

111TH CONGRESS
1ST SESSION

S. 1264

To require the Secretary of the Interior to assess the irrigation infrastructure of the Pine River Indian Irrigation Project in the State of Colorado and provide grants to, and enter into cooperative agreements with, the Southern Ute Indian Tribe to assess, repair, rehabilitate, or reconstruct existing infrastructure, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 15, 2009

Mr. UDALL of Colorado (for himself and Mr. BENNET) introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

A BILL

To require the Secretary of the Interior to assess the irrigation infrastructure of the Pine River Indian Irrigation Project in the State of Colorado and provide grants to, and enter into cooperative agreements with, the Southern Ute Indian Tribe to assess, repair, rehabilitate, or reconstruct existing infrastructure, 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 “Pine River Indian Irri-
3 gation Project Act of 2009”.

4 **SEC. 2. FINDINGS; PURPOSE.**

5 (a) FINDINGS.—Congress finds that—

6 (1) drought, population increases, and environ-
7 mental needs are exacerbating water supply issues
8 across the western United States, including on the
9 Southern Ute Indian Reservation in southwestern
10 Colorado;

11 (2)(A) a report of the Government Account-
12 ability Office dated 2006 identified significant issues
13 with the Pine River Indian Irrigation Project, in-
14 cluding the issue that, at the time of the study, the
15 Bureau of Indian Affairs estimated that total de-
16 ferred maintenance costs for the Project exceeded
17 \$20,000,000; and

18 (B) other estimates have placed those costs at
19 more than \$60,000,000;

20 (3) the report of the Government Accountability
21 Office demonstrates that key facilities of the Project
22 are severely deteriorated;

23 (4) operations and maintenance fees are not
24 sufficient to address the condition of the Project,
25 even though the Bureau of Indian Affairs has

1 sought to double those fees, from \$8.50 to \$17, in
2 recent years;

3 (5) the report of the Government Accountability
4 Office also notes that a prior study done by the Bu-
5 reau of Reclamation determined that water users
6 could not afford to pay operations and maintenance
7 fees of \$8.50 and operate a profitable farming oper-
8 ation;

9 (6) the benefits of rehabilitating and repairing
10 the irrigation infrastructure of the Project include—

11 (A) water conservation;

12 (B) extending available water supply;

13 (C) increased agricultural production;

14 (D) economic benefits;

15 (E) safer facilities; and

16 (F) the preservation of the culture of the
17 Southern Ute Indian Tribe;

18 (7) while, as of the date of enactment of this
19 Act, the Project is managed by the Bureau of Indian
20 Affairs, the Southern Ute Indian Tribe also receives
21 water from facilities owned or operated by the Bu-
22 reau of Reclamation; and

23 (8) rehabilitation and repair of the infrastruc-
24 ture of the Project by the Bureau of Reclamation
25 would improve—

1 (A) overall water management; and

2 (B) the ability of the Southern Ute Indian
3 Tribe and the Bureau of Reclamation to ad-
4 dress potential water conflicts.

5 (b) PURPOSE.—The purpose of this Act is to require
6 the Secretary of the Interior—

7 (1) to assess the condition of infrastructure of
8 the Pine River Indian Irrigation Project;

9 (2) to establish priorities for the rehabilitation
10 of irrigation infrastructure within the Project ac-
11 cording to specified criteria; and

12 (3) to implement rehabilitation activities for the
13 irrigation infrastructure of the Project.

14 **SEC. 3. DEFINITIONS.**

15 In this Act:

16 (1) PROJECT.—The term “Project” means the
17 Pine River Indian Irrigation Project.

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

20 (3) STATE.—The term “State” means the State
21 of Colorado.

22 (4) TRIBAL COUNCIL.—The term “Tribal Coun-
23 cil” means the Southern Ute Indian Tribal Council.

24 (5) TRIBE.—The term “Tribe” means the
25 Southern Ute Indian Tribe.

1 **SEC. 4. STUDY OF IRRIGATION INFRASTRUCTURE OF**
2 **PROJECT.**

3 (a) STUDY.—

4 (1) IN GENERAL.—As soon as practicable after
5 the date of enactment of this Act, the Secretary, in
6 consultation with the Tribe, shall—

7 (A) conduct a study of the irrigation infra-
8 structure of the Project; and

9 (B) based on the results of the study, de-
10 velop a list of activities (including a cost esti-
11 mate for each activity) that are recommended
12 to be implemented during the 10-year period
13 beginning on the date of completion of the
14 study to repair, rehabilitate, or reconstruct that
15 irrigation infrastructure.

16 (2) FACTORS FOR CONSIDERATION.—

17 (A) IN GENERAL.—In developing the list
18 under paragraph (1)(B), the Secretary shall
19 give priority to activities based on—

20 (i) a review of the priority factors de-
21 scribed in subparagraph (B) with respect
22 to the activity;

23 (ii) recommendations of the Tribe, if
24 any; and

1 (iii) a consideration of the projected
2 benefits of each activity on completion of
3 the Project.

4 (B) PRIORITY FACTORS.—The priority fac-
5 tors referred to in subparagraph (A)(i) are—

6 (i) any threat to the health and safety
7 of—

8 (I) a member of the Tribe;

9 (II) an employee of the irrigation
10 operations and maintenance program
11 of the Bureau of Indian Affairs; or

12 (III) the general public;

13 (ii) the extent of disrepair of the irri-
14 gation infrastructure of the Project and
15 the effect of the disrepair on the ability of
16 users of the Project to irrigate agricultural
17 land using that irrigation infrastructure;

18 (iii) whether, and the extent to which,
19 the repair, rehabilitation, or reconstruction
20 of the irrigation infrastructure of the
21 Project would provide an opportunity to
22 conserve water;

23 (iv)(I) the economic and cultural im-
24 pacts the irrigation infrastructure of the

1 Project that is in disrepair has on the
2 Tribe; and

3 (II) the economic and cultural bene-
4 fits that the repair, rehabilitation, or re-
5 construction of that irrigation infrastruc-
6 ture would have on the Tribe;

7 (v) the opportunity to address water
8 supply or environmental conflicts if the ir-
9 rigation infrastructure of the Project is re-
10 paired, rehabilitated, or reconstructed; and

11 (vi) the overall benefits of the activity
12 to efficient water operations on the land of
13 the Tribe.

14 (3) CONSULTATION.—In carrying out the study
15 under this subsection, the Secretary shall consult
16 with the Assistant Secretary for Indian Affairs and
17 other relevant Federal and local officials to evaluate
18 the extent to which programs under the jurisdiction
19 of each Federal and local agency may be used to de-
20 velop—

21 (A) the list of activities under paragraph

22 (1)(B); or

23 (B) the report under subsection (b).

24 (b) REPORT.—

1 (1) IN GENERAL.—Not later than 18 months
2 after the date of enactment of this Act, the Sec-
3 retary shall submit to the Committee on Energy and
4 Natural Resources of the Senate, the Committee on
5 Natural Resources of the House of Representatives,
6 and the Tribe a report that includes—

7 (A) the list of activities recommended for
8 implementation under subsection (a)(1)(B); and

9 (B) any findings of the Secretary with re-
10 spect to—

11 (i) the study under subsection (a);

12 (ii) consideration of the factors de-
13 scribed in subsection (a)(2); and

14 (iii) any consultation required under
15 subsection (a)(3).

16 (2) BIENNIAL REVIEW.—Not later than 2 years
17 after the date on which the Secretary submits the
18 report under paragraph (1) and every 2 years there-
19 after, the Secretary, in consultation with the Tribe,
20 shall—

21 (A) review the report; and

22 (B) update the list of activities under sub-
23 section (a)(1)(B) in accordance with each factor
24 described in subsection (a)(2), as the Secretary
25 determines to be appropriate.

1 **SEC. 5. IRRIGATION INFRASTRUCTURE GRANTS AND**
2 **AGREEMENTS.**

3 (a) IN GENERAL.—Subject to subsection (b), the Sec-
4 retary may provide grants to, and enter into cooperative
5 agreements with, the Tribe to plan, design, construct, or
6 otherwise implement any activity to repair, rehabilitate,
7 reconstruct, or replace irrigation infrastructure of the
8 Project, if the activity is recommended for implementation
9 on the list under section 4(a)(1)(B).

10 (b) LIMITATION.—Assistance provided under sub-
11 section (a) shall not be used for any on-farm improvement.

12 (c) CONSULTATION AND COORDINATION.—In pro-
13 viding assistance under subsection (a), the Secretary
14 shall—

15 (1) consult with, and obtain the approval of, the
16 Tribe;

17 (2) consult with the Assistant Secretary for In-
18 dian Affairs; and

19 (3) as appropriate, coordinate the activity with
20 any work being conducted under the irrigation oper-
21 ations and maintenance program of the Bureau of
22 Indian Affairs.

23 (d) COST SHARING REQUIREMENT.—

24 (1) IN GENERAL.—Except as provided in para-
25 graph (2), the Federal share of the total cost of car-

1 rying out an activity using assistance under sub-
2 section (a) shall be not more than 75 percent.

3 (2) EXCEPTION.—The Secretary may waive or
4 limit the non-Federal share required under para-
5 graph (1) on request of the Tribe.

6 **SEC. 6. EFFECT OF ACT.**

7 (a) WATER RIGHTS OF TRIBE.—Nothing in this Act
8 (including the implementation of any activity carried out
9 in accordance with this Act) affects any right of the Tribe
10 to receive, divert, store, or claim a right to water, includ-
11 ing the priority of right and the quantity of water associ-
12 ated with the water right under Federal or State law.

13 (b) STATE WATER LAW.—Nothing in this Act pre-
14 empts or affects—

15 (1) any provision of water law of the State; or

16 (2) any interstate compact governing water.

17 **SEC. 7. AUTHORIZATION OF APPROPRIATIONS.**

18 (a) STUDY.—There is authorized to be appropriated
19 to carry out the study under section 4 \$4,000,000.

20 (b) IRRIGATION INFRASTRUCTURE GRANTS AND
21 AGREEMENTS.—There is authorized to be appropriated to
22 carry out section 5 \$10,000,000 for each of fiscal years
23 2010 through 2015.

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