

110TH CONGRESS
1ST SESSION

H. R. 1970

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

IN THE HOUSE OF REPRESENTATIVES

APRIL 19, 2007

Mr. UDALL of New Mexico introduced the following bill; which was referred to the Committee on Natural Resources

A BILL

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

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

1 **SECTION 1. SHORT TITLE.**

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

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

- Sec. 1. Short title.
- Sec. 2. Definitions.
- Sec. 3. Compliance with environmental laws.

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

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

TITLE II—RECLAMATION WATER SETTLEMENTS FUND

- Sec. 201. Reclamation Water Settlements Fund.

TITLE III—NORTHWESTERN NEW MEXICO RURAL WATER
SUPPLY PROJECT

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

TITLE IV—NAVAJO NATION WATER RIGHTS

- Sec. 401. Agreement.
- Sec. 402. Trust Fund.
- Sec. 403. Waivers and releases.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

8 (1) ACRE-FEET.—The term “acre-feet” means
9 acre-feet per year.

1 (2) AGREEMENT.—The term “Agreement”
2 means the agreement among the State of New Mex-
3 ico, the Nation, and the United States setting forth
4 a stipulated and binding agreement signed by the
5 State of New Mexico and the Nation on April 19,
6 2005.

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

15 (4) CITY.—The term “City” means the city of
16 Gallup, New Mexico.

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

21 (6) CONTRACT.—The term “Contract” means
22 the contract between the United States and the Na-
23 tion setting forth certain commitments, rights, and
24 obligations of the United States and the Nation, as
25 described in paragraph 6.0 of the Agreement.

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

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

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

15 (10) HYDROLOGIC DETERMINATION.—The term
16 “hydrologic determination” means the draft hydro-
17 logic determination entitled “Water Availability from
18 Navajo Reservoir and the Upper Colorado River
19 Basin for Use in New Mexico,” prepared by the Bu-
20 reau of Reclamation pursuant to section 11 of the
21 Act of June 13, 1962 (Public Law 87–483; 76 Stat.
22 99), and dated May 2006.

23 (11) NATION.—The term “Nation” means the
24 Navajo Nation, a body politic and federally-recog-
25 nized Indian nation as provided for in section 101(2)

1 of the Federally Recognized Indian Tribe List of
2 1994 (25 U.S.C. 497a(2)), also known variously as
3 the “Navajo Tribe,” the “Navajo Tribe of Arizona,
4 New Mexico & Utah,” and the “Navajo Tribe of In-
5 dians” and other similar names, and includes all
6 bands of Navajo Indians and chapters of the Navajo
7 Nation.

8 (12) NAVAJO INDIAN IRRIGATION PROJECT.—

9 The term “Navajo Indian Irrigation Project” means
10 the Navajo Indian irrigation project authorized by
11 section 2 of Public Law 87–483 (76 Stat. 96).

12 (13) NAVAJO RESERVOIR.—The term “Navajo

13 Reservoir” means the reservoir created by the im-
14 poundment of the San Juan River at Navajo Dam,
15 as authorized by the Act of April 11, 1956 (com-
16 monly known as the “Colorado River Storage
17 Project Act”) (43 U.S.C. 620 et seq.).

18 (14) NAVAJO NATION MUNICIPAL PIPELINE.—

19 The term “Navajo Nation Municipal Pipeline”
20 means the pipeline used to convey the water of the
21 Animas-La Plata Project of the Navajo Nation from
22 the City of Farmington, New Mexico, to commu-
23 nities of the Navajo Nation located in close prox-
24 imity to the San Juan River Valley in State of New
25 Mexico (including the City of Shiprock), as author-

1 ized by section 15(b) of the Colorado Ute Indian
2 Water Rights Settlement Act of 1988 (Public Law
3 100–585; 102 Stat. 2973; 114 Stat. 2763A–263).

4 (15) NON-NAVAJO IRRIGATION DISTRICT.—The
5 term “Non-Navajo Irrigation Districts” means—

6 (A) the Hammond Conservancy District;

7 (B) the Bloomfield Irrigation District; and

8 (C) any other community ditch organiza-
9 tion in the San Juan River basin in State of
10 New Mexico.

11 (16) PROJECT.—The term “Project” means the
12 Northwestern New Mexico Rural Water Supply
13 Project (commonly known as the “Navajo-Gallup
14 Pipeline Project”) authorized under section 302(a),
15 as substantially described as the preferred alter-
16 native in the Draft Impact Statement.

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

20 (18) RESOLUTION.—The term “Resolution”
21 means the Resolution of the Upper Colorado River
22 Commission entitled “Use and Accounting of Upper
23 Basin Water Supplied to the Lower Basin in New
24 Mexico by the Proposed Project” and dated June
25 17, 2003.

1 (19) SAN JUAN RIVER RECOVERY IMPLEMENTA-
2 TION PROGRAM.—The term “San Juan River Recov-
3 ery Implementation Program” means the intergov-
4 ernmental program established pursuant to the coop-
5 erative agreement dated October 21, 1992 (including
6 any amendments to the program).

7 (20) SECRETARY.—The term “Secretary”
8 means the Secretary of the Interior, acting through
9 the Commissioner of Reclamation or any other des-
10 ignee.

11 (21) STREAM ADJUDICATION.—The term
12 “stream adjudication” means the general stream ad-
13 judication that is the subject of New Mexico v.
14 United States, et al., No. 75–185 (11th Jud. Dist.,
15 San Juan County, New Mexico) (involving claims to
16 waters of the San Juan River and the tributaries of
17 that river).

18 (22) TRUST FUND.—The term “Trust Fund”
19 means the Navajo Nation Water Resources Develop-
20 ment Trust Fund established by section 402(a).

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

22 (a) EFFECT OF EXECUTION OF AGREEMENT.—The
23 execution of the Agreement under section 401(a)(2) shall
24 not constitute a major Federal action under the National

1 Environmental Policy Act of 1969 (42 U.S.C. 4321 et
2 seq.).

3 (b) COMPLIANCE WITH ENVIRONMENTAL LAWS.—In
4 carrying out this Act, the Secretary shall comply with each
5 law of the Federal Government relating to the protection
6 of the environment, including—

7 (1) the National Environmental Policy Act of
8 1969 (42 U.S.C. 4321 et seq.); and

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

11 **TITLE I—AMENDMENTS TO THE**
12 **COLORADO RIVER STORAGE**
13 **PROJECT ACT AND PUBLIC**
14 **LAW 87–483**

15 **SEC. 101. AMENDMENTS TO THE COLORADO RIVER STOR-**
16 **AGE PROJECT ACT.**

17 (a) PARTICIPATING PROJECTS.—Paragraph (2) of
18 the first section of the Act of April 11, 1956 (commonly
19 known as the “Colorado River Storage Project Act”) (43
20 U.S.C. 620(2)) is amended by inserting “the North-
21 western New Mexico Rural Water Supply Project,” after
22 “Fruitland Mesa,”.

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

1 (1) by redesignating section 16 (43 U.S.C.
2 620o) as section 17; and

3 (2) by inserting after section 15 (43 U.S.C.
4 620n) the following:

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

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

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

13 “(1) is consistent with applicable law; and

14 “(2) does not impair the ability of the Secretary
15 of the Interior to deliver water under contracts en-
16 tered into under—

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

18 and

19 “(B) New Mexico State Engineer File Nos.
20 2847, 2848, 2849, and 2917.

21 “(d)(1) The Secretary of the Interior, in cooperation
22 with the State of New Mexico (acting through the Inter-
23 state Stream Commission), shall develop any terms and
24 procedures for the storage, accounting, and release of

1 water in the top water bank that are necessary to comply
2 with subsection (c).

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

5 “(A) the storage of banked water shall be sub-
6 ject to approval under State law by the New Mexico
7 State Engineer to ensure that impairment of any ex-
8 isting water right does not occur, including storage
9 of water under New Mexico State Engineer File No.
10 2849;

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

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

17 “(D) water in the top water bank be the first
18 water spilled or released for flood control purposes
19 in anticipation of a spill, on the condition that top
20 water bank water shall not be released or included
21 for purposes of calculating whether a release should
22 occur for purposes of satisfying releases required
23 under the San Juan River Recovery Implementation
24 Program.

1 “(e) The Secretary of the Interior may charge fees
2 to water users that use the top water bank in amounts
3 sufficient to cover the costs incurred by the United States
4 in administering the water bank.”.

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

6 (a) NAVAJO INDIAN IRRIGATION PROJECT.—Public
7 Law 87-483 (76 Stat. 96) is amended by striking section
8 2 and inserting the following:

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

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

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

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

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

1 “(c) In addition to being used for irrigation, the
2 water diverted by the Navajo Indian Irrigation Project
3 under subsection (b) may be used within the area served
4 by Navajo Indian Irrigation Project facilities for the fol-
5 lowing purposes:

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

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

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

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

21 “(d) The Navajo Indian Irrigation Project water di-
22 verted under subsection (b) may be transferred to areas
23 located within or outside the area served by Navajo Indian
24 Irrigation Project facilities, and within or outside the

1 boundaries of the Navajo Nation, for any beneficial use
2 in accordance with—

3 “(1) the agreement executed under section
4 401(a)(2) of the Northwestern New Mexico Rural
5 Water Projects Act;

6 “(2) the contract executed under section
7 304(a)(2)(B) of the Northwestern New Mexico
8 Rural Water Projects Act; and

9 “(3) any other applicable law.

10 “(e)(1) The Secretary may use the capacity of the
11 Navajo Indian Irrigation Project works to convey water
12 supplies for—

13 “(A) the Northwestern New Mexico Rural
14 Water Supply Project under section 302 of the
15 Northwestern New Mexico Rural Water Projects
16 Act; or

17 “(B) other nonirrigation purposes authorized
18 under subsection (c) or (d).

19 “(2) The Secretary shall not reallocate, or require re-
20 payment of, construction costs of the Navajo Indian Irri-
21 gation Project because of the conveyance of water supplies
22 under paragraph (1).”.

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

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

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

12 “(B) The annual diversion or water delivery de-
13 mands for the current year anticipated for non-irri-
14 gation uses under water delivery contracts, including
15 the demand for delivery for uses in the State of Ari-
16 zona under the Northwestern New Mexico Rural
17 Water Supply Project authorized by section 302(a)
18 of the Northwestern New Mexico Rural Water
19 Projects Act, but excluding any current demand for
20 surface water for placement into aquifer storage for
21 future recovery and use.

22 “(C) An annual normal diversion demand of
23 135,000 acre-feet for the initial stage of the San
24 Juan-Chama Project authorized by section 8.

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

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

8 “(B) the quantity of water anticipated to be
9 supplied through reuse.

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

19 “(e)(1) If the Secretary determines that there is a
20 shortage of water under subsection (a), the Secretary shall
21 allocate the shortage to the demands on the Navajo Res-
22 ervoir water supply in the following order of priority:

23 “(A) The demand for delivery for uses in the
24 State of Arizona under the Northwestern New Mex-
25 ico Rural Water Supply Project authorized by sec-

1 tion 303 of the Northwestern New Mexico Rural
2 Water Projects Act, excluding the quantity of water
3 anticipated to be diverted for the uses from inflows
4 to the San Juan River that arise below Navajo Dam
5 in accordance with New Mexico State Engineer File
6 No. 3215.

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

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

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

23 “(3) To determine the occurrence and amount of any
24 shortage to contracts entered into under this section, the
25 Secretary shall not include as available storage any water

1 stored in a top water bank in Navajo Reservoir established
2 under section 16(a) of the Act of April 11, 1956 (com-
3 monly known as the ‘Colorado River Storage Project Act’).

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

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

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

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

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

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

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

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

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

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

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

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

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

23 (8) the Compact;

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

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

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

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

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

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

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

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

16 (b) DEPOSITS TO FUND.—

17 (1) IN GENERAL.—For each of fiscal years
18 2018 through 2028, the Secretary of the Treasury
19 shall deposit in the Fund, if available, \$100,000,000
20 of the revenues that would otherwise be deposited
21 for the fiscal year in the fund established by the
22 first section of the Act of June 17, 1902 (32 Stat.
23 388, chapter 1093).

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

4 (A) without further appropriation; and

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

8 (c) EXPENDITURES FROM FUND.—

9 (1) IN GENERAL.—For each of fiscal years
10 2018 through 2030, on request by the Secretary
11 pursuant to paragraphs (2) and (3), the Secretary
12 of the Treasury shall transfer from the Fund to the
13 Secretary an amount not to exceed \$100,000,000 for
14 the fiscal year requested.

15 (2) REQUESTS.—The Secretary may request a
16 transfer from the Fund to implement a settlement
17 agreement approved by Congress that resolves, in
18 whole or in part, litigation involving the United
19 States or any other agreement approved by Congress
20 that is entered into by the Secretary, if the settle-
21 ment or other agreement requires the Bureau of
22 Reclamation to plan, design, and construct—

23 (A) water supply infrastructure; or

24 (B) a project—

1 (i) to rehabilitate a water delivery sys-
2 tem to conserve water; or

3 (ii) to restore fish and wildlife habitat
4 or otherwise improve environmental condi-
5 tions associated with or affected by a rec-
6 lamation project that is in existence on the
7 date of enactment of this Act.

8 (3) USE FOR COMPLETION OF PROJECT.—

9 (A) PRIORITIES.—

10 (i) FIRST PRIORITY.—The first pri-
11 ority for expenditure of amounts in the
12 Fund shall be for the purposes described in
13 subparagraph (B).

14 (ii) OTHER PURPOSES.—Any amounts
15 in the Fund that are not needed for the
16 purposes described in subparagraph (B)
17 may be used for other purposes authorized
18 in paragraph (2).

19 (B) COMPLETION OF PROJECT.—Effective
20 beginning January 1, 2018, if, in the judgment
21 of the Secretary, the deadline described in sec-
22 tion 401(f)(1)(A)(ix) is unlikely to be met be-
23 cause a sufficient amount of funding is not oth-
24 erwise available through appropriations made
25 available pursuant to section 309(a), the Sec-

1 retary shall request the Secretary of the Treas-
2 ury to transfer from the Fund to the Secretary
3 such amounts on an annual basis pursuant to
4 paragraph (1), not to exceed a total of
5 \$500,000,000, as are necessary to pay the Fed-
6 eral share of the costs, and substantially com-
7 plete as expeditiously as practicable, the con-
8 struction of the water supply infrastructure au-
9 thorized as part of the Project.

10 (C) PROHIBITED USE OF FUND.—The Sec-
11 retary shall not use any amount transferred
12 from the Fund under subparagraph (A) to
13 carry out any other feature or activity described
14 in title IV other than a feature or activity relat-
15 ing to the construction of the water supply in-
16 frastructure authorized as part of the Project.

17 (d) INVESTMENT OF AMOUNTS.—

18 (1) IN GENERAL.—The Secretary of the Treas-
19 ury shall invest such portion of the Fund as is not,
20 in the judgment of the Secretary of the Treasury,
21 required to meet current withdrawals.

22 (2) INTEREST-BEARING OBLIGATIONS.—Invest-
23 ments may be made only in interest-bearing obliga-
24 tions of the United States.

1 (3) ACQUISITION OF OBLIGATIONS.—For the
2 purpose of investments under paragraph (1), obliga-
3 tions may be acquired—

4 (A) on original issue at the issue price; or
5 (B) by purchase of outstanding obligations
6 at the market price.

7 (4) SALE OF OBLIGATIONS.—Any obligation ac-
8 quired by the Fund may be sold by the Secretary of
9 the Treasury at the market price.

10 (5) CREDITS TO FUND.—The interest on, and
11 the proceeds from the sale or redemption of, any ob-
12 ligations held in the Fund shall be credited to, and
13 form a part of, the Fund.

14 (e) TRANSFERS OF AMOUNTS.—

15 (1) IN GENERAL.—The amounts required to be
16 transferred to the Fund under this section shall be
17 transferred at least monthly from the general fund
18 of the Treasury to the Fund on the basis of esti-
19 mates made by the Secretary of the Treasury.

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

24 (f) TERMINATION.—On September 30, 2030—

25 (1) the Fund shall terminate; and

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

4 **TITLE III—NORTHWESTERN NEW**
5 **MEXICO RURAL WATER SUP-**
6 **PLY PROJECT**

7 **SEC. 301. PURPOSES.**

8 The purposes of this subtitle are—

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

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

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

18 **SEC. 302. AUTHORIZATION OF NORTHWESTERN NEW MEX-**
19 **ICO RURAL WATER SUPPLY PROJECT.**

20 (a) IN GENERAL.—The Secretary, acting through the
21 Commissioner of Reclamation, is authorized to design,
22 construct, operate, and maintain the Project in substantial
23 accordance with the preferred alternative in the Draft Im-
24 pact Statement.

1 (b) PROJECT FACILITIES.—To provide for the deliv-
2 ery of San Juan River water to Project Participants, the
3 Secretary may construct, operate, and maintain the
4 Project facilities described in the preferred alternative in
5 the Draft Impact Statement, including:

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

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

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

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

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

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

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

4 (5) Any water regulation, storage or treatment
5 facility, service connection to an existing public
6 water supply system, power substation, power dis-
7 tribution works, or other appurtenant works (includ-
8 ing a building or access road) that is related to the
9 Project facilities authorized by paragraphs (1)
10 through (4), including power transmission facilities
11 to connect Project facilities to existing high-voltage
12 transmission facilities.

13 (c) ACQUISITION OF LAND.—

14 (1) IN GENERAL.—Except as provided in para-
15 graph (2), the Secretary may acquire any land or in-
16 terest in land that is necessary to construct, operate,
17 and maintain the Project facilities authorized under
18 subsection (b).

19 (2) LIMITATION.—The Secretary may not con-
20 demn water rights for purposes of the Project.

21 (d) CONDITIONS.—

22 (1) IN GENERAL.—The Secretary shall not com-
23 mence construction of the facilities authorized under
24 subsection (b) until such time as—

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

3 (B) the contracts authorized under section
4 304 are executed;

5 (C) the Secretary—

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

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

11 (D) the State of New Mexico has made ar-
12 rangements with the Secretary to contribute
13 \$25,000,000 toward the construction costs of
14 the Project.

15 (2) COST SHARING.—State contributions re-
16 quired under paragraph (1)(D) shall be in addition
17 to amounts that the State of New Mexico contrib-
18 utes for the planning and construction of regional
19 facilities to distribute Project water to the City and
20 surrounding Nation communities before the date on
21 which the City executes a repayment contract under
22 section 304(b).

23 (3) EFFECT.—The design and construction of
24 the Project shall not be subject to the Indian Self-

1 Determination and Education Assistance Act (25
2 U.S.C. 450 et seq.).

3 (e) POWER ISSUES.—

4 (1) RESERVATION.—The Secretary shall re-
5 serve, from existing reservations of Colorado River
6 Storage Project power for Bureau of Reclamation
7 projects, up to 26 megawatts of power for use by the
8 Project.

9 (2) REALLOCATION OF COSTS.—Notwith-
10 standing the Act of April 11, 1956 (commonly
11 known as the “Colorado River Storage Project Act”)
12 (43 U.S.C. 620 et seq.), the Secretary shall not re-
13 allocate or reassign any cost associated with the
14 Project from an entity covered by this title to the
15 power function.

16 (f) CONVEYANCE OF PROJECT FACILITIES.—

17 (1) IN GENERAL.—The Secretary is authorized
18 to enter into separate agreements with the City and
19 the Nation to convey each Project facility authorized
20 under subsection (b) to the City and the Nation
21 after—

22 (A) completion of construction of the
23 Project; and

1 (B) execution of a Project operations
2 agreement approved by the Secretary and the
3 Project Participants that sets forth—

4 (i) any terms and conditions that the
5 Secretary determines are necessary—

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

9 (II) to fulfill the purposes of this
10 subtitle;

11 (ii) requirements acceptable to the
12 Secretary and the Project Participants
13 for—

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

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

21 (iii) conditions and requirements ac-
22 ceptable to the Secretary and the Project
23 Participants for operating and maintaining
24 each Project facility on completion of the

conveyance, including the requirement that
the City and the Nation shall—

(I) comply with—

(aa) the Compact; and

(bb) other applicable law;

and

(II) be responsible for—

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

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

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

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

1 nance of the Project that are located within the
2 corporate boundaries of the City; and

3 (B) the Nation the facilities and any land
4 or interests in land acquired by the United
5 States for the construction, operation, and
6 maintenance of the Project that are located out-
7 side the corporate boundaries of the City.

8 (3) EFFECT OF CONVEYANCE.—The conveyance
9 of each Project facility shall not affect the applica-
10 tion of the Endangered Species Act of 1973 (16
11 U.S.C. 1531 et seq.) relating to the use of the water
12 associated with the Project.

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

20 (g) COLORADO RIVER STORAGE PROJECT POWER.—
21 The conveyance of Project facilities under subsection (f)
22 shall not affect the availability of Colorado River Storage
23 Project power to the Project under subsection (e).

24 (h) REGIONAL USE OF PROJECT FACILITIES.—

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

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

8 (B) the unallocated or non-Project water
9 beneficiary—

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

11 (ii) agrees to pay the operation, main-
12 tenance, and replacement costs assignable
13 to the beneficiary for the use of the Project
14 facilities; and

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

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

1 **SEC. 303. DELIVERY AND USE OF NORTHWESTERN NEW**
2 **MEXICO RURAL WATER SUPPLY PROJECT**
3 **WATER.**

4 (a) USE OF PROJECT WATER.—

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

9 (2) USE ON CERTAIN LAND.—

10 (A) IN GENERAL.—Subject to subpara-
11 graph (B), the Nation may use Project water
12 allocations on—

13 (i) land held by the United States in
14 trust for the Nation and members of the
15 Nation; and

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

17 (B) TRANSFER.—The Nation may transfer
18 the purposes and places of use of the allocated
19 water in accordance with the Agreement and
20 applicable law.

21 (3) HYDROELECTRIC POWER.—Hydroelectric
22 power may be generated as an incident to the deliv-
23 ery of Project water under paragraph (1).

24 (4) STORAGE.—

25 (A) IN GENERAL.—Subject to subpara-
26 graph (B), any water contracted for delivery

1 under paragraph (1) that is not needed for cur-
2 rent water demands or uses may be delivered by
3 the Project for placement in underground stor-
4 age in the State of New Mexico for future re-
5 covery and use.

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

8 (i) approval by the State of New Mex-
9 ico under applicable provisions of State law
10 relating to aquifer storage and recovery;
11 and

12 (ii) the provisions of the Agreement
13 and this Act.

14 (b) PROJECT WATER AND CAPACITY ALLOCA-
15 TIONS.—

16 (1) DIVERSION.—The Project shall divert from
17 the Navajo Reservoir and the San Juan River a
18 quantity of water that does not exceed the lesser
19 of—

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

21 (B) the quantity of water necessary to sup-
22 ply a depletion from the San Juan River of
23 35,890 acre-feet.

24 (2) ALLOCATION.—

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

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

11 (C) ALLOCATION TO NAVAJO NATION COM-
12 MUNITIES IN NEW MEXICO.—For use by the
13 Nation in the State of New Mexico, the Project
14 shall deliver at the points of diversion from the
15 San Juan River or at Navajo Reservoir the less-
16 er of—

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

21 (D) ALLOCATION TO NAVAJO NATION COM-
22 MUNITIES IN ARIZONA.—In accordance with
23 subsection (d), the Project may deliver at the
24 point of diversion from the San Juan River not

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

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

9 (3) USE IN EXCESS OF ALLOCATION QUAN-
10 TITY.—Notwithstanding each allocation quantity
11 limit described in subparagraphs (B), (C), and (E)
12 of paragraph (2), the Secretary may authorize a
13 Project Participant to exceed the allocation quantity
14 limit of that Project Participant if—

15 (A) capacity is available without impairing
16 any water delivery to any other Project Partici-
17 pant; and

18 (B) the Project Participant benefitting
19 from the increased allocation quantity—

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

22 (ii) agrees to pay the operation, main-
23 tenance, and replacement costs relating to
24 the additional use any Project facility; and

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

4 (c) SOURCES OF WATER.—The sources of water for
5 the Project allocated by subsection (b) shall be water origi-
6 nating in—

7 (1) drainage of the San Juan River above Nav-
8 ajo Dam, to be supplied under New Mexico State
9 Engineer File No. 2849; and

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

13 (d) CONDITIONS FOR USE IN ARIZONA.—

14 (1) REQUIREMENTS.—Project water shall not
15 be delivered for use by any community of the Nation
16 in the State of Arizona under subsection (b)(2)(D)
17 until the date on which—

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

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

1 (C) the Secretary determines that the uses
2 in the State of Arizona are within the appor-
3 tionment of the water of the Colorado River
4 made to the State of Arizona through compact,
5 statute, or court decree;

6 (D) Congress has approved a Navajo Res-
7 ervoir supply contract between the Nation and
8 the United States to provide for the delivery of
9 Project water for the uses in Arizona;

10 (E) the Navajo Nation and the State of
11 Arizona have entered into an agreement pro-
12 viding for delivery of water of the Project for
13 uses in Arizona; and

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

16 (2) ACCOUNTING OF USES IN ARIZONA.—Any
17 depletion of water from the San Juan River stream
18 system in the State of New Mexico that results from
19 the diversion of water by the Project for uses within
20 the State of Arizona (including depletion incidental
21 to the diversion, impounding, or conveyance of water
22 in the State of New Mexico for uses in the State of
23 Arizona)—

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

4 (B) shall not increase the total quantity of
5 water to which the State of Arizona is entitled
6 to use under any compact, statute, or court de-
7 cree.

8 (e) FORBEARANCE.—

9 (1) IN GENERAL.—Subject to paragraphs (2)
10 and (3), during any year in which a shortage to the
11 normal diversion requirement for any use relating to
12 the Project within the State of Arizona occurs (as
13 determined under section 11 of Public Law 87–483
14 (76 Stat. 99)), the Nation may temporarily forbear
15 the delivery of the water supply of the Navajo Res-
16ervoir for uses in the State of New Mexico under the
17 apportionments of water to the Navajo Indian Irri-
18gation Project and the normal diversion require-
19ments of the Project to allow an equivalent quantity
20 of water to be delivered from the Navajo Reservoir
21 water supply for municipal and domestic uses of the
22 Nation in the State of Arizona under the Project.

23 (2) LIMITATION OF FORBEARANCE.—The Na-
24 tion may forebear the delivery of water under para-
25 graph (1) of a quantity not exceeding the quantity

1 of the shortage to the normal diversion requirement
2 for any use relating to the Project within the State
3 of Arizona.

4 (3) EFFECT.—The forbearance of the delivery
5 of water under paragraph (1) shall be subject to the
6 requirements relating to accounting and water quan-
7 tity described in subsection (d)(2).

8 (f) EFFECT.—Nothing in this Act—

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

13 (2) authorizes the forbearance of water uses in
14 the State of New Mexico to allow uses of water in
15 other States other than as authorized under sub-
16 section (e).

17 (g) CONSISTENCY WITH UPPER COLORADO RIVER
18 BASIN COMPACT.—In accordance with the Resolution and
19 notwithstanding any other provision of law—

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

24 (2) water diverted under paragraph (1) shall be
25 a part of the consumptive use apportionment made

1 to the State of New Mexico by Article III(a) of the
2 Compact.

3 **SEC. 304. PROJECT CONTRACTS.**

4 (a) NAVAJO NATION CONTRACT.—

5 (1) HYDROLOGIC DETERMINATION.—Congress
6 recognizes that the Hydrologic Determination satis-
7 factory to support approval of the Contract has been
8 completed.

9 (2) CONTRACT APPROVAL.—

10 (A) APPROVAL.—

11 (i) IN GENERAL.—Except to the ex-
12 tent that any provision of the Contract
13 conflicts with this Act, Congress approves,
14 ratifies, and incorporates by reference the
15 Contract.

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

21 (B) EXECUTION OF CONTRACT.—The Sec-
22 retary, acting on behalf of the United States,
23 shall enter into the Contract to the extent that
24 the Contract does not conflict with this Act (in-

1 including any amendment that is required to
2 make the Contract consistent with this Act).

3 (3) NO REPAYMENT OBLIGATION.—The Nation
4 is not obligated to repay—

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

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

14 (4) OPERATION, MAINTENANCE, AND REPLACE-
15 MENT OBLIGATION.—Subject to subsection (f), the
16 Nation shall pay any costs relating to the operation,
17 maintenance, and replacement of each facility of the
18 Project that are allocable to the Nation.

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

23 (b) CITY OF GALLUP CONTRACT.—

24 (1) CONTRACT AUTHORIZATION.—To the extent
25 consistent with this Act, the Secretary is authorized

1 to enter into a repayment contract with the City
2 that requires the City—

3 (A) to repay, within a 50-year period, the
4 share of any construction cost of the City relat-
5 ing to the Project; and

6 (B) to pay the operation, maintenance, and
7 replacement costs of the Project that are allo-
8 cable to the City.

9 (2) SHARE OF CONSTRUCTION COSTS.—

10 (A) IN GENERAL.—Subject to subpara-
11 graph (B), the Secretary shall determine the
12 share of the construction costs of the City relat-
13 ing to the Project, based on the ability of the
14 City to pay the construction costs of each facil-
15 ity of the Project that is allocable to the City.

16 (B) MINIMUM PERCENTAGE.—The share
17 of the construction costs of the City shall be at
18 least 25 percent of the construction costs of the
19 Project that are allocable to the City.

20 (3) EXCESS CONSTRUCTION COSTS.—Any con-
21 struction costs of the Project allocable to providing
22 capacity to deliver water to the City that are in ex-
23 cess of the share of the City of the construction
24 costs of the Project, as determined under paragraph
25 (2), shall be nonreimbursable.

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

5 (5) TITLE TRANSFER.—If title is transferred to
6 the City prior to repayment under section 302(f),
7 the City shall be required to provide assurances sat-
8 isfactory to the Secretary of fulfillment of the re-
9 maining repayment obligation of the City.

10 (6) OPERATION, MAINTENANCE AND REPLACE-
11 MENT OBLIGATION.—The City shall pay the oper-
12 ation, maintenance, and replacement costs for each
13 facility of the Project that is allocable to the City.

14 (7) WATER DELIVERY SUBCONTRACT.—

15 (A) IN GENERAL.—Except as provided in
16 subparagraph (B), the Secretary shall not enter
17 into a contract under paragraph (1) with the
18 City until the City has secured a water supply
19 for the portion of the Project for which the City
20 is responsible by entering into, as approved by
21 the Secretary, a water delivery subcontract for
22 a period of not less than 40 years beginning on
23 the date on which the construction of any facil-
24 ity of the Project serving the City is completed,
25 but for a period not exceeding 99 years, with—

1 (i) the Nation, as authorized by the
2 Contract; or

3 (ii) the Jicarilla Apache Nation, as
4 authorized by the settlement contract be-
5 tween the United States and the Jicarilla
6 Apache Tribe, authorized by the Jicarilla
7 Apache Tribe Water Rights Settlement Act
8 (Public Law 102–441; 106 Stat. 2237).

9 (B) EFFECT.—Nothing in this para-
10 graph—

11 (i) prevents the City from obtaining
12 an alternate source of water for the por-
13 tion of the Project for which the City is re-
14 sponsible, subject to approval of the Sec-
15 retary and the State of New Mexico, acting
16 through the New Mexico Interstate Stream
17 Commission and the New Mexico State
18 Engineer; or

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

22 (c) JICARILLA APACHE NATION CONTRACT.—

23 (1) CONTRACT AUTHORIZATION.—To the extent
24 consistent with this Act, the Secretary is authorized
25 to enter into a repayment contract with the Jicarilla

1 Apache Nation that requires the Jicarilla Apache
2 Nation—

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

6 (B) to pay the operation, maintenance, and
7 replacement costs of the Project that are allo-
8 cable to the Jicarilla Apache Nation.

9 (2) SHARE OF CONSTRUCTION COSTS.—

10 (A) IN GENERAL.—Subject to subpara-
11 graph (B), the Secretary shall determine the
12 share of the Jicarilla Apache Nation of the con-
13 struction costs of the Project, based on the abil-
14 ity of the Jicarilla Apache Nation to pay the
15 construction costs of the Project facilities that
16 are allocable to the Jicarilla Apache Nation.

17 (B) MINIMUM PERCENTAGE.—The share
18 of the Jicarilla Apache Nation under subpara-
19 graph (A) shall be at least 25 percent of the
20 construction costs of the Project that are allo-
21 cable to the Jicarilla Apache Nation.

22 (3) EXCESS CONSTRUCTION COSTS.—Any con-
23 struction costs of the Project allocable to providing
24 capacity to deliver water to the Jicarilla Apache Na-
25 tion that are in excess of the share of the Jicarilla

1 Apache Nation of the construction costs of the
2 Project, as determined under paragraph (2), shall be
3 nonreimbursable.

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

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

15 (6) OPERATION, MAINTENANCE AND REPLACE-
16 MENT OBLIGATION.—The Jicarilla Apache Nation
17 shall pay the operation, maintenance, and replace-
18 ment costs relating to each facility of the Project
19 that are allocable to the Jicarilla Apache Nation.

20 (d) CAPITAL COST ALLOCATIONS.—For purposes of
21 determining the capital repayment requirements of the
22 Project Participants under this section, the Secretary shall
23 review and, as appropriate, update the report prepared by
24 the Bureau of Reclamation in the Draft Impact Statement
25 allocating capital construction costs for the Project.

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

9 (f) TEMPORARY WAIVERS OF PAYMENTS.—

10 (1) IN GENERAL.—On the date on which the
11 Project is substantially complete and the Nation re-
12 ceives a delivery of water generated by the Project,
13 the Secretary may waive, for a period of not more
14 than 10 years, the operation, maintenance, and re-
15 placement costs of the Project allocable to the Na-
16 tion that the Secretary determines are in excess of
17 the ability of the Nation to pay.

18 (2) PAYMENT BY UNITED STATES.—Any oper-
19 ation, maintenance, or replacement costs waived by
20 the Secretary under paragraph (1) shall be paid by
21 the United States.

22 (3) EFFECT ON CONTRACTS.—Failure of the
23 Secretary to waive costs under paragraph (1) be-
24 cause of a lack of availability of Federal funding to
25 pay the costs under paragraph (2) shall not alter the

1 obligations of the Nation or the United States under
2 a repayment contract.

3 (4) TERMINATION OF AUTHORITY.—The au-
4 thority of the Secretary to waive costs under para-
5 graph (1) with respect to a Project facility trans-
6 ferred to the Nation under section 302(f) shall ter-
7minate on the date on which the Project facility is
8 transferred.

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

10 In addition to use of the Navajo Nation Municipal
11 Pipeline to convey the Animas-La Plata Project water of
12 the Nation, the Nation may use the Navajo Nation Munic-
13 ipal Pipeline to convey water for other purposes (including
14 purposes relating to the Project).

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

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

21 (b) WELLS IN THE SAN JUAN RIVER BASIN.—In ac-
22 cordance with the conjunctive groundwater development
23 plan, the Secretary may construct or rehabilitate wells and
24 related pipeline facilities to provide capacity for the diver-
25 sion and distribution of not more than 1,670 acre-feet of

1 groundwater in the San Juan River Basin in the State
2 of New Mexico for municipal and domestic uses.

3 (c) WELLS IN THE LITTLE COLORADO AND RIO
4 GRANDE BASINS.—

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

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

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

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

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

23 (d) ACQUISITION OF LAND.—

24 (1) IN GENERAL.—Except as provided in para-
25 graph (2), the Secretary may acquire any land or in-

1 terest in land that is necessary for the construction,
2 operation, and maintenance of the wells and related
3 pipeline facilities authorized under subsections (b)
4 and (c).

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

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

12 (f) CONVEYANCE OF WELLS.—

13 (1) IN GENERAL.—The Secretary shall enter
14 into an agreement with the Nation to convey to the
15 Nation—

16 (A) any well or related pipeline facility
17 constructed or rehabilitated under subsections
18 (a) and (b) after the wells and related facilities
19 have been completed; and

20 (B) any land or interest in land acquired
21 by the United States for the construction, oper-
22 ation, and maintenance of the well or related
23 pipeline facility.

24 (2) OPERATION, MAINTENANCE, AND REPLACE-
25 MENT.—On completion of a conveyance under para-

1 graph (1), the Nation shall assume responsibility for
2 the operation, maintenance, and replacement of the
3 well or related pipeline facility conveyed.

4 (3) EFFECT OF CONVEYANCE.—The conveyance
5 to the Nation of the conjunctive use wells under
6 paragraph (1) shall not affect the application of the
7 Endangered Species Act of 1973 (16 U.S.C. 1531 et
8 seq.).

9 (g) USE OF PROJECT FACILITIES.—The capacities of
10 the treatment facilities, main pipelines, and lateral pipe-
11 lines of the Project authorized by section 302(b) may be
12 used to treat and convey groundwater to Nation commu-
13 nities if the Nation provides for payment of the operation,
14 maintenance, and replacement costs associated with the
15 use of the facilities or pipelines.

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

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

21 (a) REHABILITATION.—Subject to subsection (b), the
22 Secretary shall rehabilitate—

23 (1) the Fruitland-Cambridge Irrigation Project
24 to serve not more than 3,335 acres of land, which

1 shall be considered to be the total serviceable area
2 of the Project; and

3 (2) the Hogback-Cudei Irrigation Project to
4 serve not more than 8,830 acres of land, which shall
5 be considered to be the total serviceable area of the
6 Project.

7 (b) CONDITION.—The Secretary shall not commence
8 any construction activity relating to the rehabilitation of
9 the Fruitland-Cambridge Irrigation Project or the Hog-
10 back-Cudei Irrigation Project under subsection (a) until
11 the Secretary executes the Agreement.

12 (c) OPERATION, MAINTENANCE, AND REPLACEMENT
13 OBLIGATION.—Upon the date of completion of the reha-
14 bilitation, the Nation shall assume the obligations for the
15 operation, maintenance, and replacement of each facility
16 rehabilitated under this section.

17 **SEC. 308. OTHER IRRIGATION PROJECTS.**

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

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

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

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

10 (c) COST-SHARING.—

11 (1) FEDERAL SHARE.—The Federal share of
12 the total cost of carrying out a project under sub-
13 section (b) shall be not more than 50 percent.

14 (2) FORM.—The non-Federal share required
15 under paragraph (1) may be in the form of in-kind
16 contributions, including the contribution of any valu-
17 able asset or service that the Secretary determines
18 would substantially contribute to a project carried
19 out under subsection (b).

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

1 **SEC. 309. AUTHORIZATION OF APPROPRIATIONS.**

2 (a) AUTHORIZATION OF APPROPRIATIONS FOR
3 NORTHWESTERN NEW MEXICO RURAL WATER SUPPLY
4 PROJECT.—

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

9 (2) ADJUSTMENTS.—The amount under para-
10 graph (1) shall be adjusted by such amounts as may
11 be required by reason of changes since 2005 in con-
12 struction costs, as indicated by engineering cost indi-
13 ces applicable to the types of construction involved.

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

19 (b) APPROPRIATIONS FOR CONJUNCTIVE USE
20 WELLS.—

21 (1) SAN JUAN WELLS.—There is authorized to
22 be appropriated to the Secretary for the construction
23 or rehabilitation of conjunctive use wells under sec-
24 tion 306(b) \$30,000,000, as adjusted under para-
25 graph (3), for the period of fiscal years 2008
26 through 2018.

1 (2) WELLS IN THE LITTLE COLORADO AND RIO
 2 GRANDE BASINS.—There is authorized to be appro-
 3 priated to the Secretary for the construction or reha-
 4 bilitation of conjunctive use wells under section
 5 306(c) such sums as are necessary for the period of
 6 fiscal years 2008 through 2024.

7 (3) ADJUSTMENTS.—The amount under para-
 8 graph (1) shall be adjusted by such amounts as may
 9 be required by reason of changes since 2004 in con-
 10 struction costs, as indicated by engineering cost indi-
 11 ces applicable to the types of construction or reha-
 12 bilitation involved.

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

16 (5) USE.—In addition to the uses authorized
 17 under paragraphs (1) and (2), amounts made avail-
 18 able under that paragraph may be used for the con-
 19 duct of related activities to comply with Federal en-
 20 vironmental laws.

21 (c) SAN JUAN RIVER IRRIGATION PROJECTS.—

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

24 (A) to carry out section 307(a)(1), not
 25 more than \$7,700,000, as adjusted under para-

1 graph (2), for the period of fiscal years 2008
2 through 2014; and

3 (B) to carry out section 307(a)(2), not
4 more than \$15,400,000, as adjusted under
5 paragraph (2), for the period of fiscal years
6 2008 through 2017.

7 (2) ADJUSTMENT.—The amounts made avail-
8 able under paragraph (1) shall be adjusted by such
9 amounts as may be required by reason of changes
10 since January 1, 2004, in construction costs, as in-
11 dicated by engineering cost indices applicable to the
12 types of construction involved in the rehabilitation.

13 (3) NONREIMBURSABLE EXPENDITURES.—
14 Amounts made available under this subsection shall
15 be nonreimbursable to the United States.

16 (d) OTHER IRRIGATION PROJECTS.—There are au-
17 thorized to be appropriated to the Secretary to carry out
18 section 308 \$11,000,000 for the period of fiscal years
19 2008 through 2017.

20 (e) CULTURAL RESOURCES.—

21 (1) IN GENERAL.—The Secretary may use not
22 more than 4 percent of amounts made available
23 under subsections (a) and (b) for the survey, recov-
24 ery, protection, preservation, and display of archae-

1 ological resources in the area of a Project facility or
2 conjunctive use well.

3 (2) NONREIMBURSABLE EXPENDITURES.—Any
4 amounts made available under paragraph (1) shall
5 be nonreimbursable and nonreturnable to the United
6 States.

7 (f) FISH AND WILDLIFE FACILITIES.—

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

17 (2) NONREIMBURSABLE EXPENDITURES.—Any
18 amounts expended under paragraph (1) shall be
19 nonreimbursable and nonreturnable to the United
20 States.

21 **TITLE IV—NAVAJO NATION** 22 **WATER RIGHTS**

23 **SEC. 401. AGREEMENT.**

24 (a) AGREEMENT APPROVAL.—

1 (1) APPROVAL BY CONGRESS.—Except to the
2 extent that any provision of the Agreement conflicts
3 with this Act, Congress approves, ratifies, and incor-
4 porates by reference the Agreement (including any
5 amendments to the Agreement that are executed to
6 make the Agreement consistent with this Act).

7 (2) EXECUTION BY SECRETARY.—The Sec-
8 retary, acting on behalf of the United States, shall
9 enter into the Agreement to the extent that the
10 Agreement does not conflict with this Act, includ-
11 ing—

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

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

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

21 (4) ADMINISTRATION OF NAVAJO RESERVOIR
22 RELEASES.—The State of New Mexico may admin-
23 ister releases of stored water from Navajo Reservoir
24 in accordance with subparagraph 9.1 of the Agree-
25 ment.

(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:

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

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

(D) TERMS, CONDITIONS, AND LIMITATIONS.—The diversion and use of water under

1 the Contract shall be subject to and consistent
2 with the terms, conditions, and limitations of
3 the Agreement, this Act, and any other applica-
4 ble law.

5 (2) AMENDMENTS TO CONTRACT.—The Sec-
6 retary, with the consent of the Nation, may amend
7 the Contract if the Secretary determines that the
8 amendment is—

9 (A) consistent with the Agreement; and

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

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

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

18 (i) the depletion of water does not ex-
19 ceed the quantities described in paragraph
20 (1); and

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

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

10 (i) the change or transfer is subject to
11 and consistent with the terms of the
12 Agreement, the Partial Final Decree de-
13 scribed in paragraph 3.0 of the Agreement,
14 the Contract, and any other applicable law;
15 and

16 (ii) a change or transfer of water use
17 by the Nation does not alter any obligation
18 of the United States, the Nation, or an-
19 other party to pay or repay project con-
20 struction, operation, maintenance, or re-
21 placement costs under this Act and the
22 Contract.

23 (c) SUBCONTRACTS.—

24 (1) IN GENERAL.—

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

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

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

17 (D) DEADLINE.—The Secretary shall ap-
18 prove or disapprove a subcontract submitted to
19 the Secretary under subparagraph (C) not later
20 than the later of—

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

1 (ii) the date that is 60 days after the
2 date on which a subcontractor complies
3 with—

4 (I) section 102(2)(C) of the Na-
5 tional Environmental Policy Act of
6 1969 (42 U.S.C. 4332(2)(C)); and

7 (II) any other requirement of
8 Federal law.

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

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

18 (2) ALIENATION.—

19 (A) PERMANENT ALIENATION.—The Na-
20 tion shall not permanently alienate any right
21 granted to the Nation under the Contract.

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

1 (3) NONINTERCOURSE ACT COMPLIANCE.—This
2 subsection—

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

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

8 (4) FORFEITURE.—The nonuse of the water
9 supply secured by a subcontractor of the Nation
10 under this subsection shall not result in forfeiture,
11 abandonment, relinquishment, or other loss of any
12 part of a right decreed to the Nation under the Con-
13 tract or this section.

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

18 (d) WATER LEASES NOT REQUIRING SUB-
19 CONTRACTS.—

20 (1) AUTHORITY OF NATION.—

21 (A) IN GENERAL.—The Nation may lease,
22 contract, or otherwise transfer to another party
23 or to another purpose or place of use in the
24 State of New Mexico (on or off land that is held
25 by the United States in trust for the Nation or

1 a member of the Nation or held in fee by the
 2 Nation) a water right that—

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

5 (ii) is not subject to the Contract.

6 (B) COMPLIANCE WITH OTHER LAW.—In
 7 carrying out an action under this subsection,
 8 the Nation shall comply with the Agreement,
 9 the Partial Final Decree described in paragraph
 10 3.0 of the Agreement, the Supplemental Partial
 11 Final Decree described in paragraph 4.0 of the
 12 Agreement, and any other applicable law.

13 (2) ALIENATION; MAXIMUM TERM.—

14 (A) ALIENATION.—The Nation shall not
 15 permanently alienate any right granted to the
 16 Nation under the Agreement.

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

21 (3) NONINTERCOURSE ACT COMPLIANCE.—This
 22 subsection—

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

1 (B) is deemed to fulfill any requirement
2 that may be imposed by the provisions of sec-
3 tion 2116 of the Revised Statutes (25 U.S.C.
4 177).

5 (4) FORFEITURE.—The nonuse of a water right
6 of the Nation by a lessee or contractor to the Nation
7 under this subsection shall not result in forfeiture,
8 abandonment, relinquishment, or other loss of any
9 part of a right decreed to the Nation under the Con-
10 tract or this section.

11 (e) HYDROGRAPHIC SURVEY.—

12 (1) PREPARATION.—The Secretary, on behalf of
13 the United States, shall prepare a hydrographic sur-
14 vey under the joint supervision of the Secretary and
15 the State of New Mexico (acting through the New
16 Mexico State Engineer) to identify and quantify any
17 historic or existing diversion or use of water (includ-
18 ing from surface water and underground water
19 sources) by the Nation or a member of the Nation
20 from the San Juan River Basin in the State of New
21 Mexico, as described in subparagraph 4.2 of the
22 Agreement.

23 (2) AUTHORIZATION OF APPROPRIATIONS.—

24 (A) IN GENERAL.—Subject to subpara-
25 graph (B), there is authorized to be appro-

1 priorated to the Bureau of Indian Affairs to carry
2 out paragraph (1) \$5,000,000 for the period of
3 fiscal years 2008 through 2013.

4 (B) ADJUSTMENT.—The amounts made
5 available under subparagraph (A) shall be ad-
6 justed by such amounts as are necessary to ac-
7 count for increases in the costs of preparing a
8 hydrographic survey after January 1, 2004, as
9 determined using cost indices applicable to the
10 types of technical and engineering work in-
11 volved in preparing the hydrographic survey.

12 (C) NONREIMBURSABLE EXPENDI-
13 TURES.—Any amounts made available under
14 this paragraph shall be nonreimbursable to the
15 United States.

16 (f) NULLIFICATION.—

17 (1) DEADLINES.—

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

21 (i) AGREEMENT.—Not later than De-
22 cember 31, 2008, the Secretary shall exe-
23 cute the Agreement.

1 (ii) CONTRACT.—Not later than De-
2 cember 31, 2009, the Secretary and the
3 Nation shall execute the Contract.

4 (iii) PARTIAL FINAL DECREE.—Not
5 later than December 31, 2012, the court in
6 the stream adjudication shall have entered
7 the Partial Final Decree described in para-
8 graph 3.0 of the Agreement.

9 (iv) HYDROGRAPHIC SURVEY.—Not
10 later than December 31, 2013, the Sec-
11 retary shall complete the hydrographic sur-
12 vey described in subsection (e).

13 (v) FRUITLAND-CAMBRIDGE IRRIGA-
14 TION PROJECT.—Not later than December
15 31, 2014, the rehabilitation construction of
16 the Fruitland-Cambridge Irrigation Project
17 authorized under section 307(a)(1) shall be
18 completed.

19 (vi) SUPPLEMENTAL PARTIAL FINAL
20 DECREE.—Not later than December 31,
21 2015, the court in the stream adjudication
22 shall enter the Supplemental Partial Final
23 Decree described in subparagraph 4.0 of
24 the Agreement.

1 (vii) HOGBACK-CUDEI IRRIGATION
2 PROJECT.—Not later than December 31,
3 2017, the rehabilitation construction of the
4 Hogback-Cudei Irrigation Project author-
5 ized under section 307(a)(2) shall be com-
6 pleted.

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

11 (ix) CONJUNCTIVE WELLS.—Not later
12 than December 31, 2018, the funds au-
13 thorized to be appropriated under section
14 309(b)(1) for the conjunctive use wells au-
15 thorized under section 306(b) should be
16 appropriated.

17 (x) NORTHWESTERN NEW MEXICO
18 RURAL WATER SUPPLY PROJECT.—Not
19 later than December 31, 2022, the con-
20 struction of all Project facilities shall be
21 completed.

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

1 through the New Mexico Interstate Stream
2 Commission) agree that an extension is reason-
3 ably necessary.

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

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

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

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

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

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

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

3 (3) CONDITIONS NOT CAUSING NULLIFICATION
4 OF SETTLEMENT.—

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

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

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

14 (ii) A failure—

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

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

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

23 (IV) to construct and operate a
24 lateral facility to deliver water to a

1 community of the Nation in Arizona,
2 under the Project.

3 (4) RIGHTS OF THE NATION.—A tribal right
4 under the Contract, a water right adjudicated con-
5 sistent with the Contract in the stream adjudication
6 by the Partial Final Decree described in paragraph
7 3.0 of the Agreement, and any other tribal water
8 right stipulated, adjudicated, or decreed as described
9 in the Agreement and this Act shall be held in trust
10 by the United States in perpetuity for the benefit of
11 the Nation.

12 (g) EFFECT ON RIGHTS OF INDIAN TRIBES.—

13 (1) IN GENERAL.—Except as provided in para-
14 graph (2), nothing in the Agreement, the Contract,
15 or this section quantifies or adversely affects the
16 land and water rights, or claims or entitlements to
17 water, of any Indian tribe or community other than
18 the rights, claims, or entitlements of the Nation in,
19 to, and from the San Juan River Basin in the State
20 of New Mexico.

21 (2) EXCEPTION.—The right of the Nation to
22 use water under water rights the Nation has in
23 other river basins in the State of New Mexico shall
24 be forborne to the extent that the Nation supplies
25 the uses for which the water rights exist by diver-

1 sions of water from the San Juan River Basin under
2 the Project consistent with subparagraph 9.13 of the
3 Agreement.

4 **SEC. 402. TRUST FUND.**

5 (a) ESTABLISHMENT.—There is established in the
6 Treasury a fund to be known as the “Navajo Nation
7 Water Resources Development Trust Fund”, consisting
8 of—

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

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

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

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

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

23 (c) MANAGEMENT.—The Secretary shall manage the
24 Trust Fund, invest amounts in the Trust Fund, and make
25 amounts available from the Trust Fund for distribution

1 to the Nation in accordance with the American Indian
2 Trust Fund Management Reform Act of 1994 (25 U.S.C.
3 4001 et seq.).

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

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

8 (2) the first section of the Act of June 24,
9 1938 (25 U.S.C. 162a); and

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

12 (e) CONDITIONS FOR EXPENDITURES AND WITH-
13 DRAWALS.—

14 (1) TRIBAL MANAGEMENT PLAN.—

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

22 (B) REQUIREMENTS.—In addition to any
23 requirements under the American Indian Trust
24 Fund Management Reform Act of 1994 (25
25 U.S.C. 4001 et seq.), the tribal management

1 plan shall require that the Nation only use
2 amounts in the Trust Fund for the purposes
3 described in subsection (b), including the identi-
4 fication of water conservation measures to be
5 implemented in association with the agricultural
6 water use of the Nation.

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

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

16 (4) EXPENDITURE PLAN.—

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

23 (B) DESCRIPTION.—The expenditure plan
24 shall describe the manner in which, and the

1 purposes for which, funds of the Nation remain-
2 ing in the Trust Fund will be used.

3 (C) APPROVAL.—On receipt of an expendi-
4 ture plan under subparagraph (A), the Sec-
5 retary shall approve the plan if the Secretary
6 determines that the plan is reasonable and con-
7 sistent with this Act.

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

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

15 (7) CONDITIONS.—Any amount authorized to
16 be appropriated to the Trust Fund under subsection
17 (f) shall not be available for expenditure or with-
18 drawal—

19 (A) before December 31, 2018; and

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

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

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

4 (f) AUTHORIZATION OF APPROPRIATIONS.—There is
5 authorized to be appropriated for deposit in the Trust
6 Fund—

7 (1) \$6,000,000 for each of fiscal years 2008
8 through 2012; and

9 (2) \$4,000,000 for each of fiscal years 2013
10 through 2017.

11 **SEC. 403. WAIVERS AND RELEASES.**

12 (a) EXECUTION.—The Nation, on behalf of itself and
13 members of the Nation (other than members in their ca-
14 pacity as allottees), and the United States, acting through
15 the Secretary and in its capacity as trustee for the Nation,
16 shall execute waivers and releases in accordance with
17 paragraph 7.0 of the Agreement.

18 (b) RESERVATION.—Notwithstanding subsection (a),
19 the Nation and its members (including members in their
20 capacity as allottees) and the United States, as trustee
21 for the Nation and allottees, shall retain the rights and
22 claims specified in paragraph 7.0 of the Agreement.

23 (c) EFFECTIVE DATE.—

24 (1) IN GENERAL.—The waivers and releases de-
25 scribed in subsection (a) shall be effective on the

1 date on which the Secretary publishes in the Federal
2 Register a statement of findings documenting that
3 each of the deadlines described in section 401(f)(1)
4 have been met.

5 (2) DEADLINE.—If the deadlines in section
6 401(f)(1)(A) have not been met by the later of
7 March 1, 2023, or the date of any extension under
8 section 401(f)(1)(B)—

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

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

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