

114TH CONGRESS  
1ST SESSION

# S. 1936

To provide for drought preparedness measures in the State of New Mexico,  
and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

AUGUST 4, 2015

Mr. UDALL (for himself and Mr. HEINRICH) introduced the following bill;  
which was read twice and referred to the Committee on Energy and Nat-  
ural Resources

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## A BILL

To provide for drought preparedness measures in the State  
of New Mexico, 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 “New Mexico Drought Preparedness Act of 2015”.

6 (b) **TABLE OF CONTENTS.**—The table of contents of  
7 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Definitions.
- Sec. 3. Water acquisition program.
- Sec. 4. Water conservation.
- Sec. 5. Middle Rio Grande peak flow restoration.
- Sec. 6. National Academy of Sciences study.

- Sec. 7. Emergency funding.
- Sec. 8. Secure Water Act reauthorization.
- Sec. 9. Reclamation States Emergency Drought Relief Act reauthorization.
- Sec. 10. Rio Grande Pueblo irrigation infrastructure reauthorization.
- Sec. 11. Regional conservation partnership program.
- Sec. 12. Conservation reserve program.
- Sec. 13. Effect on State law.

1 **SEC. 2. DEFINITIONS.**

2 In this Act:

3 (1) **BASIN.**—The term “Basin” means each  
4 of—

5 (A) the Upper Rio Grande Basin;

6 (B) the Middle Rio Grande Basin;

7 (C) the Lower Rio Grande Basin;

8 (D) the Lower Pecos River Basin;

9 (E) the Gila River Basin;

10 (F) the Canadian River Basin;

11 (G) the San Francisco River Basin; and

12 (H) the San Juan River Basin.

13 (2) **DISTRICT.**—The term “District” means the  
14 Middle Rio Grande Conservancy District.

15 (3) **PUEBLO.**—The term “Pueblo” means each  
16 of the following pueblos in the State:

17 (A) Cochiti.

18 (B) Santo Domingo.

19 (C) San Felipe.

20 (D) Santa Ana.

21 (E) Sandia.

22 (F) Isleta.

1           (4) SECRETARIES.—The term “Secretaries”  
2 means—

3           (A) the Administrator of the Environ-  
4 mental Protection Agency;

5           (B) the Secretary of Commerce; and

6           (C) the Secretary of the Interior.

7           (5) SECRETARY.—The term “Secretary” means  
8 the Secretary of the Interior.

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

11 **SEC. 3. WATER ACQUISITION PROGRAM.**

12           (a) IN GENERAL.—The Secretary, acting through the  
13 Commissioner of Reclamation, shall carry out in the Ba-  
14 sins a water acquisition program in coordination with the  
15 other appropriate Federal agencies, State agencies, and  
16 non-Federal stakeholders, under which the Secretary  
17 shall—

18           (1) make acquisitions of water in the Basins by  
19 lease or purchase of water rights or contractual enti-  
20 tlements from willing lessors or sellers, consistent  
21 with section 8 of the Act of June 17, 1902 (43  
22 U.S.C. 383), and applicable State law relating to the  
23 acquisition and administration of water rights; and

24           (2) take any other actions, consistent with sec-  
25 tion 8 of the Act of June 17, 1902 (43 U.S.C. 383),

1 and applicable State law, that the Secretary deter-  
2 mines would achieve the purposes of the water ac-  
3 quisition program described in subsection (b).

4 (b) PURPOSES.—The purposes of the water acqui-  
5 sition program are—

6 (1) to enhance stream flow to benefit fish and  
7 wildlife (including endangered species), water qual-  
8 ity, and river ecosystem restoration in the Basins;  
9 and

10 (2) to enhance stewardship and conservation of  
11 working land, water, and watersheds in the Basins,  
12 consistent with the purpose described in paragraph  
13 (1).

14 (c) COORDINATION.—To assist in developing and ad-  
15 ministering the program, the Secretary may provide funds  
16 to a federally established nonprofit entity with particular  
17 expertise in western water transactions.

18 (d) DISTRICT PROJECTS.—Subject to State law, the  
19 Secretary may develop programs to provide—

20 (1) cost-share assistance to the District or agri-  
21 cultural producers and irrigators in the District for  
22 making irrigation system improvements and increase  
23 system efficiency;

24 (2) incentives to the District for the establish-  
25 ment of a water leasing program from willing lessors

1 for agricultural producers and irrigators in the Dis-  
2 trict to temporarily lease pre-1907 water rights (in-  
3 stead of permanent severance from irrigable lands)  
4 for the purpose of providing benefits to species listed  
5 under the Endangered Species Act of 1973 (16  
6 U.S.C. 1531 et seq.) and other river ecosystem bene-  
7 fits; and

8 (3) cost-share assistance to the District to im-  
9 plement infrastructure or operational changes that  
10 will allow for effective management of a leasing pro-  
11 gram, while maintaining adequate water deliveries to  
12 other agricultural producers and irrigators.

13 (e) AUTHORIZATION OF APPROPRIATIONS.—There is  
14 authorized to be appropriated to the Secretary to carry  
15 out this section \$30,000,000.

16 **SEC. 4. WATER CONSERVATION.**

17 (a) IN GENERAL.—The Secretary, in cooperation  
18 with the District and in consultation with the Pueblos,  
19 may provide funding and technical assistance for the in-  
20 stallation of metering and measurement devices and the  
21 construction of check structures on irrigation diversions,  
22 canals, laterals, ditches, and drains—

23 (1) to ensure the conservation and efficient use  
24 of water within the District by—

25 (A) reducing actual consumptive use; or

1 (B) not increasing the use of water; and  
2 (2) to improve the measurement and allocation  
3 of water acquired through the water acquisition pro-  
4 gram established under section 3.

5 (b) RIO GRANDE, SAN ACACIA AND ISLETA  
6 REACHES.—

7 (1) IN GENERAL.—The Secretary shall provide  
8 for development of a comprehensive plan for the San  
9 Acacia and Isleta reaches to plan, design, construct  
10 and prioritize projects that balance river mainte-  
11 nance, water availability, use, and delivery, and eco-  
12 system benefits, including—

13 (A) planning, permitting, and construction  
14 of a pumping station at Bosque del Apache Na-  
15 tional Wildlife Refuge for the purpose of more  
16 efficiently using water to provide—

17 (i) a stable supply for the Refuge; and  
18 (ii) an efficient and reliable supply of  
19 water to the Rio Grande for the benefit of  
20 the endangered silvery minnow and South-  
21 western willow flycatcher;

22 (B) planning, permitting, and construction  
23 of a river channel realignment project near the  
24 Rio Grande mile-83 for the purpose addressing

1 river channel aggradation while maintaining  
2 floodplain connectivity;

3 (C) planning, permitting, and construction  
4 of a controlled outlet for the low flow convey-  
5 ance channel to the Rio Grande between Fort  
6 Craig, New Mexico, and Rio Grande mile-60 for  
7 the purpose of water use and delivery, enhance-  
8 ment and development of habitat areas, and  
9 possible creation of a single-channel river eco-  
10 system; and

11 (D) development of a Lower Reach Plan—

12 (i) to identify additional projects and  
13 maintenance activities with water use and  
14 delivery and ecosystem benefits; and

15 (ii) to prioritize implementation of all  
16 projects and activities.

17 (2) PUBLIC PARTICIPATION.—In carrying out  
18 this subsection, the Secretary shall provide a process  
19 for public participation and comment during plan  
20 development and alternative analysis.

21 (c) AUTHORIZATION OF APPROPRIATIONS.—There is  
22 authorized to be appropriated to the Secretary to carry  
23 out this section \$18,000,000.

1 **SEC. 5. MIDDLE RIO GRANDE PEAK FLOW RESTORATION.**

2 (a) TEMPORARY DEVIATION.—During the 5-year pe-  
3 riod beginning on the date of enactment of this Act, the  
4 Secretary of the Army shall continue the temporary devi-  
5 ation in the operation of Cochiti Lake and Jemez Canyon  
6 Dam, that was initiated in 2009 and terminated in 2013,  
7 to continue to evaluate the benefits of the deviation while  
8 a permanent reauthorization of the reservoirs is pursued.

9 (b) FEASIBILITY STUDY AND REPORT.—Not later  
10 than 1 year after the date of enactment of this Act, the  
11 Secretary of the Army and the Secretary shall—

12 (1) conduct a feasibility study to address  
13 Cochiti Dam operation limitations on the timing,  
14 magnitude, and duration of flows that support feder-  
15 ally listed species in the Middle Rio Grande, con-  
16 sistent with subsection (c); and

17 (2) submit to Congress a feasibility report on  
18 the reauthorization of the purposes of Cochiti Dam.

19 (c) GOALS.—The deviation described in subsection  
20 (a) shall provide for the detention and release of native  
21 Rio Grande water and San Juan-Chama Project water  
22 with the goals of—

23 (1) restoring natural river processes to the Rio  
24 Grande, including a Spring peak flow to the Rio  
25 Grande;

1           (2) increasing the spawning and recruitment of  
2 endangered Rio Grande silvery minnows;

3           (3) creating overbanking flows that are nec-  
4 essary—

5                 (A) to maintain a healthy bosque; and

6                 (B) to support habitat for the South-  
7 western willow flycatcher and other wildlife;

8           (4) maintaining channel capacity; and

9           (5) increasing water operational flexibility and  
10 efficiencies in meeting irrigation and municipal and  
11 industrial purposes, if the increased water oper-  
12 ational flexibility and efficiencies enhance the goals  
13 described in paragraphs (1) and (4).

14         (d) MONITORING.—The Secretary of the Army, in co-  
15 operation with the Secretary and other Federal and non-  
16 Federal stakeholders shall—

17           (1) monitor the environmental effects, benefits,  
18 and results of the deviation mandated under this  
19 section; and

20           (2) compile any data necessary to evaluate the  
21 need for further amendment to the authorizations  
22 and water control manuals for Cochiti Lake or  
23 Jemez Canyon Dam.

24         (e) CONSULTATION REQUIRED.—Before imple-  
25 menting the proposed deviation under this section, as re-

1 quired by the applicable water control manuals, the Sec-  
2 retary of the Army shall first obtain approval from—

- 3 (1) Pueblo de Cochiti regarding the effect of
- 4 the deviation on the easement of Pueblo de Cochiti;
- 5 (2) Pueblo of Santa Ana; and
- 6 (3) the Rio Grande Compact Commission.

7 (f) REPORTS.—The Secretary of the Army shall pre-  
8 pare and submit to Congress—

- 9 (1) for each year in which the deviations are
- 10 being carried out under this section, annual reports
- 11 that describe the data compiled under subsection
- 12 (d)(2); and

- 13 (2) at the end of the period described in sub-
- 14 section (a), a final, cumulative report that summa-
- 15 rizes the data obtained during that period.

16 (g) AUTHORIZATION OF APPROPRIATIONS.—There is  
17 authorized to be appropriated to the Secretary of the  
18 Army \$3,000,000 to carry out this section.

19 **SEC. 6. NATIONAL ACADEMY OF SCIENCES STUDY.**

20 (a) IN GENERAL.—Not later than 60 days after the  
21 date of enactment of this Act, the Secretary of the Army  
22 and the Secretary shall enter into an arrangement with  
23 the National Academy of Sciences to carry out a study  
24 on water and reservoir management and operation issues  
25 along the Rio Grande (including the Heron, El Vado,

1 Abiquiu, Cochiti, Jemez Canyon, Elephant Butte, and  
2 Caballo Dams and Reservoirs), which shall include—

3 (1) an evaluation of existing Rio Grande res-  
4ervoir authorizations and legal requirements;

5 (2) a summary of—

6 (A) the physical-hydrologic understanding  
7 of existing Rio Grande reservoir operations; and

8 (B) any potential constraints on the Rio  
9 Grande reservoir in light of climate change pro-  
10 jections;

11 (3) an identification of opportunities to opti-  
12 mize water storage and management to benefit the  
13 Rio Grande ecosystem, irrigators and municipal  
14 users, and to promote water conservation through  
15 reauthorization of, reoperation of, regulation of, or  
16 physical improvements to the reservoirs;

17 (4) an evaluation of the physical-hydrologic fea-  
18 sibility of the identified future reservoir management  
19 scenarios;

20 (5) an identification of water use, supply, and  
21 accounting impacts to other stakeholders in the  
22 State and on the Rio Grande Compact water deliv-  
23 eries;

24 (6) consideration of operations such as—

1 (A) the storage of supplemental water ac-  
2 quired by and under the control of the Bureau  
3 of Reclamation;

4 (B) the carryover storage of San Juan-  
5 Chama Project contract water and Pueblo Prior  
6 and Paramount operation water;

7 (C) changes in timing of water released to  
8 offset municipal pumping;

9 (D) changes in the timing of storage and  
10 release of floodwaters;

11 (E) the reduction of evaporative losses  
12 from reservoirs;

13 (F) conservation of water resulting from  
14 irrigation operation changes by non-Indian and  
15 Pueblo irrigators;

16 (G) the impacts of deliveries of New Mex-  
17 ico Rio Grande Compact water;

18 (H) the impacts of management and oper-  
19 ations on recreation and hydropower;

20 (I) the impacts of management and oper-  
21 ations on the Rio Grande ecosystem and the  
22 habitats that support species listed under the  
23 Endangered Species Act of 1973 (16 U.S.C.  
24 1531 et seq.); and

1           (J) any other factors the Academy deter-  
2           mines to be necessary for purposes of fully eval-  
3           uating opportunities to achieve greater water  
4           conservation, drought resiliency, and ecological  
5           health; and

6           (7) recommendations for future management  
7           scenarios and measures that Congress should take,  
8           consistent with section 8 of the Act of June 17,  
9           1902 (43 U.S.C. 383), the Rio Grande Compact,  
10          and applicable State law pertaining to the acqui-  
11          sition and administration of water rights, to assist the  
12          agencies in establishing more flexible operating pro-  
13          cedures to improve the performance of reservoir op-  
14          erations in accommodating multiple purposes.

15          (b) COSPONSORS.—The Secretary of the Army and  
16          the Secretary may solicit cosponsors for the study under  
17          subsection (a), as appropriate, including State or private  
18          organizations.

19          (c) PUBLIC AVAILABILITY OF STUDY.—On the date  
20          on which the National Academy of Sciences completes the  
21          study under this section, the National Academy of  
22          Sciences shall make available to the public the results of  
23          the study.

24          (d) REPORT.—Not later than 2 years after the date  
25          of enactment of this Act, the National Academy of

1 Sciences shall submit to the Secretary of the Army and  
2 the Secretary a report that contains a summary of the  
3 results of the study conducted under this section.

4 (e) DUE DEFERENCE.—The Secretary of the Army  
5 and the Secretary shall provide for due deference to the  
6 study and report prepared under this section in water  
7 management activities undertaken by the Secretary of the  
8 Army and the Secretary in the Rio Grande.

9 **SEC. 7. EMERGENCY FUNDING.**

10 (a) FINANCIAL ASSISTANCE.—

11 (1) IN GENERAL.—Financial assistance may be  
12 made available under the Reclamation States Emer-  
13 gency Drought Relief Act of 1991 (43 U.S.C. 2201  
14 et seq.), title XII of the Food Security Act of 1985  
15 (16 U.S.C. 3801 et seq.), and any other applicable  
16 Federal law (including regulations), to be divided  
17 among each applicable program at the discretion of  
18 the Secretaries for eligible water projects to assist  
19 the State and other Western States address drought-  
20 related impacts to water supplies or any other imme-  
21 diate water-related crisis or conflict.

22 (2) ADDITIONAL AVAILABILITY.—Financial as-  
23 sistance may be made available under this section to  
24 organizations and entities, including tribal govern-  
25 ments, that are engaged in collaborative processes to

1 restore the environment or are part of a basin-wide  
2 solution for restoration.

3 (b) TYPES OF ASSISTANCE.—Assistance under sub-  
4 section (a) shall include a range of projects, including—

5 (1) the installation of pumps, temporary bar-  
6 riers, or operable gates for water diversion and fish  
7 protection;

8 (2) the installation of drought-relief ground-  
9 water wells for Indian tribes and in wildlife refuges  
10 and other areas;

11 (3) the acquisition or assistance in the acquisi-  
12 tion of water from willing sellers to enhance stream  
13 flow for the benefit of fish and wildlife (including en-  
14 dangered species), water quality, river ecosystem res-  
15 toration, and other beneficial purposes, to be carried  
16 out in accordance with the water acquisition pro-  
17 gram established under section 3;

18 (4) agricultural and urban conservation and ef-  
19 ficiency projects providing multiple water supply  
20 benefits;

21 (5) exchanges with any water district willing to  
22 provide water to meet the emergency water needs of  
23 other water districts in return for the delivery of  
24 equivalent quantities of water later that year or in  
25 future years;

1           (6) maintenance of cover crops to prevent pub-  
2           lic health impacts from severe dust storms;

3           (7) emergency pumping projects for critical  
4           health and safety purposes;

5           (8) activities to reduce water demand consistent  
6           with a comprehensive program for environmental  
7           restoration and settlement of water rights claims;

8           (9) the use of new or innovative on-farm water  
9           conservation technologies or methods that may—

10                   (A) assist in sustaining permanent crops in  
11                   areas with severe water shortages; and

12                   (B) make water available for other bene-  
13                   ficial uses;

14           (10) activities that protect, restore, or enhance  
15           fish and wildlife habitat or otherwise improve envi-  
16           ronmental conditions, including water quantity or  
17           quality concerns and improved fish passage;

18           (11) activities reducing or preventing ground-  
19           water depletion or promoting groundwater recharge;

20           (12) technical assistance to improve existing ir-  
21           rigation practices to provide water supply benefits;

22           (13) the investigation of, and pilot projects for,  
23           brackish water development and aquifer storage and  
24           recovery;

1           (14) the lining of irrigation ditches and canals  
2 to reduce water loss and improve efficiency;

3           (15) assistance to municipal water management  
4 entities for water supply planning in preparation for  
5 and in response to dry, critically dry, and below nor-  
6 mal water years, including—

7                   (A) hydrological forecasting;

8                   (B) identification of alternative water sup-  
9 ply sources; and

10                   (C) guidance on potential water transfer  
11 partners; and

12           (16) any other assistance the Secretary deter-  
13 mines to be necessary to increase available water  
14 supplies, maintain the health of river ecosystems, or  
15 mitigate drought impacts.

16 **SEC. 8. SECURE WATER ACT REAUTHORIZATION.**

17           Section 9504 of the Omnibus Public Land Manage-  
18 ment Act of 2009 (42 U.S.C. 10364) is amended—

19                   (1) in subsection (a)—

20                           (A) in paragraph (1)(H)—

21                                   (i) in clause (i), by striking “or” after  
22 the semicolon at the end;

23                                   (ii) in clause (ii), by striking the pe-  
24 riod at the end and inserting “; or”; and

1 (iii) by adding at the end the fol-  
2 lowing:

3 “(iii) to plan for or address the im-  
4 pacts of drought.”; and

5 (B) in paragraph (3)(E), by adding at the  
6 end the following:

7 “(v) AUTHORITY OF COMMIS-  
8 SIONER.—The Commissioner of Reclama-  
9 tion may, at the discretion of the Commis-  
10 sioner—

11 “(I) waive any cost-share require-  
12 ments to address emergency drought  
13 situations;

14 “(II) prioritize projects based on  
15 the ability of the projects—

16 “(aa) to expeditiously yield  
17 multiple water supply benefits  
18 during periods of drought; or

19 “(bb) to prevent any other  
20 immediate water-related crisis or  
21 conflict; and

22 “(III) give priority to projects  
23 demonstrating innovative conservation  
24 tools or methods that balance  
25 instream and out-of-stream water sup-

1                   ply needs, including water conserva-  
2                   tion and water marketing.”; and

3                   (2) in subsection (e), by striking  
4                   “\$200,000,000” and inserting “\$300,000,000”.

5 **SEC. 9. RECLAMATION STATES EMERGENCY DROUGHT RE-**  
6 **LIEF ACT REAUTHORIZATION.**

7                   Section 301 of the Reclamation States Emergency  
8 Drought Relief Act of 1991 (43 U.S.C. 2241) is amend-  
9 ed—

10                   (1) by striking “\$90,000,000” and inserting  
11                   “\$190,000,000”; and

12                   (2) by striking “2012” and inserting “2018”.

13 **SEC. 10. RIO GRANDE PUEBLO IRRIGATION INFRASTRUC-**  
14 **TURE REAUTHORIZATION.**

15                   Section 9106 of the Omnibus Public Land Manage-  
16 ment Act of 2009 (Public Law 111–11; 123 Stat. 1304)  
17 is amended—

18                   (1) in subsection (c)(4), by striking “2 years  
19 after the date of enactment of this Act” and insert-  
20 ing “December 31, 2016”; and

21                   (2) in subsection (g)(2)—

22                   (A) by striking “\$6,000,000” and inserting  
23                   “\$12,000,000”; and

24                   (B) by striking “2010 through 2019” and  
25                   inserting “2015 through 2024”.

1 **SEC. 11. REGIONAL CONSERVATION PARTNERSHIP PRO-**  
2 **GRAM.**

3 The Secretary of Agriculture may allocate financial  
4 assistance made available under subtitle I of title XII of  
5 the Food Security Act of 1985 (16 U.S.C. 3871 et seq.)  
6 to establish special conservation initiatives at the local,  
7 State, or regional level to assist producers in implementing  
8 eligible activities on agricultural land in the western States  
9 for the purposes of—

10 (1) mitigating the effects of drought on agricul-  
11 tural production and the environment;

12 (2) improving water quality and quantity, in-  
13 cluding reducing groundwater depletion;

14 (3) restoring, enhancing, and preserving fish  
15 and wildlife habitat; and

16 (4) promoting innovative and collaborative con-  
17 servation tools and approaches.

18 **SEC. 12. CONSERVATION RESERVE PROGRAM.**

19 (a) CONSERVATION PRIORITY AREAS.—Section  
20 1231(f) of the Food Security Act of 1985 (16 U.S.C.  
21 3831(f)) is amended—

22 (1) in paragraph (2), by striking “or” and all  
23 that follows through the period at the end and in-  
24 serting “, water quantity, or habitat impacts related  
25 to agricultural production activities.”;

1           (2) in paragraph (3), by striking “or” and all  
 2           that follows through the period at the end and in-  
 3           serting “, water quantity, or habitat impacts related  
 4           to agricultural production activities.”; and

5           (3) in paragraph (4), by striking “water quality  
 6           and habitat benefits” and inserting “water quality,  
 7           water quantity, and habitat benefits”.

8           (b) SPECIAL CONSERVATION RESERVE ENHANCE-  
 9           MENT PROGRAM.—Section 1234(g)(2)(B) of the Food Se-  
 10          curity Act of 1985 (16 U.S.C. 3834(g)(2)(B)) is amended  
 11          by inserting “, including improving water conservation and  
 12          drought mitigation” before the period at the end.

13          **SEC. 13. EFFECT ON STATE LAW.**

14          (a) IN GENERAL.—An action taken by any of the  
 15          Secretaries or other entity under this Act or an amend-  
 16          ment made by this Act shall comply with applicable State  
 17          laws in effect on the date of enactment of this Act, includ-  
 18          ing a law described in subsection (b).

19          (b) STATE LAW.—Nothing in this Act or an amend-  
 20          ment made by this Act affects, is intended to affect, or  
 21          interferes with a law of the State relating to the control,  
 22          appropriation, use, or distribution of water, or any vested  
 23          right acquired under the law.

○