

Calendar No. 645

115TH CONGRESS
2D SESSION**S. 1012****[Report No. 115–358]**

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

IN THE SENATE OF THE UNITED STATES

MAY 2, 2017

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

NOVEMBER 14, 2018

Reported by Ms. MURKOWSKI, with an amendment

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

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 2017”.~~

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

See. 1: Short title; table of contents.
 See. 2: Definitions.
 See. 3: Water acquisition program.
 See. 4: Water conservation.
 See. 5: Middle Rio Grande peak flow restoration.
 See. 6: National Academy of Sciences study.
 See. 7: Emergency funding.
 See. 8: Secure Water Act reauthorization.
 See. 9: Reclamation States Emergency Drought Relief Act reauthorization.
 See. 10: Rio Grande Pueblo irrigation infrastructure reauthorization.
 See. 11: Regional conservation partnership program.
 See. 12: Conservation reserve program.
 See. 13: Effect on existing law.

3 **SEC. 2. DEFINITIONS.**

4 Except as otherwise provided in this Act, in this Act:

5 (1) **BASIN.**—The term “Basin”—

6 (A) is limited to areas within the State of
 7 New Mexico; and

8 (B) means each of—

- 9 (i) the Upper Rio Grande Basin;
- 10 (ii) the Middle Rio Grande Basin;
- 11 (iii) the Lower Rio Grande Basin;
- 12 (iv) the Lower Pecos River Basin;
- 13 (v) the Gila River Basin;
- 14 (vi) the Canadian River Basin;
- 15 (vii) the San Francisco River Basin;
- 16 and
- 17 (viii) the San Juan River Basin.

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

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

~~(A) Cochiti.~~

~~(B) Santo Domingo.~~

~~(C) San Felipe.~~

~~(D) Santa Ana.~~

~~(E) Sandia.~~

~~(F) Isleta.~~

~~(4) RIO GRANDE COMPACT.~~—The term “Rio Grande Compact” means the compact approved by Congress under the Act of May 31, 1939 (53 Stat. 785, chapter 155).

~~(5) SECRETARIES.~~—The term “Secretaries” means—

~~(A) the Administrator of the Environmental Protection Agency;~~

~~(B) the Secretary of Commerce; and~~

~~(C) the Secretary of the Interior.~~

~~(6) SECRETARY.~~—The term “Secretary” means the Secretary of the Interior.

~~(7) STATE.~~—The term “State” means the State of New Mexico.

SEC. 3. WATER ACQUISITION PROGRAM.

~~(a) IN GENERAL.~~—The Secretary, acting through the Commissioner of Reclamation, shall carry out in the Ba-

1 sins a water acquisition program in coordination with the
 2 other appropriate Federal agencies, State agencies, and
 3 non-Federal stakeholders, under which the Secretary
 4 shall—

5 (1) make acquisitions of water in the Basins by
 6 lease or purchase of water rights or contractual enti-
 7 tlements from willing lessors or sellers, consistent
 8 with section 8 of the Act of June 17, 1902 (43
 9 U.S.C. 383), the Rio Grande Compact, and applica-
 10 ble State law relating to the acquisition and admin-
 11 istration of water rights; and

12 (2) take any other actions, consistent with sec-
 13 tion 8 of the Act of June 17, 1902 (43 U.S.C. 383),
 14 the Rio Grande Compact, and applicable State law,
 15 that the Secretary determines would achieve the pur-
 16 poses of the water acquisition program described in
 17 subsection (b).

18 (b) PURPOSES.—The purposes of the water acquisi-
 19 tion program are—

20 (1) to enhance stream flow to benefit fish and
 21 wildlife (including endangered species), water qual-
 22 ity, and river ecosystem restoration in the Basins;
 23 and

24 (2) to enhance stewardship and conservation of
 25 working land, water, and watersheds in the Basins;

1 consistent with the purpose described in paragraph
2 (1).

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

7 (d) DISTRICT PROJECTS.—Subject to the Rio Grande
8 Compact and applicable State law, the Secretary may de-
9 velop programs to provide—

10 (1) cost-share assistance to the District or agri-
11 cultural producers and irrigators in the District for
12 making irrigation system improvements and increase
13 system efficiency;

14 (2) incentives to the District for the establish-
15 ment of a water leasing program from willing lessors
16 for agricultural producers and irrigators in the Dis-
17 trict to temporarily lease pre-1907 water rights (in-
18 stead of permanent severance from irrigable lands)
19 for the purpose of providing benefits to species listed
20 under the Endangered Species Act of 1973 (16
21 U.S.C. 1531 et seq.) and other river ecosystem bene-
22 fits; and

23 (3) cost-share assistance to the District to im-
24 plement infrastructure or operational changes that
25 will allow for effective management of a leasing pro-

1 gram, while maintaining adequate water deliveries to
 2 other agricultural producers and irrigators.

3 **SEC. 4. WATER CONSERVATION.**

4 (a) IN GENERAL.—The Secretary, in cooperation
 5 with the District and in consultation with the Pueblos,
 6 may provide funding and technical assistance for the in-
 7 stallation of metering and measurement devices and the
 8 construction of check structures on irrigation diversions,
 9 canals, laterals, ditches, and drains—

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

12 (A) reducing actual consumptive use; or

13 (B) not increasing the use of water; and

14 (2) to improve the measurement and allocation
 15 of water acquired through the water acquisition pro-
 16 gram established under section 3.

17 (b) RIO GRANDE, SAN ACACIA AND ISLETA
 18 REACHES.—

19 (1) IN GENERAL.—The Secretary shall provide
 20 for development of a comprehensive plan for the San
 21 Acacia and Isleta reaches to plan, design, construct
 22 and prioritize projects that balance river mainte-
 23 nance, water availability, use, and delivery, and eco-
 24 system benefits, including—

1 (A) planning, permitting, and construction
2 of a pumping station at Bosque del Apache Na-
3 tional Wildlife Refuge for the purpose of more
4 efficiently using water to provide—

5 (i) a stable supply for the refuge; and

6 (ii) an efficient and reliable supply of
7 water to the Rio Grande for the benefit of
8 the endangered silvery minnow and South-
9 western willow flycatcher;

10 (B) planning, permitting, and construction
11 of a river channel realignment project near the
12 Rio Grande mile-83 for the purpose addressing
13 river channel aggradation while maintaining
14 floodplain connectivity;

15 (C) planning, permitting, and construction
16 of a controlled outlet for the low flow convey-
17 ance channel to the Rio Grande between Fort
18 Craig, New Mexico and Rio Grande mile-60 for
19 the purpose of water use and delivery, enhance-
20 ment and development of habitat areas, and
21 possible creation of a single-channel river eco-
22 system; and

23 (D) development of a Lower Reach Plan—

24 (i) to identify additional projects and
25 maintenance activities with water use, sedi-

1 ment management, and delivery and eco-
 2 system benefits; and

3 (ii) to prioritize implementation of all
 4 projects and activities.

5 (2) PUBLIC PARTICIPATION.—In carrying out
 6 this subsection, the Secretary shall provide a process
 7 for public participation and comment during plan
 8 development and alternative analysis.

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

10 (a) TEMPORARY DEVIATION.—During the 5-year pe-
 11 riod beginning on the date of enactment of this Act, the
 12 Secretary of the Army shall continue the temporary devi-
 13 ation in the operation of Cochiti Lake and Jemez Canyon
 14 Dam, that was initiated in 2009 and terminated in 2013,
 15 to continue to evaluate the benefits of the deviation.

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

19 (1) conduct a feasibility study to address
 20 Cochiti Dam operation limitations on the timing,
 21 magnitude, and duration of flows that support feder-
 22 ally listed species in the Middle Rio Grande, con-
 23 sistent with subsection (c); and

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

1 (c) GOALS.—The deviation described in subsection
2 (a) shall provide for the detention and release of native
3 Rio Grande water and San Juan-Chama Project water
4 with the goals of—

5 (1) restoring natural river processes to the Rio
6 Grande, including a spring peak flow to the Rio
7 Grande;

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

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

12 (A) to maintain a healthy bosque; and

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

15 (4) maintaining channel capacity; and

16 (5) increasing water operational flexibility and
17 efficiencies in meeting irrigation and municipal and
18 industrial purposes, if the increased water oper-
19 ational flexibility and efficiencies enhance the goals
20 described in paragraphs (1) and (4).

21 (d) MONITORING.—The Secretary of the Army, in co-
22 operation with the Secretary and other Federal and non-
23 Federal stakeholders shall—

1 (1) monitor the environmental effects, benefits,
2 and results of the deviation mandated under this
3 section; and

4 (2) compile any data necessary to evaluate the
5 need for further amendment to the authorizations
6 and water control manuals for Cochiti Lake or
7 Jemez Canyon Dam.

8 (e) APPROVAL REQUIRED.—Before implementing the
9 proposed deviation under this section, as required by the
10 applicable water control manuals, the Secretary of the
11 Army shall first obtain approval from—

12 (1) Pueblo de Cochiti;

13 (2) Pueblo of Santa Ana; and

14 (3) the Rio Grande Compact Commission.

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

17 (1) for each year in which the deviations are
18 being carried out under this section, annual reports
19 that describe the data compiled under subsection
20 (d)(2); and

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

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

25 (a) DEFINITION OF BASIN.—

1 (1) IN GENERAL.—In this section, the term
2 “basin” means the Rio Grande and the tributaries
3 of the Rio Grande between—

4 (A) the headwaters of the Rio Grande and
5 the Rio Chama in the State of Colorado; and

6 (B) Elephant Butte Reservoir in the State.

7 (2) EXCLUSIONS.—In this section, the term
8 “basin” does not include Elephant Butte Reservoir,
9 Caballo Dam, or any portion of the Rio Grande or
10 the tributaries of the Rio Grande downstream of
11 Elephant Butte Reservoir.

12 (b) STUDY.—Not later than 60 days after the date
13 of enactment of this Act, the Secretary of the Army and
14 the Secretary shall enter into an arrangement with the
15 National Academy of Sciences to carry out a study on
16 water and reservoir management and operation issues in
17 the basin (including the Heron, El Vado, Abiquiu, Cochiti,
18 and Jemez Canyon Dams and Reservoirs), which shall in-
19 clude—

20 (1) an evaluation of existing basin reservoir au-
21 thorizations and legal requirements;

22 (2) a summary of—

23 (A) the physical-hydrologic understanding
24 of existing basin reservoir operations; and

- 1 (B) any potential constraints on basin res-
2 ervoirs in light of climate change projections;
- 3 ~~(3)~~ an identification of opportunities to opti-
4 mize water storage and management to benefit the
5 basin ecosystem, irrigators and municipal users, and
6 to promote water conservation through reauthoriza-
7 tion of, reoperation of, regulation of, or physical im-
8 provements to the reservoirs;
- 9 (4) an evaluation of the physical-hydrologic fea-
10 sibility of the identified future basin reservoir man-
11 agement scenarios;
- 12 ~~(5)~~ an identification of water use, supply, and
13 accounting impacts to other stakeholders in the
14 State;
- 15 ~~(6)~~ consideration of operations such as—
- 16 (A) the storage of supplemental water ac-
17 quired by and under the control of the Bureau
18 of Reclamation;
- 19 (B) the carryover storage of San Juan-
20 Chama Project contract water;
- 21 (C) the Pueblo Prior and Paramount oper-
22 ation water;
- 23 (D) changes in timing of water released to
24 offset municipal pumping;

1 (E) changes in the timing of storage and
2 release of floodwaters;

3 (F) the reduction of evaporative losses
4 from basin reservoirs;

5 (G) conservation of water resulting from
6 irrigation operation changes by non-Indian and
7 Pueblo irrigators;

8 (H) the impacts of management and oper-
9 ations on recreation and hydropower;

10 (I) the impacts of management and oper-
11 ations on the basin ecosystem and the habitats
12 that support species listed under the Endan-
13 gered Species Act of 1973 (16 U.S.C. 1531 et
14 seq.); and

15 (J) any other factors the Academy deter-
16 mines to be necessary for purposes of fully eval-
17 uating opportunities to achieve greater water
18 conservation, drought resiliency, and ecological
19 health in the basin; and

20 (7) recommendations for future management
21 scenarios and measures that Congress could take
22 with respect to the basin, consistent with all applica-
23 ble law, including the Act of June 17, 1902 (43
24 U.S.C. 383), and the Rio Grande Compact to assist
25 the agencies in establishing more flexible operating

1 procedures to improve the performance of basin res-
 2 ervoir operations in accommodating multiple pur-
 3 poses.

4 (c) COSPONSORS.—The Secretary of the Army and
 5 the Secretary may solicit cosponsors for the study under
 6 subsection (b); as appropriate, including State or private
 7 organizations.

8 (d) PUBLIC AVAILABILITY OF STUDY.—On the date
 9 on which the National Academy of Sciences completes the
 10 study under this section, the National Academy of
 11 Sciences shall make available to the public the results of
 12 the study.

13 (e) REPORT.—Not later than 2 years after the date
 14 of enactment of this Act, the National Academy of
 15 Sciences shall submit to the Secretary of the Army and
 16 the Secretary a report that contains a summary of the
 17 results of the study conducted under this section.

18 **SEC. 7. EMERGENCY FUNDING.**

19 (a) FINANCIAL ASSISTANCE.—

20 (1) IN GENERAL.—Financial assistance may be
 21 made available under the Reclamation States Emer-
 22 gency Drought Relief Act of 1991 (43 U.S.C. 2201
 23 et seq.), title XII of the Food Security Act of 1985
 24 (16 U.S.C. 3801 et seq.), and any other applicable
 25 Federal law (including regulations), to each applica-

1 ble program at the discretion of the Secretaries for
2 eligible water projects to assist western States and
3 tribal governments to address drought-related im-
4 pacts to water supplies or any other immediate
5 water-related crisis or conflict.

6 ~~(2) ADDITIONAL AVAILABILITY.~~—Financial as-
7 sistance may be made available under this section to
8 organizations and entities with water delivery au-
9 thority that are engaged in collaborative processes to
10 restore the environment or are part of a basin-wide
11 solution for restoration.

12 ~~(b) TYPES OF ASSISTANCE.~~—Assistance under sub-
13 section (a) may include a range of projects, including—

14 ~~(1) the installation of pumps, temporary bar-~~
15 ~~riers, or operable gates for water diversion and fish~~
16 ~~protection;~~

17 ~~(2) the installation of drought-relief ground-~~
18 ~~water wells for Indian tribes and in wildlife refuges~~
19 ~~and other areas;~~

20 ~~(3) the acquisition or assistance in the acquisi-~~
21 ~~tion of water from willing sellers to enhance stream~~
22 ~~flow for the benefit of fish and wildlife (including en-~~
23 ~~dangered species); water quality, river ecosystem res-~~
24 ~~toration, and other beneficial purposes, to be carried~~

1 out in accordance with the water acquisition pro-
2 gram established under section 3;

3 (4) agricultural and urban conservation and ef-
4 ficiency projects;

5 (5) exchanges with any water district willing to
6 provide water to meet the emergency water needs of
7 other water districts in return for the delivery of
8 equivalent quantities of water later that year or in
9 future years;

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

12 (7) emergency pumping projects for critical
13 health and safety purposes;

14 (8) activities to reduce water demand consistent
15 with a comprehensive program for environmental
16 restoration and settlement of water rights claims;

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

19 (A) assist in sustaining permanent crops in
20 areas with severe water shortages; and

21 (B) make water available for other bene-
22 ficial uses;

23 (10) activities that protect, restore, or enhance
24 fish and wildlife habitat or otherwise improve envi-

1 ronmental conditions, including water quantity or
2 quality concerns and improved fish passage;

3 (11) activities reducing or preventing ground-
4 water depletion or promoting groundwater recharge;

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

7 (13) the investigation of, and pilot projects for,
8 brackish water development and aquifer storage and
9 recovery;

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

12 (15) assistance to municipal water management
13 entities for water supply planning in preparation for
14 and in response to dry, critically dry, and below nor-
15 mal water years, including—

16 (A) hydrological forecasting;

17 (B) identification of alternative water sup-
18 ply sources; and

19 (C) guidance on potential water transfer
20 partners; and

21 (16) any other assistance the Secretary deter-
22 mines to be necessary to increase available water
23 supplies, maintain the health of river ecosystems, or
24 mitigate drought impacts.

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

2 Section 9504(a) of the Omnibus Public Land Man-
3 agement Act of 2009 (42 U.S.C. 10364(a)) is amended—

4 (1) in paragraph (1)(H)—

5 (A) in clause (i), by striking “or” at the
6 end;

7 (B) in clause (ii), by striking the period at
8 the end and inserting “; or”; and

9 (C) by adding at the end the following:

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

12 (2) in paragraph (3)(E), by adding at the end
13 the following:

14 “(v) **AUTHORITY OF COMMISS-**
15 **SIONER.**—The Commissioner of Reclama-
16 tion may, at the discretion of the Commis-
17 sioner, waive any cost-share require-
18 ments.”.

19 **SEC. 9. RECLAMATION STATES EMERGENCY DROUGHT RE-**
20 **LIEF ACT REAUTHORIZATION.**

21 Section 301 of the Reclamation States Emergency
22 Drought Relief Act of 1991 (43 U.S.C. 2241) is amended
23 by striking “2017” and inserting “2022”.

1 **SEC. 10. RIO GRANDE PUEBLO IRRIGATION INFRASTRUC-**
 2 **TURE REAUTHORIZATION.**

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

6 (1) in subsection (c)(4), by striking “2 years
 7 after the date of enactment of this Act” and insert-
 8 ing “December 31, 2018”; and

9 (2) in subsection (g)(2), by striking “2010
 10 through 2019” and inserting “2017 through 2025”.

11 **SEC. 11. REGIONAL CONSERVATION PARTNERSHIP PRO-**
 12 **GRAM.**

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

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

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

24 (3) restoring, enhancing, and preserving fish
 25 and wildlife habitat; and

1 (4) promoting innovative and collaborative con-
 2 servation tools and approaches.

3 **SEC. 12. CONSERVATION RESERVE PROGRAM.**

4 (a) CONSERVATION PRIORITY AREAS.—Section
 5 1231(f) of the Food Security Act of 1985 (16 U.S.C.
 6 3831(f)) is amended—

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

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

15 (3) in paragraph (4), by striking “water quality
 16 and habitat benefits” and inserting “water quality,
 17 water quantity, and habitat benefits”.

18 (b) SPECIAL CONSERVATION RESERVE ENHANCE-
 19 MENT PROGRAM.—Section 1234(g)(2)(B) of the Food Se-
 20 curity Act of 1985 (16 U.S.C. 3834(g)(2)(B)) is amended
 21 by inserting “; including improving water conservation and
 22 drought mitigation” before the period at the end.

23 **SEC. 13. EFFECT ON EXISTING LAW.**

24 (a) IN GENERAL.—An action taken by any of the
 25 Secretaries or another entity under this Act or an amend-

1 ment made by this Act shall comply with applicable State
 2 laws in effect on the date of enactment of this Act, includ-
 3 ing a law described in subsection (b).

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

9 (c) RIO GRANDE COMPACT.—Nothing in this Act or
 10 an amendment made by this Act affects or is intended to
 11 affect or interfere with any obligation of a State under
 12 the Rio Grand Compact or any litigation related to the
 13 Rio Grande Compact.

14 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

15 (a) SHORT TITLE.—*This Act may be cited as the “New*
 16 *Mexico Drought Preparedness Act of 2018”.*

17 (b) TABLE OF CONTENTS.—*The table of contents of this*
 18 *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. National Academy of Sciences study.

Sec. 6. Emergency funding.

Sec. 7. Secure Water Act grants and cooperative agreements.

Sec. 8. Rio Grande Pueblo irrigation infrastructure reauthorization.

Sec. 9. Effect on existing law.

19 **SEC. 2. DEFINITIONS.**

20 *Except as otherwise provided in this Act, in this Act:*

21 (1) BASIN.—*The term “Basin”—*

1 (A) is limited to areas within the State of
2 New Mexico; and

3 (B) means each of—

4 (i) the Upper Rio Grande Basin;

5 (ii) the Middle Rio Grande Basin;

6 (iii) the Lower Rio Grande Basin;

7 (iv) the Lower Pecos River Basin;

8 (v) the Gila River Basin;

9 (vi) the Canadian River Basin;

10 (vii) the San Francisco River Basin;

11 and

12 (viii) 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 of
16 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.

23 (4) *RIO GRANDE COMPACT*.—The term “Rio
24 Grande Compact” means the compact approved by

1 Congress under the Act of May 31, 1939 (53 Stat.
2 785, chapter 155).

3 (5) SECRETARIES.—The term “Secretaries”
4 means—

5 (A) the Administrator of the Environmental
6 Protection Agency;

7 (B) the Secretary of Commerce; and

8 (C) the Secretary of the Interior.

9 (6) SECRETARY.—The term “Secretary” means
10 the Secretary of the Interior.

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

13 **SEC. 3. WATER ACQUISITION PROGRAM.**

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

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

1 (2) *take any other actions, consistent with sec-*
 2 *tion 8 of the Act of June 17, 1902 (43 U.S.C. 383),*
 3 *the Rio Grande Compact, and applicable State law,*
 4 *that the Secretary determines would achieve the pur-*
 5 *poses of the water acquisition program described in*
 6 *subsection (b).*

7 (b) *PURPOSES.—The purposes of the water acquisition*
 8 *program are—*

9 (1) *to enhance stream flow to benefit fish and*
 10 *wildlife (including endangered species), water quality,*
 11 *and river ecosystem restoration in the Basins; and*

12 (2) *to enhance stewardship and conservation of*
 13 *working land, water, and watersheds in the Basins,*
 14 *consistent with the purpose described in paragraph*
 15 *(1).*

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

20 (d) *DISTRICT PROJECTS.—Subject to the Rio Grande*
 21 *Compact and applicable State law, the Secretary may de-*
 22 *velop programs to provide—*

23 (1) *cost-share assistance to the District or agri-*
 24 *cultural producers and irrigators in the District for*

1 *making irrigation system improvements and increase*
 2 *system efficiency;*

3 *(2) incentives to the District for the establish-*
 4 *ment of a water leasing program from willing lessors*
 5 *for agricultural producers and irrigators in the Dis-*
 6 *trict to temporarily lease pre-1907 water rights (in-*
 7 *stead of permanent severance from irrigable lands) for*
 8 *the purpose of providing benefits to species listed*
 9 *under the Endangered Species Act of 1973 (16 U.S.C.*
 10 *1531 et seq.) and other river ecosystem benefits; and*

11 *(3) cost-share assistance to the District to imple-*
 12 *ment infrastructure or operational changes that will*
 13 *allow for effective management of a leasing program,*
 14 *while maintaining adequate water deliveries to other*
 15 *agricultural producers and irrigators.*

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

17 *(a) IN GENERAL.—The Secretary, in cooperation with*
 18 *the District and in consultation with the Pueblos, may pro-*
 19 *vide funding and technical assistance for the installation*
 20 *of metering and measurement devices and the construction*
 21 *of check structures on irrigation diversions, canals, laterals,*
 22 *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 ef-
16 ficiently 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 conveyance*
 5 *channel to the Rio Grande between Fort Craig,*
 6 *New Mexico and Rio Grande mile-60 for the*
 7 *purpose of water use and delivery, enhancement*
 8 *and development of habitat areas, and possible*
 9 *creation of a single-channel river ecosystem; and*

10 *(D) development of a Lower Reach Plan—*

11 *(i) to identify additional projects and*
 12 *maintenance activities with water use, sedi-*
 13 *ment management, and delivery and eco-*
 14 *system 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 **SEC. 5. NATIONAL ACADEMY OF SCIENCES STUDY.**

22 *(a) DEFINITION OF BASIN.—*

23 *(1) IN GENERAL.—In this section, the term*
 24 *“basin” means the Rio Grande and the tributaries of*
 25 *the Rio Grande between—*

1 (A) the headwaters of the Rio Grande and
2 the Rio Chama in the State of Colorado; and

3 (B) Elephant Butte Reservoir in the State.

4 (2) *EXCLUSIONS.*—In this section, the term
5 “basin” does not include Elephant Butte Reservoir,
6 Caballo Dam, or any portion of the Rio Grande or
7 the tributaries of the Rio Grande downstream of Ele-
8 phant Butte Reservoir.

9 (b) *STUDY.*—Not later than 60 days after the date of
10 enactment of this Act, the Secretary of the Army and the
11 Secretary shall enter into an arrangement with the Na-
12 tional Academy of Sciences to carry out a study on water
13 and reservoir management and operation issues in the
14 basin (including the Heron, El Vado, Abiquiu, Cochiti, and
15 Jemez Canyon Dams and Reservoirs), which shall in-
16 clude—

17 (1) an evaluation of existing basin reservoir au-
18 thorizations and legal requirements;

19 (2) a summary of—

20 (A) the physical-hydrologic understanding
21 of existing basin reservoir operations; and

22 (B) any potential constraints on basin res-
23 ervoirs in light of climate change projections;

24 (3) an identification of opportunities to optimize
25 water storage and management to benefit the basin

1 *ecosystem, irrigators and municipal users, and to*
 2 *promote water conservation through reauthorization*
 3 *of, reoperation of, regulation of, or physical improve-*
 4 *ments to the reservoirs;*

5 *(4) an evaluation of the physical-hydrologic fea-*
 6 *sibility of the identified future basin reservoir man-*
 7 *agement scenarios;*

8 *(5) an identification of water use, supply, and*
 9 *accounting impacts to other stakeholders in the State;*

10 *(6) consideration of operations such as—*

11 *(A) the storage of supplemental water ac-*
 12 *quired by and under the control of the Bureau*
 13 *of Reclamation;*

14 *(B) the carryover storage of San Juan-*
 15 *Chama Project contract water;*

16 *(C) the Pueblo Prior and Paramount oper-*
 17 *ation water;*

18 *(D) changes in timing of water released to*
 19 *offset municipal pumping;*

20 *(E) changes in the timing of storage and re-*
 21 *lease of floodwaters;*

22 *(F) the reduction of evaporative losses from*
 23 *basin reservoirs;*

1 (G) conservation of water resulting from ir-
 2 rigation operation changes by non-Indian and
 3 Pueblo irrigators;

4 (H) the impacts of management and oper-
 5 ations on recreation and hydropower;

6 (I) the impacts of management and oper-
 7 ations on the basin ecosystem and the habitats
 8 that support species listed under the Endangered
 9 Species Act of 1973 (16 U.S.C. 1531 et seq.); and

10 (J) any other factors the Academy deter-
 11 mines to be necessary for purposes of fully evalu-
 12 ating opportunities to achieve greater water con-
 13 servation, drought resiliency, and ecological
 14 health in the basin; and

15 (7) recommendations for future management sce-
 16 narios and measures that Congress could take with re-
 17 spect to the basin, consistent with all applicable law,
 18 including the Act of June 17, 1902 (43 U.S.C. 383),
 19 and the Rio Grande Compact to assist the agencies in
 20 establishing more flexible operating procedures to im-
 21 prove the performance of basin reservoir operations in
 22 accommodating multiple purposes.

23 (c) COORDINATION WITH OTHER STUDIES.—To the
 24 maximum extent practicable, the study carried out under
 25 subsection (b) shall be coordinated with, and use data col-

1 *lected and analyses conducted for, other studies of the basin,*
 2 *including the Bureau of Reclamation Rio Grande Basin*
 3 *Study initiated in 2017.*

4 (d) *COSPONSORS.—The Secretary of the Army and the*
 5 *Secretary shall solicit cosponsors to contribute not less than*
 6 *50 percent of the costs of the study under subsection (b),*
 7 *as appropriate, including State or private organizations.*

8 (e) *PUBLIC AVAILABILITY OF STUDY.—On the date on*
 9 *which the National Academy of Sciences completes the study*
 10 *under this section, the National Academy of Sciences shall*
 11 *make available to the public the results of the study.*

12 (f) *REPORT.—Not later than 2 years after the date of*
 13 *enactment of this Act, the National Academy of Sciences*
 14 *shall submit to the Secretary of the Army and the Secretary*
 15 *a report that contains a summary of the results of the study*
 16 *conducted under this section.*

17 **SEC. 6. EMERGENCY FUNDING.**

18 (a) *FINANCIAL ASSISTANCE.—*

19 (1) *IN GENERAL.—Financial assistance may be*
 20 *made available under the Reclamation States Emer-*
 21 *gency Drought Relief Act of 1991 (43 U.S.C. 2201 et*
 22 *seq.) for eligible water projects to assist Western*
 23 *States and Tribal governments to address drought-re-*
 24 *lated impacts to water supplies or any other imme-*
 25 *diately water-related crisis or conflict.*

1 (2) *ADDITIONAL AVAILABILITY.*—*Financial as-*
 2 *sistance may be made available under this section to*
 3 *organizations and entities with water delivery au-*
 4 *thority that are engaged in collaborative processes to*
 5 *restore the environment or are part of a basin-wide*
 6 *solution for restoration.*

7 (b) *TYPES OF ASSISTANCE.*—*Assistance under sub-*
 8 *section (a) may include a range of projects, including—*

9 (1) *the installation of pumps, temporary bar-*
 10 *riers, or operable gates for water diversion and fish*
 11 *protection;*

12 (2) *the installation of drought-relief groundwater*
 13 *wells for Indian Tribes and in wildlife refuges and*
 14 *other areas;*

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

22 (4) *agricultural and urban conservation and effi-*
 23 *ciency projects;*

24 (5) *exchanges with any water district willing to*
 25 *provide water to meet the emergency water needs of*

1 *other water districts in return for the delivery of*
 2 *equivalent quantities of water later that year or in*
 3 *future years;*

4 *(6) maintenance of cover crops to prevent public*
 5 *health impacts from severe dust storms;*

6 *(7) emergency pumping projects for critical*
 7 *health and safety purposes;*

8 *(8) activities to reduce water demand consistent*
 9 *with a comprehensive program for environmental res-*
 10 *toration and settlement of water rights claims;*

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

13 *(A) assist in sustaining permanent crops in*
 14 *areas with severe water shortages; and*

15 *(B) make water available for other bene-*
 16 *ficial uses;*

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

21 *(11) activities reducing or preventing ground-*
 22 *water depletion or promoting groundwater recharge;*

23 *(12) technical assistance to improve existing ir-*
 24 *rigation practices to provide water supply benefits;*

1 (13) the investigation of, and pilot projects for,
2 brackish water development and aquifer storage and
3 recovery;

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

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

10 (A) hydrological forecasting;

11 (B) identification of alternative water sup-
12 ply sources; and

13 (C) guidance on potential water transfer
14 partners; and

15 (16) any other assistance the Secretary deter-
16 mines to be necessary to increase available water sup-
17 plies, maintain the health of river ecosystems, or
18 mitigate drought impacts.

19 **SEC. 7. SECURE WATER ACT GRANTS AND COOPERATIVE**
20 **AGREEMENTS.**

21 Section 9504(a)(1)(H) of the Omnibus Public Land
22 Management Act of 2009 (42 U.S.C. 10364(a)(1)(H)) is
23 amended—

24 (1) in clause (i), by striking “or” at the end;

1 (2) *in clause (ii), by striking the period at the*
 2 *end and inserting “; or”; and*

3 (3) *by adding at the end the following:*

4 *“(iii) to plan for or address the im-*
 5 *pacts of drought.”.*

6 **SEC. 8. RIO GRANDE PUEBLO IRRIGATION INFRASTRUC-**
 7 **TURE REAUTHORIZATION.**

8 *Section 9106 of the Omnibus Public Land Manage-*
 9 *ment Act of 2009 (Public Law 111–11; 123 Stat. 1304) is*
 10 *amended—*

11 (1) *in subsection (c)(4), by striking “2 years*
 12 *after the date of enactment of this Act” and inserting*
 13 *“December 31, 2019”; and*

14 (2) *in subsection (g)(2), by striking “2010*
 15 *through 2019” and inserting “2018 through 2026”.*

16 **SEC. 9. EFFECT ON EXISTING LAW.**

17 (a) *IN GENERAL.—An action taken by any of the Sec-*
 18 *retaries or another entity under this Act or an amendment*
 19 *made by this Act shall comply with applicable State laws*
 20 *in effect on the date of enactment of this Act, including a*
 21 *law described in subsection (b).*

22 (b) *STATE LAW.—Nothing in this Act or an amend-*
 23 *ment made by this Act affects, is intended to affect, or inter-*
 24 *feres with a law of the State relating to the control, appro-*

1 *priation, use, or distribution of water, or any vested right*
2 *acquired under the law.*

3 (c) *RIO GRANDE COMPACT.*—*Nothing in this Act or*
4 *an amendment made by this Act affects or is intended to*
5 *affect or interfere with any obligation of a State under the*
6 *Rio Grand Compact or any litigation related to the Rio*
7 *Grande Compact.*

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115TH CONGRESS
2^D Session

S. 1012

[Report No. 115-358]

A BILL

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

NOVEMBER 14, 2018

Reported with an amendment