

116TH CONGRESS
1ST SESSION

S. 3019

To protect access to water for all Montanans, and for other purposes.

IN THE SENATE OF THE UNITED STATES

DECEMBER 11, 2019

Mr. DAINES (for himself and Mr. TESTER) introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

A BILL

To protect access to water for all Montanans, 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 “Montana Water Rights
5 Protection Act”.

6 **SEC. 2. PURPOSES.**

7 The purposes of this Act are—

8 (1) to achieve a fair, equitable, and final settle-
9 ment of claims to water rights in the State of Mon-
10 tana, and in recognition of article I, and section 3

1 of article IX, of the Montana State Constitution
2 for—

3 (A) the Confederated Salish and Kootenai
4 Tribes of the Flathead Indian Reservation; and

5 (B) the United States, for the benefit of
6 the Tribes and allottees;

7 (2) to authorize, ratify, and confirm the water
8 rights compact entered into by the Tribes and the
9 State, to the extent that the Compact is consistent
10 with this Act;

11 (3) to authorize and direct the Secretary of the
12 Interior—

13 (A) to execute the Compact; and

14 (B) to take any other action necessary to
15 carry out the Compact in accordance with this
16 Act; and

17 (4) to authorize funds necessary for the imple-
18 mentation of—

19 (A) the Compact; and

20 (B) this Act.

21 **SEC. 3. DEFINITIONS.**

22 In this Act:

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

1 (A) located within the Reservation; and

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

3 (2) BISON.—The term “bison” means North
4 American plains bison.

5 (3) COMPACT.—The term “Compact” means—

6 (A) the water rights compact entered into
7 and ratified, as applicable, by the Confederated
8 Salish and Kootenai Tribes, the State, and the
9 United States, as contained in section 85–20–
10 1901 of the Montana Code Annotated (2017),
11 including any appendix or exhibit to that com-
12 pact; and

13 (B) any amendment to the compact re-
14 ferred to in subparagraph (A) (including an
15 amendment to an appendix or exhibit) that is
16 executed to ensure that the Compact is con-
17 sistent with this Act.

18 (4) DAMAGES REPORT.—The term “Damages
19 Report” means the report entitled “Damages of the
20 Confederated Salish and Kootenai Tribes Due to Ac-
21 tions By the United States”, volume I (March
22 2011), volume II (March 2011), volume III (October
23 2011), and the final supplement and economic valu-
24 ation (February 2016), which is on file at the De-
25 partment of Justice.

1 (5) ENFORCEABILITY DATE.—The term “en-
2 forceability date” means the date described in sec-
3 tion 10(b).

4 (6) FLATHEAD INDIAN IRRIGATION PROJECT.—

5 (A) IN GENERAL.—The term “Flathead
6 Indian irrigation project” means the Federal ir-
7 rigation project developed by the United States
8 to irrigate land within the Reservation pursuant
9 to—

10 (i) the Act of April 23, 1904 (33 Stat.
11 302, chapter 1495); and

12 (ii) the Act of May 29, 1908 (35 Stat.
13 444, chapter 216).

14 (B) INCLUSIONS.—The term “Flathead In-
15 dian irrigation project” includes—

16 (i) all land and any reservoir, ease-
17 ment, right-of-way, canal, ditch, lateral, or
18 any other facility of the project referred to
19 in subparagraph (A) (regardless of location
20 on or off the Reservation); and

21 (ii) any headgate, pipeline, pump,
22 building, heavy equipment, vehicle, sup-
23 plies, record, copy of a record, or any other
24 physical, tangible object of real or personal
25 property used in the management and op-

1 eration of the project referred to in sub-
2 paragraph (A).

3 (7) HUNGRY HORSE DAM.—The term “Hungry
4 Horse Dam” means the dam that is a part of the
5 Hungry Horse Project.

6 (8) HUNGRY HORSE PROJECT.—The term
7 “Hungry Horse Project” means the project author-
8 ized to be carried out by the Secretary under the Act
9 of June 5, 1944 (43 U.S.C. 593a et seq.).

10 (9) HUNGRY HORSE RESERVOIR.—The term
11 “Hungry Horse Reservoir” means the reservoir that
12 is a part of the Hungry Horse Project.

13 (10) 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 (11) LAW OF ADMINISTRATION.—The term
18 “Law of Administration” means the Unitary Admin-
19 istration and Management Ordinance, as set forth in
20 Appendix 4 of the Compact.

21 (12) RESERVATION.—

22 (A) IN GENERAL.—The term “Reserva-
23 tion” means all land within the exterior bound-
24 aries of the Indian reservation established
25 under the Treaty between the United States

1 and the Flathead, Kootenay, and Upper Pend
 2 d'Oreilles Indians, concluded at Hell Gate July
 3 16, 1855 (12 Stat. 975), notwithstanding the
 4 issuance of any patent on the Reservation.

5 (B) INCLUSIONS.—The term “Reserva-
 6 tion” includes any right-of-way through the
 7 Reservation.

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

10 (14) STATE.—

11 (A) IN GENERAL.—The term “State”
 12 means the State of Montana.

13 (B) INCLUSIONS.—The term “State” in-
 14 cludes all officers, agencies, departments, and
 15 political subdivisions of the State.

16 (15) TRIBAL WATER RIGHT.—The term “Tribal
 17 Water Right” means the water right of the Tribes,
 18 as established in—

19 (A) the Compact; and

20 (B) section 5.

21 (16) TRIBES.—

22 (A) IN GENERAL.—The term “Tribes”
 23 means the Confederated Salish and Kootenai
 24 Tribes of the Flathead Reservation of Montana.

1 (B) INCLUSIONS.—The term “Tribes” in-
2 cludes all officers, agencies, and departments of
3 the Tribes.

4 (17) TRUST FUND.—The term “Trust Fund”
5 means the Séliš-Qlispé Ksanka Settlement Trust
6 Fund established under section 8(a).

7 **SEC. 4. RATIFICATION OF COMPACT.**

8 (a) RATIFICATION.—

9 (1) IN GENERAL.—As modified by this Act, the
10 Compact is authorized, ratified, and confirmed.

11 (2) AMENDMENTS.—Any amendment to the
12 Compact is authorized, ratified, and confirmed, to
13 the extent that the amendment is executed to ensure
14 that the Compact is consistent with this Act.

15 (b) EXECUTION.—

16 (1) IN GENERAL.—To the extent that the Com-
17 pact does not conflict with this Act, the Secretary
18 shall execute the Compact, including all exhibits to,
19 appendices to, and parts of the Compact requiring
20 the signature of the Secretary.

21 (2) MODIFICATIONS.—Nothing in this Act pre-
22 cludes the Secretary from approving a modification
23 to an appendix or exhibit to the Compact that is
24 consistent with this Act, to the extent that the modi-

1 fication does not otherwise require congressional ap-
2 proval under—

3 (A) section 2116 of the Revised Statutes
4 (25 U.S.C. 177); or

5 (B) any other applicable Federal law.

6 (c) ENVIRONMENTAL COMPLIANCE.—

7 (1) IN GENERAL.—In implementing the Com-
8 pact and this Act, the Secretary and the Tribes shall
9 comply with—

10 (A) the Endangered Species Act of 1973
11 (16 U.S.C. 1531 et seq.);

12 (B) the National Environmental Policy Act
13 of 1969 (42 U.S.C. 4321 et seq.); and

14 (C) all other applicable environmental laws
15 (including regulations).

16 (2) EFFECT OF EXECUTION.—

17 (A) IN GENERAL.—The execution of the
18 Compact by the Secretary under this section
19 shall not constitute a major Federal action for
20 purposes of the National Environmental Policy
21 Act of 1969 (42 U.S.C. 4321 et seq.).

22 (B) COMPLIANCE.—The Secretary and the
23 Tribes shall carry out all Federal compliance
24 activities necessary to implement the Compact
25 and this Act.

1 (d) PUBLIC AVAILABILITY.—As provided in articles
 2 IV.I.b (relating to hearings), IV.I.c (relating to the em-
 3 ployment of a water engineer), and IV.I.7.e (relating to
 4 Board records) of the Compact, and in recognition of sec-
 5 tion 9 of article II of the Montana State Constitution, all
 6 records of the Flathead Reservation Water Management
 7 Board and the Water Engineer employed by the Board
 8 shall be open to public inspection.

9 **SEC. 5. TRIBAL WATER RIGHT.**

10 (a) INTENT OF CONGRESS.—It is the intent of Con-
 11 gress to provide to each allottee benefits that are equiva-
 12 lent to, or that exceed, the benefits possessed by the
 13 allottees on the day before the date of enactment of this
 14 Act, taking into consideration—

15 (1) the potential risks, cost, and time delay as-
 16 sociated with litigation that would be resolved by the
 17 Compact and this Act;

18 (2) the availability of funding under this Act
 19 and from other sources;

20 (3) the availability of water from the Tribal
 21 Water Right; and

22 (4) the applicability of section 7 of the Act of
 23 February 8, 1887 (25 U.S.C. 381), and this Act to
 24 protect the interests of allottees.

25 (b) CONFIRMATION OF TRIBAL WATER RIGHT.—

1 (1) IN GENERAL.—The Tribal Water Right is
2 ratified, confirmed, and declared to be valid.

3 (2) USE.—Any use of the Tribal Water Right
4 shall be subject to the terms and conditions of—

5 (A) the Compact; and

6 (B) this Act.

7 (3) CONFLICT.—In the event of a conflict be-
8 tween the Compact and this Act, the provisions of
9 this Act shall control.

10 (c) TRUST STATUS OF TRIBAL WATER RIGHT.—The
11 Tribal Water Right—

12 (1) shall be held in trust by the United States
13 for the use and benefit of the Tribes and the
14 allottees in accordance with this Act; and

15 (2) shall not be subject to forfeiture or aban-
16 donment.

17 (d) ALLOTTEES.—

18 (1) APPLICABILITY OF ACT OF FEBRUARY 8,
19 1887.—The provisions of section 7 of the Act of Feb-
20 ruary 8, 1887 (25 U.S.C. 381), relating to the use
21 of water for irrigation purposes shall apply to the
22 Tribal Water Right.

23 (2) ENTITLEMENTS TO WATER.—

1 (A) IN GENERAL.—Any entitlement to
2 water of an allottee under Federal law shall be
3 satisfied from the Tribal Water Right.

4 (B) WATER FOR IRRIGATION.—Each allot-
5 tee shall be entitled to a just and equitable allo-
6 cation of water for irrigation purposes, to be
7 enforceable under paragraph (3)(B).

8 (3) CLAIMS.—

9 (A) EXHAUSTION OF REMEDIES.—Before
10 asserting any claim against the United States
11 under section 7 of the Act of February 8, 1887
12 (25 U.S.C. 381), or any other applicable law,
13 an allottee shall exhaust remedies available
14 under—

15 (i) the Law of Administration; or

16 (ii) other applicable law.

17 (B) WATER FOR IRRIGATION.—After the
18 exhaustion of all remedies available under the
19 Law of Administration or other applicable law,
20 an allottee may seek relief under section 7 of
21 the Act of February 8, 1887 (25 U.S.C. 381),
22 or other applicable law, to seek a just and equi-
23 table allocation of water for irrigation purposes
24 under paragraph (2)(B).

1 (4) AUTHORITY OF SECRETARY.—The Sec-
2 retary shall have the authority to protect the rights
3 of allottees in accordance with this section.

4 (e) AUTHORITY OF TRIBES.—

5 (1) IN GENERAL.—The Tribes shall have the
6 authority to allocate, distribute, and lease the Tribal
7 Water Right for any use on the Reservation in ac-
8 cordance with—

9 (A) the Compact;

10 (B) the Law of Administration;

11 (C) this Act; and

12 (D) applicable Federal law.

13 (2) OFF-RESERVATION USE.—The Tribes may
14 allocate, distribute, and lease the Tribal Water Right
15 for off-Reservation use in the State in accordance
16 with the Compact, subject to the approval of the
17 Secretary.

18 (3) LAND LEASES BY ALLOTTEES.—Notwith-
19 standing paragraph (1), an allottee may lease any
20 interest in land held by the allottee, together with
21 any water right determined to be appurtenant to the
22 interest in land, in accordance with the Law of Ad-
23 ministration.

24 (f) LAW OF ADMINISTRATION.—

1 (1) IN GENERAL.—During the period beginning
2 on the date of enactment of this Act and ending on
3 the date on which the Law of Administration be-
4 comes effective on the Reservation, the Secretary
5 shall administer, with respect to the rights of
6 allottees, the Tribal Water Right in accordance with
7 this Act.

8 (2) APPROVAL.—

9 (A) IN GENERAL.—The Law of Adminis-
10 tration is approved.

11 (B) REGISTRATIONS.—As provided in sec-
12 tions 3 and 4 of article IX of the Montana
13 State Constitution and section 1–1–108 of the
14 Law of Administration, all registrations shall be
15 provided to the department of natural resources
16 and conservation of the State, to be entered
17 into the water rights database of the depart-
18 ment.

19 (C) AMENDMENTS.—An amendment to the
20 Law of Administration that affects a right of
21 an allottee shall not be valid unless the amend-
22 ment is approved by the Secretary in accord-
23 ance with this subsection.

24 (3) APPROVAL PERIOD.—

1 (A) IN GENERAL.—Subject to subpara-
2 graph (B), the Secretary shall approve or dis-
3 approve an amendment to the Law of Adminis-
4 tration by not later than 180 days after the
5 date of ratification of the Law of Administra-
6 tion by the Tribes and the State.

7 (B) EXTENSION.—The deadline described
8 in subparagraph (A) may be extended by the
9 Secretary after consultation with the Tribes.

10 (4) CONFLICT.—In the event of a conflict be-
11 tween the Law of Administration and this Act, the
12 provisions of this Act shall control.

13 (g) ADMINISTRATION.—

14 (1) ALIENATION.—The Tribes shall not perma-
15 nently alienate any portion of the Tribal Water
16 Right.

17 (2) PURCHASES OR GRANTS OF LAND FROM IN-
18 DIANS.—An authorization provided by this Act for
19 an allocation, distribution, lease, or any other ar-
20 rangement shall be considered to satisfy any require-
21 ment for authorization of the action by treaty or
22 convention under section 2116 of the Revised Stat-
23 utes (25 U.S.C. 177).

24 (3) PROHIBITION ON FORFEITURE.—The non-
25 use of all, or any portion of, the Tribal Water Right

1 by a lessee or contractor shall not result in the for-
 2 feiture, abandonment, relinquishment, or other loss
 3 of all, or any portion of, the Tribal Water Right.

4 (h) EFFECT.—Except as otherwise expressly provided
 5 in this section, nothing in this Act—

6 (1) authorizes any action by an allottee against
 7 any individual or entity, or against the Tribes, under
 8 Federal, State, Tribal, or local law; or

9 (2) alters or affects the status of any action
 10 brought pursuant to section 1491(a) of title 28,
 11 United States Code.

12 **SEC. 6. STORAGE ALLOCATION FROM HUNGRY HORSE RES-**
 13 **ERVOIR.**

14 (a) STORAGE ALLOCATION TO TRIBES.—The Sec-
 15 retary shall allocate to the Tribes 90,000 acre-feet per
 16 year, as measured at the Hungry Horse Dam, of storage
 17 water in Hungry Horse Reservoir for use by the Tribes
 18 for any beneficial purpose on or off the Reservation under
 19 a water right held by the United States and managed by
 20 the Bureau of Reclamation.

21 (b) TREATMENT.—

22 (1) IN GENERAL.—The allocation under sub-
 23 section (a) shall be considered to be part of the
 24 Tribal Water Right.

1 (2) ADMINISTRATION.—The Tribes shall admin-
2 ister the water allocated under subsection (a) in ac-
3 cordance with, and subject to the limitations of, the
4 Compact and this Act.

5 (c) ALLOCATION AGREEMENT.—

6 (1) IN GENERAL.—As a condition of receiving
7 the allocation under subsection (a), the Tribes shall
8 enter into an agreement with the Secretary to estab-
9 lish the terms and conditions of the allocation, in ac-
10 cordance with the Compact and this Act.

11 (2) INCLUSIONS.—The agreement under para-
12 graph (1) shall include provisions establishing that—

13 (A) the agreement shall be without a limit
14 as to a term;

15 (B) the Tribes, and not the United States,
16 shall be entitled to all consideration due to the
17 Tribes under any lease, contract, or agreement
18 entered into by the Tribes pursuant to sub-
19 section (d);

20 (C) the United States shall have no obliga-
21 tion to monitor, administer, or account for—

22 (i) any funds received by the Tribes
23 as consideration under any lease, contract,
24 or agreement entered into by the Tribes
25 pursuant to subsection (d); or

1 (ii) the expenditure of those funds;

2 (D) if the capacity or function of any facil-
3 ity of Hungry Horse Reservoir or Hungry
4 Horse Dam is significantly reduced, or is antici-
5 pated to be significantly reduced, for an ex-
6 tended period of time, the Tribes shall have the
7 same storage rights as other storage contrac-
8 tors with respect to the allocation under sub-
9 section (a);

10 (E) the costs associated with the construc-
11 tion and operation of the storage facilities at
12 Hungry Horse Reservoir and Hungry Horse
13 Dam allocable to the Tribes shall be nonreim-
14 bursable;

15 (F) no water service capital charge shall be
16 due or payable for the agreement or any water
17 allocated under subsection (a), regardless of
18 whether that water is delivered for use by the
19 Tribes or under a lease, contract, or by an
20 agreement entered into by the Tribes pursuant
21 to subsection (d);

22 (G) the Tribes shall not be required to
23 make payments to the United States for the
24 agreement or any water allocated under sub-
25 section (a), except for each acre-foot of stored

1 water leased or transferred for industrial pur-
2 poses;

3 (H) for each acre-foot of stored water
4 leased by the Tribes for industrial purposes—

5 (i) the Tribes shall pay annually to
6 the United States an amount sufficient to
7 cover the proportionate share of the annual
8 operation, maintenance, and replacement
9 costs for the Hungry Horse Project allo-
10 cable to that quantity of water; and

11 (ii) the annual payments of the Tribes
12 shall be reviewed and adjusted, as appro-
13 priate, to reflect the actual operation,
14 maintenance, and replacement costs for the
15 Hungry Horse Project; and

16 (I) the costs described in subparagraphs
17 (G) and (H) shall not apply to any lease or
18 transfer for industrial purposes to—

19 (i) any entity of the Tribes; or

20 (ii) any entity wholly owned by the
21 Tribes.

22 (d) AGREEMENTS BY TRIBES.—The Tribes may use,
23 lease, contract, exchange, or enter into other agreements
24 for use of the water allocated under subsection (a) if—

1 (1) the water that is the subject of the agree-
2 ment is used within the Flathead Basin or the Clark
3 Fork Basin within the State; and

4 (2) the agreement does not permanently alien-
5 ate any portion of water allocated under subsection
6 (a).

7 (e) MITIGATION WATER.—The Tribes shall make
8 available not more than 11,000 acre-feet per year of the
9 water allocated under subsection (a) to the State, in ac-
10 cordance with the Compact.

11 (f) NO CARRY-OVER STORAGE.—The allocation
12 under subsection (a) shall not be increased by any year-
13 to-year carryover storage.

14 (g) DEVELOPMENT AND DELIVERY COSTS.—The
15 United States shall not be required to pay the cost of de-
16 veloping or delivering any water allocated under sub-
17 section (a).

18 (h) NEW USES.—Except as provided in article
19 III.C.1.c of the Compact, the Tribes shall not develop any
20 new use for the allocation under subsection (a) until the
21 date on which the agreement entered into under sub-
22 section (c) takes effect.

23 (i) EFFECTIVE DATE.—The allocation under sub-
24 section (a) takes effect on the enforceability date.

1 **SEC. 7. IRRIGATION ACTIVITIES.**

2 (a) ACTIVITIES.—The Tribes may carry out the fol-
3 lowing activities relating to the Flathead Indian irrigation
4 project, in coordination with the Bureau of Indian Affairs:

5 (1) REHABILITATION AND MODERNIZATION.—

6 Rehabilitation of structures, canals, and pumping fa-
7 cilities, including dam safety improvements, irriga-
8 tion facility upgrades that improve water manage-
9 ment and operational control at irrigation diversion
10 works, irrigation facility upgrades to reduce losses in
11 conveyance of water from irrigation sources of sup-
12 ply to irrigation points of use, planning, design, and
13 construction of additional pumping facilities, oper-
14 ational improvements to infrastructure within the
15 distribution network of the Flathead Indian irriga-
16 tion project, and reconstruction, replacement, and
17 automation at irrigation diversion works, lining of
18 open canals, and placement of open canals in pipe.

19 (2) MITIGATION, RECLAMATION, AND RESTORA-
20 TION.—Mitigation, reclamation, and restoration of
21 streams, wetlands, banks, slopes, and wasteways
22 within, appurtenant to, or affected by the Flathead
23 Indian irrigation project.

24 (3) ACQUISITION OF INTERESTS.—Acquisition,
25 in accordance with subsection (e), of easements or

1 other interests in real property necessary to carry
2 out any activity under this section.

3 (b) ENVIRONMENTAL COMPLIANCE.—Prior to the
4 commencement of any construction activity under sub-
5 section (a), the Tribes shall perform appropriate Federal
6 environmental compliance activities relating to the activ-
7 ity.

8 (c) TREATMENT.—Any activities carried out pursu-
9 ant to subsection (a) that result in improvements, addi-
10 tions, or modifications to the Flathead Indian irrigation
11 project, including the acquisition of any real property in-
12 terest, shall—

13 (1) become a part of the Flathead Indian irri-
14 gation project; and

15 (2) be recorded in the inventory of the Sec-
16 retary relating to the Flathead Indian irrigation
17 project.

18 (d) EASEMENTS AND RIGHTS-OF-WAY.—

19 (1) TRIBAL EASEMENTS AND RIGHTS-OF-
20 WAY.—

21 (A) IN GENERAL.—On request of the Sec-
22 retary, the Tribes shall grant, at no cost to the
23 United States, such easements and rights-of-
24 way over Tribal land as are necessary for con-

1 struction relating to an activity under this sec-
2 tion.

3 (B) JURISDICTION.—An easement or
4 right-of-way granted by the Tribes pursuant to
5 subparagraph (A) shall not affect in any respect
6 the civil or criminal jurisdiction of the Tribes
7 over the easement or right-of-way.

8 (2) LANDOWNER EASEMENTS AND RIGHTS-OF-
9 WAY.—In partial consideration for the construction
10 activities authorized by this section, and as a condi-
11 tion of receiving service from the Flathead Indian ir-
12 rigation project or the Mission Valley Power Project,
13 a landowner shall grant, at no cost to the United
14 States or the Tribes, such easements and rights-of-
15 way over the land of the landowner as may be nec-
16 essary for—

17 (A) a construction activity authorized by
18 this section; or

19 (B) the operation and maintenance of—
20 (i) the Flathead Indian irrigation
21 project; or

22 (ii) the Mission Valley Power Project.

23 (e) LAND ACQUIRED BY UNITED STATES OR
24 TRIBES.—Any land acquired within the boundaries of the
25 Reservation by the United States on behalf of the Tribes,

1 or by the Tribes on behalf of the Tribes, in connection
2 with the purposes of this Act shall be held in trust by
3 the United States for the benefit of the Tribes.

4 (f) COOPERATIVE OPERATION AND MAINTENANCE
5 OF FLATHEAD INDIAN IRRIGATION PROJECT.—

6 (1) AGREEMENT WITH SECRETARY.—On receipt
7 of a joint request from the Tribes and one or more
8 irrigation districts within the Flathead Indian irriga-
9 tion project, the Secretary shall enter into an agree-
10 ment with the Tribes and the irrigation districts for
11 the cooperative operation and maintenance of the
12 Flathead Indian irrigation project, or any portion of
13 the Flathead Indian irrigation project.

14 (2) ESTABLISHMENT OF ORGANIZATION.—

15 (A) IN GENERAL.—In lieu of entering into
16 an agreement under paragraph (1), the Tribes
17 and one or more irrigation districts within the
18 Flathead Indian irrigation project may jointly
19 establish an organization for the purpose of en-
20 tering into an agreement for the operation and
21 maintenance of the Flathead Indian irrigation
22 project under the Indian Self-Determination
23 and Education Assistance Act (25 U.S.C. 5301
24 et seq.).

1 (B) TREATMENT.—An organization estab-
2 lished pursuant to subparagraph (A) shall be
3 considered to be a tribal organization (as de-
4 fined in section 4 of the Indian Self-Determina-
5 tion and Education Assistance Act (25 U.S.C.
6 5304)) for purposes of that Act.

7 (g) EFFECT.—Nothing in this section—

8 (1) alters any applicable law under which the
9 Bureau of Indian Affairs collects assessments or car-
10 ries out the operation and maintenance of the Flat-
11 head Indian irrigation project; or

12 (2) impacts the availability of amounts under
13 section 9.

14 (h) WATER SOURCE.—The source of the water for
15 the Flathead Indian irrigation project shall be determined
16 in accordance with article II(32) of the Compact as—

17 (1) consisting of the water right set forth in ar-
18 ticle III.C.1.a of the Compact;

19 (2) including any use of water for irrigation
20 and incidental purposes pursuant to an applicable
21 water service contract; and

22 (3) considered to be the source for the entitle-
23 ment to delivery of available irrigation water for the
24 assessed parcels, in accordance with article IV.D.2
25 of the Compact.

1 **SEC. 8. SÉLIŠ-QLISPÉ KSANKA SETTLEMENT TRUST FUND.**

2 (a) ESTABLISHMENT.—The Secretary shall establish
3 a trust fund, to be known as the “Séliš-Qlispé Ksanka Set-
4 tlement Trust Fund”, to be managed, invested, and dis-
5 tributed by the Secretary, and to remain available until
6 expended, consisting of the amounts deposited in the
7 Trust Fund under subsection (b), together with any inter-
8 est earned on those amounts, for the purpose of carrying
9 out this Act.

10 (b) DEPOSITS.—The Secretary shall deposit in the
11 Trust Fund the amounts made available pursuant to sec-
12 tion 9.

13 (c) MANAGEMENT AND INTEREST.—

14 (1) MANAGEMENT.—On receipt and deposit of
15 the funds into the Trust Fund, the Secretary shall
16 manage, invest, and distribute the amounts in ac-
17 cordance with the investment authority of the Sec-
18 retary under—

19 (A) the first section of the Act of June 24,
20 1938 (25 U.S.C. 162a);

21 (B) the American Indian Trust Fund Man-
22 agement Reform Act of 1994 (25 U.S.C. 4001
23 et seq.); and

24 (C) this section.

25 (2) INVESTMENT EARNINGS.—In addition to
26 the deposits under subsection (b), any investment

1 earnings, including interest, credited to the amounts
2 in the Trust Fund are authorized to be appropriated
3 for use in accordance with subsection (g).

4 (d) AVAILABILITY OF AMOUNTS.—

5 (1) IN GENERAL.—Amounts appropriated to,
6 and deposited in, the Trust Fund (including any in-
7 vestment earnings) shall be made available to the
8 Tribes by the Secretary beginning on the enforce-
9 ability date, subject to the requirements of this sec-
10 tion.

11 (2) USE.—Notwithstanding paragraph (1), any
12 amounts deposited in the Trust Fund shall be avail-
13 able to the Tribes, on appropriation, for—

14 (A) the uses described in subsection (g)(1),
15 in accordance with Appendix 3.6 to the Com-
16 pact; and

17 (B) the uses described in subsection (g)(2).

18 (e) WITHDRAWALS.—

19 (1) IN GENERAL.—The Tribes may withdraw
20 any portion of the amounts in the Trust Fund on
21 approval by the Secretary of a Tribal management
22 plan submitted by the Tribes in accordance with the
23 American Indian Trust Fund Management Reform
24 Act of 1994 (25 U.S.C. 4001 et seq.).

25 (2) REQUIREMENTS.—

1 (A) IN GENERAL.—In addition to the re-
2 quirements under the American Indian Trust
3 Fund Management Reform Act of 1994 (25
4 U.S.C. 4001 et seq.), the Tribal management
5 plan under paragraph (1) shall require that the
6 Tribes shall spend all amounts withdrawn from
7 the Trust Fund and any investment earnings
8 accrued through the investments under the
9 Tribal management plan in accordance with
10 this Act.

11 (B) ENFORCEMENT.—The Secretary may
12 carry out such judicial and administrative ac-
13 tions as the Secretary determines to be nec-
14 essary to enforce the Tribal management plan
15 to ensure that amounts withdrawn by the
16 Tribes from the Trust Fund pursuant to this
17 subsection are used in accordance with this Act.

18 (f) EFFECT.—Nothing in this Act provides to the
19 Tribes the right to judicial review of a determination by
20 the Secretary regarding whether to approve a Tribal man-
21 agement plan, except under subchapter II of chapter 5,
22 and chapter 7 of title 5, United States Code (commonly
23 known as the “Administrative Procedure Act”).

1 (g) USES.—Amounts in the Trust Fund shall be used
2 by the Tribes to implement the Compact, the Law of Ad-
3 ministration, and this Act for the following purposes:

4 (1) With respect to the Flathead Indian irriga-
5 tion project, rehabilitation, modernization, and res-
6 toration of damages to natural resources.

7 (2) The administration, implementation, and
8 management of the Tribal Water Right and the reg-
9 ulation and administration of water rights within the
10 Reservation under this Act, the Compact, and the
11 Law of Administration, and such infrastructure as is
12 necessary to meet programmatic needs.

13 (3) The acquisition of interests in real property
14 for purposes of paragraph (1).

15 (4) To implement the Tribal Water Right
16 through rehabilitation and improvement of agricul-
17 tural Indian land within the Reservation.

18 (5) To construct and rehabilitate livestock fenc-
19 ing on Indian land within the Reservation.

20 (6) To mitigate and control noxious weeds on
21 land within the Reservation.

22 (7) To plan, design, and construct improve-
23 ments to irrigation systems on land served by the
24 Flathead Indian irrigation project.

1 (8) To install screens, barriers, passages, or
2 ladders to prevent fish entrainment in irrigation
3 ditches and canals within the Reservation.

4 (9) To plan, design, and construct irrigation fa-
5 cilities on Indian land within the Reservation that is
6 not served by the Flathead Indian irrigation project.

7 (10) To plan, design, construct, operate, main-
8 tain, and replace community water distribution and
9 wastewater treatment facilities on the Reservation.

10 (11) To develop geothermal water resources on
11 Indian land within the Reservation.

12 (12) To develop a cultural resources program
13 relating to permitting (including cultural, historical,
14 and archeological reviews, including training and
15 certifications) and related infrastructure necessary
16 to meet programmatic needs.

17 (13) To comply with Federal environmental
18 laws for any use authorized by this section.

19 (14) To repair, rehabilitate, or replace culverts,
20 bridges, and roads of the Flathead Indian irrigation
21 project and any public or Tribal culverts, bridges,
22 and roads that intersect with, or are otherwise lo-
23 cated within, the supply and distribution network of
24 the Flathead Indian irrigation project.

1 (h) LIABILITY.—The Secretary shall not be liable for
2 the expenditure or investment of any amounts withdrawn
3 from the Trust Fund by the Tribes under this section.

4 (i) EXPENDITURE REPORTS.—Not less frequently
5 than annually, the Tribes shall submit to the Secretary
6 an expenditure report describing—

7 (1) the amount withdrawn from the Trust
8 Fund under this section; and

9 (2) any accomplishments resulting from the use
10 of a withdrawal under a Tribal management plan, in
11 accordance with this Act.

12 (j) OM&R COSTS.—Except as otherwise provided in
13 this Act, nothing in this Act affects any obligation of the
14 United States with respect to the operations, maintenance,
15 and repair of the Flathead Indian irrigation project.

16 **SEC. 9. AUTHORIZATION OF APPROPRIATIONS.**

17 (a) IN GENERAL.—There is authorized to be appro-
18 priated to the Secretary for deposit in the Trust Fund
19 \$1,900,000,000, to remain available until expended, with-
20 drawn, or reverted to the general fund of the Treasury.

21 (b) FLUCTUATION IN COSTS.—

22 (1) IN GENERAL.—Of the amount authorized to
23 be appropriated under subsection (a)—

24 (A) \$347,200,000 shall be increased or de-
25 creased, as appropriate, by such amounts as

1 may be justified by reason of ordinary fluctua-
2 tions in costs occurring after the date of enact-
3 ment of this Act, as indicated by the Consumer
4 Price Index for All Urban Consumers West
5 Urban 50,000 to 1,500,000 index;

6 (B) \$111,400,000 shall be increased or de-
7 creased, as appropriate, by such amounts as
8 may be justified by reasons of ordinary fluctua-
9 tions in costs occurring after the date of enact-
10 ment of this Act, as indicated by the Producer
11 Price Index for the Bureau of Labor Statistics;
12 and

13 (C) \$1,441,400,000 shall be increased or
14 decreased, as appropriate, by such amounts as
15 may be justified by reason of ordinary fluctua-
16 tions in costs occurring after the date of enact-
17 ment of this Act, as indicated by the Bureau of
18 Reclamation Construction Costs Index—Com-
19 posite Trend.

20 (2) REPETITION.—The adjustment process
21 under this subsection shall be repeated for each sub-
22 sequent amount appropriated for deposit in the
23 Trust Fund until the amount authorized to be ap-
24 propriated, as so adjusted, has been appropriated.

1 (3) PERIOD OF INDEXING.—The period of in-
2 dexing adjustment under this subsection for any in-
3 crement of funding shall end on the date on which
4 funds are deposited in the Trust Fund.

5 **SEC. 10. WAIVERS AND RELEASES OF CLAIMS.**

6 (a) WAIVERS AND RELEASES.—

7 (1) CLAIMS BY TRIBES AND UNITED STATES AS
8 TRUSTEE FOR TRIBES.—Subject to the reservation
9 of rights and retention of claims under subsection
10 (c), as consideration for recognition of the Tribal
11 Water Right and other benefits described in the
12 Compact and this Act, the Tribes, acting on behalf
13 of the Tribes and members of the Tribes (but not
14 any member of the Tribes as an allottee), and the
15 United States, acting as trustee for the Tribes and
16 the members of the Tribes (but not any member of
17 the Tribes as an allottee), shall execute a waiver and
18 release of all claims with prejudice for water rights
19 within the State that the Tribes, or the United
20 States acting as trustee for the Tribes, asserted or
21 could have asserted in any proceeding, including a
22 State stream adjudication, on or before the enforce-
23 ability date, except to the extent that such a right
24 is recognized in the Compact and this Act.

1 (2) CLAIMS BY UNITED STATES AS TRUSTEE
2 FOR ALLOTTEES.—Subject to the reservation of
3 rights and the retention of claims under subsection
4 (c), as consideration for recognition of the Tribal
5 Water Right and other benefits described in the
6 Compact and this Act, the United States, acting as
7 trustee for allottees, shall execute a waiver and re-
8 lease of all claims with prejudice for water rights
9 within the Reservation that the United States, act-
10 ing as trustee for the allottees, asserted or could
11 have asserted in any proceeding, including a State
12 stream adjudication, on or before the enforceability
13 date, except to the extent that such a right is recog-
14 nized in the Compact and this Act.

15 (3) CLAIMS BY TRIBES AGAINST UNITED
16 STATES.—Subject to the reservation of rights and
17 retention of claims under subsection (c), the Tribes,
18 acting on behalf of the Tribes and members of the
19 Tribes (but not any member of the Tribes as an al-
20 lottee), shall execute a waiver and release of all
21 claims with prejudice against the United States (in-
22 cluding any agency or employee of the United
23 States)—

24 (A) relating to—

1 (i) water rights within the State that
2 the United States, acting as trustee for the
3 Tribes, asserted or could have asserted in
4 any proceeding, including a general stream
5 adjudication in the State, except to the ex-
6 tent that such a right is recognized as part
7 of the Tribal Water Right under this Act;

8 (ii) damage, loss, or injury to water,
9 water rights, land, or natural resources
10 due to loss of water or water rights (in-
11 cluding damages, losses, or injuries to
12 hunting, fishing, gathering, or cultural
13 rights due to loss of water or water rights,
14 claims relating to interference with, diver-
15 sion, or taking of water, or claims relating
16 to a failure to protect, acquire, replace, or
17 develop water, water rights, or water infra-
18 structure) within the State that first ac-
19 crued at any time on or before the enforce-
20 ability date;

21 (iii) a failure to establish or provide a
22 municipal, rural, or industrial water deliv-
23 ery system on the Reservation;

24 (iv) a failure to provide—

1 (I) for operation, maintenance, or
 2 deferred maintenance for the Flathead
 3 Indian irrigation project or any other
 4 irrigation system or irrigation project;
 5 or

6 (II) a dam safety improvement to
 7 a dam within the Reservation;

8 (v) the litigation of claims relating to
 9 any water right of the Tribes in the State;
 10 and

11 (vi) the negotiation, execution, or
 12 adoption of the Compact or this Act;

13 (B) reserved under subsections (b) through
 14 (d) of section 6 of the settlement agreement for
 15 the case entitled “Nez Perce Tribe v. Salazar”,
 16 No. 06cv2239TFH (D.D.C. 2012);

17 (C) that first accrued at any time on or
 18 before the enforceability date arising from the
 19 taking or acquisition of land or resources of the
 20 Tribes for the construction or operation of the
 21 Flathead Indian irrigation project; and

22 (D) encompassed within the Damages Re-
 23 port.

24 (4) CERTAIN OFF-RESERVATION WATER
 25 RIGHTS.—

1 (A) IN GENERAL.—Notwithstanding the
2 confirmation of the water rights of the Tribes
3 described in Appendices 28 and 29 to the Com-
4 pact, as consideration for recognition of the
5 Tribal Water Right and other benefits described
6 in the Compact and this Act, the Tribes shall
7 relinquish any right, title, or claim to the water
8 rights located within the Flathead basin and de-
9 scribed in those appendices.

10 (B) REQUIREMENT.—The water rights de-
11 scribed in subparagraph (A) shall be held solely
12 by the State.

13 (b) ENFORCEABILITY DATE.—The waivers and re-
14 leases of claims under subsection (a) shall take effect on
15 the date on which the Secretary publishes in the Federal
16 Register a statement of findings that—

17 (1)(A) the Montana Water Court has approved
18 the Compact in a manner from which no further ap-
19 peal may be taken; or

20 (B) if the Montana Water Court is found to
21 lack jurisdiction, the applicable United States dis-
22 trict court has approved the Compact as a consent
23 decree from which no further appeal may be taken;

24 (2) all amounts authorized to be appropriated
25 under section 9 have been appropriated;

1 (3) the State has appropriated and paid into an
2 interest-bearing escrow account any payments due to
3 the Tribes as of the date of enactment of this Act
4 under the Compact and this Act;

5 (4) the Tribes have ratified the Compact;

6 (5) the Secretary has fulfilled the requirements
7 of section 6; and

8 (6) the waivers and releases described in sub-
9 section (a) have been executed by the Tribes and the
10 Secretary.

11 (c) RESERVATION OF RIGHTS AND RETENTION OF
12 CLAIMS.—Notwithstanding the waivers and releases under
13 subsection (a), the Tribes, acting on behalf of the Tribes
14 and members of the Tribes, and the United States, acting
15 as trustee for the Tribes and the allottees, shall retain—

16 (1) all claims relating to—

17 (A) the enforcement of, or claims accruing
18 after the enforceability date relating to water
19 rights recognized under—

20 (i) the Compact;

21 (ii) any final decree; or

22 (iii) this Act; and

23 (B) activities affecting the quality of
24 water, including any claims under—

- 1 (i) the Comprehensive Environmental
2 Response, Compensation, and Liability Act
3 of 1980 (42 U.S.C. 9601 et seq.), includ-
4 ing damages to natural resources;
- 5 (ii) the Safe Drinking Water Act (42
6 U.S.C. 300f et seq.);
- 7 (iii) the Federal Water Pollution Con-
8 trol Act (33 U.S.C. 1251 et seq.) (com-
9 monly referred to as the “Clean Water
10 Act”); and
- 11 (iv) any regulations implementing the
12 Acts described in clauses (i) through (iii);
- 13 (2) all rights to use and protect water rights ac-
14 quired after the date of enactment of this Act;
- 15 (3) damages, losses, or injuries to land or nat-
16 ural resources that are—
- 17 (A) not due to loss of water or water rights
18 (including hunting, fishing, gathering, or cul-
19 tural rights); and
- 20 (B) not encompassed within the Damages
21 Report; and
- 22 (4) all rights, remedies, privileges, immunities,
23 and powers not specifically waived and released pur-
24 suant to this Act or the Compact.

1 (d) EFFECT OF COMPACT AND ACT.—Nothing in the
2 Compact or this Act—

3 (1) except as otherwise expressly provided in
4 the Compact or this Act, reduces or extends the sov-
5 ereignty (including civil and criminal jurisdiction) of
6 any government entity;

7 (2) affects the ability of the United States to
8 carry out any activity authorized by applicable law,
9 including—

10 (A) the Comprehensive Environmental Re-
11 sponse, Compensation, and Liability Act of
12 1980 (42 U.S.C. 9601 et seq.);

13 (B) the Safe Drinking Water Act (42
14 U.S.C. 300f et seq.);

15 (C) the Federal Water Pollution Control
16 Act (33 U.S.C. 1251 et seq.) (commonly re-
17 ferred to as the “Clean Water Act”); and

18 (D) any regulations implementing the Acts
19 described in subparagraphs (A) through (C);

20 (3) affects the ability of the United States to
21 act as trustee for any other Indian tribe or allottee
22 of any other Indian tribe;

23 (4) confers jurisdiction on any State court—

24 (A) to interpret Federal law regarding
25 health, safety, or the environment;

1 (B) to determine the duties of the United
2 States or any other party under Federal law re-
3 garding health, safety, or the environment; or

4 (C) to conduct judicial review of any Fed-
5 eral agency action;

6 (5) waives any claim of a member of the Tribes
7 in an individual capacity that does not derive from
8 a right of the Tribes;

9 (6) revives any claim waived by the Tribes in
10 the case entitled “Nez Perce Tribe v. Salazar”, No.
11 06cv2239TFH (D.D.C. 2012); or

12 (7) revives any claim released by an allottee or
13 member of the Tribes in the settlement for the case
14 entitled “Cobell v. Salazar”, No. 1:96CV01285–JR
15 (D.D.C. 2012).

16 (e) TOLLING OF CLAIMS.—

17 (1) IN GENERAL.—Each applicable period of
18 limitation and time-based equitable defense relating
19 to a claim described in this section shall be tolled
20 during the period beginning on the date of enact-
21 ment of this Act and ending on the date on which
22 the amounts made available to carry out this Act are
23 transferred to the Secretary.

24 (2) EFFECT OF SUBSECTION.—Nothing in this
25 subsection revives any claim or tolls any period of

1 limitation or time-based equitable defense that ex-
2 pired before the date of enactment of this Act.

3 (f) EXPIRATION.—

4 (1) IN GENERAL.—This Act shall expire in any
5 case in which—

6 (A) the amounts authorized to be appro-
7 priated by this Act have not been made avail-
8 able to the Secretary by not later than—

9 (i) January 21, 2031; or

10 (ii) such alternative later date as is
11 agreed to by the Tribes and the Secretary;

12 or

13 (B) the Secretary fails to publish a state-
14 ment of findings under subsection (b) by not
15 later than—

16 (i) January 21, 2032; or

17 (ii) such alternative later date as is
18 agreed to by the Tribes and the Secretary,
19 after providing reasonable notice to the
20 State.

21 (2) CONSEQUENCES.—If this Act expires under
22 paragraph (1)—

23 (A) the waivers and releases under sub-
24 section (a) shall—

25 (i) expire; and

1 (ii) have no further force or effect;

2 (B) the authorization, ratification, con-
3 firmation, and execution of the Compact under
4 section 4 shall no longer be effective;

5 (C) any action carried out by the Sec-
6 retary, and any contract or agreement entered
7 into, pursuant to this Act shall be void;

8 (D) any unexpended Federal funds appro-
9 priated or made available to carry out the ac-
10 tivities authorized by this Act, together with
11 any interest earned on those funds, and any
12 water rights or contracts to use water and title
13 to other property acquired or constructed with
14 Federal funds appropriated or made available
15 to carry out the activities authorized by this Act
16 shall be returned to the Federal Government,
17 unless otherwise agreed to by the Tribes and
18 the United States and approved by Congress;
19 and

20 (E) except for Federal funds used to ac-
21 quire or construct property that is returned to
22 the Federal Government under subparagraph
23 (D), the United States shall be entitled to offset
24 any Federal funds made available to carry out
25 this Act that were expended or withdrawn, or

1 any funds made available to carry out this Act
 2 from other Federal authorized sources, together
 3 with any interest accrued on those funds,
 4 against any claims against the United States—

5 (i) relating to—

6 (I) water rights in the State as-
 7 serted by—

8 (aa) the Tribes; or

9 (bb) any user of the Tribal
 10 Water Right; or

11 (II) any other matter encom-
 12 passed in the Damages Report; or

13 (ii) in any future settlement of water
 14 rights of the Tribes or an allottee.

15 **SEC. 11. SATISFACTION OF CLAIMS.**

16 (a) TRIBAL CLAIMS.—The benefits realized by the
 17 Tribes under this Act shall be in complete replacement of,
 18 complete substitution for, and full satisfaction of all claims
 19 of the Tribes against the United States waived and re-
 20 leased pursuant to section 10.

21 (b) ALLOTTEE CLAIMS.—The benefits realized by the
 22 allottees under this Act shall be in complete replacement
 23 of, complete substitution for, and full satisfaction of—

24 (1) all claims waived and released pursuant to
 25 section 10(a)(2); and

1 (2) any claims of an allottee against the United
2 States similar in nature to a claim described in sec-
3 tion 10(a)(2) that the allottee asserted or could have
4 asserted.

5 **SEC. 12. MISCELLANEOUS PROVISIONS.**

6 (a) AMENDMENTS.—

7 (1) ACT OF APRIL 23, 1904.—Section 9 of the
8 Act of April 23, 1904 (33 Stat. 304, chapter 1495;
9 35 Stat. 450, chapter 216), is amended by striking
10 the seventh undesignated paragraph.

11 (2) ACT OF MAY 25, 1948.—Section 2 of the Act
12 of May 25, 1948 (62 Stat. 269, chapter 340), is
13 amended—

14 (A) in subsection (h), by striking para-
15 graph (6) and inserting the following:

16 “(6) To enhance fisheries habitat or to improve
17 water conservation management of the project.”;
18 and

19 (B) by adding at the end the following:

20 “(k) MISSION VALLEY DIVISION.—

21 “(1) IN GENERAL.—The Secretary of the Inte-
22 rior (referred to in this section as the ‘Secretary’),
23 or the Confederated Salish and Kootenai Tribes of
24 the Flathead Reservation of Montana acting on be-
25 half of the Secretary, as the entity with the legal au-

1 thority and responsibility to operate the Mission Val-
2 ley division of the project (referred to in this sub-
3 section as the ‘project operator’), may allocate reve-
4 nues derived from the Mission Valley division in ac-
5 cordance with paragraph (2) for the purposes de-
6 scribed in subsection (h)(6).

7 “(2) ALLOCATION.—

8 “(A) IN GENERAL.—Subject to subpara-
9 graphs (B) and (C), the revenues described in
10 paragraph (1) shall be allocated by providing—

11 “(i) \$100,000 to the Tribes; and

12 “(ii) \$100,000 to the project operator.

13 “(B) NEGOTIATION.—Effective beginning
14 on October 1 of the tenth calendar year begin-
15 ning after the date of enactment of the Mon-
16 tana Water Rights Protection Act, the Confed-
17 erated Salish and Kootenai Tribes of the Flat-
18 head Reservation of Montana, the State of
19 Montana, and the Secretary may negotiate for
20 an appropriate allocation that differs from the
21 allocation described in subparagraph (A).

22 “(C) CARRYOVER.—If the project operator
23 does not use the full allocation of the project
24 operator under this paragraph for a fiscal year,
25 an amount equal to the difference between the

1 full allocation and the amount used by the
2 project operator shall be set aside and accumu-
3 lated for expenditure during subsequent fiscal
4 years for the purposes described in subsection
5 (h)(6).”.

6 (3) INDIAN SELF-DETERMINATION AND EDU-
7 CATION ASSISTANCE ACT.—Section 403(b)(4) of the
8 Indian Self-Determination and Education Assistance
9 Act (25 U.S.C. 5363(b)(4)) is amended—

10 (A) in subparagraph (A), by adding “and”
11 at the end;

12 (B) in subparagraph (B), by striking
13 “and” at the end; and

14 (C) by striking subparagraph (C).

15 (b) LIENS.—Any lien established by the Act of April
16 23, 1904 (33 Stat. 302, chapter 1495; 35 Stat. 449, chap-
17 ter 216), is extinguished and released.

18 (c) WAIVER OF SOVEREIGN IMMUNITY.—Except as
19 provided in subsections (a) through (c) of section 208 of
20 the Department of Justice Appropriation Act, 1953 (43
21 U.S.C. 666), nothing in this Act waives the sovereign im-
22 munity of the United States.

23 (d) OTHER TRIBES NOT ADVERSELY AFFECTED.—
24 Nothing in this Act quantifies or diminishes any land or

1 water right, or any claim or entitlement to land or water,
2 of any Indian tribe other than the Tribes.

3 (e) LIMITATION ON CLAIMS FOR REIMBURSEMENT.—

4 With respect to Indian land located within the Reserva-
5 tion—

6 (1) the United States shall not submit any
7 claim for reimbursement of the cost to the United
8 States of carrying out this Act or the Compact; and

9 (2) no assessment shall be made regarding that
10 cost.

11 (f) LIMITATION ON LIABILITY OF UNITED STATES.—

12 (1) IN GENERAL.—The United States has no
13 obligation—

14 (A) to monitor, administer, or account for,
15 in any manner, any funds provided to the
16 Tribes by the State; or

17 (B) to review or approve any expenditure
18 of the funds described in subparagraph (A).

19 (2) INDEMNITY.—The Tribes shall indemnify
20 the United States, and hold the United States harm-
21 less, with respect to all claims (including claims for
22 takings or breach of trust) arising from the receipt
23 or expenditure of amounts to carry out this Act.

24 (g) ANTIDEFICIENCY.—The United States shall not
25 be liable for any failure to carry out any obligation or ac-

1 tivity authorized by this Act (including any obligation or
2 activity under the Compact) if—

3 (1) adequate appropriations are not provided
4 expressly by Congress to carry out this Act; or

5 (2) insufficient funds are available to carry out
6 this Act in the Reclamation Water Settlements Fund
7 established by section 10501(a) of the Omnibus
8 Public Land Management Act of 2009 (43 U.S.C.
9 407(a)).

10 (h) FEDERAL ADVISORY COMMITTEE ACT.—The
11 Federal Advisory Committee Act (5 U.S.C. App.) shall not
12 apply to any activity or function carried out by the Sec-
13 retary under this Act.

14 (i) EXCHANGES OF LAND.—

15 (1) STATE TRUST LAND.—

16 (A) IN GENERAL.—The Secretary shall
17 offer to negotiate with the State for the purpose
18 of exchanging public land within the State for
19 State trust land located within the Reservation
20 with a total value substantially equal to the
21 value of the surface estate of the approximately
22 36,808 acres of State trust land obtained by
23 the State pursuant to—

24 (i) the Act of February 22, 1889
25 (commonly known as the “Montana Ena-

1 bling Act”) (25 Stat. 676, chapter 180),
2 and the Act of April 23, 1904 (33 Stat.
3 302, chapter 1495; 35 Stat. 449, chapter
4 216); or

5 (ii) the Act of February 25, 1920 (41
6 Stat. 452).

7 (B) PROCEDURES.—An exchange described
8 in subparagraph (A) shall be conducted in ac-
9 cordance with section 206 of the Federal Land
10 Policy and Management Act of 1976 (43 U.S.C.
11 1716).

12 (C) VALUATION.—In determining the fair
13 market value of land for purposes of subpara-
14 graph (A), the parties to the exchange shall
15 give due consideration to the value of any im-
16 provements on the land.

17 (D) FINANCIAL IMPACT.—The Secretary
18 shall ensure that land exchanged pursuant to
19 this paragraph is selected in a manner that
20 minimizes the financial impact on local govern-
21 ments, if any.

22 (E) ASSISTANCE.—The Secretary shall
23 provide such financial or other assistance to the
24 State and the Tribes as may be necessary to
25 obtain the appraisals, and to satisfy administra-

1 tive requirements, necessary to accomplish the
2 exchanges under subparagraph (A).

3 (F) TITLE.—On approving an exchange
4 under this paragraph, the Secretary shall—

5 (i) receive title in and to the State
6 trust land involved in the exchange, on be-
7 half of the United States; and

8 (ii) transfer title in and to the public
9 land disposed of in the exchanges with the
10 State by such means of conveyance as the
11 Secretary considers to be appropriate.

12 (G) TRUST.—Title to the State trust land
13 acquired pursuant to an exchange under this
14 paragraph shall be—

15 (i) vested in the United States in
16 trust for the sole use and benefit of the
17 Tribes; and

18 (ii) recognized as part of the Reserva-
19 tion.

20 (2) REQUIREMENTS.—

21 (A) IN GENERAL.—In carrying out para-
22 graph (1), the Secretary shall, during the 5-
23 year period beginning on the date of enactment
24 of this Act, give priority to an exchange of pub-

1 lic land within the State for State trust land
2 owned by the State.

3 (B) TOTAL VALUE.—The total value of the
4 land exchanged and acquired for the Tribes
5 pursuant to this subsection shall not exceed the
6 value of the surface estate of the 36,808 acres
7 described in paragraph (1)(A).

8 (C) PRIVATE EXCHANGES.—

9 (i) IN GENERAL.—Subject to subpara-
10 graph (B), if, for any reason, after the ex-
11 piration of the period described in subpara-
12 graph (A), the exchanges under paragraph
13 (1) have not provided to the Tribes a total
14 of 36,808 acres of surface land within the
15 boundaries of the Reservation, the Sec-
16 retary shall, at the request of, and in co-
17 operation with, the Tribes, develop and im-
18 plement a program to provide to the Tribes
19 additional land within the Reservation
20 through land exchanges with private land-
21 owners.

22 (ii) REQUIREMENT.—In carrying out
23 this subparagraph, the Secretary may ex-
24 change public land within the State for pri-
25 vate land of substantially equal value with-

1 in the boundaries of the Reservation, in ac-
2 cordance with section 206 of the Federal
3 Land Policy and Management Act of 1976
4 (43 U.S.C. 1716).

5 (D) VALUATION.—In determining the fair
6 market value of land under subparagraph (C),
7 the parties to an exchange made pursuant to
8 that subparagraph shall give due consideration
9 to the value of improvements on the land.

10 (E) TITLE.—If the Secretary obtains pri-
11 vate land pursuant to subparagraph (C), the
12 Secretary shall transfer title to the land to the
13 Tribes.

14 (F) TRUST.—Title to any private or public
15 land transferred to the Tribes pursuant to this
16 paragraph shall—

17 (i) be vested in the United States in
18 trust for the sole use and benefit of the
19 Tribes; and

20 (ii) be recognized as part of the Res-
21 ervation, if the land is located within the
22 boundaries of the Reservation.

23 (G) TRIBAL ASSISTANCE.—The Tribes
24 shall assist in obtaining prospective willing par-
25 ties to exchange private land within the Res-

1 ervation for public land within the State under
2 this paragraph.

3 (j) REVIEW OF DECISIONS.—A court of competent
4 jurisdiction shall review the decisions of the Flathead Res-
5 ervation Water Management Board and the Montana De-
6 partment of Fish, Wildlife, and Parks in accordance
7 with—

- 8 (1) the Compact;
- 9 (2) the Law of Administration; and
- 10 (3) this Act.

11 (k) PAYMENTS TO CERTAIN COUNTIES.—

12 (1) PAYMENTS.—

13 (A) BY SECRETARY.—Subject to para-
14 graph (2), to reduce the financial impact on the
15 counties in which the land restored by section
16 13 is located, the Secretary shall make pay-
17 ments to Lake County and Sanders County in
18 the State, out of amounts in the fund estab-
19 lished under section 401(a) of the Act of June
20 15, 1935 (16 U.S.C. 715s(a)).

21 (B) BY TRIBES.—To ensure that culverts,
22 bridges, and roads that intersect with, or are
23 otherwise located within, the supply and dis-
24 tribution network of the Flathead Indian irriga-
25 tion project comply with Federal environmental

1 requirements, to ensure public safety, and to
2 enhance Tribal fisheries on the Reservation, the
3 Tribes shall allocate from the Trust Fund
4 amounts withdrawn for the purposes described
5 in section 8(g)(14), under an agreement ap-
6 proved by the Secretary—

7 (i) \$5,000,000 to Lake County in the
8 State; and

9 (ii) \$5,000,000 to Sanders County in
10 the State.

11 (2) AMOUNT OF PAYMENTS.—The amount of
12 the payments under paragraph (1)(A) shall be equal
13 to the amount each county would have received if
14 this section had not been enacted.

15 (3) TREATMENT OF LAND FOR PURPOSES OF
16 CALCULATING PAYMENTS.—For the limited purposes
17 of calculating payments to Lake County and Sand-
18 ers County under this subsection and section 401 of
19 the Act of June 15, 1935 (16 U.S.C. 715s), the land
20 restored by section 13 shall be treated as a fee area
21 (as defined in section 401(g) of the Act of June 15,
22 1935 (16 U.S.C. 715s(g))).

23 **SEC. 13. NATIONAL BISON RANGE RESTORATION.**

24 (a) FINDINGS; PURPOSES.—

25 (1) FINDINGS.—Congress finds that—

1 (A) the Reservation was set aside for the
2 Tribes in 1855 under the treaty between the
3 United States and the Tribes concluded at Hell
4 Gate on July 16, 1855 (12 Stat. 975);

5 (B) the National Bison Range was estab-
6 lished as a conservation measure in 1908, a
7 time when the bison were at grave risk of ex-
8 tinction;

9 (C) the National Bison Range is located in
10 the middle of the Reservation on land that was
11 acquired by the United States in what was later
12 held, in the civil action entitled “Confederated
13 Salish and Kootenai Tribes of the Flathead In-
14 dian Reservation, Montana v. United States”
15 (437 F.2d 458 (Ct.Cl. 1971)), to be a taking
16 under the Fifth Amendment to the Constitution
17 of the United States;

18 (D) the Tribes never consented to the re-
19 moval of the land described in subparagraph
20 (C) from Tribal ownership;

21 (E) since time immemorial until the estab-
22 lishment of the National Bison Range, the
23 Tribes had used the land described in subpara-
24 graph (C) for—

1 (i) hunting, fishing, and gathering;

2 and

3 (ii) cultural and many other purposes;

4 (F)(i) in the 1870s, when slaughter re-
5 sulted in the risk of bison extinction, a Pend
6 d'Oreille man named Little Falcon Robe re-
7 ceived approval from leaders of the Tribes to
8 bring orphaned bison calves across the Conti-
9 nental Divide to the Reservation for purposes of
10 starting a herd for subsistence and conservation
11 purposes;

12 (ii) starting with just a few bison calves,
13 the animals grew into a large herd under the
14 stewardship of members of the Tribes, who
15 later included Michel Pablo and Charles Allard;
16 and

17 (iii) the Reservation was the home of that
18 free-ranging herd of bison for decades before
19 the establishment of the National Bison Range;

20 (G) when the Reservation was opened for
21 homesteading, a free-ranging bison herd was no
22 longer feasible, resulting in Michel Pablo selling
23 the herd to off-Reservation interests;

24 (H) many of the bison, or their descend-
25 ants, from the Tribal member-managed herd

1 were repurchased and brought back to the Res-
2 ervation to form the original herd for the Na-
3 tional Bison Range;

4 (I) the bison herd at the National Bison
5 Range descends largely from a herd started and
6 managed as described in subparagraph (F);

7 (J) the Tribes—

8 (i) have played a substantive role as
9 conservation leaders, often in partnership
10 with the National Bison Range;

11 (ii) have demonstrated a long-term
12 commitment to responsible management of
13 the land and resources surrounding the
14 National Bison Range; and

15 (iii) desire to carry out the purposes
16 for which the National Bison Range was
17 established;

18 (K) the Tribes have extensive experience in
19 wildlife and natural resources management, in-
20 cluding—

21 (i) the establishment and management
22 of the 91,000-acre Mission Mountains
23 Tribal Wilderness, the first tribally des-
24 ignated wilderness area in the United
25 States;

1 (ii) special management districts for
2 large animals, such as the Little Money
3 Bighorn Sheep Management Area and the
4 Ferry Basin Elk Management Area; and

5 (iii) the restoration and management
6 of bighorn sheep populations, peregrine fal-
7 cons, and trumpeter swans on the Reserva-
8 tion;

9 (L) the Tribes have an extensive history of
10 successful partnerships with Federal agencies
11 with respect to issues such as—

12 (i) threatened and endangered species
13 management;

14 (ii) migratory waterfowl management;
15 and

16 (iii) wetland habitat management;

17 (M)(i) the Tribes have entered into prior
18 management-related agreements relating to the
19 National Bison Range under title IV of the In-
20 dian Self-Determination and Education Assist-
21 ance Act (25 U.S.C. 5361 et seq.); and

22 (ii) the Tribes and the United States de-
23 sire to build on past and current partnerships,
24 as well as honor and advance the Federal and

1 Tribal objectives of increasing Tribal autonomy
2 and Tribal governmental capacity;

3 (N) since the establishment of the National
4 Bison Range, additional herds of bison have
5 been established on other national wildlife ref-
6 uges and national parks;

7 (O) the facts and history regarding the
8 Federal Government, the Tribes, the bison, and
9 land on the Reservation acquired for the Na-
10 tional Bison Range are exceptional cir-
11 cumstances that warrant action by Congress;
12 and

13 (P) the United States should hold title in
14 and to the land comprising the National Bison
15 Range, with beneficial title of the land being re-
16 stored to the Tribes for—

17 (i) continued bison conservation;

18 (ii) other wildlife and natural resource
19 management purposes; and

20 (iii) other nonconflicting purposes of
21 the Tribes.

22 (2) PURPOSES.—The purposes of this section
23 are—

24 (A) to acknowledge the history, culture,
25 and ecological stewardship of the Tribes with

1 respect to the land on the Reservation acquired
2 for the National Bison Range, bison, and other
3 natural resources;

4 (B) to ensure that the land, bison, and
5 other resources referred to in subparagraph (A)
6 continue to be protected and enhanced;

7 (C) to continue public access and edu-
8 cational opportunities; and

9 (D) to ensure a smooth transition for land,
10 bison, and other natural resources as the land
11 is restored to Federal trust ownership for the
12 benefit of the Tribes.

13 (b) DEFINITION OF NATIONAL BISON RANGE.—In
14 this section, the term “National Bison Range” means all
15 land within the Reservation that was reserved for the na-
16 tional bison range under the matter under the heading
17 “NATIONAL BISON RANGE” under the heading “MIS-
18 CELLANEOUS” under the heading “DEPARTMENT OF AG-
19 RICULTURE” in the Act of May 23, 1908 (16 U.S.C. 671)
20 (as in effect on the day before the date of enactment of
21 this Act).

22 (c) RESTORATION OF LAND.—

23 (1) IN GENERAL.—Notwithstanding any other
24 provision of law, for the purposes of conserving
25 bison, wildlife, and natural resources, and of safe-

1 guarding the interests of the Tribes in those re-
2 sources and the traditional, cultural, and other inter-
3 ests of the Tribes, all land comprising the National
4 Bison Range (including all natural resources, inter-
5 ests, and appurtenances of that land) shall be held
6 in trust by the United States for the benefit of the
7 Tribes.

8 (2) ADMINISTRATION.—The land restored by
9 paragraph (1) shall be—

10 (A) a part of the Reservation;

11 (B) administered under the laws (including
12 regulations) applicable to Indian trust land; and

13 (C) managed by the Tribes, in accordance
14 with paragraph (3), solely for the care and
15 maintenance of bison, wildlife, and other nat-
16 ural resources, including designation or naming
17 of the restored land.

18 (3) TRIBAL MANAGEMENT.—In managing the
19 land restored by paragraph (1), the Tribes shall—

20 (A) provide public access and educational
21 opportunities; and

22 (B) at all times, have a publicly available
23 management plan for the land, bison, and nat-
24 ural resources, which shall include actions to

1 address management and control of invasive
2 weeds.

3 (d) CONVEYANCE OF BUILDINGS AND OTHER STRUC-
4 TURES.—

5 (1) IN GENERAL.—The United States shall con-
6 vey to the Tribes, to own in fee, all ownership inter-
7 ests of the United States in all buildings, structures,
8 improvements, and appurtenances located on the
9 land restored by subsection (c)(1).

10 (2) PERSONAL PROPERTY.—The United States
11 may convey to the Tribes any personal property
12 owned by the United States and found on, or other-
13 wise associated with, the land restored by subsection
14 (c)(1).

15 (e) RELINQUISHMENT OF RIGHTS TO BISON.—The
16 United States relinquishes to the Tribes all interests of
17 United States in the bison on the land restored by sub-
18 section (c)(1).

19 (f) TRANSITION.—

20 (1) IN GENERAL.—Notwithstanding any other
21 provision of law, during the 2-year period beginning
22 on the date of enactment of this Act, the Secretary
23 shall cooperate with the Tribes in transition activi-
24 ties regarding the management of land, bison, and
25 other resources conveyed by this Act, including by

1 providing to the Tribes funds, personal property,
2 equipment, or other resources determined to be ap-
3 propriate by the Secretary for the performance of, or
4 assistance with, the types of activities carried out by
5 the Secretary at the National Bison Range as of the
6 date of enactment of this Act.

7 (2) EFFECT.—Consistent with subsections (c),
8 (d), and (e), nothing in this section authorizes the
9 Director of the United States Fish and Wildlife
10 Service to retain ownership or control of any real or
11 personal property conveyed by this section, except as
12 the Tribes may agree to in writing.

13 (g) REPEAL.—The matter under the heading “NA-
14 TIONAL BISON RANGE” under the heading “MISCELLA-
15 NEOUS” under the heading “DEPARTMENT OF AGRI-
16 CULTURE” in the Act of May 23, 1908 (16 U.S.C. 671),
17 is repealed.

18 (h) LIABILITY.—

19 (1) FUNDING FOR LIABILITY INSURANCE.—For
20 the continued protection of the public, and as long
21 as public visitation is required by Federal law for
22 the land restored by this section, the Secretary shall
23 provide to the Tribes funding sufficient to procure li-
24 ability insurance covering tort actions filed by mem-
25 bers of the public.

1 (2) LIABILITY OF TRIBES.—The Tribes shall
2 not be liable for any land, soil, surface water,
3 groundwater, or other contamination, injury, or
4 damage resulting from the storage, disposal, release,
5 or presence of any hazardous substance (as defined
6 in section 101 of the Comprehensive Environmental
7 Response, Compensation, and Liability Act of 1980
8 (42 U.S.C. 9601)) on any portion of the land re-
9 stored by this section on or before the date of the
10 conveyance, unless the Tribes would otherwise have
11 been responsible for the storage, disposal, release, or
12 presence.

13 (i) CLAIMS AGAINST UNITED STATES.—No claim
14 may be brought pursuant to chapter 7 of title 5, United
15 States Code, or section 1491 or 1505 of title 28, United
16 States Code, against the United States, or any agency,
17 officer, or employee of the United States, concerning the
18 preconveyance or postconveyance management of the land
19 and other property conveyed by this section.

20 (j) EFFECT.—Nothing in this section relieves the
21 United States of any obligation under section 120(h)(3)
22 of the Comprehensive Environmental Response, Com-
23 pensation, and Liability Act of 1980 (42 U.S.C.
24 9620(h)(3)).

1 (k) NO PRECEDENT.—The provisions of this sec-
2 tion—

3 (1) are uniquely suited to address the distinct
4 circumstances, facts, history, and relationships in-
5 volved with the bison, land, and Tribes; and

6 (2) are not intended, and shall not be inter-
7 preted, to establish a precedent for any other situa-
8 tion regarding Federal land, property, or facilities.

9 (l) INDIAN GAMING REGULATORY ACT.—The land
10 restored by this section shall not be eligible or used for
11 any gaming activity carried out under the Indian Gaming
12 Regulatory Act (25 U.S.C. 2701 et seq.).

13 **SEC. 14. EFFECT.**

14 Nothing in this Act affects any provision of law (in-
15 cluding regulations) in effect on the day before the date
16 of enactment of this Act with respect to preenforcement
17 review of any Federal environmental enforcement action.

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