

111<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 925

To amend the Colorado River Storage Project Act and Public Law 87–483 to authorize the construction and rehabilitation of water infrastructure in Northwestern New Mexico, to authorize the use of the reclamation fund to fund the Reclamation Water Settlements Fund, to authorize the conveyance of certain Reclamation land and infrastructure, to authorize the Commissioner of Reclamation to provide for the delivery of water, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 9, 2009

Mr. LUJÁN introduced the following bill; which was referred to the Committee on Natural Resources

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## A BILL

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

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) SHORT TITLE.—This Act may be cited as the  
3 “Northwestern New Mexico Rural Water Projects Act”.

4 (b) TABLE OF CONTENTS.—The table of contents of  
5 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Definitions.
- Sec. 3. Compliance with environmental laws.
- Sec. 4. No reallocation of costs.
- Sec. 5. Interest rate.

TITLE I—AMENDMENTS TO THE COLORADO RIVER STORAGE  
PROJECT ACT AND PUBLIC LAW 87-483

- Sec. 101. Amendments to the Colorado River Storage Project Act.
- Sec. 102. Amendments to Public Law 87-483.
- Sec. 103. Effect on Federal water law.

TITLE II—RECLAMATION WATER SETTLEMENTS FUND

- Sec. 201. Reclamation Water Settlements Fund.

TITLE III—NAVAJO-GALLUP WATER SUPPLY PROJECT

- Sec. 301. Purposes.
- Sec. 302. Authorization of Navajo-Gallup Water Supply Project.
- Sec. 303. Delivery and use of Navajo-Gallup Water Supply Project water.
- Sec. 304. Project contracts.
- Sec. 305. Navajo Nation Municipal Pipeline.
- Sec. 306. Authorization of conjunctive use wells.
- Sec. 307. San Juan River Navajo Irrigation Projects.
- Sec. 308. Other irrigation projects.
- Sec. 309. Authorization of appropriations.

TITLE IV—NAVAJO NATION WATER RIGHTS

- Sec. 401. Agreement.
- Sec. 402. Trust Fund.
- Sec. 403. Waivers and releases.
- Sec. 404. Water rights held in trust.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

8 (1) AAMODT ADJUDICATION.—The term  
9 “Aamodt adjudication” means the general stream  
10 adjudication that is the subject of the civil action en-

1 titled “State of New Mexico, ex rel. State Engineer  
2 and United States of America, Pueblo de Nambe,  
3 Pueblo de Pojoaque, Pueblo de San Ildefonso, and  
4 Pueblo de Tesuque v. R. Lee Aamodt, et al.”, No.  
5 66 CV 6639 MV/LCS (D.N.M.).

6 (2) ABEYTA ADJUDICATION.—The term  
7 “Abeyta adjudication” means the general stream ad-  
8 judication that is the subject of the civil actions enti-  
9 tled “State of New Mexico v. Abeyta and State of  
10 New Mexico v. Arrellano”, Civil Nos. 7896–BB  
11 (D.N.M.) and 7939–BB (D.N.M.) (consolidated).

12 (3) ACRE-FEET.—The term “acre-feet” means  
13 acre-feet per year.

14 (4) AGREEMENT.—The term “Agreement”  
15 means the agreement among the State of New Mex-  
16 ico, the Nation, and the United States setting forth  
17 a stipulated and binding agreement signed by the  
18 State of New Mexico and the Nation on April 19,  
19 2005.

20 (5) ALLOTTEE.—The “allottee” means a person  
21 that holds a beneficial real property interest in a  
22 Navajo allotment that—

23 (A) is located within the Navajo Reserva-  
24 tion or the State of New Mexico;

1 (B) is held in trust by the United States;  
2 and

3 (C) was originally granted to an individual  
4 member of the Nation by public land order or  
5 otherwise.

6 (6) ANIMAS-LA PLATA PROJECT.—The term  
7 “Animas-La Plata Project” has the meaning given  
8 the term in section 3 of Public Law 100–585 (102  
9 Stat. 2973), including Ridges Basin Dam, Lake  
10 Nighthorse, the Navajo Nation Municipal Pipeline,  
11 and any other features or modifications made pursu-  
12 ant to the Colorado Ute Settlement Act Amend-  
13 ments of 2000 (Public Law 106–554; 114 Stat.  
14 2763A–258).

15 (7) CITY.—The term “City” means the city of  
16 Gallup, New Mexico, or a designee of the City, with  
17 authority to provide water to the Gallup, New Mex-  
18 ico service area.

19 (8) COMPACT.—The term “Compact” means  
20 the Upper Colorado River Basin Compact as con-  
21 sented to by the Act of April 6, 1949 (63 Stat. 31,  
22 chapter 48).

23 (9) CONTRACT.—The term “Contract” means  
24 the contract between the United States and the Na-  
25 tion setting forth certain commitments, rights, and

1 obligations of the United States and the Nation, as  
2 described in paragraph 6.0 of the Agreement.

3 (10) DEPLETION.—The term “depletion”  
4 means the depletion of the flow of the San Juan  
5 River stream system in the State of New Mexico by  
6 a particular use of water (including any depletion in-  
7 cident to the use) and represents the diversion from  
8 the stream system by the use, less return flows to  
9 the stream system from the use.

10 (11) DRAFT IMPACT STATEMENT.—The term  
11 “Draft Impact Statement” means the draft environ-  
12 mental impact statement prepared by the Bureau of  
13 Reclamation for the Project dated March 2007.

14 (12) FUND.—The term “Fund” means the Rec-  
15 lamation Waters Settlements Fund established by  
16 section 201(a).

17 (13) HYDROLOGIC DETERMINATION.—The term  
18 “hydrologic determination” means the hydrologic de-  
19 termination entitled “Water Availability from Nav-  
20 ajo Reservoir and the Upper Colorado River Basin  
21 for Use in New Mexico”, prepared by the Bureau of  
22 Reclamation pursuant to section 11 of the Act of  
23 June 13, 1962 (Public Law 87–483; 76 Stat. 99),  
24 and dated May 23, 2007.

1           (14) NATION.—The term “Nation” means the  
2 Navajo Nation, a body politic and federally recog-  
3 nized Indian nation as provided for in section 101(2)  
4 of the Federally Recognized Indian Tribe List of  
5 1994 (25 U.S.C. 497a(2)), also known variously as  
6 the “Navajo Tribe”, the “Navajo Tribe of Arizona,  
7 New Mexico & Utah”, and the “Navajo Tribe of In-  
8 dians” and other similar names, and includes all  
9 bands of Navajo Indians and chapters of the Navajo  
10 Nation.

11           (15) NAVAJO-GALLUP WATER SUPPLY PROJECT;  
12 PROJECT.—The term “Navajo-Gallup Water Supply  
13 Project” or “Project” means the Navajo-Gallup  
14 Water Supply Project authorized under section  
15 302(a), as described as the preferred alternative in  
16 the Draft Impact Statement.

17           (16) NAVAJO INDIAN IRRIGATION PROJECT.—  
18 The term “Navajo Indian Irrigation Project” means  
19 the Navajo Indian irrigation project authorized by  
20 section 2 of Public Law 87–483 (76 Stat. 96).

21           (17) NAVAJO RESERVOIR.—The term “Navajo  
22 Reservoir” means the reservoir created by the im-  
23 poundment of the San Juan River at Navajo Dam,  
24 as authorized by the Act of April 11, 1956 (com-

1 monly known as the “Colorado River Storage  
2 Project Act”) (43 U.S.C. 620 et seq.).

3 (18) NAVAJO NATION MUNICIPAL PIPELINE;  
4 PIPELINE.—The term “Navajo Nation Municipal  
5 Pipeline” or “Pipeline” means the pipeline used to  
6 convey the water of the Animas-La Plata Project of  
7 the Navajo Nation from the City of Farmington,  
8 New Mexico, to communities of the Navajo Nation  
9 located in close proximity to the San Juan River  
10 Valley in the State of New Mexico (including the  
11 City of Shiprock), as authorized by section 15(b) of  
12 the Colorado Ute Indian Water Rights Settlement  
13 Act of 1988 (Public Law 100–585; 102 Stat. 2973;  
14 114 Stat. 2763A–263).

15 (19) NON-NAVAJO IRRIGATION DISTRICTS.—  
16 The term “Non-Navajo Irrigation Districts”  
17 means—

18 (A) the Hammond Conservancy District;  
19 (B) the Bloomfield Irrigation District; and  
20 (C) any other community ditch organiza-  
21 tion in the San Juan River basin in the State  
22 of New Mexico.

23 (20) PARTIAL FINAL DECREE.—The term “Par-  
24 tial Final Decree” means a final and binding judge-  
25 ment and decree entered by a court in the stream

1 adjudication, setting forth the rights of the Nation  
2 to use and administer waters of the San Juan River  
3 Basin in New Mexico, as set forth in appendix 1 of  
4 the Agreement.

5 (21) PROJECT PARTICIPANTS.—The term  
6 “Project Participants” means the City, the Nation,  
7 and the Jicarilla Apache Nation.

8 (22) SAN JUAN RIVER BASIN RECOVERY IMPLE-  
9 MENTATION PROGRAM.—The term “San Juan River  
10 Basin Recovery Implementation Program” means  
11 the intergovernmental program established pursuant  
12 to the cooperative agreement dated October 21,  
13 1992 (including any amendments to the program).

14 (23) SECRETARY.—The term “Secretary”  
15 means the Secretary of the Interior, acting through  
16 the Commissioner of Reclamation or any other des-  
17 ignee.

18 (24) STREAM ADJUDICATION.—The term  
19 “stream adjudication” means the general stream ad-  
20 judication that is the subject of *New Mexico v.*  
21 *United States, et al.*, No. 75–185 (11th Jud. Dist.,  
22 San Juan County, New Mexico) (involving claims to  
23 waters of the San Juan River and the tributaries of  
24 that river).



1           (25) SUPPLEMENTAL PARTIAL FINAL DE-  
2       CREE.—The term “Supplemental Partial Final De-  
3       cree” means a final and binding judgement and de-  
4       cree entered by a court in the stream adjudication,  
5       setting forth certain water rights of the Nation, as  
6       set forth in appendix 2 of the Agreement.

7           (26) TRUST FUND.—The term “Trust Fund”  
8       means the Navajo Nation Water Resources Develop-  
9       ment Trust Fund established by section 402(a).

10 **SEC. 3. COMPLIANCE WITH ENVIRONMENTAL LAWS.**

11       (a) EFFECT OF EXECUTION OF AGREEMENT.—The  
12       execution of the Agreement under section 401(a)(2) shall  
13       not constitute a major Federal action under the National  
14       Environmental Policy Act of 1969 (42 U.S.C. 4321 et  
15       seq.).

16       (b) COMPLIANCE WITH ENVIRONMENTAL LAWS.—In  
17       carrying out this Act, the Secretary shall comply with each  
18       law of the Federal Government relating to the protection  
19       of the environment, including—

20           (1) the National Environmental Policy Act of  
21       1969 (42 U.S.C. 4321 et seq.); and

22           (2) the Endangered Species Act of 1973 (16  
23       U.S.C. 1531 et seq.).

1 **SEC. 4. NO REALLOCATION OF COSTS.**

2 (a) EFFECT OF ACT.—Notwithstanding any other  
3 provision of law, the Secretary shall not reallocate or reas-  
4 sign any costs of projects that have been authorized under  
5 the Act of April 11, 1956 (commonly known as the “Colo-  
6 rado River Storage Project Act”) (43 U.S.C. 620 et seq.),  
7 as of the date of enactment of this Act because of—

8 (1) the authorization of the Navajo-Gallup  
9 Water Supply Project under this Act; or

10 (2) the changes in the uses of the water di-  
11 verted by the Navajo Indian Irrigation Project or  
12 the waters stored in the Navajo Reservoir authorized  
13 under this Act.

14 (b) USE OF POWER REVENUES.—Notwithstanding  
15 any other provision of law, no power revenues under the  
16 Act of April 11, 1956 (commonly known as the “Colorado  
17 River Storage Project Act”) (43 U.S.C. 620 et seq.), shall  
18 be used to pay or reimburse any costs of the Navajo In-  
19 dian Irrigation Project or Navajo-Gallup Water Supply  
20 Project.

21 **SEC. 5. INTEREST RATE.**

22 Notwithstanding any other provision of law, the inter-  
23 est rate applicable to any repayment contract entered into  
24 under section 304 shall be equal to the discount rate for  
25 Federal water resources planning, as determined by the  
26 Secretary.

1 **TITLE I—AMENDMENTS TO THE**  
2 **COLORADO RIVER STORAGE**  
3 **PROJECT ACT AND PUBLIC**  
4 **LAW 87-483**

5 **SEC. 101. AMENDMENTS TO THE COLORADO RIVER STOR-**  
6 **AGE PROJECT ACT.**

7 (a) PARTICIPATING PROJECTS.—Paragraph (2) of  
8 the first section of the Act of April 11, 1956 (commonly  
9 known as the “Colorado River Storage Project Act”) (43  
10 U.S.C. 620(2)) is amended by inserting “the Navajo-Gal-  
11 lup Water Supply Project,” after “Fruitland Mesa,”.

12 (b) NAVAJO RESERVOIR WATER BANK.—The Act of  
13 April 11, 1956 (commonly known as the “Colorado River  
14 Storage Project Act”) is amended—

15 (1) by redesignating section 16 (43 U.S.C.  
16 620o) as section 17; and

17 (2) by inserting after section 15 (43 U.S.C.  
18 620n) the following:

19 “SEC. 16. (a) The Secretary of the Interior may cre-  
20 ate and operate within the available capacity of Navajo  
21 Reservoir a top water bank.

22 “(b) Water made available for the top water bank in  
23 accordance with subsections (c) and (d) shall not be sub-  
24 ject to section 11 of Public Law 87-483 (76 Stat. 99).

1       “(c) The top water bank authorized under subsection  
2 (a) shall be operated in a manner that—

3               “(1) is consistent with applicable law, except  
4 that, notwithstanding any other provision of law,  
5 water for purposes other than irrigation may be  
6 stored in the Navajo Reservoir pursuant to the rules  
7 governing the top water bank established under this  
8 section; and

9               “(2) does not impair the ability of the Secretary  
10 of the Interior to deliver water under contracts en-  
11 tered into under—

12                       “(A) Public Law 87–483 (76 Stat. 96);

13                       and

14                       “(B) New Mexico State Engineer File Nos.  
15                       2847, 2848, 2849, and 2917.

16       “(d)(1) The Secretary of the Interior, in cooperation  
17 with the State of New Mexico (acting through the Inter-  
18 state Stream Commission), shall develop any terms and  
19 procedures for the storage, accounting, and release of  
20 water in the top water bank that are necessary to comply  
21 with subsection (c).

22       “(2) The terms and procedures developed under para-  
23 graph (1) shall include provisions requiring that—

24               “(A) the storage of banked water shall be sub-  
25 ject to approval under State law by the New Mexico

1 State Engineer to ensure that impairment of any ex-  
2 isting water right does not occur, including storage  
3 of water under New Mexico State Engineer File No.  
4 2849;

5 “(B) water in the top water bank be subject to  
6 evaporation and other losses during storage;

7 “(C) water in the top water bank be released  
8 for delivery to the owner or assigns of the banked  
9 water on request of the owner, subject to reasonable  
10 scheduling requirements for making the release;

11 “(D) water in the top water bank be the first  
12 water spilled or released for flood control purposes  
13 in anticipation of a spill, on the condition that top  
14 water bank water shall not be released or included  
15 for purposes of calculating whether a release should  
16 occur for purposes of satisfying the flow rec-  
17 ommendations of the San Juan River Basin Recov-  
18 ery Implementation Program; and

19 “(E) water eligible for banking in the top water  
20 bank shall be water that otherwise would have been  
21 diverted and beneficially used in New Mexico that  
22 year.

23 “(e) The Secretary of the Interior may charge fees  
24 to water users that use the top water bank in amounts

1 sufficient to cover the costs incurred by the United States  
2 in administering the water bank.”.

3 **SEC. 102. AMENDMENTS TO PUBLIC LAW 87-483.**

4 (a) NAVAJO INDIAN IRRIGATION PROJECT.—Public  
5 Law 87-483 (76 Stat. 96) is amended by striking section  
6 2 and inserting the following:

7 “SEC. 2. (a) In accordance with the Act of April 11,  
8 1956 (commonly known as the ‘Colorado River Storage  
9 Project Act’) (43 U.S.C. 620 et seq.), the Secretary of  
10 the Interior is authorized to construct, operate, and main-  
11 tain the Navajo Indian Irrigation Project to provide irriga-  
12 tion water to a service area of not more than 110,630  
13 acres of land.

14 “(b)(1) Subject to paragraph (2), the average annual  
15 diversion by the Navajo Indian Irrigation Project from the  
16 Navajo Reservoir over any consecutive 10-year period shall  
17 be the lesser of—

18 “(A) 508,000 acre-feet per year; or

19 “(B) the quantity of water necessary to supply  
20 an average depletion of 270,000 acre-feet per year.

21 “(2) The quantity of water diverted for any 1 year  
22 shall not exceed the average annual diversion determined  
23 under paragraph (1) by more than 15 percent.

24 “(c) In addition to being used for irrigation, the  
25 water diverted by the Navajo Indian Irrigation Project

1 under subsection (b) may be used within the area served  
2 by Navajo Indian Irrigation Project facilities for the fol-  
3 lowing purposes:

4           “(1) Aquaculture purposes, including the  
5 rearing of fish in support of the San Juan River  
6 Basin Recovery Implementation Program authorized  
7 by Public Law 106–392 (114 Stat. 1602).

8           “(2) Domestic, industrial, or commercial pur-  
9 poses relating to agricultural production and proc-  
10 essing.

11           “(3)(A) The generation of hydroelectric power  
12 as an incident to the diversion of water by the Nav-  
13 ajo Indian Irrigation Project for authorized pur-  
14 poses.

15           “(B) Notwithstanding any other provision of  
16 law—

17           “(i) any hydroelectric power generated  
18 under this paragraph shall be used or marketed  
19 by the Navajo Nation;

20           “(ii) the Navajo Nation shall retain any  
21 revenues from the sale of the hydroelectric  
22 power; and

23           “(iii) the United States shall have no trust  
24 obligation to monitor, administer, or account

1           for the revenues received by the Navajo Nation,  
2           or the expenditure of the revenues.

3           “(4) The implementation of the alternate water  
4           source provisions described in subparagraph 9.2 of  
5           the agreement executed under section 401(a)(2) of  
6           the Northwestern New Mexico Rural Water Projects  
7           Act.

8           “(d) The Navajo Indian Irrigation Project water di-  
9           verted under subsection (b) may be transferred to areas  
10          located within or outside the area served by Navajo Indian  
11          Irrigation Project facilities, and within or outside the  
12          boundaries of the Navajo Nation, for any beneficial use  
13          in accordance with—

14                 “(1) the agreement executed under section  
15                 401(a)(2) of the Northwestern New Mexico Rural  
16                 Water Projects Act;

17                 “(2) the contract executed under section  
18                 304(a)(2)(B) of that Act; and

19                 “(3) any other applicable law.

20          “(e) The Secretary may use the capacity of the Nav-  
21          ajo Indian Irrigation Project works to convey water sup-  
22          plies for—

23                 “(1) the Navajo-Gallup Water Supply Project  
24                 under section 302 of the Northwestern New Mexico  
25                 Rural Water Projects Act; or



1           “(2) other nonirrigation purposes authorized  
2           under subsection (c) or (d).

3           “(f)(1) Repayment of the costs of construction of the  
4 project (as authorized in subsection (a)) shall be in accord-  
5 ance with the Act of April 11, 1956 (commonly known  
6 as the ‘Colorado River Storage Project Act’) (43 U.S.C.  
7 620 et seq.), including section 4(d) of that Act.

8           “(2) The Secretary shall not reallocate, or require re-  
9 payment of, construction costs of the Navajo Indian Irri-  
10 gation Project because of the conveyance of water supplies  
11 for nonirrigation purposes under subsection (e).”.

12           (b) RUNOFF ABOVE NAVAJO DAM.—Section 11 of  
13 Public Law 87–483 (76 Stat. 100) is amended by adding  
14 at the end the following:

15           “(d)(1) For purposes of implementing in a year of  
16 prospective shortage the water allocation procedures es-  
17 tablished by subsection (a), the Secretary of the Interior  
18 shall determine the quantity of any shortages and the ap-  
19 propriate apportionment of water using the normal diver-  
20 sion requirements on the flow of the San Juan River origi-  
21 nating above Navajo Dam based on the following criteria:

22           “(A) The quantity of diversion or water delivery  
23 for the current year anticipated to be necessary to  
24 irrigate land in accordance with cropping plans pre-  
25 pared by contractors.

1           “(B) The annual diversion or water delivery de-  
2           mands for the current year anticipated for non-irri-  
3           gation uses under water delivery contracts, including  
4           contracts authorized by the Northwestern New Mex-  
5           ico Rural Water Projects Act, but excluding any cur-  
6           rent demand for surface water for placement into  
7           aquifer storage for future recovery and use.

8           “(C) An annual normal diversion demand of  
9           135,000 acre-feet for the initial stage of the San  
10          Juan-Chama Project authorized by section 8.

11          “(2) The Secretary shall not include in the normal  
12          diversion requirements—

13                 “(A) the quantity of water that reliably can be  
14                 anticipated to be diverted or delivered under a con-  
15                 tract from inflows to the San Juan River arising  
16                 below Navajo Dam under New Mexico State Engi-  
17                 neer File No. 3215; or

18                 “(B) the quantity of water anticipated to be  
19                 supplied through reuse.

20          “(e)(1) If the Secretary determines that there is a  
21          shortage of water under subsection (a), the Secretary shall  
22          respond to the shortage in the Navajo Reservoir water  
23          supply by curtailing releases and deliveries in the following  
24          order:

1           “(A) The demand for delivery for uses in the  
2           State of Arizona under the Navajo-Gallup Water  
3           Supply Project authorized by section 303 of the  
4           Northwestern New Mexico Rural Water Projects  
5           Act, excluding the quantity of water anticipated to  
6           be diverted for the uses from inflows to the San  
7           Juan River that arise below Navajo Dam in accord-  
8           ance with New Mexico State Engineer File No.  
9           3215.

10           “(B) The demand for delivery for uses allocated  
11           under paragraph 8.2 of the agreement executed  
12           under section 401(a)(2) of the Northwestern New  
13           Mexico Rural Water Projects Act, excluding the  
14           quantity of water anticipated to be diverted for such  
15           uses under State Engineer File No. 3215.

16           “(C) The uses in the State of New Mexico that  
17           are determined under subsection (d), in accordance  
18           with the procedure for apportioning the water supply  
19           under subsection (a).

20           “(2) For any year for which the Secretary determines  
21           and responds to a shortage in the Navajo Reservoir water  
22           supply, the Secretary shall not deliver, and contractors of  
23           the water supply shall not divert, any of the water supply  
24           for placement into aquifer storage for future recovery and  
25           use.

1       “(3) To determine the occurrence and amount of any  
2 shortage to contracts entered into under this section, the  
3 Secretary shall not include as available storage any water  
4 stored in a top water bank in Navajo Reservoir established  
5 under section 16(a) of the Act of April 11, 1956 (com-  
6 monly known as the ‘Colorado River Storage Project Act’).

7       “(f) The Secretary of the Interior shall apportion  
8 water under subsections (a), (d), and (e) on an annual  
9 volume basis.

10       “(g) The Secretary of the Interior may revise a deter-  
11 mination of shortages, apportionments, or allocations of  
12 water under subsections (a), (d), and (e) on the basis of  
13 information relating to water supply conditions that was  
14 not available at the time at which the determination was  
15 made.

16       “(h) Nothing in this section prohibits the distribution  
17 of water in accordance with cooperative water agreements  
18 between water users providing for a sharing of water sup-  
19 plies.

20       “(i) Diversions under New Mexico State Engineer  
21 File No. 3215 shall be distributed, to the maximum extent  
22 water is available, in proportionate amounts to the diver-  
23 sion demands of contractors and subcontractors of the  
24 Navajo Reservoir water supply that are diverting water  
25 below Navajo Dam.”.

1 **SEC. 103. EFFECT ON FEDERAL WATER LAW.**

2 Unless expressly provided in this Act, nothing in this  
3 Act modifies, conflicts with, preempts, or otherwise af-  
4 fects—

5 (1) the Boulder Canyon Project Act (43 U.S.C.  
6 617 et seq.);

7 (2) the Boulder Canyon Project Adjustment Act  
8 (54 Stat. 774, chapter 643);

9 (3) the Act of April 11, 1956 (commonly known  
10 as the “Colorado River Storage Project Act”) (43  
11 U.S.C. 620 et seq.);

12 (4) the Act of September 30, 1968 (commonly  
13 known as the “Colorado River Basin Project Act”)  
14 (82 Stat. 885);

15 (5) Public Law 87–483 (76 Stat. 96);

16 (6) the Treaty between the United States of  
17 America and Mexico representing utilization of wa-  
18 ters of the Colorado and Tijuana Rivers and of the  
19 Rio Grande, signed at Washington February 3, 1944  
20 (59 Stat. 1219);

21 (7) the Colorado River Compact of 1922, as ap-  
22 proved by the Presidential Proclamation of June 25,  
23 1929 (46 Stat. 3000);

24 (8) the Compact;

25 (9) the Act of April 6, 1949 (63 Stat. 31, chap-  
26 ter 48);

1 (10) the Jicarilla Apache Tribe Water Rights  
2 Settlement Act (106 Stat. 2237); or

3 (11) section 205 of the Energy and Water De-  
4 velopment Appropriations Act, 2005 (118 Stat.  
5 2949).

6 **TITLE II—RECLAMATION WATER**  
7 **SETTLEMENTS FUND**

8 **SEC. 201. RECLAMATION WATER SETTLEMENTS FUND.**

9 (a) ESTABLISHMENT.—There is established in the  
10 Treasury of the United States a fund, to be known as the  
11 “Reclamation Water Settlements Fund”, consisting of—

12 (1) such amounts as are deposited to the Fund  
13 under subsection (b); and

14 (2) any interest earned on investment of  
15 amounts in the Fund under subsection (d).

16 (b) DEPOSITS TO FUND.—

17 (1) IN GENERAL.—For each of fiscal years  
18 2009 through 2023, the Secretary of the Treasury  
19 shall deposit in the Fund, if available, \$120,000,000  
20 of the revenues that would otherwise be deposited  
21 for the fiscal year in the fund established by the  
22 first section of the Act of June 17, 1902 (32 Stat.  
23 388, chapter 1093).

1           (2) AVAILABILITY OF AMOUNTS.—Amounts de-  
2           posited in the Fund under paragraph (1) shall be  
3           made available pursuant to this section—

4                   (A) without further appropriation; and

5                   (B) in addition to amounts appropriated  
6           pursuant to any authorization contained in any  
7           other provision of law.

8           (c) EXPENDITURES FROM FUND.—

9                   (1) IN GENERAL.—

10                   (A) EXPENDITURES.—Subject to subpara-  
11           graph (B), for each of fiscal years 2009  
12           through 2028, the Secretary may expend from  
13           the Fund an amount not to exceed  
14           \$120,000,000, plus the interest accrued in the  
15           Fund, for the fiscal year in which expenditures  
16           are made pursuant to paragraphs (2) and (3).

17                   (B) ADDITIONAL EXPENDITURES.—The  
18           Secretary may expend more than \$120,000,000  
19           for any fiscal year if such amounts are available  
20           in the Fund due to expenditures not reaching  
21           \$120,000,000 for prior fiscal years.

22           (2) AUTHORITY.—The Secretary may expend  
23           money from the Fund to implement a settlement  
24           agreement approved by Congress that resolves, in  
25           whole or in part, litigation involving the United

1 States, if the settlement agreement or implementing  
2 legislation requires the Bureau of Reclamation to  
3 provide financial assistance for, or plan, design, and  
4 construct—

5 (A) water supply infrastructure; or

6 (B) a project—

7 (i) to rehabilitate a water delivery sys-  
8 tem to conserve water; or

9 (ii) to restore fish and wildlife habitat  
10 or otherwise improve environmental condi-  
11 tions associated with or affected by, or lo-  
12 cated within the same river basin as, a  
13 Federal reclamation project that is in ex-  
14 istence on the date of enactment of this  
15 Act.

16 (3) USE FOR COMPLETION OF PROJECT AND  
17 OTHER SETTLEMENTS.—

18 (A) PRIORITIES.—

19 (i) FIRST PRIORITY.—

20 (I) IN GENERAL.—The first pri-  
21 ority for expenditure of amounts in  
22 the Fund during the entire period in  
23 which the Fund is in existence shall  
24 be for the purposes described in, and



1 in the order of, clauses (i) through  
2 (iv) of subparagraph (B).

3 (II) RESERVED AMOUNTS.—The  
4 Secretary shall reserve amounts de-  
5 posited into the Fund in accordance  
6 with subclause (I).

7 (ii) OTHER PURPOSES.—Any amounts  
8 in the Fund that are not needed for the  
9 purposes described in subparagraph (B)  
10 may be used for other purposes authorized  
11 in paragraph (2).

12 (B) COMPLETION OF PROJECT.—

13 (i) NAVAJO-GALLUP WATER SUPPLY  
14 PROJECT.—

15 (I) IN GENERAL.—Subject to  
16 subclause (II), effective beginning  
17 January 1, 2009, if, in the judgment  
18 of the Secretary on an annual basis  
19 the deadline described in section  
20 401(f)(1)(A)(ix) is unlikely to be met  
21 because a sufficient amount of fund-  
22 ing is not otherwise available through  
23 appropriations made available pursu-  
24 ant to section 309(a), the Secretary  
25 shall expend from the Fund such

1 amounts on an annual basis con-  
2 sistent with paragraphs (1) and (2),  
3 as are necessary to pay the Federal  
4 share of the costs, and substantially  
5 complete as expeditiously as prac-  
6 ticable, the construction of the water  
7 supply infrastructure authorized as  
8 part of the Project.

9 (II) MAXIMUM AMOUNT.—

10 (aa) IN GENERAL.—Except  
11 as provided under item (bb), the  
12 amount expended under sub-  
13 clause (I) shall not exceed  
14 \$500,000,000 for the period of  
15 fiscal years 2009 through 2018.

16 (bb) EXCEPTION.—The limi-  
17 tation on the expenditure amount  
18 under item (aa) may be exceeded  
19 during the entire period in which  
20 the Fund is in existence.

21 (ii) OTHER NEW MEXICO SETTLE-  
22 MENTS.—

23 (I) IN GENERAL.—Subject to  
24 subclause (II), effective beginning  
25 January 1, 2009, in addition to the

1 funding made available under clause  
2 (i), if in the judgment of the Sec-  
3 retary on an annual basis a sufficient  
4 amount of funding is not otherwise  
5 available through annual appropria-  
6 tions, the Secretary shall expend from  
7 the Fund such amounts on an annual  
8 basis consistent with paragraphs (1)  
9 and (2), as are necessary to pay the  
10 Federal share of the costs of imple-  
11 menting the Indian water rights set-  
12 tlement agreements entered into by  
13 the State of New Mexico in the  
14 Aamodt adjudication and the Abeyta  
15 adjudication, if such settlements are  
16 subsequently approved and authorized  
17 by an Act of Congress.

18 (II) MAXIMUM AMOUNT.—The  
19 amount expended under subclause (I)  
20 shall not exceed \$250,000,000.

21 (iii) MONTANA SETTLEMENTS.—

22 (I) IN GENERAL.—Subject to  
23 subclause (II), effective beginning  
24 January 1, 2009, in addition to fund-  
25 ing made available pursuant to

1 clauses (i) and (ii), if in the judgment  
2 of the Secretary on an annual basis a  
3 sufficient amount of funding is not  
4 otherwise available through annual  
5 appropriations, the Secretary shall ex-  
6 pend from the Fund such amounts on  
7 an annual basis consistent with para-  
8 graphs (1) and (2), as are necessary  
9 to pay the Federal share of the costs  
10 of implementing Indian water rights  
11 settlement agreements entered into by  
12 the State of Montana with the Black-  
13 feet Tribe, the Crow Tribe, or the  
14 Gros Ventre and Assiniboine Tribes of  
15 the Fort Belknap Indian Reservation  
16 in the judicial proceeding entitled “In  
17 re the General Adjudication of All the  
18 Rights to Use Surface and Ground-  
19 water in the State of Montana”, if a  
20 settlement or settlements are subse-  
21 quently approved and authorized by  
22 an Act of Congress.

23 (II) MAXIMUM AMOUNT.—

24 (aa) IN GENERAL.—Except  
25 as provided under item (bb), the

1 amount expended under sub-  
2 clause (I) shall not exceed  
3 \$350,000,000 for the period of  
4 fiscal years 2009 through 2018.

5 (bb) EXCEPTION.—The limi-  
6 tation on the expenditure amount  
7 under item (aa) may be exceeded  
8 during the entire period in which  
9 the Fund is in existence.

10 (cc) OTHER FUNDING.—The  
11 Secretary shall ensure that any  
12 such funding shall be provided in  
13 a manner that does not limit the  
14 funding available pursuant to  
15 clauses (i) and (ii).

16 (iv) ARIZONA SETTLEMENT.—

17 (I) IN GENERAL.—Subject to  
18 subclause (II), effective beginning  
19 January 1, 2009, in addition to fund-  
20 ing made available pursuant to  
21 clauses (i), (ii), and (iii), if in the  
22 judgment of the Secretary on an an-  
23 nual basis a sufficient amount of  
24 funding is not otherwise available  
25 through annual appropriations, the

1 Secretary shall expend from the Fund  
2 such amounts on an annual basis con-  
3 sistent with paragraphs (1) and (2),  
4 as are necessary to pay the Federal  
5 share of the costs of implementing an  
6 Indian water rights settlement agree-  
7 ment entered into by the State of Ari-  
8 zona with the Navajo Nation to re-  
9 solve the water rights claims of the  
10 Nation in the Lower Colorado River  
11 basin in Arizona, if a settlement is  
12 subsequently approved and authorized  
13 by an Act of Congress.

14 (II) MAXIMUM AMOUNT.—

15 (aa) IN GENERAL.—Except  
16 as provided under item (bb), the  
17 amount expended under sub-  
18 clause (I) shall not exceed  
19 \$100,000,000 for the period of  
20 fiscal years 2009 through 2018.

21 (bb) EXCEPTION.—The limi-  
22 tation on the expenditure amount  
23 under item (aa) may be exceeded  
24 during the entire period in which  
25 the Fund is in existence.

1                   (cc) OTHER FUNDING.—The  
2                   Secretary shall ensure that any  
3                   such funding shall be provided in  
4                   a manner that does not limit the  
5                   funding available pursuant to  
6                   clauses (i) and (ii).

7                   (C) REVERSION.—If the settlements de-  
8                   scribed in clauses (ii) through (iv) of subpara-  
9                   graph (B) have not been approved and author-  
10                  ized by an Act of Congress by December 31,  
11                  2014, the amounts reserved for the settlements  
12                  shall no longer be reserved by the Secretary  
13                  pursuant to subparagraph (A)(i) and shall re-  
14                  vert to the Fund for any authorized use, as de-  
15                  termined by the Secretary.

16               (d) INVESTMENT OF AMOUNTS.—

17                   (1) IN GENERAL.—The Secretary shall invest  
18                   such portion of the Fund as is not, in the judgment  
19                   of the Secretary, required to meet current with-  
20                   drawals.

21                   (2) CREDITS TO FUND.—The interest on, and  
22                   the proceeds from the sale or redemption of, any ob-  
23                   ligations held in the Fund shall be credited to, and  
24                   form a part of, the Fund.

25               (e) TRANSFERS OF AMOUNTS.—

1           (1) IN GENERAL.—The amounts required to be  
2 transferred to the Fund under this section shall be  
3 transferred at least monthly from the general fund  
4 of the Treasury to the Fund on the basis of esti-  
5 mates made by the Secretary of the Treasury.

6           (2) ADJUSTMENTS.—Proper adjustment shall  
7 be made in amounts subsequently transferred to the  
8 extent prior estimates were in excess of or less than  
9 the amounts required to be transferred.

10 (f) TERMINATION.—On September 30, 2028—

11           (1) the Fund shall terminate; and

12           (2) the unexpended and unobligated balance of  
13 the Fund shall be transferred to the appropriate  
14 fund of the Treasury.

15           **TITLE III—NAVAJO-GALLUP**  
16           **WATER SUPPLY PROJECT**

17           **SEC. 301. PURPOSES.**

18           The purposes of this subtitle are—

19           (1) to authorize the Secretary to construct, op-  
20 erate, and maintain the Navajo-Gallup Water Supply  
21 Project;

22           (2) to allocate the capacity of the Project  
23 among the Nation, the City, and the Jicarilla  
24 Apache Nation; and



1           (3) to authorize the Secretary to enter into  
2           Project repayment contracts with the City and the  
3           Jicarilla Apache Nation.

4 **SEC. 302. AUTHORIZATION OF NAVAJO-GALLUP WATER**  
5 **SUPPLY PROJECT.**

6           (a) IN GENERAL.—The Secretary, acting through the  
7           Commissioner of Reclamation, is authorized to design,  
8           construct, operate, and maintain the Project in substantial  
9           accordance with the preferred alternative in the Draft Im-  
10          pact Statement.

11          (b) PROJECT FACILITIES.—To provide for the deliv-  
12          ery of San Juan River water to Project Participants, the  
13          Secretary may construct, operate, and maintain the  
14          Project facilities described in the preferred alternative in  
15          the Draft Impact Statement, including:

16               (1) A pumping plant on the San Juan River in  
17               the vicinity of Kirtland, New Mexico.

18               (2)(A) A main pipeline from the San Juan  
19               River near Kirtland, New Mexico, to Shiprock, New  
20               Mexico, and Gallup, New Mexico, which follows  
21               United States Highway 491.

22               (B) Any pumping plants associated with the  
23               pipeline authorized under subparagraph (A).

1           (3)(A) A main pipeline from Cutter Reservoir  
2 to Ojo Encino, New Mexico, which follows United  
3 States Highway 550.

4           (B) Any pumping plants associated with the  
5 pipeline authorized under subparagraph (A).

6           (4)(A) Lateral pipelines from the main pipelines  
7 to Nation communities in the States of New Mexico  
8 and Arizona.

9           (B) Any pumping plants associated with the  
10 pipelines authorized under subparagraph (A).

11          (5) Any water regulation, storage or treatment  
12 facility, service connection to an existing public  
13 water supply system, power substation, power dis-  
14 tribution works, or other appurtenant works (includ-  
15 ing a building or access road) that is related to the  
16 Project facilities authorized by paragraphs (1)  
17 through (4), including power transmission facilities  
18 and associated wheeling services to connect Project  
19 facilities to existing high-voltage transmission facili-  
20 ties and deliver power to the Project.

21          (c) ACQUISITION OF LAND.—

22           (1) IN GENERAL.—The Secretary is authorized  
23 to acquire any land or interest in land that is nec-  
24 essary to construct, operate, and maintain the  
25 Project facilities authorized under subsection (b).

1           (2) LAND OF THE PROJECT PARTICIPANTS.—As  
2 a condition of construction of the facilities author-  
3 ized under this title, the Project Participants shall  
4 provide all land or interest in land, as appropriate,  
5 that the Secretary identifies as necessary for acquisi-  
6 tion under this subsection at no cost to the Sec-  
7 retary.

8           (3) LIMITATION.—The Secretary may not con-  
9 demn water rights for purposes of the Project.

10 (d) CONDITIONS.—

11           (1) IN GENERAL.—Except as provided in para-  
12 graph (2), the Secretary shall not commence con-  
13 struction of the facilities authorized under sub-  
14 section (b) until such time as—

15           (A) the Secretary executes the Agreement  
16 and the Contract;

17           (B) the contracts authorized under section  
18 304 are executed;

19           (C) the Secretary—

20           (i) completes an environmental impact  
21 statement for the Project; and

22           (ii) has issued a record of decision  
23 that provides for a preferred alternative;  
24 and

1           (D) the Secretary has entered into an  
2           agreement with the State of New Mexico under  
3           which the State of New Mexico will provide a  
4           share of the construction costs of the Project of  
5           not less than \$50,000,000, except that the  
6           State of New Mexico shall receive credit for  
7           funds the State has contributed to construct  
8           water conveyance facilities to the Project Par-  
9           ticipants to the extent that the facilities reduce  
10          the cost of the Project as estimated in the  
11          Draft Impact Statement.

12          (2) EXCEPTION.—If the Jicarilla Apache Na-  
13          tion elects not to enter into a contract pursuant to  
14          section 304, the Secretary, after consulting with the  
15          Nation, the City, and the State of New Mexico act-  
16          ing through the Interstate Stream Commission, may  
17          make appropriate modifications to the scope of the  
18          Project and proceed with Project construction if all  
19          other conditions for construction have been satisfied.

20          (3) EFFECT OF INDIAN SELF-DETERMINATION  
21          AND EDUCATION ASSISTANCE ACT.—The Indian  
22          Self-Determination and Education Assistance Act  
23          (25 U.S.C. 450 et seq.) shall not apply to the de-  
24          sign, construction, operation, maintenance, or re-  
25          placement of the Project.

1 (e) POWER.—The Secretary shall reserve, from exist-  
2 ing reservations of Colorado River Storage Project power  
3 for Bureau of Reclamation projects, up to 26 megawatts  
4 of power for use by the Project.

5 (f) CONVEYANCE OF TITLE TO PROJECT FACILI-  
6 TIES.—

7 (1) IN GENERAL.—The Secretary is authorized  
8 to enter into separate agreements with the City and  
9 the Nation and, on entering into the agreements,  
10 shall convey title to each Project facility or section  
11 of a Project facility authorized under subsection (b)  
12 (including any appropriate interests in land) to the  
13 City and the Nation after—

14 (A) completion of construction of a Project  
15 facility or a section of a Project facility that is  
16 operating and delivering water; and

17 (B) execution of a Project operations  
18 agreement approved by the Secretary and the  
19 Project Participants that sets forth—

20 (i) any terms and conditions that the  
21 Secretary determines are necessary—

22 (I) to ensure the continuation of  
23 the intended benefits of the Project;  
24 and

1 (II) to fulfill the purposes of this  
2 subtitle;

3 (ii) requirements acceptable to the  
4 Secretary and the Project Participants  
5 for—

6 (I) the distribution of water  
7 under the Project or section of a  
8 Project facility; and

9 (II) the allocation and payment  
10 of annual operation, maintenance, and  
11 replacement costs of the Project or  
12 section of a Project facility based on  
13 the proportionate uses of Project fa-  
14 cilities; and

15 (iii) conditions and requirements ac-  
16 ceptable to the Secretary and the Project  
17 Participants for operating and maintaining  
18 each Project facility on completion of the  
19 conveyance of title, including the require-  
20 ment that the City and the Nation shall—

21 (I) comply with—

22 (aa) the Compact; and

23 (bb) other applicable law;

24 and

25 (II) be responsible for—

1 (aa) the operation, mainte-  
2 nance, and replacement of each  
3 Project facility; and

4 (bb) the accounting and  
5 management of water conveyance  
6 and Project finances, as nec-  
7 essary to administer and fulfill  
8 the conditions of the Contract ex-  
9 ecuted under section  
10 304(a)(2)(B).

11 (2) EFFECT OF CONVEYANCE.—The conveyance  
12 of title to each Project facility shall not affect the  
13 application of the Endangered Species Act of 1973  
14 (16 U.S.C. 1531 et seq.) relating to the use of the  
15 water associated with the Project.

16 (3) LIABILITY.—

17 (A) IN GENERAL.—Effective on the date of  
18 the conveyance authorized by this subsection,  
19 the United States shall not be held liable by  
20 any court for damages of any kind arising out  
21 of any act, omission, or occurrence relating to  
22 the land, buildings, or facilities conveyed under  
23 this subsection, other than damages caused by  
24 acts of negligence committed by the United

1 States, or by employees or agents of the United  
2 States, prior to the date of conveyance.

3 (B) TORT CLAIMS.—Nothing in this sec-  
4 tion increases the liability of the United States  
5 beyond the liability provided in chapter 171 of  
6 title 28, United States Code (commonly known  
7 as the “Federal Tort Claims Act”).

8 (4) NOTICE OF PROPOSED CONVEYANCE.—Not  
9 later than 45 days before the date of a proposed  
10 conveyance of title to any Project facility, the Sec-  
11 retary shall submit to the Committee on Resources  
12 of the House of Representatives and to the Com-  
13 mittee on Energy and Natural Resources of the Sen-  
14 ate notice of the conveyance of each Project facility.

15 (g) COLORADO RIVER STORAGE PROJECT POWER.—  
16 The conveyance of Project facilities under subsection (f)  
17 shall not affect the availability of Colorado River Storage  
18 Project power to the Project under subsection (e).

19 (h) REGIONAL USE OF PROJECT FACILITIES.—

20 (1) IN GENERAL.—Subject to paragraph (2),  
21 Project facilities constructed under subsection (b)  
22 may be used to treat and convey non-Project water  
23 or water that is not allocated by subsection 303(b)  
24 if—



1 (A) capacity is available without impairing  
2 any water delivery to a Project Participant; and

3 (B) the unallocated or non-Project water  
4 beneficiary—

5 (i) has the right to use the water;

6 (ii) agrees to pay the operation, main-  
7 tenance, and replacement costs assignable  
8 to the beneficiary for the use of the Project  
9 facilities; and

10 (iii) agrees to pay an appropriate fee  
11 that may be established by the Secretary  
12 to assist in the recovery of any capital cost  
13 allocable to that use.

14 (2) EFFECT OF PAYMENTS.—Any payments to  
15 the United States or the Nation for the use of un-  
16 used capacity under this subsection or for water  
17 under any subcontract with the Nation or the  
18 Jicarilla Apache Nation shall not alter the construc-  
19 tion repayment requirements or the operation, main-  
20 tenance, and replacement payment requirements of  
21 the Project Participants.

22 **SEC. 303. DELIVERY AND USE OF NAVAJO-GALLUP WATER**  
23 **SUPPLY PROJECT WATER.**

24 (a) USE OF PROJECT WATER.—

1           (1) IN GENERAL.—In accordance with this Act  
2           and other applicable law, water supply from the  
3           Project shall be used for municipal, industrial, com-  
4           mercial, domestic, and stock watering purposes.

5           (2) USE ON CERTAIN LAND.—

6           (A) IN GENERAL.—Subject to subpara-  
7           graph (B), the Nation may use Project water  
8           allocations on—

9                   (i) land held by the United States in  
10                  trust for the Nation and members of the  
11                  Nation; and

12                   (ii) land held in fee by the Nation.

13           (B) TRANSFER.—The Nation may transfer  
14           the purposes and places of use of the allocated  
15           water in accordance with the Agreement and  
16           applicable law.

17           (3) HYDROELECTRIC POWER.—

18           (A) IN GENERAL.—Hydroelectric power  
19           may be generated as an incident to the delivery  
20           of Project water for authorized purposes under  
21           paragraph (1).

22           (B) ADMINISTRATION.—Notwithstanding  
23           any other provision of law—

1 (i) any hydroelectric power generated  
2 under this paragraph shall be used or mar-  
3 keted by the Nation;

4 (ii) the Nation shall retain any reve-  
5 nues from the sale of the hydroelectric  
6 power; and

7 (iii) the United States shall have no  
8 trust obligation or other obligation to mon-  
9 itor, administer, or account for the reve-  
10 nues received by the Nation, or the ex-  
11 penditure of the revenues.

12 (4) STORAGE.—

13 (A) IN GENERAL.—Subject to subpara-  
14 graph (B), any water contracted for delivery  
15 under paragraph (1) that is not needed for cur-  
16 rent water demands or uses may be delivered by  
17 the Project for placement in underground stor-  
18 age in the State of New Mexico for future re-  
19 covery and use.

20 (B) STATE APPROVAL.—Delivery of water  
21 under subparagraph (A) is subject to—

22 (i) approval by the State of New Mex-  
23 ico under applicable provisions of State law  
24 relating to aquifer storage and recovery;  
25 and

1 (ii) the provisions of the Agreement  
2 and this Act.

3 (b) PROJECT WATER AND CAPACITY ALLOCA-  
4 TIONS.—

5 (1) DIVERSION.—Subject to availability and  
6 consistent with Federal and State law, the Project  
7 may divert from the Navajo Reservoir and the San  
8 Juan River a quantity of water to be allocated and  
9 used consistent with the Agreement and this Act,  
10 that does not exceed in any 1 year, the lesser of—

11 (A) 37,760 acre-feet of water; or

12 (B) the quantity of water necessary to sup-  
13 ply a depletion from the San Juan River of  
14 35,890 acre-feet.

15 (2) PROJECT DELIVERY CAPACITY ALLOCA-  
16 TIONS.—

17 (A) IN GENERAL.—The capacity of the  
18 Project shall be allocated to the Project Partici-  
19 pants in accordance with subparagraphs (B)  
20 through (E), other provisions of this Act, and  
21 other applicable law.

22 (B) DELIVERY CAPACITY ALLOCATION TO  
23 THE CITY.—The Project may deliver at the  
24 point of diversion from the San Juan River not  
25 more than 7,500 acre-feet of water in any 1

1 year for which the City has secured rights for  
2 the use of the City.

3 (C) DELIVERY CAPACITY ALLOCATION TO  
4 NAVAJO NATION COMMUNITIES IN NEW MEX-  
5 ICO.—For use by the Nation in the State of  
6 New Mexico, the Project may deliver water out  
7 of the water rights held by the Secretary for the  
8 Nation and confirmed under this Act, at the  
9 points of diversion from the San Juan River or  
10 at Navajo Reservoir in any 1 year, the lesser  
11 of—

- 12 (i) 22,650 acre-feet of water; or  
13 (ii) the quantity of water necessary to  
14 supply a depletion from the San Juan  
15 River of 20,780 acre-feet of water.

16 (D) DELIVERY CAPACITY ALLOCATION TO  
17 NAVAJO NATION COMMUNITIES IN ARIZONA.—  
18 Subject to subsection (c), the Project may de-  
19 liver at the point of diversion from the San  
20 Juan River not more than 6,411 acre-feet of  
21 water in any 1 year for use by the Nation in  
22 the State of Arizona.

23 (E) DELIVERY CAPACITY ALLOCATION TO  
24 JICARILLA APACHE NATION.—The Project may  
25 deliver at Navajo Reservoir not more than

1           1,200 acre-feet of water in any 1 year of the  
2           water rights of the Jicarilla Apache Nation,  
3           held by the Secretary and confirmed by the  
4           Jicarilla Apache Tribe Water Rights Settlement  
5           Act (Public Law 102–441; 106 Stat. 2237), for  
6           use by the Jicarilla Apache Nation in the south-  
7           ern portion of the Jicarilla Apache Nation Res-  
8           ervation in the State of New Mexico.

9           (3) USE IN EXCESS OF DELIVERY CAPACITY AL-  
10          LOCATION QUANTITY.—Notwithstanding each deliv-  
11          ery capacity allocation quantity limit described in  
12          subparagraphs (B), (C), and (E) of paragraph (2),  
13          the Secretary may authorize a Project Participant to  
14          exceed the delivery capacity allocation quantity limit  
15          of that Project Participant if—

16                 (A) delivery capacity is available without  
17                 impairing any water delivery to any other  
18                 Project Participant; and

19                 (B) the Project Participant benefitting  
20                 from the increased allocation of delivery capac-  
21                 ity—

22                         (i) has the right under applicable law  
23                         to use the additional water;

24                         (ii) agrees to pay the operation, main-  
25                         tenance, and replacement costs relating to

1 the additional use of any Project facility;  
2 and

3 (iii) agrees, if the Project title is held  
4 by the Secretary, to pay a fee established  
5 by the Secretary to assist in recovering  
6 capital costs relating to that additional  
7 use.

8 (c) CONDITIONS FOR USE IN ARIZONA.—

9 (1) REQUIREMENTS.—Project water shall not  
10 be delivered for use by any community of the Nation  
11 located in the State of Arizona under subsection  
12 (b)(2)(D) until—

13 (A) the Nation and the State of Arizona  
14 have entered into a water rights settlement  
15 agreement approved by an Act of Congress that  
16 specifies the allocation of Colorado River Sys-  
17 tem water to which the use in Arizona will be  
18 charged; and

19 (B) the Secretary has determined by hy-  
20 drologic investigation that sufficient water is  
21 reasonably likely to be available to supply the  
22 use in the State of Arizona from water of the  
23 Colorado River system allocated to the State.

24 (2) ACCOUNTING OF USES IN ARIZONA.—Pursu-  
25 ant to paragraph (1), any depletion of water from

1 the San Juan River stream system in the State of  
2 New Mexico that results from the diversion of water  
3 by the Project for uses within the State of Arizona  
4 (including depletion incidental to the diversion, im-  
5 pounding, or conveyance of water in the State of  
6 New Mexico for uses in the State of Arizona)—

7 (A) shall be accounted for as a part of the  
8 Colorado River System apportionments to the  
9 State of Arizona; and

10 (B) shall not increase the total quantity of  
11 water to which the State of Arizona is entitled  
12 to use under any compact, statute, or court de-  
13 cree.

14 (d) FORBEARANCE.—

15 (1) IN GENERAL.—Subject to paragraphs (2)  
16 and (3), during any year in which a shortage to the  
17 normal diversion requirement for any use relating to  
18 the Project within the State of Arizona occurs (as  
19 determined under section 11 of Public Law 87–483  
20 (76 Stat. 99)), the Nation may temporarily forbear  
21 the delivery of the water supply of the Navajo Res-  
22 ervoir for uses in the State of New Mexico under the  
23 apportionments of water to the Navajo Indian Irri-  
24 gation Project and the normal diversion require-  
25 ments of the Project to allow an equivalent quantity



1 of water to be delivered from the Navajo Reservoir  
2 water supply for municipal and domestic uses of the  
3 Nation in the State of Arizona under the Project.

4 (2) LIMITATION OF FORBEARANCE.—The Na-  
5 tion may forebear the delivery of water under para-  
6 graph (1) of a quantity not exceeding the quantity  
7 of the shortage to the normal diversion requirement  
8 for any use relating to the Project within the State  
9 of Arizona.

10 (3) EFFECT.—The forbearance of the delivery  
11 of water under paragraph (1) shall be subject to the  
12 requirements in subsection (c).

13 (e) EFFECT.—Nothing in this Act—

14 (1) authorizes the marketing, leasing, or trans-  
15 fer of the water supplies made available to the Na-  
16 tion under the Contract to non-Navajo water users  
17 in States other than the State of New Mexico; or

18 (2) authorizes the forbearance of water uses in  
19 the State of New Mexico to allow uses of water in  
20 other States other than as authorized under sub-  
21 section (d).

22 (f) COLORADO RIVER COMPACTS.—Notwithstanding  
23 any other provision of law—

24 (1) water may be diverted by the Project from  
25 the San Juan River in the State of New Mexico for

1 use within New Mexico in the lower basin, as that  
2 term is used in the Colorado River Compact;

3 (2) any water diverted under paragraph (1)  
4 shall be a part of, and charged against, the con-  
5 sumptive use apportionment made to the State of  
6 New Mexico by article III(a) of the Compact and to  
7 the upper basin by article III(a) of the Colorado  
8 River Compact; and

9 (3) any water so diverted by the Project into  
10 the lower basin within the State of New Mexico shall  
11 not be credited as water reaching Lee Ferry pursu-  
12 ant to articles III(c) and III(d) of the Colorado  
13 River Compact.

14 (g) PAYMENT OF OPERATION, MAINTENANCE, AND  
15 REPLACEMENT COSTS.—

16 (1) IN GENERAL.—The Secretary is authorized  
17 to pay the operation, maintenance, and replacement  
18 costs of the Project allocable to the Project Partici-  
19 pants under section 304 until the date on which the  
20 Secretary declares any section of the Project to be  
21 substantially complete and delivery of water gen-  
22 erated by, and through, that section of the Project  
23 can be made to a Project participant.

24 (2) PROJECT PARTICIPANT PAYMENTS.—Begin-  
25 ning on the date described in paragraph (1), each

1 Project Participant shall pay all allocated operation,  
2 maintenance, and replacement costs for that sub-  
3 stantially completed section of the Project, in ac-  
4 cordance with contracts entered into pursuant to  
5 section 304, except as provided in section 304(f).

6 **SEC. 304. PROJECT CONTRACTS.**

7 (a) NAVAJO NATION CONTRACT.—

8 (1) HYDROLOGIC DETERMINATION.—Congress  
9 recognizes that the Hydrologic Determination nec-  
10 essary to support approval of the Contract has been  
11 completed.

12 (2) CONTRACT APPROVAL.—

13 (A) APPROVAL.—

14 (i) IN GENERAL.—Except to the ex-  
15 tent that any provision of the Contract  
16 conflicts with this Act, Congress approves,  
17 ratifies, and confirms the Contract.

18 (ii) AMENDMENTS.—To the extent  
19 any amendment is executed to make the  
20 Contract consistent with this Act, that  
21 amendment is authorized, ratified, and  
22 confirmed.

23 (B) EXECUTION OF CONTRACT.—The Sec-  
24 retary, acting on behalf of the United States,  
25 shall enter into the Contract to the extent that

1 the Contract does not conflict with this Act (in-  
2 cluding any amendment that is required to  
3 make the Contract consistent with this Act).

4 (3) NONREIMBURSABILITY OF ALLOCATED  
5 COSTS.—The following costs shall be nonreimburs-  
6 able and not subject to repayment by the Nation or  
7 any other Project beneficiary:

8 (A) Any share of the construction costs of  
9 the Nation relating to the Project authorized by  
10 section 302(a).

11 (B) Any costs relating to the construction  
12 of the Navajo Indian Irrigation Project that  
13 may otherwise be allocable to the Nation for  
14 use of any facility of the Navajo Indian Irriga-  
15 tion Project to convey water to each Navajo  
16 community under the Project.

17 (C) Any costs relating to the construction  
18 of Navajo Dam that may otherwise be allocable  
19 to the Nation for water deliveries under the  
20 Contract.

21 (4) OPERATION, MAINTENANCE, AND REPLACE-  
22 MENT OBLIGATION.—Subject to subsection (f), the  
23 Contract shall include provisions under which the  
24 Nation shall pay any costs relating to the operation,

1 maintenance, and replacement of each facility of the  
2 Project that are allocable to the Nation.

3 (5) LIMITATION, CANCELLATION, TERMINATION,  
4 AND RESCISSION.—The Contract may be limited by  
5 a term of years, canceled, terminated, or rescinded  
6 only by an Act of Congress.

7 (b) CITY OF GALLUP CONTRACT.—

8 (1) CONTRACT AUTHORIZATION.—Consistent  
9 with this Act, the Secretary is authorized to enter  
10 into a repayment contract with the City that re-  
11 quires the City—

12 (A) to repay, within a 50-year period, the  
13 share of the construction costs of the City relat-  
14 ing to the Project, with interest as provided  
15 under section 5; and

16 (B) consistent with section 303(g), to pay  
17 the operation, maintenance, and replacement  
18 costs of the Project that are allocable to the  
19 City.

20 (2) CONTRACT PREPAYMENT.—

21 (A) IN GENERAL.—The contract author-  
22 ized under paragraph (1) may allow the City to  
23 satisfy the repayment obligation of the City for  
24 construction costs of the Project on the pay-

1           ment of the share of the City prior to the initi-  
2           ation of construction.

3           (B) AMOUNT.—The amount of the share  
4           of the City described in subparagraph (A) shall  
5           be determined by agreement between the Sec-  
6           retary and the City.

7           (C) REPAYMENT OBLIGATION.—Any repay-  
8           ment obligation established by the Secretary  
9           and the City pursuant to subparagraph (A)  
10          shall be subject to a final cost allocation by the  
11          Secretary on project completion and to the limi-  
12          tations set forth in paragraph (3).

13          (3) SHARE OF CONSTRUCTION COSTS.—

14           (A) IN GENERAL.—Subject to subpara-  
15           graph (B), the Secretary shall determine the  
16           share of the construction costs of the Project  
17           allocable to the City and establish the percent-  
18           age of the allocated construction costs that the  
19           City shall be required to repay pursuant to the  
20           contract entered into under paragraph (1),  
21           based on the ability of the City to pay.

22           (B) MINIMUM PERCENTAGE.—Notwith-  
23           standing subparagraph (A), the repayment obli-  
24           gation of the City shall be at least 25 percent  
25           of the construction costs of the Project that are

1 allocable to the City, but shall in no event ex-  
2 ceed 35 percent.

3 (4) EXCESS CONSTRUCTION COSTS.—Any con-  
4 struction costs of the Project allocable to the City in  
5 excess of the repayment obligation of the City, as  
6 determined under paragraph (3), shall be nonreim-  
7 bursable.

8 (5) GRANT FUNDS.—A grant from any other  
9 Federal source shall not be credited toward the  
10 amount required to be repaid by the City under a  
11 repayment contract.

12 (6) TITLE TRANSFER.—If title is transferred to  
13 the City prior to repayment under section 302(f),  
14 the City shall be required to provide assurances sat-  
15 isfactory to the Secretary of fulfillment of the re-  
16 maining repayment obligation of the City.

17 (7) WATER DELIVERY SUBCONTRACT.—The  
18 Secretary shall not enter into a contract under para-  
19 graph (1) with the City until the City has secured  
20 a water supply for the City's portion of the Project  
21 described in section 303(b)(2)(B), by entering into,  
22 as approved by the Secretary, a water delivery sub-  
23 contract for a period of not less than 40 years begin-  
24 ning on the date on which the construction of any

1 facility of the Project serving the City is completed,  
2 with—

3 (A) the Nation, as authorized by the Con-  
4 tract;

5 (B) the Jicarilla Apache Nation, as author-  
6 ized by the settlement contract between the  
7 United States and the Jicarilla Apache Tribe,  
8 authorized by the Jicarilla Apache Tribe Water  
9 Rights Settlement Act (Public Law 102-441;  
10 106 Stat. 2237); or

11 (C) an acquired alternate source of water,  
12 subject to approval of the Secretary and the  
13 State of New Mexico, acting through the New  
14 Mexico Interstate Stream Commission and the  
15 New Mexico State Engineer.

16 (c) JICARILLA APACHE NATION CONTRACT.—

17 (1) CONTRACT AUTHORIZATION.—Consistent  
18 with this Act, the Secretary is authorized to enter  
19 into a repayment contract with the Jicarilla Apache  
20 Nation that requires the Jicarilla Apache Nation—

21 (A) to repay, within a 50-year period, the  
22 share of any construction cost of the Jicarilla  
23 Apache Nation relating to the Project, with in-  
24 terest as provided under section 5; and



1 (B) consistent with section 303(g), to pay  
2 the operation, maintenance, and replacement  
3 costs of the Project that are allocable to the  
4 Jicarilla Apache Nation.

5 (2) CONTRACT PREPAYMENT.—

6 (A) IN GENERAL.—The contract author-  
7 ized under paragraph (1) may allow the  
8 Jicarilla Apache Nation to satisfy the repay-  
9 ment obligation of the Jicarilla Apache Nation  
10 for construction costs of the Project on the pay-  
11 ment of the share of the Jicarilla Apache Na-  
12 tion prior to the initiation of construction.

13 (B) AMOUNT.—The amount of the share  
14 of Jicarilla Apache Nation described in sub-  
15 paragraph (A) shall be determined by agree-  
16 ment between the Secretary and the Jicarilla  
17 Apache Nation.

18 (C) REPAYMENT OBLIGATION.—Any repay-  
19 ment obligation established by the Secretary  
20 and the Jicarilla Apache Nation pursuant to  
21 subparagraph (A) shall be subject to a final  
22 cost allocation by the Secretary on project com-  
23 pletion and to the limitations set forth in para-  
24 graph (3).

25 (3) SHARE OF CONSTRUCTION COSTS.—

1           (A) IN GENERAL.—Subject to subpara-  
2 graph (B), the Secretary shall determine the  
3 share of the construction costs of the Project  
4 allocable to the Jicarilla Apache Nation and es-  
5 tablish the percentage of the allocated construc-  
6 tion costs of the Jicarilla Apache Nation that  
7 the Jicarilla Apache Nation shall be required to  
8 repay based on the ability of the Jicarilla  
9 Apache Nation to pay.

10           (B) MINIMUM PERCENTAGE.—Notwith-  
11 standing subparagraph (A), the repayment obli-  
12 gation of the Jicarilla Apache Nation shall be  
13 at least 25 percent of the construction costs of  
14 the Project that are allocable to the Jicarilla  
15 Apache Nation, but shall in no event exceed 35  
16 percent.

17           (4) EXCESS CONSTRUCTION COSTS.—Any con-  
18 struction costs of the Project allocable to the  
19 Jicarilla Apache Nation in excess of the repayment  
20 obligation of the Jicarilla Apache Nation as deter-  
21 mined under paragraph (3), shall be nonreimburs-  
22 able.

23           (5) GRANT FUNDS.—A grant from any other  
24 Federal source shall not be credited toward the

1 share of the Jicarilla Apache Nation of construction  
2 costs.

3 (6) NAVAJO INDIAN IRRIGATION PROJECT  
4 COSTS.—The Jicarilla Apache Nation shall have no  
5 obligation to repay any Navajo Indian Irrigation  
6 Project construction costs that might otherwise be  
7 allocable to the Jicarilla Apache Nation for use of  
8 the Navajo Indian Irrigation Project facilities to  
9 convey water to the Jicarilla Apache Nation, and  
10 any such costs shall be nonreimbursable.

11 (d) CAPITAL COST ALLOCATIONS.—

12 (1) IN GENERAL.—For purposes of estimating  
13 the capital repayment requirements of the Project  
14 Participants under this section, the Secretary shall  
15 review and, as appropriate, update the Draft Impact  
16 Statement allocating capital construction costs for  
17 the Project.

18 (2) FINAL COST ALLOCATION.—The repayment  
19 contracts entered into with Project Participants  
20 under this section shall require that the Secretary  
21 perform a final cost allocation when construction of  
22 the Project is determined to be substantially com-  
23 plete.

24 (3) REPAYMENT OBLIGATION.—The Secretary  
25 shall determine the repayment obligation of the

1 Project Participants based on the final cost alloca-  
2 tion identifying reimbursable and nonreimbursable  
3 capital costs of the Project consistent with this Act.

4 (e) OPERATION, MAINTENANCE, AND REPLACEMENT  
5 COST ALLOCATIONS.—For purposes of determining the  
6 operation, maintenance, and replacement obligations of  
7 the Project Participants under this section, the Secretary  
8 shall review and, as appropriate, update the Draft Impact  
9 Statement that allocates operation, maintenance, and re-  
10 placement costs for the Project.

11 (f) TEMPORARY WAIVERS OF PAYMENTS.—

12 (1) IN GENERAL.—On the date on which the  
13 Secretary declares a section of the Project to be sub-  
14 stantially complete and delivery of water generated  
15 by and through that section of the Project can be  
16 made to the Nation, the Secretary may waive, for a  
17 period of not more than 10 years, the operation,  
18 maintenance, and replacement costs allocable to the  
19 Nation for that section of the Project that the Sec-  
20 retary determines are in excess of the ability of the  
21 Nation to pay.

22 (2) SUBSEQUENT PAYMENT BY NATION.—After  
23 a waiver under paragraph (1), the Nation shall pay  
24 all allocated operation, maintenance, and replace-  
25 ment costs of that section of the Project.

1           (3) PAYMENT BY UNITED STATES.—Any oper-  
2           ation, maintenance, or replacement costs waived by  
3           the Secretary under paragraph (1) shall be paid by  
4           the United States and shall be nonreimbursable.

5           (4) EFFECT ON CONTRACTS.—Failure of the  
6           Secretary to waive costs under paragraph (1) be-  
7           cause of a lack of availability of Federal funding to  
8           pay the costs under paragraph (3) shall not alter the  
9           obligations of the Nation or the United States under  
10          a repayment contract.

11          (5) TERMINATION OF AUTHORITY.—The au-  
12          thority of the Secretary to waive costs under para-  
13          graph (1) with respect to a Project facility trans-  
14          ferred to the Nation under section 302(f) shall ter-  
15          minate on the date on which the Project facility is  
16          transferred.

17          (g) PROJECT CONSTRUCTION COMMITTEE.—The  
18          Secretary shall facilitate the formation of a project con-  
19          struction committee with the Project Participants and the  
20          State of New Mexico—

21                 (1) to review cost factors and budgets for con-  
22                 struction and operation and maintenance activities;

23                 (2) to improve construction management  
24                 through enhanced communication; and

1           (3) to seek additional ways to reduce overall  
2       Project costs.

3 **SEC. 305. NAVAJO NATION MUNICIPAL PIPELINE.**

4       (a) USE OF NAVAJO NATION PIPELINE.—In addition  
5 to use of the Navajo Nation Municipal Pipeline to convey  
6 the Animas-La Plata Project water of the Nation, the Na-  
7 tion may use the Navajo Nation Municipal Pipeline to con-  
8 vey non-Animas La Plata Project water for municipal and  
9 industrial purposes.

10       (b) CONVEYANCE OF TITLE TO PIPELINE.—

11           (1) IN GENERAL.—On completion of the Navajo  
12 Nation Municipal Pipeline, the Secretary may enter  
13 into separate agreements with the City of Farm-  
14 ington, New Mexico and the Nation to convey title  
15 to each portion of the Navajo Nation Municipal  
16 Pipeline facility or section of the Pipeline to the City  
17 of Farmington and the Nation after execution of a  
18 Project operations agreement approved by the Sec-  
19 retary, the Nation, and the City of Farmington that  
20 sets forth any terms and conditions that the Sec-  
21 retary determines are necessary.

22           (2) CONVEYANCE TO THE CITY OF FARMINGTON  
23 OR NAVAJO NATION.—In conveying title to the Nav-  
24 ajo Nation Municipal Pipeline under this subsection,  
25 the Secretary shall convey—

1 (A) to the City of Farmington, the facilities  
2 and any land or interest in land acquired  
3 by the United States for the construction, operation,  
4 and maintenance of the Pipeline that are  
5 located within the corporate boundaries of the  
6 City; and

7 (B) to the Nation, the facilities and any  
8 land or interests in land acquired by the United  
9 States for the construction, operation, and  
10 maintenance of the Pipeline that are located  
11 outside the corporate boundaries of the City of  
12 Farmington.

13 (3) EFFECT OF CONVEYANCE.—The conveyance  
14 of title to the Pipeline shall not affect the application  
15 of the Endangered Species Act of 1973 (16  
16 U.S.C. 1531 et seq.) relating to the use of water associated  
17 with the Animas-La Plata Project.

18 (4) LIABILITY.—

19 (A) IN GENERAL.—Effective on the date of  
20 the conveyance authorized by this subsection,  
21 the United States shall not be held liable by  
22 any court for damages of any kind arising out  
23 of any act, omission, or occurrence relating to  
24 the land, buildings, or facilities conveyed under  
25 this subsection, other than damages caused by

1 acts of negligence committed by the United  
2 States or by employees or agents of the United  
3 States prior to the date of conveyance.

4 (B) TORT CLAIMS.—Nothing in this sub-  
5 section increases the liability of the United  
6 States beyond the liability provided under chap-  
7 ter 171 of title 28, United States Code (com-  
8 monly known as the “Federal Tort Claims  
9 Act”).

10 (5) NOTICE OF PROPOSED CONVEYANCE.—Not  
11 later than 45 days before the date of a proposed  
12 conveyance of title to the Pipeline, the Secretary  
13 shall submit to the Committee on Natural Resources  
14 of the House of Representatives and the Committee  
15 on Energy and Natural Resources of the Senate, no-  
16 tice of the conveyance of the Pipeline.

17 **SEC. 306. AUTHORIZATION OF CONJUNCTIVE USE WELLS.**

18 (a) CONJUNCTIVE GROUNDWATER DEVELOPMENT  
19 PLAN.—Not later than 1 year after the date of enactment  
20 of this Act, the Nation, in consultation with the Secretary,  
21 shall complete a conjunctive groundwater development  
22 plan for the wells described in subsections (b) and (c).

23 (b) WELLS IN THE SAN JUAN RIVER BASIN.—In ac-  
24 cordance with the conjunctive groundwater development  
25 plan, the Secretary may construct or rehabilitate wells and



1 related pipeline facilities to provide capacity for the diver-  
2 sion and distribution of not more than 1,670 acre-feet of  
3 groundwater in the San Juan River Basin in the State  
4 of New Mexico for municipal and domestic uses.

5 (c) WELLS IN THE LITTLE COLORADO AND RIO  
6 GRANDE BASINS.—

7 (1) IN GENERAL.—In accordance with the  
8 Project and conjunctive groundwater development  
9 plan for the Nation, the Secretary may construct or  
10 rehabilitate wells and related pipeline facilities to  
11 provide capacity for the diversion and distribution  
12 of—

13 (A) not more than 680 acre-feet of ground-  
14 water in the Little Colorado River Basin in the  
15 State of New Mexico;

16 (B) not more than 80 acre-feet of ground-  
17 water in the Rio Grande Basin in the State of  
18 New Mexico; and

19 (C) not more than 770 acre-feet of ground-  
20 water in the Little Colorado River Basin in the  
21 State of Arizona.

22 (2) USE.—Groundwater diverted and distrib-  
23 uted under paragraph (1) shall be used for munic-  
24 ipal and domestic uses.

25 (d) ACQUISITION OF LAND.—

1           (1) IN GENERAL.—Except as provided in para-  
2           graph (2), the Secretary may acquire any land or in-  
3           terest in land that is necessary for the construction,  
4           operation, and maintenance of the wells and related  
5           pipeline facilities authorized under subsections (b)  
6           and (c).

7           (2) LIMITATION.—Nothing in this subsection  
8           authorizes the Secretary to condemn water rights for  
9           the purposes described in paragraph (1).

10          (e) CONDITION.—The Secretary shall not commence  
11          any construction activity relating to the wells described in  
12          subsections (b) and (c) until the Secretary executes the  
13          Agreement.

14          (f) CONVEYANCE OF WELLS.—

15               (1) IN GENERAL.—On the determination of the  
16               Secretary that the wells and related facilities are  
17               substantially complete and delivery of water gen-  
18               erated by the wells can be made to the Nation, an  
19               agreement with the Nation shall be entered into, to  
20               convey to the Nation title to—

21                       (A) any well or related pipeline facility  
22                       constructed or rehabilitated under subsections  
23                       (a) and (b) after the wells and related facilities  
24                       have been completed; and

1 (B) any land or interest in land acquired  
2 by the United States for the construction, oper-  
3 ation, and maintenance of the well or related  
4 pipeline facility.

5 (2) OPERATION, MAINTENANCE, AND REPLACE-  
6 MENT.—

7 (A) IN GENERAL.—The Secretary is au-  
8 thorized to pay operation and maintenance  
9 costs for the wells and related pipeline facilities  
10 authorized under this subsection until title to  
11 the facilities is conveyed to the Nation.

12 (B) SUBSEQUENT ASSUMPTION BY NA-  
13 TION.—On completion of a conveyance of title  
14 under paragraph (1), the Nation shall assume  
15 all responsibility for the operation and mainte-  
16 nance of the well or related pipeline facility con-  
17 veyed.

18 (3) EFFECT OF CONVEYANCE.—The conveyance  
19 of title to the Nation of the conjunctive use wells  
20 under paragraph (1) shall not affect the application  
21 of the Endangered Species Act of 1973 (16 U.S.C.  
22 1531 et seq.).

23 (g) USE OF PROJECT FACILITIES.—The capacities of  
24 the treatment facilities, main pipelines, and lateral pipe-  
25 lines of the Project authorized by section 302(b) may be

1 used to treat and convey groundwater to Nation commu-  
2 nities if the Nation provides for payment of the operation,  
3 maintenance, and replacement costs associated with the  
4 use of the facilities or pipelines.

5 (h) LIMITATIONS.—The diversion and use of ground-  
6 water by wells constructed or rehabilitated under this sec-  
7 tion shall be made in a manner consistent with applicable  
8 Federal and State law.

9 **SEC. 307. SAN JUAN RIVER NAVAJO IRRIGATION PROJECTS.**

10 (a) REHABILITATION.—Subject to subsection (b), the  
11 Secretary shall rehabilitate—

12 (1) the Fruitland-Cambridge Irrigation Project  
13 to serve not more than 3,335 acres of land, which  
14 shall be considered to be the total serviceable area  
15 of the project; and

16 (2) the Hogback-Cudei Irrigation Project to  
17 serve not more than 8,830 acres of land, which shall  
18 be considered to be the total serviceable area of the  
19 project.

20 (b) CONDITION.—The Secretary shall not commence  
21 any construction activity relating to the rehabilitation of  
22 the Fruitland-Cambridge Irrigation Project or the Hog-  
23 back-Cudei Irrigation Project under subsection (a) until  
24 the Secretary executes the Agreement.

1           (c) OPERATION, MAINTENANCE, AND REPLACEMENT  
2 OBLIGATION.—The Nation shall continue to be respon-  
3 sible for the operation, maintenance, and replacement of  
4 each facility rehabilitated under this section.

5 **SEC. 308. OTHER IRRIGATION PROJECTS.**

6           (a) IN GENERAL.—Not later than 2 years after the  
7 date of enactment of this Act, the Secretary, in consulta-  
8 tion with the State of New Mexico (acting through the  
9 Interstate Stream Commission) and the Non-Navajo Irri-  
10 gation Districts that elect to participate, shall—

11                 (1) conduct a study of Non-Navajo Irrigation  
12 District diversion and ditch facilities; and

13                 (2) based on the study, identify and prioritize  
14 a list of projects, with associated cost estimates, that  
15 are recommended to be implemented to repair, reha-  
16 bilitate, or reconstruct irrigation diversion and ditch  
17 facilities to improve water use efficiency.

18           (b) GRANTS.—The Secretary may provide grants to,  
19 and enter into cooperative agreements with, the Non-Nav-  
20 ajo Irrigation Districts to plan, design, or otherwise imple-  
21 ment the projects identified under subsection (a)(2).

22           (c) COST-SHARING.—

23                 (1) FEDERAL SHARE.—The Federal share of  
24 the total cost of carrying out a project under sub-

1 section (b) shall be not more than 50 percent, and  
2 shall be nonreimbursable.

3 (2) FORM.—The non-Federal share required  
4 under paragraph (1) may be in the form of in-kind  
5 contributions, including the contribution of any valu-  
6 able asset or service that the Secretary determines  
7 would substantially contribute to a project carried  
8 out under subsection (b).

9 (3) STATE CONTRIBUTION.—The Secretary may  
10 accept from the State of New Mexico a partial or  
11 total contribution toward the non-Federal share for  
12 a project carried out under subsection (b).

13 **SEC. 309. AUTHORIZATION OF APPROPRIATIONS.**

14 (a) AUTHORIZATION OF APPROPRIATIONS FOR NAV-  
15 AJO-GALLUP WATER SUPPLY PROJECT.—

16 (1) IN GENERAL.—There is authorized to be  
17 appropriated to the Secretary to plan, design, and  
18 construct the Project \$870,000,000 for the period of  
19 fiscal years 2009 through 2024, to remain available  
20 until expended.

21 (2) ADJUSTMENTS.—The amount under para-  
22 graph (1) shall be adjusted by such amounts as may  
23 be required by reason of changes since 2007 in con-  
24 struction costs, as indicated by engineering cost indi-  
25 ces applicable to the types of construction involved.

1           (3) USE.—In addition to the uses authorized  
2           under paragraph (1), amounts made available under  
3           that paragraph may be used for the conduct of re-  
4           lated activities to comply with Federal environmental  
5           laws.

6           (4) OPERATION AND MAINTENANCE.—

7                   (A) IN GENERAL.—There are authorized to  
8                   be appropriated such sums as are necessary to  
9                   operate and maintain the Project consistent  
10                  with this Act.

11                  (B) EXPIRATION.—The authorization  
12                  under subparagraph (A) shall expire 10 years  
13                  after the year the Secretary declares the Project  
14                  to be substantially complete.

15           (b) APPROPRIATIONS FOR CONJUNCTIVE USE  
16           WELLS.—

17                   (1) SAN JUAN WELLS.—There is authorized to  
18                   be appropriated to the Secretary for the construction  
19                   or rehabilitation and operation and maintenance of  
20                   conjunctive use wells under section 306(b)  
21                   \$30,000,000, as adjusted under paragraph (3), for  
22                   the period of fiscal years 2009 through 2019.

23                   (2) WELLS IN THE LITTLE COLORADO AND RIO  
24                   GRANDE BASINS.—There are authorized to be appro-  
25                   priated to the Secretary for the construction or reha-

1       bilitation and operation and maintenance of conjunctive  
2       tive use wells under section 306(c) such sums as are  
3       necessary for the period of fiscal years 2009 through  
4       2024.

5           (3) ADJUSTMENTS.—The amount under paragraph  
6       (1) shall be adjusted by such amounts as may  
7       be required by reason of changes since 2008 in construction  
8       costs, as indicated by engineering cost indices applicable to  
9       the types of construction or rehabilitation involved.  
10       bilitation involved.

11           (4) NONREIMBURSABLE EXPENDITURES.—  
12       Amounts made available under paragraphs (1) and  
13       (2) shall be nonreimbursable to the United States.

14           (5) USE.—In addition to the uses authorized  
15       under paragraphs (1) and (2), amounts made available  
16       under that paragraph may be used for the conduct of related  
17       activities to comply with Federal environmental laws.  
18       vironmental laws.

19           (6) LIMITATION.—Appropriations authorized  
20       under paragraph (1) shall not be used for operation  
21       or maintenance of any conjunctive use wells at a  
22       time in excess of 3 years after the well is declared  
23       substantially complete.

24       (c) SAN JUAN RIVER IRRIGATION PROJECTS.—



1           (1) IN GENERAL.—There are authorized to be  
2 appropriated to the Secretary—

3           (A) to carry out section 307(a)(1), not  
4 more than \$7,700,000, as adjusted under para-  
5 graph (2), for the period of fiscal years 2009  
6 through 2015, to remain available until ex-  
7 pended; and

8           (B) to carry out section 307(a)(2), not  
9 more than \$15,400,000, as adjusted under  
10 paragraph (2), for the period of fiscal years  
11 2009 through 2018, to remain available until  
12 expended.

13           (2) ADJUSTMENT.—The amounts made avail-  
14 able under paragraph (1) shall be adjusted by such  
15 amounts as may be required by reason of changes  
16 since January 1, 2004, in construction costs, as in-  
17 dicated by engineering cost indices applicable to the  
18 types of construction involved in the rehabilitation.

19           (3) NONREIMBURSABLE EXPENDITURES.—  
20 Amounts made available under this subsection shall  
21 be nonreimbursable to the United States.

22           (d) OTHER IRRIGATION PROJECTS.—There are au-  
23 thorized to be appropriated to the Secretary to carry out  
24 section 308 \$11,000,000 for the period of fiscal years  
25 2009 through 2018.

1 (e) CULTURAL RESOURCES.—

2 (1) IN GENERAL.—The Secretary may use not  
3 more than 2 percent of amounts made available  
4 under subsections (a), (b), and (c) for the survey, re-  
5 covery, protection, preservation, and display of ar-  
6 chaeological resources in the area of a Project facil-  
7 ity or conjunctive use well.

8 (2) NONREIMBURSABLE EXPENDITURES.—Any  
9 amounts made available under paragraph (1) shall  
10 be nonreimbursable.

11 (f) FISH AND WILDLIFE FACILITIES.—

12 (1) IN GENERAL.—In association with the de-  
13 velopment of the Project, the Secretary may use not  
14 more than 4 percent of amounts made available  
15 under subsections (a), (b), and (c) to purchase land  
16 and construct and maintain facilities to mitigate the  
17 loss of, and improve conditions for the propagation  
18 of, fish and wildlife if any such purchase, construc-  
19 tion, or maintenance will not affect the operation of  
20 any water project or use of water.

21 (2) NONREIMBURSABLE EXPENDITURES.—Any  
22 amounts expended under paragraph (1) shall be  
23 nonreimbursable.

1           **TITLE IV—NAVAJO NATION**  
2                           **WATER RIGHTS**

3 **SEC. 401. AGREEMENT.**

4           (a) **AGREEMENT APPROVAL.**—

5                   (1) **APPROVAL BY CONGRESS.**—Except to the  
6           extent that any provision of the Agreement conflicts  
7           with this Act, Congress approves, ratifies, and con-  
8           firms the Agreement (including any amendments to  
9           the Agreement that are executed to make the Agree-  
10          ment consistent with this Act).

11                   (2) **EXECUTION BY SECRETARY.**—The Sec-  
12          retary shall enter into the Agreement to the extent  
13          that the Agreement does not conflict with this Act,  
14          including—

15                           (A) any exhibits to the Agreement requir-  
16                           ing the signature of the Secretary; and

17                           (B) any amendments to the Agreement  
18                           necessary to make the Agreement consistent  
19                           with this Act.

20                   (3) **AUTHORITY OF SECRETARY.**—The Sec-  
21          retary may carry out any action that the Secretary  
22          determines is necessary or appropriate to implement  
23          the Agreement, the Contract, and this section.

24                   (4) **ADMINISTRATION OF NAVAJO RESERVOIR**  
25          **RELEASES.**—The State of New Mexico may admin-

1       ister water that has been released from storage in  
 2       Navajo Reservoir in accordance with subparagraph  
 3       9.1 of the Agreement.

4       (b) WATER AVAILABLE UNDER CONTRACT.—

5           (1) QUANTITIES OF WATER AVAILABLE.—

6               (A) IN GENERAL.—Water shall be made  
 7       available annually under the Contract for  
 8       projects in the State of New Mexico supplied  
 9       from the Navajo Reservoir and the San Juan  
 10      River (including tributaries of the River) under  
 11      New Mexico State Engineer File Numbers  
 12      2849, 2883, and 3215 in the quantities de-  
 13      scribed in subparagraph (B).

14           (B) WATER QUANTITIES.—The quantities  
 15      of water referred to in subparagraph (A) are as  
 16      follows:

	Diver- sion (acre- feet/ year)	Deple- tion (acre- feet/ year)
Navajo Indian Irrigation Project	508,000	270,000
Navajo-Gallup Water Supply Project	22,650	20,780
Animas-La Plata Project	4,680	2,340
Total	535,330	293,120

17           (C) MAXIMUM QUANTITY.—A diversion of  
 18      water to the Nation under the Contract for a  
 19      project described in subparagraph (B) shall not

1           exceed the quantity of water necessary to sup-  
2           ply the amount of depletion for the project.

3           (D) TERMS, CONDITIONS, AND LIMITA-  
4           TIONS.—The diversion and use of water under  
5           the Contract shall be subject to and consistent  
6           with the terms, conditions, and limitations of  
7           the Agreement, this Act, and any other applica-  
8           ble law.

9           (2) AMENDMENTS TO CONTRACT.—The Sec-  
10          retary, with the consent of the Nation, may amend  
11          the Contract if the Secretary determines that the  
12          amendment is—

13                 (A) consistent with the Agreement; and

14                 (B) in the interest of conserving water or  
15                 facilitating beneficial use by the Nation or a  
16                 subcontractor of the Nation.

17          (3) RIGHTS OF THE NATION.—The Nation may,  
18          under the Contract—

19                 (A) use tail water, wastewater, and return  
20                 flows attributable to a use of the water by the  
21                 Nation or a subcontractor of the Nation if—

22                         (i) the depletion of water does not ex-  
23                         ceed the quantities described in paragraph  
24                         (1); and

1           (ii) the use of tail water, wastewater,  
2           or return flows is consistent with the  
3           terms, conditions, and limitations of the  
4           Agreement, and any other applicable law;  
5           and

6           (B) change a point of diversion, change a  
7           purpose or place of use, and transfer a right for  
8           depletion under this Act (except for a point of  
9           diversion, purpose or place of use, or right for  
10          depletion for use in the State of Arizona under  
11          section 303(b)(2)(D)), to another use, purpose,  
12          place, or depletion in the State of New Mexico  
13          to meet a water resource or economic need of  
14          the Nation if—

15               (i) the change or transfer is subject to  
16               and consistent with the terms of the  
17               Agreement, the Partial Final Decree de-  
18               scribed in paragraph 3.0 of the Agreement,  
19               the Contract, and any other applicable law;  
20               and

21               (ii) a change or transfer of water use  
22               by the Nation does not alter any obligation  
23               of the United States, the Nation, or an-  
24               other party to pay or repay project con-  
25               struction, operation, maintenance, or re-

1 placement costs under this Act and the  
2 Contract.

3 (c) SUBCONTRACTS.—

4 (1) IN GENERAL.—

5 (A) SUBCONTRACTS BETWEEN NATION  
6 AND THIRD PARTIES.—The Nation may enter  
7 into subcontracts for the delivery of Project  
8 water under the Contract to third parties for  
9 any beneficial use in the State of New Mexico  
10 (on or off land held by the United States in  
11 trust for the Nation or a member of the Nation  
12 or land held in fee by the Nation).

13 (B) APPROVAL REQUIRED.—A subcontract  
14 entered into under subparagraph (A) shall not  
15 be effective until approved by the Secretary in  
16 accordance with this subsection and the Con-  
17 tract.

18 (C) SUBMITTAL.—The Nation shall submit  
19 to the Secretary for approval or disapproval any  
20 subcontract entered into under this subsection.

21 (D) DEADLINE.—The Secretary shall ap-  
22 prove or disapprove a subcontract submitted to  
23 the Secretary under subparagraph (C) not later  
24 than the later of—

1 (i) the date that is 180 days after the  
2 date on which the subcontract is submitted  
3 to the Secretary; and

4 (ii) the date that is 60 days after the  
5 date on which a subcontractor complies  
6 with—

7 (I) section 102(2)(C) of the Na-  
8 tional Environmental Policy Act of  
9 1969 (42 U.S.C. 4332(2)(C)); and

10 (II) any other requirement of  
11 Federal law.

12 (E) ENFORCEMENT.—A party to a sub-  
13 contract may enforce the deadline described in  
14 subparagraph (D) under section 1361 of title  
15 28, United States Code.

16 (F) COMPLIANCE WITH OTHER LAW.—A  
17 subcontract described in subparagraph (A) shall  
18 comply with the Agreement, the Partial Final  
19 Decree described in paragraph 3.0 of the Agree-  
20 ment, and any other applicable law.

21 (G) NO LIABILITY.—The Secretary shall  
22 not be liable to any party, including the Nation,  
23 for any term of, or any loss or other detriment  
24 resulting from, a lease, contract, or other agree-  
25 ment entered into pursuant to this subsection.



1 (2) ALIENATION.—

2 (A) PERMANENT ALIENATION.—The Na-  
3 tion shall not permanently alienate any right  
4 granted to the Nation under the Contract.

5 (B) MAXIMUM TERM.—The term of any  
6 water use subcontract (including a renewal)  
7 under this subsection shall be not more than 99  
8 years.

9 (3) NONINTERCOURSE ACT COMPLIANCE.—This  
10 subsection—

11 (A) provides congressional authorization  
12 for the subcontracting rights of the Nation; and

13 (B) is deemed to fulfill any requirement  
14 that may be imposed by section 2116 of the Re-  
15 vised Statutes (25 U.S.C. 177).

16 (4) FORFEITURE.—The nonuse of the water  
17 supply secured by a subcontractor of the Nation  
18 under this subsection shall not result in forfeiture,  
19 abandonment, relinquishment, or other loss of any  
20 part of a right decreed to the Nation under the Con-  
21 tract or this section.

22 (5) NO PER CAPITA PAYMENTS.—No part of  
23 the revenue from a water use subcontract under this  
24 subsection shall be distributed to any member of the  
25 Nation on a per capita basis.

1 (d) WATER LEASES NOT REQUIRING SUB-  
2 CONTRACTS.—

3 (1) AUTHORITY OF NATION.—

4 (A) IN GENERAL.—The Nation may lease,  
5 contract, or otherwise transfer to another party  
6 or to another purpose or place of use in the  
7 State of New Mexico (on or off land that is held  
8 by the United States in trust for the Nation or  
9 a member of the Nation or held in fee by the  
10 Nation) a water right that—

11 (i) is decreed to the Nation under the  
12 Agreement; and

13 (ii) is not subject to the Contract.

14 (B) COMPLIANCE WITH OTHER LAW.—In  
15 carrying out an action under this subsection,  
16 the Nation shall comply with the Agreement,  
17 the Partial Final Decree described in paragraph  
18 3.0 of the Agreement, the Supplemental Partial  
19 Final Decree described in paragraph 4.0 of the  
20 Agreement, and any other applicable law.

21 (2) ALIENATION; MAXIMUM TERM.—

22 (A) ALIENATION.—The Nation shall not  
23 permanently alienate any right granted to the  
24 Nation under the Agreement.

1           (B) MAXIMUM TERM.—The term of any  
2           water use lease, contract, or other arrangement  
3           (including a renewal) under this subsection  
4           shall be not more than 99 years.

5           (3) NO LIABILITY.—The Secretary shall not be  
6           liable to any party, including the Nation, for any  
7           term of, or any loss or other detriment resulting  
8           from, a lease, contract, or other agreement entered  
9           into pursuant to this subsection.

10          (4) NONINTERCOURSE ACT COMPLIANCE.—This  
11          subsection—

12                 (A) provides congressional authorization  
13                 for the lease, contracting, and transfer of any  
14                 water right described in paragraph (1)(A); and

15                 (B) is deemed to fulfill any requirement  
16                 that may be imposed by the provisions of sec-  
17                 tion 2116 of the Revised Statutes (25 U.S.C.  
18                 177).

19          (5) FORFEITURE.—The nonuse of a water right  
20          of the Nation by a lessee or contractor to the Nation  
21          under this subsection shall not result in forfeiture,  
22          abandonment, relinquishment, or other loss of any  
23          part of a right decreed to the Nation under the Con-  
24          tract or this section.

25          (e) NULLIFICATION.—

## 1 (1) DEADLINES.—

2 (A) IN GENERAL.—In carrying out this  
3 section, the following deadlines apply with re-  
4 spect to implementation of the Agreement:

5 (i) AGREEMENT.—Not later than De-  
6 cember 31, 2009, the Secretary shall exe-  
7 cute the Agreement.

8 (ii) CONTRACT.—Not later than De-  
9 cember 31, 2009, the Secretary and the  
10 Nation shall execute the Contract.

11 (iii) PARTIAL FINAL DECREE.—Not  
12 later than December 31, 2012, the court in  
13 the stream adjudication shall have entered  
14 the Partial Final Decree described in para-  
15 graph 3.0 of the Agreement.

16 (iv) FRUITLAND-CAMBRIDGE IRRIGA-  
17 TION PROJECT.—Not later than December  
18 31, 2015, the rehabilitation construction of  
19 the Fruitland-Cambridge Irrigation Project  
20 authorized under section 307(a)(1) shall be  
21 completed.

22 (v) SUPPLEMENTAL PARTIAL FINAL  
23 DECREE.—Not later than December 31,  
24 2015, the court in the stream adjudication  
25 shall enter the Supplemental Partial Final

1 Decree described in subparagraph 4.0 of  
2 the Agreement.

3 (vi) HOGBACK-CUDEI IRRIGATION  
4 PROJECT.—Not later than December 31,  
5 2018, the rehabilitation construction of the  
6 Hogback-Cudei Irrigation Project author-  
7 ized under section 307(a)(2) shall be com-  
8 pleted.

9 (vii) TRUST FUND.—Not later than  
10 December 31, 2019, the United States  
11 shall make all deposits into the Trust  
12 Fund under section 402.

13 (viii) CONJUNCTIVE WELLS.—Not  
14 later than December 31, 2019, the funds  
15 authorized to be appropriated under sec-  
16 tion 309(b)(1) for the conjunctive use wells  
17 authorized under section 306(b) should be  
18 appropriated.

19 (ix) NAVAJO-GALLUP WATER SUPPLY  
20 PROJECT.—Not later than December 31,  
21 2024, the construction of all Project facili-  
22 ties shall be completed.

23 (B) EXTENSION.—A deadline described in  
24 subparagraph (A) may be extended if the Na-  
25 tion, the United States (acting through the Sec-

1           retary), and the State of New Mexico (acting  
2           through the New Mexico Interstate Stream  
3           Commission) agree that an extension is reason-  
4           ably necessary.

5           (2) REVOCABILITY OF AGREEMENT, CONTRACT  
6           AND AUTHORIZATIONS.—

7                   (A) PETITION.—If the Nation determines  
8                   that a deadline described in paragraph (1)(A) is  
9                   not substantially met, the Nation may submit  
10                  to the court in the stream adjudication a peti-  
11                  tion to enter an order terminating the Agree-  
12                  ment and Contract.

13                  (B) TERMINATION.—On issuance of an  
14                  order to terminate the Agreement and Contract  
15                  under subparagraph (A)—

16                          (i) the Trust Fund shall be termi-  
17                          nated;

18                          (ii) the balance of the Trust Fund  
19                          shall be deposited in the general fund of  
20                          the Treasury;

21                          (iii) the authorizations for construc-  
22                          tion and rehabilitation of water projects  
23                          under this Act shall be revoked and any  
24                          Federal activity related to that construc-

1           tion and rehabilitation shall be suspended;  
2           and

3                   (iv) this title and titles I and III shall  
4           be null and void.

5           (3) CONDITIONS NOT CAUSING NULLIFICATION  
6           OF SETTLEMENT.—

7                   (A) IN GENERAL.—If a condition described  
8           in subparagraph (B) occurs, the Agreement and  
9           Contract shall not be nullified or terminated.

10                  (B) CONDITIONS.—The conditions referred  
11           to in subparagraph (A) are as follows:

12                   (i) A lack of right to divert at the ca-  
13           pacities of conjunctive use wells con-  
14           structed or rehabilitated under section  
15           306.

16                   (ii) A failure—

17                           (I) to determine or resolve an ac-  
18                           counting of the use of water under  
19                           this Act in the State of Arizona;

20                           (II) to obtain a necessary water  
21                           right for the consumptive use of water  
22                           in Arizona;

23                           (III) to contract for the delivery  
24                           of water for use in Arizona; or

1 (IV) to construct and operate a  
2 lateral facility to deliver water to a  
3 community of the Nation in Arizona,  
4 under the Project.

5 (f) EFFECT ON RIGHTS OF INDIAN TRIBES.—

6 (1) IN GENERAL.—Except as provided in para-  
7 graph (2), nothing in the Agreement, the Contract,  
8 or this section quantifies or adversely affects the  
9 land and water rights, or claims or entitlements to  
10 water, of any Indian tribe or community other than  
11 the rights, claims, or entitlements of the Nation in,  
12 to, and from the San Juan River Basin in the State  
13 of New Mexico.

14 (2) EXCEPTION.—The right of the Nation to  
15 use water under water rights the Nation has in  
16 other river basins in the State of New Mexico shall  
17 be forborne to the extent that the Nation supplies  
18 the uses for which the water rights exist by diver-  
19 sions of water from the San Juan River Basin under  
20 the Project consistent with subparagraph 9.13 of the  
21 Agreement.

22 **SEC. 402. TRUST FUND.**

23 (a) ESTABLISHMENT.—There is established in the  
24 Treasury a fund to be known as the “Navajo Nation



1 Water Resources Development Trust Fund”, consisting  
2 of—

3 (1) such amounts as are appropriated to the  
4 Trust Fund under subsection (f); and

5 (2) any interest earned on investment of  
6 amounts in the Trust Fund under subsection (d).

7 (b) USE OF FUNDS.—The Nation may use amounts  
8 in the Trust Fund—

9 (1) to investigate, construct, operate, maintain,  
10 or replace water project facilities, including facilities  
11 conveyed to the Nation under this Act and facilities  
12 owned by the United States for which the Nation is  
13 responsible for operation, maintenance, and replace-  
14 ment costs; and

15 (2) to investigate, implement, or improve a  
16 water conservation measure (including a metering or  
17 monitoring activity) necessary for the Nation to  
18 make use of a water right of the Nation under the  
19 Agreement.

20 (c) MANAGEMENT.—The Secretary shall manage the  
21 Trust Fund, invest amounts in the Trust Fund, and make  
22 amounts available from the Trust Fund for distribution  
23 to the Nation in accordance with the American Indian  
24 Trust Fund Management Reform Act of 1994 (25 U.S.C.  
25 4001 et seq.).

1 (d) INVESTMENT OF THE TRUST FUND.—The Sec-  
2 retary shall invest amounts in the Trust Fund in accord-  
3 ance with—

4 (1) the Act of April 1, 1880 (25 U.S.C. 161);

5 (2) the first section of the Act of June 24,  
6 1938 (25 U.S.C. 162a); and

7 (3) the American Indian Trust Fund Manage-  
8 ment Reform Act of 1994 (25 U.S.C. 4001 et seq.).

9 (e) CONDITIONS FOR EXPENDITURES AND WITH-  
10 DRAWALS.—

11 (1) TRIBAL MANAGEMENT PLAN.—

12 (A) IN GENERAL.—Subject to paragraph  
13 (7), on approval by the Secretary of a tribal  
14 management plan in accordance with the Amer-  
15 ican Indian Trust Fund Management Reform  
16 Act of 1994 (25 U.S.C. 4001 et seq.), the Na-  
17 tion may withdraw all or a portion of the  
18 amounts in the Trust Fund.

19 (B) REQUIREMENTS.—In addition to any  
20 requirements under the American Indian Trust  
21 Fund Management Reform Act of 1994 (25  
22 U.S.C. 4001 et seq.), the tribal management  
23 plan shall require that the Nation only use  
24 amounts in the Trust Fund for the purposes  
25 described in subsection (b), including the identi-

1           fication of water conservation measures to be  
2           implemented in association with the agricultural  
3           water use of the Nation.

4           (2) ENFORCEMENT.—The Secretary may take  
5           judicial or administrative action to enforce the provi-  
6           sions of any tribal management plan to ensure that  
7           any amounts withdrawn from the Trust Fund are  
8           used in accordance with this Act.

9           (3) NO LIABILITY.—Neither the Secretary nor  
10          the Secretary of the Treasury shall be liable for the  
11          expenditure or investment of any amounts with-  
12          drawn from the Trust Fund by the Nation.

13          (4) EXPENDITURE PLAN.—

14                (A) IN GENERAL.—The Nation shall sub-  
15                mit to the Secretary for approval an expendi-  
16                ture plan for any portion of the amounts in the  
17                Trust Fund made available under this section  
18                that the Nation does not withdraw under this  
19                subsection.

20                (B) DESCRIPTION.—The expenditure plan  
21                shall describe the manner in which, and the  
22                purposes for which, funds of the Nation remain-  
23                ing in the Trust Fund will be used.

24                (C) APPROVAL.—On receipt of an expendi-  
25                ture plan under subparagraph (A), the Sec-

1           retary shall approve the plan if the Secretary  
2           determines that the plan is reasonable and con-  
3           sistent with this Act.

4           (5) ANNUAL REPORT.—The Nation shall sub-  
5           mit to the Secretary an annual report that describes  
6           any expenditures from the Trust Fund during the  
7           year covered by the report.

8           (6) LIMITATION.—No portion of the amounts in  
9           the Trust Fund shall be distributed to any Nation  
10          member on a per capita basis.

11          (7) CONDITIONS.—Any amount authorized to  
12          be appropriated to the Trust Fund under subsection  
13          (f) shall not be available for expenditure or with-  
14          drawal—

15                  (A) before December 31, 2019; and

16                  (B) until the date on which the court in  
17          the stream adjudication has entered—

18                          (i) the Partial Final Decree; and

19                          (ii) the Supplemental Partial Final  
20          Decree.

21          (f) AUTHORIZATION OF APPROPRIATIONS.—There  
22          are authorized to be appropriated for deposit in the Trust  
23          Fund—

24                  (1) \$6,000,000 for each of fiscal years 2009  
25          through 2013; and

1           (2) \$4,000,000 for each of fiscal years 2014  
2 through 2018.

3 **SEC. 403. WAIVERS AND RELEASES.**

4           (a) CLAIMS BY THE NATION AND THE UNITED  
5 STATES.—The Nation, on behalf of itself and members of  
6 the Nation (other than members in the capacity of the  
7 members as allottees), and the United States, acting  
8 through the Secretary and in the capacity of the United  
9 States as trustee for the Nation, shall each execute a waiv-  
10 er and release of—

11           (1) all claims for water rights in, or for waters  
12 of, the San Juan River Basin in the State of New  
13 Mexico that the Nation, or the United States as  
14 trustee for the Nation, asserted, or could have as-  
15 serted, in the San Juan River adjudication or in any  
16 other court proceeding;

17           (2) all claims that the Nation, or the United  
18 States as trustee for the Nation, has asserted or  
19 could assert for any damage, loss, or injury to water  
20 rights or claims of interference, diversion, or taking  
21 of water in the San Juan Basin in the State of New  
22 Mexico that, regardless of whether the damage, loss,  
23 or injury is unanticipated, unexpected, or un-  
24 known—

1 (A) accrued at any time before or on the  
2 effective date of the waiver and release under  
3 subsection (d); and

4 (B) may or may not be more numerous or  
5 more serious than is understood or expected;  
6 and

7 (3) all claims of any damage, loss, or injury or  
8 for injunctive or other relief because of the condition  
9 of or changes in water quality related to, or arising  
10 out of, the exercise of water rights.

11 (b) CLAIMS BY THE NATION AGAINST THE UNITED  
12 STATES.—The Nation, on behalf of itself and its members  
13 (other than members in the capacity of the members as  
14 allottees), shall execute a waiver and release of—

15 (1) all causes of action that the Nation or the  
16 members of the Nation (other than members in the  
17 capacity of the members as allottees) may have  
18 against the United States or any agencies or employ-  
19 ees of the United States, arising out of claims for  
20 water rights in, or waters of, the San Juan River  
21 Basin in the State of New Mexico that the United  
22 States asserted, or could have asserted, in the  
23 stream adjudication or other court proceeding;

24 (2) all claims for any damage, loss, or injury to  
25 water rights, claims of interference, diversion or tak-

1       ing of water, or failure to protect, acquire, or de-  
2       velop water or water rights for land within the San  
3       Juan Basin in the State of New Mexico that, re-  
4       gardless whether the damage, loss, or injury is unan-  
5       ticipated, unexpected, or unknown—

6               (A) accrued at any time before or on the  
7               effective date of the waiver and release under  
8               subsection (d); and

9               (B) may or may not be more numerous or  
10              more serious than is understood or expected;  
11              and

12             (3) all claims arising out of, resulting from, or  
13             relating in any manner to the negotiation, execution  
14             or adoption of the Agreement, the Contract, or this  
15             Act (including any specific terms and provisions of  
16             the Agreement, the Contract, or this Act) that the  
17             Nation may have against the United States or any  
18             agencies or employees of the United States.

19       (c) RESERVATION OF CLAIMS.—Notwithstanding  
20       subsections (a) and (b), the Nation and the members of  
21       the Nation (including members in the capacity of the  
22       members as allottees) and the United States, as trustee  
23       for the Nation and allottees, shall retain—

24             (1) all claims for water rights or injuries to  
25             water rights arising out of activities occurring out-

1 side the San Juan River Basin in the State of New  
2 Mexico, subject to paragraphs 8.0, 9.3, 9.12, 9.13,  
3 and 13.9 of the Agreement;

4 (2) all claims for enforcement of the Agree-  
5 ment, the Contract, the Partial Final Decree, the  
6 Supplemental Partial Final Decree, or this Act,  
7 through any legal and equitable remedies available  
8 in any court of competent jurisdiction;

9 (3) all rights to use and protect water rights ac-  
10 quired pursuant to State law after the effective date  
11 of the waivers and releases described in subsection  
12 (d);

13 (4) all claims relating to activities affecting the  
14 quality of water not related to the exercise of water  
15 rights; and

16 (5) all rights, remedies, privileges, immunities,  
17 and powers not specifically waived and released  
18 under the terms of the Agreement or this Act.

19 (d) EFFECTIVE DATE.—

20 (1) IN GENERAL.—The waivers and releases de-  
21 scribed in subsection (a) shall be effective on the  
22 date on which the Secretary publishes in the Federal  
23 Register a statement of findings documenting that  
24 each of the deadlines described in section 401(e)(1)  
25 have been met.



1           (2) DEADLINE.—If the deadlines in section  
2           401(e)(1)(A) have not been met by the later of  
3           March 1, 2025, or the date of any extension under  
4           section 401(e)(1)(B)—

5                   (A) the waivers and releases described in  
6                   subsection (a) shall be of no effect; and

7                   (B) section 401(e)(2)(B) shall apply.

8   **SEC. 404. WATER RIGHTS HELD IN TRUST.**

9           A tribal water right adjudicated and described in  
10          paragraph 3.0 of the Partial Final Decree and in para-  
11          graph 3.0 of the Supplemental Partial Final Decree shall  
12          be held in trust by the United States on behalf of the Na-  
13          tion.

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