

117TH CONGRESS
2D SESSION

S. 3308

AN ACT

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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Colorado River Indian
3 Tribes Water Resiliency Act of 2022”.

4 **SEC. 2. PURPOSES.**

5 The purposes of this Act are to authorize—

6 (1) the CRIT to enter into lease or exchange
7 agreements, storage agreements, and agreements for
8 conserved water for the economic well-being of the
9 CRIT; and

10 (2) the Secretary to approve any lease or ex-
11 change agreements, storage agreements, or agree-
12 ments for conserved water entered into by the CRIT.

13 **SEC. 3. DEFINITIONS.**

14 In this Act:

15 (1) **AGREEMENT FOR CONSERVED WATER.**—

16 The term “agreement for conserved water” means
17 an agreement for the creation of system conserva-
18 tion, storage of conserved water in Lake Mead, or
19 other mechanisms for voluntarily leaving a portion of
20 the CRIT reduced consumptive use in Lake Mead.

21 (2) **ALLOTTEE.**—The term “allottee” means an
22 individual who holds a beneficial real property inter-
23 est in an allotment of Indian land that is—

24 (A) located within the exterior boundaries
25 of the Reservation; and

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

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

5 (4) CONSUMPTIVE USE.—The term “consump-
6 tive use” means a portion of the decreed allocation
7 that has a recent history of use by the CRIT within
8 the exterior boundary of the Reservation. Any
9 verified reduction in consumptive use pursuant to a
10 lease or exchange agreement, a storage agreement,
11 or an agreement for conserved water shall be
12 deemed to be a consumptive use in the year in which
13 the reduction occurred, subject to the condition that
14 the reduction is reflected in the Water Accounting
15 Report.

16 (5) CRIT.—The term “CRIT” means the Colo-
17 rado River Indian Tribes, a federally recognized In-
18 dian Tribe.

19 (6) DECREED ALLOCATION.—The term “de-
20 creed allocation” means the volume of water of the
21 mainstream of the Colorado River allocated to the
22 CRIT that is accounted for as part of the apporportion-
23 ment for the State in part I–A of the Appendix of
24 the Consolidated Decree.

1 (7) LOWER BASIN.—The term “Lower Basin”
2 has the meaning given the term in article II(g) of
3 the Colorado River Compact of 1922, as approved by
4 Congress in section 13 of the Boulder Canyon
5 Project Act (43 U.S.C. 617l) and by the Presidential
6 Proclamation of June 25, 1929 (46 Stat. 3000).

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

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

18 (10) SECRETARY.—The term “Secretary”
19 means the Secretary of the Interior.

20 (11) STATE.—Except for purposes of section
21 16, the term “State” means the State of Arizona.

22 (12) STORAGE.—The term “storage” means the
23 underground storage, in accordance with State law,
24 of a portion of the consumptive use off the Reserva-
25 tion within the Lower Basin in the State.

1 (13) WATER ACCOUNTING REPORT.—The term
2 “Water Accounting Report” means the annual re-
3 port of the Bureau of Reclamation entitled the “Col-
4 orado River Accounting and Water Use Report: Ari-
5 zona, California, and Nevada” which includes the
6 compilation of records in accordance with article V
7 of the Consolidated Decree.

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

9 (a) AUTHORIZATION.—Notwithstanding section 2116
10 of the Revised Statutes (commonly known as the “Indian
11 Trade and Intercourse Act”) (25 U.S.C. 177) or any other
12 provision of law, the CRIT is authorized, subject to the
13 approval of the Secretary under section 7(a), and has the
14 sole authority, to enter into, with any person, an agree-
15 ment to lease or exchange, or an option to lease or ex-
16 change, a portion of the consumptive use for a use off
17 the Reservation (referred to in this Act as a “lease or ex-
18 change agreement”), subject to the conditions that the use
19 off the Reservation is located in the Lower Basin in the
20 State and is not located in the counties of Navajo, Apache,
21 or Cochise in the State.

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

1 (c) MODIFICATIONS.—Any lease or exchange agree-
2 ment entered into under subsection (a) may be renegoti-
3 ated or modified at any time during the term of the lease
4 or exchange agreement, subject to the approval of the Sec-
5 retary under section 7(a), subject to the condition that the
6 term of the renegotiated lease or exchange agreement does
7 not exceed 100 years.

8 (d) APPLICABLE LAW.—Any person entering into a
9 lease or exchange agreement with the CRIT under this
10 section shall use the water received under the lease or ex-
11 change agreement in accordance with applicable Federal
12 and State law.

13 **SEC. 5. STORAGE AGREEMENTS.**

14 (a) AUTHORIZATION.—Notwithstanding section 2116
15 of the Revised Statutes (commonly known as the “Indian
16 Trade and Intercourse Act”) (25 U.S.C. 177) or any other
17 provision of law, the CRIT is authorized, subject to the
18 approval of the Secretary under section 7(a), and has the
19 sole authority, to enter into an agreement, including with
20 the Arizona Water Banking Authority (or a successor
21 agency or entity), for the storage of a portion of the con-
22 sumptive use, or the water received under an exchange
23 pursuant to an exchange agreement under section 4, at
24 1 or more underground storage facilities or groundwater
25 savings facilities off the Reservation (referred to in this

1 Act as a “storage agreement”), subject to the conditions
2 that the facility is located in the Lower Basin in the State
3 and is not located in the counties of Navajo, Apache, or
4 Cochise in the State.

5 (b) MODIFICATIONS.—Any storage agreement en-
6 tered into under subsection (a) may be renegotiated or
7 modified at any time during the term of the storage agree-
8 ment, subject to the approval of the Secretary under sec-
9 tion 7(a).

10 (c) APPLICABLE LAW.—Any storage agreement en-
11 tered into under subsection (a) shall be in accordance with
12 applicable Federal and State law.

13 (d) DELEGATION OF RIGHTS.—The CRIT may as-
14 sign or sell any long-term storage credits accrued as a re-
15 sult of a storage agreement, subject to the condition that
16 the assignment or sale is in accordance with applicable
17 State law.

18 **SEC. 6. AGREEMENTS FOR CREATION OF WATER FOR THE**
19 **COLORADO RIVER SYSTEM FOR STORING**
20 **WATER IN LAKE MEAD.**

21 (a) AUTHORIZATION.—Notwithstanding section 2116
22 of the Revised Statutes (commonly known as the “Indian
23 Trade and Intercourse Act”) (25 U.S.C. 177) or any other
24 provision of law, the CRIT is authorized, subject to the
25 approval of the Secretary under section 7(a), and has the

1 sole authority, to enter into, with any person, an agree-
2 ment for conserved water, subject to the conditions that
3 if the conserved water is delivered, the delivery is to a loca-
4 tion in the Lower Basin in the State and is not to a loca-
5 tion in the counties of Navajo, Apache, or Cochise in the
6 State.

7 (b) **TERM OF AN AGREEMENT FOR CONSERVED**
8 **WATER.**—The term of any agreement for conserved water
9 entered into under subsection (a) shall be mutually agreed,
10 except that the term shall not exceed 100 years.

11 (c) **MODIFICATIONS.**—Any agreement for conserved
12 water entered into under subsection (a) may be renegoti-
13 ated or modified at any time during the term of the agree-
14 ment for conserved water, subject to the approval of the
15 Secretary under section 7(a).

16 (d) **APPLICABLE LAW.**—Any agreement for conserved
17 water entered into under subsection (a), and any use of
18 conserved water, shall be in accordance with Federal law,
19 including any program authorized by Federal law.

20 **SEC. 7. SECRETARIAL APPROVAL; DISAPPROVAL; AGREE-**
21 **MENTS.**

22 (a) **AUTHORIZATION.**—The Secretary shall approve
23 or disapprove any—

24 (1) lease or exchange agreement;

1 (2) modification to a lease or exchange agree-
2 ment;

3 (3) storage agreement;

4 (4) modification to a storage agreement;

5 (5) agreement for conserved water; or

6 (6) modification to an agreement for conserved
7 water.

8 (b) SECRETARIAL AGREEMENTS.—The Secretary is
9 authorized to enter into a lease or exchange agreement,
10 a storage agreement, or an agreement for conserved water
11 with the CRIT, subject to the condition that the Secretary
12 pays the fair market value for the CRIT reduced consump-
13 tive use.

14 (c) REQUIREMENTS.—

15 (1) LEASE OR EXCHANGE AGREEMENTS AND
16 STORAGE AGREEMENTS.—The Secretary shall not
17 approve any lease or exchange agreement, or any
18 modification to a lease or exchange agreement, or
19 any storage agreement, or any modification to a
20 storage agreement, that is not in compliance with—

21 (A) this Act; and

22 (B) the agreement entered into between
23 the CRIT, the State, and the Secretary under
24 section 10(a).

1 (2) AGREEMENTS FOR CONSERVED WATER.—

2 The Secretary shall not approve any agreement for
3 conserved water, or any modification to an agree-
4 ment for conserved water, that is not in compliance
5 with—

6 (A) this Act; and

7 (B) other applicable Federal law, including
8 any program authorized by Federal law.

9 (3) PERMANENT ALIENATION.—The Secretary
10 shall not approve any lease or exchange agreement,
11 or any modification to a lease or exchange agree-
12 ment, any storage agreement, or any modification to
13 a storage agreement, or any agreement for conserved
14 water, or any modification to an agreement for con-
15 served water, that permanently alienates any portion
16 of the CRIT decreed allocation.

17 (d) OTHER REQUIREMENTS.—The requirement for
18 Secretarial approval under subsection (a) shall satisfy the
19 requirements of section 2116 of the Revised Statutes
20 (commonly known as the “Indian Trade and Intercourse
21 Act”) (25 U.S.C. 177).

22 (e) AUTHORITY OF THE SECRETARY.—Nothing in
23 this Act, or any agreement entered into or approved by
24 the Secretary under this Act, including any lease or ex-
25 change agreement, storage agreement, or agreement for

1 conserved water, shall diminish or abrogate the authority
2 of the Secretary to act under applicable Federal law or
3 regulation, including the Consolidated Decree.

4 **SEC. 8. RESPONSIBILITIES OF THE SECRETARY.**

5 (a) COMPLIANCE.—When approving a lease or ex-
6 change agreement, a storage agreement, or an agreement
7 for conserved water, the Secretary shall promptly comply
8 with all aspects of the National Environmental Policy Act
9 of 1969 (42 U.S.C. 4321 et seq.), the Endangered Species
10 Act of 1973 (16 U.S.C. 1531 et seq.), and all other appli-
11 cable environmental laws and regulations.

12 (b) DOCUMENTATION.—The Secretary shall docu-
13 ment any lease or exchange agreement, storage agreement,
14 or agreement for conserved water in the Water Accounting
15 Report.

16 **SEC. 9. AGREEMENT BETWEEN THE CRIT AND THE STATE.**

17 (a) IN GENERAL.—Before entering into the first
18 lease or exchange agreement or storage agreement, the
19 CRIT shall enter into an agreement with the State that
20 outlines all notice, information sharing, and collaboration
21 requirements that shall apply to any potential lease or ex-
22 change agreement or storage agreement the CRIT may
23 enter into.

24 (b) REQUIREMENT.—The agreement required under
25 subsection (a) shall include a provision that requires the

1 CRIT to submit to the State all documents regarding a
2 potential lease or exchange agreement or storage agree-
3 ment.

4 **SEC. 10. AGREEMENT BETWEEN THE CRIT, THE STATE, AND**
5 **THE SECRETARY.**

6 (a) IN GENERAL.—Before approving the first lease
7 or exchange agreement or storage agreement under sec-
8 tion 7, the Secretary shall enter into an agreement with
9 the State and the CRIT that describes the procedural,
10 technical, and accounting methodologies for any lease or
11 exchange agreement or storage agreement the CRIT may
12 enter into, including quantification of the reduction in con-
13 sumptive use and water accounting.

14 (b) NEPA.—The execution of the agreement re-
15 quired under subsection (a) shall not constitute a major
16 Federal action for purposes of the National Environ-
17 mental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

18 (c) EFFECT.—Nothing in this Act prohibits the Sec-
19 retary from agreeing with the CRIT and the State to a
20 modification to an agreement entered into under sub-
21 section (a) (including an appendix or exhibit to the agree-
22 ment) if the modification—

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

24 (2) does not otherwise require congressional ap-
25 proval under section 2116 of the Revised Statutes

1 (commonly known as the “Indian Trade and Inter-
2 course Act”) (25 U.S.C. 177) or any other provision
3 of law.

4 **SEC. 11. NO EFFECT ON THE CRIT DECREED ALLOCATION.**

5 (a) **TEMPORARY USE.**—A lease or exchange agree-
6 ment, a storage agreement, or an agreement for conserved
7 water—

8 (1) shall provide for the temporary use, storage,
9 or conservation of a portion of the consumptive use
10 off the Reservation; and

11 (2) shall not permanently alienate the decreed
12 allocation.

13 (b) **PRIORITY STATUS.**—

14 (1) **IN GENERAL.**—The lease or exchange of a
15 portion of the consumptive use shall not cause that
16 portion to lose or change its priority under the Con-
17 solidated Decree.

18 (2) **NONUSE.**—Any nonuse by a person who is
19 a party to any lease or exchange agreement or stor-
20 age agreement with the CRIT shall not result in for-
21 feiture, abandonment, relinquishment, or other loss
22 by the CRIT of all or any portion of the decreed al-
23 location.

24 (c) **RESERVATION OF RIGHTS.**—The lease, exchange,
25 storage, or conservation of a portion of the consumptive

1 use shall not reduce or limit the right of the CRIT to use
2 the remaining portion of the decreed allocation on the Res-
3 ervation.

4 (d) STORAGE AGREEMENTS.—A storage agreement
5 entered into under this Act shall account for the quantity
6 of water in storage off the Reservation in accordance with
7 applicable State law.

8 **SEC. 12. ALLOTTEE USE OF WATER.**

9 (a) INTERFERENCE.—The lease, exchange, storage,
10 or conservation of a portion of the consumptive use shall
11 not directly or indirectly interfere with, or diminish, any
12 entitlement to water for an allottee under Federal or Trib-
13 al law.

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

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

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

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

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

10 The CRIT, and not the United States in any capac-
11 ity, shall be entitled to all consideration due to the CRIT
12 under any lease or exchange agreement, storage agree-
13 ment, or agreement for conserved water.

14 **SEC. 14. LIABILITY OF THE UNITED STATES.**

15 (a) LIMITATION OF LIABILITY.—The United States
16 shall not be liable to the CRIT or to any party to a lease
17 or exchange agreement, a storage agreement, or an agree-
18 ment for conserved water in any claim relating to the ne-
19 gotiation, execution, or approval of any lease or exchange
20 agreement, storage agreement, or agreement for conserved
21 water, including any claim relating to the terms included
22 in such an agreement, except for claims relating to the
23 requirements of section 8(a).

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, stor-
6 age agreement, or agreement for conserved water; or

7 (2) the expenditure of such funds.

8 **SEC. 15. APPLICATION.**

9 (a) IN GENERAL.—This Act shall only apply 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 that is available for use in the State shall not be
14 used, directly or indirectly outside the Lower Basin in the
15 State or in the counties of Navajo, Apache, or Cochise in
16 the State.

17 **SEC. 16. RULE OF CONSTRUCTION.**

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

22 (1) the United States;

23 (2) any other Indian Tribe, band, or commu-
24 nity;

- 1 (3) any State or political subdivision or district
- 2 of a State; or
- 3 (4) any person.

Passed the Senate December 19, 2022.

Attest:

Secretary.

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