION.—The Secretary
 18 shall not approve any lease or exchange agreement,
 19 or any modification to a lease or exchange agree-
 20 ment, or any storage agreement that permanently
 21 alienates any portion of the CRIT decreed allocation.

22 (c) OTHER REQUIREMENTS.—The requirement for
 23 Secretarial approval under subsection (a) shall satisfy the
 24 requirements of section 2116 of the Revised Statutes

1 (commonly known as the “Indian Trade and Intercourse
2 Act”) (25 U.S.C. 177).

3 (d) **AUTHORITY OF THE SECRETARY.**—Nothing in
4 this Act, or any agreement entered into or approved by
5 the Secretary under this Act, including any lease or ex-
6 change agreement or storage agreement, shall diminish or
7 abrogate the authority of the Secretary to act under appli-
8 cable Federal law or regulation, including the Consoli-
9 dated Decree.

10 **SEC. 7. RESPONSIBILITIES OF THE SECRETARY.**

11 (a) **COMPLIANCE.**—The Secretary, when approving a
12 lease or exchange agreement or a storage agreement under
13 this Act, shall ensure such agreement complies with—

14 (1) the National Environmental Policy Act of
15 1969 (42 U.S.C. 4321 et seq.);

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

18 (3) all other applicable Federal environmental
19 laws.

20 (b) **DOCUMENTATION.**—The Secretary shall docu-
21 ment any lease or exchange agreement or storage agree-
22 ment in the Water Accounting Report.

23 **SEC. 8. AGREEMENT BETWEEN THE CRIT AND THE STATE.**

24 (a) **IN GENERAL.**—Prior to entering into the first
25 lease or exchange agreement or storage agreement, the

1 CRIT shall enter into an agreement with the State that
2 outlines all notice, information sharing, and collaboration
3 requirements that shall apply to any potential lease or ex-
4 change agreement or storage agreement the CRIT may
5 enter into.

6 (b) REQUIREMENT.—The agreement under sub-
7 section (a) shall include a provision that requires the
8 CRIT to submit to the State all documents regarding a
9 potential lease or exchange agreement or storage agree-
10 ment.

11 **SEC. 9. AGREEMENT BETWEEN THE CRIT, THE STATE, AND**
12 **THE SECRETARY.**

13 (a) IN GENERAL.—Prior to approving the first lease
14 or exchange agreement or storage agreement under sec-
15 tion 6, the Secretary shall enter into an agreement with
16 the State and the CRIT that describes the procedural,
17 technical, and accounting methodologies for any lease or
18 exchange agreement or storage agreement the CRIT may
19 enter into, including quantification of the reduction in con-
20 sumptive use and water accounting.

21 (b) NEPA.—The execution of the agreement under
22 subsection (a) shall not constitute a major Federal action
23 for purposes of the National Environmental Policy Act of
24 1969 (42 U.S.C. 4321 et seq.).

1 (c) EFFECT.—Nothing in this Act shall prohibit the
 2 Secretary from agreeing with the CRIT and the State to
 3 a modification to an agreement entered into under sub-
 4 section (a) (including an appendix or exhibit to the agree-
 5 ment) on the condition that the modification—

6 (1) is in compliance with this Act; and

7 (2) does not otherwise require congressional ap-
 8 proval under section 2116 of the Revised Statutes
 9 (commonly known as the “Indian Trade and Inter-
 10 course Act”) (25 U.S.C. 177) or any other provision
 11 of law.

12 **SEC. 10. NO EFFECT ON THE CRIT DECREED ALLOCATION.**

13 (a) TEMPORARY USE.—A lease or exchange agree-
 14 ment or storage agreement—

15 (1) shall provide for the temporary use or stor-
 16 age of a portion of the consumptive use off the Res-
 17 ervation; and

18 (2) shall not permanently alienate the decreed
 19 allocation.

20 (b) PRIORITY STATUS.—

21 (1) IN GENERAL.—The lease or exchange of a
 22 portion of the consumptive use shall not cause that
 23 portion to lose or change its priority under the Con-
 24 solidated Decree.

1 (2) NONUSE.—Any nonuse by a person who is
 2 a party to any lease or exchange agreement or stor-
 3 age agreement with the CRIT shall not result in for-
 4 feiture, abandonment, relinquishment, or other loss
 5 by the CRIT of all or any portion of the decreed al-
 6 location.

7 (c) RESERVATION OF RIGHTS.—The lease, exchange,
 8 or storage of a portion of the consumptive use shall not
 9 reduce or limit the right of the CRIT to use the remaining
 10 portion of the decreed allocation on the Reservation.

11 (d) STORAGE AGREEMENTS.—Any storage agreement
 12 shall account for the quantity of water in storage off the
 13 Reservation in accordance with applicable State law.

14 **SEC. 11. ALLOTTEE USE OF WATER.**

15 (a) INTERFERENCE.—The lease, exchange, or storage
 16 of a portion of the consumptive use shall not directly or
 17 indirectly interfere with, or diminish, any entitlement to
 18 water for an allottee under Federal or Tribal law.

19 (b) WATER RIGHTS OF ALLOTTEES.—The Secretary
 20 shall protect the rights of the allottees to a just and equi-
 21 table distribution of water for irrigation purposes, pursu-
 22 ant to section 7 of the Act of February 8, 1887 (commonly
 23 known as the “Indian General Allotment Act”) (24 Stat.
 24 390, chapter 119; 25 U.S.C. 381) (referred to in this sec-
 25 tion as the “Act”).

1 (c) RELIEF UNDER TRIBAL LAW.—Prior to asserting
2 any claim against the United States pursuant to the Act,
3 or any other applicable law, an allottee shall exhaust all
4 remedies available under applicable Tribal law.

5 (d) RELIEF UNDER THE INDIAN GENERAL ALLOT-
6 MENT ACT.—Following an exhaustion of remedies avail-
7 able under applicable Tribal law, an allottee may seek re-
8 lief under the Act, or any other applicable law.

9 (e) RELIEF FROM THE SECRETARY.—Following ex-
10 haustion of remedies available under the Act, or any other
11 applicable law, an allottee may petition the Secretary for
12 relief.

13 **SEC. 12. CONSIDERATION PAID TO THE CRIT.**

14 The CRIT, and not the United States in any capac-
15 ity, shall be entitled to all consideration due to the CRIT
16 under any lease or exchange agreement or storage agree-
17 ment.

18 **SEC. 13. LIABILITY OF THE UNITED STATES.**

19 (a) LIMITATION OF LIABILITY.—The United States
20 shall not be liable in any claim relating to the negotiation,
21 execution, or approval of any lease or exchange agreement
22 or storage agreement, including any claims relating to the
23 terms included in such an agreement.

1 (b) OBLIGATIONS.—The United States shall have no
 2 trust obligation or other obligation to monitor, administer,
 3 or account for—

4 (1) any funds received by the CRIT as consid-
 5 eration under any lease or exchange agreement or
 6 storage agreement; or

7 (2) the expenditure of such funds.

8 **SEC. 14. APPLICATION.**

9 (a) IN GENERAL.—This Act shall apply only to the
 10 portion of the decreed allocation that is available for use
 11 in the State.

12 (b) REQUIREMENT.—The portion of the decreed allo-
 13 cation described in subsection (a) shall not be used, di-
 14 rectly or indirectly, outside the Lower Basin in the State.

15 **SEC. 15. RULE OF CONSTRUCTION.**

16 Nothing in this Act establishes, or shall be considered
 17 to establish, a precedent in any litigation involving, or al-
 18 ters, affects, or quantifies, any water right with respect
 19 to—

20 (1) the United States;

21 (2) any other Indian Tribe, band, or commu-
 22 nity;

23 (3) any State or political subdivision or district
 24 of a State; or

1 (4) any person.

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