

117TH CONGRESS  
1ST SESSION

**S.** \_\_\_\_\_

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.

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IN THE SENATE OF THE UNITED STATES

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Mr. KELLY (for himself and Ms. SINEMA) introduced the following bill; which was read twice and referred to the Committee on \_\_\_\_\_

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**A BILL**

To authorize the Colorado River Indian Tribes to enter into lease or exchange agreements and storage agreements relating to water of the Colorado River allocated to the Colorado River Indian Tribes, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

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

6 **SEC. 2. PURPOSES.**

7 The purposes of this Act are—

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

4           (2) to authorize the Secretary to approve any  
5           lease or exchange agreements or storage agreements  
6           entered into by the CRIT.

7 **SEC. 3. DEFINITIONS.**

8           In this Act:

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

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

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

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

19          (3) CONSUMPTIVE USE.—The term “consump-  
20          tive use” means a portion of the decreed allocation  
21          that has been consumptively used by the CRIT with-  
22          in the exterior boundary of the Reservation for a  
23          minimum of 4 of the 5 years immediately preceding  
24          the year of delivery of a portion of the decreed allo-  
25          cation according to a lease or exchange agreement or

1 storage agreement. Any verified reduction in con-  
2 sumptive use pursuant to a system conservation  
3 agreement, a lease or exchange agreement, or stor-  
4 age agreement, or from the creation of intentionally  
5 created surplus, shall be deemed to be a consumptive  
6 use in the year in which the reduction occurred, if  
7 the reduction is reflected in the Water Accounting  
8 Report.

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

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

18 (6) LOWER BASIN.—The term “Lower Basin”  
19 has the meaning given the term in article II(g) of  
20 the Colorado River Compact of 1922, as approved by  
21 Congress in section 13 of the Boulder Canyon  
22 Project Act (43 U.S.C. 617l), and by the Presi-  
23 dential Proclamation of June 25, 1929 (46 Stat.  
24 3000).

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

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

12          (9) SECRETARY.—The term “Secretary” means  
13          the Secretary of the Interior.

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

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

20          (12) WATER ACCOUNTING REPORT.—The term  
21          “Water Accounting Report” means the annual re-  
22          port of the Bureau of Reclamation entitled the “Col-  
23          orado River Accounting and Water Use Report: Ari-  
24          zona, California, and Nevada” which includes the

1 compilation of records in accordance with article V  
2 of the Consolidated Decree.

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

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

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

19 (c) MODIFICATIONS.—Any lease or exchange agree-  
20 ment entered into under subsection (a) may be renegoti-  
21 ated or modified at any time during the term of the lease  
22 or exchange agreement, subject to the approval of the Sec-  
23 retary under section 6(a), on the condition that the term  
24 of the renegotiated lease or exchange agreement does not  
25 exceed 100 years.

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

6 **SEC. 5. STORAGE AGREEMENTS.**

7 (a) **AUTHORIZATION.**—Notwithstanding section 2116  
8 of the Revised Statutes (commonly known as the “Indian  
9 Trade and Intercourse Act”) (25 U.S.C. 177) or any other  
10 provision of law, the CRIT is authorized to, subject to the  
11 approval of the Secretary under section 6(a), and has the  
12 sole authority to, enter into an agreement, including with  
13 the Arizona Water Banking Authority (or successor agen-  
14 cy or entity), for the storage of a portion of the consump-  
15 tive use, or the water received under an exchange pursuant  
16 to an exchange agreement under section 4, at 1 or more  
17 underground storage facilities or groundwater savings fa-  
18 cilities off the Reservation (referred to in this Act as a  
19 “storage agreement”), on the condition that the facility  
20 shall be located in the Lower Basin in the State.

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

24 (c) **DELEGATION OF RIGHTS.**—The CRIT may assign  
25 or sell any longterm storage credits accrued as a result

1 of a storage agreement, on the condition that the assign-  
2 ment or sale is in accordance with applicable State law.

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

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

8 (b) REQUIREMENTS.—

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

13 (A) this Act; and

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

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

22 (c) OTHER REQUIREMENTS.—The requirement for  
23 Secretarial approval under subsection (a) shall satisfy the  
24 requirements of section 2116 of the Revised Statutes

1 (commonly known as the “Indian Trade and Intercourse  
2 Act”) (25 U.S.C. 177).

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

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

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

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

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

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

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

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

24 (a) **IN GENERAL.**—Prior to entering into the first  
25 lease or exchange agreement or storage agreement, the

1 CRIT shall enter into an agreement with the State that  
2 outlines all notice, information sharing, and collaboration  
3 requirements that shall apply to any potential lease or ex-  
4 change agreement or storage agreement the CRIT may  
5 enter into.

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

11 **SEC. 9. AGREEMENT BETWEEN THE CRIT, THE STATE, AND**  
12 **THE SECRETARY.**

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

21 (b) NEPA.—The execution of the agreement under  
22 subsection (a) shall not constitute a major Federal action  
23 for purposes of the National Environmental Policy Act of  
24 1969 (42 U.S.C. 4321 et seq.).

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

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

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

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

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

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

18 (2) shall not permanently alienate the decreed  
19 allocation.

20 (b) PRIORITY STATUS.—

21 (1) IN GENERAL.—The lease or exchange of a  
22 portion of the consumptive use shall not cause that  
23 portion to lose or change its priority under the Con-  
24 solidated Decree.

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

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

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

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

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

19          (b) WATER RIGHTS OF ALLOTTEES.—The Secretary  
20          shall protect the rights of the allottees to a just and equi-  
21          table distribution of water for irrigation purposes, pursu-  
22          ant to section 7 of the Act of February 8, 1887 (commonly  
23          known as the “Indian General Allotment Act”) (24 Stat.  
24          390, chapter 119; 25 U.S.C. 381) (referred to in this sec-  
25          tion as the “Act”).

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

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

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

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

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

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

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

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

4 (1) any funds received by the CRIT as consid-  
5 eration under any lease or exchange agreement or  
6 storage agreement; or

7 (2) the expenditure of such funds.

8 **SEC. 14. APPLICATION.**

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

12 (b) REQUIREMENT.—The portion of the decreed allo-  
13 cation described in subsection (a) shall not be used, di-  
14 rectly or indirectly, outside the Lower Basin in the State.

15 **SEC. 15. RULE OF CONSTRUCTION.**

16 Nothing in this Act establishes, or shall be considered  
17 to establish, a precedent in any litigation involving, or al-  
18 ters, affects, or quantifies, any water right with respect  
19 to—

20 (1) the United States;

21 (2) any other Indian Tribe, band, or commu-  
22 nity;

23 (3) any State or political subdivision or district  
24 of a State; or

25 (4) any person.