

Calendar No. 257

111TH CONGRESS
2D SESSION**S. 965****[Report No. 111–117]**

To approve the Taos Pueblo Indian Water Rights Settlement Agreement,
and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 4, 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 In-
dian Affairs

JANUARY 20, 2010

Reported by Mr. DORGAN, with amendments

[Omit the part struck through and insert the part printed in *italie*]**A BILL**

To approve the Taos Pueblo Indian Water Rights Settlement
Agreement, 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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Taos Pueblo Indian Water Rights Settlement Act”.

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

- Sec. 1. Short title; table of contents.
- Sec. 2. Purpose.
- Sec. 3. Definitions.
- Sec. 4. Pueblo rights.
- Sec. 5. Pueblo water infrastructure and watershed enhancement.
- Sec. 6. Taos Pueblo Water Development Fund.
- Sec. 7. Marketing.
- Sec. 8. Mutual-Benefit Projects.
- Sec. 9. San Juan-Chama Project contracts.
- Sec. 10. Authorizations, ratifications, confirmations, and conditions precedent.
- Sec. 11. Waivers and releases.
- Sec. 12. Interpretation and enforcement.
- Sec. 13. Disclaimer.

3 **SEC. 2. PURPOSE.**

4 The purposes of this Act are—

- 5 (1) to approve, ratify, and confirm the Taos
 6 Pueblo Indian Water Rights Settlement Agreement;
- 7 (2) to authorize and direct the Secretary to exe-
 8 cute the Settlement Agreement and to perform all
 9 obligations of the Secretary under the Settlement
 10 Agreement and this Act; and
- 11 (3) to authorize all actions and appropriations
 12 necessary for the United States to meet its obliga-
 13 tions under the Settlement Agreement and this Act.

14 **SEC. 3. DEFINITIONS.**

15 In this Act:

- 16 (1) ELIGIBLE NON-PUEBLO ENTITIES.—The
 17 term “Eligible Non-Pueblo Entities” means the
 18 Town of Taos, El Prado Water and Sanitation Dis-
 19 trict (“EPWSD”), and the New Mexico Department

1 of Finance and Administration Local Government
 2 Division on behalf of the Acequia Madre del Rio
 3 Lucero y del Arroyo Seco, the Acequia Madre del
 4 Prado, the Acequia del Monte, the Acequia Madre
 5 del Rio Chiquito, the Upper Ranchitos Mutual Do-
 6 mestic Water Consumers Association, the Upper Ar-
 7 royo Hondo Mutual Domestic Water Consumers As-
 8 sociation, and the Llano Quemado Mutual Domestic
 9 Water Consumers Association.

10 (2) ENFORCEMENT DATE.—The term “Enforce-
 11 ment Date” means the date upon which the Sec-
 12 retary publishes the notice required by section
 13 10(f)(1).

14 (3) MUTUAL-BENEFIT PROJECTS.—The term
 15 “Mutual-Benefit Projects” means the projects de-
 16 scribed and identified in articles 6 and 10.1 of the
 17 Settlement Agreement.

18 (4) PARTIAL FINAL DECREE.—The term “Par-
 19 tial Final Decree” means the Decree entered in New
 20 Mexico v. Abeyta and New Mexico v. Arellano, Civil
 21 Nos. 7896–BB (U.S.6 D.N.M.) and 7939–BB (U.S.
 22 D.N.M) (consolidated), for the resolution of the
 23 Pueblo’s water right claims and which is substan-
 24 tially in the form agreed to by the Parties and at-

1 tached to the Settlement Agreement as Attachment
2 5.

3 (5) PARTIES.—The term “Parties” means the
4 Parties to the Settlement Agreement, as identified in
5 article 1 of the Settlement Agreement.

6 (6) PUEBLO.—The term “Pueblo” means the
7 Taos Pueblo, a sovereign Indian tribe duly recog-
8 nized by the United States of America.

9 (7) PUEBLO LANDS.—The term “Pueblo lands”
10 means those lands located within the Taos Valley to
11 which the Pueblo, or the United States in its capac-
12 ity as trustee for the Pueblo, holds title subject to
13 Federal law limitations on alienation. Such lands in-
14 clude Tracts A, B, and C, the Pueblo’s land grant,
15 the Blue Lake Wilderness Area, and the Tenorio
16 and Karavas Tracts and are generally depicted in
17 Attachment 2 to the Settlement Agreement.

18 (8) SAN JUAN-CHAMA PROJECT.—The term
19 “San Juan-Chama Project” means the Project au-
20 thorized by section 8 of the Act of June 13, 1962
21 (76 Stat. 96, 97), and the Act of April 11, 1956 (70
22 Stat. 105).

23 (9) SECRETARY.—The term “Secretary” means
24 the Secretary of the Interior.

1 (10) SETTLEMENT AGREEMENT.—The term
 2 “Settlement Agreement” means the contract dated
 3 March 31, 2006, between and among—

4 (A) the United States, acting solely in its
 5 capacity as trustee for Taos Pueblo;

6 (B) the Taos Pueblo, on its own behalf;

7 (C) the State of New Mexico;

8 (D) the Taos Valley Acequia Association
 9 and its 55 member ditches (“TVAA”);

10 (E) the Town of Taos;

11 (F) EPWSD; and

12 (G) the 12 Taos area Mutual Domestic
 13 Water Consumers Associations (“MDWCAs”),
 14 as amended to conform with this Act.

15 (11) STATE ENGINEER.—The term “State En-
 16 gineer” means the New Mexico State Engineer.

17 (12) TAOS VALLEY.—The term “Taos Valley”
 18 means the geographic area depicted in Attachment 4
 19 of the Settlement Agreement.

20 **SEC. 4. PUEBLO RIGHTS.**

21 (a) IN GENERAL.—Those rights to which the Pueblo
 22 is entitled under the Partial Final Decree shall be held
 23 in trust by the United States on behalf of the Pueblo and
 24 shall not be subject to forfeiture, abandonment, or perma-
 25 nent alienation.

1 (b) SUBSEQUENT ACT OF CONGRESS.—The Pueblo
 2 shall not be denied all or any part of its rights held in
 3 trust absent its consent unless such rights are explicitly
 4 abrogated by an Act of Congress hereafter enacted.

5 **SEC. 5. PUEBLO WATER INFRASTRUCTURE AND WATER-**
 6 **SHED ENHANCEMENT.**

7 (a) IN GENERAL.—The Secretary, acting through the
 8 Commissioner of Reclamation, shall provide grants and
 9 technical assistance to the Pueblo on a nonreimbursable
 10 basis to—

11 (1) plan, permit, design, engineer, construct, re-
 12 construct, replace, or rehabilitate water production,
 13 treatment, and delivery infrastructure;

14 (2) restore, preserve, and protect the environ-
 15 ment associated with the Buffalo Pasture area; and

16 (3) protect and enhance watershed conditions.

17 (b) AVAILABILITY OF GRANTS.—Upon the Enforce-
 18 ment Date, all amounts appropriated pursuant to section
 19 10(c)(1) or made available from other authorized sources,
 20 shall be available in grants to the Pueblo after the require-
 21 ments of subsection (c) have been met.

22 (c) PLAN.—The Secretary shall provide financial as-
 23 sistance pursuant to subsection (a) upon the Pueblo's sub-
 24 mittal of a plan that identifies the projects to be imple-
 25 mented consistent with the purposes of this section and

1 describes how such projects are consistent with the Settle-
 2 ment Agreement.

3 (d) EARLY FUNDS.—Notwithstanding subsection (b),
 4 \$10,000,000 of the monies authorized to be appropriated
 5 pursuant to section 10(c)(1)—

6 (1) shall be made available in grants to the
 7 Pueblo by the Secretary upon appropriation or avail-
 8 ability of the funds from other authorized sources;
 9 and

10 (2) shall be distributed by the Secretary to the
 11 Pueblo on receipt by the Secretary from the Pueblo
 12 of a written notice, a Tribal Council resolution that
 13 describes the purposes under subsection (a) for
 14 which the monies will be used, and a plan under
 15 subsection (c) for this portion of the funding.

16 **SEC. 6. TAOS PUEBLO WATER DEVELOPMENT FUND.**

17 (a) ESTABLISHMENT.—There is established in the
 18 Treasury of the United States a fund to be known as the
 19 “Taos Pueblo Water Development Fund” (hereinafter,
 20 “Fund”) to be used to pay or reimburse costs incurred
 21 by the Pueblo for—

22 (1) acquiring water rights;

23 (2) planning, permitting, designing, engineer-
 24 ing, constructing, reconstructing, replacing, rehabili-
 25 tating, operating, or repairing water production,

1 treatment or delivery infrastructure, on-farm im-
2 provements, or wastewater infrastructure;

3 (3) restoring, preserving and protecting the
4 Buffalo Pasture, including planning, permitting, de-
5 signing, engineering, constructing, operating, man-
6 aging and replacing the Buffalo Pasture Recharge
7 Project;

8 (4) administering the Pueblo's water rights ac-
9 quisition program and water management and ad-
10 ministration system; and

11 (5) for watershed protection and enhancement,
12 support of agriculture, water-related Pueblo commu-
13 nity welfare and economic development, and costs
14 related to the negotiation, authorization, and imple-
15 mentation of the Settlement Agreement.

16 (b) MANAGEMENT OF THE FUND.—The Secretary
17 shall manage the Fund, invest amounts in the Fund, and
18 make monies available from the Fund for distribution to
19 the Pueblo consistent with the American Indian Trust
20 Fund Management Reform Act of 1994 (25 U.S.C. 4001,
21 et seq.) (hereinafter, “Trust Fund Reform Act”), this Act,
22 and the Settlement Agreement.

23 (c) INVESTMENT OF THE FUND.—Upon the Enforce-
24 ment Date, the Secretary shall invest amounts in the
25 Fund in accordance with—

1 (1) the Act of April 1, 1880 (21 Stat. 70, ch.
2 41, 25 U.S.C. 161);

3 (2) the first section of the Act of June 24,
4 1938 (52 Stat. 1037, ch. 648, 25 U.S.C. 162a); and

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

7 (d) AVAILABILITY OF AMOUNTS FROM THE FUND.—
8 Upon the Enforcement Date, all monies deposited in the
9 Fund pursuant to section 10(c)(2) or made available from
10 other authorized sources shall be available to the Pueblo
11 for expenditure or withdrawal after the requirements of
12 subsection (e) have been met.

13 (e) EXPENDITURES AND WITHDRAWAL.—

14 (1) TRIBAL MANAGEMENT PLAN.—

15 (A) IN GENERAL.—The Pueblo may with-
16 draw all or part of the Fund on approval by the
17 Secretary of a tribal management plan as de-
18 scribed in the Trust Fund Reform Act.

19 (B) REQUIREMENTS.—In addition to the
20 requirements under the Trust Fund Reform
21 Act, the tribal management plan shall require
22 that the Pueblo spend any funds in accordance
23 with the purposes described in subsection (a).

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

1 quirement that monies withdrawn from the Fund
2 are used for the purposes specified in subsection (a).

3 (3) LIABILITY.—If the Pueblo exercises the
4 right to withdraw monies from the Fund, neither the
5 Secretary nor the Secretary of the Treasury shall re-
6 tain any liability for the expenditure or investment
7 of the monies withdrawn.

8 (4) EXPENDITURE PLAN.—

9 (A) IN GENERAL.—The Pueblo shall sub-
10 mit to the Secretary for approval an expendi-
11 ture plan for any portions of the funds made
12 available under this Act that the Pueblo does
13 not withdraw under paragraph (1)(A).

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

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

23 (5) ANNUAL REPORT.—The Pueblo shall submit
24 to the Secretary an annual report that describes all

1 expenditures from the Fund during the year covered
2 by the report.

3 (f) FUNDS AVAILABLE UPON APPROPRIATION.—Not-
4 withstanding subsection (d), \$15,000,000 of the monies
5 authorized to be appropriated pursuant to section
6 10(c)(2)—

7 (1) shall be available upon appropriation or
8 made available from other authorized sources for the
9 Pueblo's acquisition of water rights pursuant to Ar-
10 ticle 5.1.1.2.3 of the Settlement Agreement, the Buf-
11 falo Pasture Recharge Project, implementation of
12 the Pueblo's water rights acquisition program and
13 water management and administration system, the
14 design, planning, and permitting of water or waste-
15 water infrastructure eligible for funding under sec-
16 tions 5 or 6, or costs related to the negotiation, au-
17 thorization, and implementation of the Settlement
18 Agreement; and

19 (2) shall be distributed by the Secretary to the
20 Pueblo on receipt by the Secretary from the Pueblo
21 of a written notice and a Tribal Council resolution
22 that describes the purposes under paragraph (1) for
23 which the monies will be used.

1 (g) NO PER CAPITA DISTRIBUTIONS.—No part of the
 2 Fund shall be distributed on a per capita basis to members
 3 of the Pueblo.

4 **SEC. 7. MARKETING.**

5 (a) PUEBLO WATER RIGHTS.—Subject to the ap-
 6 proval of the Secretary in accordance with subsection (e),
 7 the Pueblo may market water rights secured to it under
 8 the Settlement Agreement and Partial Final Decree, pro-
 9 vided that such marketing is in accordance with this sec-
 10 tion.

11 (b) PUEBLO CONTRACT RIGHTS TO SAN JUAN-
 12 CHAMA PROJECT WATER.—Subject to the approval of the
 13 Secretary in accordance with subsection (e), the Pueblo
 14 may subcontract water made available to the Pueblo under
 15 the contract authorized under section 9(b)(1)(A) to third
 16 parties to supply water for use within or without the Taos
 17 Valley, provided that the delivery obligations under such
 18 subcontract are not inconsistent with the Secretary's exist-
 19 ing San Juan-Chama Project obligations and such sub-
 20 contract is in accordance with this section.

21 (c) LIMITATION.—

22 (1) IN GENERAL.—Diversion or use of water off
 23 Pueblo lands pursuant to Pueblo water rights or
 24 Pueblo contract rights to San Juan-Chama Project
 25 water shall be subject to and not inconsistent with

1 the same requirements and conditions of State law,
2 any applicable Federal law, and any applicable inter-
3 state compact as apply to the exercise of water
4 rights or contract rights to San Juan-Chama Project
5 water held by non-Federal, non-Indian entities, in-
6 cluding all applicable State Engineer permitting and
7 reporting requirements.

8 (2) EFFECT ON WATER RIGHTS.—Such diver-
9 sion or use off Pueblo lands under paragraph (1)
10 shall not impair water rights or increase surface
11 water depletions within the Taos Valley.

12 (d) MAXIMUM TERM.—

13 (1) IN GENERAL.—The maximum term of any
14 water use lease or subcontract, including all renew-
15 als, shall not exceed 99 years in duration.

16 (2) ALIENATION OF RIGHTS.—The Pueblo shall
17 not permanently alienate any rights it has under the
18 Settlement Agreement, the Partial Final Decree,
19 and this Act.

20 (e) APPROVAL OF SECRETARY.—The Secretary shall
21 approve or disapprove any lease or subcontract submitted
22 by the Pueblo for approval not later than—

23 (1) 180 days after submission; or

24 (2) 60 days after compliance, if required, with
25 section 102(2)(C) of the National Environmental

1 Policy Act of 1969 (42 U.S.C. 4332(2)(C)), or any
2 other requirement of Federal law, whichever is later,
3 provided that no Secretarial approval shall be re-
4 quired for any water use lease ~~or subcontract~~ with
5 a term of less than 7 years.

6 (f) NO FORFEITURE OR ABANDONMENT.—The non-
7 use by a lessee or subcontractor of the Pueblo of any right
8 to which the Pueblo is entitled under the Partial Final
9 Decree shall in no event result in a forfeiture, abandon-
10 ment, relinquishment, or other loss of all or any part of
11 those rights.

12 (g) NO PREEMPTION.—

13 (1) IN GENERAL.—The approval authority of
14 the Secretary provided under subsection (e) shall not
15 amend, construe, supersede, or preempt any State or
16 Federal law, interstate compact, or international
17 treaty that pertains to the Colorado River, the Rio
18 Grande, or any of their tributaries, including the ap-
19 propriation, use, development, storage, regulation,
20 allocation, conservation, exportation, or quantity of
21 those waters.

22 (2) APPLICABLE LAW.—The provisions of sec-
23 tion 2116 of the Revised Statutes (25 U.S.C. 177)
24 shall not apply to any water made available under
25 the Settlement Agreement.

1 (h) NO PREJUDICE.—Nothing in this Act shall be
 2 construed to establish, address, prejudice, or prevent any
 3 party from litigating whether or to what extent any appli-
 4 cable State law, Federal law, or interstate compact does
 5 or does not permit, govern, or apply to the use of the
 6 Pueblo’s water outside of New Mexico.

7 **SEC. 8. MUTUAL-BENEFIT PROJECTS.**

8 (a) IN GENERAL.—Upon the Enforcement Date, the
 9 Secretary, acting through the Commissioner of Reclama-
 10 tion, shall provide financial assistance in the form of
 11 grants on a nonreimbursable basis to Eligible Non-Pueblo
 12 Entities to plan, permit, design, engineer, and construct
 13 the Mutual-Benefit Projects in accordance with the Settle-
 14 ment Agreement—

15 (1) to minimize adverse impacts on the Pueblo’s
 16 water resources by moving future non-Indian ground
 17 water pumping away from the Pueblo’s Buffalo Pas-
 18 ture; and

19 (2) to implement the resolution of a dispute
 20 over the allocation of certain surface water flows be-
 21 tween the Pueblo and non-Indian irrigation water
 22 right owners in the community of Arroyo Seco
 23 Arriba.

24 (b) COST-SHARING.—

1 (1) FEDERAL SHARE.—The Federal share of
 2 the total cost of planning, designing, and con-
 3 structing the Mutual-Benefit Projects authorized in
 4 subsection (a) shall be 75 percent and shall be non-
 5 reimbursable.

6 (2) NON-FEDERAL SHARE.—The non-Federal
 7 share of the total cost of planning, designing, and
 8 constructing the Mutual-Benefit Projects shall be 25
 9 percent and may be in the form of in-kind contribu-
 10 tions, including the contribution of any valuable
 11 asset or service that the Secretary determines would
 12 substantially contribute to completing the Mutual-
 13 Benefit Projects.

14 **SEC. 9. SAN JUAN-CHAMA PROJECT CONTRACTS.**

15 (a) IN GENERAL.—Contracts issued under this sec-
 16 tion shall be in accordance with this Act and the Settle-
 17 ment Agreement.

18 (b) CONTRACTS FOR SAN JUAN-CHAMA PROJECT
 19 WATER.—

20 (1) IN GENERAL.—The Secretary shall enter
 21 into 3 repayment contracts by ~~December 31,~~
 22 ~~2009~~*not later than 180 days after the date of enact-*
 23 *ment of this Act*, for the delivery of San Juan-Chama
 24 Project water in the following amounts:

25 (A) 2,215 acre-feet/annum to the Pueblo.

1 (B) 366 acre-feet/annum to the Town of
2 Taos.

3 (C) 40 acre-feet/annum to EPWSD.

4 (2) REQUIREMENTS.—Each such contract shall
5 provide that if the conditions precedent set forth in
6 section 10(f)(2) have not been fulfilled by December
7 31, ~~2015~~2016, the contract shall expire on that date.

8 (3) APPLICABLE LAW.—Public Law 87–483 (76
9 Stat. 97) applies to the contracts entered into under
10 paragraph (1) and no preference shall be applied as
11 a result of section 4(a) with regard to the delivery
12 or distribution of San Juan-Chama Project water or
13 the management or operation of the San Juan-
14 Chama Project.

15 (c) WAIVER.—With respect to the contract author-
16 ized and required by subsection (b)(1)(A) and notwith-
17 standing the provisions of Public Law 87–483 (76 Stat.
18 96) or any other provision of law—

19 (1) the Secretary shall waive the entirety of the
20 Pueblo's share of the construction costs, both prin-
21 cipal and the interest, for the San Juan-Chama
22 Project and pursuant to that waiver, the Pueblo's
23 share of all construction costs for the San Juan-
24 Chama Project, inclusive of both principal and inter-
25 est shall be nonreimbursable; and

1 (2) the Secretary's waiver of the Pueblo's share
 2 of the construction costs for the San Juan-Chama
 3 Project will not result in an increase in the pro rata
 4 shares of other San Juan-Chama Project water con-
 5 tractors, but such costs shall be absorbed by the
 6 United States Treasury or otherwise appropriated to
 7 the Department of the Interior.

8 **SEC. 10. AUTHORIZATIONS, RATIFICATIONS, CONFIRMA-**
 9 **TIONS, AND CONDITIONS PRECEDENT.**

10 (a) RATIFICATION.—

11 (1) IN GENERAL.—Except to the extent that
 12 any provision of the Settlement Agreement conflicts
 13 with any provision of this Act, the Settlement Agree-
 14 ment is authorized, ratified, and confirmed.

15 (2) AMENDMENTS.—To the extent amendments
 16 are executed to make the Settlement Agreement con-
 17 sistent with this Act, such amendments are also au-
 18 thorized, ratified, and confirmed.

19 (b) EXECUTION OF SETTLEMENT AGREEMENT.—To
 20 the extent that the Settlement Agreement does not conflict
 21 with this Act, the Secretary shall execute the Settlement
 22 Agreement, including all exhibits to the Settlement Agree-
 23 ment requiring the signature of the Secretary and any
 24 amendments necessary to make the Settlement Agreement

1 consistent with this Act, after the Pueblo has executed the
2 Settlement Agreement and any such amendments.

3 (c) AUTHORIZATION OF APPROPRIATIONS.—

4 (1) TAOS PUEBLO INFRASTRUCTURE AND WA-
5 TERSHED FUND.—There is authorized to be appro-
6 priated to the Secretary to provide grants pursuant
7 to section 5, \$30,000,000, as adjusted under para-
8 graph (4), for the period of fiscal years 2010
9 through 2016.

10 (2) TAOS PUEBLO WATER DEVELOPMENT
11 FUND.—There is authorized to be appropriated to
12 the Taos Pueblo Water Development Fund, estab-
13 lished at section 6(a), \$58,000,000, as adjusted
14 under paragraph (4), for the period of fiscal years
15 2010 through 2016.

16 (3) MUTUAL-BENEFIT PROJECTS FUNDING.—
17 There is further authorized to be appropriated to the
18 Secretary to provide grants pursuant to section 8, a
19 total of \$33,000,000, as adjusted under paragraph
20 (4), for the period of fiscal years 2010 through
21 2016.

22 (4) ADJUSTMENTS TO AMOUNTS AUTHOR-
23 IZED.—The amounts authorized to be appropriated
24 under paragraphs (1) through (3) shall be adjusted
25 by such amounts as may be required by reason of

1 changes since April 1, 2007, in construction costs,
2 as indicated by engineering cost indices applicable to
3 the types of construction or rehabilitation involved.

4 (5) DEPOSIT IN FUND.—Except for the funds
5 to be provided to the Pueblo pursuant to section
6 5(d), the Secretary shall deposit the funds made
7 available pursuant to paragraphs (1) and (3) into a
8 Taos Settlement Fund to be established within the
9 Treasury of the United States so that such funds
10 may be made available to the Pueblo and the Eligi-
11 ble Non-Pueblo Entities upon the Enforcement Date
12 as set forth in sections 5(b) and 8(a).

13 (d) AUTHORITY OF THE SECRETARY.—The Secretary
14 is authorized to enter into such agreements and to take
15 such measures as the Secretary may deem necessary or
16 appropriate to fulfill the intent of the Settlement Agree-
17 ment and this Act.

18 (e) ENVIRONMENTAL COMPLIANCE.—

19 (1) EFFECT OF EXECUTION OF SETTLEMENT
20 AGREEMENT.—The Secretary's execution of the Set-
21 tlement Agreement shall not constitute a major Fed-
22 eral action under the National Environmental Policy
23 Act of 1969 (42 U.S.C. 4321 et seq.).

24 (2) COMPLIANCE WITH ENVIRONMENTAL
25 LAWS.—In carrying out this Act, the Secretary shall

1 comply with each law of the Federal Government re-
2 lating to the protection of the environment, includ-
3 ing—

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

6 (B) the Endangered Species Act of 1973
7 (16 U.S.C. 1531 et seq.).

8 (f) CONDITIONS PRECEDENT AND SECRETARIAL
9 FINDING.—

10 (1) IN GENERAL.—Upon the fulfillment of the
11 conditions precedent described in paragraph (2), the
12 Secretary shall publish in the Federal Register a
13 statement of finding that the conditions have been
14 fulfilled.

15 (2) CONDITIONS.—The conditions precedent re-
16 ferred to in paragraph (1) are the following:

17 (A) The President has signed into law the
18 Taos Pueblo Indian Water Rights Settlement
19 Act.

20 (B) To the extent that the Settlement
21 Agreement conflicts with this Act, the Settle-
22 ment Agreement has been revised to conform
23 with this Act.

24 (C) The Settlement Agreement, so revised,
25 including waivers and releases pursuant to sec-

tion 11, has been executed by the Parties and the Secretary prior to the Parties' motion for entry of the Partial Final Decree.

(D) Congress has fully appropriated or the Secretary has provided from other authorized sources all funds authorized by paragraphs (1) through (3) of subsection (c) so that the entire amounts so authorized have been previously provided to the Pueblo pursuant to sections 5 and 6, or placed in the Taos Pueblo Water Development Fund or the Taos Settlement Fund as directed in subsection (c).

(E) The Legislature of the State of New Mexico has fully appropriated the funds for the State contributions as specified in the Settlement Agreement, and those funds have been deposited in appropriate accounts.

(F) The State of New Mexico has enacted legislation that amends NMSA 1978, section 72-6-3 to state that a water use due under a water right secured to the Pueblo under the Settlement Agreement or the Partial Final Decree may be leased for a term, including all renewals, not to exceed 99 years, provided that this condition shall not be construed to require

1 that said amendment state that any State law
 2 based water rights acquired by the Pueblo or by
 3 the United States on behalf of the Pueblo may
 4 be leased for said term.

5 (G) A Partial Final Decree that sets forth
 6 the water rights and contract rights to water to
 7 which the Pueblo is entitled under the Settle-
 8 ment Agreement and this Act and that substan-
 9 tially conforms to the Settlement Agreement
 10 and Attachment 5 thereto has been approved by
 11 the Court and has become final and nonappeal-
 12 able.

13 (g) ENFORCEMENT DATE.—The Settlement Agree-
 14 ment shall become enforceable, and the waivers and re-
 15 leases executed pursuant to section 11 and the limited
 16 waiver of sovereign immunity set forth in section 12(a)
 17 shall become effective, as of the date that the Secretary
 18 publishes the notice required by subsection (f)(1).

19 (h) EXPIRATION DATE.—

20 (1) IN GENERAL.—If all of the conditions
 21 precedent described in section (f)(2) have not been
 22 fulfilled by December 31, 2016, the Settlement
 23 Agreement shall be null and void, the waivers and
 24 releases executed pursuant to section 11 and the
 25 sovereign immunity waivers in section 12(a) shall

1 not become effective, and any unexpended Federal
2 funds, together with any income earned thereon, and
3 title to any property acquired or constructed with
4 expended Federal funds, shall be returned to the
5 Federal Government, unless otherwise agreed to by
6 the Parties in writing and approved by Congress.

7 (2) EXCEPTION.—Notwithstanding subsection
8 (h)(1) or any other provision of law, any unexpended
9 Federal funds, together with any income earned
10 thereon, made available under sections 5(d) and 6(f)
11 and title to any property acquired or constructed
12 with expended Federal funds made available under
13 sections 5(d) and 6(f) shall be retained by the Pueb-
14 lo.

15 (3) RIGHT TO SET-OFF.—In the event the con-
16 ditions precedent set forth in subsection (f)(2) have
17 not been fulfilled by December 31, 2016, the United
18 States shall be entitled to set off any funds expended
19 or withdrawn from the amount appropriated pursu-
20 ant to paragraphs (1) and (2) of subsection (c) or
21 made available from other authorized sources, to-
22 gether with any interest accrued, against any claims
23 asserted by the Pueblo against the United States re-
24 lating to water rights in the Taos Valley.

1 **SEC. 11. WAIVERS AND RELEASES.**

2 (a) CLAIMS BY THE PUEBLO AND THE UNITED
3 STATES.—In return for recognition of the Pueblo’s water
4 rights and other benefits, including but not limited to the
5 commitments by non-Pueblo parties, as set forth in the
6 Settlement Agreement and this Act, the Pueblo, on behalf
7 of itself and its members, and the United States acting
8 in its capacity as trustee for the Pueblo are authorized
9 to execute a waiver and release of claims against the par-
10 ties to New Mexico v. Abeyta and New Mexico v. Arellano,
11 Civil Nos. 7896–BB (U.S.6 D.N.M.) and 7939–BB (U.S.
12 D.N.M.) (consolidated) from—

13 (1) all claims for water rights in the Taos Val-
14 ley that the Pueblo, or the United States acting in
15 its capacity as trustee for the Pueblo, asserted, or
16 could have asserted, in any proceeding, including but
17 not limited to in New Mexico v. Abeyta and New
18 Mexico v. Arellano, Civil Nos. 7896–BB (U.S.6
19 D.N.M.) and 7939–BB (U.S. D.N.M.) (consoli-
20 dated), up to and including the Enforcement Date,
21 except to the extent that such rights are recognized
22 in the Settlement Agreement or this Act;

23 (2) all claims for water rights, whether for con-
24 sumptive or nonconsumptive use, in the Rio Grande
25 mainstream or its tributaries that the Pueblo, or the
26 United States acting in its capacity as trustee for

1 the Pueblo, asserted or could assert in any water
2 rights adjudication proceedings except those claims
3 based on Pueblo or United States ownership of lands
4 or water rights acquired after the Enforcement
5 Date, provided that nothing in this paragraph shall
6 prevent the Pueblo or the United States from fully
7 participating in the inter se phase of any such water
8 rights adjudication proceedings;

9 (3) all claims for damages, losses or injuries to
10 water rights or claims of interference with, diversion
11 or taking of water (including but not limited to
12 claims for injury to lands resulting from such dam-
13 ages, losses, injuries, interference with, diversion, or
14 taking) in the Rio Grande mainstream or its tribu-
15 taries or for lands within the Taos Valley that ac-
16 crued at any time up to and including the Enforce-
17 ment Date; and

18 (4) all claims against the State of New Mexico,
19 its agencies, or employees relating to the negotiation
20 or the adoption of the Settlement Agreement.

21 (b) CLAIMS BY THE PUEBLO AGAINST THE UNITED
22 STATES.—The Pueblo, on behalf of itself and its members,
23 is authorized to execute a waiver and release of—

24 (1) all claims against the United States, its
25 agencies, or employees relating to claims for water

1 rights in or water of the Taos Valley that the United
2 States acting in its capacity as trustee for the Pueb-
3 lo asserted, or could have asserted, in any pro-
4 ceeding, including but not limited to in New Mexico
5 v. Abeyta and New Mexico v. Arellano, Civil Nos.
6 7896-BB (U.S.6 D.N.M.) and 7939-BB (U.S.
7 D.N.M.) (consolidated);

8 (2) all claims against the United States, its
9 agencies, or employees relating to damages, losses,
10 or injuries to water, water rights, land, or natural
11 resources due to loss of water or water rights (in-
12 cluding but not limited to damages, losses or injuries
13 to hunting, fishing, gathering, or cultural rights due
14 to loss of water or water rights, claims relating to
15 interference with, diversion or taking of water or
16 water rights, or claims relating to failure to protect,
17 acquire, replace, or develop water, water rights or
18 water infrastructure) in the Rio Grande mainstream
19 or its tributaries or within the Taos Valley that first
20 accrued at any time up to and including the En-
21 forcement Date;

22 (3) all claims against the United States, its
23 agencies, or employees for an accounting of funds
24 appropriated by the Act of March 4, 1929 (45 Stat.
25 1562), the Act of March 4, 1931 (46 Stat. 1552),

1 the Act of June 22, 1936 (49 Stat. 1757), the Act
 2 of August 9, 1937 (50 Stat. 564), and the Act of
 3 May 9, 1938 (52 Stat. 291), as authorized by the
 4 Pueblo Lands Act of June 7, 1924 (43 Stat. 636),
 5 and the Pueblo Lands Act of May 31, 1933 (48
 6 Stat. 108), and for breach of trust relating to funds
 7 for water replacement appropriated by said Acts
 8 that first accrued before the date of enactment of
 9 this Act;

10 (4) all claims against the United States, its
 11 agencies, or employees relating to the pending litigation of claims relating to the Pueblo's water rights
 12 in New Mexico v. Abeyta and New Mexico v.
 13 Arellano, Civil Nos. 7896–BB (U.S. 6 D.N.M.) and
 14 7939–BB (U.S. D.N.M.) (consolidated); and
 15

16 (5) all claims against the United States, its
 17 agencies, or employees relating to the negotiation,
 18 Execution or the adoption of the Settlement Agreement, exhibits thereto, the Final Decree, or this Act.
 19

20 (c) RESERVATION OF RIGHTS AND RETENTION OF
 21 CLAIMS.—Notwithstanding the waivers and releases authorized in this Act, the Pueblo on behalf of itself and
 22 its members and the United States acting in its capacity
 23 as trustee for the Pueblo retain—
 24

1 (1) all claims for enforcement of the Settlement
2 Agreement, the Final Decree, including the Partial
3 Final Decree, the San Juan-Chama Project contract
4 between the Pueblo and the United States, or this
5 Act;

6 (2) all claims against persons other than the
7 Parties to the Settlement Agreement for damages,
8 losses or injuries to water rights or claims of inter-
9 ference with, diversion or taking of water rights (in-
10 cluding but not limited to claims for injury to lands
11 resulting from such damages, losses, injuries, inter-
12 ference with, diversion, or taking of water rights)
13 within the Taos Valley arising out of activities oc-
14 curring outside the Taos Valley or the Taos Valley
15 Stream System;

16 (3) all rights to use and protect water rights ac-
17 quired after the date of enactment of this Act;

18 (4) all rights to use and protect water rights ac-
19 quired pursuant to State law, to the extent not in-
20 consistent with the Partial Final Decree and the
21 Settlement Agreement (including water rights for
22 the land the Pueblo owns in Questa, New Mexico);

23 (5) all claims relating to activities affecting the
24 quality of water including but not limited to any
25 claims the Pueblo might have under the Comprehen-

1 sive Environmental Response, Compensation, and
2 Liability Act of 1980 (42 U.S.C. 9601 et seq.) (in-
3 cluding but not limited to claims for damages to nat-
4 ural resources), the Safe Drinking Water Act (42
5 U.S.C. 300f et seq.), the Federal Water Pollution
6 Control Act (33 U.S.C. 1251 et seq.), and the regu-
7 lations implementing those Acts;

8 (6) all claims relating to damages, losses, or in-
9 juries to land or natural resources not due to loss
10 of water or water rights (including but not limited
11 to hunting, fishing, gathering, or cultural rights);
12 and

13 (7) all rights, remedies, privileges, immunities,
14 powers, and claims not specifically waived and re-
15 leased pursuant to this Act and the Settlement
16 Agreement.

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

19 (1) affects the ability of the United States act-
20 ing in its sovereign capacity to take actions author-
21 ized by law, including but not limited to any laws re-
22 lating to health, safety, or the environment, includ-
23 ing but not limited to the Federal Water Pollution
24 Control Act (33 U.S.C. 1251 et seq.), the Safe
25 Drinking Water Act (42 U.S.C. 300f et seq.), the

1 Comprehensive Environmental Response, Compensation,
 2 tion, and Liability Act of 1980 (42 U.S.C. 9601 et
 3 seq.), the Solid Waste Disposal Act (42 U.S.C. 6901
 4 et seq.), and the regulations implementing such
 5 Acts;

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

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

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

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

16 (4) waives any claim of a member of the Pueblo
 17 in an individual capacity that does not derive from
 18 a right of the Pueblo.

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 the earlier of—

25 (A) December 31, 2016; or

1 (B) the Enforcement Date.

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

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

10 **SEC. 12. INTERPRETATION AND ENFORCEMENT.**

11 (a) LIMITED WAIVER OF SOVEREIGN IMMUNITY.—
12 Upon and after the Enforcement Date, if any Party to
13 the Settlement Agreement brings an action in any court
14 of competent jurisdiction over the subject matter relating
15 only and directly to the interpretation or enforcement of
16 the Settlement Agreement or this Act, and names the
17 United States or the Pueblo as a party, then the United
18 States, the Pueblo, or both may be added as a party to
19 any such action, and any claim by the United States or
20 the Pueblo to sovereign immunity from the action is
21 waived, but only for the limited and sole purpose of such
22 interpretation or enforcement, and no waiver of sovereign
23 immunity is made for any action against the United States
24 or the Pueblo that seeks money damages.

1 (b) SUBJECT MATTER JURISDICTION NOT AF-
2 FECTED.—Nothing in this Act shall be deemed as confer-
3 ring, restricting, enlarging, or determining the subject
4 matter jurisdiction of any court, including the jurisdiction
5 of the court that enters the Partial Final Decree adjudi-
6 cating the Pueblo’s water rights.

7 (c) REGULATORY AUTHORITY NOT AFFECTED.—
8 Nothing in this Act shall be deemed to determine or limit
9 any authority of the State or the Pueblo to regulate or
10 administer waters or water rights now or in the future.

11 **SEC. 13. DISCLAIMER.**

12 Nothing in the Settlement Agreement or this Act
13 shall be construed in any way to quantify or otherwise ad-
14 versely affect the land and water rights, claims, or entitle-
15 ments to water of any other Indian tribe.

Calendar No. 257

111TH CONGRESS
2D Session

S. 965

[Report No. 111-117]

A BILL

To approve the Taos Pueblo Indian Water Rights
Settlement Agreement, and for other purposes.

JANUARY 20, 2010

Reported with amendments