

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 (e) 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.

○