

## Calendar No. 987

110TH CONGRESS  
2D SESSION

# S. 2805

To direct the Secretary of the Interior, acting through the Commissioner of Reclamation, to assess the irrigation infrastructure of the Rio Grande Pueblos in the State of New Mexico and provide grants to, and enter into cooperative agreements with, the Rio Grande Pueblos to repair, rehabilitate, or reconstruct existing infrastructure, and for other purposes.

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### IN THE SENATE OF THE UNITED STATES

APRIL 2, 2008

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

SEPTEMBER 16, 2008

Reported by Mr. BINGAMAN, with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

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# A BILL

To direct the Secretary of the Interior, acting through the Commissioner of Reclamation, to assess the irrigation infrastructure of the Rio Grande Pueblos in the State of New Mexico and provide grants to, and enter into cooperative agreements with, the Rio Grande Pueblos to repair, rehabilitate, or reconstruct existing infrastructure, 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,*

3   **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “*Rio Grande Pueblos*  
5   *Irrigation Infrastructure Improvement Act*”.

6   **SEC. 2. FINDINGS AND PURPOSE.**

7       (a) **FINDINGS.**—Congress finds that—

8           (1) drought, population increases, and environ-  
9       mental needs are exacerbating water supply issues  
10      across the western United States, including the Rio  
11      Grande Basin in New Mexico;

12           (2) a report developed by the Bureau of Ree-  
13       lamation and the Bureau of Indian Affairs in 2000  
14       identified a serious need for the rehabilitation and  
15       repair of irrigation infrastructure of the Rio Grande  
16       Pueblos;

17           (3) inspection of existing irrigation infrastruc-  
18       ture of the Rio Grande Pueblos shows that many  
19       key facilities, such as diversion structures and main  
20       conveyance ditches, are unsafe and barely, if at all,  
21       operable;

22           (4) the benefits of rehabilitating and repairing  
23       irrigation infrastructure of the Rio Grande Pueblos  
24       include—

25               (A) water conservation;

7               (5) certain Indian Pueblos in the Rio Grande  
8 Basin receive water from facilities operated or owned  
9 by the Bureau of Reclamation; and

10 (6) rehabilitation and repair of irrigation infra-  
11 structure of the Rio Grande Pueblos would im-  
12 prove—

13 (A) overall water management by the Bu-  
14 reau of Reclamation; and

15 (B) the ability of the Bureau of Reclama-  
16 tion to help address potential water supply con-  
17 flicts in the Rio Grande Basin.

18 (b) PURPOSE.—The purpose of this Act is to direct  
19 the Secretary—

20 (1) to assess the condition of the irrigation in-  
21 frastructure of the Rio Grande Pueblos.

#### 4 SEC. 3. DEFINITIONS.

5 In this Act:

10 (5) RIO GRANDE BASIN.—The term "Rio  
11 Grande Basin" means the headwaters of the Rio  
12 Chama and the Rio Grande Rivers (including any  
13 tributaries) from the State line between Colorado  
14 and New Mexico downstream to the elevation cor-  
15 responding with the spillway crest of Elephant Butte  
16 Dam at 4,457.3 feet mean sea level.

(6) RÍO GRANDE PUEBLO.—The term “Río Grande Pueblo” means any of the 18 Pueblos that—

19 (A) occupy land in the Rio Grande Basin;  
20 and

(B) are included on the list of federally recognized Indian tribes published by the Secretary in accordance with section 104 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 479a-1).

(9) SPECIAL PROJECT.—The term “special project” has the meaning given the term in the 2004 Agreement.

11 (10) STATE.—The term “State” means the  
12 State of New Mexico.

## 13 SEC. 4. IRRIGATION INFRASTRUCTURE STUDY.

14 (a) STUDY.—

19 (A) conduct a study of Pueblo irrigation  
20 infrastructure; and

(B) based on the results of the study, develop a list of projects (including a cost estimate for each project), that are recommended to be implemented over a 10-year period to re-

1 pair, rehabilitate, or reconstruct Pueblo irriga-  
2 tion infrastructure.

3 (2) REQUIRED CONSENT.—The Secretary shall  
4 carry out paragraph (1) with the consent of each  
5 Pueblo that notifies the Secretary of the intention of  
6 the Pueblo to participate in—

7 (A) the conduct of the study under para-  
8 graph (1)(A); and

9 (B) the development of the list of projects  
10 under paragraph (1)(B).

11 (b) PRIORITY.—

12 (1) CONSIDERATION OF FACTORS.—

13 (A) IN GENERAL.—In developing the list of  
14 projects under subsection (a)(1)(B), the Sec-  
15 retary shall—

16 (i) consider each of the factors de-  
17 scribed in paragraph (2); and

18 (ii) prioritize the projects re-  
19 commended for implementation based on—

20 (I) a review of each of the fac-  
21 tors; and

22 (II) a consideration of the pro-  
23 jected benefits of the project on com-  
24 pletion of the project.

5 (2) FACTORS.—The factors referred to in para-  
6 graph (1) are—

7 (A)(i) the extent of disrepair of the Pueblo  
8 irrigation infrastructure; and

13 (B) whether, and the extent that, the re-  
14 pair, rehabilitation, or reconstruction of the  
15 Pueblo irrigation infrastructure would provide  
16 an opportunity to conserve water;

17 (C)(i) the economic and cultural impacts  
18 that the Pueblo irrigation infrastructure that is  
19 in disrepair has on the applicable Rio Grande  
20 Pueblo; and

21 (ii) the economic and cultural benefits that  
22 the repair, rehabilitation, or reconstruction of  
23 the Pueblo irrigation infrastructure would have  
24 on the applicable Rio Grande Pueblo;

(E) the overall benefits of the project to efficient water operations on the land of the applicable Rio Grande Pueblo.

9       (e) CONSULTATION.—In developing the list of  
10 projects under subsection (a)(1)(B), the Secretary shall  
11 consult with the Director of the Bureau of Indian Affairs  
12 (including the designated engineer with respect to each  
13 proposed project that affects the Six Middle Rio Grande  
14 Pueblos), the Chief of the Natural Resources Conservation  
15 Service, and the Chief of Engineers to evaluate the extent  
16 to which programs under the jurisdiction of the respective  
17 agencies may be used—

21 (2) to implement—

22 (A) a project recommended for implemen-  
23 tation under subsection (a)(1)(B); or

(B) any other related project (including on-farm improvements) that may be appro-

5 (d) REPORT.—Not later than 18 months after the  
6 date of enactment of this Act, the Secretary shall submit  
7 to the Committee on Energy and Natural Resources of  
8 the Senate and the Committee on Resources of the House  
9 of Representatives a report that includes—

10 (1) the list of projects recommended for imple-  
11 ments under subsection (a)(1)(B); and

12 (2) any findings of the Secretary with respect  
13 to—

14 (A) the study conducted under subsection  
15 (a)(1)(A);

16 (B) the consideration of the factors under  
17 subsection (b)(2); and

18 (C) the consultations under subsection (e).

19 (e) BIENNIAL REVIEW.—Not later than 2 years after  
20 the date on which the Secretary submits the report under  
21 subsection (d) and biennially thereafter, the Secretary, in  
22 consultation with each Rio Grande Pueblo, shall—

23 (1) review the report submitted under sub-  
24 section (d); and

## 5 SEC. 5. IRRIGATION INFRASTRUCTURE GRANTS.

6 (a) IN GENERAL.—The Secretary may provide grants  
7 to, and enter into cooperative agreements with, the Rio  
8 Grande Pueblos to plan, design, construct, or otherwise  
9 implement projects to repair, rehabilitate, reconstruct, or  
10 replace Pueblo irrigation infrastructure that are re-  
11 commended for implementation under section 4(a)(1)(B)—

12 (1) to increase water use efficiency and agricultural  
13 productivity for the benefit of a Rio Grande  
14 Pueblo;

15 (2) to conserve water; or

16 (3) to otherwise enhance water management or  
17 help avert water supply conflicts in the Rio Grande  
18 Basin.

19 (b) **LIMITATION.**—Assistance provided under sub-  
20 section (a) shall not be used for—

(1) the repair, rehabilitation, or reconstruction of any major impoundment structure;

23 (2) any on-farm improvements; or

1 Grande Pueblo land that has not been historically ir-  
2 rigated.

3 (e) CONSULTATION.—In carrying out a project under  
4 subsection (a), the Secretary shall—

5 (1) consult with, and obtain the approval of, the  
6 applicable Rio Grande Pueblo;

7 (2) consult with the Director of the Bureau of  
8 Indian Affairs; and

9 (3) as appropriate, coordinate the project with  
10 any work being conducted under the irrigation oper-  
11 ations and maintenance program of the Bureau of  
12 Indian Affairs.

13 (d) COST-SHARING REQUIREMENT.—

14 (1) FEDERAL SHARE.—

15 (A) IN GENERAL.—Except as provided in  
16 subparagraph (B), the Federal share of the  
17 total cost of carrying out a project under sub-  
18 section (a) shall be not more than 75 percent.

19 (B) EXCEPTION.—The Secretary may  
20 waive or limit the non-Federal share required  
21 under subparagraph (A) if the Secretary deter-  
22 mines, based on a demonstration of financial  
23 hardship by the Rio Grande Pueblo, that the  
24 Rio Grande Pueblo is unable to contribute the  
25 required non-Federal share.

## 1                   (2) DISTRICT CONTRIBUTIONS.—

2                   (A) IN GENERAL.—The Secretary may ac-  
3                   cept from the District a partial or total con-  
4                   tribution toward the non-Federal share required  
5                   for a project carried out under subsection (a)  
6                   on land located in any of the Six Middle Rio  
7                   Grande Pueblos if the Secretary determines  
8                   that the project is a special project.

9                   (B) LIMITATION.—Nothing in subparagraph  
10                   (A) requires the District to contribute to  
11                   the non-Federal share of the cost of a project  
12                   carried out under subsection (a).

## 13                   (3) STATE CONTRIBUTIONS.—

14                   (A) IN GENERAL.—The Secretary may ac-  
15                   cept from the State a partial or total contribu-  
16                   tion toward the non-Federal share for a project  
17                   carried out under subsection (a).

18                   (B) LIMITATION.—Nothing in subparagraph  
19                   (A) requires the State to contribute to  
20                   the non-Federal share of the cost of a project  
21                   carried out under subsection (a).

22                   (4) FORM OF NON-FEDERAL SHARE.—The non-  
23                   Federal share under paragraph (1)(A) may be in the  
24                   form of in-kind contributions, including the contribu-  
25                   tion of any valuable asset or service that the Sec-

1       retary determines would substantially contribute to a  
2       project carried out under subsection (a).

(e) OPERATION AND MAINTENANCE.—The Secretary  
may not use any amount made available under section  
8(b) to carry out the operation or maintenance of any  
project carried out under subsection (a).

7 SEC. 6. EFFECT ON EXISTING AUTHORITY AND RESPON-  
8 SIBILITIES.

9      ~~Nothing in this Act~~—

10 (1) affects any existing project-specific funding  
11 authority; or

18 SEC. 7. EFFECT ON PUEBLO WATER RIGHTS OR STATE  
19 WATER LAW

20 (a) PUEBLO WATER RIGHTS.—Nothing in this Act  
21 (including the implementation of any project carried out  
22 in accordance with this Act) affects the right of any Pueb-  
23 lo to receive, divert, store, or claim a right to water, in-  
24 cluding the priority of right and the quantity of water as-  
25 sociated with the water right under Federal or State law.

1       (b) STATE WATER LAW.—Nothing in this Act pre-  
2 empts or affects—  
3           (1) State water law; or  
4           (2) an interstate compact governing water.

5 **SEC. 8. AUTHORIZATION OF APPROPRIATIONS.**

6       (a) STUDY.—There is authorized to be appropriated  
7 to carry out section 4 \$4,000,000.  
8       (b) PROJECTS.—There is authorized to be appro-  
9 priated to carry out section 5 \$6,000,000 for each of fiscal  
10 years 2010 through 2019.

11 **SECTION 1. SHORT TITLE.**

12       *This Act may be cited as the “Rio Grande Pueblos Ir-  
13 rigation Infrastructure Improvement Act”.*

14 **SEC. 2. FINDINGS AND PURPOSE.**

15       (a) FINDINGS.—Congress finds that—

16           (1) drought, population increases, and environ-  
17 mental needs are exacerbating water supply issues  
18 across the western United States, including the Rio  
19 Grande Basin in New Mexico;

20           (2) a report developed by the Bureau of Rec-  
21 lamation and the Bureau of Indian Affairs in 2000  
22 identified a serious need for the rehabilitation and re-  
23 pair of irrigation infrastructure of the Rio Grande  
24 Pueblos;

21 (A) overall water management by the Bu-  
22 reau of Reclamation; and

(B) the ability of the Bureau of Reclamation to help address potential water supply conflicts in the Rio Grande Basin.

1       (b) *PURPOSE.*—The purpose of this Act is to direct the  
2   Secretary—

3               (1) to assess the condition of the irrigation infra-  
4   structure of the Rio Grande Pueblos;

5               (2) to establish priorities for the rehabilitation of  
6   irrigation infrastructure of the Rio Grande Pueblos  
7   in accordance with specified criteria; and

8               (3) to implement projects to rehabilitate and im-  
9   prove the irrigation infrastructure of the Rio Grande  
10   Pueblos.

11 **SEC. 3. DEFINITIONS.**

12       In this Act:

13               (1) *2004 AGREEMENT.*—The term “2004 Agree-  
14   ment” means the agreement entitled “Agreement By  
15   and Between the United States of America and the  
16   Middle Rio Grande Conservancy District, Providing  
17   for the Payment of Operation and Maintenance  
18   Charges on Newly Reclaimed Pueblo Indian Lands in  
19   the Middle Rio Grande Valley, New Mexico” and exe-  
20   cuted in September 2004 (including any successor  
21   agreements and amendments to the agreement).

22               (2) *DESIGNATED ENGINEER.*—The term “des-  
23   ignated engineer” means a Federal employee des-  
24   ignated under the Act of February 14, 1927 (69 Stat.  
25   1098, chapter 138) to represent the United States in

1       *any action involving the maintenance, rehabilitation,*  
2       *or preservation of the condition of any irrigation*  
3       *structure or facility on land located in the Six Middle*  
4       *Rio Grande Pueblos.*

5           (3) *DISTRICT.*—The term “District” means the  
6       *Middle Rio Grande Conservancy District, a political*  
7       *subdivision of the State established in 1925.*

8           (4) *PUEBLO IRRIGATION INFRASTRUCTURE.*—The  
9       *term “Pueblo irrigation infrastructure” means any*  
10       *diversion structure, conveyance facility, or drainage*  
11       *facility that is—*

12               (A) *in existence as of the date of enactment*  
13       *of this Act; and*

14               (B) *located on land of a Rio Grande Pueblo*  
15       *that is associated with—*

16                       (i) *the delivery of water for the irriga-*  
17       *tion of agricultural land; or*

18                       (ii) *the carriage of irrigation return*  
19       *flows and excess water from the land that is*  
20       *served.*

21           (5) *RIO GRANDE BASIN.*—The term “Rio Grande  
22       *Basin” means the headwaters of the Rio Chama and*  
23       *the Rio Grande Rivers (including any tributaries)*  
24       *from the State line between Colorado and New Mexico*  
25       *downstream to the elevation corresponding with the*

1       *spillway crest of Elephant Butte Dam at 4,457.3 feet*  
2       *mean sea level.*

3           (6) *RIO GRANDE PUEBLO.*—*The term “Rio*  
4       *Grande Pueblo” means any of the 18 Pueblos that—*

5               (A) *occupy land in the Rio Grande Basin;*  
6               *and*

7               (B) *are included on the list of federally rec-*  
8       *ognized Indian tribes published by the Secretary*  
9       *in accordance with section 104 of the Federally*  
10      *Recognized Indian Tribe List Act of 1994 (25*  
11      *U.S.C. 479a-1).*

12           (7) *SECRETARY.*—*The term “Secretary” means*  
13       *the Secretary of the Interior, acting through the Com-*  
14       *missioner of Reclamation.*

15           (8) *SIX MIDDLE RIO GRANDE PUEBLOS.*—*The*  
16       *term “Six Middle Rio Grande Pueblos” means each*  
17       *of the Pueblos of Cochiti, Santo Domingo, San Felipe,*  
18       *Santa Ana, Sandia, and Isleta.*

19           (9) *SPECIAL PROJECT.*—*The term “special*  
20       *project” has the meaning given the term in the 2004*  
21       *Agreement.*

22           (10) *STATE.*—*The term “State” means the State*  
23       *of New Mexico.*

24   **SEC. 4. IRRIGATION INFRASTRUCTURE STUDY.**

25       (a) *STUDY.*—

(B) based on the results of the study, develop a list of projects (including a cost estimate for each project), that are recommended to be implemented over a 10-year period to repair, rehabilitate, or reconstruct Pueblo irrigation infrastructure.

17 (A) the conduct of the study under para-  
18 graph (1)(A); and

(B) the development of the list of projects under paragraph (1)(B) with respect to the Pueblo.

22 (b) *PRIORITY.*—

## 23 (1) CONSIDERATION OF FACTORS.—

4 (i) consider each of the factors de-  
5 scribed in paragraph (2); and

6 (ii) prioritize the projects rec-  
7 ommended for implementation based on—

8 (I) a review of each of the factors;

9 *and*

(II) a consideration of the projected benefits of the project on completion of the project.

17                   (2) *FACTORS.—The factors referred to in para-*  
18                   *graph (1) are—*

19 (A)(i) the extent of disrepair of the Pueblo  
20 irrigation infrastructure; and

(B) whether, and the extent that, the repair, rehabilitation, or reconstruction of the Pueblo irrigation infrastructure would provide an opportunity to conserve water;

21 (c) *CONSULTATION.—In developing the list of projects*  
22 *under subsection (a)(1)(B), the Secretary shall consult with*  
23 *the Director of the Bureau of Indian Affairs (including the*  
24 *designated engineer with respect to each proposed project*  
25 *that affects the Six Middle Rio Grande Pueblos), the Chief*

1 of the Natural Resources Conservation Service, and the  
2 Chief of Engineers to evaluate the extent to which programs  
3 under the jurisdiction of the respective agencies may be  
4 used—

5 (1) to assist in evaluating projects to repair, re-  
6 habilitate, or reconstruct Pueblo irrigation infrastruc-  
7 ture; and

8 (2) to implement—

9 (A) a project recommended for implementa-  
10 tion under subsection (a)(1)(B); or

11 (B) any other related project (including on-  
12 farm improvements) that may be appropriately  
13 coordinated with the repair, rehabilitation, or re-  
14 construction of Pueblo irrigation infrastructure  
15 to improve the efficient use of water in the Rio  
16 Grande Basin.

17 (d) REPORT.—Not later than 2 years after the date  
18 of enactment of this Act, the Secretary shall submit to the  
19 Committee on Energy and Natural Resources of the Senate  
20 and the Committee on Resources of the House of Representa-  
21 tives a report that includes—

22 (1) the list of projects recommended for imple-  
23 mentation under subsection (a)(1)(B); and

24 (2) any findings of the Secretary with respect  
25 to—

6 (e) *PERIODIC REVIEW*.—Not later than 4 years after  
7 the date on which the Secretary submits the report under  
8 subsection (d) and every 4 years thereafter, the Secretary,  
9 in consultation with each *Rio Grande Pueblo*, shall—

10 (1) review the report submitted under subsection  
11 (d); and

## 16 SEC. 5. IRRIGATION INFRASTRUCTURE GRANTS.

17       (a) *IN GENERAL.*—The Secretary may provide grants  
18 to, and enter into contracts or other agreements with, the  
19 Rio Grande Pueblos to plan, design, construct, or otherwise  
20 implement projects to repair, rehabilitate, reconstruct, or  
21 replace Pueblo irrigation infrastructure that are rec-  
22 ommended for implementation under section 4(a)(1)(B)—  
23                   (1) to increase water use efficiency and agricul-  
24                   tural productivity for the benefit of a Rio Grande  
25                   Pueblo;

5           (b) *LIMITATION.*—Assistance provided under sub-  
6 section (a) shall not be used for—

7                   (1) the repair, rehabilitation, or reconstruction  
8 of any major impoundment structure; or  
9                   (2) any on-farm improvements.

10 (c) *CONSULTATION.—In carrying out a project under*  
11 *subsection (a), the Secretary shall—*

20 (d) COST-SHARING REQUIREMENT.—

21 (1) *FEDERAL SHARE*.—

8 (2) *DISTRICT CONTRIBUTIONS.*—

20 (3) *STATE CONTRIBUTIONS.*—

11           (e) *OPERATION AND MAINTENANCE.*—The Secretary  
12 may not use any amount made available under section 8(b)  
13 to carry out the operation or maintenance of any project  
14 carried out under subsection (a).

15 **SEC. 6. EFFECT ON EXISTING AUTHORITY AND RESPONSIBILITIES.**

17 *Nothing in this Act—*

18 (1) affects any existing project-specific funding  
19 authority; or

1 **SEC. 7. EFFECT ON PUEBLO WATER RIGHTS OR STATE**2 **WATER LAW.**

3       (a) *PUEBLO WATER RIGHTS.*—*Nothing in this Act*  
4 *(including the implementation of any project carried out*  
5 *in accordance with this Act) affects the right of any Pueblo*  
6 *to receive, divert, store, or claim a right to water, including*  
7 *the priority of right and the quantity of water associated*  
8 *with the water right under Federal or State law.*

9       (b) *STATE WATER LAW.*—*Nothing in this Act pre-*  
10 *empts or affects—*

11           (1) *State water law; or*  
12           (2) *an interstate compact governing water.*

13 **SEC. 8. AUTHORIZATION OF APPROPRIATIONS.**

14       (a) *STUDY.*—*There is authorized to be appropriated*  
15 *to carry out section 4 \$4,000,000.*

16       (b) *PROJECTS.*—*There is authorized to be appro-*  
17 *priated to carry out section 5 \$6,000,000 for each of fiscal*  
18 *years 2010 through 2019.*



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110<sup>TH</sup> CONGRESS  
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**A BILL**

To direct the Secretary of the Interior, acting through the Commissioner of Reclamation, to assess the irrigation infrastructure of the Rio Grande Pueblos in the State of New Mexico and provide grants to, and enter into cooperative agreements with, the Rio Grande Pueblos to repair, rehabilitate, or reconstruct existing infrastructure, and for other purposes.

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SEPTEMBER 16, 2008

Reported with an amendment