

NAVAJO UTAH WATER RIGHTS SETTLEMENT ACT OF 2020

DECEMBER 18, 2020.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. GRIJALVA, from the Committee on Natural Resources,
submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany H.R. 644]

The Committee on Natural Resources, to whom was referred the bill (H.R. 644) to approve the settlement of the water rights claims of the Navajo Nation in Utah, 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 all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Navajo Utah Water Rights Settlement Act of 2020”.

SEC. 2. PURPOSES.

The purposes of this Act are—

- (1) to achieve a fair, equitable, and final settlement of all claims to water rights in the State of Utah for—
 - (A) the Navajo Nation; and
 - (B) the United States, for the benefit of the Nation;
- (2) to authorize, ratify, and confirm the Agreement entered into by the Nation and the State, to the extent that the Agreement is consistent with this Act;
- (3) to authorize and direct the Secretary—
 - (A) to execute the Agreement; and
 - (B) to take any actions necessary to carry out the agreement in accordance with this Act; and
- (4) to authorize funds necessary for the implementation of the Agreement and this Act.

SEC. 3. DEFINITIONS.

In this Act:

- (1) **AGREEMENT.**—The term “agreement” means—

- (A) the document entitled “Navajo Utah Water Rights Settlement Agreement” dated December 14, 2015, and the exhibits attached thereto; and
- (B) any amendment or exhibit to the document or exhibits referenced in subparagraph (A) to make the document or exhibits consistent with this Act.
- (2) ALLOTMENT.—The term “allotment” means a parcel of land—
- (A) granted out of the public domain that is—
- (i) located within the exterior boundaries of the Reservation; or
- (ii) Bureau of Indian Affairs parcel number 792 634511 in San Juan County, Utah, consisting of 160 acres located in Township 41S, Range 20E, sections 11, 12, and 14, originally set aside by the United States for the benefit of an individual identified in the allotting document as a Navajo Indian; and
- (B) held in trust by the United States—
- (i) for the benefit of an individual, individuals, or an Indian Tribe other than the Navajo Nation; or
- (ii) in part for the benefit of the Navajo Nation as of the enforceability date.
- (3) ALLOTTEE.—The term “allottee” means an individual or Indian Tribe with a beneficial interest in an allotment held in trust by the United States.
- (4) ENFORCEABILITY DATE.—The term “enforceability date” means the date on which the Secretary publishes in the Federal Register the statement of findings described in section 8(a).
- (5) GENERAL STREAM ADJUDICATION.—The term “general stream adjudication” means the adjudication pending, as of the date of enactment, in the Seventh Judicial District in and for Grand County, State of Utah, commonly known as the “Southeastern Colorado River General Adjudication”, Civil No. 810704477, conducted pursuant to State law.
- (6) INJURY TO WATER RIGHTS.—The term “injury to water rights” means an interference with, diminution of, or deprivation of water rights under Federal or State law, excluding injuries to water quality.
- (7) MEMBER.—The term “member” means any person who is a duly enrolled member of the Navajo Nation.
- (8) NAVAJO NATION OR NATION.—The term “Navajo Nation” or “Nation” means a body politic and federally recognized Indian nation, as published on the list established under section 104(a) of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 5131(a)), also known variously as the “Navajo Nation”, the “Navajo Nation of Arizona, New Mexico, & Utah”, and the “Navajo Nation of Indians” and other similar names, and includes all bands of Navajo Indians and chapters of the Navajo Nation and all divisions, agencies, officers, and agents thereof.
- (9) NAVAJO WATER DEVELOPMENT PROJECTS.—The term “Navajo water development projects” means projects for domestic municipal water supply, including distribution infrastructure, and agricultural water conservation, to be constructed, in whole or in part, using monies from the Navajo Water Development Projects Account.
- (10) NAVAJO WATER RIGHTS.—The term “Navajo water rights” means the Nation’s water rights in Utah described in the agreement and this Act.
- (11) OM&R.—The term “OM&R” means operation, maintenance, and replacement.
- (12) PARTIES.—The term “parties” means the Navajo Nation, the State, and the United States.
- (13) RESERVATION.—The term “Reservation” means, for purposes of the agreement and this Act, the Reservation of the Navajo Nation in Utah as in existence on the date of enactment of this Act and depicted on the map attached to the agreement as Exhibit A, including any parcel of land granted out of the public domain and held in trust by the United States entirely for the benefit of the Navajo Nation as of the enforceability date.
- (14) SECRETARY.—The term “Secretary” means the Secretary of the United States Department of the Interior or a duly authorized representative thereof.
- (15) STATE.—The term “State” means the State of Utah and all officers, agents, departments, and political subdivisions thereof.
- (16) UNITED STATES.—The term “United States” means the United States of America and all departments, agencies, bureaus, officers, and agents thereof.
- (17) UNITED STATES ACTING IN ITS TRUST CAPACITY.—The term “United States acting in its trust capacity” means the United States acting for the benefit of the Navajo Nation or for the benefit of allottees.

SEC. 4. RATIFICATION OF AGREEMENT.

(a) **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).

(b) **EXECUTION BY SECRETARY.**—The Secretary is authorized and directed to promptly execute the agreement to the extent that the agreement does not conflict with this Act, including—

(1) any exhibits to the agreement requiring the signature of the Secretary; and

(2) any amendments to the agreement necessary to make the agreement consistent with this Act.

(c) **ENVIRONMENTAL COMPLIANCE.**—

(1) **IN GENERAL.**—In implementing the agreement and this Act, the Secretary shall comply with all applicable provisions of—

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

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

(C) all other applicable environmental laws and regulations.

(2) **EXECUTION OF THE AGREEMENT.**—Execution of the agreement by the Secretary as provided for in this Act shall not constitute a major Federal action under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

SEC. 5. NAVAJO WATER RIGHTS.

(a) **CONFIRMATION OF NAVAJO WATER RIGHTS.**—

(1) **QUANTIFICATION.**—The Navajo Nation shall have the right to use water from water sources located within Utah and adjacent to or encompassed within the boundaries of the Reservation resulting in depletions not to exceed 81,500 acre-feet annually as described in the agreement and as confirmed in the decree entered by the general stream adjudication court.

(2) **SATISFACTION OF ALLOTTEE RIGHTS.**—Depletions resulting from the use of water on an allotment shall be accounted for as a depletion by the Navajo Nation for purposes of depletion accounting under the agreement, including recognition of—

(A) any water use existing on an allotment as of the date of enactment of this Act and as subsequently reflected in the hydrographic survey report referenced in section 7(b);

(B) reasonable domestic and stock water uses put into use on an allotment; and

(C) any allotment water rights that may be decreed in the general stream adjudication or other appropriate forum.

(3) **SATISFACTION OF ON-RESERVATION STATE LAW-BASED WATER RIGHTS.**—Depletions resulting from the use of water on the Reservation pursuant to State law-based water rights existing as of the date of enactment of this Act shall be accounted for as depletions by the Navajo Nation for purposes of depletion accounting under the agreement.

(4) **IN GENERAL.**—The Navajo water rights are ratified, confirmed, and declared to be valid.

(5) **USE.**—Any use of the Navajo water rights shall be subject to the terms and conditions of the agreement and this Act.

(6) **CONFLICT.**—In the event of a conflict between the agreement and this Act, the provisions of this Act shall control.

(b) **TRUST STATUS OF NAVAJO WATER RIGHTS.**—The Navajo water rights—

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

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

(c) **AUTHORITY OF THE NATION.**—

(1) **IN GENERAL.**—The Nation shall have the authority to allocate, distribute, and lease the Navajo water rights for any use on the Reservation in accordance with the agreement, this Act, and applicable Tribal and Federal law.

(2) **OFF-RESERVATION USE.**—The Nation may allocate, distribute, and lease the Navajo water rights for off-Reservation use in accordance with the agreement, subject to the approval of the Secretary.

(3) **ALLOTTEE WATER RIGHTS.**—The Nation shall not object in the general stream adjudication or other applicable forum to the quantification of reasonable domestic and stock water uses on an allotment, and shall administer any water use on the Reservation in accordance with applicable Federal law, including recognition of—

(A) any water use existing on an allotment as of the date of enactment of this Act and as subsequently reflected in the hydrographic survey report referenced in section 7(b);

(B) reasonable domestic and stock water uses on an allotment; and

(C) any allotment water rights decreed in the general stream adjudication or other appropriate forum.

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

(1) authorizes any action by the Nation against the United States under Federal, State, Tribal, or local law; or

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

SEC. 6. NAVAJO TRUST ACCOUNTS.

(a) ESTABLISHMENT.—The Secretary shall establish a trust fund, to be known as the “Navajo Utah Settlement Trust Fund” (referred to in this Act as the “Trust Fund”), to be managed, invested, and distributed by the Secretary and to remain available until expended, consisting of the amounts deposited in the Trust Fund under subsection (c), together with any interest earned on those amounts, for the purpose of carrying out this Act.

(b) ACCOUNTS.—The Secretary shall establish in the Trust Fund the following accounts:

(1) The Navajo Water Development Projects Account.

(2) The Navajo OM&R Account.

(c) DEPOSITS.—The Secretary shall deposit in the Trust Fund Accounts—

(1) in the Navajo Water Development Projects Account, the amounts made available pursuant to section 7(a)(1); and

(2) in the Navajo OM&R Account, the amount made available pursuant to section 7(a)(2).

(d) MANAGEMENT AND INTEREST.—

(1) MANAGEMENT.—Upon receipt and deposit of the funds into the Trust Fund Accounts, the Secretary shall manage, invest, and distribute all amounts in the Trust Fund in a manner that is consistent with the investment authority of the Secretary under—

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

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

(C) this section.

(2) INVESTMENT EARNINGS.—In addition to the deposits under subsection (c), any investment earnings, including interest, credited to amounts held in the Trust Fund are authorized to be appropriated to be used in accordance with the uses described in subsection (h).

(e) AVAILABILITY OF AMOUNTS.—Amounts appropriated to, and deposited in, the Trust Fund, including any investment earnings, shall be made available to the Nation by the Secretary beginning on the enforceability date and subject to the uses and restrictions set forth in this section.

(f) WITHDRAWALS.—

(1) WITHDRAWALS UNDER THE AMERICAN INDIAN TRUST FUND MANAGEMENT REFORM ACT OF 1994.—The Nation may withdraw any portion of the funds in the Trust Fund on approval by the Secretary of a tribal management plan submitted by the Nation in accordance with the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4001 et seq.).

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

(B) ENFORCEMENT.—The Secretary may carry out such judicial and administrative actions as the Secretary determines to be necessary to enforce the Tribal management plan to ensure that amounts withdrawn by the Nation from the Trust Fund under this paragraph are used in accordance with this Act.

(2) WITHDRAWALS UNDER EXPENDITURE PLAN.—The Nation may submit to the Secretary a request to withdraw funds from the Trust Fund pursuant to an approved expenditure plan.

(A) REQUIREMENTS.—To be eligible to withdraw funds under an expenditure plan under this paragraph, the Nation shall submit to the Secretary for approval an expenditure plan for any portion of the Trust Fund that the

Nation elects to withdraw pursuant to this paragraph, subject to the condition that the funds shall be used for the purposes described in this Act.

(B) INCLUSIONS.—An expenditure plan under this paragraph shall include a description of the manner and purpose for which the amounts proposed to be withdrawn from the Trust Fund will be used by the Nation, in accordance with subsections (c) and (h).

(C) APPROVAL.—On receipt of an expenditure plan under this paragraph, the Secretary shall approve the plan, if the Secretary determines that the plan—

- (i) is reasonable;
- (ii) is consistent with, and will be used for, the purposes of this Act; and
- (iii) contains a schedule which described that tasks will be completed within 18 months of receipt of withdrawn amounts.

(D) ENFORCEMENT.—The Secretary may carry out such judicial and administrative actions as the Secretary determines to be necessary to enforce an expenditure plan to ensure that amounts disbursed under this paragraph are used in accordance with this Act.

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

(h) USES.—Amounts from the Trust Fund shall be used by the Nation for the following purposes:

- (1) The Navajo Water Development Projects Account shall be used to plan, design, and construct the Navajo water development projects and for the conduct of related activities, including to comply with Federal environmental laws.
- (2) The Navajo OM&R Account shall be used for the operation, maintenance, and replacement of the Navajo water development projects.

(i) LIABILITY.—The Secretary and the Secretary of the Treasury shall not be liable for the expenditure or investment of any amounts withdrawn from the Trust Fund by the Nation under subsection (f).

(j) NO PER CAPITA DISTRIBUTIONS.—No portion of the Trust Fund shall be distributed on a per capita basis to any member of the Nation.

(k) EXPENDITURE REPORTS.—The Navajo Nation shall submit to the Secretary annually an expenditure report describing accomplishments and amounts spent from use of withdrawals under a Tribal management plan or an expenditure plan as described in this Act.

SEC. 7. AUTHORIZATION OF APPROPRIATIONS.

(a) AUTHORIZATION.—There are authorized to be appropriated to the Secretary—

(1) for deposit in the Navajo Water Development Projects Account of the Trust Fund established under section 6(b)(1), \$198,300,000, which funds shall be retained until expended, withdrawn, or reverted to the general fund of the Treasury; and

(2) for deposit in the Navajo OM&R Account of the Trust Fund established under section 6(b)(2), \$11,100,000, which funds shall be retained until expended, withdrawn, or reverted to the general fund of the Treasury.

(b) IMPLEMENTATION COSTS.—There is authorized to be appropriated non-trust funds in the amount of \$1,000,000 to assist the United States with costs associated with the implementation of the Act, including the preparation of a hydrographic survey of historic and existing water uses on the Reservation and on allotments.

(c) STATE COST SHARE.—The State shall contribute \$8,000,000 payable to the Secretary for deposit into the Navajo Water Development Projects Account of the Trust Fund established under section 6(b)(1) in installments in each of the 3 years following the execution of the agreement by the Secretary as provided for in subsection (b) of section 4.

(d) FLUCTUATION IN COSTS.—The amount authorized to be appropriated under subsection (a) shall be increased or decreased, as appropriate, by such amounts as may be justified by reason of ordinary fluctuations in costs occurring after the date of enactment of this Act as indicated by the Bureau of Reclamation Construction Cost Index—Composite Trend.

(1) REPETITION.—The adjustment process under this subsection shall be repeated for each subsequent amount appropriated until the amount authorized, as adjusted, has been appropriated.

(2) PERIOD OF INDEXING.—The period of indexing adjustment for any increment of funding shall end on the date on which funds are deposited into the Trust Fund.

SEC. 8. CONDITIONS PRECEDENT.

(a) **IN GENERAL.**—The waivers and release contained in section 9 of this Act shall become effective as of the date the Secretary causes to be published in the Federal Register a statement of findings that—

(1) to the extent that the agreement conflicts with the Act, the agreement has been revised to conform with this Act;

(2) the agreement, so revised, including waivers and releases of claims set forth in section 9, has been executed by the parties, including the United States;

(3) Congress has fully appropriated, or the Secretary has provided from other authorized sources, all funds authorized under subsection (a) of section 7;

(4) the State has enacted any necessary legislation and provided the funding required under the agreement and subsection (c) of section 7; and

(5) the court has entered a final or interlocutory decree that—

(A) confirms the Navajo water rights consistent with the agreement and this Act; and

(B) with respect to the Navajo water rights, is final and nonappealable.

(b) **EXPIRATION DATE.**—If all the conditions precedent described in subsection (a) have not been fulfilled to allow the Secretary's statement of findings to be published in the Federal Register by October 31, 2030—

(1) the agreement and this Act, including waivers and releases of claims described in those documents, shall no longer be effective;

(2) any funds that have been appropriated pursuant to section 7 but not expended, including any investment earnings on funds that have been appropriated pursuant to such section, shall immediately revert to the general fund of the Treasury; and

(3) any funds contributed by the State pursuant to subsection (c) of section 7 but not expended shall be returned immediately to the State.

(c) **EXTENSION.**—The expiration date set forth in subsection (b) may be extended if the Navajo Nation, the State, and the United States (acting through the Secretary) agree that an extension is reasonably necessary.

SEC. 9. WAIVERS AND RELEASES.

(a) **IN GENERAL.**—

(1) **WAIVER AND RELEASE OF CLAIMS BY THE NATION AND THE UNITED STATES ACTING IN ITS CAPACITY AS TRUSTEE FOR THE NATION.**—Subject to the retention of rights set forth in subsection (c), in return for confirmation of the Navajo water rights and other benefits set forth in the agreement and this Act, the Nation, on behalf of itself and the members of the Nation (other than members in their capacity as allottees), and the United States, acting as trustee for the Nation and members of the Nation (other than members in their capacity as allottees), are authorized and directed to execute a waiver and release of—

(A) all claims for water rights within Utah based on any and all legal theories that the Navajo Nation or the United States acting in its trust capacity for the Nation, asserted, or could have asserted, at any time in any proceeding, including to the general stream adjudication, up to and including the enforceability date, except to the extent that such rights are recognized in the agreement and this Act; and

(B) all claims for damages, losses, or injuries to water rights or claims of interference with, diversion, or taking of water rights (including claims for injury to lands resulting from such damages, losses, injuries, interference with, diversion, or taking of water rights) within Utah against the State, or any person, entity, corporation, or municipality, that accrued at any time up to and including the enforceability date.

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

(1) all claims the Navajo Nation may have against the United States relating in any manner to claims for water rights in, or water of, Utah that the United States acting in its trust capacity for the Nation asserted, or could have asserted, in any proceeding, including the general stream adjudication;

(2) all claims the Navajo Nation may have against the United States relating in any manner to damages, losses, or injuries to water, water rights, land, or other resources due to loss of water or water rights (including damages, losses, or injuries to hunting, fishing, gathering, or cultural rights due to loss of water or water rights; claims relating to interference with, diversion, or taking of water; or claims relating to failure to protect, acquire, replace, or develop water or water rights) within Utah that first accrued at any time up to and including the enforceability date;

(3) all claims the Nation may have against the United States relating in any manner to the litigation of claims relating to the Nation's water rights in proceedings in Utah; and

(4) all claims the Nation may have against the United States relating in any manner to the negotiation, execution, or adoption of the agreement or this Act.

(c) RESERVATION OF RIGHTS AND RETENTION OF CLAIMS BY THE NAVAJO NATION AND THE UNITED STATES.—Notwithstanding the waivers and releases authorized in this Act, the Navajo Nation, and the United States acting in its trust capacity for the Nation, retain—

(1) all claims for injuries to and the enforcement of the agreement and the final or interlocutory decree entered in the general stream adjudication, through such legal and equitable remedies as may be available in the decree court or the Federal District Court for the District of Utah;

(2) all rights to use and protect water rights acquired after the enforceability date;

(3) all claims relating to activities affecting the quality of water, including any claims under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq. (including claims for damages to natural resources)), the Safe Drinking Water Act (42 U.S.C. 300f et seq.), and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), the regulations implementing those Acts, and the common law;

(4) all claims for water rights, and claims for injury to water rights, in states other than the State of Utah;

(5) all claims, including environmental claims, under any laws (including regulations and common law) relating to human health, safety, or the environment; and

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

(d) EFFECT.—Nothing in the agreement or this Act—

(1) affects the ability of the United States acting in its sovereign capacity to take actions authorized by law, including any laws relating to health, safety, or the environment, including the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.), the Safe Drinking Water Act (42 U.S.C. 300f et seq.), the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.), and the regulations implementing those laws;

(2) affects the ability of the United States to take actions in its capacity as trustee for any other Indian Tribe or allottee;

(3) confers jurisdiction on any State court to—

(A) interpret Federal law regarding health, safety, or the environment or determine the duties of the United States or other parties pursuant to such Federal law; and

(B) conduct judicial review of Federal agency action; or

(4) modifies, conflicts with, preempts, or otherwise affects—

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

(B) the Boulder Canyon Project Adjustment Act (43 U.S.C. 618 et seq.);

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

(D) the Colorado River Basin Project Act (43 U.S.C. 1501 et seq.);

(E) the Treaty between the United States of America and Mexico respecting utilization of waters of the Colorado and Tijuana Rivers and of the Rio Grande, signed at Washington February 3, 1944 (59 Stat. 1219);

(F) the Colorado River Compact of 1922, as approved by the Presidential Proclamation of June 25, 1929 (46 Stat. 3000); and

(G) the Upper Colorado River Basin Compact as consented to by the Act of April 6, 1949 (63 Stat. 31, chapter 48).

(e) TOLLING OF CLAIMS.—

(1) IN GENERAL.—Each applicable period of limitation and time-based equitable defense relating to a claim waived by the Navajo Nation described in this section shall be tolled for the period beginning on the date of enactment of this Act and ending on the enforceability date.

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

(3) LIMITATION.—Nothing in this section precludes the tolling of any period of limitations or any time-based equitable defense under any other applicable law.

SEC. 10. MISCELLANEOUS PROVISIONS.

(a) **PRECEDENT.**—Nothing in this Act establishes any standard for the quantification or litigation of Federal reserved water rights or any other Indian water claims of any other Indian Tribe in any other judicial or administrative proceeding.

(b) **OTHER INDIAN TRIBES.**—Nothing in the agreement or this Act shall be construed in any way to quantify or otherwise adversely affect the water rights, claims, or entitlements to water of any Indian Tribe, band, or community, other than the Navajo Nation.

SEC. 11. RELATION TO ALLOTTEES.

(a) **NO EFFECT ON CLAIMS OF ALLOTTEES.**—Nothing in this Act or the agreement shall affect the rights or claims of allottees, or the United States, acting in its capacity as trustee for or on behalf of allottees, for water rights or damages related to lands allotted by the United States to allottees, except as provided in section 5(a)(2).

(b) **RELATIONSHIP OF DECREE TO ALLOTTEES.**—Allottees, or the United States, acting in its capacity as trustee for allottees, are not bound by any decree entered in the general stream adjudication confirming the Navajo water rights and shall not be precluded from making claims to water rights in the general stream adjudication. Allottees, or the United States, acting in its capacity as trustee for allottees, may make claims and such claims may be adjudicated as individual water rights in the general stream adjudication.

SEC. 12. ANTIDEFICIENCY.

The United States shall not be liable for any failure to carry out any obligation or activity authorized by this Act (including any obligation or activity under the agreement) if adequate appropriations are not provided expressly by Congress to carry out the purposes of this Act.

PURPOSE OF THE BILL

The purpose of H.R. 644 is to ratify and modify the Navajo Utah Water Rights Settlement Agreement negotiated between the State of Utah, the Navajo Nation, and the United States.

BACKGROUND AND NEED FOR LEGISLATION

The Navajo Nation Reservation consists of approximately 26,600 square miles in Arizona, New Mexico, and Utah. According to the Department of the Interior, approximately 1.6 percent of the total Navajo Nation membership reside within the Utah portion of the Navajo Reservation, or 5,029 of the Navajo Nation's current total membership of 300,048.¹ H.R. 644 would ratify an Indian water rights settlement agreement for the Utah portion of the Navajo Reservation, recognizing a reserved water right for the Navajo Nation totaling 81,500 acre-feet of depletion per year.² H.R. 644 would also authorize \$198 million for a water development fund to be transferred to the Navajo Nation approximately four to five fiscal years following bill enactment for water-related expenses.³ The majority of these funds would be used for the eventual completion of a regional water supply project that is intended to serve as the primary project for meeting the water needs of the Utah portion of the

¹Hearing on H.R. 644, H.R. 2459, and H.R. 3292 Before the Subcomm. on Water, Oceans, and Wildlife of the H. Comm. on Nat. Res., 116th Cong. (2019) (not printed), (written statement of Alan Mikkelsen, Sr. Advisor (Water & W. Res. Issues) to the Sec'y of the Interior, and Chair, Working Grp. on Indian Water Settlements, U.S. Dept of the Interior), <https://naturalresources.house.gov/imo/media/doc/Mikkelsen%20Testimony%20WOW%20Leg%20Hrg%2006.26.19.pdf>.

²Letter from Alan Mikkelsen, Senior Advisor to the Secretary, Water and Western Resource Issues, U.S. Department of the Interior, and Stephen E. Boyd, Assistant Attorney General, Office of Legislative Affairs, U.S. Department of Justice, to Rep. Rob Bishop, Chairman of the United States House Committee on Natural Resources for the 115th Congress (Sept. 7, 2018).

³Congressional Budget Office, *Cost Estimate for S. 1207, Navajo Utah Water Rights Settlement Act of 2019, as ordered reported by the Senate Committee on Indian Affairs on May 15, 2019* (June 19, 2019).

Navajo Reservation.⁴ H.R. 644 would also authorize \$11 million for an operation and maintenance fund to pay for the initial operation and maintenance costs of projects constructed through the use of the water development fund. An additional \$1 million would be authorized for a survey of existing water uses on the Utah portion of the Navajo Reservation to fulfill a requirement for judicial approval of the settlement agreement in Utah state court.

The COVID–19 outbreak on the Navajo Nation has highlighted the need for a reliable water supply on the Navajo Indian Reservation. While H.R. 644 would help address long-term water supply needs on a segment of the Reservation in Utah, the Committee believes that more immediate assistance is needed for the Navajo Nation and other Tribal Nations to address the COVID–19 outbreaks that have disproportionately impacted Indian Country. H.R. 644 would not provide funding to the Navajo Nation for water project construction in Utah for several years. According to the Congressional Budget Office, settlement funds are not expected to be transferred to the Navajo Nation until approximately four to five years after bill enactment given that the settlement agreement requires several conditions to be met before congressionally authorized funds can be transferred, including the completion of certain court proceedings needed to confirm the Navajo Nation’s water rights. The bill authorizes funds to be transferred to the Navajo Nation as late as 2030,⁵ and the regional water project contemplated under H.R. 644 has not yet completed its design stage. Furthermore, according to the Navajo Nation, ongoing negotiations for the settlement of the Navajo Nation’s water rights in Arizona may require further changes to the project’s design and future construction timeline.⁶ Given the lengthy funding timeline under H.R. 644, the federal government must urgently provide significant federal funding and resources apart from H.R. 644 to help meet water supply needs during the pandemic.

In order to allow current non-Indian water uses in Utah to continue unimpaired, the settlement ratified by H.R. 644 also agrees to subordinate the Navajo Nation’s reserved water right to all perfected non-tribal water rights as of the date the settlement is signed. Indian reserved water rights were first recognized by the Supreme Court in *Winters v. United States* in 1908.⁷ Under the *Winters* decision, whenever the federal government reserved lands for an Indian reservation, it also implicitly reserved enough water to support the purposes of the reservation. Practically speaking, the ruling means that tribes with federally established reservations have a legal right to enough water to sustain their tribal communities. Under the *Winters* decision and the western water rights system of prior appropriation, tribes also typically have water rights that are senior in priority to non-tribal water rights hold-

⁴Hearing on H.R. 644, H.R. 2459, and H.R. 3292 Before the H. Comm. on Nat. Res., Subcommittee on Water, Oceans, and Wildlife, 116th Cong. (2019) (not printed), (written statement of Jonathan Nez, President of the Navajo Nation), <https://naturalresources.house.gov/imo/media/doc/Nez%20Testimony%20WOW%20Leg%20Hrg%2006.26.19.pdf>.

⁵See Sec. 8 of H.R. 644.

⁶Navajo Nation/State of Utah Water Rights Settlement Projects, *White Paper Prepared by Navajo Nation Department of Water Resources* (June 6, 2014).

⁷207 U.S. 564 (1908).

ers.⁸ Without Indian water rights settlements, tribes could significantly disrupt existing water uses across the drought-prone western states by fully litigating their water rights. H.R. 644 provides water supply certainty for existing non-tribal water users within Utah by approving a water sharing agreement in which the Navajo Nation agrees to subordinate its reserved water rights in Utah to existing non-tribal water users.

COMMITTEE ACTION

H.R. 644 was introduced on January 17, 2019, by Ranking Member Rob Bishop (R-UT). The bill was referred solely to the Committee on Natural Resources, and within the Committee to the Subcommittee on Water, Oceans, and Wildlife. On June 26, 2019, the Subcommittee held a hearing on the bill. On February 12, 2020, the Natural Resources Committee met to consider the bill. The Subcommittee was discharged by unanimous consent. Ranking Member Bishop offered an amendment in the nature of a substitute, which was agreed to by unanimous consent. No additional amendments were offered, and the bill, as amended, was adopted and ordered favorably reported to the House of Representatives by unanimous consent.

On July 1, 2020, the House of Representatives passed H.R. 2, the Moving Forward Act, which included the text of H.R. 644.⁹

HEARINGS

For the purposes of section 103(i) of H. Res. 6 of the 116th Congress—the following hearing was used to develop or consider H.R. 644: legislative hearing by the Subcommittee on Water, Oceans, and Wildlife held on June 26, 2019.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

Provides the short title of the bill, the “Navajo Utah Water Rights Settlement Act of 2019.”

Section 2. Purposes

Establishes the purposes of the Act to authorize, ratify, and confirm the Navajo Nation’s settlement with the State of Utah for all water rights claims in that state.

Section 3. Definitions

Defines terms and parties referenced in the Act.

Section 4. Ratification of agreement

Issues Congressional approval and ratification of the Navajo Utah Water Rights Settlement Agreement. Directs the Secretary of the Interior to execute the agreement and comply with applicable environmental laws and regulations.

⁸ Charles V. Stern, Cong. Research Serv., R44148, Indian Water Rights Settlements (Updated May 22, 2020).

⁹ H.R. 2, 116th Cong. (as passed by and engrossed in the House, July 1, 2020).

Section 5. Navajo water rights

Confirms the Navajo Nation's water rights in Utah at 81,500 acre-feet of water per year, to be held in trust by the United States and not subject to forfeiture or abandonment. Depletions resulting from water use on an allotment or the Reservation shall be counted as a depletion by the Navajo Nation. The Navajo Nation shall have the authority to allocate, distribute, and lease its water rights for any use on the Reservation. The Navajo Nation may also allocate, distribute, and lease those water rights for off-Reservation use. The Navajo Nation is prohibited from objecting in the general stream adjudication or any other applicable forum to the quantification of a water right for reasonable domestic and stock water uses on an allotment.

Section 6. Navajo trust accounts

Establishes the Navajo Utah Settlement Trust Fund to be managed, invested, and distributed by the Secretary of the Interior. Establishes two accounts within the Trust Fund: the Navajo Water Development Projects Account and the Navajo OM&R (Operation, Maintenance, and Replacement) Account. The Navajo Nation may withdraw funds from the Trust Fund upon approval from the Secretary, subject to certain requirements. The Navajo Nation shall submit annual expenditure reports describing the use of withdrawals.

Section 7. Authorization of appropriations

Authorizes \$198,300,000 for deposit in the Navajo Water Development Projects Account and \$11,100,000 for deposit in the Navajo OM&R Account. Separately authorizes \$1,000,000 for non-trust funds to assist the United States with costs associated with the implementation of the Act. The State of Utah shall contribute \$8,000,000 for deposit into the Navajo Water Development Projects Account.

Section 8. Conditions precedent

Establishes that the waivers and releases in this Act become effective after the Secretary publishes a notice in the Federal Register stating that the Settlement Agreement has been executed by the parties, Congress has fully appropriated funds authorized under Section 7, the court has entered a final decree confirming the Navajo water rights, and certain other conditions have been met. If all conditions have not been met to allow the publication of the Secretary's notice by October 31, 2030, the Settlement Agreement and the Act shall no longer be effective. This expiration date may be extended upon agreement from the Navajo Nation, the State of Utah, and the Secretary of the Interior.

Section 9. Waivers and releases

Enumerates the waivers and releases required for the settlement to take effect. Lists the rights reserved and retained by the Navajo Nation and the United States.

Section 10. Miscellaneous provisions

States that the Act does not establish precedent regarding the water rights, claims, or entitlements to water for any other Indian

Tribe. The Act shall not quantify or adversely affect the water rights of any tribe other than the Navajo Nation.

Section 11. Relation to allottees

Clarifies that nothing in this Act or the Settlement Agreement affects the rights or claims of allottees, or the United States acting in its capacity as trustee for or on behalf of allottees, for water rights or damages related to lands allotted by the United States to allottees.

Section 12. Antideficiency

States that the United States shall not be liable for failure to meet the requirements of the Act if adequate appropriations are not provided by Congress.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Natural Resources' oversight findings and recommendations are reflected in the body of this report.

COMPLIANCE WITH HOUSE RULE XIII AND CONGRESSIONAL BUDGET ACT

1. *Cost of Legislation and the Congressional Budget Act.* With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of clause (3)(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has requested but not received a cost estimate for this bill from the Director of Congressional Budget Office. The Committee adopts as its own cost estimate the forthcoming cost estimate of the Director of the Congressional Budget Office, should such cost estimate be made available before House passage of the bill.

The Committee has requested but not received from the Director of the Congressional Budget Office a statement as to whether this bill contains any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

2. *General Performance Goals and Objectives.* As required by clause 3(c)(4) of rule XIII, the general performance goals and objectives of this bill are to ratify and modify the Navajo Utah Water Rights Settlement Agreement negotiated between the State of Utah, the Navajo Nation, and the United States.

EARMARK STATEMENT

This bill does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined under clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives.

UNFUNDED MANDATES REFORM ACT STATEMENT

An estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act was not made available to the Committee in time for the filing of this report. The Chair of the Committee shall cause such estimate to be printed in the *Congressional Record* upon its receipt by the Committee.

EXISTING PROGRAMS

This bill does not establish or reauthorize a program of the federal government known to be duplicative of another program.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

PREEMPTION OF STATE, LOCAL, OR TRIBAL LAW

Any preemptive effect of this bill over state, local, or tribal law is intended to be consistent with the bill's purposes and text and the Supremacy Clause of Article VI of the U.S. Constitution.

CHANGES IN EXISTING LAW

If enacted, this bill would make no changes to existing law.

ADDITIONAL VIEWS

Settlements, if crafted correctly, can provide relief from burdensome legal obligations and benefit tribes, States, and American taxpayers. That is why under my tenure as Chairman of this Committee, we instituted a new protocol for reviewing Indian water rights settlements.

This protocol required the Administration to convey support for the settlement and provide a copy of the settlement and the proposed authorizing legislation, including federal spending levels and claims being resolved, to the Committee.

Under this protocol, Congress approved three Indian water rights settlements and authorized funding to implement them. These settlements were a win for the tribes, a win for the States, and a win for the taxpayers.

The Navajo Utah Water Rights Settlement Act of 2019, meets these requirements. This bill would approve a water rights settlement between the Navajo Tribe, the State of Utah and the federal government. This settlement is complete, and has the support of the Tribe, State, and Administration.

Importantly, H.R. 644 does not leave the door open to potential issues, such as project-based settlements which can run out of money before the promised project is complete. As a fund-based settlement, this legislation ensures the Navajo Nation has the flexibility it needs to meet its future water needs while protecting the American taxpayer. For these reasons, I support H.R. 644 as reported by the Committee on Natural Resources.

ROB BISHOP.

