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S 1171 IS

110th CONGRESS  
1st Session  
S. 1171

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.

**IN THE SENATE OF THE UNITED STATES**

**April 19, 2007**

Mr. BINGAMAN (for himself and Mr. DOMENICI) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

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**A BILL**

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.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

- (a) Short Title- This Act may be cited as the 'Northwestern New Mexico Rural Water Projects Act'.
- (b) Table of Contents- The table of contents of this Act is as follows:
  - Sec. 1. Short title.
  - Sec. 2. Definitions.
  - Sec. 3. Compliance with environmental laws.

## **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--NORTHWESTERN NEW MEXICO RURAL WATER SUPPLY PROJECT**

- Sec. 301. Purposes.
- Sec. 302. Authorization of Northwestern New Mexico Rural Water Supply Project.
- Sec. 303. Delivery and use of Northwestern New Mexico Rural Water Supply Project water.
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- Sec. 305. Use of 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. 2. DEFINITIONS.**

In this Act:

- (1) ACRE-FEET- The term `acre-feet' means acre-feet per year.
- (2) AGREEMENT- The term `Agreement' means the agreement among the State of New Mexico, the Nation, and the United States setting forth a stipulated and binding agreement signed by the State of New Mexico and the Nation on April 19, 2005.
- (3) ANIMAS-LA PLATA PROJECT- The term `Animas-La Plata Project' has the meaning given the term in section 3 of Public Law 100-585 (102 Stat. 2973), including Ridges Basin Dam, Lake Nighthorse, the Pipeline, and any other features or modifications made pursuant to the Colorado Ute

Settlement Act Amendments of 2000 (Public Law 106-554; 114 Stat. 2763A-258).

(4) CITY- The term 'City' means the city of Gallup, New Mexico.

(5) COMPACT- The term 'Compact' means the Upper Colorado River Basin Compact as consented to by the Act of April 6, 1949 (63 Stat. 31, chapter 48).

(6) CONTRACT- The term 'Contract' means the contract between the United States and the Nation setting forth certain commitments, rights, and obligations of the United States and the Nation, as described in paragraph 6.0 of the Agreement.

(7) DEPLETION- The term 'depletion' means the depletion of the flow of the San Juan River stream system in State of New Mexico by a particular use of water (including any depletion incident to the use) and represents the diversion from the stream system by the use, less return flows to the stream system from the use.

(8) DRAFT IMPACT STATEMENT- The term 'Draft Impact Statement' means the draft environmental impact statement prepared by the Bureau of Reclamation for the Project dated March 2007.

(9) FUND- The term 'Fund' means the Reclamation Waters Settlements Fund established by section 201(a).

(10) HYDROLOGIC DETERMINATION- The term 'hydrologic determination' means the draft hydrologic determination entitled 'Water Availability from Navajo Reservoir and the Upper Colorado River Basin for Use in New Mexico,' prepared by the Bureau of Reclamation pursuant to section 11 of the Act of June 13, 1962 (Public Law 87-483; 76 Stat. 99), and dated May 2006.

(11) NATION- The term 'Nation' means the Navajo Nation, a body politic and federally-recognized Indian nation as provided for in section 101(2) of the Federally Recognized Indian Tribe List of 1994 (25 U.S.C. 497a(2)), also known variously as the 'Navajo Tribe,' the 'Navajo Tribe of Arizona, New Mexico & Utah,' and the 'Navajo Tribe of Indians' and other similar names, and includes all bands of Navajo Indians and chapters of the Navajo Nation.

(12) NAVAJO INDIAN IRRIGATION PROJECT- The term 'Navajo Indian Irrigation Project' means the Navajo Indian irrigation project authorized by section 2 of Public Law 87-483 (76 Stat. 96).

(13) NAVAJO RESERVOIR- The term 'Navajo Reservoir' means the reservoir created by the impoundment of the San Juan River at Navajo Dam, as authorized by the Act of April 11, 1956 (commonly known as the 'Colorado River Storage Project Act') (43 U.S.C. 620 et seq.).

(14) NAVAJO NATION MUNICIPAL PIPELINE- The term 'Navajo Nation Municipal Pipeline' means the pipeline used to convey the water of the Animas-La Plata Project of the Navajo Nation from the City of Farmington, New Mexico, to communities of the Navajo Nation located in close proximity to the San Juan River Valley in State of New Mexico (including the City of Shiprock), as authorized by section 15(b) of the

Colorado Ute Indian Water Rights Settlement Act of 1988 (Public Law 100-585; 102 Stat. 2973; 114 Stat. 2763A-263).

(15) NON-NAVAJO IRRIGATION DISTRICT- The term 'Non-Navajo Irrigation Districts' means--

- (A) the Hammond Conservancy District;
- (B) the Bloomfield Irrigation District; and
- (C) any other community ditch organization in the San Juan River basin in State of New Mexico.

(16) PROJECT- The term 'Project' means the Northwestern New Mexico Rural Water Supply Project (commonly known as the 'Navajo-Gallup Pipeline Project') authorized under section 302(a), as substantially described as the preferred alternative in the Draft Impact Statement.

(17) PROJECT PARTICIPANTS- The term 'Project Participants' means the City, the Nation, and the Jicarilla Apache Nation.

(18) RESOLUTION- The term 'Resolution' means the Resolution of the Upper Colorado River Commission entitled 'Use and Accounting of Upper Basin Water Supplied to the Lower Basin in New Mexico by the Proposed Project' and dated June 17, 2003.

(19) SAN JUAN RIVER RECOVERY IMPLEMENTATION PROGRAM- The term 'San Juan River Recovery Implementation Program' means the intergovernmental program established pursuant to the cooperative agreement dated October 21, 1992 (including any amendments to the program).

(20) SECRETARY- The term 'Secretary' means the Secretary of the Interior, acting through the Commissioner of Reclamation or any other designee.

(21) STREAM ADJUDICATION- The term 'stream adjudication' means the general stream adjudication that is the subject of *New Mexico v. United States, et al.*, No. 75-185 (11th Jud. Dist., San Juan County, New Mexico) (involving claims to waters of the San Juan River and the tributaries of that river).

(22) TRUST FUND- The term 'Trust Fund' means the Navajo Nation Water Resources Development Trust Fund established by section 402(a).

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

(a) Effect of Execution of Agreement- The execution of the Agreement under section 401(a)(2) shall not constitute a major Federal action under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(b) Compliance With Environmental Laws- In carrying out this Act, the Secretary shall comply with each law of the Federal Government relating to the protection of the environment, including--

- (1) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and
- (2) the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

**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.**

(a) Participating Projects- Paragraph (2) of the first section of the Act of April 11, 1956 (commonly known as the 'Colorado River Storage Project Act') (43 U.S.C. 620(2)) is amended by inserting 'the Northwestern New Mexico Rural Water Supply Project,' after 'Fruitland Mesa,'.

(b) Navajo Reservoir Water Bank- The Act of April 11, 1956 (commonly known as the 'Colorado River Storage Project Act') is amended--

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

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

'Sec. 16. (a) The Secretary of the Interior may create and operate within the available capacity of Navajo Reservoir a top water bank.

'(b) Water made available for the top water bank in accordance with subsections

(c) and (d) shall not be subject to section 11 of Public Law 87-483 (76 Stat. 99).

'(c) The top water bank authorized under subsection (a) shall be operated in a manner that--

'(1) is consistent with applicable law; and

'(2) does not impair the ability of the Secretary of the Interior to deliver water under contracts entered into under--

'(A) Public Law 87-483 (76 Stat. 96); and

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

'(d)(1) The Secretary of the Interior, in cooperation with the State of New Mexico (acting through the Interstate Stream Commission), shall develop any terms and procedures for the storage, accounting, and release of water in the top water bank that are necessary to comply with subsection (c).

'(2) The terms and procedures developed under paragraph (1) shall include provisions requiring that--

'(A) the storage of banked water shall be subject to approval under State law by the New Mexico State Engineer to ensure that impairment of any existing water right does not occur, including storage of water under New Mexico State Engineer File No. 2849;

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

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

'(D) water in the top water bank be the first water spilled or released for flood control purposes in anticipation of a spill, on the condition that top water bank water shall not be released or included for purposes of calculating whether a release should occur for purposes of satisfying

releases required under the San Juan River Recovery Implementation Program.

`(e) The Secretary of the Interior may charge fees to water users that use the top water bank in amounts sufficient to cover the costs incurred by the United States in administering the water bank.'

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

(a) Navajo Indian Irrigation Project- Public Law 87-483 (76 Stat. 96) is amended by striking section 2 and inserting the following:

`Sec. 2. (a) In accordance with the Act of April 11, 1956 (commonly known as the `Colorado River Storage Project Act') (43 U.S.C. 620 et seq.), the Secretary of the Interior is authorized to construct, operate, and maintain the Navajo Indian Irrigation Project to provide irrigation water to a service area of not more than 110,630 acres of land.

`(b)(1) Subject to paragraph (2), the average diversion by the Navajo Indian Irrigation Project from the Navajo Reservoir over any consecutive 10-year period shall be the lesser of--

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

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

`(2) The quantity of water diverted for any 1 year shall not be more than 15 percent of the average diversion determined under paragraph (1).

`(c) In addition to being used for irrigation, the water diverted by the Navajo Indian Irrigation Project under subsection (b) may be used within the area served by Navajo Indian Irrigation Project facilities for the following purposes:

`(1) Aquaculture purposes, including the rearing of fish in support of the San Juan River Basin Recovery Implementation Program authorized by Public Law 106-392 (114 Stat. 1602).

`(2) Domestic, industrial, or commercial purposes relating to agricultural production and processing.

`(3) The generation of hydroelectric power as an incident to the diversion of water by the Navajo Indian Irrigation Project for authorized purposes.

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

`(d) The Navajo Indian Irrigation Project water diverted under subsection (b) may be transferred to areas located within or outside the area served by Navajo Indian Irrigation Project facilities, and within or outside the boundaries of the Navajo Nation, for any beneficial use in accordance with--

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

`(2) the contract executed under section 304(a)(2)(B) of the Northwestern New Mexico Rural Water Projects Act; and

`(3) any other applicable law.

`(e)(1) The Secretary may use the capacity of the Navajo Indian Irrigation Project works to convey water supplies for--

`(A) the Northwestern New Mexico Rural Water Supply Project under section 302 of the Northwestern New Mexico Rural Water Projects Act; or

`(B) other nonirrigation purposes authorized under subsection (c) or (d).

`(2) The Secretary shall not reallocate, or require repayment of, construction costs of the Navajo Indian Irrigation Project because of the conveyance of water supplies under paragraph (1).'

(b) Runoff Above Navajo Dam- Section 11 of Public Law 87-483 (76 Stat. 100) is amended by adding at the end the following:

`(d)(1) For purposes of implementing in a year of prospective shortage the water allocation procedures established by subsection (a), the Secretary of the Interior shall determine the quantity of any shortages and the appropriate apportionment of water using the normal diversion requirements on the flow of the San Juan River originating above Navajo Dam based on the following criteria:

`(A) The quantity of diversion or water delivery for the current year anticipated to be necessary to irrigate land in accordance with cropping plans prepared by contractors.

`(B) The annual diversion or water delivery demands for the current year anticipated for non-irrigation uses under water delivery contracts, including the demand for delivery for uses in the State of Arizona under the Northwestern New Mexico Rural Water Supply Project authorized by section 302(a) of the Northwestern New Mexico Rural Water Projects Act, but excluding any current demand for surface water for placement into aquifer storage for future recovery and use.

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

`(2) The Secretary shall not include in the normal diversion requirements--

`(A) the quantity of water that reliably can be anticipated to be diverted or delivered under a contract from inflows to the San Juan River arising below Navajo Dam under New Mexico State Engineer File No. 3215; or

`(B) the quantity of water anticipated to be supplied through reuse.

`(3) If the State of New Mexico determines that water uses under Navajo Reservoir water supply contracts or diversions by the San Juan-Chama Project need to be reduced in any 1 year for the State to comply with the Upper Colorado River Basin Compact, as consented to by the Act of April 6, 1949 (63 Stat. 31, chapter 48), the Secretary shall reduce the normal diversion requirements for the year to reflect the water use or diversion limitations imposed by the State of New Mexico.

`(e)(1) If the Secretary determines that there is a shortage of water under subsection (a), the Secretary shall allocate the shortage to the demands on the Navajo Reservoir water supply in the following order of priority:

`(A) The demand for delivery for uses in the State of Arizona under the Northwestern New Mexico Rural Water Supply Project authorized by section 303 of the Northwestern New Mexico Rural Water Projects Act, excluding the quantity of water anticipated to be diverted for the uses from

inflows to the San Juan River that arise below Navajo Dam in accordance with New Mexico State Engineer File No. 3215.

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

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

`(2) For any year for which the Secretary determines and allocates a shortage in the Navajo Reservoir water supply, the Secretary shall not deliver, and contractors of the water supply shall not divert, any of the water supply for placement into aquifer storage for future recovery and use.

`(3) To determine the occurrence and amount of any shortage to contracts entered into under this section, the Secretary shall not include as available storage any water stored in a top water bank in Navajo Reservoir established under section 16(a) of the Act of April 11, 1956 (commonly known as the `Colorado River Storage Project Act').

`(f) The Secretary of the Interior shall apply the sharing and apportionment of water determined under subsections (a), (d), and (e) on an annual volume basis.

`(g) The Secretary of the Interior may revise a determination of shortages, apportionments, or allocations of water under subsections (a), (d), and (e) on the basis of information relating to water supply conditions that was not available at the time at which the determination was made.

`(h) Nothing in this section prohibits the Secretary from reallocating water for any year, including a year in which a shortage is determined under subsection (a), in accordance with cooperative water agreements between water users providing for a sharing of water supplies.

`(i) Any water available for diversion under New Mexico State Engineer File No. 3215 shall be distributed, to the maximum extent practicable, in proportionate amounts to the diversion demands of all contractors and subcontractors of the Navajo Reservoir water supply that are diverting water below Navajo Dam.'

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

Unless expressly provided in this Act, nothing in this Act modifies, conflicts with, preempts, or otherwise affects--

- (1) the Boulder Canyon Project Act (43 U.S.C. 617 et seq.);
- (2) the Boulder Canyon Project Adjustment Act (54 Stat. 774, chapter 643);
- (3) the Act of April 11, 1956 (commonly known as the `Colorado River Storage Project Act') (43 U.S.C. 620 et seq.);
- (4) the Act of September 30, 1968 (commonly known as the `Colorado River Basin Project Act') (82 Stat. 885);
- (5) Public Law 87-483 (76 Stat. 96);



- (6) the Treaty between the United States of America and Mexico representing utilization of waters of the Colorado and Tijuana Rivers and of the Rio Grande, signed at Washington February 3, 1944 (59 Stat. 1219);
- (7) the Colorado River Compact of 1922, as approved by the Presidential Proclamation of June 25, 1929 (46 Stat. 3000);
- (8) the Compact;
- (9) the Act of April 6, 1949 (63 Stat. 31, chapter 48);
- (10) the Jicarilla Apache Tribe Water Rights Settlement Act (106 Stat. 2237); or
- (11) section 205 of the Energy and Water Development Appropriations Act, 2005 (118 Stat. 2949).

## **TITLE II--RECLAMATION WATER SETTLEMENTS FUND**

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

- (a) Establishment- There is established in the Treasury of the United States a fund, to be known as the 'Reclamation Water Settlements Fund', consisting of--
  - (1) such amounts as are deposited to the Fund under subsection (b); and
  - (2) any interest earned on investment of amounts in the Fund under subsection (d).
- (b) Deposits to Fund--
  - (1) IN GENERAL- For each of fiscal years 2018 through 2028, the Secretary of the Treasury shall deposit in the Fund, if available, \$100,000,000 of the revenues that would otherwise be deposited for the fiscal year in the fund established by the first section of the Act of June 17, 1902 (32 Stat. 388, chapter 1093).
  - (2) AVAILABILITY OF AMOUNTS- Amounts deposited in the Fund under paragraph (1) shall be made available pursuant to this section--
    - (A) without further appropriation; and
    - (B) in addition to amounts appropriated pursuant to any authorization contained in any other provision of law.
- (c) Expenditures From Fund--
  - (1) IN GENERAL- For each of fiscal years 2018 through 2030, on request by the Secretary pursuant to paragraphs (2) and (3), the Secretary of the Treasury shall transfer from the Fund to the Secretary an amount not to exceed \$100,000,000 for the fiscal year requested.
  - (2) REQUESTS- The Secretary may request a transfer from the Fund to implement a settlement agreement approved by Congress that resolves, in whole or in part, litigation involving the United States or any other agreement approved by Congress that is entered into by the Secretary, if the settlement or other agreement requires the Bureau of Reclamation to plan, design, and construct--
    - (A) water supply infrastructure; or
    - (B) a project--

(i) to rehabilitate a water delivery system to conserve water; or

(ii) to restore fish and wildlife habitat or otherwise improve environmental conditions associated with or affected by a reclamation project that is in existence on the date of enactment of this Act.

**(3) USE FOR COMPLETION OF PROJECT-**

**(A) PRIORITIES-**

(i) **FIRST PRIORITY-** The first priority for expenditure of amounts in the Fund shall be for the purposes described in subparagraph (B).

(ii) **OTHER PURPOSES-** Any amounts in the Fund that are not needed for the purposes described in subparagraph (B) may be used for other purposes authorized in paragraph (2).

**(B) COMPLETION OF PROJECT-** Effective beginning January 1, 2018, if, in the judgment of the Secretary, the deadline described in section 401(f)(1)(A)(ix) is unlikely to be met because a sufficient amount of funding is not otherwise available through appropriations made available pursuant to section 309(a), the Secretary shall request the Secretary of the Treasury to transfer from the Fund to the Secretary such amounts on an annual basis pursuant to paragraph (1), not to exceed a total of \$500,000,000, as are necessary to pay the Federal share of the costs, and substantially complete as expeditiously as practicable, the construction of the water supply infrastructure authorized as part of the Project.

**(C) PROHIBITED USE OF FUND-** The Secretary shall not use any amount transferred from the Fund under subparagraph (A) to carry out any other feature or activity described in title IV other than a feature or activity relating to the construction of the water supply infrastructure authorized as part of the Project.

**(d) Investment of Amounts-**

(1) **IN GENERAL-** The Secretary of the Treasury shall invest such portion of the Fund as is not, in the judgment of the Secretary of the Treasury, required to meet current withdrawals.

(2) **INTEREST-BEARING OBLIGATIONS-** Investments may be made only in interest-bearing obligations of the United States.

(3) **ACQUISITION OF OBLIGATIONS-** For the purpose of investments under paragraph (1), obligations may be acquired--

(A) on original issue at the issue price; or

(B) by purchase of outstanding obligations at the market price.

(4) **SALE OF OBLIGATIONS-** Any obligation acquired by the Fund may be sold by the Secretary of the Treasury at the market price.

(5) **CREDITS TO FUND-** The interest on, and the proceeds from the sale or redemption of, any obligations held in the Fund shall be credited to, and form a part of, the Fund.

(e) Transfers of Amounts-

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

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

(f) Termination- On September 30, 2030--

(1) the Fund shall terminate; and

(2) the unexpended and unobligated balance of the Fund shall be transferred to the general fund of the Treasury.

**TITLE III--NORTHWESTERN NEW MEXICO RURAL WATER SUPPLY PROJECT**

**SEC. 301. PURPOSES.**

The purposes of this subtitle are--

(1) to authorize the Secretary to construct the Northwestern New Mexico Rural Water Supply Project;

(2) to allocate the water supply for the Project among the Nation, the city of Gallup, New Mexico, and the Jicarilla Apache Nation; and

(3) to authorize the Secretary to enter into Project repayment contracts with the city of Gallup and the Jicarilla Apache Nation.

**SEC. 302. AUTHORIZATION OF NORTHWESTERN NEW MEXICO RURAL WATER SUPPLY PROJECT.**

(a) In General- The Secretary, acting through the Commissioner of Reclamation, is authorized to design, construct, operate, and maintain the Project in substantial accordance with the preferred alternative in the Draft Impact Statement.

(b) Project Facilities- To provide for the delivery of San Juan River water to Project Participants, the Secretary may construct, operate, and maintain the Project facilities described in the preferred alternative in the Draft Impact Statement, including:

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

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

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

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

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

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

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

(5) Any water regulation, storage or treatment facility, service connection to an existing public water supply system, power substation, power distribution works, or other appurtenant works (including a building or access road) that is related to the Project facilities authorized by paragraphs (1) through (4), including power transmission facilities to connect Project facilities to existing high-voltage transmission facilities.

(c) Acquisition of Land-

(1) IN GENERAL- Except as provided in paragraph (2), the Secretary may acquire any land or interest in land that is necessary to construct, operate, and maintain the Project facilities authorized under subsection (b).

(2) LIMITATION- The Secretary may not condemn water rights for purposes of the Project.

(d) Conditions-

(1) IN GENERAL- The Secretary shall not commence construction of the facilities authorized under subsection (b) until such time as--

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

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

(C) the Secretary--

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

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

(D) the State of New Mexico has made arrangements with the Secretary to contribute \$25,000,000 toward the construction costs of the Project.

(2) COST SHARING- State contributions required under paragraph (1)(D) shall be in addition to amounts that the State of New Mexico contributes for the planning and construction of regional facilities to distribute Project water to the City and surrounding Nation communities before the date on which the City executes a repayment contract under section 304(b).

(3) EFFECT- The design and construction of the Project shall not be subject to the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.).

(e) Power Issues-

(1) RESERVATION- The Secretary shall reserve, from existing reservations of Colorado River Storage Project power for Bureau of Reclamation projects, up to 26 megawatts of power for use by the Project.

(2) REALLOCATION OF COSTS- Notwithstanding the Act of April 11, 1956 (commonly known as the 'Colorado River Storage Project Act') (43

U.S.C. 620 et seq.), the Secretary shall not reallocate or reassign any cost associated with the Project from an entity covered by this title to the power function.

(f) Conveyance of Project Facilities-

(1) IN GENERAL- The Secretary is authorized to enter into separate agreements with the City and the Nation to convey each Project facility authorized under subsection (b) to the City and the Nation after--

(A) completion of construction of the Project; and

(B) execution of a Project operations agreement approved by the Secretary and the Project Participants that sets forth--

(i) any terms and conditions that the Secretary determines are necessary--

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

(II) to fulfill the purposes of this subtitle;

(ii) requirements acceptable to the Secretary and the Project Participants for--

(I) the distribution of water under the Project; and

(II) the allocation and payment of annual operation, maintenance, and replacement costs of the Project based on the proportionate uses of Project facilities; and

(iii) conditions and requirements acceptable to the Secretary and the Project Participants for operating and maintaining each Project facility on completion of the conveyance, including the requirement that the City and the Nation shall--

(I) comply with--

(aa) the Compact; and

(bb) other applicable law; and

(II) be responsible for--

(aa) the operation, maintenance, and replacement of each Project facility; and

(bb) the accounting and management of water conveyance and Project finances, as necessary to administer and fulfill the conditions of the Contract executed under section 304(a)(2)(B).

(2) CONVEYANCE TO THE CITY OF GALLUP OR NAVAJO NATION- In conveying a Project facility under this subsection, the Secretary shall convey to--

(A) the City the facilities and any land or interest in land acquired by the United States for the construction, operation, and

maintenance of the Project that are located within the corporate boundaries of the City; and

(B) the Nation the facilities and any land or interests in land acquired by the United States for the construction, operation, and maintenance of the Project that are located outside the corporate boundaries of the City.

(3) EFFECT OF CONVEYANCE- The conveyance of each Project facility shall not affect the application of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) relating to the use of the water associated with the Project.

(4) NOTICE OF PROPOSED CONVEYANCE- Not later than 45 days before the date of a proposed conveyance of any Project facility, the Secretary shall submit to the Committee on Resources of the House of Representatives and to the Committee on Energy and Natural Resources of the Senate notice of the conveyance of each Project facility.

(g) Colorado River Storage Project Power- The conveyance of Project facilities under subsection (f) shall not affect the availability of Colorado River Storage Project power to the Project under subsection (e).

(h) Regional Use of Project Facilities-

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

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

(B) the unallocated or non-Project water beneficiary--

(i) has the right to use the water;

(ii) agrees to pay the operation, maintenance, and replacement costs assignable to the beneficiary for the use of the Project facilities; and

(iii) agrees to pay a fee established by the Secretary to assist in the recovery of any capital cost relating to that use.

(2) EFFECT OF PAYMENTS- Any payments to the United States or the Nation for the use of unused capacity under this subsection or for water under any subcontract with the Nation or the Jicarilla Apache Nation shall not alter the construction repayment requirements or the operation, maintenance, and replacement payment requirements of the Project Participants.

### **SEC. 303. DELIVERY AND USE OF NORTHWESTERN NEW MEXICO RURAL WATER SUPPLY PROJECT WATER.**

(a) Use of Project Water-

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

(2) USE ON CERTAIN LAND-

(A) IN GENERAL- Subject to subparagraph (B), the Nation may use Project water allocations on--

- (i) land held by the United States in trust for the Nation and members of the Nation; and
- (ii) land held in fee by the Nation.

(B) TRANSFER- The Nation may transfer the purposes and places of use of the allocated water in accordance with the Agreement and applicable law.

(3) HYDROELECTRIC POWER- Hydroelectric power may be generated as an incident to the delivery of Project water under paragraph (1).

(4) STORAGE-

(A) IN GENERAL- Subject to subparagraph (B), any water contracted for delivery under paragraph (1) that is not needed for current water demands or uses may be delivered by the Project for placement in underground storage in the State of New Mexico for future recovery and use.

(B) STATE APPROVAL- Delivery of water under subparagraph (A) is subject to--

- (i) approval by the State of New Mexico under applicable provisions of State law relating to aquifer storage and recovery; and
- (ii) the provisions of the Agreement and this Act.

(b) Project Water and Capacity Allocations-

(1) DIVERSION- The Project shall divert from the Navajo Reservoir and the San Juan River a quantity of water that does not exceed the lesser of--

- (A) 37,760 acre-feet of water; or
- (B) the quantity of water necessary to supply a depletion from the San Juan River of 35,890 acre-feet.

(2) ALLOCATION-

(A) IN GENERAL- Water diverted under paragraph (1) shall be allocated to the Project Participants in accordance with subparagraphs (B) through (E), other provisions of this Act, and other applicable law.

(B) ALLOCATION TO THE CITY OF GALLUP- The Project shall deliver at the point of diversion from the San Juan River not more than 7,500 acre-feet of water for use by the City.

(C) ALLOCATION TO NAVAJO NATION COMMUNITIES IN NEW MEXICO- For use by the Nation in the State of New Mexico, the Project shall deliver at the points of diversion from the San Juan River or at Navajo Reservoir the lesser of--

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

(D) ALLOCATION TO NAVAJO NATION COMMUNITIES IN ARIZONA- In accordance with subsection (d), the Project may deliver at the point of diversion from the San Juan River not more

than 6,411 acre-feet of water for use by the Nation in the State of Arizona.

(E) ALLOCATION TO JICARILLA APACHE NATION- The Project shall deliver at Navajo Reservoir not more than 1,200 acre-feet of water for use by the Jicarilla Apache Nation in the southern portion of the Jicarilla Apache Nation Reservation in the State of New Mexico.

(3) USE IN EXCESS OF ALLOCATION QUANTITY- Notwithstanding each allocation quantity limit described in subparagraphs (B), (C), and (E) of paragraph (2), the Secretary may authorize a Project Participant to exceed the allocation quantity limit of that Project Participant if--

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

(B) the Project Participant benefitting from the increased allocation quantity--

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

(ii) agrees to pay the operation, maintenance, and replacement costs relating to the additional use any Project facility; and

(iii) agrees to pay a fee established by the Secretary to assist in recovering capital costs relating to that additional use.

(c) Sources of Water- The sources of water for the Project allocated by subsection (b) shall be water originating in--

(1) drainage of the San Juan River above Navajo Dam, to be supplied under New Mexico State Engineer File No. 2849; and

(2) inflow to the San Juan River arising below Navajo Dam, to be supplied under New Mexico State Engineer File No. 3215.

(d) Conditions for Use in Arizona-

(1) REQUIREMENTS- Project water shall not be delivered for use by any community of the Nation in the State of Arizona under subsection

(b)(2)(D) until the date on which--

(A) the Secretary determines by hydrologic investigation that sufficient water is reasonably likely to be available to supply uses from water of the Colorado River system allocated to the State of Arizona;

(B) the Secretary submits to Congress the determination described in subparagraph (A);

(C) the Secretary determines that the uses in the State of Arizona are within the apportionment of the water of the Colorado River made to the State of Arizona through compact, statute, or court decree;

(D) Congress has approved a Navajo Reservoir supply contract between the Nation and the United States to provide for the delivery of Project water for the uses in Arizona;



(E) the Navajo Nation and the State of Arizona have entered into an agreement providing for delivery of water of the Project for uses in Arizona; and

(F) any other determination is made as may be required by the Compact.

(2) ACCOUNTING OF USES IN ARIZONA- Any depletion of water from the San Juan River stream system in the State of New Mexico that results from the diversion of water by the Project for uses within the State of Arizona (including depletion incidental to the diversion, impounding, or conveyance of water in the State of New Mexico for uses in the State of Arizona)--

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

(B) shall not increase the total quantity of water to which the State of Arizona is entitled to use under any compact, statute, or court decree.

(e) Forbearance-

(1) IN GENERAL- Subject to paragraphs (2) and (3), during any year in which a shortage to the normal diversion requirement for any use relating to the Project within the State of Arizona occurs (as determined under section 11 of Public Law 87-483 (76 Stat. 99)), the Nation may temporarily forbear the delivery of the water supply of the Navajo Reservoir for uses in the State of New Mexico under the apportionments of water to the Navajo Indian Irrigation Project and the normal diversion requirements of the Project to allow an equivalent quantity of water to be delivered from the Navajo Reservoir water supply for municipal and domestic uses of the Nation in the State of Arizona under the Project.

(2) LIMITATION OF FORBEARANCE- The Nation may forebear the delivery of water under paragraph (1) of a quantity not exceeding the quantity of the shortage to the normal diversion requirement for any use relating to the Project within the State of Arizona.

(3) EFFECT- The forbearance of the delivery of water under paragraph (1) shall be subject to the requirements relating to accounting and water quantity described in subsection (d)(2).

(f) Effect- Nothing in this Act--

(1) authorizes the marketing, leasing, or transfer of the water supplies made available to the Nation under the Contract to non-Navajo water users in States other than the State of New Mexico; or

(2) authorizes the forbearance of water uses in the State of New Mexico to allow uses of water in other States other than as authorized under subsection (e).

(g) Consistency With Upper Colorado River Basin Compact- In accordance with the Resolution and notwithstanding any other provision of law--

(1) water may be diverted by the Project from the San Juan River in the State of New Mexico for use in the Lower Colorado River Basin in the State of New Mexico; and

(2) water diverted under paragraph (1) shall be a part of the consumptive use apportionment made to the State of New Mexico by Article III(a) of the Compact.

## **SEC. 304. PROJECT CONTRACTS.**

### **(a) Navajo Nation Contract-**

(1) **HYDROLOGIC DETERMINATION-** Congress recognizes that the Hydrologic Determination satisfactory to support approval of the Contract has been completed.

### **(2) CONTRACT APPROVAL-**

#### **(A) APPROVAL-**

(i) **IN GENERAL-** Except to the extent that any provision of the Contract conflicts with this Act, Congress approves, ratifies, and incorporates by reference the Contract.

(ii) **AMENDMENTS-** To the extent any amendment is executed to make the Contract consistent with this Act, that amendment is authorized, ratified, and confirmed.

**(B) EXECUTION OF CONTRACT-** The Secretary, acting on behalf of the United States, shall enter into the Contract to the extent that the Contract does not conflict with this Act (including any amendment that is required to make the Contract consistent with this Act).

(3) **NO REPAYMENT OBLIGATION-** The Nation is not obligated to repay--

(A) any share of the construction costs of the Nation relating to the Project authorized by section 302(a); or

(B) any costs relating to the construction of the Navajo Indian Irrigation Project that may otherwise be allocable to the Nation for use of any facility of the Navajo Indian Irrigation Project to convey water to each Navajo community under the Project.

(4) **OPERATION, MAINTENANCE, AND REPLACEMENT OBLIGATION-** Subject to subsection (f), the Nation shall pay any costs relating to the operation, maintenance, and replacement of each facility of the Project that are allocable to the Nation.

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

### **(b) City of Gallup Contract-**

(1) **CONTRACT AUTHORIZATION-** To the extent consistent with this Act, the Secretary is authorized to enter into a repayment contract with the City that requires the City--

(A) to repay, within a 50-year period, the share of any construction cost of the City relating to the Project; and

(B) to pay the operation, maintenance, and replacement costs of the Project that are allocable to the City.

**(2) SHARE OF CONSTRUCTION COSTS-**

**(A) IN GENERAL-** Subject to subparagraph (B), the Secretary shall determine the share of the construction costs of the City relating to the Project, based on the ability of the City to pay the construction costs of each facility of the Project that is allocable to the City.

**(B) MINIMUM PERCENTAGE-** The share of the construction costs of the City shall be at least 25 percent of the construction costs of the Project that are allocable to the City.

**(3) EXCESS CONSTRUCTION COSTS-** Any construction costs of the Project allocable to providing capacity to deliver water to the City that are in excess of the share of the City of the construction costs of the Project, as determined under paragraph (2), shall be nonreimbursable.

**(4) GRANT FUNDS-** A grant from any other Federal source shall not be credited toward the amount required to be repaid by the City under a repayment contract.

**(5) TITLE TRANSFER-** If title is transferred to the City prior to repayment under section 302(f), the City shall be required to provide assurances satisfactory to the Secretary of fulfillment of the remaining repayment obligation of the City.

**(6) OPERATION, MAINTENANCE AND REPLACEMENT OBLIGATION-** The City shall pay the operation, maintenance, and replacement costs for each facility of the Project that is allocable to the City.

**(7) WATER DELIVERY SUBCONTRACT-**

**(A) IN GENERAL-** Except as provided in subparagraph (B), the Secretary shall not enter into a contract under paragraph (1) with the City until the City has secured a water supply for the portion of the Project for which the City is responsible by entering into, as approved by the Secretary, a water delivery subcontract for a period of not less than 40 years beginning on the date on which the construction of any facility of the Project serving the City is completed, but for a period not exceeding 99 years, with--

- (i) the Nation, as authorized by the Contract; or
- (ii) the Jicarilla Apache Nation, as authorized by the settlement contract between the United States and the Jicarilla Apache Tribe, authorized by the Jicarilla Apache Tribe Water Rights Settlement Act (Public Law 102-441; 106 Stat. 2237).

**(B) EFFECT-** Nothing in this paragraph--

- (i) prevents the City from obtaining an alternate source of water for the portion of the Project for which the City is responsible, subject to approval of the Secretary and the State of New Mexico, acting through the New Mexico Interstate Stream Commission and the New Mexico State Engineer; or

(ii) obligates the Nation or the Jicarilla Apache Nation to enter into a water delivery subcontract with the City.

(c) Jicarilla Apache Nation Contract-

(1) CONTRACT AUTHORIZATION- To the extent consistent with this Act, the Secretary is authorized to enter into a repayment contract with the Jicarilla Apache Nation that requires the Jicarilla Apache Nation--

(A) to repay, within a 50-year period, the share of any construction cost of the Jicarilla Apache Nation relating to the Project; and

(B) to pay the operation, maintenance, and replacement costs of the Project that are allocable to the Jicarilla Apache Nation.

(2) SHARE OF CONSTRUCTION COSTS-

(A) IN GENERAL- Subject to subparagraph (B), the Secretary shall determine the share of the Jicarilla Apache Nation of the construction costs of the Project, based on the ability of the Jicarilla Apache Nation to pay the construction costs of the Project facilities that are allocable to the Jicarilla Apache Nation.

(B) MINIMUM PERCENTAGE- The share of the Jicarilla Apache Nation under subparagraph (A) shall be at least 25 percent of the construction costs of the Project that are allocable to the Jicarilla Apache Nation.

(3) EXCESS CONSTRUCTION COSTS- Any construction costs of the Project allocable to providing capacity to deliver water to the Jicarilla Apache Nation that are in excess of the share of the Jicarilla Apache Nation of the construction costs of the Project, as determined under paragraph (2), shall be nonreimbursable.

(4) GRANT FUNDS- A grant from any other Federal source shall not be credited toward the share of the Jicarilla Apache Nation of construction costs.

(5) NAVAJO INDIAN IRRIGATION PROJECT COSTS- The Jicarilla Apache Nation shall have no obligation to repay any Navajo Indian Irrigation Project construction costs that might otherwise be allocable to the Jicarilla Apache Nation for use of the Navajo Indian Irrigation Project facilities to convey water to the Jicarilla Apache Nation.

(6) OPERATION, MAINTENANCE AND REPLACEMENT OBLIGATION- The Jicarilla Apache Nation shall pay the operation, maintenance, and replacement costs relating to each facility of the Project that are allocable to the Jicarilla Apache Nation.

(d) Capital Cost Allocations- For purposes of determining the capital repayment requirements of the Project Participants under this section, the Secretary shall review and, as appropriate, update the report prepared by the Bureau of Reclamation in the Draft Impact Statement allocating capital construction costs for the Project.

(e) Operation, Maintenance, and Replacement Cost Allocations- For purposes of determining the operation, maintenance, and replacement obligations of the Project Participants under this section, the Secretary shall review and, as appropriate, update the report prepared by the Bureau of Reclamation in the Draft

Impact Statement that allocates operation, maintenance, and replacement costs for the Project.

(f) Temporary Waivers of Payments-

(1) IN GENERAL- On the date on which the Project is substantially complete and the Nation receives a delivery of water generated by the Project, the Secretary may waive, for a period of not more than 10 years, the operation, maintenance, and replacement costs of the Project allocable to the Nation that the Secretary determines are in excess of the ability of the Nation to pay.

(2) PAYMENT BY UNITED STATES- Any operation, maintenance, or replacement costs waived by the Secretary under paragraph (1) shall be paid by the United States.

(3) EFFECT ON CONTRACTS- Failure of the Secretary to waive costs under paragraph (1) because of a lack of availability of Federal funding to pay the costs under paragraph (2) shall not alter the obligations of the Nation or the United States under a repayment contract.

(4) TERMINATION OF AUTHORITY- The authority of the Secretary to waive costs under paragraph (1) with respect to a Project facility transferred to the Nation under section 302(f) shall terminate on the date on which the Project facility is transferred.

### **SEC. 305. USE OF NAVAJO NATION MUNICIPAL PIPELINE.**

In addition to use of the Navajo Nation Municipal Pipeline to convey the Animas-La Plata Project water of the Nation, the Nation may use the Navajo Nation Municipal Pipeline to convey water for other purposes (including purposes relating to the Project).

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

(a) Conjunctive Groundwater Development Plan- Not later than 1 year after the date of enactment of this Act, the Nation, in consultation with the Secretary, shall complete a conjunctive groundwater development plan for the wells described in subsections (b) and (c).

(b) Wells in the San Juan River Basin- In accordance with the conjunctive groundwater development plan, the Secretary may construct or rehabilitate wells and related pipeline facilities to provide capacity for the diversion and distribution of not more than 1,670 acre-feet of groundwater in the San Juan River Basin in the State of New Mexico for municipal and domestic uses.

(c) Wells in the Little Colorado and Rio Grande Basins-

(1) IN GENERAL- In accordance with the Project and conjunctive groundwater development plan for the Nation, the Secretary may construct or rehabilitate wells and related pipeline facilities to provide capacity for the diversion and distribution of--

(A) not more than 680 acre-feet of groundwater in the Little Colorado River Basin in the State of New Mexico;

- (B) not more than 80 acre-feet of groundwater in the Rio Grande Basin in the State of New Mexico; and  
(C) not more than 770 acre-feet of groundwater in the Little Colorado River Basin in the State of Arizona.
- (2) USE- Groundwater diverted and distributed under paragraph (1) shall be used for municipal and domestic uses.
- (d) Acquisition of Land-
- (1) IN GENERAL- Except as provided in paragraph (2), the Secretary may acquire any land or interest in land that is necessary for the construction, operation, and maintenance of the wells and related pipeline facilities authorized under subsections (b) and (c).
- (2) LIMITATION- Nothing in this subsection authorizes the Secretary to condemn water rights for the purposes described in paragraph (1).
- (e) Condition- The Secretary shall not commence any construction activity relating to the wells described in subsections (b) and (c) until the Secretary executes the Agreement.
- (f) Conveyance of Wells-
- (1) IN GENERAL- The Secretary shall enter into an agreement with the Nation to convey to the Nation--
- (A) any well or related pipeline facility constructed or rehabilitated under subsections (a) and (b) after the wells and related facilities have been completed; and
- (B) any land or interest in land acquired by the United States for the construction, operation, and maintenance of the well or related pipeline facility.
- (2) OPERATION, MAINTENANCE, AND REPLACEMENT- On completion of a conveyance under paragraph (1), the Nation shall assume responsibility for the operation, maintenance, and replacement of the well or related pipeline facility conveyed.
- (3) EFFECT OF CONVEYANCE- The conveyance to the Nation of the conjunctive use wells under paragraph (1) shall not affect the application of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).
- (g) Use of Project Facilities- The capacities of the treatment facilities, main pipelines, and lateral pipelines of the Project authorized by section 302(b) may be used to treat and convey groundwater to Nation communities if the Nation provides for payment of the operation, maintenance, and replacement costs associated with the use of the facilities or pipelines.
- (h) Limitations- The diversion and use of groundwater by wells constructed or rehabilitated under this section shall be made in a manner consistent with applicable Federal and State law.

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

- (a) Rehabilitation- Subject to subsection (b), the Secretary shall rehabilitate--

- (1) the Fruitland-Cambridge Irrigation Project to serve not more than 3,335 acres of land, which shall be considered to be the total serviceable area of the Project; and
- (2) the Hogback-Cudei Irrigation Project to serve not more than 8,830 acres of land, which shall be considered to be the total serviceable area of the Project.

(b) Condition- The Secretary shall not commence any construction activity relating to the rehabilitation of the Fruitland-Cambridge Irrigation Project or the Hogback-Cudei Irrigation Project under subsection (a) until the Secretary executes the Agreement.

(c) Operation, Maintenance, and Replacement Obligation- Upon the date of completion of the rehabilitation, the Nation shall assume the obligations for the operation, maintenance, and replacement of each facility rehabilitated under this section.

### **SEC. 308. OTHER IRRIGATION PROJECTS.**

(a) In General- Not later than 2 years after the date of enactment of this Act, the Secretary, in consultation with the State of New Mexico (acting through the Interstate Stream Commission) and the Non-Navajo Irrigation Districts that elect to participate, shall--

- (1) conduct a study of Non-Navajo Irrigation District diversion and ditch facilities; and
- (2) based on the study, identify and prioritize a list of projects, with associated cost estimates, that are recommended to be implemented to repair, rehabilitate, or reconstruct irrigation diversion and ditch facilities to improve water use efficiency.

(b) Grants- The Secretary may provide grants to, and enter into cooperative agreements with, the Non-Navajo Irrigation Districts to plan, design, or otherwise implement the projects identified under subsection (a)(2).

(c) Cost-Sharing-

- (1) FEDERAL SHARE- The Federal share of the total cost of carrying out a project under subsection (b) shall be not more than 50 percent.
- (2) FORM- The non-Federal share required under paragraph (1) may be in the form of in-kind contributions, including the contribution of any valuable asset or service that the Secretary determines would substantially contribute to a project carried out under subsection (b).
- (3) STATE CONTRIBUTION- The Secretary may accept from the State of New Mexico a partial or total contribution toward the non-Federal share for a project carried out under subsection (b).

### **SEC. 309. AUTHORIZATION OF APPROPRIATIONS.**

(a) Authorization of Appropriations for Northwestern New Mexico Rural Water Supply Project-

(1) IN GENERAL- There is authorized to be appropriated to the Secretary to construct the Project such sums as are necessary for the period of fiscal years 2008 through 2022.

(2) ADJUSTMENTS- The amount under paragraph (1) shall be adjusted by such amounts as may be required by reason of changes since 2005 in construction costs, as indicated by engineering cost indices applicable to the types of construction involved.

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

(b) Appropriations for Conjunctive Use Wells-

(1) SAN JUAN WELLS- There is authorized to be appropriated to the Secretary for the construction or rehabilitation of conjunctive use wells under section 306(b) \$30,000,000, as adjusted under paragraph (3), for the period of fiscal years 2008 through 2018.

(2) WELLS IN THE LITTLE COLORADO AND RIO GRANDE BASINS- There is authorized to be appropriated to the Secretary for the construction or rehabilitation of conjunctive use wells under section 306(c) such sums as are necessary for the period of fiscal years 2008 through 2024.

(3) ADJUSTMENTS- The amount under paragraph (1) shall be adjusted by such amounts as may be required by reason of changes since 2004 in construction costs, as indicated by engineering cost indices applicable to the types of construction or rehabilitation involved.

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

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

(c) San Juan River Irrigation Projects-

(1) IN GENERAL- There are authorized to be appropriated to the Secretary--

(A) to carry out section 307(a)(1), not more than \$7,700,000, as adjusted under paragraph (2), for the period of fiscal years 2008 through 2014; and

(B) to carry out section 307(a)(2), not more than \$15,400,000, as adjusted under paragraph (2), for the period of fiscal years 2008 through 2017.

(2) ADJUSTMENT- The amounts made available under paragraph (1) shall be adjusted by such amounts as may be required by reason of changes since January 1, 2004, in construction costs, as indicated by engineering cost indices applicable to the types of construction involved in the rehabilitation.

(3) NONREIMBURSABLE EXPENDITURES- Amounts made available under this subsection shall be nonreimbursable to the United States.



(d) Other Irrigation Projects- There are authorized to be appropriated to the Secretary to carry out section 308 \$11,000,000 for the period of fiscal years 2008 through 2017.

(e) Cultural Resources-

(1) IN GENERAL- The Secretary may use not more than 4 percent of amounts made available under subsections (a) and (b) for the survey, recovery, protection, preservation, and display of archaeological resources in the area of a Project facility or conjunctive use well.

(2) NONREIMBURSABLE EXPENDITURES- Any amounts made available under paragraph (1) shall be nonreimbursable and nonreturnable to the United States.

(f) Fish and Wildlife Facilities-

(1) IN GENERAL- In association with the development of the Project, the Secretary may use not more than 4 percent of amounts made available under subsections (a) and (b) to purchase land and construct and maintain facilities to mitigate the loss of, and improve conditions for the propagation of, fish and wildlife if any such purchase, construction, or maintenance will not affect the operation of any water project or use of water.

(2) NONREIMBURSABLE EXPENDITURES- Any amounts expended under paragraph (1) shall be nonreimbursable and nonreturnable to the United States.

#### **TITLE IV--NAVAJO NATION WATER RIGHTS**

#### **SEC. 401. AGREEMENT.**

(a) Agreement Approval-

(1) APPROVAL BY CONGRESS- Except to the extent that any provision of the Agreement conflicts with this Act, Congress approves, ratifies, and incorporates by reference the Agreement (including any amendments to the Agreement that are executed to make the Agreement consistent with this Act).

(2) EXECUTION BY SECRETARY- The Secretary, acting on behalf of the United States, shall enter into the Agreement to the extent that the Agreement does not conflict with this Act, including--

(A) any exhibits to the Agreement requiring the signature of the Secretary; and

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

(3) AUTHORITY OF SECRETARY- The Secretary may carry out any action that the Secretary determines is necessary or appropriate to implement the Agreement, the Contract, and this section.

(4) ADMINISTRATION OF NAVAJO RESERVOIR RELEASES- The State of New Mexico may administer releases of stored water from Navajo Reservoir in accordance with subparagraph 9.1 of the Agreement.

(b) Water Available Under Contract-

(1) QUANTITIES OF WATER AVAILABLE-

(A) IN GENERAL- Water shall be made available annually under the Contract for projects in the State of New Mexico supplied from the Navajo Reservoir and the San Juan River (including tributaries of the River) under New Mexico State Engineer File Numbers 2849, 2883, and 3215 in the quantities described in subparagraph (B).

(B) WATER QUANTITIES- The quantities of water referred to in subparagraph (A) are as follows:

	Depletion (acre-feet/year)	Diversion (acre-feet/year)
Navajo Indian Irrigation Project	508,000	270,000
Northwestern New Mexico Rural Water Supply Project	22,650	20,780
Animas-La Plata Project	4,680	2,340
Total	535,330	293,120

(C) MAXIMUM QUANTITY- A diversion of water to the Nation under the Contract for a project described in subparagraph (B) shall not exceed the quantity of water necessary to supply the amount of depletion for the project.

(D) TERMS, CONDITIONS, AND LIMITATIONS- The diversion and use of water under the Contract shall be subject to and consistent with the terms, conditions, and limitations of the Agreement, this Act, and any other applicable law.

(2) AMENDMENTS TO CONTRACT- The Secretary, with the consent of the Nation, may amend the Contract if the Secretary determines that the amendment is--

(A) consistent with the Agreement; and

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

(3) RIGHTS OF THE NATION- The Nation may, under the Contract--

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

(i) the depletion of water does not exceed the quantities described in paragraph (1); and

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

and

(B) change a point of diversion, change a purpose or place of use, and transfer a right for depletion under this Act (except for a point of diversion, purpose or place of use, or right for depletion for use in the State of Arizona under section 303(b)(2)(D)), to another use, purpose, place, or depletion in the State of New Mexico to meet a water resource or economic need of the Nation if--

(i) the change or transfer is subject to and consistent with the terms of the Agreement, the Partial Final Decree described in paragraph 3.0 of the Agreement, the Contract, and any other applicable law; and

(ii) a change or transfer of water use by the Nation does not alter any obligation of the United States, the Nation, or another party to pay or repay project construction, operation, maintenance, or replacement costs under this Act and the Contract.

(c) Subcontracts-

(1) IN GENERAL-

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

(B) APPROVAL REQUIRED- A subcontract entered into under subparagraph (A) shall not be effective until approved by the Secretary in accordance with this subsection and the Contract.

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

(D) DEADLINE- The Secretary shall approve or disapprove a subcontract submitted to the Secretary under subparagraph (C) not later than the later of--

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

(ii) the date that is 60 days after the date on which a subcontractor complies with--

(I) section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)); and

(II) any other requirement of Federal law.

(E) ENFORCEMENT- A party to a subcontract may enforce the deadline described in subparagraph (D) under section 1361 of title 28, United States Code.

(F) COMPLIANCE WITH OTHER LAW- A subcontract described in subparagraph (A) shall comply with the Agreement, the Partial Final Decree described in paragraph 3.0 of the Agreement, and any other applicable law.

(2) ALIENATION-

(A) PERMANENT ALIENATION- The Nation shall not permanently alienate any right granted to the Nation under the Contract.

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

(3) NONINTERCOURSE ACT COMPLIANCE- This subsection--

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

(B) is deemed to fulfill any requirement that may be imposed by section 2116 of the Revised Statutes (25 U.S.C. 177).

(4) FORFEITURE- The nonuse of the water supply secured by a subcontractor of the Nation under this subsection shall not result in forfeiture, abandonment, relinquishment, or other loss of any part of a right decreed to the Nation under the Contract or this section.

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

(d) Water Leases Not Requiring Subcontracts-

(1) AUTHORITY OF NATION-

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

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

(ii) is not subject to the Contract.

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

(2) ALIENATION; MAXIMUM TERM-

(A) ALIENATION- The Nation shall not permanently alienate any right granted to the Nation under the Agreement.

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

(3) NONINTERCOURSE ACT COMPLIANCE- This subsection--

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

(B) is deemed to fulfill any requirement that may be imposed by the provisions of section 2116 of the Revised Statutes (25 U.S.C. 177).

(4) FORFEITURE- The nonuse of a water right of the Nation by a lessee or contractor to the Nation under this subsection shall not result in forfeiture, abandonment, relinquishment, or other loss of any part of a right decreed to the Nation under the Contract or this section.

(e) Hydrographic Survey-

(1) PREPARATION- The Secretary, on behalf of the United States, shall prepare a hydrographic survey under the joint supervision of the Secretary and the State of New Mexico (acting through the New Mexico State Engineer) to identify and quantify any historic or existing diversion or use of water (including from surface water and underground water sources) by the Nation or a member of the Nation from the San Juan River Basin in the State of New Mexico, as described in subparagraph 4.2 of the Agreement.

(2) AUTHORIZATION OF APPROPRIATIONS-

(A) IN GENERAL- Subject to subparagraph (B), there is authorized to be appropriated to the Bureau of Indian Affairs to carry out paragraph (1) \$5,000,000 for the period of fiscal years 2008 through 2013.

(B) ADJUSTMENT- The amounts made available under subparagraph (A) shall be adjusted by such amounts as are necessary to account for increases in the costs of preparing a hydrographic survey after January 1, 2004, as determined using cost indices applicable to the types of technical and engineering work involved in preparing the hydrographic survey.

(C) NONREIMBURSABLE EXPENDITURES- Any amounts made available under this paragraph shall be nonreimbursable to the United States.

(f) Nullification-

(1) DEADLINES-

(A) IN GENERAL- In carrying out this section, the following deadlines apply with respect to implementation of the Agreement:

(i) AGREEMENT- Not later than December 31, 2008, the Secretary shall execute the Agreement.

(ii) CONTRACT- Not later than December 31, 2009, the Secretary and the Nation shall execute the Contract.

(iii) PARTIAL FINAL DECREE- Not later than December 31, 2012, the court in the stream adjudication shall have entered the Partial Final Decree described in paragraph 3.0 of the Agreement.

(iv) HYDROGRAPHIC SURVEY- Not later than December 31, 2013, the Secretary shall complete the hydrographic survey described in subsection (e).

(v) FRUITLAND-CAMBRIDGE IRRIGATION PROJECT- Not later than December 31, 2014, the rehabilitation construction of the Fruitland-Cambridge

Irrigation Project authorized under section 307(a)(1) shall be completed.

(vi) SUPPLEMENTAL PARTIAL FINAL DECREE- Not later than December 31, 2015, the court in the stream adjudication shall enter the Supplemental Partial Final Decree described in subparagraph 4.0 of the Agreement.

(vii) HOGBACK-CUDEI IRRIGATION PROJECT- Not later than December 31, 2017, the rehabilitation construction of the Hogback-Cudei Irrigation Project authorized under section 307(a)(2) shall be completed.

(viii) TRUST FUND- Not later than December 31, 2018, the United States shall make all deposits into the Trust Fund under section 402.

(ix) CONJUNCTIVE WELLS- Not later than December 31, 2018, the funds authorized to be appropriated under section 309(b)(1) for the conjunctive use wells authorized under section 306(b) should be appropriated.

(x) NORTHWESTERN NEW MEXICO RURAL WATER SUPPLY PROJECT- Not later than December 31, 2022, the construction of all Project facilities shall be completed.

(B) EXTENSION- A deadline described in subparagraph (A) may be extended if the Nation, the United States (acting through the Secretary), and the State of New Mexico (acting through the New Mexico Interstate Stream Commission) agree that an extension is reasonably necessary.

**(2) REVOCABILITY OF AGREEMENT, CONTRACT AND AUTHORIZATIONS-**

(A) PETITION- If the Nation determines that a deadline described in paragraph (1)(A) is not substantially met, the Nation may submit to the court in the stream adjudication a petition to enter an order terminating the Agreement and Contract.

(B) TERMINATION- On issuance of an order to terminate the Agreement and Contract under subparagraph (A)--

(i) the Trust Fund shall be terminated;

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

(iii) the authorizations for construction and rehabilitation of water projects under this Act shall be revoked and any Federal activity related to that construction and rehabilitation shall be suspended; and

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

**(3) CONDITIONS NOT CAUSING NULLIFICATION OF SETTLEMENT-**

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

(B) CONDITIONS- The conditions referred to in subparagraph (A) are as follows:

(i) A lack of right to divert at the capacities of conjunctive use wells constructed or rehabilitated under section 306.

(ii) A failure--

(I) to determine or resolve an accounting of the use of water under this Act in the State of Arizona;

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

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

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

(4) RIGHTS OF THE NATION- A tribal right under the Contract, a water right adjudicated consistent with the Contract in the stream adjudication by the Partial Final Decree described in paragraph 3.0 of the Agreement, and any other tribal water right stipulated, adjudicated, or decreed as described in the Agreement and this Act shall be held in trust by the United States in perpetuity for the benefit of the Nation.

(g) Effect on Rights of Indian Tribes-

(1) IN GENERAL- Except as provided in paragraph (2), nothing in the Agreement, the Contract, or this section quantifies or adversely affects the land and water rights, or claims or entitlements to water, of any Indian tribe or community other than the rights, claims, or entitlements of the Nation in, to, and from the San Juan River Basin in the State of New Mexico.

(2) EXCEPTION- The right of the Nation to use water under water rights the Nation has in other river basins in the State of New Mexico shall be forborne to the extent that the Nation supplies the uses for which the water rights exist by diversions of water from the San Juan River Basin under the Project consistent with subparagraph 9.13 of the Agreement.

## **SEC. 402. TRUST FUND.**

(a) Establishment- There is established in the Treasury a fund to be known as the 'Navajo Nation Water Resources Development Trust Fund', consisting of--

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

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

(b) Use of Funds- The Nation may use amounts in the Trust Fund--

(1) to investigate, construct, operate, maintain, or replace water project facilities, including facilities conveyed to the Nation under this Act; and

- (2) to investigate, implement, or improve a water conservation measure (including a metering or monitoring activity) necessary for the Nation to make use of a water right of the Nation under the Agreement.
- (c) Management- The Secretary shall manage the Trust Fund, invest amounts in the Trust Fund, and make amounts available from the Trust Fund for distribution to the Nation in accordance with the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4001 et seq.).
- (d) Investment of the Trust Fund- The Secretary shall invest amounts in the Trust Fund in accordance with--
- (1) the Act of April 1, 1880 (25 U.S.C. 161);
  - (2) the first section of the Act of June 24, 1938 (25 U.S.C. 162a); and
  - (3) the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4001 et seq.).
- (e) Conditions for Expenditures and Withdrawals-
- (1) TRIBAL MANAGEMENT PLAN-
    - (A) IN GENERAL- Subject to paragraph (7), on approval by the Secretary of a tribal management plan in accordance with the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4001 et seq.), the Nation may withdraw all or a portion of the amounts in the Trust Fund.
    - (B) REQUIREMENTS- In addition to any requirements under the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4001 et seq.), the tribal management plan shall require that the Nation only use amounts in the Trust Fund for the purposes described in subsection (b), including the identification of water conservation measures to be implemented in association with the agricultural water use of the Nation.
  - (2) ENFORCEMENT- The Secretary may take judicial or administrative action to enforce the provisions of any tribal management plan to ensure that any amounts withdrawn from the Trust Fund are used in accordance with this Act.
  - (3) NO LIABILITY- Neither the Secretary nor the Secretary of the Treasury shall be liable for the expenditure or investment of any amounts withdrawn from the Trust Fund by the Nation.
  - (4) EXPENDITURE PLAN-
    - (A) IN GENERAL- The Nation shall submit to the Secretary for approval an expenditure plan for any portion of the amounts in the Trust Fund made available under this section that the Nation does not withdraw under this subsection.
    - (B) DESCRIPTION- The expenditure plan shall describe the manner in which, and the purposes for which, funds of the Nation remaining in the Trust Fund will be used.
    - (C) APPROVAL- On receipt of an expenditure plan under subparagraph (A), the Secretary shall approve the plan if the Secretary determines that the plan is reasonable and consistent with this Act.



(5) ANNUAL REPORT- The Nation shall submit to the Secretary an annual report that describes any expenditures from the Trust Fund during the year covered by the report.

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

(7) CONDITIONS- Any amount authorized to be appropriated to the Trust Fund under subsection (f) shall not be available for expenditure or withdrawal--

(A) before December 31, 2018; and

(B) until the date on which the court in the stream adjudication has entered--

(i) the Partial Final Decree described in paragraph 3.0 of the Agreement; and

(ii) the Supplemental Partial Final Decree described in paragraph 4.0 of the Agreement.

(f) Authorization of Appropriations- There is authorized to be appropriated for deposit in the Trust Fund--

(1) \$6,000,000 for each of fiscal years 2008 through 2012; and

(2) \$4,000,000 for each of fiscal years 2013 through 2017.

## **SEC. 403. WAIVERS AND RELEASES.**

(a) Execution- The Nation, on behalf of itself and members of the Nation (other than members in their capacity as allottees), and the United States, acting through the Secretary and in its capacity as trustee for the Nation, shall execute waivers and releases in accordance with paragraph 7.0 of the Agreement.

(b) Reservation- Notwithstanding subsection (a), the Nation and its members (including members in their capacity as allottees) and the United States, as trustee for the Nation and allottees, shall retain the rights and claims specified in paragraph 7.0 of the Agreement.

(c) Effective Date-

(1) IN GENERAL- The waivers and releases described in subsection (a) shall be effective on the date on which the Secretary publishes in the Federal Register a statement of findings documenting that each of the deadlines described in section 401(f)(1) have been met.

(2) DEADLINE- If the deadlines in section 401(f)(1)(A) have not been met by the later of March 1, 2023, or the date of any extension under section 401(f)(1)(B)--

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

(B) section 401(f)(2)(B) shall apply.

*END*