

Applicability.
42 USC 1395aa
note.

DIVISION DD—MONTANA WATER RIGHTS PROTECTION ACT

Montana Water Rights Protection Act.
Native Americans.
25 USC 5301
note.

SEC. 1. SHORT TITLE.

This division may be cited as the “Montana Water Rights Protection Act”.

SEC. 2. PURPOSES.

The purposes of this Act are—
(1) to achieve a fair, equitable, and final settlement of claims to water rights in the State of Montana, and in recognition of article I, and section 3 of article IX, of the Montana State Constitution for—

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

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

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

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

(A) to execute the Compact; and

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

(4) to authorize funds necessary for the implementation of—

(A) the Compact; and

(B) this Act.

SEC. 3. DEFINITIONS.

(a) IN GENERAL.—In this Act:

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

(A) located within the Reservation; and

(B) held in trust by the United States.

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

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

(A) the water rights compact entered into and ratified, as applicable, by the Confederated Salish and Kootenai Tribes, the State, and the United States, as contained in section 85–20–1901 of the Montana Code Annotated (2019), including—

(i) any appendix or exhibit to that compact; and

(ii) any modifications authorized by that compact;

and

(B) any amendment to the compact referred to in subparagraph (A) (including an amendment to an appendix or exhibit) that is—

(i) executed to ensure that the Compact is consistent with this Act; or

(ii) otherwise authorized by the Compact and this Act.

(4) ENFORCEABILITY DATE.—The term “enforceability date” means the date described in section 10(b).

(5) FLATHEAD INDIAN IRRIGATION PROJECT.—

(A) IN GENERAL.—The term “Flathead Indian irrigation project” means the Federal irrigation project developed by the United States to irrigate land within the Reservation pursuant to—

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

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

(B) INCLUSIONS.—The term “Flathead Indian irrigation project” includes—

(i) all land and any reservoir, easement, right-of-way, canal, ditch, lateral, or any other facility of

the project referred to in subparagraph (A) (regardless of location on or off the Reservation); and

(ii) any headgate, pipeline, pump, building, heavy equipment, vehicle, supplies, record, copy of a record, or any other physical, tangible object of real or personal property used in the management and operation of the project referred to in subparagraph (A).

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

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

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

(9) INDIAN TRIBE.—The term “Indian tribe” has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304).

(10) LAW OF ADMINISTRATION.—The term “Law of Administration” means the Unitary Administration and Management Ordinance, as set forth in Appendix 4 to the Compact.

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

(12) STATE.—

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

(B) INCLUSIONS.—The term “State” includes all officers, agencies, departments, and political subdivisions of the State.

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

(A) the Compact; and

(B) this Act.

(14) TRIBES.—

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

(B) INCLUSIONS.—The term “Tribes” includes all officers, agencies, and departments of the Tribes.

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

(b) DEFINITIONS OF CERTAIN TERMS.—Any term used but not defined in this Act, including the terms “Existing Use”, “Historic Farm Deliveries”, “Instream Flow”, “Minimum Reservoir Pool Elevations”, and “Reservation”, shall have the meaning given the term in article II of the Compact.

SEC. 4. RATIFICATION OF COMPACT.

(a) RATIFICATION.—

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

(2) AMENDMENTS.—Any amendment to the Compact is authorized, ratified, and confirmed, to the extent that such an amendment—

(A) is executed to ensure that the Compact is consistent with this Act; or

(B)(i) is approved by the Secretary;

(ii) concerns nonmonetary matters; and

(iii) does not affect the water rights of the Tribes determined in the Compact, or any other property held in trust by the United States on behalf of the Tribes or allottees.

(3) MODIFICATIONS.—Nothing in this Act—

(A) precludes the Secretary from approving a modification to the Compact, including an appendix or exhibit to the Compact, that is consistent with this Act; or

(B) authorizes amendments or modifications that otherwise require congressional approval under—

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

(ii) any other applicable Federal law.

(b) EXECUTION.—To the extent that the Compact does not conflict with this Act, the Secretary shall execute the Compact, including all exhibits to, appendices to, and parts of the Compact requiring the signature of the Secretary.

(c) ENVIRONMENTAL COMPLIANCE.—

(1) IN GENERAL.—In implementing the Compact and this Act, the Secretary and the Tribes shall ensure compliance with—

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

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

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

(2) PERFORMANCE OF COMPLIANCE ACTIVITIES.—The Secretary and the Tribes shall perform appropriate Federal environmental compliance activities relating to any activity undertaken by the Secretary or Tribes pursuant to this Act prior to commencement of that activity.

(3) EFFECT OF EXECUTION.—

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

(B) COMPLIANCE.—The Secretary shall ensure compliance with all Federal laws and regulations necessary to implement the Compact and this Act.

(d) PUBLIC AVAILABILITY.—As provided in articles IV.I.b (relating to hearings), IV.I.c (relating to the employment of a water engineer), and IV.I.7.e (relating to Board records) of the Compact, and in recognition of section 9 of article II of the Montana State Constitution, all records of the Flathead Reservation Water Management Board and the Water Engineer employed by the Board shall be open to public inspection.

SEC. 5. TRIBAL WATER RIGHT.

(a) INTENT OF CONGRESS.—It is the intent of Congress to provide to each allottee benefits that are equivalent to, or that exceed, the benefits possessed by allottees on the day before the date of enactment of this Act, taking into consideration—

(1) the potential risks, cost, and time delay associated with litigation that would be resolved by the Compact and this Act;

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

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

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

(b) CONFIRMATION OF TRIBAL WATER RIGHT.—

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

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

(A) the Compact; and

(B) this Act.

(3) CONFLICT.—In the event of a conflict between the Compact and this Act, the provisions of this Act shall control.

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

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

(2) shall not be subject to forfeiture or abandonment.

(d) ALLOTTEES.—

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

(2) ENTITLEMENTS TO WATER.—

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

(B) WATER FOR IRRIGATION.—Each allottee shall be entitled to a just and equitable allocation of water for irrigation purposes, to be enforceable under paragraph (3)(B).

(3) CLAIMS.—

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

(i) the Law of Administration; or

(ii) other applicable Tribal law.

(B) WATER FOR IRRIGATION.—After the exhaustion of all remedies available under the Law of Administration or other applicable Tribal law, an allottee may seek relief under section 7 of the Act of February 8, 1887 (25 U.S.C. 381), or other applicable law, to seek a just and equitable allocation of water for irrigation purposes under paragraph (2)(B).

(4) AUTHORITY OF SECRETARY.—The Secretary shall have the authority to protect the rights of allottees in accordance with this section.

(e) AUTHORITY OF TRIBES.—

(1) IN GENERAL.—The Tribes shall have the authority to allocate, distribute, and lease the Tribal Water Right for any use on the Reservation in accordance with—

- (A) the Compact;
- (B) the Law of Administration;
- (C) this Act; and
- (D) applicable Federal law.

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

(3) LAND LEASES BY ALLOTTEES.—Notwithstanding paragraph (1), an allottee may lease any interest in land held by the allottee, together with any water right determined to be appurtenant to the interest in land, in accordance with the Law of Administration.

(f) LAW OF ADMINISTRATION.—

(1) IN GENERAL.—During the period beginning on the date of enactment of this Act and ending on the date on which the Law of Administration becomes effective on the Reservation, the Secretary shall administer, with respect to the rights of allottees, the Tribal Water Right in accordance with this Act.

Time period.

(2) APPROVAL.—

(A) IN GENERAL.—The Law of Administration is approved.

(B) REGISTRATIONS.—As provided in sections 3 and 4 of article IX of the Montana State Constitution and section 1-1-108 of the Law of Administration, all water rights and changes of use authorized under the Law of Administration, including all registrations required by sections 2-1-101 through 2-1-107, shall be provided to the department of natural resources and conservation of the State, to be entered into the water rights database of the department.

(3) AMENDMENTS.—

(A) IN GENERAL.—An otherwise valid amendment to the Law of Administration that affects a right of an allottee shall not be effective unless the amendment is approved by the Secretary in accordance with this subsection.

(B) APPROVAL PERIOD.—

(i) IN GENERAL.—Subject to clause (ii), the Secretary shall approve or disapprove an amendment to the Law of Administration not later than 180 days after the date of ratification of the amendment by the Tribes and the State.

Deadline.

(ii) EXTENSION.—The deadline described in clause (i) may be extended by the Secretary after consultation with the Tribes.

Consultation.

(4) CONFLICT.—In the event of a conflict between the Law of Administration and this Act, the provisions of this Act shall control.

(g) ADMINISTRATION.—

(1) ALIENATION.—The Tribes shall not permanently alienate any portion of the Tribal Water Right.

(2) PURCHASES OR GRANTS OF LAND FROM INDIANS.—An authorization provided by this Act for an allocation, distribution, lease, or any other arrangement shall be considered to

satisfy any requirement for authorization of the action by treaty or convention under section 2116 of the Revised Statutes (25 U.S.C. 177).

(3) **PROHIBITION ON FORFEITURE.**—The nonuse of all, or any portion of, the Tribal Water Right by a lessee or contractor shall not result in the forfeiture, abandonment, relinquishment, or other loss of all, or any portion of, the Tribal Water Right.

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

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

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

SEC. 6. STORAGE ALLOCATION FROM HUNGRY HORSE RESERVOIR.

(a) **STORAGE ALLOCATION TO TRIBES.**—

(1) **IN GENERAL.**—Subject to paragraph (2), the Secretary shall allocate to the Tribes 90,000 acre-feet per year, as measured at the Hungry Horse Dam, of storage water in Hungry Horse Reservoir for use by the Tribes for any beneficial purpose on or off the Reservation under a water right held by the United States and managed by the Bureau of Reclamation.

(2) **LIMITATIONS.**—The allocation under paragraph (1) shall be subject to—

(A) Appendix 7 to the Compact, entitled “Flathead Basin Tribal Depletions Study”, prepared by the Bureau of Reclamation, and dated September 2012; and

(B) Appendix 8 to the Compact, entitled “Hungry Horse Reservoir, Montana: Biological Impact Evaluation and Operational Constraints for a proposed 90,000-acre-foot withdrawal”, prepared by the State, as revised on September 14, 2011.

(b) **TREATMENT.**—

(1) **IN GENERAL.**—The allocation under subsection (a) shall be considered to be part of the Tribal Water Right.

(2) **ADMINISTRATION.**—The Tribes shall administer the water allocated under subsection (a) in accordance with, and subject to the limitations of, the Compact and this Act.

(c) **ALLOCATION AGREEMENT.**—

(1) **IN GENERAL.**—As a condition of receiving the allocation under subsection (a), the Tribes shall enter into an agreement with the Secretary to establish the terms and conditions of the allocation, in accordance with the Compact and this Act.

(2) **INCLUSIONS.**—The agreement under paragraph (1) shall include provisions establishing that—

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

(B) the Tribes, and not the United States, shall be entitled to all consideration due to the Tribes under any lease, contract, or agreement entered into by the Tribes pursuant to subsection (d);

(C) the United States shall have no obligation to monitor, administer, or account for—

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

(ii) the expenditure of those funds;

(D) if the capacity or function of any facility of Hungry Horse Reservoir or Hungry Horse Dam is significantly reduced, or is anticipated to be significantly reduced, for an extended period of time, the Tribes shall have the same storage rights as other storage contractors with respect to the allocation under subsection (a);

(E) the costs associated with the construction and operation of the storage facilities at Hungry Horse Reservoir and Hungry Horse Dam allocable to the Tribes shall be nonreimbursable;

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

(G) the Tribes shall not be required to make payments to the United States for the agreement or any water allocated under subsection (a), except for each acre-foot of stored water leased or transferred for industrial purposes;

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

(i) the Tribes shall pay annually to the United States an amount sufficient to cover the proportionate share of the annual operation, maintenance, and replacement costs for the Hungry Horse Project allocable to that quantity of water; and

(ii) the annual payments of the Tribes shall be reviewed and adjusted, as appropriate, to reflect the actual operation, maintenance, and replacement costs for the Hungry Horse Project; and

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

(i) any entity of the Tribes; or

(ii) any entity wholly owned by the Tribes.

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

(1) the water that is the subject of the agreement is used within the Flathead Basin or the Clark Fork Basin within the State; and

(2) the agreement does not permanently alienate any portion of water allocated under subsection (a).

(e) MITIGATION WATER.—Notwithstanding section 5(e)(2), the Tribes shall make available for lease not more than 11,000 acre-feet per year of the water allocated under subsection (a), in accordance with the Compact.

(f) NO CARRYOVER STORAGE.—The allocation under subsection (a) shall not be increased by any year-to-year carryover storage.

(g) DEVELOPMENT AND DELIVERY COSTS.—The United States shall not be required to pay the cost of developing or delivering any water allocated under subsection (a).

(h) NEW USES.—Except as provided in article III.C.1.c of the Compact, the Tribes shall not develop any new use for the allocation

Contracts.

under subsection (a) until the date on which the agreement entered into under subsection (c) takes effect.

(i) **EFFECTIVE DATE.**—The allocation under subsection (a) takes effect on the enforceability date.

SEC. 7. IRRIGATION PROJECT-RELATED COMPACT IMPLEMENTATION.

(a) **PURPOSES.**—The purposes of this section are—

(1) to implement key provisions of the Compact regarding the Tribal Water Right by authorizing and carrying out the activities described in subsection (b) relative to components of the Flathead Indian irrigation project, in order—

(A) to conserve water resources, enhance fish and wildlife habitat, especially habitat of threatened and endangered species, and improve the movement of fish through and around Flathead Indian irrigation project facilities;

(B) to ensure that the necessary water supplies are provided to protect Instream Flow, Existing Uses, and Historic Farm Deliveries;

(C) to provide for the safe and efficient storage, delivery, and routing of water; and

(D) to dedicate the water thereby saved through modernization and rehabilitation activities to the water rights of the Tribes for Instream Flow and Minimum Reservoir Pool Elevations;

(2) to require that, in carrying out the activities under subsection (b), the Secretary and the Tribes—

(A) are guided by existing studies commissioned by the Secretary and the Tribes that identify current facility conditions and describe future modernization recommendations;

(B) recognize the need to maintain flexibility and modify the guidance provided by the studies described in subparagraph (A), as appropriate and consistent with the processes established and entities designated in the Compact; and

(C) carry out all such activities that can be accomplished in a cost-effective manner and that are consistent with the Compact; and

(3) to ensure the prudent and knowledgeable conservation, management, and protection of the water resources of the Reservation through the activities described in subsection (b), which will ensure the protection of the Reservation as the permanent homeland of the Tribes in accordance with the treaty between the United States and the Tribes concluded at Hell Gate on July 16, 1855 (12 Stat. 975).

(b) **ACTIVITIES.**—Subject to the availability of appropriations, the Secretary, or on the request of the Tribes, the Tribes on behalf of the Secretary under title IV of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5361 et seq.), shall in accordance with subsection (c) carry out the following activities relating to the Flathead Indian irrigation project:

(1) **REHABILITATION AND MODERNIZATION.**—

(A) Rehabilitation and modernization of structures, canals, and pumping facilities, including dam safety improvements, irrigation facility upgrades that improve water management and operational control at irrigation diversion works, and irrigation facility upgrades to reduce

losses in conveyance of water from irrigation sources of supply to irrigation points of use, in accordance with the Compact.

(B) Planning, design, and construction of additional pumping facilities.

(C) Operational improvements to infrastructure within the distribution network of the Flathead Indian irrigation project.

(D) Reconstruction, replacement, and automation at irrigation diversion works.

(E) Lining of open canals, and placement of open canals in pipe.

(F) Fencing and physical project access enhancements.

(2) MITIGATION, RECLAMATION, AND RESTORATION.—

(A) Mitigation, reclamation, and restoration of streams, wetlands, banks, slopes, and wasteways within, appurtenant to, or affected by the Flathead Indian irrigation project.

(B) The installation of screens, barriers, passages, or ladders to prevent fish entrainment in irrigation ditches and canals within, or appurtenant to, the Flathead Indian irrigation project.

(3) ACQUISITION OF INTERESTS.—Acquisition of easements or other interests in real property necessary to carry out any activity under this section.

(c) ENVIRONMENTAL COMPLIANCE.—

(1) IN GENERAL.—Prior to the commencement of any activity under subsection (b), the Secretary, or the Tribes if the Tribes elect to perform the activities on behalf of the Secretary under title IV of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5361 et seq.), shall perform appropriate environmental, cultural, and historical compliance activities relating to the activity, including to ensure compliance with—

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

(B) division A of subtitle III of title 54, United States Code (formerly known as the “National Historic Preservation Act” (16 U.S.C. 470 et seq.)).

(2) COSTS.—All costs associated with the performance of compliance activities under paragraph (1) shall be paid with funds deposited in the Trust Fund, on the condition that any costs associated with the performance of Federal approval or other review of such compliance work or costs associated with inherently Federal functions shall remain the responsibility of the Secretary.

(d) FUNDING.—

(1) INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT COMPACTING.—

(A) FUNDING AUTHORITY AND AGREEMENTS.—Notwithstanding any other provision of law, if the Tribes elect to perform all activities described in subsection (b) on behalf of the Secretary, the Secretary shall enter into a self-governance agreement with the Tribes under title IV of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5361 et seq.) covering all such activities.

(B) FUNDING AGREEMENTS.—The Secretary shall use funds only from the Salish and Kootenai Compact Account established under section 8(b)(1) for any funding agreement, including any related contract support costs, under which the Tribes carry out activities described in subsection (b).

Deadline.

(C) TIMING FOR ELECTION.—Not later than 120 days after the date on which funds are first appropriated for deposit in the Trust Fund, or not later than such alternative later date as is agreed to by the Tribes and the Secretary, the Tribes may elect to perform all activities described in subsection (b) on behalf of the Secretary.

(D) APPLICABILITY OF ISDEAA.—Any funds transferred for use in a funding agreement under this paragraph shall be subject to—

(i) title IV of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5361 et seq.); and

(ii) the self-governance agreement and funding agreement entered into between the Tribes and the Secretary.

(E) RELATION TO COMPACT.—The Tribes and the Federal Government—

(i) shall carry out the activities described in subsection (b) in a manner that is consistent with, and fulfills, the respective obligations of the Tribes and the Federal Government under the Compact; and

(ii) may not carry out any action pursuant to the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5301 et seq.) that is inconsistent with the rights and responsibilities under the Compact.

(F) APPLICABILITY OF CERTAIN ISDEAA PROVISIONS.—For purposes of this Act—

(i) the “annual trust evaluation” required under section 403(d) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5363(d)) shall monitor the performance, and progress toward completion, of activities under subsection (b) that the Tribes are carrying out;

(ii) the activities described in subsection (b) shall be considered to be “construction programs or projects” under section 403(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5363(e)); and

Requirements.

(iii) reporting requirements regarding planning, design, and the use and expenditure of funds shall be negotiated and included within a funding agreement.

(2) SECRETARIAL PERFORMANCE OF ACTIVITIES.—If the Tribes do not elect to carry out the activities described in subsection (b) by the deadline established under paragraph (1)(C), the Secretary shall carry out the activities using amounts made available under section 8(c)(3).

(3) NONREIMBURSABILITY OF COSTS.—All costs incurred in carrying out this section shall be nonreimbursable.

(4) ADMINISTRATION.—

(A) IN GENERAL.—Subject to subparagraph (B), the Secretary and the Tribes shall negotiate the cost of any oversight activity carried out by the Secretary under any agreement entered into under paragraph (1)(A).

(B) REQUIREMENT.—All costs associated with an oversight activity—

(i) shall be paid with funds deposited in the Salish and Kootenai Compact Account established under section 8(b)(1); and

(ii) notwithstanding subsection (c), may include costs associated with review or approval of environmental compliance work and related Federal functions.

(C) LIMITATION ON COST.—The total cost described in subparagraph (A) shall not exceed 3 percent of the total project costs for each project.

(e) TREATMENT.—Any activities carried out pursuant to subsection (b) that result in improvements, additions, or modifications to the Flathead Indian irrigation project, including the acquisition of any real property interest, shall—

(1) become a part of the Flathead Indian irrigation project; and

(2) be recorded in the inventory of the Secretary relating to the Flathead Indian irrigation project.

(f) EASEMENTS AND RIGHTS-OF-WAY.—

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

(A) IN GENERAL.—On request of the Secretary, the Tribes shall grant, at no cost to the United States, such easements and rights-of-way over Tribal land as are necessary for construction relating to an activity under this section.

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

(2) LANDOWNER EASEMENTS AND RIGHTS-OF-WAY.—In partial consideration for the construction activities associated with the rehabilitation and modernization of the Flathead Indian irrigation project authorized by this section, and as a condition of receiving service from the Flathead Indian irrigation project, a willing landowner shall confirm or grant, at no cost to the United States or the Tribes, such easements and rights-of-way over the land of the landowner as may be necessary for—

(A) an activity authorized by this section; or

(B) access to and operation and maintenance of—

(i) the Flathead Indian irrigation project; or

(ii) the Mission Valley Power Project.

(3) CONDEMNATION NOT AUTHORIZED.—Nothing in this section authorizes the Secretary to condemn interests in land for the Flathead Indian irrigation project.

(g) LAND ACQUIRED BY UNITED STATES OR TRIBES.—Any land acquired within the boundaries of the Reservation by the United States on behalf of the Tribes, or by the Tribes on behalf of the Tribes and conveyed to the United States, in connection with the purposes of this section shall be held in trust by the United States for the benefit of the Tribes.

(h) EFFECT.—Nothing in this section—

- Determinations.
- (1) alters any applicable law under which the Bureau of Indian Affairs collects assessments or carries out the operation and maintenance of the Flathead Indian irrigation project; or
- (2) impacts the availability of amounts under section 9.
- (i) **WATER SOURCE FOR FLATHEAD INDIAN IRRIGATION PROJECT.**—
- (1) **IN GENERAL.**—The water source for the Flathead Indian irrigation project—
- (A) shall be determined in accordance with article II(32) of the Compact; and
- (B) shall consist of—
- (i) the water right set forth in article III.C.1.a of the Compact; and
- (ii) any use of water for irrigation and incidental purposes pursuant to an applicable water service contract.
- (2) **ENTITLEMENT TO DELIVERY OF WATER.**—Entitlement to delivery of available irrigation water for assessed parcels shall be determined in accordance with article IV.D.2 of the Compact.

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

- (a) **ESTABLISHMENT.**—The Secretary shall establish in the Treasury of the United States a trust fund, to be known as the “Séliš-Qlispé Ksanka Settlement Trust Fund”, to be allocated, maintained, managed, invested, and distributed by the Secretary, and to remain available until expended, consisting of the amounts deposited in the Trust Fund under section 9(a), together with any interest earned on those amounts, for the purpose of carrying out this Act.
- (b) **ACCOUNTS.**—The Secretary shall establish in the Trust Fund the following accounts:
- (1) The Salish and Kootenai Compact Account, for the uses described in paragraphs (1) and (2) of subsection (h).
- (2) The Salish and Kootenai Settlement Implementation Account, for any use described in subsection (h).
- (c) **DEPOSITS.**—
- (1) **IN GENERAL.**—The Secretary shall deposit in the Trust Fund the amounts made available pursuant to section 9(a)(1).
- (2) **ALLOCATION INTO ACCOUNTS.**—
- (A) **IN GENERAL.**—Subject to subparagraph (B), each year, the Secretary shall allocate from the Trust Fund amounts into each of the accounts described in paragraphs (1) and (2) of subsection (b) in such proportions as the Secretary and the Tribes may agree.
- (B) **REQUIREMENT.**—In any year, if the Tribes and the Secretary are unable to agree on the amounts to be allocated under subparagraph (A) for that year, the Secretary shall deposit equal sums in each account.
- (3) **TRANSFER.**—If the Tribes do not elect to carry out the activities described in subsection (b) of section 7 by the deadline described in subsection (d)(1)(C) of that section, the Secretary, on an annual basis, shall transfer funds from the account established under subsection (b)(1) to an appropriate programmatic account solely for the purpose of carrying out those activities and the activities described in section 7(c).
- (d) **MANAGEMENT AND INTEREST.**—

(1) **MANAGEMENT.**—On receipt and deposit of the funds into the Trust Fund, the Secretary shall manage, invest, and distribute the amounts in accordance with the investment authority of the Secretary under—

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

(B) the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4001 et seq.); and

(C) this section.

(2) **INVESTMENT EARNINGS.**—In addition to the deposits under section 9(a), any investment earnings, including interest, credited to the amounts in the Trust Fund shall be available for use in accordance with subsection (h).

(e) **AVAILABILITY OF AMOUNTS.**—

(1) **IN GENERAL.**—Amounts deposited in the Trust Fund (including any investment earnings) shall be made available to the Tribes by the Secretary beginning on the enforceability date, subject to the requirements of this Act.

(2) **USE.**—Notwithstanding paragraph (1), any amounts—

(A) deposited in the account described in subsection (b)(1) or transferred to another account under subsection (c)(3), shall be available to the Tribes or the Secretary, as applicable, on the date on which the amounts are deposited or transferred, for the uses described in subsection (h)(1), in accordance with Appendix 3.6 to the Compact; and

(B) deposited in the account described in subsection (b)(1) shall be available to the Tribes on the date on which the amounts are deposited for the uses described in subsection (h)(2).

(f) **WITHDRAWALS UNDER AITFMRA.**—

(1) **IN GENERAL.**—The Tribes may withdraw any portion of the amounts in the account described in subsection (b)(2) on approval by the Secretary of a Tribal management plan submitted by the Tribes in accordance with the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4001 et seq.).

(2) **INAPPLICABILITY OF AITFMRA.**—A withdrawal from the account described in subsection (b)(1)—

(A) shall be made only in accordance with subsection (e) and section 7; and

(B) notwithstanding any other provision of law, shall not be subject to the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4001 et seq.).

(3) **REQUIREMENTS.**—

(A) **IN GENERAL.**—In addition to the requirements under the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4001 et seq.), the Tribal management plan under paragraph (1) shall require that the Tribes shall spend all amounts withdrawn from the Trust Fund and any investment earnings accrued through the investments under the Tribal management plan in accordance with this Act.

(B) **ENFORCEMENT.**—The Secretary may carry out such judicial and administrative actions as the Secretary determines to be necessary to enforce the Tribal management plan to ensure that amounts withdrawn by the Tribes

Determination.

from the Trust Fund pursuant to this subsection are used in accordance with this Act.

(g) EFFECT.—Nothing in this Act provides to the Tribes the right to judicial review of a determination by the Secretary regarding whether to approve a Tribal management plan, except under subchapter II of chapter 5, and chapter 7 of title 5, United States Code (commonly known as the “Administrative Procedure Act”).

(h) USES.—The Tribes may use amounts in the Trust Fund to implement the Compact, the Law of Administration, and this Act for the following purposes:

(1) To carry out activities described in subsections (b) and (c) of section 7.

(2) The administration, implementation, and management of the Tribal Water Right and the regulation and administration of water rights within the Reservation under this Act, the Compact, and the Law of Administration, and such infrastructure as is necessary to meet related programmatic needs.

(3) To implement the Tribal Water Right through rehabilitation and improvement of agricultural Indian land within the Reservation.

(4) To construct and rehabilitate livestock fencing on Indian land within the Reservation.

(5) To mitigate and control noxious weeds on land within the Reservation.

(6) To plan, design, and construct improvements to irrigation systems on land served by the Flathead Indian irrigation project.

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

(8) To plan, design, and construct irrigation facilities on Indian land within the Reservation that is not served by the Flathead Indian irrigation project.

(9) To plan, design, construct, operate, maintain, and replace community water distribution and wastewater treatment facilities on the Reservation.

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

(11) To develop a cultural resources program relating to permitting necessary to conduct the activities authorized under this subsection (including cultural, historical, and archeological reviews, including training and certifications) and related infrastructure necessary to meet programmatic needs.

(12) To comply with Federal environmental laws for any use authorized by this subsection.

(13) To repair, rehabilitate, or replace culverts, bridges, and roads of the Flathead Indian irrigation project and any public or Tribal culverts, bridges, and roads that intersect with, or are otherwise located within, the supply and distribution network of the Flathead Indian irrigation project.

(i) LIABILITY.—Except with respect to amounts transferred in accordance with section 7(d), the Secretary shall not be liable for the expenditure or investment of any amounts withdrawn from the Trust Fund by the Tribes under this section.

(j) EXPENDITURE REPORTS.—

Compliance.

(1) **IN GENERAL.**—Not less frequently than annually, the Tribes shall submit to the Secretary an expenditure report describing—

Time period.

(A) the amount withdrawn from the Trust Fund under this section; and

(B) any authorized activities resulting from the use of a withdrawal under a Tribal management plan, in accordance with this Act.

(2) **APPLICATION.**—Any amounts transferred to the Tribes pursuant to a self-governance agreement and funding agreement entered into between the Tribes and the Secretary under title IV of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5361 et seq.) shall not be subject to paragraph (1).

(k) **OM&R COSTS.**—Except as otherwise provided in this Act, nothing in this Act affects any obligation of the United States with respect to the operation, maintenance, and repair of the Flat-head Indian irrigation project.

SEC. 9. FUNDING.

(a) **FUNDING.**—

(1) **AUTHORIZATION OF APPROPRIATIONS.**—There is authorized to be appropriated to the Secretary for deposit in the Trust Fund \$1,000,000,000, to remain available until expended, withdrawn, or reverted to the general fund of the Treasury.

(2) **MANDATORY FUNDING.**—

(A) **IN GENERAL.**—On October 1, 2020, and on each October 1 thereafter through October 1, 2029, out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall deposit in the Trust Fund \$90,000,000, to remain available until expended, withdrawn, or reverted to the general fund of the Treasury.

Effective dates.
Time period.

(B) **AVAILABILITY.**—Amounts deposited in the Trust Fund under subparagraph (A) shall be available without further appropriation.

(b) **FLUCTUATION IN COSTS.**—

(1) **IN GENERAL.**—Of the amounts authorized to be appropriated and appropriated to the Trust Fund under paragraphs (1) and (2), respectively, of subsection (a)—

(A) \$347,200,000 shall be increased or decreased, as appropriate, by such amounts as may be justified by reason of ordinary fluctuations in costs occurring after the date of enactment of this Act, as indicated by the Consumer Price Index for All Urban Consumers West Urban 50,000 to 1,500,000 index;

(B) \$111,400,000 shall be increased or decreased, as appropriate, by such amounts as may be justified by reasons of ordinary fluctuations in costs occurring after the date of enactment of this Act, as indicated by the Producer Price Index for the Bureau of Labor Statistics; and

(C) \$1,441,400,000 shall be increased or decreased, as appropriate, by such amounts as may be justified by reason of ordinary fluctuations in costs occurring after the date of enactment of this Act, as indicated by the Bureau of Reclamation Construction Costs Index—Composite Trend.

(2) **REQUIREMENTS FOR ADJUSTMENT PROCESS.**—The adjustment process under this subsection shall—

(A) take into account any agreement reached by the Secretary and the Tribes under paragraph (4); and

(B) be repeated for each subsequent amount appropriated for deposit in the Trust Fund until the amount authorized to be appropriated, as so adjusted, has been appropriated.

(3) PERIOD OF INDEXING.—The period of indexing adjustment under this subsection for any increment of funding shall end on the date on which funds are deposited in the Trust Fund.

(4) AGREEMENT.—Based on the activities likely to be conducted using amounts deposited in the Trust Fund, the Secretary and the Tribes may agree on which provisions of paragraph (1) shall govern the fluctuation in costs to be used in calculating the amount authorized to be appropriated under subsection (a)(1).

(c) LIMITATION ON USE OF RECLAMATION WATER SETTLEMENTS FUND.—Notwithstanding any other provision of law—

Time period.

(1) no amounts in the Reclamation Water Settlements Fund established by section 10501(a) of the Omnibus Public Land Management Act of 2009 (43 U.S.C. 407(a)) may be used by the Tribes or the Secretary to carry out any provision of this Act until the date that is 10 years after the date of enactment of this Act; and

Effective date.

(2) effective beginning on the date that is 10 years after that date of enactment, the total amount used by the Tribes and the Secretary to carry out this Act from the Reclamation Water Settlements Fund shall not exceed an amount equal to 50 percent of the total amount in the Fund on that date.

SEC. 10. WAIVERS AND RELEASES OF CLAIMS.

(a) WAIVERS AND RELEASES.—

(1) CLAIMS BY TRIBES AND UNITED STATES AS TRUSTEE FOR TRIBES.—Subject to the reservation of rights and retention of claims under subsection (c), as consideration for recognition of the Tribal Water Right and other benefits described in the Compact and this Act, the Tribes, acting on behalf of the Tribes and members of the Tribes (but not any member of the Tribes as an allottee), and the United States, acting as trustee for the Tribes and the members of the Tribes (but not any member of the Tribes as an allottee), shall execute a waiver and release with prejudice of all claims for water rights within the State that the Tribes, or the United States acting as trustee for the Tribes, asserted or could have asserted in any proceeding, including a State stream adjudication, on or before the enforceability date, except to the extent that such a right is recognized in the Compact and this Act.

(2) CLAIMS BY UNITED STATES AS TRUSTEE FOR ALLOTTEES.—Subject to the reservation of rights and the retention of claims under subsection (c), as consideration for recognition of the Tribal Water Right and other benefits described in the Compact and this Act, the United States, acting as trustee for allottees, shall execute a waiver and release with prejudice of all claims for water rights within the Reservation that the United States, acting as trustee for allottees, asserted or could have asserted in any proceeding, including a State stream adjudication, on

or before the enforceability date, except to the extent that such a right is recognized in the Compact and this Act.

(3) CLAIMS BY TRIBES AGAINST UNITED STATES.—Subject to the reservation of rights and retention of claims under subsection (c), the Tribes, acting on behalf of the Tribes and members of the Tribes (but not any member of the Tribes as an allottee), shall execute a waiver and release with prejudice of all claims against the United States (including any agency or employee of the United States) first arising before the enforceability date—

(A) relating to—

(i) water rights within the State that the United States, acting as trustee for the Tribes, asserted or could have asserted in any proceeding, including the general stream adjudication in the State, except to the extent that such rights are recognized as part of the Tribal Water Right under this Act;

(ii) foregone benefits from nontribal use of water, on and off the Reservation (including water from all sources and for all uses);

(iii) damage, loss, or injury to water, water rights, land, or natural resources due to loss of water or water rights (including damages, losses, or injuries to hunting, fishing, gathering, or cultural rights due to loss of water or water rights, claims relating to interference with, diversion, or taking of water, or claims relating to a failure to protect, acquire, replace, or develop water, water rights, or water infrastructure) within the State;

(iv) a failure to establish or provide a municipal, rural, or industrial water delivery system on the Reservation;

(v) damage, loss, or injury to water, water rights, land, or natural resources due to construction, operation, and management of the Flathead Indian irrigation project and other Federal land and facilities (including damages, losses, or injuries to Tribal fisheries, fish habitat, wildlife, and wildlife habitat);

(vi) damage, loss, or injury from failure to protect natural resources and land against noxious weeds impacts;

(vii) inadequate compensation for minerals extracted;

(viii) inadequate compensation for land and interests in land used for Bureau of Indian Affairs roads and wildlife refuges;

(ix) a failure to provide—

(I) for operation, maintenance, or deferred maintenance for the Flathead Indian irrigation project or any other irrigation system or irrigation project; or

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

(x) the litigation of claims relating to any water right of the Tribes in the State; and

(xi) the negotiation, execution, or adoption of the Compact or this Act;

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

(C) arising from the taking or acquisition of land or resources of the Tribes for the construction or operation of the Flathead Indian irrigation project.

(4) CERTAIN OFF-RESERVATION WATER RIGHTS.—

(A) IN GENERAL.—Notwithstanding the confirmation of the water rights of the Tribes described in Appendices 28 and 29 to the Compact, as consideration for recognition of the Tribal Water Right and other benefits described in the Compact and this Act, the Tribes shall relinquish any right, title, or claim to the water rights located within the Flathead basin and described in those appendices.

(B) REQUIREMENT.—The water rights described in subparagraph (A) shall be held solely by the State.

Federal Register,
publication.

(b) ENFORCEABILITY DATE.—The waivers and releases of claims under subsection (a) shall take effect on the date on which the Secretary publishes in the Federal Register a statement of findings that—

(1)(A) the Montana Water Court has approved the Compact in a manner from which no further appeal may be taken; or

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

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

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

(4) the Tribes have ratified the Compact;

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

(6) the waivers and releases described in subsection (a) have been executed by the Tribes and the Secretary.

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

(1) all claims relating to—

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

(i) the Compact;

(ii) any final decree; or

(iii) this Act; and

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

(i) the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.), including damages to natural resources;

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

(iii) the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) (commonly referred to as the “Clean Water Act”); and

(iv) any regulations implementing the Acts described in clauses (i) through (iii);

(2) all rights to use and protect water rights acquired after the date of enactment of this Act;

(3) all claims for damages, losses, or injuries to land or natural resources that are—

(A) not due to loss of water or water rights (including hunting, fishing, gathering, or cultural rights); and

(B) not covered by subsection (a)(3); and

(4) all rights, remedies, privileges, immunities, and powers not specifically waived and released pursuant to this Act or the Compact.

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

(1) except as otherwise expressly provided in the Compact or this Act, reduces or extends the sovereignty (including civil and criminal jurisdiction) of any government entity;

(2) affects the ability of the United States acting as sovereign to carry out any activity authorized by applicable law, including—

(A) the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.);

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

(C) the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) (commonly referred to as the “Clean Water Act”); and

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

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

(4) confers jurisdiction on any State court—

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

(B) to determine the duties of the United States or any other party under Federal law regarding health, safety, or the environment; or

(C) to conduct judicial review of any Federal agency action;

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

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

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

(e) TOLLING OF CLAIMS.—

(1) IN GENERAL.—Each applicable period of limitation and time-based equitable defense relating to a claim described in

Time period.

this section shall be tolled during the period beginning on the date of enactment of this Act and ending on the date on which the amounts made available to carry out this Act are transferred to the Secretary.

(2) EFFECT OF SUBSECTION.—Nothing in this subsection revives any claim or tolls any period of limitation or time-based equitable defense that expired before the date of enactment of this Act.

(f) EXPIRATION.—

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

(A) the amounts authorized to be appropriated by this Act have not been made available to the Secretary by not later than—

(i) January 21, 2031; or

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

(B) the Secretary fails to publish a statement of findings under subsection (b) by not later than—

(i) January 21, 2032; or

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

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

(A) the waivers and releases under subsection (a) shall—

(i) expire; and

(ii) have no further force or effect;

(B) the authorization, ratification, confirmation, and execution of the Compact under section 4 shall no longer be effective;

(C) any action carried out by the Secretary, and any contract or agreement entered into, pursuant to this Act shall be void;

(D) any unexpended Federal funds appropriated or made available to carry out the activities authorized by this Act, together with any interest earned on those funds, and any water rights or contracts to use water and title to other property acquired or constructed with Federal funds appropriated or made available to carry out the activities authorized by this Act shall be returned to the Federal Government, unless otherwise agreed to by the Tribes and the United States and approved by Congress; and

(E) except for Federal funds used to acquire or construct property that is returned to the Federal Government under subparagraph (D), the United States shall be entitled to offset any Federal funds made available to carry out this Act that were expended or withdrawn, or any funds made available to carry out this Act from other Federal authorized sources, together with any interest accrued on those funds, against any claims against the United States—

(i) relating to—

(I) water rights in the State asserted by—

(aa) the Tribes; or

- (bb) any user of the Tribal Water Right;
- or
- (II) any other matter covered by subsection (a)(3); or
- (ii) in any future settlement of water rights of the Tribes or an allottee.

SEC. 11. SATISFACTION OF CLAIMS.

(a) **TRIBAL CLAIMS.**—The benefits realized by the Tribes under this Act shall be in complete replacement of, complete substitution for, and full satisfaction of all claims of the Tribes against the United States waived and released pursuant to paragraphs (1) and (3) of section 10(a).

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

- (1) all claims waived and released pursuant to section 10(a)(2); and
- (2) any claims of an allottee against the United States that an allottee asserted or could have asserted that are similar in nature to a claim described in section 10(a)(2).

SEC. 12. NATIONAL BISON RANGE RESTORATION.

(a) **FINDINGS; PURPOSES.**—

(1) **FINDINGS.**—Congress finds that—

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

(B) the National Bison Range was established as a conservation measure in 1908, a time when the bison were at grave risk of extinction;

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

(D) the Tribes never consented to the removal of the land described in subparagraph (C) from Tribal ownership;

(E) since time immemorial until the establishment of the National Bison Range, the Tribes had used the land described in subparagraph (C) for—

- (i) hunting, fishing, and gathering; and
- (ii) cultural and many other purposes;

(F)(i) in the 1870s, when slaughter resulted in the risk of bison extinction, a Pend d’Oreille man named Little Falcon Robe received approval from leaders of the Tribes to bring orphaned bison calves across the Continental Divide to the Reservation for purposes of starting a herd for subsistence and conservation purposes;

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

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

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

(H) many of the bison, or their descendants, from the Tribal member-managed herd were repurchased and brought back to the Reservation to form the original herd for the National Bison Range;

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

(J) the Tribes—

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

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

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

(K) the Tribes have extensive experience in wildlife and natural resources management, including—

(i) the establishment and management of the 91,000-acre Mission Mountains Tribal Wilderness, the first tribally designated wilderness area in the United States;

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

(iii) the restoration and management of bighorn sheep populations, peregrine falcons, and trumpeter swans on the Reservation;

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

(i) threatened and endangered species management;

(ii) migratory waterfowl management; and

(iii) wetland habitat management;

(M)(i) the Tribes have entered into prior management-related agreements relating to the National Bison Range under title IV of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5361 et seq.); and

(ii) the Tribes and the United States desire to build on past and current partnerships, as well as honor and advance the Federal and Tribal objectives of increasing Tribal autonomy and Tribal governmental capacity;

(N) since the establishment of the National Bison Range, additional herds of bison have been established on other national wildlife refuges and national parks;

(O) the facts and history regarding the Federal Government, the Tribes, the bison, and land on the Reservation acquired for the National Bison Range are exceptional circumstances that warrant action by Congress; and

(P) the United States should hold title in and to the land comprising the National Bison Range, with beneficial title of the land being restored to the Tribes for—

- (i) continued bison conservation;
- (ii) other wildlife and natural resource management purposes; and
- (iii) other nonconflicting purposes of the Tribes.

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

(A) to acknowledge the history, culture, and ecological stewardship of the Tribes with respect to the land on the Reservation acquired for the National Bison Range, bison, and other natural resources;

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

(C) to continue public access and educational opportunities; and

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

(b) DEFINITION OF NATIONAL BISON RANGE.—In this section, the term “National Bison Range” means all land within the Reservation that was reserved for the national bison range under the matter under the heading “NATIONAL BISON RANGE” under the heading “MISCELLANEOUS” under the heading “DEPARTMENT OF AGRICULTURE” in the Act of May 23, 1908 (16 U.S.C. 671) (as in effect on the day before the date of enactment of this Act).

(c) RESTORATION OF LAND.—

(1) IN GENERAL.—Notwithstanding any other provision of law, for the purposes of conserving bison, wildlife, and natural resources, and of safeguarding the interests of the Tribes in those resources and the traditional, cultural, and other interests of the Tribes, all land comprising the National Bison Range (including all natural resources, interests, and appurtenances of that land) shall be held in trust by the United States for the benefit of the Tribes.

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

(A) a part of the Reservation;

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

(C) managed by the Tribes, in accordance with paragraph (3), solely for the care and maintenance of bison, wildlife, and other natural resources, including designation or naming of the restored land.

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

(A) provide public access and educational opportunities; and

(B) at all times, have a publicly available management plan for the land, bison, and natural resources, which shall include actions to address management and control of invasive weeds.

(d) CONVEYANCE OF BUILDINGS AND OTHER STRUCTURES.—

(1) IN GENERAL.—The United States shall convey to the Tribes, to own in fee, all ownership interests of the United

Public
information.
Plan.

States in all buildings, structures, improvements, and appurtenances located on the land restored by subsection (c)(1).

(2) **PERSONAL PROPERTY.**—The United States may convey to the Tribes any personal property owned by the United States and found on, or otherwise associated with, the land restored by subsection (c)(1).

(e) **RELINQUISHMENT OF RIGHTS TO BISON.**—The United States relinquishes to the Tribes all interests of United States in the bison on the land restored by subsection (c)(1).

(f) **TRANSITION.**—

(1) **IN GENERAL.**—Notwithstanding any other provision of law, during the 2-year period beginning on the date of enactment of this Act, the Secretary shall cooperate with the Tribes in transition activities regarding the management of land, bison, and other resources conveyed by this Act, including by providing to the Tribes, as determined to be appropriate by the Secretary, funds, personal property, equipment, or other resources for the performance of, or assistance with, the types of activities carried out by the Secretary at the National Bison Range as of the date of enactment of this Act.

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

(g) **REPEAL.**—The matter under the heading “NATIONAL BISON RANGE” under the heading “MISCELLANEOUS” under the heading “DEPARTMENT OF AGRICULTURE” in the Act of May 23, 1908 (16 U.S.C. 671), is repealed.

(h) **LIABILITY.**—The Tribes shall not be liable for any land, soil, surface water, groundwater, or other contamination, injury, or damage resulting from the storage, disposal, release, or presence of any hazardous substance (as defined in section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601)) on any portion of the land restored by this section on or before the date of the conveyance, unless the Tribes would otherwise have been responsible for the storage, disposal, release, or presence.

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

(j) **EFFECT.**—Nothing in this section relieves the United States of any obligation under section 120(h)(3) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9620(h)(3)).

(k) **NO PRECEDENT.**—The provisions of this section—

(1) are uniquely suited to address the distinct circumstances, facts, history, and relationships involved with the bison, land, and Tribes; and

(2) are not intended, and shall not be interpreted, to establish a precedent for any other situation regarding Federal land, property, or facilities.

(l) **INDIAN GAMING REGULATORY ACT.**—The land restored by this section shall not be eligible or used for any gaming activity

Time period.
Effective date.
Determination.

carried out under the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.).

SEC. 13. MISCELLANEOUS PROVISIONS.

(a) AMENDMENTS.—

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

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

(A) in subsection (h), by striking paragraph (6) and inserting the following:

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

(B) by adding at the end the following:

“(k) MISSION VALLEY DIVISION.—

“(1) IN GENERAL.—The Secretary of the Interior (referred to in this section as the ‘Secretary’), or the Confederated Salish and Kootenai Tribes of the Flathead Reservation of Montana acting on behalf of the Secretary, as the entity with the legal authority and responsibility to operate the Mission Valley division of the project (referred to in this subsection as the ‘project operator’), may allocate revenues derived from the Mission Valley division in accordance with paragraph (2) for the purposes described in subsection (h)(6).

“(2) ALLOCATION.—

“(A) IN GENERAL.—Subject to subparagraphs (B) and (C), the revenues described in paragraph (1) shall be allocated by providing—

“(i) \$100,000 to the Tribes; and

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

“(B) NEGOTIATION.—Effective beginning on October 1 of the tenth calendar year beginning after the date of enactment of the Montana Water Rights Protection Act, the Confederated Salish and Kootenai Tribes of the Flathead Reservation of Montana, the State of Montana, and the Secretary may negotiate for an appropriate allocation that differs from the allocation described in subparagraph (A).

“(C) CARRYOVER.—If the project operator does not use the full allocation of the project operator under this paragraph for a fiscal year, an amount equal to the difference between the full allocation and the amount used by the project operator shall be set aside and accumulated for expenditure during subsequent fiscal years for the purposes described in subsection (h)(6).”

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

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

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

(C) by striking subparagraph (C).

Effective date.

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

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

(d) OTHER TRIBES NOT ADVERSELY AFFECTED.—Nothing in this Act quantifies or diminishes any land or water right, or any claim or entitlement to land or water, of any Indian tribe other than the Tribes.

(e) LIMITATION ON CLAIMS FOR REIMBURSEMENT.—With respect to Indian land located within the Reservation—

(1) the United States shall not submit against any Indian-owned land within the Reservation any claim for reimbursement of the cost to the United States of carrying out this Act or the Compact; and

(2) no assessment of any Indian-owned land located within the Reservation shall be made regarding that cost.

(f) LIMITATION ON LIABILITY OF UNITED STATES.—

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

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

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

(2) INDEMNITY.—The Tribes shall indemnify the United States, and hold the United States harmless, with respect to all claims (including claims for takings or breach of trust) arising from the receipt or expenditure of amounts to carry out this Act (other than claims arising out of activities carried out by the Tribes with funds transferred in accordance with section 7(d)).

(g) ANTIDEFICIENCY.—The United States shall not be liable for any failure to carry out any obligation or activity authorized by this Act (including any obligation or activity under the Compact) if—

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

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

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

(i) COOPERATIVE OPERATION AND MAINTENANCE OF FLATHEAD INDIAN IRRIGATION PROJECT.—

(1) AGREEMENT WITH SECRETARY.—On receipt of a joint request from the Tribes and 1 or more irrigation districts within the Flathead Indian irrigation project, the Secretary shall enter into an agreement with the Tribes and the irrigation districts for the cooperative operation and maintenance of the Flathead Indian irrigation project, or any portion of the Flathead Indian irrigation project, under such form of organization and under such conditions as may be acceptable to the Secretary.

(2) ESTABLISHMENT OF ORGANIZATION.—

(A) IN GENERAL.—In lieu of entering into an agreement under paragraph (1), the Tribes and 1 or more irrigation districts within the Flathead Indian irrigation project may jointly establish an organization for the purpose of entering into an agreement for the operation and maintenance of the Flathead Indian irrigation project under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5301 et seq.).

(B) CONTRACT SUPPORT COSTS.—Any contract support costs pursuant to section 106(a) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5325(a)) for an organization established pursuant to subparagraph (A) shall be limited to funds available from annual assessments under part 171 of title 25, Code of Federal Regulations (or successor regulations).

(C) TREATMENT.—An organization established pursuant to subparagraph (A) shall be considered to be a tribal organization (as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304)) for purposes of that Act.

(D) ANNUAL O&M ASSESSMENTS.—Nothing in this subsection limits the ability of an organization established pursuant to subparagraph (A) to include the costs of administering the Flathead Indian irrigation project when establishing annual assessment rates in accordance with part 171 of title 25, Code of Federal Regulations (or successor regulations).

(j) EXCHANGES OF LAND.—

(1) DEFINITIONS.—In this subsection:

(A) PUBLIC LAND.—The term “public land” means—

(i) public lands (as defined in section 103 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1702)); and

(ii) land managed by the Secretary of Agriculture under the jurisdiction of the Forest Service.

(B) SECRETARY CONCERNED.—The term “Secretary concerned” means, as applicable—

(i) the Secretary, with respect to the public land described in subparagraph (A)(i); or

(ii) the Secretary of Agriculture, with respect to the public land described in subparagraph (A)(ii).

(2) STATE TRUST LAND.—

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

(i) the Act of February 22, 1889 (commonly known as the “Montana Enabling Act”) (25 Stat. 676, chapter 180), and the Act of April 23, 1904 (33 Stat. 302, chapter 1495; 35 Stat. 449, chapter 216); or

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

(B) PROCEDURES.—An exchange described in subparagraph (A) shall be conducted in accordance with section

206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716).

Determination.

(C) VALUATION.—In determining the fair market value of land for purposes of subparagraph (A), the parties to the exchange shall give due consideration to the value of any improvements on the land.

(D) FINANCIAL IMPACT.—The Secretary concerned shall ensure that land exchanged pursuant to this paragraph is selected in a manner that minimizes the financial impact on local governments, if any.

(E) ASSISTANCE.—The Secretary concerned shall provide such financial or other assistance to the State and the Tribes as may be necessary to obtain the appraisals, and to satisfy administrative requirements, necessary to accomplish the exchanges under subparagraph (A).

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

(i) receive title in and to the State trust land involved in the exchange, on behalf of the United States; and

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

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

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

(ii) recognized as part of the Reservation.

(3) REQUIREMENTS.—

(A) IN GENERAL.—In carrying out paragraph (2), the Secretary concerned shall, during the 5-year period beginning on the date of enactment of this Act, give priority to an exchange of public land within the State for State trust land owned by the State.

(B) TOTAL VALUE.—The total value of the land exchanged and acquired for the Tribes pursuant to this subsection shall not exceed the value of the surface estate of the 36,808 acres described in paragraph (2)(A).

(C) PRIVATE EXCHANGES.—

(i) IN GENERAL.—Subject to subparagraph (B), if, for any reason, after the expiration of the period described in subparagraph (A), the exchanges under paragraph (2) have not provided to the Tribes a total of 36,808 acres of surface land within the boundaries of the Reservation, the Secretary concerned shall, at the request of, and in cooperation with, the Tribes, develop and implement a program to provide to the Tribes additional land within the Reservation through land exchanges with private landowners.

(ii) REQUIREMENT.—In carrying out this subparagraph, the Secretary concerned may exchange public land within the State for private land of substantially equal value within the boundaries of the Reservation, in accordance with section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716).

Time period.
Effective date.

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

Determination.

(E) TITLE.—If the Secretary concerned obtains private land pursuant to subparagraph (C), the Secretary concerned shall transfer title to the land to the Tribes.

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

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

(ii) be recognized as part of the Reservation, if the land is located within the boundaries of the Reservation.

(G) TRIBAL ASSISTANCE.—The Tribes shall assist in obtaining prospective willing parties to exchange private land within the Reservation for public land within the State under this paragraph.

(4) PROTECTION OF GRAZING RIGHTS.—State trust land that is not adjacent to Tribal land shall not be eligible to be exchanged under this subsection.

(k) REVIEW OF DECISIONS.—A court of competent jurisdiction shall review the decisions of the Flathead Reservation Water Management Board and the Montana Department of Fish, Wildlife, and Parks in accordance with—

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

(l) PAYMENTS TO CERTAIN COUNTIES.—

(1) PAYMENTS.—

(A) BY SECRETARY.—Subject to paragraph (2), to reduce the financial impact on the counties in which the land restored by section 12 is located, the Secretary shall make payments to Lake County and Sanders County in the State, out of amounts in the fund established under section 401(a) of the Act of June 15, 1935 (16 U.S.C. 715s(a)).

(B) BY TRIBES.—To ensure that culverts, bridges, and roads that intersect with, or are otherwise located within, the supply and distribution network of the Flathead Indian irrigation project comply with Federal environmental requirements, to ensure public safety, and to enhance Tribal fisheries on the Reservation, the Tribes shall allocate from the Trust Fund amounts withdrawn for the purposes described in section 8(h)(13), under an agreement approved by the Secretary—

- (i) \$5,000,000 to Lake County in the State; and
- (ii) \$5,000,000 to Sanders County in the State.

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

(3) TREATMENT OF LAND FOR PURPOSES OF CALCULATING PAYMENTS.—For the limited purposes of calculating payments to Lake County and Sanders County under this subsection and section 401 of the Act of June 15, 1935 (16 U.S.C. 715s), the land restored by section 13 shall be treated as a fee area

(as defined in section 401(g) of the Act of June 15, 1935 (16 U.S.C. 715s(g))).

(m) EFFECT ON CURRENT LAW.—Nothing in this Act authorizes preenforcement judicial review of any Federal environmental enforcement action.

(n) NO PRECEDENT.—The provisions of this Act—

(1) are uniquely suited to address the distinct circumstances, facts, history, and relationships involved; and

(2) are not intended, and shall not be interpreted, to establish precedent for any other situation.

DIVISION EE—TAXPAYER CERTAINTY AND DISASTER TAX RELIEF ACT OF 2020

Taxpayer
Certainty
and Disaster
Tax Relief Act
of 2020.
26 USC 1 note.

SEC. 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This division may be cited as the “Taxpayer Certainty and Disaster Tax Relief Act of 2020”.

(b) AMENDMENT OF 1986 CODE.—Except as otherwise expressly provided, whenever in this division an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

(c) TABLE OF CONTENTS.—The table of contents of this division is as follows:

Sec. 1. Short title; table of contents.

TITLE I—EXTENSION OF CERTAIN EXPIRING PROVISIONS

Subtitle A—Certain Provisions Made Permanent

- Sec. 101. Reduction in medical expense deduction floor.
- Sec. 102. Energy efficient commercial buildings deduction.
- Sec. 103. Benefits provided to volunteer firefighters and emergency medical responders.
- Sec. 104. Transition from deduction for qualified tuition and related expenses to increased income limitation on lifetime learning credit.
- Sec. 105. Railroad track maintenance credit.
- Sec. 106. Certain provisions related to beer, wine, and distilled spirits.
- Sec. 107. Refunds in lieu of reduced rates for certain craft beverages produced outside the United States.
- Sec. 108. Reduced rates not allowed for smuggled or illegally produced beer, wine, and spirits.
- Sec. 109. Minimum processing requirements for reduced distilled spirits rates.
- Sec. 110. Modification of single taxpayer rules.

Subtitle B—Certain Provisions Extended Through 2025

- Sec. 111. Look-thru rule for related controlled foreign corporations.
- Sec. 112. New markets tax credit.
- Sec. 113. Work opportunity credit.
- Sec. 114. Exclusion from gross income of discharge of qualified principal residence indebtedness.
- Sec. 115. 7-year recovery period for motorsports entertainment complexes.
- Sec. 116. Expensing rules for certain productions.
- Sec. 117. Oil spill liability trust fund rate.
- Sec. 118. Empowerment zone tax incentives.
- Sec. 119. Employer credit for paid family and medical leave.
- Sec. 120. Exclusion for certain employer payments of student loans.
- Sec. 121. Extension of carbon oxide sequestration credit.

Subtitle C—Extension of Certain Other Provisions

- Sec. 131. Credit for electricity produced from certain renewable resources.