

116TH CONGRESS
1ST SESSION

H. R. 3491

To approve the Kickapoo Tribe Water Rights Settlement Agreement, and
for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 25, 2019

Mr. WATKINS (for himself and Ms. DAVIDS of Kansas) introduced the following bill; which was referred to the Committee on Natural Resources, and in addition to the Committee on Agriculture, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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.
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 (C) 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 rights, entered into by
13 the Tribe and the State of Kansas, to the extent
14 that the Settlement Agreement is consistent with
15 this Act;

16 (3) to authorize and direct the Secretary—

17 (A) to execute the Agreement; and

18 (B) to take any other action necessary to
19 carry out the Settlement Agreement in accord-
20 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 in section 4 of the
15 Indian Self-Determination and Education Assistance
16 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 I; 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 and regulations.

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 rights; 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 RIGHTS.—

25 The Tribal water right—

1 (1) shall be held in trust by the United States
2 on behalf of the Tribe its members and allottees in
3 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 rights
21 pursuant to the terms and conditions of the Kick-
22 apoo Tribe Water Rights Settlement Agreement and
23 the 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 water
20 code described in paragraphs (1) and (2) is en-
21 acted, the Secretary shall administer, with re-
22 spect to the rights of allottees, the Tribal water
23 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 rights.

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 rights.

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 The Secretary of Agriculture, as delegated to the Di-
15 rector of the Natural Resources Conservation Service, in
16 consultation with the Secretary as delegated to the Sec-
17 retary's Indian Water Rights Office, is hereby directed—

18 (1) to commence a study of the Upper Dela-
19 ware and Tributaries Watershed Plan, as authorized
20 by the Committee on Environment and Public
21 Works of the Senate (Senate Report 105–13; April
22 22, 1997); and

23 (2) not later than 2 years after the date of en-
24 actment of this Act, to make recommendations to
25 Congress with respect to material alterations or

1 changes in the Plan necessary to effectuate, in part,
2 the Tribal water rights approved, ratified, and con-
3 firmed by the Kickapoo Tribe Water Rights Settle-
4 ment Agreement and this Act.

5 The enactment of this legislation does not impose a duty
6 or otherwise obligate the United States to appropriate
7 funds, plan, design, or take any other action to construct
8 any infrastructure. Any appropriations for infrastructure
9 and any matters related to the Agreement and this Act
10 will be considered by the Congress following receipt of the
11 recommendations for material changes or alterations in
12 the Plan referenced herein.

13 **SEC. 8. WAIVER AND RELEASE OF CLAIMS; RETENTION OF**
14 **CLAIMS.**

15 (a) CLAIMS BY THE TRIBE AND ITS MEMBERS AND
16 ALLOTTEES AND THE UNITED STATES ON BEHALF OF
17 THE TRIBE AND ITS MEMBERS AND ALLOTTEES.—In re-
18 turn for recognition of the Tribal water right and other
19 benefits set forth in the Agreement and this Act, including
20 but not limited to the commitments of the other parties
21 hereto, the Tribe on behalf of itself and its members and
22 allottees and the United States acting in its capacity as
23 trustee for the Tribe and its members and allottees agree
24 to execute a waiver and release of claims against the other
25 parties to the Agreement from—

1 (1) all claims for water rights in the Delaware
2 River Basin that the Tribe or the United States act-
3 ing in its capacity as trustee for the Tribe asserted
4 or could have asserted in any proceeding up to and
5 including the date the Agreement becomes effective,
6 except to the extent such rights are recognized in
7 the Agreement;

8 (2) all claims for damages, losses, or injuries to
9 water rights or claims of interference with, diversion,
10 or taking of water (including but not limited to
11 claims for injury to lands resulting from such dam-
12 ages, losses, injuries, interference with, diversion, or
13 taking) in the Delaware River Basin that accrued at
14 any time up to and including the effective date; and

15 (3) all claims against the State of Kansas, its
16 agencies, or employees.

17 (b) CLAIMS BY THE TRIBE AGAINST THE UNITED
18 STATES.—The Tribe, on behalf of itself and its members
19 and allottees, as part of the performance of the obligations
20 of the Tribe under the Agreement and this Act, agrees
21 to execute a waiver and release of—

22 (1) all claims against the United States, its
23 agents, or employees relating to claims for water
24 rights in or water of the Delaware River Basin that
25 the United States acting in its capacity as trustee

1 for the Tribe asserted or could have asserted in any
2 proceeding;

3 (2) all claims against the United States, its
4 agents, or employees relating to damages, losses, or
5 injuries to water, water rights, land, or natural re-
6 sources due to the loss of water or water rights (in-
7 cluding but not limited to damages, losses, or inju-
8 ries to hunting, fishing, gathering, or cultural rights
9 due to the loss of water or water rights; claims relat-
10 ing to interference with, diversion, or taking of
11 water or water rights; or claims relating to failure
12 to protect, acquire, replace, or develop water, water
13 rights, or water infrastructure) in the Delaware
14 River Basin that first accrued at any time up to and
15 including the enforcement date; provided, however,
16 that the claims herein in section 8(b)(2) are not
17 waived until such time as appropriations for water-
18 related infrastructure for the Upper Delaware and
19 Tributaries Watershed Plan referenced in section 7
20 herein are paid, and then to the extent of the
21 amount of the appropriations; and

22 (3) all claims against the United States, its
23 agents, or employees.

24 (c) RESERVATION AND RETENTION OF RIGHTS.—
25 Notwithstanding the waivers and releases set forth above,

1 the Tribe on behalf of itself and its members and allottees,
2 and the United States acting in its capacity as trustee for
3 the Tribe and its members and allottees, retain—

4 (1) all claims for enforcement of the Agree-
5 ment;

6 (2) all claims against persons other than the
7 parties to the Agreement for damages, losses, or in-
8 juries to water rights or claims of interference with,
9 diversion, or taking of water (including but not lim-
10 ited to claims for injury to lands resulting from such
11 damages, losses, injuries, interference with, diver-
12 sion, or taking) in the Delaware River Basin;

13 (3) all rights to use and protect water rights ac-
14 quired after the date of enactment of this Act;

15 (4) all claims relating to activities affecting the
16 quality of water, including but not limited to claims
17 the Tribe might have under the Comprehensive En-
18 vironmental Response, Compensation, and Liability
19 Act of 1980 (42 U.S.C. 9601 et seq.) (including but
20 not limited to claims for damages to natural re-
21 sources), the Safe Drinking Water Act (42 U.S.C.
22 300f et seq.), the Federal Water Pollution Control
23 Act (33 U.S.C. 1251 et seq.), all as amended, and
24 regulations implementing those Acts;

1 (5) to the extent not waived by court order and
2 related joint stipulation that the Tribe executed with
3 the United States in 2012 as part of the litigation
4 styled *Nez Perce Tribe et al. v. Salazar et al.*, all
5 claims relating to damages, losses, or injuries to
6 land or natural resources not due to the loss of
7 water or water rights (including but not limited to
8 hunting, fishing, gathering, or cultural rights); and

9 (6) all rights, remedies, privileges, immunities,
10 powers, and claims not specifically waived and re-
11 leased pursuant to the Agreement.

12 (d) EFFECT.—Nothing in the Agreement—

13 (1) affects the ability of the United States act-
14 ing in its sovereign capacity to take actions author-
15 ized by law, including but not limited to any law re-
16 lating to health, safety, or the environment, includ-
17 ing but not limited to the Federal Water Pollution
18 Control Act (33 U.S.C. 1251 et seq.), the Com-
19 prehensive Environmental Response, Compensation,
20 and Liability Act of 1980 (42 U.S.C. 9601 et seq.)
21 (including but not limited to claims for damages to
22 natural resources), the Safe Drinking Water Act (42
23 U.S.C. 300f et seq.), and the Solid Waste Disposal
24 Act (42 U.S.C. 6901 et seq.), all as amended, and
25 regulations implementing those Acts;

1 (2) affects the ability of the United States to
2 take actions acting in its capacity as trustee for any
3 other Indian Tribe or allottee; and

4 (3) waives any claim of a member of the Tribe
5 in an individual capacity that does not derive from
6 a right of the Tribe.

7 **SEC. 9. ENFORCEABILITY DATE.**

8 (a) **IN GENERAL.**—The Settlement Agreement and
9 waivers shall take effect and be enforceable on the date
10 on which the Secretary publishes in the Federal Register
11 a statement of findings that—

12 (1) the Settlement Agreement, as amended to
13 conform with this Act, has been executed by the Sec-
14 retary of the Interior, the State, and the Tribe; and

15 (2) the section 8 waivers and releases, except
16 those in section 8(b)(2), have been executed.

17 (b) **TERM OF THE AGREEMENT.**—The term of the
18 Agreement shall commence on the effective date and shall
19 continue perpetually.

20 **SEC. 10. JUDICIAL PROCEEDINGS.**

21 Upon the date of enactment of this Act, the judicial
22 proceeding described in Article 10 of the Settlement
23 Agreement shall be and is hereby authorized to be com-
24 menced.

1 **SEC. 11. MISCELLANEOUS PROVISIONS.**

2 (a) WAIVER OF SOVEREIGN IMMUNITY BY THE
3 UNITED STATES.—Except as provided in subsections (a)
4 through (e) of section 208 of the Department of Justice
5 Appropriation Act, 1953 (43 U.S.C. 666), nothing in this
6 Act waives the sovereign immunity of the United States.

7 (b) PERFORMANCE BY THE UNITED STATES.—Per-
8 formance by the United States of its obligations under the
9 Agreement that depend upon the appropriation of funds
10 by Congress and the disbursement of such funds shall be
11 contingent on such appropriation and disbursement. No
12 liability that depends upon the appropriation of such funds
13 shall accrue to the United States for failure to perform
14 an obligation under the Agreement where funds necessary
15 to enable such performance are not appropriated or paid.

16 (c) OTHER TRIBES NOT ADVERSELY AFFECTED.—
17 Nothing in this Act quantifies or diminishes any land or
18 water rights, or any claim or entitlement to land or water,
19 of an Indian Tribe, band, or community other than the
20 Tribe.

21 (d) LIMITATION ON CLAIMS FOR REIMBURSE-
22 MENT.—With respect to Indian land within the Reserva-
23 tion—

24 (1) the United States shall not submit against
25 any Indian-owned land located within the Reserva-
26 tion any claim for reimbursement of the cost to the

1 United States of carrying out this Act and the Set-
2 tlement Agreement; and

3 (2) no assessment of any Indian-owned land lo-
4 cated within the Reservation shall be made regard-
5 ing that cost.

6 (e) EFFECT ON CURRENT LAW.—Nothing in this sec-
7 tion affects any provision of law (including regulations)
8 in effect on the day before the date of enactment of this
9 Act with respect to preenforcement review of any Federal
10 environmental enforcement action.

11 (f) NO USE OF CONDEMNATION OR EMINENT DO-
12 MAIN.—Land or interests in land may not be acquired by
13 condemnation or eminent domain under this Act or for
14 the purposes of this Act.

○