

Calendar No. 682117TH CONGRESS
2^D 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, Ms. SINEMA, Mrs. FEINSTEIN, and Mr. PADILLA) introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

DECEMBER 19, 2022

Reported by Mr. SCHATZ, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

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,*

1 **SECTION 1. SHORT TITLE.**

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

4 **SEC. 2. PURPOSES.**

5 The purposes of this Act are—

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

9 (2) to authorize the Secretary to approve any
10 lease or exchange agreements or storage agreements
11 entered into by the CRIT.

12 **SEC. 3. DEFINITIONS.**

13 In this Act:

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

17 (A) located within the exterior boundaries
18 of the Reservation; and

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

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

24 (3) CONSUMPTIVE USE.—The term “consump-
25 tive use” means a portion of the decreed allocation
26 that has been consumptively used by the CRIT with-

1 in the exterior boundary of the Reservation for a
2 minimum of 4 of the 5 years immediately preceding
3 the year of delivery of a portion of the decreed allo-
4 cation according to a lease or exchange agreement or
5 storage agreement. Any verified reduction in con-
6 sumptive use pursuant to a system conservation
7 agreement, a lease or exchange agreement, or stor-
8 age agreement, or from the creation of intentionally
9 created surplus, shall be deemed to be a consumptive
10 use in the year in which the reduction occurred, if
11 the reduction is reflected in the Water Accounting
12 Report.

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

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

22 (6) LOWER BASIN.—The term “Lower Basin”
23 has the meaning given the term in article II(g) of
24 the Colorado River Compact of 1922, as approved by
25 Congress in section 13 of the Boulder Canyon

1 Project Act (43 U.S.C. 6171), and by the Presi-
2 dential Proclamation of June 25, 1929 (46 Stat.
3 3000).

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

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

15 (9) SECRETARY.—The term “Secretary” means
16 the Secretary of the Interior.

17 (10) STATE.—Except for purposes of section
18 15, the term “State” means the State of Arizona.

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

23 (12) WATER ACCOUNTING REPORT.—The term
24 “Water Accounting Report” means the annual re-
25 port of the Bureau of Reclamation entitled the “Col-

1 orado River Accounting and Water Use Report: Ari-
 2 zona, California, and Nevada” which includes the
 3 compilation of records in accordance with article V
 4 of the Consolidated Decree.

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

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

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

21 (c) **MODIFICATIONS.**—Any lease or exchange agree-
 22 ment entered into under subsection (a) may be renegoti-
 23 ated or modified at any time during the term of the lease
 24 or exchange agreement, subject to the approval of the Sec-
 25 retary under section 6(a), on the condition that the term

1 of the renegotiated lease or exchange agreement does not
2 exceed 100 years.

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

8 **SEC. 5. STORAGE 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 to, subject to the
13 approval of the Secretary under section 6(a), and has the
14 sole authority to, enter into an agreement, including with
15 the Arizona Water Banking Authority (or successor agen-
16 cy or entity), for the storage of a portion of the consump-
17 tive use, or the water received under an exchange pursuant
18 to an exchange agreement under section 4, at 1 or more
19 underground storage facilities or groundwater savings fa-
20 cilities off the Reservation (referred to in this Act as a
21 “storage agreement”); on the condition that the facility
22 shall be located in the Lower Basin in the State.

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

1 (c) DELEGATION OF RIGHTS.—The CRIT may assign
 2 or sell any longterm storage credits accrued as a result
 3 of a storage agreement, on the condition that the assign-
 4 ment or sale is in accordance with applicable State law.

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

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

10 (b) REQUIREMENTS.—

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

15 (A) this Act; and

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

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

24 (c) OTHER REQUIREMENTS.—The requirement for
 25 Secretarial approval under subsection (a) shall satisfy the

1 requirements of section 2116 of the Revised Statutes
2 (commonly known as the “Indian Trade and Intercourse
3 Act”) (25 U.S.C. 177).

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

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

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

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

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

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

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

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

2 (a) **IN GENERAL.**—Prior to entering into the first
3 lease or exchange agreement or storage agreement, the
4 CRIT shall enter into an agreement with the State that
5 outlines all notice, information sharing, and collaboration
6 requirements that shall apply to any potential lease or ex-
7 change agreement or storage agreement the CRIT may
8 enter into.

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

14 **SEC. 9. AGREEMENT BETWEEN THE CRIT, THE STATE, AND**
15 **THE SECRETARY.**

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

24 (b) **NEPA.**—The execution of the agreement under
25 subsection (a) shall not constitute a major Federal action

1 for purposes of the National Environmental Policy Act of
 2 1969 (42 U.S.C. 4321 et seq.).

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

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

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

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

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

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

20 (2) shall not permanently alienate the decreed
 21 allocation.

22 (b) PRIORITY STATUS.—

23 (1) IN GENERAL.—The lease or exchange of a
 24 portion of the consumptive use shall not cause that

1 portion to lose or change its priority under the Con-
2 solidated Decree.

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

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

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

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

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

21 (b) WATER RIGHTS OF ALLOTTEES.—The Secretary
22 shall protect the rights of the allottees to a just and equi-
23 table distribution of water for irrigation purposes, pursu-
24 ant to section 7 of the Act of February 8, 1887 (commonly
25 known as the “Indian General Allotment Act”) (24 Stat.

1 390, chapter 119, 25 U.S.C. 381) (referred to in this sec-
2 tion as the “Act”).

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

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

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

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

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

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

21 (a) LIMITATION OF LIABILITY.—The United States
22 shall not be liable in any claim relating to the negotiation,
23 execution, or approval of any lease or exchange agreement
24 or storage agreement, including any claims relating to the
25 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

25 (4) any person.

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 agreements*
12 *for conserved water entered into by the CRIT.*

13 **SEC. 3. DEFINITIONS.**

14 *In this Act:*

15 *(1) AGREEMENT FOR CONSERVED WATER.—The*
16 *term “agreement for conserved water” means an*
17 *agreement for the creation of system conservation,*
18 *storage of conserved water in Lake Mead, or other*
19 *mechanisms for voluntarily leaving a portion of the*
20 *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 of*
25 *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 Su-
3 preme Court of the United States in *Arizona v. Cali-*
4 *fornia*, 547 U.S. 150 (2006).

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

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

18 (6) *DECREED ALLOCATION.*—The term “decreed
19 allocation” means the volume of water of the main-
20 stream of the Colorado River allocated to the CRIT
21 that is accounted for as part of the apportionment for
22 the State in part I–A of the Appendix of the Consoli-
23 dated Decree.

24 (7) *LOWER BASIN.*—The term “Lower Basin”
25 has the meaning given the term in article II(g) of the

1 *Colorado River Compact of 1922, as approved by*
2 *Congress in section 13 of the Boulder Canyon Project*
3 *Act (43 U.S.C. 617l) and by the Presidential Procla-*
4 *mation of June 25, 1929 (46 Stat. 3000).*

5 (8) *PERSON.*—*The term “person” means an in-*
6 *dividual, a public or private corporation, a company,*
7 *a partnership, a joint venture, a firm, an association,*
8 *a society, an estate or trust, a private organization*
9 *or enterprise, the United States, an Indian Tribe, a*
10 *governmental entity, or a political subdivision or mu-*
11 *nicipal corporation organized under, or subject to, the*
12 *constitution and laws of the State.*

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

16 (10) *SECRETARY.*—*The term “Secretary” means*
17 *the Secretary of the Interior.*

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

20 (12) *STORAGE.*—*The term “storage” means the*
21 *underground storage, in accordance with State law, of*
22 *a portion of the consumptive use off the Reservation*
23 *within the Lower Basin in the State.*

24 (13) *WATER ACCOUNTING REPORT.*—*The term*
25 *“Water Accounting Report” means the annual report*

1 *of the Bureau of Reclamation entitled the “Colorado*
2 *River Accounting and Water Use Report: Arizona,*
3 *California, and Nevada” which includes the compila-*
4 *tion of records in accordance with article V of the*
5 *Consolidated Decree.*

6 **SEC. 4. LEASE OR EXCHANGE 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, subject to the ap-*
11 *proval of the Secretary under section 7(a), and has the sole*
12 *authority, to enter into, with any person, an agreement to*
13 *lease or exchange, or an option to lease or exchange, a por-*
14 *tion of the consumptive use for a use off the Reservation*
15 *(referred to in this Act as a “lease or exchange agreement”),*
16 *subject to the conditions that the use off the Reservation is*
17 *located in the Lower Basin in the State and is not located*
18 *in the counties of Navajo, Apache, or Cochise in the State.*

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

23 *(c) MODIFICATIONS.—Any lease or exchange agreement*
24 *entered into under subsection (a) may be renegotiated or*
25 *modified at any time during the term of the lease or ex-*

1 *change agreement, subject to the approval of the Secretary*
2 *under section 7(a), subject to the condition that the term*
3 *of the renegotiated lease or exchange agreement does not ex-*
4 *ceed 100 years.*

5 *(d) APPLICABLE LAW.—Any person entering into a*
6 *lease or exchange agreement with the CRIT under this sec-*
7 *tion shall use the water received under the lease or exchange*
8 *agreement in accordance with applicable Federal and State*
9 *law.*

10 **SEC. 5. STORAGE AGREEMENTS.**

11 *(a) AUTHORIZATION.—Notwithstanding section 2116*
12 *of the Revised Statutes (commonly known as the “Indian*
13 *Trade and Intercourse Act”)* (25 U.S.C. 177) *or any other*
14 *provision of law, the CRIT is authorized, subject to the ap-*
15 *proval of the Secretary under section 7(a), and has the sole*
16 *authority, to enter into an agreement, including with the*
17 *Arizona Water Banking Authority (or a successor agency*
18 *or entity), for the storage of a portion of the consumptive*
19 *use, or the water received under an exchange pursuant to*
20 *an exchange agreement under section 4, at 1 or more under-*
21 *ground storage facilities or groundwater savings facilities*
22 *off the Reservation (referred to in this Act as a “storage*
23 *agreement”), subject to the conditions that the facility is*
24 *located in the Lower Basin in the State and is not located*
25 *in the counties of Navajo, Apache, or Cochise in the State.*

1 (b) *MODIFICATIONS.*—Any storage agreement entered
 2 into under subsection (a) may be renegotiated or modified
 3 at any time during the term of the storage agreement, sub-
 4 ject to the approval of the Secretary under section 7(a).

5 (c) *APPLICABLE LAW.*—Any storage agreement entered
 6 into under subsection (a) shall be in accordance with appli-
 7 cable Federal and State law.

8 (d) *DELEGATION OF RIGHTS.*—The CRIT may assign
 9 or sell any long-term storage credits accrued as a result of
 10 a storage agreement, subject to the condition that the assign-
 11 ment or sale is in accordance with applicable State law.

12 **SEC. 6. AGREEMENTS FOR CREATION OF WATER FOR THE**
 13 **COLORADO RIVER SYSTEM FOR STORING**
 14 **WATER IN LAKE MEAD.**

15 (a) *AUTHORIZATION.*—Notwithstanding section 2116
 16 of the Revised Statutes (commonly known as the “Indian
 17 Trade and Intercourse Act”) (25 U.S.C. 177) or any other
 18 provision of law, the CRIT is authorized, subject to the ap-
 19 proval of the Secretary under section 7(a), and has the sole
 20 authority, to enter into, with any person, an agreement for
 21 conserved water, subject to the conditions that if the con-
 22 served water is delivered, the delivery is to a location in
 23 the Lower Basin in the State and is not to a location in
 24 the counties of Navajo, Apache, or Cochise in the State.

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

5 (c) *MODIFICATIONS.*—*Any agreement for conserved*
 6 *water entered into under subsection (a) may be renegotiated*
 7 *or modified at any time during the term of the agreement*
 8 *for conserved water, subject to the approval of the Secretary*
 9 *under section 7(a).*

10 (d) *APPLICABLE LAW.*—*Any agreement for conserved*
 11 *water entered into under subsection (a), and any use of con-*
 12 *served water, shall be in accordance with Federal law, in-*
 13 *cluding any program authorized by Federal law.*

14 **SEC. 7. SECRETARIAL APPROVAL; DISAPPROVAL; AGREE-**
 15 **MENTS.**

16 (a) *AUTHORIZATION.*—*The Secretary shall approve or*
 17 *disapprove any—*

18 (1) *lease or exchange agreement;*

19 (2) *modification to a lease or exchange agree-*
 20 *ment;*

21 (3) *storage agreement;*

22 (4) *modification to a storage agreement;*

23 (5) *agreement for conserved water; or*

24 (6) *modification to an agreement for conserved*
 25 *water.*

1 (b) *SECRETARIAL AGREEMENTS.*—*The Secretary is*
2 *authorized to enter into a lease or exchange agreement, a*
3 *storage agreement, or an agreement for conserved water*
4 *with the CRIT, subject to the condition that the Secretary*
5 *pays the fair market value for the CRIT reduced consump-*
6 *tive use.*

7 (c) *REQUIREMENTS.*—

8 (1) *LEASE OR EXCHANGE AGREEMENTS AND*
9 *STORAGE AGREEMENTS.*—*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 stor-*
12 *age agreement, or any modification to a storage*
13 *agreement, that is not in compliance with—*

14 (A) *this Act; and*

15 (B) *the agreement entered into between the*
16 *CRIT, the State, and the Secretary under section*
17 *10(a).*

18 (2) *AGREEMENTS FOR CONSERVED WATER.*—*The*
19 *Secretary shall not approve any agreement for con-*
20 *served water, or any modification to an agreement for*
21 *conserved water, that is not in compliance with—*

22 (A) *this Act; and*

23 (B) *other applicable Federal law, including*
24 *any program authorized by Federal law.*

1 (3) *PERMANENT ALIENATION.*—*The Secretary*
2 *shall not approve any lease or exchange agreement, or*
3 *any modification to a lease or exchange agreement,*
4 *any storage agreement, or any modification to a stor-*
5 *age agreement, or any agreement for conserved water,*
6 *or any modification to an agreement for conserved*
7 *water, that permanently alienates any portion of the*
8 *CRIT decreed allocation.*

9 (d) *OTHER REQUIREMENTS.*—*The requirement for*
10 *Secretarial approval under subsection (a) shall satisfy the*
11 *requirements of section 2116 of the Revised Statutes (com-*
12 *monly known as the “Indian Trade and Intercourse Act”)*
13 *(25 U.S.C. 177).*

14 (e) *AUTHORITY OF THE SECRETARY.*—*Nothing in this*
15 *Act, or any agreement entered into or approved by the Sec-*
16 *retary under this Act, including any lease or exchange*
17 *agreement, storage agreement, or agreement for conserved*
18 *water, shall diminish or abrogate the authority of the Sec-*
19 *retary to act under applicable Federal law or regulation,*
20 *including the Consolidated Decree.*

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

22 (a) *COMPLIANCE.*—*When approving a lease or ex-*
23 *change agreement, a storage agreement, or an agreement for*
24 *conserved water, the Secretary shall promptly comply with*
25 *all aspects of the National Environmental Policy Act of*

1 1969 (42 U.S.C. 4321 *et seq.*), the Endangered Species Act
 2 of 1973 (16 U.S.C. 1531 *et seq.*), and all other applicable
 3 environmental laws and regulations.

4 (b) *DOCUMENTATION.*—The Secretary shall document
 5 any lease or exchange agreement, storage agreement, or
 6 agreement for conserved water in the Water Accounting Re-
 7 port.

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

9 (a) *IN GENERAL.*—Before entering into the first lease
 10 or exchange agreement or storage agreement, the CRIT shall
 11 enter into an agreement with the State that outlines all no-
 12 tice, information sharing, and collaboration requirements
 13 that shall apply to any potential lease or exchange agree-
 14 ment or storage agreement the CRIT may enter into.

15 (b) *REQUIREMENT.*—The agreement required under
 16 subsection (a) shall include a provision that requires the
 17 CRIT to submit to the State all documents regarding a po-
 18 tential lease or exchange agreement or storage agreement.

19 **SEC. 10. AGREEMENT BETWEEN THE CRIT, THE STATE, AND**
 20 **THE SECRETARY.**

21 (a) *IN GENERAL.*—Before approving the first lease or
 22 exchange agreement or storage agreement under section 7,
 23 the Secretary shall enter into an agreement with the State
 24 and the CRIT that describes the procedural, technical, and
 25 accounting methodologies for any lease or exchange agree-

1 *ment or storage agreement the CRIT may enter into, in-*
 2 *cluding quantification of the reduction in consumptive use*
 3 *and water accounting.*

4 (b) *NEPA.*—*The execution of the agreement required*
 5 *under subsection (a) shall not constitute a major Federal*
 6 *action for purposes of the National Environmental Policy*
 7 *Act of 1969 (42 U.S.C. 4321 et seq.).*

8 (c) *EFFECT.*—*Nothing in this Act prohibits the Sec-*
 9 *retary from agreeing with the CRIT and the State to a*
 10 *modification to an agreement entered into under subsection*
 11 *(a) (including an appendix or exhibit to the agreement) if*
 12 *the modification—*

13 (1) *is in compliance with this Act; and*

14 (2) *does not otherwise require congressional ap-*
 15 *proval under section 2116 of the Revised Statutes*
 16 *(commonly known as the “Indian Trade and Inter-*
 17 *course Act”)* (25 U.S.C. 177) *or any other provision*
 18 *of law.*

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

20 (a) *TEMPORARY USE.*—*A lease or exchange agreement,*
 21 *a storage agreement, or an agreement for conserved water—*

22 (1) *shall provide for the temporary use, storage,*
 23 *or conservation of a portion of the consumptive use off*
 24 *the Reservation; and*

1 (2) shall not permanently alienate the decreed
2 allocation.

3 (b) *PRIORITY STATUS.*—

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

8 (2) *NONUSE.*—Any nonuse by a person who is a
9 party to any lease or exchange agreement or storage
10 agreement with the CRIT shall not result in for-
11 feiture, abandonment, relinquishment, or other loss by
12 the CRIT of all or any portion of the decreed alloca-
13 tion.

14 (c) *RESERVATION OF RIGHTS.*—The lease, exchange,
15 storage, or conservation of a portion of the consumptive use
16 shall not reduce or limit the right of the CRIT to use the
17 remaining portion of the decreed allocation on the Reserva-
18 tion.

19 (d) *STORAGE AGREEMENTS.*—A storage agreement en-
20 tered into under this Act shall account for the quantity of
21 water in storage off the Reservation in accordance with ap-
22 plicable State law.

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

24 (a) *INTERFERENCE.*—The lease, exchange, storage, or
25 conservation of a portion of the consumptive use shall not

1 *directly or indirectly interfere with, or diminish, any enti-*
2 *tlement to water for an allottee under Federal or Tribal*
3 *law.*

4 (b) *WATER RIGHTS OF ALLOTTEES.*—*The Secretary*
5 *shall protect the rights of the allottees to a just and equitable*
6 *distribution of water for irrigation purposes, pursuant to*
7 *section 7 of the Act of February 8, 1887 (commonly known*
8 *as the “Indian General Allotment Act”) (24 Stat. 390,*
9 *chapter 119; 25 U.S.C. 381) (referred to in this section as*
10 *the “Act”).*

11 (c) *RELIEF UNDER TRIBAL LAW.*—*Prior to asserting*
12 *any claim against the United States pursuant to the Act,*
13 *or any other applicable law, an allottee shall exhaust all*
14 *remedies available under applicable Tribal law.*

15 (d) *RELIEF UNDER THE INDIAN GENERAL ALLOT-*
16 *MENT ACT.*—*Following an exhaustion of remedies available*
17 *under applicable Tribal law, an allottee may seek relief*
18 *under the Act or any other applicable law.*

19 (e) *RELIEF FROM THE SECRETARY.*—*Following ex-*
20 *haustion of remedies available under the Act, or any other*
21 *applicable law, an allottee may petition the Secretary for*
22 *relief.*

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

24 *The CRIT, and not the United States in any capacity,*
25 *shall be entitled to all consideration due to the CRIT under*

1 *any lease or exchange agreement, storage agreement, or*
 2 *agreement for conserved water.*

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

4 (a) *LIMITATION OF LIABILITY.*—*The United States*
 5 *shall not be liable to the CRIT or to any party to a lease*
 6 *or exchange agreement, a storage agreement, or an agree-*
 7 *ment for conserved water in any claim relating to the nego-*
 8 *tiation, execution, or approval of any lease or exchange*
 9 *agreement, storage agreement, or agreement for conserved*
 10 *water, including any claim relating to the terms included*
 11 *in such an agreement, except for claims relating to the re-*
 12 *quirements of section 8(a).*

13 (b) *OBLIGATIONS.*—*The United States shall have no*
 14 *trust obligation or other obligation to monitor, administer,*
 15 *or account for—*

16 (1) *any funds received by the CRIT as consider-*
 17 *ation under any lease or exchange agreement, storage*
 18 *agreement, or agreement for conserved water; or*

19 (2) *the expenditure of such funds.*

20 **SEC. 15. APPLICATION.**

21 (a) *IN GENERAL.*—*This Act shall only apply to the*
 22 *portion of the decreed allocation that is available for use*
 23 *in the State.*

24 (b) *REQUIREMENT.*—*The portion of the decreed alloca-*
 25 *tion that is available for use in the State shall not be used,*

1 *directly or indirectly outside the Lower Basin in the State*
2 *or in the counties of Navajo, Apache, or Cochise in the*
3 *State.*

4 **SEC. 16. RULE OF CONSTRUCTION.**

5 *Nothing in this Act establishes, or shall be considered*
6 *to establish, a precedent in any litigation involving, or al-*
7 *ters, affects, or quantifies, any water right with respect to—*

8 *(1) the United States;*

9 *(2) any other Indian Tribe, band, or community;*

10 *(3) any State or political subdivision or district*

11 *of a State; or*

12 *(4) any person.*

Calendar No. 682

117TH CONGRESS
2^D SESSION

S. 3308

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.

DECEMBER 19, 2022

Reported with an amendment