

PUBLIC LAW 117-343—JAN. 5, 2023

COLORADO RIVER INDIAN TRIBES WATER
RESILIENCY ACT OF 2022

Public Law 117–343
117th Congress

An Act

Jan. 5, 2023
[S. 3308]

Colorado River
Indian Tribes
Water Resiliency
Act of 2022.

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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Colorado River Indian Tribes Water Resiliency Act of 2022”.

SEC. 2. PURPOSES.

The purposes of this Act are to authorize—

(1) the CRIT to enter into lease or exchange agreements, storage agreements, and agreements for conserved water for the economic well-being of the CRIT; and

(2) the Secretary to approve any lease or exchange agreements, storage agreements, or agreements for conserved water entered into by the CRIT.

SEC. 3. DEFINITIONS.

In this Act:

(1) **AGREEMENT FOR CONSERVED WATER.**—The term “agreement for conserved water” means an agreement for the creation of system conservation, storage of conserved water in Lake Mead, or other mechanisms for voluntarily leaving a portion of the CRIT reduced consumptive use in Lake Mead.

(2) **ALLOTTEE.**—The term “allottee” means an individual who holds a beneficial real property interest in an allotment of Indian land that is—

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

(B) held in trust by the United States.

(3) **CONSOLIDATED DECREE.**—The term “Consolidated Decree” means the decree entered by the Supreme Court of the United States in *Arizona v. California*, 547 U.S. 150 (2006).

(4) **CONSUMPTIVE USE.**—The term “consumptive use” means a portion of the decreed allocation that has a recent history of use by the CRIT within the exterior boundary of the Reservation. Any verified reduction in consumptive use pursuant to a lease or exchange agreement, a storage agreement, or an agreement for conserved water shall be deemed to be a consumptive use in the year in which the reduction occurred, subject to the condition that the reduction is reflected in the Water Accounting Report.

(5) CRIT.—The term “CRIT” means the Colorado River Indian Tribes, a federally recognized Indian Tribe.

(6) DECREED ALLOCATION.—The term “decreed allocation” means the volume of water of the mainstream of the Colorado River allocated to the CRIT that is accounted for as part of the apportionment for the State in part I–A of the Appendix of the Consolidated Decree.

(7) LOWER BASIN.—The term “Lower Basin” has the meaning given the term in article II(g) of the Colorado River Compact of 1922, as approved by Congress in section 13 of the Boulder Canyon Project Act (43 U.S.C. 6171) and by the Presidential Proclamation of June 25, 1929 (46 Stat. 3000).

(8) PERSON.—The term “person” means an individual, a public or private corporation, a company, a partnership, a joint venture, a firm, an association, a society, an estate or trust, a private organization or enterprise, the United States, an Indian Tribe, a governmental entity, or a political subdivision or municipal corporation organized under, or subject to, the constitution and laws of the State.

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

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

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

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

(13) WATER ACCOUNTING REPORT.—The term “Water Accounting Report” means the annual report of the Bureau of Reclamation entitled the “Colorado River Accounting and Water Use Report: Arizona, California, and Nevada” which includes the compilation of records in accordance with article V of the Consolidated Decree.

SEC. 4. LEASE OR EXCHANGE AGREEMENTS.

(a) AUTHORIZATION.—Notwithstanding section 2116 of the Revised Statutes (commonly known as the “Indian Trade and Intercourse Act”) (25 U.S.C. 177) or any other provision of law, the CRIT is authorized, subject to the approval of the Secretary under section 7(a), and has the sole authority, to enter into, with any person, an agreement to lease or exchange, or an option to lease or exchange, a portion of the consumptive use for a use off the Reservation (referred to in this Act as a “lease or exchange agreement”), subject to the conditions that the use off the Reservation is located in the Lower Basin in the State and is not located in the counties of Navajo, Apache, or Cochise in the State.

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

(c) MODIFICATIONS.—Any lease or exchange agreement entered into under subsection (a) may be renegotiated or modified at any time during the term of the lease or exchange agreement, subject to the approval of the Secretary under section 7(a), subject to

the condition that the term of the renegotiated lease or exchange agreement does not exceed 100 years.

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

SEC. 5. STORAGE AGREEMENTS.

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

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

(c) **APPLICABLE LAW.**—Any storage agreement entered into under subsection (a) shall be in accordance with applicable Federal and State law.

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

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

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

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

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

(d) **APPLICABLE LAW.**—Any agreement for conserved water entered into under subsection (a), and any use of conserved water, shall be in accordance with Federal law, including any program authorized by Federal law.

SEC. 7. SECRETARIAL APPROVAL; DISAPPROVAL; AGREEMENTS.

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

- (1) lease or exchange agreement;
- (2) modification to a lease or exchange agreement;
- (3) storage agreement;
- (4) modification to a storage agreement;
- (5) agreement for conserved water; or
- (6) modification to an agreement for conserved water.

(b) **SECRETARIAL AGREEMENTS.**—The Secretary is authorized to enter into a lease or exchange agreement, a storage agreement, or an agreement for conserved water with the CRIT, subject to the condition that the Secretary pays the fair market value for the CRIT reduced consumptive use.

(c) **REQUIREMENTS.**—

(1) **LEASE OR EXCHANGE AGREEMENTS AND STORAGE AGREEMENTS.**—The Secretary shall not approve any lease or exchange agreement, or any modification to a lease or exchange agreement, or any storage agreement, or any modification to a storage agreement, that is not in compliance with—

(A) this Act; and

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

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

(A) this Act; and

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

(3) **PERMANENT ALIENATION.**—The Secretary shall not approve any lease or exchange agreement, or any modification to a lease or exchange agreement, any storage agreement, or any modification to a storage agreement, or any agreement for conserved water, or any modification to an agreement for conserved water, that permanently alienates any portion of the CRIT decreed allocation.

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

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

SEC. 8. RESPONSIBILITIES OF THE SECRETARY.

(a) **COMPLIANCE.**—When approving a lease or exchange agreement, a storage agreement, or an agreement for conserved water, the Secretary shall promptly comply with all aspects of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), and all other applicable environmental laws and regulations.

(b) DOCUMENTATION.—The Secretary shall document any lease or exchange agreement, storage agreement, or agreement for conserved water in the Water Accounting Report.

Applicability.

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

(a) IN GENERAL.—Before entering into the first lease or exchange agreement or storage agreement, the CRIT shall enter into an agreement with the State that outlines all notice, information sharing, and collaboration requirements that shall apply to any potential lease or exchange agreement or storage agreement the CRIT may enter into.

(b) REQUIREMENT.—The agreement required under subsection (a) shall include a provision that requires the CRIT to submit to the State all documents regarding a potential lease or exchange agreement or storage agreement.

SEC. 10. AGREEMENT BETWEEN THE CRIT, THE STATE, AND THE SECRETARY.

(a) IN GENERAL.—Before approving the first lease or exchange agreement or storage agreement under section 7, the Secretary shall enter into an agreement with the State and the CRIT that describes the procedural, technical, and accounting methodologies for any lease or exchange agreement or storage agreement the CRIT may enter into, including quantification of the reduction in consumptive use and water accounting.

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

(c) EFFECT.—Nothing in this Act prohibits the Secretary from agreeing with the CRIT and the State to a modification to an agreement entered into under subsection (a) (including an appendix or exhibit to the agreement) if the modification—

(1) is in compliance with this Act; and

(2) does not otherwise require congressional approval under section 2116 of the Revised Statutes (commonly known as the “Indian Trade and Intercourse Act”) (25 U.S.C. 177) or any other provision of law.

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

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

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

(2) shall not permanently alienate the decreed allocation.

(b) PRIORITY STATUS.—

(1) IN GENERAL.—The lease or exchange of a portion of the consumptive use shall not cause that portion to lose or change its priority under the Consolidated Decree.

(2) NONUSE.—Any nonuse by a person who is a party to any lease or exchange agreement or storage agreement with the CRIT shall not result in forfeiture, abandonment, relinquishment, or other loss by the CRIT of all or any portion of the decreed allocation.

(c) RESERVATION OF RIGHTS.—The lease, exchange, storage, or conservation of a portion of the consumptive use shall not reduce

or limit the right of the CRIT to use the remaining portion of the decreed allocation on the Reservation.

(d) **STORAGE AGREEMENTS.**—A storage agreement entered into under this Act shall account for the quantity of water in storage off the Reservation in accordance with applicable State law.

SEC. 12. ALLOTTEE USE OF WATER.

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

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

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

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

(e) **RELIEF FROM THE SECRETARY.**—Following exhaustion of remedies available under the Act, or any other applicable law, an allottee may petition the Secretary for relief.

SEC. 13. CONSIDERATION PAID TO THE CRIT.

The CRIT, and not the United States in any capacity, shall be entitled to all consideration due to the CRIT under any lease or exchange agreement, storage agreement, or agreement for conserved water.

SEC. 14. LIABILITY OF THE UNITED STATES.

(a) **LIMITATION OF LIABILITY.**—The United States shall not be liable to the CRIT or to any party to a lease or exchange agreement, a storage agreement, or an agreement for conserved water in any claim relating to the negotiation, execution, or approval of any lease or exchange agreement, storage agreement, or agreement for conserved water, including any claim relating to the terms included in such an agreement, except for claims relating to the requirements of section 8(a).

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

(1) any funds received by the CRIT as consideration under any lease or exchange agreement, storage agreement, or agreement for conserved water; or

(2) the expenditure of such funds.

SEC. 15. APPLICATION.

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

(b) **REQUIREMENT.**—The portion of the decreed allocation that is available for use in the State shall not be used, directly or indirectly outside the Lower Basin in the State or in the counties of Navajo, Apache, or Cochise in the State.

SEC. 16. RULE OF CONSTRUCTION.

Nothing in this Act establishes, or shall be considered to establish, a precedent in any litigation involving, or alters, affects, or quantifies, any water right with respect to—

- (1) the United States;
- (2) any other Indian Tribe, band, or community;
- (3) any State or political subdivision or district of a State;

or

- (4) any person.

Approved January 5, 2022.

LEGISLATIVE HISTORY—S. 3308:

SENATE REPORTS: No. 117-286 (Comm. on Indian Affairs).

CONGRESSIONAL RECORD, Vol. 168 (2022):

Dec. 19, considered and passed Senate.

Dec. 21, considered and passed House.

