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111TH CONGRESS
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[Report No. 111-115]

To authorize the Secretary of the Interior, acting through the Commissioner of Reclamation, to develop water infrastructure in the Rio Grande Basin, and to approve the settlement of the water rights claims of the Pueblos of Nambe, Pojoaque, San Ildefonso, and Tesuque.

IN THE SENATE OF THE UNITED STATES

MAY 20, 2009

Mr. BINGAMAN (for himself and Mr. UDALL of New Mexico) introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

JANUARY 20, 2010

Reported by Mr. DORGAN, with amendments

[Omit the part struck through and insert the part printed in *italic*]

A BILL

To authorize the Secretary of the Interior, acting through the Commissioner of Reclamation, to develop water infrastructure in the Rio Grande Basin, and to approve the settlement of the water rights claims of the Pueblos of Nambe, Pojoaque, San Ildefonso, and Tesuque.

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; TABLE OF CONTENTS.**

2 (a) SHORT TITLE.—This Act may be cited as the
3 “Aamodt Litigation Settlement Act”.

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

Sec. 1. Short title; table of contents.

Sec. 2. Definitions.

TITLE I—POJOAQUE BASIN REGIONAL WATER SYSTEM

Sec. 101. Authorization of Regional Water System.

Sec. 102. Operating Agreement.

Sec. 103. Acquisition of Pueblo water supply for the Regional Water System.

Sec. 104. Delivery and allocation of Regional Water System capacity and water.

Sec. 105. Aamodt Settlement Pueblos’ Fund.

Sec. 106. Environmental compliance.

Sec. 107. Authorization of appropriations.

TITLE II—POJOAQUE BASIN INDIAN WATER RIGHTS
SETTLEMENT

Sec. 201. Settlement Agreement and contract approval.

Sec. 202. Environmental compliance.

Sec. 203. Conditions precedent and enforcement date.

Sec. 204. Waivers and releases.

Sec. 205. Effect.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

8 (1) AAMODT CASE.—The term “Aamodt Case”
9 means the civil action entitled State of New Mexico,
10 ex rel. State Engineer and United States of Amer-
11 ica, Pueblo de Nambe, Pueblo de Pojoaque, Pueblo
12 de San Ildefonso, and Pueblo de Tesuque v. R. Lee
13 Aamodt, et al., No. 66 CV 6639 MV/LCS (D.N.M.).

14 (2) ACRE-FEET.—The term “acre-feet” means
15 acre-feet of water per year.

1 (3) AUTHORITY.—The term “Authority” means
2 the Pojoaque Basin Regional Water Authority de-
3 scribed in section 9.5 of the Settlement Agreement
4 or an alternate entity acceptable to the Pueblos and
5 the County to operate and maintain the diversion
6 and treatment facilities, certain transmission pipe-
7 lines, and other facilities of the Regional Water Sys-
8 tem.

9 (4) CITY.—The term “City” means the city of
10 Santa Fe, New Mexico.

11 (5) COST-SHARING AND SYSTEM INTEGRATION
12 AGREEMENT.—The term “Cost-Sharing and System
13 Integration Agreement” means the agreement to be
14 executed by the United States, the State, the Pueb-
15 los, the County, and the City that—

16 (A) describes the location, capacity, and
17 management (including the distribution of
18 water to customers) of the Regional Water Sys-
19 tem; and

20 (B) allocates the costs of the Regional
21 Water System with respect to—

22 (i) the construction, operation, main-
23 tenance, and repair of the Regional Water
24 System;

1 (ii) rights-of-way for the Regional
2 Water System; and

3 (iii) the acquisition of water rights.

4 (6) COUNTY.—The term “County” means
5 Santa Fe County, New Mexico.

6 (7) COUNTY DISTRIBUTION SYSTEM.—The term
7 “County Distribution System” means the portion of
8 the Regional Water System that serves water cus-
9 tomers on non-Pueblo land in the Pojoaque Basin.

10 (8) COUNTY WATER UTILITY.—The term
11 “County Water Utility” means the water utility or-
12 ganized by the County to—

13 (A) receive water distributed by the Au-
14 thority; and

15 (B) provide the water received under sub-
16 paragraph (A) to customers on non-Pueblo land
17 in the Pojoaque Basin.

18 (9) ENGINEERING REPORT.—The term “Engi-
19 neering Report” means the report entitled
20 “Pojoaque Regional Water System Engineering Re-
21 port” dated September 2008 and any amendments
22 thereto, including any modifications which may be
23 required by section 101(d)(2).

1 (10) FUND.—The term “Fund” means the
2 Aamodt Settlement Pueblos’ Fund established by
3 section 105(a).

4 (11) OPERATING AGREEMENT.—The term “Op-
5 erating Agreement” means the agreement between
6 the Pueblos and the County executed under section
7 102(a).

8 (12) OPERATIONS, MAINTENANCE, AND RE-
9 PLACEMENT COSTS.—

10 (A) IN GENERAL.—The term “operations,
11 maintenance, and replacement costs” means all
12 costs for the operation of the Regional Water
13 System that are necessary for the safe, effi-
14 cient, and continued functioning of the Regional
15 Water System to produce the benefits described
16 in the Settlement Agreement.

17 (B) EXCLUSION.—The term “operations,
18 maintenance, and replacement costs” does not
19 include construction costs or costs related to
20 construction design and planning.

21 (13) POJOAQUE BASIN.—

22 (A) IN GENERAL.—The term “Pojoaque
23 Basin” means the geographic area limited by a
24 surface water divide (which can be drawn on a
25 topographic map), within which area rainfall

1 and runoff flow into arroyos, drainages, and
 2 named tributaries that eventually drain to—

3 (i) the Rio Pojoaque; or

4 (ii) the 2 unnamed arroyos imme-
 5 diately south; and

6 (iii) 2 arroyos (including the Arroyo
 7 Alamo) that are north of the confluence of
 8 the Rio Pojoaque and the Rio Grande.

9 (B) INCLUSION.—The term “Pojoaque
 10 Basin” includes the San Ildefonso Eastern Res-
 11 ervation recognized by section 8 of Public Law
 12 87–231 (75 Stat. 505).

13 (14) PUEBLO.—The term “Pueblo” means each
 14 of the pueblos of Nambe, Pojoaque, San Ildefonso,
 15 or Tesuque.

16 (15) PUEBLOS.—The term “Pueblos” means
 17 collectively the Pueblos of Nambe, Pojoaque, San
 18 Ildefonso, and Tesuque.

19 (16) PUEBLO LAND.—The term “Pueblo land”
 20 means any real property that is—

21 (A) held by the United States in trust for
 22 a Pueblo within the Pojoaque Basin;

23 (B)(i) owned by a Pueblo within the
 24 Pojoaque Basin before the date on which a
 25 court approves the Settlement Agreement; or

1 (ii) acquired by a Pueblo on or after the
2 date on which a court approves the Settlement
3 Agreement, if the real property is located—

4 (I) within the exterior boundaries of
5 the Pueblo, as recognized and conformed
6 by a patent issued under the Act of De-
7 cember 22, 1858 (11 Stat. 374, chapter
8 V); or

9 (II) within the exterior boundaries of
10 any territory set aside for the Pueblo by
11 law, executive order, or court decree;

12 (C) owned by a Pueblo or held by the
13 United States in trust for the benefit of a
14 Pueblo outside the Pojoaque Basin that is lo-
15 cated within the exterior boundaries of the
16 Pueblo as recognized and confirmed by a patent
17 issued under the Act of December 22, 1858 (11
18 Stat. 374, chapter V); or

19 (D) within the exterior boundaries of any
20 real property located outside the Pojoaque
21 Basin set aside for a Pueblo by law, executive
22 order, or court decree, if the land is within or
23 contiguous to land held by the United States in
24 trust for the Pueblo as of January 1, 2005.

25 (17) PUEBLO WATER FACILITY.—

1 (A) IN GENERAL.—The term “Pueblo
2 Water Facility” means—

3 (i) a portion of the Regional Water
4 System that serves only water customers
5 on Pueblo land; and

6 (ii) portions of a Pueblo water system
7 in existence on the date of enactment of
8 this Act that serve water customers on
9 non-Pueblo land, also in existence on the
10 date of enactment of this Act, or their suc-
11 cessors, that are—

12 (I) depicted in the final project
13 design, as modified by the drawings
14 reflecting the completed Regional
15 Water System; and

16 (II) described in the Operating
17 Agreement.

18 (B) INCLUSIONS.—The term “Pueblo
19 Water Facility” includes—

20 (i) the barrier dam and infiltration
21 project on the Rio Pojoaque described in
22 the Engineering Report; and

23 (ii) the Tesuque Pueblo infiltration
24 pond described in the Engineering Report.

25 (18) REGIONAL WATER SYSTEM.—

1 (A) IN GENERAL.—The term “Regional
2 Water System” means the Regional Water Sys-
3 tem described in section 101(a).

4 (B) EXCLUSIONS.—The term “Regional
5 Water System” does not include the County or
6 Pueblo water supply delivered through the Re-
7 gional Water System.

8 (19) SAN JUAN-CHAMA PROJECT.—The term
9 “San Juan-Chama Project” means the Project au-
10 thorized by section 8 of the Act of June 13, 1962
11 (76 Stat. 96, 97), and the Act of April 11, 1956 (70
12 Stat. 105).

13 (20) SAN JUAN-CHAMA PROJECT ACT.—The
14 term “San Juan-Chama Project Act” means sections
15 8 through 18 of the Act of June 13, 1962 (76 Stat.
16 96, 97).

17 (21) SECRETARY.—The term “Secretary”
18 means the Secretary of the Interior.

19 (22) SETTLEMENT AGREEMENT.—The term
20 “Settlement Agreement” means the stipulated and
21 binding agreement among the State, the Pueblos,
22 the United States, the County, and the City dated
23 January 19, 2006, and signed by all of the govern-
24 ment parties to the Settlement Agreement (other

1 than the United States) on May 3, 2006, and as
 2 amended in conformity with this Act.

3 (23) STATE.—The term “State” means the
 4 State of New Mexico.

5 **TITLE I—POJOAQUE BASIN**
 6 **REGIONAL WATER SYSTEM**

7 **SEC. 101. AUTHORIZATION OF REGIONAL WATER SYSTEM.**

8 (a) IN GENERAL.—The Secretary, acting through the
 9 Commissioner of Reclamation, shall plan, design, and con-
 10 struct a regional water system in accordance with the Set-
 11 tlement Agreement, to be known as the “Regional Water
 12 System”—

13 (1) to divert and distribute water to the Pueb-
 14 los and to the County Water Utility, in accordance
 15 with the Engineering Report; and

16 (2) that consists of—

17 (A) surface water diversion facilities at
 18 San Ildefonso Pueblo on the Rio Grande; and

19 (B) any treatment, transmission, storage
 20 and distribution facilities and wellfields for the
 21 County Distribution System and Pueblo Water
 22 Facilities that are necessary to supply 4,000
 23 acre-feet of water within the Pojoaque Basin,
 24 unless modified in accordance with subsection
 25 (d)(2).

1 (b) FINAL PROJECT DESIGN.—The Secretary shall
2 issue a final project design within 90 days of completion
3 of the environmental compliance described in section 106
4 for the Regional Water System that—

5 (1) is consistent with the Engineering Report;
6 and

7 (2) includes a description of any Pueblo Water
8 Facilities.

9 (c) ACQUISITION OF LAND; WATER RIGHTS.—

10 (1) ACQUISITION OF LAND.—Upon request, and
11 in exchange for the funding which shall be provided
12 in section 107(c), the Pueblos shall consent to the
13 grant of such easements and rights-of-way as may
14 be necessary for the construction of the Regional
15 Water System at no cost to the Secretary. To the
16 extent that the State or County own easements or
17 rights-of-way that may be used for construction of
18 the Regional Water System, the State or County
19 shall provide that land or interest in land as nec-
20 essary for construction at no cost to the Secretary.
21 The Secretary shall acquire any other land or inter-
22 est in land that is necessary for the construction of
23 the Regional Water System.

1 (2) WATER RIGHTS.—The Secretary shall not
2 condemn water rights for purposes of the Regional
3 Water System.

4 (d) CONDITIONS FOR CONSTRUCTION.—

5 (1) IN GENERAL.—The Secretary shall not
6 begin construction of the Regional Water System fa-
7 cilities until the date on which—

8 (A) the Secretary executes—

9 (i) the Settlement Agreement; and

10 (ii) the Cost-Sharing and System In-
11 tegration Agreement; and

12 (B) the State and the County have entered
13 into an agreement with the Secretary to con-
14 tribute the non-Federal share of the costs of the
15 construction in accordance with the Cost-Shar-
16 ing and System Integration Agreement.

17 (2) MODIFICATIONS TO REGIONAL WATER SYS-
18 TEM.—

19 (A) IN GENERAL.—The State and the
20 County, in agreement with the Pueblos, the
21 City, and other signatories to the Cost-Sharing
22 and System Integration Agreement, may modify
23 the extent, size, and capacity of the County
24 Distribution System as set forth in the Cost-
25 Sharing and System Integration Agreement.

1 (B) EFFECT.—A modification under sub-
2 paragraph (A)—

3 (i) shall not affect implementation of
4 the Settlement Agreement so long as the
5 provisions in section 203 are satisfied; and

6 (ii) may result in an adjustment of
7 the State and County cost-share allocation
8 as set forth in the Cost-Sharing and Sys-
9 tem Integration Agreement.

10 (e) APPLICABLE LAW.—The Indian Self-Determina-
11 tion and Education Assistance Act (25 U.S.C. 450 et seq.)
12 shall not apply to the design and construction of the Re-
13 gional Water System.

14 (f) CONSTRUCTION COSTS.—

15 ~~(1) PUEBLO WATER FACILITIES.—The costs of~~
16 ~~constructing the Pueblo Water Facilities, as deter-~~
17 ~~mined by the final project design and the Engineer-~~
18 ~~ing Report—~~

19 ~~(A) shall be at full Federal expense subject~~
20 ~~to the amount authorized in section 107(a)(1);~~
21 ~~and~~

22 ~~(B) shall be nonreimbursable to the United~~
23 ~~States.~~

24 ~~(2) COUNTY DISTRIBUTION SYSTEM.—The costs~~

25 ~~(1) PUEBLO WATER FACILITIES.—~~

1 (A) *IN GENERAL.*—*Except as provided in*
2 *subparagraph (B), the expenditures of the Sec-*
3 *retary to construct the Pueblo Water Facilities*
4 *under this section shall not exceed \$106,400,000.*

5 (B) *EXCEPTION.*—*The amount described in*
6 *subparagraph (A) shall be increased or de-*
7 *creased, as appropriate, based on ordinary fluc-*
8 *tuations in construction costs since October 1,*
9 *2006, as determined using applicable engineer-*
10 *ing cost indices.*

11 (2) *COSTS TO PUEBLO.*—*The costs incurred by*
12 *the Secretary in carrying out activities to construct*
13 *the Pueblo Water Facilities under this section shall*
14 *not be reimbursable to the United States.*

15 (3) *COUNTY DISTRIBUTION SYSTEM.*—*The costs*
16 *of constructing the County Distribution System shall*
17 *be at State and local expense.*

18 (g) *STATE AND LOCAL CAPITAL OBLIGATIONS.*—*The*
19 *State and local capital obligations for the Regional Water*
20 *System described in the Cost-Sharing and System Integra-*
21 *tion Agreement shall be satisfied on the payment of the*
22 *State and local capital obligations described in the Cost-*
23 *Sharing and System Integration Agreement.*

24 (h) *CONVEYANCE OF REGIONAL WATER SYSTEM FA-*
25 *CILITIES.*—

1 (1) IN GENERAL.—Subject to paragraph (2), on
2 completion of the construction of the Regional Water
3 System, the Secretary, in accordance with the Oper-
4 ating Agreement, shall convey to—

5 (A) each Pueblo the portion of any Pueblo
6 Water Facility that is located within the bound-
7 aries of the Pueblo, including any land or inter-
8 est in land located within the boundaries of the
9 Pueblo that is acquired by the United States
10 for the construction of the Pueblo Water Facil-
11 ity;

12 (B) the County the County Distribution
13 System, including any land or interest in land
14 acquired by the United States for the construc-
15 tion of the County Distribution System; and

16 (C) the Authority any portions of the Re-
17 gional Water System that remain after making
18 the conveyances under subparagraphs (A) and
19 (B), including any land or interest in land ac-
20 quired by the United States for the construc-
21 tion of the portions of the Regional Water Sys-
22 tem.

23 (2) CONDITIONS FOR CONVEYANCE.—The Sec-
24 retary shall not convey any portion of the Regional

1 Water System facilities under paragraph (1) until
2 the date on which—

3 (A) construction of the Regional Water
4 System is complete; and

5 (B) the Operating Agreement is executed
6 in accordance with section 102.

7 (3) SUBSEQUENT CONVEYANCE.—On convey-
8 ance by the Secretary under paragraph (1), the
9 Pueblos, the County, and the Authority shall not re-
10 convey any portion of the Regional Water System
11 conveyed to the Pueblos, the County, and the Au-
12 thority, respectively, unless the reconveyance is au-
13 thorized by an Act of Congress enacted after the
14 date of enactment of this Act.

15 (4) INTEREST OF THE UNITED STATES.—On
16 conveyance of a portion of the Regional Water Sys-
17 tem under paragraph (1), the United States shall
18 have no further right, title, or interest in and to the
19 portion of the Regional Water System conveyed.

20 (5) ADDITIONAL CONSTRUCTION.—On convey-
21 ance of a portion of the Regional Water System
22 under paragraph (1), the Pueblos, County, or the
23 Authority, as applicable, may, at the expense of the
24 Pueblos, County, or the Authority, construct any ad-

1 ditional infrastructure that is necessary to fully use
2 the water delivered by the Regional Water System.

3 (6) LIABILITY.—

4 (A) IN GENERAL.—Effective on the date of
5 conveyance of any land or facility under this
6 section, the United States shall not be held lia-
7 ble by any court for damages of any kind aris-
8 ing out of any act, omission, or occurrence re-
9 lating to the land and facilities conveyed, other
10 than damages caused by acts of negligence by
11 the United States, or by employees or agents of
12 the United States, prior to the date of convey-
13 ance.

14 (B) TORT CLAIMS.—Nothing in this sec-
15 tion increases the liability of the United States
16 beyond the liability provided in chapter 171 of
17 title 28, United States Code (commonly known
18 as the “Federal Tort Claims Act”).

19 (7) EFFECT.—Nothing in any transfer of own-
20 ership provided or any conveyance thereto as pro-
21 vided in this section shall extinguish the right of any
22 Pueblo, the County, or the Regional Water Author-
23 ity to the continuous use and benefit of each ease-
24 ment or right of way for the use, operation, mainte-
25 nance, repair, and replacement of Pueblo Water Fa-

1 facilities, the County Distribution System or the Re-
2 gional Water System or for wastewater purposes as
3 provided in the Cost-Sharing and System Integra-
4 tion Agreement.

5 **SEC. 102. OPERATING AGREEMENT.**

6 (a) IN GENERAL.—The Pueblos and the County shall
7 submit to the Secretary an executed Operating Agreement
8 for the Regional Water System that is consistent with this
9 Act, the Settlement Agreement, and the Cost-Sharing and
10 System Integration Agreement not later than 180 days
11 after the later of—

12 (1) the date of completion of environmental
13 compliance and permitting; or

14 (2) the date of issuance of a final project design
15 for the Regional Water System under section
16 101(b).

17 (b) APPROVAL.—Not later than 180 days after re-
18 ceipt of the operating agreement described in subsection
19 (a), the Secretary shall approve the Operating Agreement
20 upon determination that the Operating Agreement is con-
21 sistent with this Act, the Settlement Agreement, and the
22 Cost-Sharing and System Integration Agreement.

23 (c) CONTENTS.—The Operating Agreement shall in-
24 clude—

1 (1) provisions consistent with the Settlement
2 Agreement and the Cost-Sharing and System Inte-
3 gration Agreement and necessary to implement the
4 intended benefits of the Regional Water System de-
5 scribed in those documents;

6 (2) provisions for—

7 (A) the distribution of water conveyed
8 through the Regional Water System, including
9 a delineation of—

10 (i) distribution lines for the County
11 Distribution System;

12 (ii) distribution lines for the Pueblo
13 Water Facilities; and

14 (iii) distribution lines that serve
15 both—

16 (I) the County Distribution Sys-
17 tem; and

18 (II) the Pueblo Water Facilities;

19 (B) the allocation of the Regional Water
20 System capacity;

21 (C) the terms of use of unused water ca-
22 pacity in the Regional Water System;

23 (D) the construction of additional infra-
24 structure and the acquisition of associated
25 rights-of-way or easements necessary to enable

1 any of the Pueblos or the County to fully use
2 water allocated to the Pueblos or the County
3 from the Regional Water System, including pro-
4 visions addressing when the construction of
5 such additional infrastructure requires approval
6 by the Authority;

7 (E) the allocation and payment of annual
8 operation, maintenance, and replacement costs
9 for the Regional Water System, including the
10 portions of the Regional Water System that are
11 used to treat, transmit, and distribute water to
12 both the Pueblo Water Facilities and the Coun-
13 ty Water Utility;

14 (F) the operation of wellfields located on
15 Pueblo land;

16 (G) the transfer of any water rights nec-
17 essary to provide the Pueblo water supply de-
18 scribed in section 103(a);

19 (H) the operation of the Regional Water
20 System with respect to the water supply, includ-
21 ing the allocation of the water supply in accord-
22 ance with section 3.1.8.4.2 of the Settlement
23 Agreement so that, in the event of a shortage
24 of supply to the Regional Water System, the
25 supply to each of the Pueblos' and to the Coun-

1 ty's distribution system shall be reduced on a
2 prorata basis, in proportion to each distribution
3 system's most current annual use; and

4 (I) dispute resolution; and

5 (3) provisions for operating and maintaining
6 the Regional Water System facilities before and
7 after conveyance under section 101(h), including
8 provisions to—

9 (A) ensure that—

10 (i) the operation of, and the diversion
11 and conveyance of water by, the Regional
12 Water System is in accordance with the
13 Settlement Agreement;

14 (ii) the wells in the Regional Water
15 System are used in conjunction with the
16 surface water supply of the Regional
17 Water System to ensure a reliable firm
18 supply of water to all users of the Regional
19 Water System, consistent with the intent
20 of the Settlement Agreement that surface
21 supplies will be used to the maximum ex-
22 tent feasible;

23 (iii) the respective obligations regard-
24 ing delivery, payment, operation, and man-
25 agement are enforceable; and

1 (iv) the County has the right to serve
 2 any new water users located on non-Pueblo
 3 land in the Pojoaque Basin; and

4 (B) allow for any aquifer storage and re-
 5 covery projects that are approved by the Office
 6 of the New Mexico State Engineer.

7 (d) EFFECT.—Nothing in this Act precludes the Op-
 8 erating Agreement from authorizing phased or interim op-
 9 erations if the Regional Water System is constructed in
 10 phases.

11 **SEC. 103. ACQUISITION OF PUEBLO WATER SUPPLY FOR**
 12 **THE REGIONAL WATER SYSTEM.**

13 (a) IN GENERAL.—For the purpose of providing a
 14 reliable firm supply of water from the Regional Water Sys-
 15 tem for the Pueblos in accordance with the Settlement
 16 Agreement, the Secretary, on behalf of the Pueblos,
 17 shall—

18 (1) acquire water rights to—

19 (A) 302 acre-feet of Nambe reserved water
 20 described in section 2.6.2 of the Settlement
 21 Agreement pursuant to section 107(c)(1)(C);
 22 and

23 (B) 1141 acre-feet from water acquired by
 24 the County for water rights commonly referred

1 to as “Top of the World” rights in the Aamodt
2 Case;

3 ~~(2) make available 1079 acre-feet to the Pueb-~~
4 ~~los pursuant to a contract entered into among the~~
5 ~~Pueblos and the Secretary in accordance with sec-~~
6 ~~tion 11 of the San Juan-Chama Project Act, under~~
7 ~~water rights held by the Secretary; and~~

8 *(2) enter into a contract with the Pueblos for*
9 *1,079 acre-feet in accordance with section 11 of the*
10 *San Juan-Chama Project Act; and*

11 (3) by application to the State Engineer, ~~ob-~~
12 ~~tain~~*seek* approval to divert the water acquired and
13 made available under paragraphs (1) and (2) at the
14 points of diversion for the Regional Water System,
15 consistent with the Settlement Agreement and the
16 Cost-Sharing and System Integration Agreement.

17 (b) FORFEITURE.—The nonuse of the water supply
18 secured by the Secretary for the Pueblos under subsection
19 (a) shall in no event result in forfeiture, abandonment, re-
20 linquishment, or other loss thereof.

21 (c) TRUST.—The Pueblo water supply secured under
22 subsection (a) shall be held by the United States in trust
23 for the Pueblos.

24 (d) APPLICABLE LAW.—The water supply made
25 available pursuant to subsection (a)(2) shall be subject to

1 the San Juan-Chama Project Act, and no preference shall
2 be provided to the Pueblos as a result of subsection (c)
3 with regard to the delivery or distribution of San Juan-
4 Chama Project water or the management or operation of
5 the San Juan-Chama Project.

6 (e) CONTRACT FOR SAN JUAN-CHAMA PROJECT
7 WATER SUPPLY.—With respect to the contract for the
8 water supply required by subsection (a)(2), such San
9 Juan-Chama Project contract shall be pursuant to the fol-
10 lowing terms:

11 (1) WAIVERS.—Notwithstanding the provisions
12 of the San Juan-Chama Project Act, or any other
13 provision of law—

14 (A) the Secretary shall waive the entirety
15 of the Pueblos' share of the construction costs
16 for the San Juan-Chama Project, and pursuant
17 to that waiver, the Pueblos' share of all con-
18 struction costs for the San Juan-Chama
19 Project, inclusive of both principal and interest,
20 due from 1972 to the execution of the contract
21 required by subsection (a)(2), shall be nonreim-
22 bursable;

23 (B) the Secretary's waiver of each Pueblo's
24 share of the construction costs for the San
25 Juan-Chama Project will not result in an in-

1 crease in the pro rata shares of other San
2 Juan-Chama Project water contractors, but
3 such costs shall be absorbed by the United
4 States Treasury or otherwise appropriated to
5 the Department of the Interior; and

6 (C) the costs associated with any water
7 made available from the San Juan-Chama
8 Project which were determined nonreimbursable
9 and nonreturnable pursuant to Public Law No.
10 88–293, 78 Stat. 171 (March 26, 1964), shall
11 remain nonreimbursable and nonreturnable.

12 (2) TERMINATION.—The contract shall provide
13 that it shall terminate only upon the following condi-
14 tions—

15 (A) failure of the United States District
16 Court for the District of New Mexico to enter
17 a final decree for the Aamodt Case by Decem-
18 ber 15, 2012, or within the time period of any
19 extension of that deadline granted by the court;
20 or

21 (B) entry of an order by the United States
22 District Court for the District of New Mexico
23 voiding the final decree and Settlement Agree-
24 ment for the Aamodt Case pursuant to section
25 10.3 of the Settlement Agreement.

1 (f) LIMITATION.—The Secretary shall use the water
 2 supply secured under subsection (a) only for the purposes
 3 described in the Settlement Agreement.

4 (g) FULFILLMENT OF WATER SUPPLY ACQUISITION
 5 OBLIGATIONS.—Compliance with subsections (a) through
 6 (f) shall satisfy any and all obligations of the Secretary
 7 to acquire or secure a water supply for the Pueblos pursu-
 8 ant to the Settlement Agreement.

9 (h) RIGHTS OF PUEBLOS IN SETTLEMENT AGREE-
 10 MENT UNAFFECTED.—Notwithstanding the provisions of
 11 subsections (a) through (g), the Pueblos, the County or
 12 the Regional Water Authority may acquire any additional
 13 water rights to ensure all parties to the Settlement Agree-
 14 ment receive the full allocation of water provided by the
 15 Settlement Agreement and nothing in this Act amends or
 16 modifies the quantities of water allocated to the Pueblos
 17 thereunder.

18 **SEC. 104. DELIVERY AND ALLOCATION OF REGIONAL**
 19 **WATER SYSTEM CAPACITY AND WATER.**

20 (a) ALLOCATION OF REGIONAL WATER SYSTEM CA-
 21 PACITY.—

22 (1) IN GENERAL.—The Regional Water System
 23 shall have the capacity to divert from the Rio
 24 Grande a quantity of water sufficient to provide—

1 (A) up to 4,000 acre-feet of consumptive
2 use of water; and

3 (B) the requisite peaking capacity de-
4 scribed in—

5 (i) the Engineering Report; and

6 (ii) the final project design.

7 (2) ALLOCATION TO THE PUEBLOS AND COUN-
8 TY WATER UTILITY.—Of the capacity described in
9 paragraph (1)—

10 (A) there shall be allocated to the Pueb-
11 los—

12 (i) sufficient capacity for the convey-
13 ance of 2,500 acre-feet consumptive use;
14 and

15 (ii) the requisite peaking capacity for
16 the quantity of water described in clause
17 (i); and

18 (B) there shall be allocated to the County
19 Water Utility—

20 (i) sufficient capacity for the convey-
21 ance of up to 1,500 acre-feet consumptive
22 use; and

23 (ii) the requisite peaking capacity for
24 the quantity of water described in clause
25 (i).

1 (3) APPLICABLE LAW.—Water shall be allo-
2 cated to the Pueblos and the County Water Utility
3 under this subsection in accordance with—

4 (A) this title;

5 (B) the Settlement Agreement; and

6 (C) the Operating Agreement.

7 (b) DELIVERY OF REGIONAL WATER SYSTEM
8 WATER.—The Authority shall deliver water from the Re-
9 gional Water System—

10 (1) to the Pueblos water in a quantity sufficient
11 to allow full consumptive use of up to 2,500 acre-
12 feet per year of water rights by the Pueblos in ac-
13 cordance with—

14 (A) the Settlement Agreement;

15 (B) the Operating Agreement; and

16 (C) this title; and

17 (2) to the County water in a quantity sufficient
18 to allow full consumptive use of up to 1,500 acre-
19 feet per year of water rights by the County Water
20 Utility in accordance with—

21 (A) the Settlement Agreement;

22 (B) the Operating Agreement; and

23 (C) this title.

1 (c) ADDITIONAL USE OF ALLOCATION QUANTITY
2 AND UNUSED CAPACITY.—The Regional Water System
3 may be used to—

4 (1) provide for use of return flow credits to
5 allow for full consumptive use of the water allocated
6 in the Settlement Agreement to each of the Pueblos
7 and to the County; and

8 (2) convey water allocated to one of the Pueblos
9 or the County Water Utility for the benefit of an-
10 other Pueblo or the County Water Utility or allow
11 use of unused capacity by each other through the
12 Regional Water System in accordance with an inter-
13 governmental agreement between the Pueblos, or be-
14 tween a Pueblo and County Water Utility, as appli-
15 cable, if—

16 (A) such intergovernmental agreements are
17 consistent with the Operating Agreement, the
18 Settlement Agreement, and this Act;

19 (B) capacity is available without reducing
20 water delivery to any Pueblo or the County
21 Water Utility in accordance with the Settlement
22 Agreement, unless the County Water Utility or
23 Pueblo contracts for a reduction in water deliv-
24 ery or Regional Water System capacity;

1 (C) the Pueblo or County Water Utility
 2 contracting for use of the unused capacity or
 3 water has the right to use the water under ap-
 4 plicable law; and

5 (D) any agreement for the use of unused
 6 capacity or water provides for payment of the
 7 operation, maintenance, and replacement costs
 8 associated with the use of capacity or water.

9 **SEC. 105. AAMODT SETTLEMENT PUEBLOS' FUND.**

10 (a) ESTABLISHMENT OF THE AAMODT SETTLEMENT
 11 PUEBLOS' FUND.—There is established in the Treasury
 12 of the United States a fund, to be known as the “Aamodt
 13 Settlement Pueblos' Fund,” consisting of—

14 (1) such amounts as are made available to the
 15 Fund under section 107(c) or other authorized
 16 sources; and

17 (2) any interest earned from investment of
 18 amounts in the Fund under subsection (b).

19 (b) MANAGEMENT OF THE FUND.—The Secretary
 20 shall manage the Fund, invest amounts in the Fund, and
 21 make amounts available from the Fund for distribution
 22 to the Pueblos in accordance with—

23 (1) the American Indian Trust Fund Manage-
 24 ment Reform Act of 1994 (25 U.S.C. 4001 et seq.);
 25 and

1 (2) this Act.

2 (c) INVESTMENT OF THE FUND.—On the date set
3 forth in section 203(a)(1), the Secretary shall invest
4 amounts in the Fund in accordance with—

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

6 (2) the first section of the Act of June 24,
7 1938 (25 U.S.C. 162a); and

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

10 (d) TRIBAL MANAGEMENT PLAN.—

11 (1) IN GENERAL.—A Pueblo may withdraw all
12 or part of the Pueblo’s portion of the Fund on ap-
13 proval by the Secretary of a tribal management plan
14 as described in the American Indian Trust Fund
15 Management Reform Act of 1994 (25 U.S.C. 4001
16 et seq.).

17 (2) REQUIREMENTS.—In addition to the re-
18 quirements under the American Indian Trust Fund
19 Management Reform Act of 1994 (25 U.S.C. 4001
20 et seq.), the tribal management plan shall require
21 that a Pueblo spend any amounts withdrawn from
22 the Fund in accordance with the purposes described
23 in section 107(c).

24 (3) ENFORCEMENT.—The Secretary may take
25 judicial or administrative action to enforce the provi-

1 sions of any tribal management plan to ensure that
2 any amounts withdrawn from the Fund under an
3 approved tribal management plan are used in ac-
4 cordance with this title.

5 (4) LIABILITY.—If a Pueblo or the Pueblos ex-
6 ercise the right to withdraw amounts from the
7 Fund, neither the Secretary nor the Secretary of the
8 Treasury shall retain any liability for the expendi-
9 ture or investment of the amounts withdrawn.

10 (5) EXPENDITURE PLAN.—

11 (A) IN GENERAL.—The Pueblos shall sub-
12 mit to the Secretary for approval an expendi-
13 ture plan for any portion of the amounts in the
14 Fund that the Pueblos do not withdraw under
15 this subsection.

16 (B) DESCRIPTION.—The expenditure plan
17 shall describe the manner in which, and the
18 purposes for which, amounts remaining in the
19 Fund will be used.

20 (C) APPROVAL.—On receipt of an expendi-
21 ture plan under subparagraph (A), the Sec-
22 retary shall approve the plan if the Secretary
23 determines that the plan is reasonable and con-
24 sistent with this Act, the Settlement Agree-

1 ment, and the Cost-Sharing and System Inte-
2 gration Agreement.

3 (D) ANNUAL REPORT.—The Pueblos shall
4 submit to the Secretary an annual report that
5 describes all expenditures from the Fund during
6 the year covered by the report.

7 (6) NO PER CAPITA PAYMENTS.—No part of
8 the principal of the Fund, or the interest or income
9 accruing on the principal shall be distributed to any
10 member of a Pueblo on a per capita basis.

11 (7) AVAILABILITY OF AMOUNTS FROM THE
12 FUND.—

13 (A) APPROVAL OF SETTLEMENT AGREE-
14 MENT.—Amounts made available under sub-
15 paragraphs (A) and (C) of section 107(c)(1) or
16 from other authorized sources shall be available
17 for expenditure or withdrawal only after the
18 date on which the United States District Court
19 for the District of New Mexico issues an order
20 approving the Settlement Agreement.

21 (B) COMPLETION OF CERTAIN PORTIONS
22 OF REGIONAL WATER SYSTEM.—Amounts made
23 available under section 107(c)(1)(B) or from
24 other authorized sources shall be available for
25 expenditure or withdrawal only after those por-

1 tions of the Regional Water System described
2 in section 1.5.24 of the Settlement Agreement
3 have been declared substantially complete by
4 the Secretary.

5 (C) FAILURE TO FULFILL CONDITIONS
6 PRECEDENT.—If the conditions precedent in
7 section 203 have not been fulfilled by Sep-
8 tember 15, 2017, the United States shall be en-
9 titled to set off any funds expended or with-
10 drawn from the amounts appropriated pursuant
11 to section 107(c), together with any interest ac-
12 crued, against any claims asserted by the Pueb-
13 los against the United States relating to the
14 water rights in the Pojoaque Basin.

15 **SEC. 106. ENVIRONMENTAL COMPLIANCE.**

16 (a) IN GENERAL.—In carrying out this title, the Sec-
17 retary shall comply with each law of the Federal Govern-
18 ment relating to the protection of the environment, includ-
19 ing—

20 (1) the National Environmental Policy Act of
21 1969 (42 U.S.C. 4321 et seq.); and

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

24 (b) NATIONAL ENVIRONMENTAL POLICY ACT.—
25 Nothing in this Act affects the outcome of any analysis

1 conducted by the Secretary or any other Federal official
 2 under the National Environmental Policy Act of 1969 (42
 3 U.S.C. 4321 et seq.).

4 **SEC. 107. AUTHORIZATION OF APPROPRIATIONS.**

5 (a) REGIONAL WATER SYSTEM.—

6 (1) IN GENERAL.—Subject to paragraph (4),
 7 there is authorized to be appropriated to the Sec-
 8 retary for the planning, design, and construction of
 9 the Regional Water System and the conduct of
 10 environmental compliance activities under section
 11 ~~106~~ a total of \$106,400,000 between fiscal years
 12 ~~2010 and 2022~~. *ronmental compliance activities*
 13 *under section 106 an amount not to exceed*
 14 *\$106,400,000, as adjusted under paragraph (3), for*
 15 *the period of fiscal years 2010 through 2022, to re-*
 16 *main available until expended.*

17 (2) PRIORITY OF FUNDING.—Of the amounts
 18 authorized under paragraph (1), the Secretary shall
 19 give priority to funding—

20 (A) the construction of the San Ildefonso
 21 portion of the Regional Water System, con-
 22 sisting of—

23 (i) the surface water diversion, treat-
 24 ment, and transmission facilities at San
 25 Ildefonso Pueblo; and

1 (ii) the San Ildefonso Pueblo portion
2 of the Pueblo Water Facilities; and

3 (B) that part of the Regional Water Sys-
4 tem providing 475 acre-feet to Pojoaque Pueblo
5 pursuant to section 2.2 of the Settlement
6 Agreement.

7 (3) ADJUSTMENT.—The amount authorized
8 under paragraph (1) shall be adjusted annually to
9 account for increases in construction costs since Oc-
10 tober 1, 2006, as determined using applicable engi-
11 neering cost indices.

12 (4) LIMITATIONS.—

13 (A) IN GENERAL.—No amounts shall be
14 made available under paragraph (1) for the
15 construction of the Regional Water System
16 until the date on which the United States Dis-
17 trict Court for the District of New Mexico
18 issues an order approving the Settlement Agree-
19 ment.

20 (B) RECORD OF DECISION.—No amounts
21 made available under paragraph (1) shall be ex-
22 pended unless the record of decision issued by
23 the Secretary after completion of an environ-
24 mental impact statement provides for a pre-
25 ferred alternative that is in substantial compli-

1 ance with the proposed Regional Water System,
2 as defined in the Engineering Report.

3 (b) ACQUISITION OF WATER RIGHTS.—There is au-
4 thorized to be appropriated to the Secretary funds for the
5 acquisition of the water rights under section
6 103(a)(1)(B)—

7 (1) in the amount of \$5,400,000.00 if such ac-
8 quisition is completed by December 31, 2010; and

9 (2) the amount authorized under paragraph
10 (b)(1) shall be adjusted according to the CPI Urban
11 Index commencing January 1, 2011.

12 (c) AAMODT SETTLEMENT PUEBLOS' FUND.—

13 (1) IN GENERAL.—There is authorized to be
14 appropriated to the Fund the following amounts for
15 the period of fiscal years 2010 through 2022:

16 (A) \$15,000,000, which shall be allocated
17 to the Pueblos, in accordance with section 2.7.1
18 of the Settlement Agreement, for the rehabilita-
19 tion, improvement, operation, maintenance, and
20 replacement of the agricultural delivery facili-
21 ties, waste water systems, and other water-re-
22 lated infrastructure of the applicable Pueblo.
23 The amount authorized herein shall be adjusted
24 according to the CPI Urban Index commencing
25 October 1, 2006.

1 (B) \$37,500,000, which shall be allocated
2 to an account, to be established not later than
3 January 1, 2016, to assist the Pueblos in pay-
4 ing the Pueblos' share of the cost of operating,
5 maintaining, and replacing the Pueblo Water
6 Facilities and the Regional Water System.

7 (C) \$5,000,000 and any interest thereon,
8 which shall be allocated to the Pueblo of Nambe
9 for the acquisition of the Nambe reserved water
10 rights in accordance with section 103(a)(1)(A).
11 The amount authorized herein shall be adjusted
12 according to the CPI Urban Index commencing
13 January 1, 2011. The funds provided under
14 this section may be used by the Pueblo of
15 Nambe only for the acquisition of land, other
16 real property interests, or economic develop-
17 ment.

18 (2) OPERATION, MAINTENANCE, AND REPLACE-
19 MENT COSTS.—

20 (A) IN GENERAL.—Prior to conveyance of
21 the Regional Water System pursuant to section
22 101, the Secretary *is authorized to and* shall
23 pay any operation, maintenance or replacement
24 costs associated with the Pueblo Water Facili-
25 ties or the Regional Water System up to an

1 amount that does not exceed \$5,000,000, which
2 is authorized to be appropriated to the Sec-
3 retary.

4 ~~(B) OBLIGATION OF THE FEDERAL GOV-~~
5 ~~ERNMENT AFTER COMPLETION.—Except as~~
6 ~~provided in section 103(a)(4)(B), after con-~~
7 ~~struction of the Regional Water System is com-~~
8 ~~pleted and the amounts required to be deposited~~
9 ~~in the account have been deposited under this~~
10 ~~section the Federal Government shall have no~~
11 ~~obligation to pay for the operation, mainte-~~
12 ~~nance, and replacement costs of the Regional~~
13 ~~Water System.~~

14 *(B) OBLIGATION OF FEDERAL GOVERNMENT*
15 *AFTER COMPLETION.—The amount authorized*
16 *under subparagraph (A) shall expire after the*
17 *date on which construction of the Regional*
18 *Water System is completed and the amounts re-*
19 *quired to be deposited in the account have been*
20 *deposited under this section by the Federal Gov-*
21 *ernment.*

1 **TITLE II—POJOAQUE BASIN IN-**
2 **DIAN WATER RIGHTS SETTLE-**
3 **MENT**

4 **SEC. 201. SETTLEMENT AGREEMENT AND CONTRACT AP-**
5 **PROVAL.**

6 (a) APPROVAL.—To the extent the Settlement Agree-
7 ment and the Cost-Sharing and System Integration Agree-
8 ment do not conflict with this Act, the Settlement Agree-
9 ment and the Cost-Sharing and System Integration Agree-
10 ment (including any amendments to the Settlement Agree-
11 ment and the Cost-Sharing and System Integration Agree-
12 ment that are executed to make the Settlement Agreement
13 or the Cost-Sharing and System Integration Agreement
14 consistent with this Act) are authorized, ratified, and con-
15 firmed.

16 (b) EXECUTION.—To the extent the Settlement
17 Agreement and the Cost-Sharing and System Integration
18 Agreement do not conflict with this Act, the Secretary
19 shall execute the Settlement Agreement and the Cost-
20 Sharing and System Integration Agreement (including
21 any amendments that are necessary to make the Settle-
22 ment Agreement or the Cost-Sharing and System Integra-
23 tion Agreement consistent with this Act).

24 (c) AUTHORITIES OF THE PUEBLOS.—

1 (1) IN GENERAL.—Each of the Pueblos may
2 enter into contracts to lease or exchange water
3 rights or to forbear undertaking new or expanded
4 water uses for water rights recognized in section 2.1
5 of the Settlement Agreement for use within the
6 Pojoaque Basin in accordance with the other limita-
7 tions of section 2.1.5 of the Settlement Agreement
8 provided that section 2.1.5 is amended accordingly.

9 (2) EXECUTION.—The Secretary shall not exe-
10 cute the Settlement Agreement until such amend-
11 ment is accomplished under paragraph (1).

12 (3) APPROVAL BY SECRETARY.—Consistent
13 with the Settlement Agreement as amended under
14 paragraph (1), the Secretary shall approve or dis-
15 approve a lease entered into under paragraph (1).

16 (4) PROHIBITION ON PERMANENT ALIEN-
17 ATION.—No lease or contract under paragraph (1)
18 shall be for a term exceeding 99 years, nor shall any
19 such lease or contract provide for permanent alien-
20 ation of any portion of the water rights made avail-
21 able to the Pueblos under the Settlement Agreement.

22 (5) APPLICABLE LAW.—Section 2116 of the Re-
23 vised Statutes (25 U.S.C. 177) shall not apply to
24 any lease or contract entered into under paragraph
25 (1).

1 (6) LEASING OR MARKETING OF WATER SUP-
2 PLY.—The water supply provided on behalf of the
3 Pueblos pursuant to section 103(a)(1) may only be
4 leased or marketed by any of the Pueblos pursuant
5 to the intergovernmental agreements described in
6 section 104(c)(2).

7 (d) AMENDMENTS TO CONTRACTS.—The Secretary
8 shall amend the contracts relating to the Nambe Falls
9 Dam and Reservoir that are necessary to use water sup-
10 plied from the Nambe Falls Dam and Reservoir in accord-
11 ance with the Settlement Agreement.

12 **SEC. 202. ENVIRONMENTAL COMPLIANCE.**

13 (a) EFFECT OF EXECUTION OF SETTLEMENT
14 AGREEMENT.—The execution of the Settlement Agree-
15 ment under section 201(b) shall not constitute a major
16 Federal action under the National Environmental Policy
17 Act of 1969 (42 U.S.C. 4321 et seq.).

18 (b) COMPLIANCE WITH ENVIRONMENTAL LAWS.—In
19 carrying out this Act, the Secretary shall comply with each
20 law of the Federal Government relating to the protection
21 of the environment, including—

22 (1) the National Environmental Policy Act of
23 1969 (42 U.S.C. 4321 et seq.); and

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

1 **SEC. 203. CONDITIONS PRECEDENT AND ENFORCEMENT**

2 **DATE.**

3 (a) CONDITIONS PRECEDENT.—

4 (1) IN GENERAL.—Upon the fulfillment of the
5 conditions precedent described in paragraph (2), the
6 Secretary shall publish in the Federal Register by
7 September 15, 2017, a statement of finding that the
8 conditions have been fulfilled.

9 (2) REQUIREMENTS.—The conditions precedent
10 referred to in paragraph (1) are the conditions
11 that—

12 (A) to the extent that the Settlement
13 Agreement conflicts with this title, the Settle-
14 ment Agreement has been revised to conform
15 with this title;

16 (B) the Settlement Agreement, so revised,
17 including waivers and releases pursuant to sec-
18 tion 204, has been executed by the appropriate
19 parties and the Secretary;

20 (C) Congress has fully appropriated, or the
21 Secretary has provided from other authorized
22 sources, all funds authorized by section 107,
23 with the exception of subsection (a)(1) of that
24 section, by December 15, 2016;

1 (D) the Secretary has acquired and entered
2 into appropriate contracts for the water rights
3 described in section 103(a);

4 (E) for purposes of section 103(a), permits
5 have been issued by the New Mexico State Engi-
6 neer to the Regional Water Authority to change
7 the points of diversion to the mainstem of the
8 Rio Grande for the diversion and consumptive
9 use of at least 2,381 acre-feet by the Pueblos as
10 part of the water supply for the Regional Water
11 System, subject to the conditions that—

12 (i) the permits shall be free of any con-
13 dition that materially adversely affects the
14 ability of the Pueblos or the Regional Water
15 Authority to divert or use the Pueblo water
16 supply described in section 103(a), includ-
17 ing water rights acquired in addition to
18 those described in section 103(a), in accord-
19 ance with section 103(g); and

20 (ii) the Settlement Agreement shall es-
21 tablish the means to address any permit
22 conditions to ensure the ability of the Pueb-
23 los to fully divert and consume at least
24 2,381 acre-feet as part of the water supply
25 for the Regional Water System, including

1 *defining the conditions that will not con-*
2 *stitute a material adverse affect;*

3 ~~(D)~~(F) the State has enacted any nec-
4 essary legislation and provided any funding that
5 may be required under the Settlement Agree-
6 ment;

7 ~~(E)~~(G) a partial final decree that sets forth
8 the water rights and other rights to water to
9 which the Pueblos are entitled under the Settle-
10 ment Agreement and this title and that sub-
11 stantially conforms to the Settlement Agree-
12 ment has been approved by the United States
13 District Court for the District of New Mexico;
14 and

15 ~~(F)~~(H) a final decree that sets forth the
16 water rights for all parties to the Aamodt Case
17 and that substantially conforms to the Settle-
18 ment Agreement has been approved by the
19 United States District Court for the District of
20 New Mexico by June 15, 2017.

21 (b) EXPIRATION DATE.—If all the conditions prece-
22 dent described in subsection (a)(2) have not been fulfilled
23 by September 15, 2017—

1 (1) the Settlement Agreement and this Act in-
2 cluding waivers described in those documents shall
3 no longer be effective; and

4 (2) any funds that have been appropriated
5 under this Act but not expended shall immediately
6 revert to the general fund of the United States
7 Treasury.

8 (c) ENFORCEMENT DATE.—The Settlement Agree-
9 ment shall become enforceable as of the date that the
10 United States District Court for the District of New Mex-
11 ico enters a partial final decree pursuant to subsection
12 (a)(2)(E) and an Interim Administrative Order consistent
13 with the Settlement Agreement.

14 (d) EFFECTIVENESS OF WAIVERS.—The waivers and
15 releases executed pursuant to section 204 shall become ef-
16 fective as of the date that the Secretary publishes the no-
17 tice required by subsection (a)(1).

18 (e) REQUIREMENTS FOR DETERMINATION OF SUB-
19 STANTIAL COMPLETION OF THE REGIONAL WATER SYS-
20 TEM.—

21 (1) CRITERIA FOR SUBSTANTIAL COMPLETION
22 OF REGIONAL WATER SYSTEM.—Subject to the pro-
23 visions in section 101(d) concerning the extent, size,
24 and capacity of the County Distribution System, the
25 Regional Water System shall be determined to be

1 substantially completed if the infrastructure has
 2 been constructed capable of—

3 (A) diverting, treating, transmitting, and
 4 distributing a supply of 2,500 acre-feet of water
 5 to the Pueblos; and

6 (B) diverting, treating, and transmitting
 7 the quantity of water specified in the Engineer-
 8 ing Report to the County Distribution System.

9 (2) CONSULTATION.—On or after June 30,
 10 2021, at the request of 1 or more of the Pueblos,
 11 the Secretary shall consult with the Pueblos and
 12 confer with the County and the State on whether the
 13 criteria in paragraph (1) for substantial completion
 14 of the Regional Water System have been met or will
 15 be met by June 30, 2024.

16 ~~(3) RIGHT TO VOID FINAL DECREE.—If the~~
 17 ~~substantial completion criteria have not been met by~~
 18 ~~June 15, 2021, after the consultation required by~~
 19 ~~paragraph (2), the Pueblos or the United States as~~
 20 ~~trustee for the Pueblos have until midnight June 30,~~
 21 ~~2024 to ask the Decree Court to void the Final De-~~
 22 ~~eree pursuant to section 10.3 of the Settlement~~
 23 ~~Agreement.~~

24 ~~(f) VOIDING OF WAIVERS.—If the Court determines~~
 25 ~~the Final Decree is voided pursuant to Section 10.3 of~~

1 the Settlement Agreement, the Settlement Agreement
 2 shall no longer be effective, the waivers and releases exe-
 3 cuted pursuant to section 204 shall no longer be effective,
 4 and any unexpended Federal funds, together with any in-
 5 come earned thereon, and title to any property acquired
 6 or constructed with expended Federal funds, shall be re-
 7 turned to the Federal Government unless otherwise agreed
 8 to by the Pueblos and the United States in writing and
 9 approved by Congress.

10 (3) *WRITTEN DETERMINATION BY SECRETARY.*—

11 *Not earlier than June 30, 2021, at the request of 1*
 12 *or more of the Pueblos and after the consultation re-*
 13 *quired by paragraph (2), the Secretary shall—*

14 (A) *determine whether the Regional Water*
 15 *System has been substantially completed based*
 16 *on the criteria described in paragraph (1); and*

17 (B) *submit a written notice of the deter-*
 18 *mination under subparagraph (A) to—*

19 (i) *the Pueblos;*

20 (ii) *the County; and*

21 (iii) *the State.*

22 (4) *RIGHT TO REVIEW.*—

23 (A) *IN GENERAL.*—*A determination by the*
 24 *Secretary under paragraph (3)(A) shall be con-*
 25 *sidered to be a final agency action subject to ju-*

1 *judicial review by the Decree Court under sections*
2 *701 through 706 of title 5, United States Code.*

3 *(B) FAILURE TO MAKE TIMELY DETERMINA-*
4 *TION.—*

5 *(i) IN GENERAL.—If a Pueblo requests*
6 *a written determination under paragraph*
7 *(3) and the Secretary fails to make such a*
8 *written determination by the date described*
9 *in clause (ii), there shall be a rebuttable*
10 *presumption that the failure constitutes*
11 *agency action unlawfully withheld or un-*
12 *reasonably delayed under section 706 of*
13 *title 5, United States Code.*

14 *(ii) DATE.—The date referred to in*
15 *clause (i) is the date that is the later of—*

16 *(I) the date that is 180 days after*
17 *the date of receipt by the Secretary of*
18 *the request by the Pueblo; and*

19 *(II) June 30, 2023.*

20 *(C) EFFECT OF ACT.—Nothing in this Act*
21 *gives any Pueblo or Settlement Party the right*
22 *to judicial review of a determination of the Sec-*
23 *retary regarding whether the Regional Water*
24 *System has been substantially completed except*
25 *under subchapter II of chapter 5, and chapter 7,*

1 *of title 5, United States Code (commonly known*
2 *as the “Administrative Procedure Act”).*

3 (5) *RIGHT TO VOID FINAL DECREE.—*

4 (A) *IN GENERAL.—Not later than June 30,*
5 *2024, on a determination by the Secretary, after*
6 *consultation with the Pueblos, that the Regional*
7 *Water System is not substantially complete, 1 or*
8 *more of the Pueblos, or the United States acting*
9 *on behalf of a Pueblo, shall have the right to no-*
10 *tify the Decree Court of the determination.*

11 (B) *EFFECT.—The Final Decree shall have*
12 *no force or effect on a finding by the Decree*
13 *Court that a Pueblo, or the United States acting*
14 *on behalf of a Pueblo, has submitted proper noti-*
15 *fication under subparagraph (A).*

16 (f) *VOIDING OF WAIVERS.—If the Final Decree is void*
17 *under subsection (e)(5)—*

18 (1) *the Settlement Agreement shall no longer be*
19 *effective;*

20 (2) *the waivers and releases executed pursuant to*
21 *section 204 shall no longer be effective; and*

22 (3) *any unexpended Federal funds, together with*
23 *any interest earned on those funds, and title to any*
24 *property acquired or constructed with expended Fed-*
25 *eral funds shall be returned to the Federal Govern-*

1 *ment, unless otherwise agreed to by the Pueblos and*
2 *the United States and approved by Congress.*

3 **SEC. 204. WAIVERS AND RELEASES.**

4 (a) CLAIMS BY THE PUEBLOS AND THE UNITED
5 STATES.—In return for recognition of the Pueblos' water
6 rights and other benefits, including waivers and releases
7 by non-Pueblo parties, as set forth in the Settlement
8 Agreement and this Act, the Pueblos, on behalf of them-
9 selves and their members, and the United States acting
10 in its capacity as trustee for the Pueblos are authorized
11 to execute a waiver and release of—

12 (1) all claims for water rights in the Pojoaque
13 Basin that the Pueblos, or the United States acting
14 in its capacity as trustee for the Pueblos, asserted,
15 or could have asserted, in any proceeding, including
16 the Aamodt Case, up to and including the waiver ef-
17 fectiveness date identified in section 203(d), except
18 to the extent that such rights are recognized in the
19 Settlement Agreement or this Act;

20 (2) all claims for water rights for lands in the
21 Pojoaque Basin and for rights to use water in the
22 Pojoaque Basin that the Pueblos, or the United
23 States acting in its capacity as trustee for the Pueb-
24 los, might be able to otherwise assert in any pro-
25 ceeding not initiated on or before the date of enact-

1 ment of this title, except to the extent that such
2 rights are recognized in the Settlement Agreement
3 or this Act;

4 (3) all claims for damages, losses or injuries to
5 water rights or claims of interference with, diversion
6 or taking of water (including claims for injury to
7 land resulting from such damages, losses, injuries,
8 interference with, diversion, or taking) for land with-
9 in the Pojoaque Basin that accrued at any time up
10 to and including the waiver effectiveness date identi-
11 fied in section 203(d);

12 (4) their defenses in the Aamodt Case to the
13 claims previously asserted therein by other parties to
14 the Settlement Agreement;

15 (5) all pending and future inter se challenges to
16 the quantification and priority of water rights of
17 non-Pueblo wells in the Pojoaque Basin, except as
18 provided by section 2.8 of the Settlement Agree-
19 ment;

20 (6) all pending and future inter se challenges
21 against other parties to the Settlement Agreement;

22 (7) all claims for damages, losses, or injuries to
23 water rights or claims of interference with, diversion
24 or taking of water (including claims for injury to
25 land resulting from such damages, losses, injuries,

1 interference with, diversion, or taking of water) at-
 2 tributable to City of Santa Fe pumping of ground-
 3 water that has effects on the ground and surface
 4 water supplies of the Pojoaque Basin, provided that
 5 this waiver shall not be effective by the Pueblo of
 6 Tesuque unless there is a water resources agreement
 7 executed between the Pueblo of Tesuque and the
 8 City of Santa Fe; *and*

9 (8) all claims for damages, losses, or injuries to
 10 water rights or claims of interference with, diversion
 11 or taking of water (including claims for injury to
 12 land resulting from such damages, losses, injuries,
 13 interference with, diversion, or taking of water) at-
 14 tributable to County of Santa Fe pumping of
 15 groundwater that has effects on the ground and sur-
 16 face water supplies of the Pojoaque Basin; *and*.

17 ~~(9) all claims for damages, losses, or injuries,~~
 18 ~~or for injunctive or other relief, because of the condi-~~
 19 ~~tion of, or changes in, the concentration of naturally~~
 20 ~~occurring constituents of ground and surface water~~
 21 ~~in the Pojoaque Basin arising out of the diversion of~~
 22 ~~water pursuant to water rights recognized by the~~
 23 ~~final decree.~~

24 (b) CLAIMS BY THE PUEBLOS AGAINST THE UNITED
 25 STATES.—The Pueblos, on behalf of themselves and their

1 members, are authorized to execute a waiver and release
2 of—

3 (1) all claims against the United States, its
4 agencies, or employees, relating to claims for water
5 rights in or water of the Pojoaque Basin or for
6 rights to use water in the Pojoaque Basin that the
7 United States acting in its capacity as trustee for
8 the Pueblos asserted, or could have asserted, in any
9 proceeding, including the Aamodt Case;

10 (2) all claims against the United States, its
11 agencies, or employees relating to damages, losses,
12 or injuries to water, water rights, land, or natural
13 resources due to loss of water or water rights (in-
14 cluding damages, losses or injuries to hunting, fish-
15 ing, gathering or cultural rights due to loss of water
16 or water rights; claims relating to interference with,
17 diversion or taking of water or water rights; or
18 claims relating to failure to protect, acquire, replace,
19 or develop water, water rights or water infrastruc-
20 ture) within the Pojoaque Basin that first accrued
21 at any time up to and including the waiver effective-
22 ness date identified in section 203(d);

23 (3) all claims against the United States, its
24 agencies, or employees for an accounting of funds
25 appropriated by Acts, including the Act of December

1 22, 1927 (45 Stat. 2), the Act of March 4, 1929 (45
2 Stat. 1562), the Act of March 26, 1930 (46 Stat.
3 90), the Act of February 14, 1931 (46 Stat. 1115),
4 the Act of March 4, 1931 (46 Stat. 1552), the Act
5 of July 1, 1932 (47 Stat. 525), the Act of June 22,
6 1936 (49 Stat. 1757), the Act of August 9, 1937
7 (50 Stat. 564), and the Act of May 9, 1938 (52
8 Stat. 291), as authorized by the Pueblo Lands Act
9 of June 7, 1924 (43 Stat. 636), and the Pueblo
10 Lands Act of May 31, 1933 (48 Stat. 108), and for
11 breach of Trust relating to funds for water replace-
12 ment appropriated by said Acts that first accrued
13 before the date of enactment of this Act;

14 (4) all claims against the United States, its
15 agencies, or employees relating to the pending litiga-
16 tion of claims relating to the Pueblos' water rights
17 in the Aamodt Case; and

18 (5) all claims against the United States, its
19 agencies, or employees relating to the negotiation,
20 Execution or the adoption of the Settlement Agree-
21 ment, exhibits thereto, the Partial Final Decree, the
22 Final Decree, or this Act.

23 (c) RESERVATION OF RIGHTS AND RETENTION OF
24 CLAIMS.—Notwithstanding the waivers and releases au-
25 thorized in this Act, the Pueblos on behalf of themselves

1 and their members and the United States acting in its
2 capacity as trustee for the Pueblos retain.—

3 (1) all claims for enforcement of the Settlement
4 Agreement, the Cost-Sharing and System Integra-
5 tion Agreement, the Final Decree, including the Par-
6 tial Final Decree, the San Juan-Chama Project con-
7 tract between the Pueblos and the United States or
8 this Act;

9 (2) all rights to use and protect water rights ac-
10 quired after the date of enactment of this Act;

11 (3) all rights to use and protect water rights ac-
12 quired pursuant to state law to the extent not incon-
13 sistent with the Partial Final Decree, Final Decree,
14 and the Settlement Agreement;

15 (4) all claims against persons other than Par-
16 ties to the Settlement Agreement for damages, losses
17 or injuries to water rights or claims of interference
18 with, diversion or taking of water (including claims
19 for injury to lands resulting from such damages,
20 losses, injuries, interference with, diversion, or tak-
21 ing of water) within the Pojoaque Basin arising out
22 of activities occurring outside the Pojoaque Basin;

23 (5) all claims relating to activities affecting the
24 quality of water including any claims the Pueblos
25 may have under the Comprehensive Environmental

1 Response, Compensation, and Liability Act of 1980
2 (42 U.S.C. 9601 et seq.) (including claims for dam-
3 ages to natural resources), the Safe Drinking Water
4 Act (42 U.S.C. 300f et seq.), the Federal Water Pol-
5 lution Control Act (33 U.S.C. 1251 et seq.), and the
6 regulations implementing those laws;

7 (6) all claims against the United States relating
8 to damages, losses, or injuries to land or natural re-
9 sources not due to loss of water or water rights (in-
10 cluding hunting, fishing, gathering or cultural
11 rights);

12 (7) all claims for water rights from water
13 sources outside the Pojoaque Basin for land outside
14 the Pojoaque Basin owned by a Pueblo or held by
15 the United States for the benefit of any of the Pueb-
16 los; and

17 (8) all rights, remedies, privileges, immunities,
18 powers and claims not specifically waived and re-
19 leased pursuant to this Act or the Settlement Agree-
20 ment.

21 (d) EFFECT OF SECTION.—Nothing in the Settle-
22 ment Agreement or this Act—

23 (1) affects the ability of the United States act-
24 ing in its sovereign capacity to take actions author-
25 ized by law, including any laws relating to health,

1 safety, or the environment, including the Com-
2 prehensive Environmental Response, Compensation,
3 and Liability Act of 1980 (42 U.S.C. 9601 et seq.),
4 the Safe Drinking Water Act (42 U.S.C. 300f et
5 seq.), the Federal Water Pollution Control Act (33
6 U.S.C. 1251 et seq.), the Solid Waste Disposal Act
7 (42 U.S.C. 6901 et seq.), and the regulations imple-
8 menting those laws;

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

12 (3) confers jurisdiction on any State court to—

13 (A) interpret Federal law regarding health,
14 safety, or the environment or determine the du-
15 ties of the United States or other parties pursu-
16 ant to such Federal law; or

17 (B) conduct judicial review of Federal
18 agency action;

19 (e) TOLLING OF CLAIMS.—

20 (1) IN GENERAL.—Each applicable period of
21 limitation and time-based equitable defense relating
22 to a claim described in this section shall be tolled for
23 the period beginning on the date of enactment of
24 this Act and ending on June 30, 2021.

1 (2) EFFECT OF SUBPARAGRAPH.—Nothing in
2 this subsection revives any claim or tolls any period
3 of limitation or time-based equitable defense that ex-
4 pired before the date of enactment of this Act.

5 (3) LIMITATION.—Nothing in this section pre-
6 cludes the tolling of any period of limitations or any
7 time-based equitable defense under any other appli-
8 cable law.

9 **SEC. 205. EFFECT.**

10 Nothing in this Act or the Settlement Agreement af-
11 fects the land and water rights, claims, or entitlements
12 to water of any Indian tribe, pueblo, or community other
13 than the Pueblos.

Calendar No. 255

111TH CONGRESS
2^D SESSION

S. 1105

[Report No. 111-115]

A BILL

To authorize the Secretary of the Interior, acting through the Commissioner of Reclamation, to develop water infrastructure in the Rio Grande Basin, and to approve the settlement of the water rights claims of the Pueblos of Nambe, Pojoaque, San Ildefonso, and Tesuque.

JANUARY 20, 2010

Reported with amendments