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2d Session }

SENATE

{ REPORT
110-401

NORTHWESTERN NEW MEXICO RURAL WATER PROJECTS ACT

JUNE 25, 2008.—Ordered to be printed

Mr. BINGAMAN, from the Committee on Energy and Natural
Resources, submitted the following

R E P O R T

[To accompany S. 1171]

The Committee on Energy and Natural Resources, to which was referred the bill (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, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

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.
- 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.

SEC. 2. DEFINITIONS.

In this Act:

(1) **AAMODT ADJUDICATION.**—The term “Aamodt adjudication” means the general stream adjudication that is the subject of the civil action entitled “State of New Mexico, ex rel. State Engineer and United States of America, Pueblo de Nambe, Pueblo de Pojoaque, Pueblo de San Ildefonso, and Pueblo de Tesuque v. R. Lee Aamodt, et al.”, No. 66 CV 6639 MV/LCS (D.N.M.).

(2) **ABEYTA ADJUDICATION.**—The term “Abeyta adjudication” means the general stream adjudication that is the subject of the civil actions entitled “State of New Mexico v. Abeyta and State of New Mexico v. Arrellano”, Civil Nos. 7896–BB (D.N.M) and 7939–BB (D.N.M.) (consolidated).

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

(4) **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.

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

(A) is located within the Navajo Reservation or the State of New Mexico;

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

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

(6) **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 Navajo Nation Municipal 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).

(7) **CITY.**—The term “City” means the city of Gallup, New Mexico, or a designee of the City, with authority to provide water to the Gallup, New Mexico service area.

(8) **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).

(9) **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.

(10) **DEPLETION.**—The term “depletion” means the depletion of the flow of the San Juan River stream system in the 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.

(11) **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.

(12) **FUND.**—The term “Fund” means the Reclamation Waters Settlements Fund established by section 201(a).

(13) **HYDROLOGIC DETERMINATION.**—The term “hydrologic determination” means the 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 23, 2007.

(14) **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.

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

(16) 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).

(17) 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.).

(18) NAVAJO NATION MUNICIPAL PIPELINE; PIPELINE.—The term “Navajo Nation Municipal Pipeline” or “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 the 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).

(19) NON-NAVAJO IRRIGATION DISTRICTS.—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 the State of New Mexico.

(20) PARTIAL FINAL DECREE.—The term “Partial Final Decree” means a final and binding judgement and decree entered by a court in the stream adjudication, setting forth the rights of the Nation to use and administer waters of the San Juan River Basin in New Mexico, as set forth in Appendix 1 of the Agreement.

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

(22) SAN JUAN RIVER BASIN RECOVERY IMPLEMENTATION PROGRAM.—The term “San Juan River Basin Recovery Implementation Program” means the intergovernmental program established pursuant to the cooperative agreement dated October 21, 1992 (including any amendments to the program).

(23) SECRETARY.—The term “Secretary” means the Secretary of the Interior, acting through the Commissioner of Reclamation or any other designee.

(24) 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).

(25) SUPPLEMENTAL PARTIAL FINAL DECREE.—The term “Supplemental Partial Final Decree” means a final and binding judgement and decree entered by a court in the stream adjudication, setting forth certain water rights of the Nation, as set forth in Appendix 2 of the Agreement.

(26) 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.).

SEC. 4. NO REALLOCATION OF COSTS.

(a) EFFECT OF ACT.—Notwithstanding any other provision of law, the Secretary shall not reallocate or reassign any costs of projects that have been authorized under the Act of April 11, 1956 (commonly known as the “Colorado River Storage Project Act”) (43 U.S.C. 620 et seq.), as of the date of enactment of this Act because of—

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

(2) the changes in the uses of the water diverted by the Navajo Indian Irrigation Project or the waters stored in the Navajo Reservoir authorized under this Act.

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

SEC. 5. INTEREST RATE.

Notwithstanding any other provision of law, the interest rate applicable to any repayment contract entered into under section 304 shall be equal to the discount rate for Federal water resources planning, as determined by the Secretary.

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 Navajo-Gallup 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, except that, notwithstanding any other provision of law, water for purposes other than irrigation may be stored in the Navajo Reservoir pursuant to the rules governing the top water bank established under this section; 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;

“(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 the flow recommendations of the San Juan River Basin Recovery Implementation Program; and

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

“(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 annual 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 exceed the average annual diversion determined under paragraph (1) by more than 15 percent.

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

“(B) Notwithstanding any other provision of law—

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

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

“(iii) the United States shall have no trust obligation to monitor, administer, or account for the revenues received by the Navajo Nation, or the expenditure of the revenues.

“(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 that Act; and

“(3) any other applicable law.

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

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

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

“(f)(1) Repayment of the costs of construction of the project (as authorized in subsection (a)) shall be 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.), including section 4(d) of that Act.

“(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 for nonirrigation purposes under subsection (e).”

(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 con-

tracts authorized by 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.

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

“(A) The demand for delivery for uses in the State of Arizona under the Navajo-Gallup 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 responds to 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 apportion water 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 distribution of water in accordance with cooperative water agreements between water users providing for a sharing of water supplies.

“(i) Diversions under New Mexico State Engineer File No. 3215 shall be distributed, to the maximum extent water is available, in proportionate amounts to the diversion demands of 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 2009 through 2023, the Secretary of the Treasury shall deposit in the Fund, if available, \$120,000,000 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.—

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

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

(2) AUTHORITY.—The Secretary may expend money from the Fund to implement a settlement agreement approved by Congress that resolves, in whole or in part, litigation involving the United States, if the settlement agreement or implementing legislation requires the Bureau of Reclamation to provide financial assistance for, or 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, or located within the same river basin as, a Federal reclamation project that is in existence on the date of enactment of this Act.

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

(A) PRIORITIES.—

(i) FIRST PRIORITY.—

(I) IN GENERAL.—The first priority for expenditure of amounts in the Fund during the entire period in which the Fund is in existence shall be for the purposes described in, and in the order of, clauses (i) through (iv) of subparagraph (B).

(II) RESERVED AMOUNTS.—The Secretary shall reserve amounts deposited into the Fund in accordance with subclause (I).

(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.—

(i) NAVAJO-GALLUP WATER SUPPLY PROJECT.—

(I) IN GENERAL.—Subject to subclause (II), effective beginning January 1, 2009, if, in the judgment of the Secretary on an annual basis 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 expend from the Fund such amounts on an annual basis consistent with paragraphs (1) and (2), as are necessary to pay the Federal share of the costs, and sub-

stantially complete as expeditiously as practicable, the construction of the water supply infrastructure authorized as part of the Project.

(II) MAXIMUM AMOUNT.—

(aa) IN GENERAL.—Except as provided under item (bb), the amount expended under subclause (I) shall not exceed \$500,000,000 for the period of fiscal years 2009 through 2018.

(bb) EXCEPTION.—The limitation on the expenditure amount under item (aa) may be exceeded during the entire period in which the Fund is in existence.

(ii) OTHER NEW MEXICO SETTLEMENTS.—

(I) IN GENERAL.—Subject to subclause (II), effective beginning January 1, 2009, in addition to the funding made available under clause (i), if in the judgment of the Secretary on an annual basis a sufficient amount of funding is not otherwise available through annual appropriations, the Secretary shall expend from the Fund such amounts on an annual basis consistent with paragraphs (1) and (2), as are necessary to pay the Federal share of the costs of implementing the Indian water rights settlement agreements entered into by the State of New Mexico in the Aamodt adjudication and the Abeyta adjudication, if such settlements are subsequently approved and authorized by an Act of Congress.

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

(iii) MONTANA SETTLEMENTS.—

(I) IN GENERAL.—Subject to subclause (II), effective beginning January 1, 2009, in addition to funding made available pursuant to clauses (i) and (ii), if in the judgment of the Secretary on an annual basis a sufficient amount of funding is not otherwise available through annual appropriations, the Secretary shall expend from the Fund such amounts on an annual basis consistent with paragraphs (1) and (2), as are necessary to pay the Federal share of the costs of implementing Indian water rights settlement agreements entered into by the State of Montana with the Blackfeet Tribe, the Crow Tribe, or the Gros Ventre and Assiniboine Tribes of the Fort Belknap Indian Reservation in the judicial proceeding entitled “In re the General Adjudication of All the Rights to Use Surface and Groundwater in the State of Montana”, if a settlement or settlements are subsequently approved and authorized by an Act of Congress.

(II) MAXIMUM AMOUNT.—

(aa) IN GENERAL.—Except as provided under item (bb), the amount expended under subclause (I) shall not exceed \$350,000,000 for the period of fiscal years 2009 through 2018.

(bb) EXCEPTION.—The limitation on the expenditure amount under item (aa) may be exceeded during the entire period in which the Fund is in existence.

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

(iv) ARIZONA SETTLEMENT.—

(I) IN GENERAL.—Subject to subclause (II), effective beginning January 1, 2009, in addition to funding made available pursuant to clauses (i), (ii), and (iii), if in the judgment of the Secretary on an annual basis a sufficient amount of funding is not otherwise available through annual appropriations, the Secretary shall expend from the Fund such amounts on an annual basis consistent with paragraphs (1) and (2), as are necessary to pay the Federal share of the costs of implementing an Indian water rights settlement agreement entered into by the State of Arizona with the Navajo Nation to resolve the water rights claims of the Nation in the Lower Colorado River basin in Arizona, if a settlement is subsequently approved and authorized by an Act of Congress.

(II) MAXIMUM AMOUNT.—

(aa) IN GENERAL.—Except as provided under item (bb), the amount expended under subclause (I) shall not exceed \$100,000,000 for the period of fiscal years 2009 through 2018.

(bb) EXCEPTION.—The limitation on the expenditure amount under item (aa) may be exceeded during the entire period in which the Fund is in existence.

- (cc) OTHER FUNDING.—The Secretary shall ensure that any such funding shall be provided in a manner that does not limit the funding available pursuant to clauses (i) and (ii).
- (C) REVERSION.—If the settlements described in clauses (ii) through (iv) of subparagraph (B) have not been approved and authorized by an Act of Congress by December 31, 2014, the amounts reserved for the settlements shall no longer be reserved by the Secretary pursuant to subparagraph (A)(i) and shall revert to the Fund for any authorized use, as determined by the Secretary.
- (d) INVESTMENT OF AMOUNTS.—
 - (1) IN GENERAL.—The Secretary shall invest such portion of the Fund as is not, in the judgment of the Secretary, required to meet current withdrawals.
 - (2) 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, 2028—
 - (1) the Fund shall terminate; and
 - (2) the unexpended and unobligated balance of the Fund shall be transferred to the appropriate fund of the Treasury.

TITLE III—NAVAJO-GALLUP WATER SUPPLY PROJECT

SEC. 301. PURPOSES.

The purposes of this subtitle are—

- (1) to authorize the Secretary to construct, operate, and maintain the Navajo-Gallup Water Supply Project;
- (2) to allocate the capacity of the Project among the Nation, the City, and the Jicarilla Apache Nation; and
- (3) to authorize the Secretary to enter into Project repayment contracts with the City and the Jicarilla Apache Nation.

SEC. 302. AUTHORIZATION OF NAVAJO-GALLUP 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), includ-

ing power transmission facilities and associated wheeling services to connect Project facilities to existing high-voltage transmission facilities and deliver power to the Project.

(c) ACQUISITION OF LAND.—

(1) IN GENERAL.—The Secretary is authorized to acquire any land or interest in land that is necessary to construct, operate, and maintain the Project facilities authorized under subsection (b).

(2) LAND OF THE PROJECT PARTICIPANTS.—As a condition of construction of the facilities authorized under this title, the Project Participants shall provide all land or interest in land, as appropriate, that the Secretary identifies as necessary for acquisition under this subsection at no cost to the Secretary.

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

(d) CONDITIONS.—

(1) IN GENERAL.—Except as provided in paragraph (2), 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 Secretary has entered into an agreement with the State of New Mexico under which the State of New Mexico will provide a share of the construction costs of the Project of not less than \$50,000,000, except that the State of New Mexico shall receive credit for funds the State has contributed to construct water conveyance facilities to the Project Participants to the extent that the facilities reduce the cost of the Project as estimated in the Draft Impact Statement.

(2) EXCEPTION.—If the Jicarilla Apache Nation elects not to enter into a contract pursuant to section 304, the Secretary, after consulting with the Nation, the City, and the State of New Mexico acting through the Interstate Stream Commission, may make appropriate modifications to the scope of the Project and proceed with Project construction if all other conditions for construction have been satisfied.

(3) EFFECT OF INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT.—The Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) shall not apply to the design, construction, operation, maintenance, or replacement of the Project.

(e) POWER.—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.

(f) CONVEYANCE OF TITLE TO PROJECT FACILITIES.—

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

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

(II) the allocation and payment of annual operation, maintenance, and replacement costs of the Project or section of a Project facility 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 of title, 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) EFFECT OF CONVEYANCE.—The conveyance of title to 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.
 - (3) LIABILITY.—
 - (A) IN GENERAL.—Effective on the date of the conveyance authorized by this subsection, the United States shall not be held liable by any court for damages of any kind arising out of any act, omission, or occurrence relating to the land, buildings, or facilities conveyed under this subsection, other than damages caused by acts of negligence committed by the United States, or by employees or agents of the United States, prior to the date of conveyance.
 - (B) TORT CLAIMS.—Nothing in this section increases the liability of the United States beyond the liability provided in chapter 171 of title 28, United States Code (commonly known as the “Federal Tort Claims Act”).
 - (4) NOTICE OF PROPOSED CONVEYANCE.—Not later than 45 days before the date of a proposed conveyance of title to 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 an appropriate fee that may be established by the Secretary to assist in the recovery of any capital cost allocable 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 sub-contract 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 NAVAJO-GALLUP 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.—
 - (A) IN GENERAL.—Hydroelectric power may be generated as an incident to the delivery of Project water for authorized purposes under paragraph (1).
 - (B) ADMINISTRATION.—Notwithstanding any other provision of law—

- (i) any hydroelectric power generated under this paragraph shall be used or marketed by the Nation;
 - (ii) the Nation shall retain any revenues from the sale of the hydroelectric power; and
 - (iii) the United States shall have no trust obligation or other obligation to monitor, administer, or account for the revenues received by the Nation, or the expenditure of the revenues.
- (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.—Subject to availability and consistent with Federal and State law, the Project may divert from the Navajo Reservoir and the San Juan River a quantity of water to be allocated and used consistent with the Agreement and this Act, that does not exceed in any 1 year, 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) PROJECT DELIVERY CAPACITY ALLOCATIONS.—
 - (A) IN GENERAL.—The capacity of the Project shall be allocated to the Project Participants in accordance with subparagraphs (B) through (E), other provisions of this Act, and other applicable law.
 - (B) DELIVERY CAPACITY ALLOCATION TO THE CITY.—The Project may deliver at the point of diversion from the San Juan River not more than 7,500 acre-feet of water in any 1 year for which the City has secured rights for the use of the City.
 - (C) DELIVERY CAPACITY ALLOCATION TO NAVAJO NATION COMMUNITIES IN NEW MEXICO.—For use by the Nation in the State of New Mexico, the Project may deliver water out of the water rights held by the Secretary for the Nation and confirmed under this Act, at the points of diversion from the San Juan River or at Navajo Reservoir in any 1 year, 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) DELIVERY CAPACITY ALLOCATION TO NAVAJO NATION COMMUNITIES IN ARIZONA.—Subject to subsection (c), the Project may deliver at the point of diversion from the San Juan River not more than 6,411 acre-feet of water in any 1 year for use by the Nation in the State of Arizona.
 - (E) DELIVERY CAPACITY ALLOCATION TO JICARILLA APACHE NATION.—The Project may deliver at Navajo Reservoir not more than 1,200 acre-feet of water in any 1 year of the water rights of the Jicarilla Apache Nation, held by the Secretary and confirmed by the Jicarilla Apache Tribe Water Rights Settlement Act (Public Law 102-441; 106 Stat. 2237), 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 DELIVERY CAPACITY ALLOCATION QUANTITY.—Notwithstanding each delivery capacity allocation quantity limit described in subparagraphs (B), (C), and (E) of paragraph (2), the Secretary may authorize a Project Participant to exceed the delivery capacity allocation quantity limit of that Project Participant if—
 - (A) delivery capacity is available without impairing any water delivery to any other Project Participant; and
 - (B) the Project Participant benefitting from the increased allocation of delivery capacity—
 - (i) has the right under applicable law to use the additional water;
 - (ii) agrees to pay the operation, maintenance, and replacement costs relating to the additional use of any Project facility; and
 - (iii) agrees, if the Project title is held by the Secretary, to pay a fee established by the Secretary to assist in recovering capital costs relating to that additional use.
 - (c) CONDITIONS FOR USE IN ARIZONA.—

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

(A) the Nation and the State of Arizona have entered into a water rights settlement agreement approved by an Act of Congress that specifies the allocation of Colorado River System water to which the use in Arizona will be charged; and

(B) the Secretary has determined by hydrologic investigation that sufficient water is reasonably likely to be available to supply the use in the State of Arizona from water of the Colorado River system allocated to the State.

(2) ACCOUNTING OF USES IN ARIZONA.—Pursuant to paragraph (1), 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.

(d) 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 in subsection (c).

(e) 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 (d).

(f) COLORADO RIVER COMPACTS.—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 within New Mexico in the lower basin, as that term is used in the Colorado River Compact;

(2) any water diverted under paragraph (1) shall be a part of, and charged against, the consumptive use apportionment made to the State of New Mexico by Article III(a) of the Compact and to the upper basin by Article III(a) of the Colorado River Compact; and

(3) any water so diverted by the Project into the lower basin within the State of New Mexico shall not be credited as water reaching Lee Ferry pursuant to Articles III(c) and III(d) of the Colorado River Compact.

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

(1) IN GENERAL.—The Secretary is authorized to pay the operation, maintenance, and replacement costs of the Project allocable to the Project Participants under section 304 until the date on which the Secretary declares any section of the Project to be substantially complete and delivery of water generated by, and through, that section of the Project can be made to a Project participant.

(2) PROJECT PARTICIPANT PAYMENTS.—Beginning on the date described in paragraph (1), each Project Participant shall pay all allocated operation, maintenance, and replacement costs for that substantially completed section of the Project, in accordance with contracts entered into pursuant to section 304, except as provided in section 304(f).

SEC. 304. PROJECT CONTRACTS.**(a) NAVAJO NATION CONTRACT.—**

(1) **HYDROLOGIC DETERMINATION.**—Congress recognizes that the Hydrologic Determination necessary 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 confirms 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) **NONREIMBURSABILITY OF ALLOCATED COSTS.**—The following costs shall be nonreimbursable and not subject to repayment by the Nation or any other Project beneficiary:

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

(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.

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

(4) **OPERATION, MAINTENANCE, AND REPLACEMENT OBLIGATION.**—Subject to subsection (f), the Contract shall include provisions under which 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.**—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 the construction costs of the City relating to the Project, with interest as provided under section 5; and

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

(2) CONTRACT PREPAYMENT.—

(A) **IN GENERAL.**—The contract authorized under paragraph (1) may allow the City to satisfy the repayment obligation of the City for construction costs of the Project on the payment of the share of the City prior to the initiation of construction.

(B) **AMOUNT.**—The amount of the share of the City described in subparagraph (A) shall be determined by agreement between the Secretary and the City.

(C) **REPAYMENT OBLIGATION.**—Any repayment obligation established by the Secretary and the City pursuant to subparagraph (A) shall be subject to a final cost allocation by the Secretary on project completion and to the limitations set forth in paragraph (3).

(3) SHARE OF CONSTRUCTION COSTS.—

(A) **IN GENERAL.**—Subject to subparagraph (B), the Secretary shall determine the share of the construction costs of the Project allocable to the City and establish the percentage of the allocated construction costs that the City shall be required to repay pursuant to the contract entered into under paragraph (1), based on the ability of the City to pay.

(B) **MINIMUM PERCENTAGE.**—Notwithstanding subparagraph (A), the repayment obligation of the City shall be at least 25 percent of the construction costs of the Project that are allocable to the City, but shall in no event exceed 35 percent.

(4) **EXCESS CONSTRUCTION COSTS.**—Any construction costs of the Project allocable to the City in excess of the repayment obligation of the City, as determined under paragraph (3), shall be nonreimbursable.

(5) 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.

(6) 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.

(7) WATER DELIVERY SUBCONTRACT.—The Secretary shall not enter into a contract under paragraph (1) with the City until the City has secured a water supply for the City's portion of the Project described in section 303(b)(2)(B), 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, with—

(A) the Nation, as authorized by the Contract;

(B) 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); or

(C) an acquired alternate source of water, 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.

(c) JICARILLA APACHE NATION CONTRACT.—

(1) CONTRACT AUTHORIZATION.—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, with interest as provided under section 5; and

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

(2) CONTRACT PREPAYMENT.—

(A) IN GENERAL.—The contract authorized under paragraph (1) may allow the Jicarilla Apache Nation to satisfy the repayment obligation of the Jicarilla Apache Nation for construction costs of the Project on the payment of the share of the Jicarilla Apache Nation prior to the initiation of construction.

(B) AMOUNT.—The amount of the share of Jicarilla Apache Nation described in subparagraph (A) shall be determined by agreement between the Secretary and the Jicarilla Apache Nation.

(C) REPAYMENT OBLIGATION.—Any repayment obligation established by the Secretary and the Jicarilla Apache Nation pursuant to subparagraph (A) shall be subject to a final cost allocation by the Secretary on project completion and to the limitations set forth in paragraph (3).

(3) SHARE OF CONSTRUCTION COSTS.—

(A) IN GENERAL.—Subject to subparagraph (B), the Secretary shall determine the share of the construction costs of the Project allocable to the Jicarilla Apache Nation and establish the percentage of the allocated construction costs of the Jicarilla Apache Nation that the Jicarilla Apache Nation shall be required to repay based on the ability of the Jicarilla Apache Nation to pay.

(B) MINIMUM PERCENTAGE.—Notwithstanding subparagraph (A), the repayment obligation of the Jicarilla Apache Nation shall be at least 25 percent of the construction costs of the Project that are allocable to the Jicarilla Apache Nation, but shall in no event exceed 35 percent.

(4) EXCESS CONSTRUCTION COSTS.—Any construction costs of the Project allocable to the Jicarilla Apache Nation in excess of the repayment obligation of the Jicarilla Apache Nation as determined under paragraph (3), shall be non-reimbursable.

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

(6) 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, and any such costs shall be nonreimbursable.

(d) CAPITAL COST ALLOCATIONS.—

(1) IN GENERAL.—For purposes of estimating the capital repayment requirements of the Project Participants under this section, the Secretary shall review

and, as appropriate, update the Draft Impact Statement allocating capital construction costs for the Project.

(2) **FINAL COST ALLOCATION.**—The repayment contracts entered into with Project Participants under this section shall require that the Secretary perform a final cost allocation when construction of the Project is determined to be substantially complete.

(3) **REPAYMENT OBLIGATION.**—The Secretary shall determine the repayment obligation of the Project Participants based on the final cost allocation identifying reimbursable and nonreimbursable capital costs of the Project consistent with this Act.

(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 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 Secretary declares a section of the Project to be substantially complete and delivery of water generated by and through that section of the Project can be made to the Nation, the Secretary may waive, for a period of not more than 10 years, the operation, maintenance, and replacement costs allocable to the Nation for that section of the Project that the Secretary determines are in excess of the ability of the Nation to pay.

(2) **SUBSEQUENT PAYMENT BY NATION.**—After a waiver under paragraph (1), the Nation shall pay all allocated operation, maintenance, and replacement costs of that section of the Project.

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

(4) **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 (3) shall not alter the obligations of the Nation or the United States under a repayment contract.

(5) **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.

(g) **PROJECT CONSTRUCTION COMMITTEE.**—The Secretary shall facilitate the formation of a project construction committee with the Project Participants and the State of New Mexico—

(1) to review cost factors and budgets for construction and operation and maintenance activities;

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

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

SEC. 305. NAVAJO NATION MUNICIPAL PIPELINE.

(a) **USE OF NAVAJO NATION 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 non-Animas La Plata Project water for municipal and industrial purposes.

(b) **CONVEYANCE OF TITLE TO PIPELINE.**—

(1) **IN GENERAL.**—On completion of the Navajo Nation Municipal Pipeline, the Secretary may enter into separate agreements with the City of Farmington, New Mexico and the Nation to convey title to each portion of the Navajo Nation Municipal Pipeline facility or section of the Pipeline to the City of Farmington and the Nation after execution of a Project operations agreement approved by the Secretary, the Nation, and the City of Farmington that sets forth any terms and conditions that the Secretary determines are necessary.

(2) **CONVEYANCE TO THE CITY OF FARMINGTON OR NAVAJO NATION.**—In conveying title to the Navajo Nation Municipal Pipeline under this subsection, the Secretary shall convey—

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

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

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

(4) **LIABILITY.**—

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

(B) **TORT CLAIMS.**—Nothing in this subsection increases the liability of the United States beyond the liability provided under chapter 171 of title 28, United States Code (commonly known as the “Federal Tort Claims Act”).

(5) **NOTICE OF PROPOSED CONVEYANCE.**—Not later than 45 days before the date of a proposed conveyance of title to the Pipeline, the Secretary shall submit to the Committee on Natural Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate, notice of the conveyance of the Pipeline.

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.**—On the determination of the Secretary that the wells and related facilities are substantially complete and delivery of water generated by the wells can be made to the Nation, an agreement with the Nation shall be entered into, to convey to the Nation title to—

(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.**—

(A) **IN GENERAL.**—The Secretary is authorized to pay operation and maintenance costs for the wells and related pipeline facilities authorized under this subsection until title to the facilities is conveyed to the Nation.

(B) SUBSEQUENT ASSUMPTION BY NATION.—On completion of a conveyance of title under paragraph (1), the Nation shall assume all responsibility for the operation and maintenance of the well or related pipeline facility conveyed.

(3) EFFECT OF CONVEYANCE.—The conveyance of title 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.—The Nation shall continue to be responsible 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, and shall be nonreimbursable.

(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 NAVAJO-GALLUP WATER SUPPLY PROJECT.—

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

(2) ADJUSTMENTS.—The amount under paragraph (1) shall be adjusted by such amounts as may be required by reason of changes since 2007 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.

- (4) OPERATION AND MAINTENANCE.—
- (A) IN GENERAL.—There are authorized to be appropriated such sums as are necessary to operate and maintain the Project consistent with this Act.
- (B) EXPIRATION.—The authorization under subparagraph (A) shall expire 10 years after the year the Secretary declares the Project to be substantially complete.
- (b) APPROPRIATIONS FOR CONJUNCTIVE USE WELLS.—
- (1) SAN JUAN WELLS.—There is authorized to be appropriated to the Secretary for the construction or rehabilitation and operation and maintenance of conjunctive use wells under section 306(b) \$30,000,000, as adjusted under paragraph (3), for the period of fiscal years 2009 through 2019.
- (2) WELLS IN THE LITTLE COLORADO AND RIO GRANDE BASINS.—There are authorized to be appropriated to the Secretary for the construction or rehabilitation and operation and maintenance of conjunctive use wells under section 306(c) such sums as are necessary for the period of fiscal years 2009 through 2024.
- (3) ADJUSTMENTS.—The amount under paragraph (1) shall be adjusted by such amounts as may be required by reason of changes since 2008 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.
- (6) LIMITATION.—Appropriations authorized under paragraph (1) shall not be used for operation or maintenance of any conjunctive use wells at a time in excess of 3 years after the well is declared substantially complete.
- (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 2009 through 2015, to remain available until expended; 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 2009 through 2018, to remain available until expended.
- (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 2009 through 2018.
- (e) CULTURAL RESOURCES.—
- (1) IN GENERAL.—The Secretary may use not more than 2 percent of amounts made available under subsections (a), (b), and (c) 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.
- (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), (b), and (c) 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.

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 confirms 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 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 water that has been released from storage in 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:

	Diversion (acre- feet/year)	Depletion (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

(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, 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.

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

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

(4) 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).

(5) 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) 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, 2009, 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) FRUITLAND-CAMBRIDGE IRRIGATION PROJECT.—Not later than December 31, 2015, the rehabilitation construction of the Fruitland-Cambridge Irrigation Project authorized under section 307(a)(1) shall be completed.

(v) 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.

(vi) HOGBACK-CUDEI IRRIGATION PROJECT.—Not later than December 31, 2018, the rehabilitation construction of the Hogback-Cudei Irrigation Project authorized under section 307(a)(2) shall be completed.

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

(viii) CONJUNCTIVE WELLS.—Not later than December 31, 2019, the funds authorized to be appropriated under section 309(b)(1) for the conjunctive use wells authorized under section 306(b) should be appropriated.

(ix) NAVAJO-GALLUP WATER SUPPLY PROJECT.—Not later than December 31, 2024, 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.

(f) 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 facilities owned by the United States for which the Nation is responsible for operation, maintenance, and replacement costs; 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, 2019; and

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

(i) the Partial Final Decree; and

(ii) the Supplemental Partial Final Decree.

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

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

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

SEC. 403. WAIVERS AND RELEASES.

(a) CLAIMS BY THE NATION AND THE UNITED STATES.—The Nation, on behalf of itself and members of the Nation (other than members in the capacity of the members as allottees), and the United States, acting through the Secretary and in the capacity of the United States as trustee for the Nation, shall each execute a waiver and release of—

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

(2) all claims that the Nation, or the United States as trustee for the Nation, has asserted or could assert for any damage, loss, or injury to water rights or claims of interference, diversion, or taking of water in the San Juan Basin in the State of New Mexico that, regardless of whether the damage, loss, or injury is unanticipated, unexpected, or unknown—

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

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

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

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

(1) all causes of action that the Nation or the members of the Nation (other than members in the capacity of the members as allottees) may have against the United States or any agencies or employees of the United States, arising out of claims for water rights in, or waters of, the San Juan River Basin in the State of New Mexico that the United States asserted, or could have asserted, in the stream adjudication or other court proceeding;

(2) all claims for any damage, loss, or injury to water rights, claims of interference, diversion or taking of water, or failure to protect, acquire, or develop water or water rights for land within the San Juan Basin in the State of New Mexico that, regardless whether the damage, loss, or injury is unanticipated, unexpected, or unknown—

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

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

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

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

(1) all claims for water rights or injuries to water rights arising out of activities occurring outside the San Juan River Basin in the State of New Mexico, subject to paragraphs 8.0, 9.3, 9.12, 9.13 and 13.9 of the Agreement;

(2) all claims for enforcement of the Agreement, the Contract, the Partial Final Decree, the Supplemental Partial Final Decree, or this Act, through any legal and equitable remedies available in any court of competent jurisdiction;

(3) all rights to use and protect water rights acquired pursuant to State law after the effective date of the waivers and releases described in subsection (d);

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

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

(d) 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(e)(1) have been met.

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

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

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

SEC. 404. WATER RIGHTS HELD IN TRUST.

A tribal water right adjudicated and described in paragraph 3.0 of the Partial Final Decree and in paragraph 3.0 of the Supplemental Partial Final Decree shall be held in trust by the United States on behalf of the Nation.

PURPOSE OF THE MEASURE

The purpose of S. 1171 is 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.

BACKGROUND AND NEED

In 1975, the State of New Mexico initiated a general stream adjudication to determine the quantity and priority of water rights in the San Juan River basin in New Mexico (*State of New Mexico v. United States of America*, Civ. No. 75–184 (11th Judicial Dist.)). The San Juan River is a tributary of the Colorado River and flows through the northwest portion of the state. The adjudication has been pending for over thirty years, and S. 1171 would implement a settlement to resolve the Navajo Nation's water rights, the largest claims in the adjudication.

The basis for the legislation is a settlement agreement executed by the Navajo Nation and the State of New Mexico on April 19, 2005, which requires Federal legislation to take effect. The agreement recognizes approximately 600,000 acre-feet per year (afy) of water rights available to the Navajo Nation for agricultural, municipal, industrial, domestic, and stock watering purposes, in return for a waiver of additional water rights and associated liability claims. A majority of the Navajo rights that would be adjudicated

through the settlement have been recognized by prior federal laws, some of which are now proposed for amendment by S. 1171. The most significant of these is Public Law 87–483 (1962) which authorized construction of the Navajo Indian Irrigation Project (NIIP). The water supply for NIIP is provided by Navajo Reservoir, a Bureau of Reclamation project authorized by the 1956 Colorado River Storage Project Act. Public Law 87–483 also recognized the existence of several other Navajo irrigation projects, encompassing approximately 11,000 acres. Notwithstanding the 1962 law, NIIP has not been fully constructed. The settlement agreement and legislation amend Public Law 87–483 to allow the Navajo Nation to use the NIIP water supply for other purposes; establishes conditions that apply to any changes of use; and caps overall diversions of water for NIIP. There are also provisions specifically negotiated to protect existing water users in the basin.

S. 1171 also provides the means to address an ongoing need for drinking water on the Navajo Reservation through the construction of the Navajo-Gallup Pipeline Project (“Project”). Authorization and construction of the Project is critical to the Navajo Nation, and integral to the Nation’s agreement to waive additional claims to water. According to an analysis performed by the U.S. Bureau of Reclamation, over 40% of Navajo households rely on water hauling to meet daily water needs. Also, 40% of Navajo families have incomes below the poverty level, compared with less than 10% nationwide. The lack of infrastructure, economic development, and sustained poverty are all closely connected. A reliable water supply is essential for stimulating and sustaining economic development in the region. The Project, by itself, will not eliminate water hauling on the Reservation, but it will reduce it by providing a reliable water supply of good quality much closer to many Navajo communities. The Project will also hook into existing distribution systems. Ultimately, the Project is expected to serve in excess of 203,000 tribal members in 43 different Navajo communities.

The Project will also serve other needs in New Mexico by providing a significant water supply to the city of Gallup, New Mexico, and, potentially, a smaller quantity to the Jicarilla Apache Tribe. Currently, Gallup relies on groundwater pumping to supply water to its residents. Due to falling water levels, the City anticipates significant shortages sometime between 2010 and 2016. The construction of the Project is critical to provide a long-term sustainable water supply to Gallup which expects to have a population of 47,000 people by 2040.

On March 30, 2007, the Bureau of Reclamation released a draft Environmental Impact Statement for the Navajo-Gallup Project which analyzes several alternatives for the Project. Another procedural hurdle was crossed in May 2006 when the Bureau of Reclamation issued a draft hydrologic determination finding that sufficient water exists from New Mexico’s Upper Colorado River Basin allocation for Project needs through at least 2060. The Secretary of the Interior (Secretary) announced the approval of the hydrologic determination on June 8, 2007. Based on Reclamation’s work, the Upper Colorado River Commission (representing Colorado, Wyoming, Utah, and New Mexico) approved a resolution in June 2006, supporting Congressional action to: (1) approve the Settlement

Agreement; and (2) authorize the Navajo-Gallup Water Supply Project.

LEGISLATIVE HISTORY

S. 1171 was introduced in the Senate on April 19, 2007 by Senator Bingaman for himself and Senator Domenici, and referred to the Committee on Energy and Natural Resources. The full committee held a hearing on S. 1171 on June 27, 2007. (S. Hrg. 110–148.) At its business meeting on May 7, 2008, the Committee on Energy and Natural Resources ordered S. 1171 favorably reported as amended.

COMMITTEE RECOMMENDATION

The Committee on Energy and Natural Resources, in open business session on May 7, 2008, by voice vote of a quorum present, recommends that the Senate pass S. 1171, if amended as described herein.

COMMITTEE AMENDMENT

During the consideration of S. 1171, the Committee adopted a substitute amendment to improve the bill. The amendment incorporates a number of changes to several areas of the bill. The bill was amended to incorporate new definitions and to clarify that the new authorizations in S. 1171 would not result in a reallocation of costs under existing laws. There is also a new section that specifies the interest rate applicable to any new repayment contracts entered into by the Bureau of Reclamation.

Title I is amended in several places. These changes include modifications that clarify how the bill would change existing law, certain rights and responsibilities of the Navajo Nation with respect to existing facilities; and how shortages would be addressed for water made available from Navajo Reservoir.

Title II incorporates changes which have the effect of increasing the amount of funding available from the Reclamation Fund and the time frame for which such funding is available. The amendment also establishes a new set of priorities that will ensure that the Reclamation Fund can be used to implement certain settlements in New Mexico, Montana, and Arizona according to the time frame set out in Title II. The amendment also modifies how funds are invested before they are disbursed by the Secretary.

The amendments to Title III are numerous with a majority being technical in nature, such as referring to the Project as the Navajo-Gallup Water Supply Project in all places in the bill. Other, more substantive changes include: (1) an increase in cost-share by the State of New Mexico; (2) clarifications to the authority of the Secretary to convey Project facilities to the Project participants; (3) modifications which specify the conditions under which the Project may deliver water to communities in Arizona; (4) the inclusion of more specific terms addressing project repayment and the responsibility for paying operation, maintenance, and replacement (OM&R) costs; and (5) new authorization of appropriations for the Secretary to pay a limited amount of OM&R for the Project.

Finally, the amendment includes a number of technical changes to Title IV of the bill. It also deletes a provision related to a hydro-

graphic survey and expressly incorporates the waiver and release of certain legal claims upon implementation of the settlement.

SECTION-BY-SECTION ANALYSIS

Section 1 provides the short title of the Act and a table of contents.

Section 2 provides the definition of key terms used in the Act.

Section 3(a) states that the Secretary's execution of the Agreement shall not constitute a major federal action for purposes of the National Environmental Policy Act.

Section 3(b) expressly requires the Secretary to comply with all federal environmental laws in carrying out the provisions of the Act. Specific reference is made to the Endangered Species Act (ESA), and it is noted that the San Juan Recovery Implementation Program (SJRIP) is a key factor in ensuring that the Navajo-Gallup Project can result in new depletions from the San Juan River system while maintaining compliance with the ESA. It is expected that the SJRIP, including the development of a programmatic biological opinion by the U.S. Fish and Wildlife Service, will help ensure that ESA compliance is maintained in the future notwithstanding the development of future water uses within the Colorado River apportionments made to the states of the Upper Colorado River Basin.

Section 4(a) ensures that the Act will not result in a reallocation or reassignment of existing costs under the Colorado River Storage Project Act.

Section 4(b) states that no power revenues under the Colorado River Storage Project Act will be used to pay for any costs associated with the Navajo Indian Irrigation Project or Navajo-Gallup Water Supply Project.

Section 5 specifies the interest rate to be used for any repayment contract entered into under section 304 of the Act.

TITLE I—AMENDMENTS TO THE COLORADO RIVER

Section 101(a) amends the Colorado River Storage Project Act by adding the Navajo-Gallup Water Supply Project as a participating project.

Section 101(b) amends the Colorado River Storage Project Act to authorize the Secretary to create a "top water bank" within the available capacity of Navajo Reservoir pursuant to specific criteria and conditions set forth in the provision.

Section 102(a) amends section 2 of Public Law 87-483 by striking the existing provision and replacing it with a new section 2 that maintains the long-standing authorization for the Navajo Indian Irrigation Project (NIIP) but includes several new provisions. The revised section 2 specifically sets forth the quantity of water available for the project; authorizes additional uses of that water; authorizes the transfer of that water outside NIIP and the Navajo reservation under certain conditions, authorizes the use of NIIP facilities to transport non-NIIP water if capacity is available; and directs that the use of NIIP water for non-irrigation purposes will not result in a reallocation of construction costs of NIIP. The new authority to use the capacity of NIIP to convey water for non-irrigation purposes does not authorize the Secretary to construct any

new features to NIIP that were not already authorized under the Act of June 13, 1962. Also, subsection (f) under the revised section 2 continues the deferral of construction costs under the original Act, notwithstanding the possible use of NIIP facilities to deliver non-irrigation water.

Section 102(b) amends section 11 of P.L. 87–483 to add several new subsections. The first (subsection 11(d)) specifies how the Secretary is to determine and apportion shortages based on the prospective runoff originating above Navajo Reservoir and the available water in storage in Navajo Reservoir, including a provision that makes clear that the Secretary is to apply any shortage to the initial stage of the San Juan-Chama project against the full annual diversion demand of 135,000 acre-feet. The second new subsection (subsection 11(e)) specifies the order in which the Secretary will curtail releases and deliveries from Navajo Reservoir. The remaining new provisions (subsection 11(f)–(i)) declare that the Secretary shall apportion water on an annual volume basis; recognize that water may be distributed pursuant to cooperative agreements; and address diversions associated with a specific New Mexico State Engineer permit.

Section 103 disclaims any effect on certain specified Federal laws addressing water resources, unless expressly stated.

TITLE II—RECLAMATION WATER SETTLEMENTS FUND

Section 201(a) establishes the “Reclamation Water Settlements Fund” (Fund).

Section 201(b) directs that certain revenues be deposited in the Fund and provides that those funds be available without further appropriation pursuant to the section.

Section 201(c) specifies the conditions and criteria under which the Secretary of the Interior can expend money from the Reclamation Water Settlements Fund. First, the amounts available are specified. The purposes are also defined, which are to use the fund to implement a congressionally approved settlement agreement to the extent that the settlement requires the Bureau of Reclamation to provide financial assistance, or to plan, design, and construct certain types of projects. Only the settlement actions required to be carried out by the Bureau of Reclamation and which fit the specified criteria, are to be funded using the Fund. This subsection also specifies the priorities for spending from the Fund and directs the Secretary to reserve the specified quantities to ensure that a minimum of such funding is available in the event that appropriations are not sufficient to implement certain activities by the deadlines set forth in the settlement legislation. The first priority is funding to construct the Navajo-Gallup Water Supply Project. The second priority is the funding needed to help implement two other identified settlements in New Mexico. The third priority is the expenditure of funds to help implement three identified settlements in Montana. The fourth priority is the specified funding needed to help implement an identified settlement in Arizona. While other settlements may qualify for expenditures from the fund, the identified settlements will be the priorities subject to the requirement that Federal legislation is enacted to authorize such settlements by December 31, 2014.

Section 201(d) directs the Secretary to invest the amounts in the Fund and retains the benefits of that investment in the Fund.

Section 201(e) addresses timing and adjustments issues associated with transferring amounts to the Fund.

Section 201(f) specifies that the Fund will terminate on September 30, 2028, and any balance will be returned to the appropriate fund in the Treasury, which includes the Reclamation Fund.

TITLE III—NAVAJO-GALLUP WATER SUPPLY PROJECT

Section 301 describes the purposes of Title III.

Section 302(a) authorizes the Secretary, acting through the Commissioner of Reclamation to carry-out a range of activities to construct and operate the Navajo-Gallup Water Supply Project. Completion of the Project is one of the conditions required to implement the settlement of the Navajo Nation's water rights claims in the San Juan River basin.

Section 302(b) authorizes the Secretary to construct, operate, and maintain a number of identified facilities associated with the Project.

Section 302(c) authorizes the Secretary to acquire the property interests necessary to construct, operate, and maintain the Project, subject to the requirement that the Project Participants provide any ownership interest they have in such properties at no cost to the Secretary.

Section 302(d) specifies a number of conditions that must be met before the Secretary is to commence construction of the Project. One of the conditions is the completion of an agreement with the State of New Mexico concerning its cost-share associated with the Project. The Secretary will use any such funds provided by New Mexico pursuant to the Contributed Funds Act (43 U.S.C. 395) for the benefit of the Project. Section 302(d) also makes clear that the Secretary is authorized to construct the Project with appropriate modifications if the Jicarilla Apache Nation elects to not participate.

Section 302(e) directs the Secretary to reserve a specified amount of power from the Colorado River Storage Project for use by the Project.

Section 302(f) authorizes the Secretary to enter into agreements with the Navajo Nation and the City of Gallup to convey appropriate sections of the Project to those entities under certain conditions. The conveyance is not to affect application of the ESA, and the United States' liability for actions associated with the Project is limited as set forth in the subsection.

Section 302(g) provides that any conveyance under subsection (f) will not affect the availability of power under subsection (e).

Section 302(h) authorizes the use of Project facilities to treat and convey non-Project water supplies under specified conditions.

Section 303(a) specifies the authorized uses of Project water, the place of use of such water supplies, and associated conditions.

Section 303(b) authorizes the Project to divert specified quantities of water from Navajo Reservoir and the San Juan River subject to applicable state and Federal law. Subsection (b) also specifies the Project capacity available to each of the Project participants and authorizes deliveries in excess of the designated capacity under specified conditions. Included in the authorized capacity is a

quantity of water available for use by the Navajo Nation in Window Rock, Arizona.

Section 303(c) specifies the conditions that apply before the Project can deliver water to communities in the State of Arizona and how such water will be accounted for under the Colorado River Compact and other applicable law.

Section 303(d) provides authority for the Navajo Nation to forbear the delivery of Navajo Reservoir water for uses in New Mexico so that an equivalent amount of water may be provided for Project uses in Arizona. The authority provided by subsection (d) is subject to several specified conditions including a water rights settlement agreement between the Navajo Nation and the State of Arizona, and a requirement that any such uses be accounted for as part of the Colorado River System apportionments to Arizona.

Section 303(e) provides a disclaimer concerning the marketing of Project water or forbearance of the use of Project water by the Navajo Nation.

Section 303(f) confirms the authority of the State of New Mexico to use its apportionment of Colorado River water in the lower Colorado River basin within New Mexico and the conditions associated with such use. The Upper Colorado River Commission approved this use of New Mexico's apportionment by a Resolution adopted June 17, 2003, entitled "Use and Accounting of Upper Basin Water Supplied to the Lower Basin in New Mexico by the Proposed Project."

Section 303(g) authorizes the Secretary to pay the operation and maintenance costs of the Project for a limited amount of time as specified in the subsection.

Section 304(a) directs the Secretary to enter into a Contract with the Navajo Nation for the delivery of Project water as a condition of the water rights settlement. The subsection notes that the Secretary has completed a hydrologic determination which is a necessary prerequisite for executing the Contract, and provides congressional ratification of the Contract so long as it is consistent with the Act. The subsection also specifies that certain identified construction costs shall be non-reimbursable by the Navajo Nation. Except as provided, the Nation shall be responsible for its share of the operation and maintenance costs of the Project.

Section 304(b) authorizes the Secretary to enter into a repayment contract with the City of Gallup, New Mexico, which addresses repayment of allocable Project construction costs and the payment of operation and maintenance costs. The reimbursable portion of the City's construction cost repayment obligation is addressed, and prepayment of the City's construction cost obligation is also authorized subject to certain conditions. The subsection also requires that the City secure a water supply for its portion of the Project as a precondition to the Secretary executing the repayment contract.

Section 304(c) authorizes the Secretary to enter into a repayment contract with the Jicarilla Apache Nation, which addresses repayment of allocable Project construction costs and the payment of operation and maintenance costs. The reimbursable portion of the Jicarilla Nation's construction cost repayment obligation is addressed, and prepayment of the Jicarilla Nation's construction cost obligation is also authorized subject to certain conditions.

Section 304(d) directs the Secretary update the cost estimate in the draft environmental impact statement (DEIS), and to perform a final cost allocation when the Project is substantially complete to establish the Project Participants' final cost allocation.

Section 304(e) directs the Secretary to update the DEIS as appropriate to determine the operation, maintenance, and replacement cost obligations of the Project Participants.

Section 304(f) authorizes the Secretary to waive for a period of not more than 10 years, the Navajo Nation's obligation to pay for allocated operation, maintenance, and replacement (OM&R) costs associated with completed sections of the Project. Any waived costs shall be payable by the United States and non-reimbursable from the Navajo Nation. This provision will allow the Navajo Nation time to establish a rate base sufficient to take over full OM&R costs at the appropriate time set forth in the bill.

Section 304(g) directs the Secretary to form a Project construction committee to address a number of issues affecting the cost of the Project.

Section 305(a) authorizes the Navajo Nation to use the Navajo Nation Municipal Pipeline (Pipeline) to convey water other than the supplies authorized for use in association with the Animas-La Plata Project.

Section 305(b) authorizes the Secretary to enter into agreements to convey title to appropriate sections of the Pipeline and associated property interests to the Navajo Nation and City of Farmington, New Mexico. The conveyance is not to affect application of the ESA, and the United States' liability for actions associated with the Project is limited as set forth in the subsection.

Section 306(a) directs the Navajo Nation to prepare a groundwater development plan (Plan) with the Secretary for the wells authorized to be constructed in section 306.

Section 306(b) authorizes the Secretary to construct or rehabilitate wells and related pipelines to supply a certain amount of groundwater to the Navajo Nation for municipal and domestic uses, consistent with the Plan and as a condition of the water rights settlement.

Section 306(c) authorizes the Secretary to develop groundwater resources in the Little Colorado and Rio Grande basins in accordance with the Plan.

Section 306(d) authorizes the Secretary to acquire necessary property interests in association with groundwater development, but does not authorize the condemnation of water rights.

Section 306(e) requires the Secretary to execute the Agreement prior to commencing any construction activity associated with the wells.

Section 306(f) directs the Secretary to convey to the Navajo Nation the title to any wells, related facilities, and other appropriate property interests upon substantially completing such facilities. The Secretary is authorized to pay OM&R for the wells and related facilities until conveyed to the Navajo Nation which should occur as soon as possible after completion.

Section 306(g) authorizes the use of Project facilities to treat and convey groundwater to the Navajo Nation under specified conditions.

Section 306(h) requires that the diversion and use of groundwater under section 306 be consistent with applicable Federal or state law.

Section 307(a) directs the Secretary to rehabilitate two existing irrigation projects serving the Navajo Nation.

Section 307(b) prohibits the Secretary from beginning any construction activity associated with the rehabilitation before the Agreement is executed.

Section 307(c) specifies that the Navajo Nation will be responsible for OM&R of the rehabilitated facilities.

Section 308(a) requires the Secretary, in consultation with identified entities, to study and make recommendations for rehabilitating or otherwise improving the water use efficiency of specified diversion and ditch facilities.

Section 308(b) authorizes the Secretary to provide grants or enter into agreements to implement the projects identified under subsection (a).

Section 308(c) identifies the required non-Federal cost-share necessary to implement the rehabilitation projects and the form of such cost-share.

Section 309(a) authorizes the appropriations necessary to plan, design, and construct the Navajo-Gallup Water Supply Project, including an appropriate inflation adjustment. The Project may also be constructed using the funds made available in Title II if appropriations are not sufficient to construct the Project by the identified deadline. Subsection (a) also authorizes appropriations for operating and maintaining the Project for a specified amount of time.

Section 309(b) authorizes appropriations for constructing, rehabilitating, and for a 3-year period, operating and maintaining the wells and associated facilities identified in section 306(b)–(c). The amounts authorized for the wells in the San Juan River basin are to be appropriately adjusted for inflation.

Section 309(c) authorizes appropriations for implementing the rehabilitation projects identified in section 307, including an appropriate adjustment for inflation.

Section 309(d) authorizes appropriations for implementing section 308.

Section 309(e) specifies the maximum percentage of appropriations that may be used for the protection of cultural resources under existing law, and that such appropriations are nonreimbursable.

Section 309(f) specifies the maximum percentage of appropriations that may be used for the protection of fish and wildlife, and that such appropriations are nonreimbursable.

TITLE IV—NAVAJO NATION WATER RIGHTS

Section 401(a) approves the water rights settlement agreement resolving the Navajo Nation's water rights claims in the San Juan River Basin in New Mexico and directs the Secretary to enter into the Agreement, including any amendments needed to make the Agreement consistent with the Act.

Section 401(b) identifies the water supplies to be made available to the Navajo Nation under the Contract and declares certain rights and responsibilities associated with the use of that water.

Section 401(c) authorizes the Navajo Nation to enter into sub-contracts to lease water supplies available under the Contract to third parties within New Mexico under certain specified conditions, including approval by the Secretary and compliance with the Agreement and the Partial Final Decree.

Section 401(d) authorizes the Navajo Nation to lease or otherwise transfer other water supplies available under the Agreement to another party within New Mexico under certain specified conditions, including compliance with the Agreement and the Partial Final Decree.

Section 401(e) identifies the deadlines for completing a number of actions necessary to implement the settlement agreement with the Navajo Nation. It also authorizes extension of the deadlines and defines the rights of the Navajo Nation to terminate the Agreement if the deadlines are not substantially met. Subsection (e) also expressly declares that certain events or conditions are not cause to nullify or terminate the Agreement.

Section 401(f) limits the effect of the Agreement, Contract, or Section on the rights of other Indian tribe or community with one specified exception.

Section 402(a) establishes a “Navajo Nation Water Resources Development Trust Fund” consisting of certain identified funds.

Section 402(b) authorizes specified uses of the Trust Fund by the Navajo Nation.

Section 402(c) directs the Secretary to manage and distribute money from the Fund in accordance with the American Indian Trust Fund Management Reform Act.

Section 402(d) directs the Secretary to invest amounts in the Trust Fund in a specified manner.

Section 402(e) identifies a number of conditions for expenditures and withdrawals from the Trust Fund, including a Tribal management plan and the completion of certain actions associated with implementing the Agreement.

Section 402(f) authorizes appropriations for the Trust Fund.

Section 403(a) requires the Navajo Nation and United States to execute specified waivers and releases associated with the Navajo Nation’s water rights claims in the San Juan River basin.

Section 403(b) requires the Navajo Nation to execute a waiver and release of certain claims against the United States.

Section 403(c) identifies certain rights and claims that the Navajo Nation and the United States on its behalf retain in association with the Agreement.

Section 403(d) declares the conditions necessary for the waivers and releases to become effective and a deadline for satisfying those conditions.

Section 404 declares that the water rights adjudicated to the Navajo Nation shall be held in trust by the United States.

COST AND BUDGETARY CONSIDERATIONS

The Congressional Budget Office estimate of the costs of this measure has been requested but was not received at the time the report was filed. When the Congressional Budget Office completes its cost estimate, it will be posted on the internet at www.cbo.gov.

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 1171. The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of S. 1171, as ordered reported.

CONGRESSIONALLY DIRECTED SPENDING

In accordance with paragraph 4(b) of rule XLIV of the Standing Rules of the Senate, the Committee provides the following identification of congressionally directed spending items contained in the bill, as reported:

Section	Provision	Member
309	Authorization of appropriations	Senators Bingaman and Domenici
402(f)	Authorization of appropriations	Senators Bingaman and Domenici

EXECUTIVE COMMUNICATIONS

The testimony provided by the Department of the Interior at the committee hearing on June 27, 2007 on S. 1171 follows:

STATEMENT OF ROBERT JOHNSON, COMMISSIONER, BUREAU OF RECLAMATION, AND CARL ARTMAN, ASSISTANT SECRETARY FOR INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR

Chairman Bingaman and Ranking Member Domenici, we would like to thank you for the opportunity to appear today to present the Administration's views on S. 1171, the Northwestern New Mexico Rural Water Projects Act. The Department of the Interior's support for negotiated settlements as an approach to resolving Indian water rights remains strong. The Administration, however, has concerns that S. 1171 would increase mandatory spending, delay the full cost of the legislation beyond the 10 year Congressional scorekeeping window, not provide for adequate cost sharing by non-Federal interests, and likely include costs that exceed the Federal government's underlying liability. The Administration did not participate in the drafting of the water rights settlement embodied in S. 1171, and does not support a water settlement under these circumstances. For these reasons, the Administration opposes the cost and cannot support the legislation as written. We would like to work with Congress and all parties concerned in developing a settlement that the Administration can support.

S. 1171 would amend Federal statutes that relate to the Bureau of Reclamation and the use of water in the Colorado River basin. Major provisions include: (1) Authorization for the Bureau of Reclamation to construct and oper-

ate a pipeline (formally titled the "Northwestern New Mexico Rural Water Supply Project", but generally known as the "Navajo-Gallup Pipeline Project") to bring water from the San Juan River to the eastern portion of the Navajo Reservation, the Jicarilla Apache Reservation, and the City of Gallup, New Mexico; (2) creation of a Reclamation Water Settlements Fund in the Treasury that could be used to fund activities under this bill and future Indian water rights settlements, to be funded by the diversion of revenues from the existing Reclamation Fund; (3) authorization for the Secretary of the Interior to reserve up to 26 megawatts of power from existing reservations of Colorado River Storage Project power for Bureau of Reclamation projects for use by the Northwestern New Mexico Rural Water Supply Project; and (4) authorization for the Secretary to rehabilitate existing irrigation projects, develop groundwater wells, and establish other funds for the benefit of the Navajo Nation. The bill also includes provisions that would resolve the Navajo Nation's Federal Indian reserved water rights claims in the San Juan River in New Mexico, although the United States was not party to the final negotiations on this issue.

THE ROLE OF THE CRITERIA AND PROCEDURES

The Administration has been actively engaged in the New Mexico water settlements. You will recall, Mr. Chairman, that Secretary Kempthorne committed during his confirmation to bringing his energy and concern to the pending water settlements in New Mexico. Consistent with this pledge, we have made it a high priority to better understand the complex issues that must be resolved in each of the proposed New Mexico settlements. Our water rights team has made several trips to New Mexico to visit with the Pueblos, Tribes, the State, local communities, water users, and other constituencies to these proposed settlements. A few months ago, at the Secretary's request, key officials from the Departments of Justice and the Interior and the Office of Management and Budget traveled to Navajo country to observe first-hand the difficult issues related to water delivery on the Reservation.

Mr. Chairman and members, we are keenly aware of the needs in this area of the United States. On the Navajo Reservation, some people routinely haul water for 20-30 miles several times a week to provide for their basic household needs. Families must travel extended distances to do laundry because washing machines require water hookups which they do not have. There is no question that the Administration officials who traveled to the Reservation came away with powerful and indelible images as well as a better understanding of the needs of Reservation inhabitants seeking access to basic services that are taken for granted by all but a few Americans.

Nonetheless, despite our understanding of the human needs on the Navajo Reservation, we firmly believe that the resolution of substantive and procedural problems

raised by this bill will require the active involvement of all parties to the proposed settlement. It is important to have an open and full discussion on all aspects of the settlement, including the specific goals of the Navajo Nation and the State of New Mexico for the settlement of these claims and whether these goals can be met by alternative and potentially less expensive means. This settlement was developed largely without Federal involvement, and, consistent with Secretary Kempthorne's commitment to address these issues, we would welcome the opportunity to continue to engage with the Committee and proponents of this settlement to see if we can identify areas of common ground sufficient to move forward with the full support of the Administration.

One of the first steps in this process, Mr. Chairman, is for us to acknowledge the three New Mexico settlement proposals that are now being advocated to Congress. While the Navajo settlement in the San Juan River is the subject of today's hearing, there are other settlements proposed in New Mexico, as well as in other western states, that require active Federal participation in negotiations. If enacted, the cost of S. 1171, alone, is estimated to exceed 1 billion dollars. If the other two proposals from New Mexico, Aamodt (involving the Pueblos of Nambe, Pojoaque, San Ildefonso, and Tesuque) and Abeyta (involving the Pueblo of Taos), about which the Administration also has raised serious concerns, were to be enacted as currently envisioned by their proponents, total expenditures for Indian water rights settlements in New Mexico alone are likely to exceed \$1.5 billion.

The Administration believes that the policy guidance found in the Criteria and Procedures for the Participation of the Federal Government in Negotiations for the Settlement of Indian Water Rights Claims ("Criteria") (55 Fed. Reg. 9223 (1990)) provides a flexible framework in which we can evaluate the merits of this bill. The Criteria provide guidance on the appropriate level of Federal contribution to the settlements, incorporating consideration of calculable legal exposure plus costs related to Federal trust or programmatic responsibilities. In addition, the Criteria call for settlements to contain non-Federal cost-share proportionate to the benefits received by the non-Federal parties, and specify that the total cost of a settlement to all parties should not exceed the value of the existing claims as calculated by the Federal Government. As we have testified previously, the Criteria is a tool that allows the Administration to evaluate each settlement in its unique context while also establishing a process that provides guidance upon which proponents of settlements can rely.

PROVISIONS OF PARTICULAR CONCERN IN S. 1171

We would like in the remainder of this statement to provide a synopsis of substantive concerns regarding S. 1171. We will start with the high cost of this settlement. The Administration has concerns about the costs associated with

this legislation, and currently opposes the nearly \$1 billion financial commitment embodied in this bill. We are also concerned about the large number of authorizations that the bill contains, including the indefinite amount authorized for construction of the Navajo-Gallup Pipeline. We have not yet been able to fully analyze the costs of this legislation. In 2005, the Bureau of Reclamation estimated that the price of the Navajo-Gallup pipeline would be approximately \$716 million. Reclamation is in the process of updating this appraisal-level price estimate to better reflect current construction conditions, and expects an upward adjustment to nearly \$1 billion for this feature alone. In addition, S. 1171 would authorize Federal expenditures of \$30 million for groundwater wells, \$23 million for rehabilitation of Fruitland-Cambridge and Hogback-Cudei irrigation projects, \$11 million for other irrigation projects, \$5 million for hydrographic surveys, and \$50 million to be placed in a Navajo Nation Water Resources Development Trust Fund to be used by the Navajo Nation for water facility construction and maintenance or implementation of water conservation measures.

The Administration has serious concerns regarding the proposal contained in Title II of this bill to establish a "Reclamation Water Settlements Fund" within the United States Treasury. Title II provides that revenues of up to \$100 million a year for fiscal years 2018 through 2028, which is a time period outside the Congressional scorekeeping window, be diverted from the Reclamation Fund into the Water Settlements Fund. S. 1171 provides that moneys in the Water Settlements Fund would be available without further appropriation to fund water supply infrastructure authorized under this bill if there turns out to be insufficient funding available through the regular appropriations process to meet the funding and construction deadlines established in this bill. The second priority for the Water Settlements Fund would be to implement other Indian water rights settlements approved by Congress, including water supply infrastructure, rehabilitation of water delivery systems, fish and wildlife restoration or environmental improvement. The Reclamation Water Settlements Fund would terminate in 2030 and any remaining balance would be transferred to the General Fund of the Treasury.

We believe the sponsors of this legislation are looking for stable mechanisms to ensure the availability of funding for Indian water rights settlements around the West. We are concerned, however, that this proposal would allow direct spending not subject to further appropriations for future settlements, preventing future Presidents and Congresses from setting their own priorities with regard to budgeting and appropriating Federal tax dollars. At the present time, use of monies from the Reclamation Fund are discretionary and subject to annual appropriations by Congress.

While S. 1171 does require some cost-sharing in the form of a requirement for partial reimbursement of con-

struction costs from the City of Gallup and the Jicarilla Apache Nation, it is limited. The City of Gallup and the Jicarilla Apache Nation would be required to repay the portion of the construction costs for the pipeline and associated facilities that the Secretary would allocate to them as their responsibility, but only to the extent of their ability to pay, or alternatively, a minimum of 25% of such allocated construction costs, within 50 years of project completion.

Project proponents assert that the Navajo-Gallup Pipeline Project would qualify as a rural water project under the rural water program being established by the Bureau of Reclamation pursuant to the Rural Water Supply Act of 2006 (P.L. 109-451), legislation which was passed in December of 2006. However, the proposed pipelines envisioned by this bill have not received the level of scrutiny that this newly established program will provide. Under the rural water program, each project must be investigated prior to authorization, and the Secretary must consider whether the non-Federal project entity has the capability to pay 100 percent of the costs associated with the operations, maintenance, and replacement of the facilities constructed or developed as part of the rural water supply project. The Secretary must also recommend an appropriate non-Federal cost-share for the proposed rural water project based on the capability-to-pay of project sponsors, or at least 25% of total construction costs. The program allows the Secretary to consider deferring construction costs allocated to Indian tribes. Under this new program, the Secretary is to forward to Congress recommendations regarding whether or not the proposed rural water project should be authorized for construction based upon appraisal level and feasibility studies and the eligibility and prioritization criteria developed pursuant to the Rural Water Supply Act. The rural water program is intended to target communities of 50,000 inhabitants or fewer. The Secretary may require larger communities to pay a higher portion of project costs. Since Reclamation's rural water program is still under development, we have not evaluated the activities proposed in S. 1171 under the rural water project eligibility and prioritization criteria; these criteria are currently being developed by Reclamation. Upon development, we will actively evaluate whether this project would meet such criteria and could be recommended to Congress for authorization as a rural water project.

We have identified a number of other concerns regarding this bill. These include potential interpretation conflicts concerning the Navajo Indian Irrigation Project; the timing of transfers of title to the Nation; the authorization of Federal grants to support the repair and rehabilitation of certain irrigation projects, and concern that this bill might give the State of New Mexico an inappropriate role in the operation of Federal facilities that are currently operated by the United States under the Colorado River Compact and Reclamation law. Also, the Department of Justice has

concerns about the waivers and releases referred to in section 403. First, they are still reviewing these waivers and releases for adequacy. Second, waivers and releases should be stated in full in the legislation because they are critical to the finality of the agreements.

We also note that the bill should require the Secretary of the Interior, rather than the Secretary of the Treasury, to invest amounts in the proposed Reclamation Water Settlements Fund, in order to make use of the investment expertise of Interior's Office of the Special Trustee for American Indians.

COMPARING THIS BILL WITH OTHER WATER RIGHTS SETTLEMENTS

Much has been said about the position taken by the Administration on water rights and other settlements over the past few years, suggesting that not supporting S. 1171 as written would be inconsistent with the positions we have taken on previously introduced water settlement bills. We want to squarely address these issues.

First, we emphasize that each proposed settlement is unique. The Administration evaluates each proposed settlement individually. Just as we did with each of the water settlements that have been proposed in recent years, notably the Arizona Water Rights Settlement Act (P.L. 108-451), the Snake River Water Rights Settlement Act (P.L. 108-447), and the San Joaquin River settlement that is proposed in legislation pending in this Congress (S. 27 and H.R. 24), the Administration must evaluate this proposed settlement in its unique context to determine to what extent it is consistent with our programmatic objectives and our responsibility to American taxpayers as well as our responsibility to protect the interests of the Navajo Nation. All of these previous settlements encompassed multiple objectives, providing comprehensive solutions to multi-faceted problems.

In the case of the Arizona Water Rights Settlement Act, the settlement resolved a dispute over the financial repayment obligation of Arizona water users for the Central Arizona Project (CAP), with significant amounts of money at stake. Federal representatives recognized that the CAP operational flexibility necessary to resolve the dispute could only be granted if sufficient legal and legislative protection was achieved to assure tribal access to, and use of, CAP project water. Enactment of the Indian water rights settlements in that Act was key to resolving larger legal issues involving CAP repayments by Arizona water users. Achieving final settlement of these larger issues made the legislation generally acceptable to the Administration, although our testimony did express concern about the cost of the settlement.

The Snake River Settlement in Idaho entailed several complex Endangered Species Act components that allowed further water resources development to occur for the Nez Perce Tribe and other water users in a manner that also

fulfilled the Department's obligation to protect and recover listed species.

The other settlement that has been compared to this bill, the San Joaquin Restoration Program, is in fact not connected to any Indian water rights settlement. The San Joaquin Restoration Program implements a settlement of a lawsuit that had been ongoing for over eighteen years, where a Federal judge had concluded that Reclamation's operations violated a provision of California law. The San Joaquin restoration program also involves cost shares, authorizing up to \$250 million of new Federal appropriations but only as a match for non-Federal funding of the restoration costs. This means that the State of California and Friant water users are funding a significant portion of the restoration costs. Approximately \$200 million of State bond funds for projects that will directly contribute to restoration efforts have already been approved by California voters.

We wish to reiterate however that the Administration is committed to ensuring consistency with the Criteria and Procedures. The settlement of the Navajo claims to the San Juan River proposed in this bill has a high Federal cost without appropriate safeguards that carrying out the authorized activities would accomplish the goals and objectives of the proposed settlement. These kinds of analyses should be completed prior to the passage of such a large settlement proposal. In light of the goal of finality, it is especially troubling that this bill does not address the distribution systems that must be constructed before any water will actually reach the homes of those who need it.

CONCLUSION

The Administration and Secretary Kempthorne remain committed to supporting the Indian water right settlement process and ensuring that such settlements fulfill the Federal Government's responsibilities to Indian Tribes while also protecting the interests of the taxpaying public. The Bureau of Reclamation, the Secretary's Indian Water Rights Office, and many others in the Department are vigorously working to develop the information and documentation necessary to support a full and open discussion of this settlement. This includes already having developed a draft environmental impact statement on the proposed pipeline and completing the hydrologic determination on water availability in New Mexico. We expect to have an updated appraisal-level estimate of the costs of constructing the pipeline completed in the near future.

The Administration hopes that the entities proposing this legislation, including the Navajo Nation, the City of Gallup, the State of New Mexico, and the Jicarilla Apache Nation, will agree to work together with us towards the common goal: a settlement that will ensure that the Navajo obtain a secure, economically beneficial water supply consistent with our obligations to the taxpaying public. A clean, reliable water supply is of utmost importance to the

members of the Navajo Nation, as it is to all Americans, and the United States is committed to working towards achieving it. While much work remains ahead, we are hopeful that this hearing will assist in advancing a process that results in a successful outcome.

Mr. Chairman, this completes our statement. We would be happy to answer any questions the Committee may have.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill S. 1171 as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

Public Law 84-485, Chapter 203 (70 Stat. 105)

AN ACT To authorize the Secretary of the Interior to construct, operate, and maintain the Colorado River storage project and participating projects, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, in order to initiate the comprehensive development of the water resources of the Upper Colorado River Basin, for the purposes, among others, of regulating the flow of the Colorado River, storing water for beneficial consumptive use, making it possible for the States of the Upper Basin to utilize, consistently with the provisions of the Colorado River Compact, the apportionments made to and among them in the Colorado River Compact and the Upper Colorado River Basin Compact, respectively, providing for the reclamation of arid and semiarid land, for the control of floods, and for the generation of hydroelectric power, as an incident of the foregoing purposes, the Secretary of the Interior is hereby authorized (1) to construct, operate, and maintain the following initial units of the Colorado River storage project, consisting of dams, reservoirs, powerplants, transmission facilities and appurtenant works; Curecanti, Flaming Gorge, Navajo (dam and reservoir only), and Glen Canyon: *Provided,* That the Curecanti Dam shall be constructed to a height which will impound not less than nine hundred and forty thousand acre-feet of water or will create a reservoir of such greater capacity as can be obtained by a high waterline located at seven thousand five hundred and twenty feet above mean sea level, and that construction thereof shall not be undertaken until the Secretary has, on the basis of further engineering and economic investigations, reexamined the economic justification of such unit and, accompanied by appropriate documentation in the form of a supplemental report, has certified to the Congress and to the President that, in his judgment, the benefits of such unit will exceed its costs; and (2) to construct, operate, and maintain the following additional reclamation projects (including power-generating and transmission facilities related thereto), hereinafter referred to as participating projects: Central Utah (initial phase and the Uintah unit), San Juan-Chama (initial stage), Emery County, Florida, Hammond, La Barge,

Lyman, Navajo Indian, Paonia (including the Minnesota unit, a dam and a reservoir on Muddy Creek just above its confluence with the North Fork of the Gunnison River, and other necessary works), Animas La Plata, Dolores, Dallas Creek, West Divide, San Miguel, Seedskadee, Savery-Pot Hook, Bostwick Park, Fruitland Mesa, the Navajo-Gallup Water Supply Project, Silt and Smith Fork: *Provided further*, That as part of the Glen Canyon Unit the Secretary of the Interior shall take adequate protective measures to preclude impairment of the Rainbow Bridge National Monument.

SEC. 2. In carrying out further investigations of projects under the Federal reclamation laws in the Upper Colorado River Basin, the Secretary shall give priority to completion of planning reports on the Gooseberry, Eagle Divide, Bluestone, Battlement Mesa, Grand Mesa, Yellow Jacket, Basalt Middle Park (including the Troublesome, Rabbit Ear, and Azure units), Upper Gunnison (including the East River, Ohio Creek, and Tomichi Creek units), Lower Yampa (including the Juniper and Great Northern units), Upper Yampa (including the Hayden Mesa, Wessels, and Toponas units), and Sublette (including a diversion of water from the Green River to the North Platte River Basin in Wyoming), Ute Indian unit of the Central Utah Project, San Juan County (Utah), Price River, Grand County (Utah), Gray Canyon, and Juniper (Utah) participating projects: *Provided*, That the planning report for the Ute Indian unit of the Central Utah participating project shall be completed on or before December 31, 1974, to enable the United States of America to meet the commitments heretofore made to the Ute Indian Tribe of the Uintah and Ouray Indian Reservation under the agreement dated September 20, 1965 (Contract Numbered 14-06-W-194). Said reports shall be completed as expeditiously as funds are made available therefor and shall be submitted promptly to the affected States, which in the case of the San Juan-Chama project shall include the State of Texas, and thereafter to the President and the Congress: *Provided*, That with reference to the plans and specifications for the San Juan-Chama project, the storage for control and regulation of water imported from the San Juan River shall (1) be limited to a single offstream dam and reservoir on a tributary of the Chama River, (2) be used solely for control and regulation and no power facilities shall be established, installed or operated thereat, and (3) be operated at all times by the Bureau of Reclamation of the Department of the Interior in strict compliance with the Rio Grande Compact as administered by the Rio Grande Compact Commission. The preparation of detailed designs and specification for the works proposed to be constructed in connection with projects shall be carried as far forward as the investigations thereof indicate is reasonable in the circumstances.

The Secretary, concurrently with the investigations directed by the preceding paragraph, shall also give priority to completion of a planning report on the Juniper project.

* * * * *

SEC. 15. The Secretary of the Interior is directed to continue studies and to make a report to the Congress and to the States of the Colorado River Basin on the quality of water of the Colorado River.

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, except that, notwithstanding any other provision of law, water for purposes other than irrigation may be stored in the Navajo Reservoir pursuant to the rules governing the top water bank established under this section; 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 the flow recommendations of the San Juan River Basin 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. [16] 17. As used in the Act—

The terms “Colorado River Basin”, “Colorado River Compact”, “Colorado River System”, “Lee Ferry”, “States of the Upper Division”, “Upper Basin”, and “domestic use” shall have the meaning ascribed to them in article II of the Upper Colorado River Basin Compact;

The term “States of the Upper Colorado River Basin” shall mean the States of Arizona, Colorado, New Mexico, Utah, and Wyoming;

The term “Upper Colorado River Basin” shall have the same meaning as the term “Upper Basin”;

The term “Upper Colorado River Basin Compact” shall mean that certain compact executed on October 11, 1948 by commis-

sioners representing the States of Arizona, Colorado, New Mexico, Utah, and Wyoming, and consented to by the Congress of the United States of America by Act of April 6, 1949 (63 Stat. 31);

The term "Rio Grande Compact" shall mean that certain compact executed on March 18, 1938, by commissioners representing the States of Colorado, New Mexico, and Texas and consented to by the Congress of the United States of America by Act of May 31, 1939 (53 Stat. 785);

The term "Treaty with the United Mexican States" shall mean that certain treaty between the United States of America and the United Mexican States, signed at Washington, District of Columbia, February 3, 1944, relating to the utilization of the waters of the Colorado River and other rivers, as amended and supplemented by the protocol dated November 14, 1944, and the understandings recited in the Senate resolution of April 18, 1945, advising and consenting to ratification thereof.

* * * * *

Public Law 87-483 (76 Stat. 96)

AN ACT To authorize the Secretary of the Interior to construct, operate, and maintain the Navajo Indian irrigation project and the initial stage of the San Juan-Chama project as participating projects of the Colorado River storage project, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, for the purposes of furnishing water for the irrigation of irrigable and arable lands and for municipal, domestic, and industrial uses, providing recreation and fish and wildlife benefits, and controlling silt, and for other beneficial purposes, the Congress approves as participating projects of the Colorado River storage project (Act of April 11, 1956, 70 Stat. 105, as amended, 43 U.S.C. 620-620o) the Navajo Indian irrigation project, New Mexico, and the initial stage of the San Juan Chama project, Colorado-New Mexico. The Navajo Indian irrigation project and the initial stage of the San Juan-Chama project herein approved are substantially those described in the proposed coordinated report of the Acting Commissioner of Reclamation and the Commissioner of Indian Affairs, approved and adopted by the Secretary of the Interior on October 16, 1957, as conditioned, modified, and limited herein.

NAVAJO INDIAN IRRIGATION PROJECT

* * * * *

【SEC. 2. Pursuant to the provisions of the Act of April 11, 1956, as amended, the Secretary of the Interior is authorized to construct, operate, and maintain the Navajo Indian irrigation project for the principal purpose of furnishing irrigation water to approximately one hundred and ten thousand six hundred and thirty acres of land, said project to have an average annual diversion of five hundred and eight thousand acre-feet of water and the repayment of the costs of construction thereof to be in accordance with the provisions of said Act of April 11, 1956, as amended, including, but not limited to, section 4(d) thereof.】

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 annual 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 exceed the average annual diversion determined under paragraph (1) by more than 15 percent.

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

(B) Notwithstanding any other provision of law—

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

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

(iii) the United States shall have no trust obligation to monitor, administer, or account for the revenues received by the Navajo Nation, or the expenditure of the revenues.

(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 that Act; and

(3) any other applicable law.

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

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

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

(f)(1) Repayment of the costs of construction of the project (as authorized in subsection (a)) shall be 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.), including section 4(d) of that Act.

(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 for nonirrigation purposes under subsection (e).

* * * * *

GENERAL

SEC. 11. (a) No person shall have or be entitled to have the use for any purpose, including uses under the Navajo Indian irrigation project and the San Juan-Chama project authorized by sections 2 and 8 of this Act, of water stored in Navajo Reservoir or of any other waters of the San Juan River and its tributaries originating above Navajo Reservoir to the use of which the United States is entitled under these projects except under contract satisfactory to the Secretary and conforming to the provisions of this Act. Such contracts, which, in the case of water for Indian uses, shall be executed with the Navajo Tribe, shall make provision, in any year in which the Secretary anticipates a shortage, taking into account both prospective runoff originating above Navajo Reservoir and the available water in storage in Navajo Reservoir, for a sharing of the available water in the following manner: The prospective runoff shall be apportioned between the contractors diverting above and those diverting at or below Navajo Reservoir in the proportion that the total normal diversion requirement of each group bears to the total of all normal diversion requirements. In the case of contractors diverting above Navajo Reservoir, each such contract shall provide for a sharing of the runoff apportioned to said group in the same proportion as the normal diversion requirement under said contract bear to the total normal diversion requirements of all such contracts that have been made hereunder: *Provided*, That for any year in which the foregoing sharing procedure either would apportion to any contractor diverting above Navajo Reservoir an amount in excess of the runoff anticipated to be physically available at the point of his diversion, or would result in no water being available to one or more such contractors, the runoff apportioned to said group shall be reapportioned, as near as may be among the contractors diverting above Navajo Reservoir in the proportion that the normal diversion requirements of each bears to the total normal diversion requirements of the group. In the case of contractors diverting from or below Navajo Reservoir, each such contract shall provide for a sharing of the remaining runoff together with the available storage in the same proportion as then normal diversion requirement under said contract bears to the total normal diversion requirements under all such contracts that have been made hereunder.

The Secretary shall not enter into contracts for a total amount of water beyond that which, in his judgment, in the event of shortage, will result in a reasonable amount being available for the diversion requirements for the Navajo Indian irrigation project and

the initial stage of the San Juan-Chama project as specified in sections 2 and 8 of this Act.

No long-term contract, except contracts for the benefit of the lands and for the purposes specified in sections 2 and 8 of this Act, shall be entered into for the delivery of water stored in Navajo Reservoir or of any other waters of the San Juan River and its tributaries, as aforesaid, until the Secretary has determined by hydrologic investigations that sufficient water to fulfill said contract is reasonably likely to be available for use in the State of New Mexico during the term thereof under the allocations made in articles III and XIV of the Upper Colorado River Basin compact, and has submitted such determination to the Congress of the United States and the Congress has approved such contracts: *Provided*, That nothing contained in the foregoing shall be construed to forbid the Secretary from entering into temporary water supply contracts in the San Juan River Basin for any year in which he determines that water legally available for use in the upper basin of the Colorado River system would otherwise not be used there and is not needed to fulfill the obligations of the upper division States with respect to delivery of water at Lee Ferry.

(b) If contracts are entered into for delivery from storage in Navajo Reservoir of water not covered by subsection (a) of this section, such contracts shall be subject to the same provision for sharing of available water supply in the event of shortage as in the case of contracts required to be made pursuant to subparagraph (a) of this section.

(c) This section shall not be applicable to the water requirements of the existing Fruitland, Hogback, Cudai, and Cambridge Indian irrigation projects, nor to the water required in connection with the extension of the irrigated acreages of the Fruitland and Hogback Indian irrigation projects in a total amount of approximately eleven thousand acres.

(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 contracts authorized by the North-western 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.

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

(A) The demand for delivery for uses in the State of Arizona under the Navajo-Gallup 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 responds to 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 apportion water 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 distribution of water in accordance with cooperative water agreements between water users providing for a sharing of water supplies.

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

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