

INDIAN WATER RIGHTS SETTLEMENT EXTENSION ACT

JULY 9, 2020.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed

Mr. GRIJALVA, from the Committee on Natural Resources,
submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 1904]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 1904) to amend the Omnibus Public Land Management Act of 2009 to make the Reclamation Water Settlements Fund permanent, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Indian Water Rights Settlement Extension Act”.

SEC. 2. RECLAMATION WATER SETTLEMENTS FUND.

Section 10501 of the Omnibus Public Land Management Act of 2009 (43 U.S.C. 407) is amended—

(1) in subsection (b)(1), by inserting “and for fiscal year 2031 and each fiscal year thereafter” after “For each of fiscal years 2020 through 2029”;

(2) in subsection (c)—

(A) in paragraph (1)(A), by striking “for each of fiscal years 2020 through 2034” and inserting “for fiscal year 2020 and each fiscal year thereafter”;

and

(B) in paragraph (3)(C), by striking “for any authorized use” and all that follows through the period at the end and inserting “for any use authorized under paragraph (2).”; and

(3) by striking subsection (f).

PURPOSE OF THE BILL

The purpose of H.R. 1904 is to fund water infrastructure projects by amending the Omnibus Public Land Management Act of 2009 to make the Reclamation Water Settlements Fund permanent.

BACKGROUND AND NEED FOR LEGISLATION

Presently, numerous tribes across the country lack dependable drinking water, clean water, and wastewater infrastructure, even though the federal government has a legal obligation to help ensure tribal water access. To help address this legal obligation and improve clean water access, Congress historically has approved and funded Indian water rights settlements, which pay for water infrastructure serving tribal communities and quantify Indian reserved water rights.

Indian reserved water rights were first recognized by the Supreme Court in *Winters v. United States* in 1908.¹ Under the *Winters* decision, whenever the federal government reserved lands for an Indian reservation, it also implicitly reserved enough water to support the purposes of the reservation. Practically speaking, the ruling means that tribes with federally established reservations have a legal right to enough water to sustain their tribal communities.

Despite the *Winters* decision, Indian water rights were left largely undeveloped and unprotected in the decades after 1908. By and large, the federal government failed to meet its legal trust responsibility to protect Indian water rights from competing water users during the 20th century. By contrast, federal policy and expenditures supported the construction of numerous water infrastructure projects to deliver water to non-Indian communities across the west. In many cases, this water delivered to non-Indian communities is water to which tribes have a legal entitlement.

Presently, tribes have two options to address the federal government's failure to honor its trust responsibility and secure the water they have legal entitlement to: (1) carry out litigation against the United States and non-Indian water users or (2) agree to a water settlement agreement with the United States and non-federal parties. The litigation route can involve trial costs that require millions of dollars from all parties for studies, expert reports, attorney fees, and other expenditures.² The adjudication is often complex and contentious and can last decades. Litigation also exposes the federal government to "breach of trust" claims for failing to protect Indian water rights, which can cost taxpayers billions.

Instead of litigation, negotiated Indian water rights settlements have been the preferred alternative for tribes, states, and the federal government, including the current administration and every Republican and Democratic administration since the 1970s.³ Negotiated settlements are preferred because they relieve taxpayers

¹ 207 U.S. 564 (1908).

² See, e.g., TRIBAL WATER WORKING GRP., WATER IN INDIAN COUNTRY: CHALLENGES AND OPPORTUNITIES (2012), http://uttoncenter.unm.edu/pdfs/2012White_Paper.pdf.

³ See, e.g., Hearing on H.R. 1904 Before the H. Comm. on Nat. Res., 116th Cong. (2019) (not printed), <https://docs.house.gov/Committee/Calendar/ByEvent.aspx?EventID=109242> (written statement of Alan Mikkelsen, Sr. Advisor (Water & W. Res. Issues) to the Sec'y of the Interior, and Chair, Working Grp. on Indian Water Settlements, U.S. Dep't of the Interior), <https://docs.house.gov/meetings/II/II00/20190404/109242/HHRG-09116-II00-Wstate-MikkelsenA-20190404.pdf>.

from significant legal liability, provide water supply certainty for tribal and surrounding non-tribal communities, build cooperative solutions that benefit all stakeholders, and often include funding for important water infrastructure that allows a tribe to access the water to which they have a legal entitlement.

Indian water rights settlements typically address at least two major issues: quantifying “paper water” rights for tribes and ensuring that actual “wet water” reaches Indian lands and Native people through the construction of water delivery and other infrastructure. In the quantification process, the parties assess the exact amount of water under a tribe’s reserved right. In order to turn quantified rights into wet water, tribes will often agree to a lower water quantity than they have a right to and waive “breach of trust” claims against the federal government in exchange for federal infrastructure funding. Federal funding provided by these settlements is often used to construct water infrastructure serving tribal communities, such as water treatment facilities and water delivery canals.

Funding Challenges

Since 1978, thirty-six Indian water rights settlements have been federally approved with an estimated federal cost of nearly \$6 billion.⁴ In the last decade, Congress authorized seven new settlements that call for federal expenditures totaling approximately \$2.5 billion.⁵ Enacting the settlement bills currently pending before Congress would cost an additional \$2 billion.⁶ Furthermore, there are an additional twenty-one federal negotiating teams currently negotiating with twenty-one tribes on future settlements that will prompt new settlement legislation expected to cost several billion more.⁷ In addition to settlements resulting from current negotiations, more federal negotiating teams will be appointed in future years that will spur additional settlement legislation. There are more than 280 federally recognized tribes in the west alone. While many of these tribes will require Indian water rights settlements, the federal government has finalized and funded settlements for only a fraction of the west’s tribes over the past 40 years.

Without action, unreliable and insufficient federal funding will remain a significant barrier to the approval and full implementation of numerous future settlements. Salt River Project Associate General Manager David Roberts, appearing before the Natural Resources Committee, testified that “funding [for] the infrastructure component of settlements continues to be a primary barrier” to the “successful completion of Indian water rights settlements.”⁸

⁴ Indian water rights settlements usually need to be federally approved by Congressional legislation or, more rarely, by either administrative action or court decision. CHARLES V. STERN, CONG. RESEARCH SERV., R44148, INDIAN WATER RIGHTS SETTLEMENTS (updated May 22, 2020).

⁵ See source cited *supra* note 3.

⁶ See S. 3019, sponsored by Sen. Daines; H.R. 644/S. 1207, sponsored by Ranking Member Bishop and Sen. Romney; H.R. 2549/S. 1277, sponsored by Rep. O’Halloran and Sen. McSally; and H.R. 3292/S. 1875, sponsored by Rep. Lujan and Sen. Udall.

⁷ STERN, *supra* note 4, tbl. 2; *Hearing on S. 2154, S. 3060, and S. 3168 Before the S. Comm. on Indian Aff.*, 115th Cong. 11 (2018) (written statement of Alan Mikkelsen, Sr. Advisor (Water & W. Res. Issues) to the Sec’y of the Interior, and Chair, Working Grp. on Indian Water Settlements, U.S. Dep’t of the Interior), <https://www.govinfo.gov/content/pkg/CHRG-115shrg31611/pdf/CHRG-115shrg31611.pdf>; *Federal Teams, SEC’Y’S INDIAN WATER RTS. OFF.*, https://www.doi.gov/sites/doi.gov/files/uploads/2018-06-15_team_and_tribe_list_siwro.pdf.

⁸ *Hearing on H.R. 1904 Before the H. Comm. on Nat. Res.*, 116th Cong. (2019) (not printed) (written statement of David C. Roberts, Assoc. Gen. Manager, Salt River Project (Ariz.)), <https://>

Tohono O’odham Nation Chairman Edward D. Manuel identified similar funding challenges, testifying that “the substantial difficulty in identifying and committing federal resources necessary to fully and fairly resolve water rights claims has led to uncertainty for tribes and non-Indians alike. This uncertainty is badly compounded by chronic underfunding of already-enacted tribal water settlements.”⁹ Insufficient funding provided through annual appropriations has also caused construction delays and increased total project costs.

To help provide a reliable, sufficient funding source to enact congressionally approved settlements, the Reclamation Water Settlements Fund (Settlements Fund) was created through Title X of the Omnibus Public Land Management Act of 2009.¹⁰ This statute directed the Secretary of the Treasury to annually deposit into the Settlements Fund, between 2020 and 2029, \$120 million in energy royalties from western states and other revenues (for a total of \$1.2 billion) that would otherwise have been deposited into the Reclamation Fund—a separate account within the U.S. Treasury authorized by Congress in 1902 to help pay for water infrastructure in the western states.¹¹ For many years, the Reclamation Fund has received significant additional revenues that have gone unused or been diverted by the annual appropriations process for uses wholly unrelated to water infrastructure. This longstanding trend has accelerated in the past decade—deposits into the Reclamation Fund have exceeded expenditures by approximately \$1 billion on average per year since 2010.¹² The statute creating the Reclamation Water Settlements Fund obligates a fraction of the unused deposits to fund critical tribal water infrastructure projects, allowing revenues intended for water infrastructure needs to be used for their intended purpose, instead of allowing the revenues to go unused or get diverted away from water infrastructure needs during the annual appropriations process.

Some members of the Committee’s minority have spoken against the Reclamation Water Settlements Fund because its creation in 2009 originally included a delayed revenue sharing provision, which delayed the use of energy royalties and other revenues for tribal water infrastructure by a decade. These delayed revenue sharing provisions were intentionally modeled on measures supported by Republican Committee Members, including the Gulf of Mexico Energy Security Act (P.L. 109–432), which has the same provision delaying revenue sharing by a decade.

Some members of the Committee’s minority also have said an extension of the Settlements Fund is unneeded at this time because the Fund will receive \$120 million annually until 2029. The funding made available through 2029, however, is already spoken for

docs.house.gov/meetings/II/II00/20190404/109242/HHRG-116-II00-Wstate-RobertsD-20190404.pdf.

⁹*Hearing on H.R. 1904 Before the H. Comm. on Nat. Res.*, 116th Cong. (2019) (not printed) (written statement of Edward D. Manuel, Chairman, Tohono O’odham Nation of Ariz.), <https://docs.house.gov/meetings/II/II00/20190404/109242/HHRG-116-II00-Wstate-ManuelE-20190404.pdf>.

¹⁰Pub. L. No. 111–11, tit. X, pt. II, §10,501, 123 Stat. 991, 1375 (2009), <https://www.congress.gov/111/plaws/pub11/PLAW-111publ11.pdf>.

¹¹Not to be confused with the Reclamation Water Settlements Fund, the Reclamation Fund was established under the Reclamation Act of 1902 to pay for the construction and maintenance of water projects in the western United States. 43 U.S.C. §391 *et seq.*

¹²CHARLES V. STERN, CONG. RESEARCH SERV., IF10042, THE RECLAMATION FUND (updated May 21, 2019).

and is expected to be obligated to a handful of existing, congressionally approved settlements. In written testimony before the Committee, the Trump administration confirmed that these existing funds are not expected to be available for any currently pending or future settlements absent a Settlements Fund extension, testifying that “it appears that there will be little, if any, funding in the Settlements Fund for settlements” other than a small number of existing, Congressionally approved settlements.¹³

Other objections raised during Committee proceedings had little to do with the legislation itself and focused instead on advocating for a process used by former Chair Rob Bishop to provide congressional authorization for Indian water rights settlements. The former process delegated Congress’ authority to authorize settlement approval legislation to staff of the Departments of Justice and Interior as well as the Office of Management and Budget by giving each Executive Branch agency veto power over the House authorizing Committee’s ability to consider settlement legislation. This limitation on Congress’ authority to authorize legislation was not adopted in the 116th Congress.

H.R. 1904 does not address or amend the settlement authorization process in any way or affect the requirement that individual settlements be authorized by Congress. It should be noted that H.R. 1904 is also similar to Ranking Member Bishop’s Restore Our Parks Act, which similarly redirects surplus federal energy revenues to specific purposes outside of the appropriations process.¹⁴ The primary difference is that H.R. 1904 directs surplus revenues toward meeting tribal trust obligations and securing clean water infrastructure for Native American households, which are 19 times as likely as white households to lack complete running water and indoor plumbing.¹⁵

Apart from limited opposition from some Republican members of the Committee, there is widespread bipartisan support for extending the Reclamation Water Settlements Fund. A ten-year extension of the Settlements Fund was recently approved by the Republican-led Senate committee of jurisdiction without controversy.¹⁶ The appointed representatives for all Republican and Democratic western state governors have also expressed support for extending the Reclamation Water Settlements Fund,¹⁷ along with several major tribal, municipal, and agricultural water stakeholders across the west. The Committee and interested stakeholders support an extension of the Reclamation Water Settlements Fund because it will prevent costly, protracted, and divisive water rights litigation across the western states; provide water supply certainty for the west by set-

¹³ *Hearing on H.R. 1904 Before the H. Comm. on Nat. Res.*, 116th Cong. (2019) (not printed) (written statement of Alan Mikkelsen, Sr. Advisor (Water & W. Res. Issues) to the Sec’y of the Interior, and Chair, Working Grp. on Indian Water Settlements, U.S. Dep’t of the Interior), <https://docs.house.gov/meetings/II/II00/20190404/109242/HHRG-116-II00-Wstate-MikkelsenA-20190404.pdf>.

¹⁴ See section 2 of H.R. 1225.

¹⁵ See, e.g., DIGDEEP RIGHT TO WATER PROJ. & U.S. WATER ALLIANCE, CLOSING THE WATER ACCESS GAP IN THE UNITED STATES 22 (2019), http://uswateralliance.org/sites/uswateralliance.org/files/Closing%20the%20Water%20Access%20Gap%20in%20the%20United%20States_DIGITAL.pdf.

¹⁶ See S. REP. NO. 116–189, at 5 (2019), <https://www.congress.gov/116/crpt/srpt189/CRPT-116srpt189.pdf>.

¹⁷ See *Hearing on H.R. 1904 Before the H. Comm. on Nat. Res.*, 116th Cong. (2019) (not printed) (written statement of Michelle Bushman, Legal Counsel, W. States Water Council), <https://docs.house.gov/meetings/II/II00/20190404/109242/HHRG-116-II00-Wstate-BushmanM-20190404.pdf>.

ting the west's major remaining unsettled water rights claims; help enact settlements without needless and costly delays attributable to an uncertain annual appropriations process; and secure drinking water, clean water, and wastewater infrastructure for the numerous tribes suffering through the health and economic consequences caused by a lack of safe water and basic water infrastructure.

COMMITTEE ACTION

H.R. 1904 was introduced on March 27, 2019, by Chair Raúl M. Grijalva (D-AZ). The bill was referred solely to the Committee on Natural Resources. On April 4, 2019, the full Committee held a hearing on the bill. On February 12, 2020, the Natural Resources Committee met to consider the bill. Chair Grijalva offered an amendment in the nature of a substitute, which was agreed to by voice vote. The bill, as amended, was adopted and ordered favorably reported to the House of Representatives by a roll call vote of 22 yeas and 14 nays, as follows:

Date: February 12, 2020

COMMITTEE ON NATURAL RESOURCES
116th Congress - Roll Call

Bill / Motion: H.R. 1904

Amendment:

Disposition: Final Passage: H.R. 1904, as amended, was ordered favorably reported to the House of Representatives by a roll call vote of 22 yeas and 14 nays.

	DEM. MEMBERS (25)	YEAS	NAYS	PRESENT
1	Mr. Brown, MD	X		
2	Mr. Cartwright, PA	X		
3	Mr. Case, HI	X		
4	Mr. Clay, MO	X		
5	Mr. Costa, CA	X		
6	Mr. Cox, CA	X		
7	Mr. Cunningham, SC	X		
8	Ms. DeGette, CO	X		
9	Mrs. Dingell, MI	X		
10	Mr. Gallego, AZ	X		
11	Mr. Grijalva, AZ (<i>Chair</i>)	X		
12	Mr. Garcia, IL	X		
13	Ms. Haaland, NM	X		
14	Mr. Horsford, NV	X		
15	Mr. Huffman, CA	X		
16	Mr. Levin, CA	X		
17	Mr. Lowenthal, CA	X		
18	Mr. McEachin, VA			
19	Ms. Napolitano, CA	X		
20	Mr. Neguse, CO			
21	Mr. Sablan, CNMI	X		
22	Mr. San Nicolas, GU			
23	Mr. Soto, FL	X		
24	Mr. Tonko, NY	X		
25	Ms. Velázquez, NY			
26				
	REP. MEMBERS (19)	Y	N	P
1	Mr. Bishop, UT (<i>Ranking</i>)		X	
2	Ms. Cheney, WY		X	
3	Mr. Cook, CA		X	
4	Mr. Curtis, UT		X	
5	Mr. Fulcher, ID		X	
6	Mr. Gohmert, TX		X	
7	Ms. González-Colón, PR		X	
8	Mr. Gosar, AZ		X	
9	Mr. Graves, LA			
10	Mr. Hern, OK		X	
11	Mr. Hice, GA		X	
12	Mr. Johnson, LA		X	
13	Mr. Lamborn, CO		X	
14	Mr. McClintock, CA		X	
15	Mrs. Radewagen, AS			
16	Mr. Webster, FL			
17	Mr. Westerman, AR			
18	Mr. Wittman, VA		X	
19	Mr. Young, AK	X		
	TOTALS	22	14	
	Total: 44 / Quorum: 15 / Report: 23	YEAS	NAYS	PRESENT

On July 1, 2020, the House of Representatives passed H.R. 2, the Moving Forward Act, which included the text of H.R. 1904.

HEARINGS

For the purposes of section 103(i) of H. Res. 6 of the 116th Congress—the following hearing was used to develop or consider H.R. 1904: legislative hearing by the full House Committee on Natural Resources held on April 4, 2019.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Natural Resources' oversight findings and recommendations are reflected in the body of this report.

COMPLIANCE WITH HOUSE RULE XIII AND CONGRESSIONAL BUDGET ACT

1. *Cost of Legislation and the Congressional Budget Act.* With respect to the requirements of clause 3(c)(2) and (3) of rule XIII of the Rules of the House of Representatives and sections 308(a) and 402 of the Congressional Budget Act of 1974, the Committee has received the following estimate for the bill from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, March 24, 2020.

Hon. RAÚL M. GRIJALVA,
*Chairman, Committee on Natural Resources,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1904, the Indian Water Rights Settlement Extension Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Aurora Swanson.

Sincerely,

PHILLIP L. SWAGEL,
Director.

Enclosure.

H.R. 1904, Indian Water Rights Settlement Extension Act			
As ordered reported by the House Committee on Natural Resources on February 12, 2020			
By Fiscal Year, Millions of Dollars	2020	2020-2025	2020-2030
Direct Spending (Outlays)	0	0	0
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	0	0	0
Spending Subject to Appropriation (Outlays)	0	0	0
Statutory pay-as-you-go procedures apply?	No	Mandate Effects	
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2031?	< \$5 billion	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No

H.R. 1904 would appropriate \$120 million to the Reclamation Water Settlements Fund beginning in 2031 and every year thereafter to pay for the cost of any future Indian water settlements entered into during 2031 and future years. The fund was established to provide dedicated funding for federally approved Indian water settlements, which generally require construction of water distribution facilities. Because the appropriation would occur after 2030, CBO estimates there would be no effect on the budget over the 2020–2030 period.

Under current law, about \$1.2 billion is available to fund those settlements over the 2020–2030 period. However, the fund expires in 2034 and any unobligated amounts will not be available for water settlements after that expiration. The bill would eliminate the termination date.

CBO estimates that enacting H.R. 1904 would increase direct spending by about \$1 billion in each of the four consecutive 10-year periods beginning in 2031. Thus, enacting the bill would not increase on-budget deficits by more than \$5 billion in any of those periods.

The CBO staff contact for this estimate is Aurora Swanson. The estimate was reviewed by H. Samuel Papenfuss, Deputy Director of Budget Analysis.

2. General Performance Goals and Objectives. As required by clause 3(c)(4) of rule XIII, the general performance goals and objectives of this bill are to fund water infrastructure projects by amending the Omnibus Public Land Management Act of 2009 to make the Reclamation Water Settlements Fund permanent.

EARMARK STATEMENT

This bill does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined under clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives.

UNFUNDED MANDATES REFORM ACT STATEMENT

This bill contains no unfunded mandates.

EXISTING PROGRAMS

This bill does not establish or reauthorize a program of the federal government known to be duplicative of another program.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

PREEMPTION OF STATE, LOCAL, OR TRIBAL LAW

Any preemptive effect of this bill over state, local, or tribal law is intended to be consistent with the bill's purposes and text and the Supremacy Clause of Article VI of the U.S. Constitution.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, and existing law in which no change is proposed is shown in roman):

OMNIBUS PUBLIC LAND MANAGEMENT ACT OF 2009

* * * * *

TITLE X—WATER SETTLEMENTS

Subtitle A—San Joaquin River Restoration Settlement

* * * * *

PART II—RECLAMATION WATER SETTLEMENTS FUND

SEC. 10501. RECLAMATION WATER SETTLEMENTS FUND.

(a) ESTABLISHMENT.—There is established in the Treasury of the United States a fund, to be known as the “Reclamation Water Settlements Fund”, consisting of—

- (1) such amounts as are deposited to the Fund under subsection (b); and
- (2) any interest earned on investment of amounts in the Fund under subsection (d).

(b) DEPOSITS TO FUND.—

- (1) IN GENERAL.—For each of fiscal years 2020 through 2029 and for fiscal year 2031 and each fiscal year thereafter, the Secretary of the Treasury shall deposit in the Fund, if available, \$120,000,000 of the revenues that would otherwise be deposited for the fiscal year in the fund established by the first section of the Act of June 17, 1902 (32 Stat. 388, chapter 1093).

(2) AVAILABILITY OF AMOUNTS.—Amounts deposited in the Fund under paragraph (1) shall be made available pursuant to this section—

(A) without further appropriation; and

(B) in addition to amounts appropriated pursuant to any authorization contained in any other provision of law.

(c) EXPENDITURES FROM FUND.—

(1) IN GENERAL.—

(A) EXPENDITURES.—Subject to subparagraph (B), [for each of fiscal years 2020 through 2034] *for fiscal year 2020 and each fiscal year thereafter*, the Secretary may expend from the Fund an amount not to exceed \$120,000,000, plus the interest accrued in the Fund, for the fiscal year in which expenditures are made pursuant to paragraphs (2) and (3).

(B) ADDITIONAL EXPENDITURES.—The Secretary may expend more than \$120,000,000 for any fiscal year if such amounts are available in the Fund due to expenditures not reaching \$120,000,000 for prior fiscal years.

(2) AUTHORITY.—The Secretary may expend money from the Fund to implement a settlement agreement approved by Congress that resolves, in whole or in part, litigation involving the United States, if the settlement agreement or implementing legislation requires the Bureau of Reclamation to provide financial assistance for, or plan, design, and construct—

(A) water supply infrastructure; or

(B) a project—

(i) to rehabilitate a water delivery system to conserve water; or

(ii) to restore fish and wildlife habitat or otherwise improve environmental conditions associated with or affected by, or located within the same river basin as, a Federal reclamation project that is in existence on the date of enactment of this Act.

(3) USE FOR COMPLETION OF PROJECT AND OTHER SETTLEMENTS.—

(A) PRIORITIES.—

(i) FIRST PRIORITY.—

(I) IN GENERAL.—The first priority for expenditure of amounts in the Fund during the entire period in which the Fund is in existence shall be for the purposes described in, and in the order of, clauses (i) through (iv) of subparagraph (B).

(II) RESERVED AMOUNTS.—The Secretary shall reserve and use amounts deposited into the Fund in accordance with subclause (I).

(ii) OTHER PURPOSES.—Any amounts in the Fund that are not needed for the purposes described in subparagraph (B) may be used for other purposes authorized in paragraph (2).

(B) COMPLETION OF PROJECT.—

(i) NAVAJO-GALLUP WATER SUPPLY PROJECT.—

(I) IN GENERAL.—Subject to subclause (II), effective beginning January 1, 2020, if, in the judgment of the Secretary on an annual basis the

deadline described in section 10701(e)(1)(A)(ix) is unlikely to be met because a sufficient amount of funding is not otherwise available through appropriations made available pursuant to section 10609(a), the Secretary shall expend from the Fund such amounts on an annual basis consistent with paragraphs (1) and (2), as are necessary to pay the Federal share of the costs, and substantially complete as expeditiously as practicable, the construction of the water supply infrastructure authorized as part of the Project.

(II) MAXIMUM AMOUNT.—

(aa) IN GENERAL.—Except as provided under item (bb), the amount expended under subclause (I) shall not exceed \$500,000,000 for the period of fiscal years 2020 through 2029.

(bb) EXCEPTION.—The limitation on the expenditure amount under item (aa) may be exceeded during the entire period in which the Fund is in existence if such additional funds can be expended without limiting the amounts identified in clauses (ii) through (iv).

(ii) OTHER NEW MEXICO SETTLEMENTS.—

(I) IN GENERAL.—Subject to subclause (II), effective beginning January 1, 2020, in addition to the funding made available under clause (i), if in the judgment of the Secretary on an annual basis a sufficient amount of funding is not otherwise available through annual appropriations, the Secretary shall expend from the Fund such amounts on an annual basis consistent with paragraphs (1) and (2), as are necessary to pay the Federal share of the remaining costs of implementing the Indian water rights settlement agreements entered into by the State of New Mexico in the Aamodt adjudication and the Abeyta adjudication, if such settlements are subsequently approved and authorized by an Act of Congress and the implementation period has not already expired.

(II) MAXIMUM AMOUNT.—The amount expended under subclause (I) shall not exceed \$250,000,000.

(iii) MONTANA SETTLEMENTS.—

(I) IN GENERAL.—Subject to subclause (II), effective beginning January 1, 2020, in addition to funding made available pursuant to clauses (i) and (ii), if in the judgment of the Secretary on an annual basis a sufficient amount of funding is not otherwise available through annual appropriations, the Secretary shall expend from the Fund such amounts on an annual basis consistent with paragraphs (1) and (2), as are necessary to pay the Federal share of the remaining costs of implementing Indian water rights settlement agreements entered into by the State of Montana with the Blackfeet Tribe, the Crow Tribe, or the Gros

Ventre and Assiniboine Tribes of the Fort Belknap Indian Reservation in the judicial proceeding entitled “In re the General Adjudication of All the Rights to Use Surface and Groundwater in the State of Montana”, if a settlement or settlements are subsequently approved and authorized by an Act of Congress and the implementation period has not already expired.

(II) MAXIMUM AMOUNT.—

(aa) IN GENERAL.—Except as provided under item (bb), the amount expended under subclause (I) shall not exceed \$350,000,000 for the period of fiscal years 2020 through 2029.

(bb) EXCEPTION.—The limitation on the expenditure amount under item (aa) may be exceeded during the entire period in which the Fund is in existence if such additional funds can be expended without limiting the amounts identified in clause (i), (ii), and (iv).

(cc) OTHER FUNDING.—The Secretary shall ensure that any funding under this clause shall be provided in a manner that does not limit the funding available pursuant to clauses (i) and (ii).

(iv) ARIZONA SETTLEMENT.—

(I) IN GENERAL.—Subject to subclause (II), effective beginning January 1, 2020, in addition to funding made available pursuant to clauses (i), (ii), and (iii), if in the judgment of the Secretary on an annual basis a sufficient amount of funding is not otherwise available through annual appropriations, the Secretary shall expend from the Fund such amounts on an annual basis consistent with paragraphs (1) and (2), as are necessary to pay the Federal share of the remaining costs of implementing an Indian water rights settlement agreement entered into by the State of Arizona with the Navajo Nation to resolve the water rights claims of the Nation in the Lower Colorado River basin in Arizona, if a settlement is subsequently approved and authorized by an Act of Congress and the implementation period has not already expired.

(II) MAXIMUM AMOUNT.—

(aa) IN GENERAL.—Except as provided under item (bb), the amount expended under subclause (I) shall not exceed \$100,000,000 for the period of fiscal years 2020 through 2029.

(bb) EXCEPTION.—The limitation on the expenditure amount under item (aa) may be exceeded during the entire period in which the Fund is in existence if such additional funds can be expended without limiting the amounts identified in clauses (i) through (iii).

(cc) OTHER FUNDING.—The Secretary shall ensure that any funding under this clause shall be provided in a manner that does not limit the funding available pursuant to clauses (i) and (ii).

(C) REVERSION.—If the settlements described in clauses (ii) through (iv) of subparagraph (B) have not been approved and authorized by an Act of Congress by December 31, 2019, the amounts reserved for the settlements shall no longer be reserved by the Secretary pursuant to subparagraph (A)(i) and shall revert to the Fund **for any authorized use, as determined by the Secretary.** *for any use authorized under paragraph (2).*

(d) INVESTMENT OF AMOUNTS.—

(1) IN GENERAL.—The Secretary shall invest such portion of the Fund as is not, in the judgment of the Secretary, required to meet current withdrawals.

(2) CREDITS TO FUND.—The interest on, and the proceeds from the sale or redemption of, any obligations held in the Fund shall be credited to, and form a part of, the Fund.

(e) TRANSFERS OF AMOUNTS.—

(1) IN GENERAL.—The amounts required to be transferred to the Fund under this section shall be transferred at least monthly from the general fund of the Treasury to the Fund on the basis of estimates made by the Secretary of the Treasury.

(2) ADJUSTMENTS.—Proper adjustment shall be made in amounts subsequently transferred to the extent prior estimates were in excess of or less than the amounts required to be transferred.

[(f) TERMINATION.—On September 30, 2034—

[(1) the Fund shall terminate; and

[(2) the unexpended and unobligated balance of the Fund shall be transferred to the appropriate fund of the Treasury.]

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DISSENTING VIEWS

Negotiating and litigating over water rights is a uniquely executive function, but approving a settlement is a legislative one. Indian water rights settlements are a means of resolving ongoing water rights disputes among tribes, federal and State governments, and other parties. These settlements provide certainty and determine specific terms of water allocation and use.

Once negotiations have concluded and all sides have agreed it is in their mutual best interest—then and only then—the settlement is brought to Congress for ratification and an appropriation is made to settle and close the case.

That's the way it is supposed to work. That's the way it once worked. But over the last two decades, this process has been usurped by Congress. Congress began proposing, negotiating and agreeing to settlements, even when our lawyers and their agencies expressed concerns over the terms of the so-called settlements.

To combat this practice, under Republican leadership, the Natural Resources Committee implemented a policy to assure that settlements were only considered once our lawyers and the relevant agencies agreed that a claim had merit and ought to be settled to save taxpayers the potential of higher costs if the matter went to court. At the outset of this Congress, a Republican amendment was offered to codify this policy in the Committee rules. Specifically, it provided that before an Indian water rights settlement is considered by the Natural Resources Committee that the Departments of Interior and Justice and the plaintiffs all agree to the settlement and that the Office of Management and Budget certifies that it doesn't duplicate claims previously paid, that it doesn't pay meritless claims, and that it is in the best interests of the U.S. taxpayers to approve the settlement rather than to go to court.

The amendment was rejected, opening the floodgates to politically-driven settlement claims being paid regardless of their actual merit and in a manner that often leaves us open to still further claims.

H.R. 1904 greases the skids on this practice by permanently extending the Reclamation Water Settlements Fund, bypassing the appropriations authority of Congress. This fund was first created by the Democrats in 2009 using a budget gimmick to avoid any scoring costs under the analysis of the Congressional Budget Office (CBO). Now, Democrats are looking to capitalize on the same budget gimmick to permanently extend this Fund.

In 2009, when this Fund was authorized, the Democratic-led House approved several water rights settlements that even the Obama Administration expressed concerns over authorizing. One example is the White Mountain Apache Tribe settlement. This settlement had to be fixed several times, most recently in the Fiscal Year 2020 appropriations package. Before it was passed into law,

Mike Connor, the then-Commissioner of the Bureau of Reclamation under the Obama Administration, testified that “Reclamation determined the Tribe’s cost estimate of roughly \$126.2 million, which is in the proposed legislation, is not sufficiently detailed or comprehensive to provide the necessary assurance that the project can be constructed for that amount of money.”¹ He was right.

The same bill which codified the White Mountain Apache settlement also approved the Aamodt litigation settlement. On June 26, 2019, the Water, Oceans, and Wildlife Subcommittee held a hearing to discuss the Aamodt settlement and found that, in short, the settlement needs more money. This came as no surprise as the Obama Administration had also testified that it is “concerned about the validity of the cost estimates that the settlement parties are relying on for the regional water system. The parties rely on an engineering report dated June 2007 that has not been verified by the level of study that the Bureau of Reclamation would recommend in order to assure reliability.”² Ten years later, Congress is faced with the reality that this settlement could collapse.

Yet it seems the budget gimmick Democrats used to claim there is no cost for the creation of the Reclamation Water Settlements Fund has come back to haunt them. A Senate bill attempting to fix the Aamodt settlement was recently scored by CBO as increasing mandatory spending by \$157 million over the next 10 years.

Through H.R. 1904, the Democrat majority is ignoring reality and permanently extending the Reclamation Water Settlements Fund. As proposed, this never-ending fund sets a perverse incentive in which Congress doesn’t have to ensure the settlements it approves are well thought out and complete. After all, there will always be money available to fix whatever mess Congress passes. For these reasons, many Republicans oppose this legislation.

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¹ https://www.doi.gov/ocl/hearings/111/HR3342_090909.

² https://www.doi.gov/ocl/hearings/111/HR3342_090909.