

AMENDMENT NO. _____ Calendar No. _____

Purpose: In the nature of a substitute.

IN THE SENATE OF THE UNITED STATES—116th Cong., 1st Sess.

S. 886

To amend the Omnibus Public Land Management Act of 2009 to make the Reclamation Water Settlements Fund permanent.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended
to be proposed by Mr. UDALL

Viz:

1 Strike all after the enacting clause and insert the fol-
2 lowing:

3 **SECTION 1. SHORT TITLE.**

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

6 **SEC. 2. RECLAMATION WATER SETTLEMENTS FUND.**

7 Section 10501 of the Omnibus Public Land Manage-
8 ment Act of 2009 (43 U.S.C. 407) is amended—

9 (1) in subsection (b)(1), by striking “fiscal
10 years 2020 through 2029” and inserting “fiscal
11 years 2020 through 2039”;

1 (2) in subsection (c)—

2 (A) in paragraph (1), by striking subpara-
3 graph (A) and inserting the following:

4 “(A) EXPENDITURES.—

5 “(i) IN GENERAL.—Subject to sub-
6 paragraph (B)—

7 “(I) for each of fiscal years 2020
8 through 2029, the Secretary may ex-
9 pend from the Fund an amount not to
10 exceed \$120,000,000, plus the interest
11 accrued from the Fund, for the fiscal
12 year in which expenditures are made
13 pursuant to paragraphs (2) and (3);
14 and

15 “(II) subject to clause (ii), for
16 each of fiscal years 2030 through
17 2044, the Secretary may expend from
18 the Fund an amount not to exceed
19 \$120,000,000, plus the interest ac-
20 crued in the Fund, for the fiscal year
21 in which expenditures are made pur-
22 suant to paragraph (2).

23 “(ii) LIMITATION.—Of the amount de-
24 scribed in clause (i)(II) for each of fiscal
25 years 2030 through 2044, the Secretary

1 may expend an amount not to exceed
2 \$90,000,000 for an individual Indian water
3 rights settlement, unless the Secretary de-
4 termines that an expenditure of more than
5 \$90,000,000 would not adversely affect the
6 funding of the implementation of other
7 congressionally approved settlement agree-
8 ments.”;

9 (B) in paragraph (2), in the matter pre-
10 ceding subparagraph (A), by striking “litigation
11 involving the United States, if the settlement
12 agreement or implementing legislation requires
13 the Bureau of Reclamation” and inserting
14 “claims concerning Indian water resources, if
15 the settlement agreement or implementing legis-
16 lation authorizes the Secretary”; and

17 (C) in paragraph (3)—

18 (i) in subparagraph (A)—

19 (I) in clause (i)—

20 (aa) in subclause (I), by
21 striking “the entire period in
22 which the Fund is in existence”
23 and inserting “the period of fis-
24 cal years 2020 through 2029”;
25 and

1 (bb) in subclause (II), by in-
2 serting “during the period of fis-
3 cal years 2020 through 2029”
4 after “into the Fund”; and

5 (II) in clause (ii), by inserting
6 “or are deposited into the Fund after
7 fiscal year 2029” after “subparagraph
8 (B)”;

9 (ii) in subparagraph (B)—

10 (I) in clauses (i)(II)(bb),
11 (iii)(II)(bb), and (iv)(II)(bb), by strik-
12 ing “the entire period in which the
13 Fund is in existence” each place it ap-
14 pears and inserting “the period of fis-
15 cal years 2020 through 2029”; and

16 (II) in clause (iv)(I)—

17 (aa) by striking the period
18 at the end and inserting “; and”;

19 (bb) by striking “through
20 annual appropriations, the Sec-
21 retary” shall and inserting the
22 following: “through annual ap-
23 propriations—

24 “(aa) the Secretary”; and

1 (cc) by adding at the end
2 the following:

3 “(bb) if the Indian water
4 rights settlement agreement de-
5 scribed in item (aa) has not been
6 approved and authorized by an
7 Act of Congress by December 31,
8 2021—

9 “(AA) the amount shall
10 no longer be reserved for
11 that settlement under sub-
12 paragraph (A)(i)(II); and

13 “(BB) the Secretary
14 shall deposit the amount
15 that would have otherwise
16 been reserved under sub-
17 paragraph (A)(i)(II) for the
18 Indian water rights settle-
19 ment agreement into the
20 Lower Colorado River Basin
21 Development Fund estab-
22 lished under section 403(a)
23 of the Colorado River Basin
24 Project Act (43 U.S.C.
25 1543(a)), with 65 percent of

1 that amount in each fiscal
2 year deposited into the Fu-
3 ture Indian Water Settle-
4 ment Subaccount of that
5 Fund.”;

6 (iii) in subparagraph (C)—

7 (I) by striking “December 31,
8 2019” and inserting “December 31,
9 2021”; and

10 (II) by striking “for any author-
11 ized use” and inserting “for any use
12 authorized under paragraph (2)”; and

13 (iv) by adding at the end the fol-
14 lowing:

15 “(D) SUFFICIENCY OF FUNDS.—The Sec-
16 retary may use amounts in the Fund in a fiscal
17 year for multiple settlements under subpara-
18 graph (B), without regard to the priorities de-
19 scribed in clauses (ii) through (iv) of subpara-
20 graph (B), to ensure that sufficient funds are
21 available to meet the enforceability date or sub-
22 stantial completion date of a settlement.”; and
23 (3) in subsection (f), by striking “September
24 30, 2034” and inserting “September 30, 2044”.

1 **SEC. 3. AMENDMENTS TO AAMODT LITIGATION SETTLE-**
2 **MENT ACT.**

3 (a) DEFINITION OF 611(G) AGREEMENT.—Section
4 602 of the Aamodt Litigation Settlement Act (Public Law
5 111–291; 124 Stat. 3134) is amended—

6 (1) by redesignating paragraphs (1) through
7 (23) as paragraphs (2) through (24), respectively;
8 and

9 (2) by inserting before paragraph (2) (as so re-
10 designated) the following:

11 “(1) 611(g) AGREEMENT.—The term ‘611(g)
12 Agreement’ means the agreement dated July 2,
13 2019, to be executed by the United States, the
14 State, the Pueblos, the County, and the City pursu-
15 ant to section 611(g).”.

16 (b) FINAL PROJECT DESIGN.—Section 611(b) of the
17 Aamodt Litigation Settlement Act (Public Law 111–291;
18 124 Stat. 3137) is amended, in the matter preceding para-
19 graph (1), by striking “within 90 days of” and inserting
20 “as soon as feasible after”.

21 (c) CONSTRUCTION COSTS FOR PUEBLO WATER FA-
22 CILITIES.—Section 611(f) of the Aamodt Litigation Set-
23 tlement Act (Public Law 111–291; 124 Stat. 3138) is
24 amended—

25 (1) in paragraph (1)—

1 (A) in subparagraph (A), by striking
2 “\$106,400,000” and inserting “\$243,400,000”;
3 and

4 (B) by striking subparagraph (B) and in-
5 serting the following:

6 “(B) EXCEPTION.—Of the amount de-
7 scribed in subparagraph (A)—

8 “(i) the initial \$106,400,000 shall be
9 increased or decreased, as appropriate,
10 based on ordinary fluctuations in construc-
11 tion costs since October 1, 2006, as deter-
12 mined using applicable engineering cost in-
13 dices; and

14 “(ii) any amounts made available in
15 excess of the amount described in clause
16 (i) shall be increased or decreased, as ap-
17 propriate, based on ordinary fluctuations
18 in construction costs since October 1,
19 2018, as determined using applicable engi-
20 neering cost indices.”; and

21 (2) in paragraph (3), by inserting “and the
22 611(g) Agreement” after “the Cost-Sharing and
23 System Integration Agreement”.

1 (d) FUNDING FOR REGIONAL WATER SYSTEM.—Sec-
2 tion 617(a)(1)(B) of the Aamodt Litigation Settlement
3 Act (Public Law 111–291; 124 Stat. 3147) is amended—

4 (1) by striking “\$50,000,000” and inserting
5 “\$187,000,000”; and

6 (2) by striking “2024” and inserting “2028”.

7 (e) ADJUSTMENT.—Section 617(a)(4) of the Aamodt
8 Litigation Settlement Act (Public Law 111–291; 124 Stat.
9 3147) is amended by striking “since October 1, 2006, as
10 determined using applicable engineering cost indices” and
11 inserting “pursuant to section 611(f)(1)(B)”.

12 (f) EXECUTION OF AGREEMENT UNDER SECTION
13 611(G).—Section 621 of the Aamodt Litigation Settle-
14 ment Act (Public Law 111–291; 124 Stat. 3149) is
15 amended by striking subsections (a) and (b) and inserting
16 the following:

17 “(a) APPROVAL.—To the extent the Settlement
18 Agreement, the Cost-Sharing and System Integration
19 Agreement, and the 611(g) Agreement do not conflict with
20 this title, the Settlement Agreement, the Cost-Sharing and
21 System Integration Agreement, and the 611(g) Agreement
22 (including any amendments to the Settlement Agreement,
23 the Cost-Sharing and System Integration Agreement, and
24 the 611(g) Agreement that are executed to make the Set-
25 tlement Agreement, the Cost-Sharing and System Integra-

tion Agreement, or the 611(g) Agreement consistent with this title) are authorized, ratified, and confirmed.

“(b) EXECUTION.—To the extent the Settlement Agreement, the Cost-Sharing and System Integration Agreement, and the 611(g) Agreement do not conflict with this title, the Secretary shall execute the Settlement Agreement, the Cost-Sharing and System Integration Agreement, and the 611(g) Agreement (including any amendments that are necessary to make the Settlement Agreement, the Cost-Sharing and System Integration Agreement, or the 611(g) Agreement consistent with this title).”.

(g) REQUIREMENTS FOR DETERMINATION OF SUBSTANTIAL COMPLETION OF THE REGIONAL WATER SYSTEM.—Section 623(e) of the Aamodt Litigation Settlement Act (Public Law 111–291; 124 Stat. 3151) is amended—

(1) by striking paragraph (1) and inserting the following:

“(1) CRITERIA FOR SUBSTANTIAL COMPLETION OF REGIONAL WATER SYSTEM.—Subject to the provisions of section 611(d) concerning the extent, size, and capacity of the County Distribution System, the Regional Water System shall be determined to be substantially completed if—

“(A) the infrastructure has been constructed capable of—

“(i) diverting, treating, transmitting, and distributing a supply of 2,500 acre-feet of water to the Pueblos consistent with the Engineering Report (as amended by the 611(g) Agreement and the Operating Agreement); and

“(ii) diverting, treating, and transmitting the quantity of water specified in the Engineering Report to the County Distribution System and consistent with the Engineering Report (as amended by the 611(g) Agreement and the Operating Agreement); or

“(B) the Secretary—

“(i) issues a notice to proceed authorizing the commencement of Phase I construction of the Regional Water System by December 31, 2019, and subsequently commences construction of the Regional Water System;

“(ii) diligently proceeds to construct the Regional Water System in accordance with the Engineering Report (as amended

1 by the 611(g) Agreement), on a schedule
2 for completion by June 30, 2028;

3 “(iii) expends all of the available
4 funding provided to construct the Regional
5 Water System under section 611(f)(1)(A),
6 in the Cost-Sharing and System Integra-
7 tion Agreement, and in the 611(g) Agree-
8 ment;

9 “(iv) complies with the terms of the
10 611(g) Agreement; and

11 “(v) despite diligent efforts cannot
12 complete construction of the Regional
13 Water System as described in the final En-
14 gineering Report (as amended by the
15 611(g) Agreement), due solely to the lack
16 of additional authorized funding.”;

17 (2) in paragraph (2)—

18 (A) by striking “2021” and inserting
19 “2025”; and

20 (B) by striking “2024” and inserting
21 “2028”;

22 (3) in paragraph (3), in the matter preceding
23 subparagraph (A), by striking “2021” and inserting
24 “2025”;

1 (4) in paragraph (4)(B)(ii)(II), by striking
2 “2023” and inserting “2027”; and
3 (5) in paragraph (5)(A), by striking “2024”
4 and inserting “2028”.

5 **SEC. 4. KICKAPOO TRIBE.**

6 (a) DEFINITION OF UPPER DELAWARE AND TRIBU-
7 TARIES WATERSHED PLAN.—In this section, the term
8 “Upper Delaware and Tributaries Watershed Plan”
9 means the plan described in the document entitled “Wa-
10 tershed Plan and Environmental Impact Statement Upper
11 Delaware and Tributaries Watershed Atchison, Brown,
12 Jackson, and Nemaha Counties, Kansas”, dated January
13 1994, and supplemented in June 1994—

14 (1) developed, pursuant to the Watershed Pro-
15 tection and Flood Prevention Act (16 U.S.C. 1001
16 et seq.)—

17 (A) by the Kickapoo Tribe, certain water-
18 shed and conservation districts in the State of
19 Kansas, and the Department of Wildlife and
20 Parks of the State of Kansas; and

21 (B) with the cooperation and technical as-
22 sistance of the Natural Resources Conservation
23 Service; and

1 (2) described in the report of the Committee on
2 Environment and Public Works of the Senate (Sen-
3 ate Report 105–13; April 22, 1997).

4 (b) STUDY; RECOMMENDATIONS.—To support the
5 purposes of achieving a fair, equitable, and final settle-
6 ment of claims to water rights for the Kickapoo Tribe in
7 the State of Kansas, the Secretary of Agriculture (acting
8 through the Chief of the Natural Resources Conservation
9 Service), in consultation with the Secretary of the Interior
10 (acting through the Director of the Secretary’s Indian
11 Water Rights Office), shall—

12 (1) commence a study of the multipurpose dam
13 described in the Upper Delaware and Tributaries
14 Watershed Plan; and

15 (2) not later than 2 years after the date of en-
16 actment of this Act, make recommendations to Con-
17 gress with respect to the material alterations or
18 changes to the Upper Delaware and Tributaries Wa-
19 tershed Plan that are necessary to effectuate, in
20 part, the Tribal water rights agreed to by the Kick-
21 apoo Tribe and the State of Kansas on September
22 9, 2016, in the Kickapoo Tribe Water Rights Settle-
23 ment Agreement, which otherwise remains subject to
24 approval and authorization by Congress.