

Public Law 102-441
102d Congress

An Act

Relating to the settlement of the water rights claims of the Jicarilla Apache Tribe.

Oct. 23, 1992

[H.R. 5122]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Jicarilla
Apache Tribe
Water Rights
Settlement Act.

SECTION 1. SHORT TITLE.

This Act may be cited as the "Jicarilla Apache Tribe Water Rights Settlement Act".

SEC. 2. FINDINGS.

Congress hereby finds and declares that—

(1) the Jicarilla Apache Tribe has multiple claims against the State of New Mexico, the United States, and other parties, related to water rights for its reservation in northern New Mexico and based on the alleged infringement of those rights;

(2) Federal water resource projects have diverted water upstream from the Jicarilla Apache Indian Reservation and have impounded water downstream from the reservation, but no provision has been made for substantial water resource development to benefit the reservation;

(3) a full and final settlement of the water rights claims of the Jicarilla Apache Tribe will inure to the benefit of the Tribe, the State of New Mexico, and the United States;

(4) this Act, together with a Settlement Contract between the Jicarilla Apache Tribe and the United States, is intended to provide for the full, fair and final resolution of the water right claims of the Tribe, and to secure to the Tribe a perpetual water supply for use on its reservation;

(5) the Jicarilla Apache Tribe may use this water supply outside the boundaries of its reservation consistent with the terms of a Settlement Contract between the Tribe and the United States; and

(6) the Secretary, in accordance with the requirements of section 11(a) of the Act of June 13, 1962 (76 Stat. 96, 99; Public Law 87-483), has determined by hydrologic investigations that sufficient water to fulfill the Settlement Contract is reasonably likely to be available for use in the State of New Mexico under the allocations made in articles III and XIV of the Upper Colorado River Basin Compact and has transmitted such determination to Congress by letter dated February 2, 1989.

SEC. 3. PURPOSE.

It is the purpose of this Act to—

(1) approve, ratify and incorporate by reference the Settlement Contract; and

(2) to authorize the actions and appropriations necessary and appropriate for the United States to fulfill its obligations under such contract and this Act.

SEC. 4. DEFINITIONS.

As used in this Act:

(1) The term "Settlement Contract" means a contract between the United States and the Jicarilla Apache Tribe setting forth the commitments, rights, and obligations of the United States and the Tribe in providing for the resolution of all water right claims of the Tribe.

(2) The term "Secretary" means the Secretary of the Interior.

(3) The term "Tribe" means the Jicarilla Apache Tribe of Indians organized under a revised constitution adopted December 15, 1968, pursuant to the Indian Reorganization Act (25 U.S.C. 476 et seq.) and duly recognized by the United States of America.

(4) The term "Navajo Reservoir" means the reservoir created by the impoundment of the San Juan River at the Navajo Dam as authorized by the Act of April 11, 1956 (70 Stat. 105).

(5) The term "San Juan-Chama Project" means the Project authorized by section 8 of the Act of June 13, 1962 (76 Stat. 96, 97), and the Act of April 11, 1956 (70 Stat. 105).

SEC. 5. SETTLEMENT CONTRACT APPROVAL.

(a) **SETTLEMENT CONTRACT.**—The Secretary, acting on behalf of the United States, and the President of the Tribe, acting pursuant to an authorization from the Jicarilla Apache Tribal Council, are authorized to enter into the Settlement Contract, but in no event shall such contract be limited by any term of years, or be canceled, terminated or rescinded by the action of any party, except by an Act of Congress hereafter enacted.

(b) **APPROVAL OF SETTLEMENT CONTRACT.**—The Congress approves, ratifies, and hereby incorporates by reference the Settlement Contract.

(c) **AUTHORITY OF SECRETARY.**—The Secretary is authorized to enter into such agreements and to take such measures as the Secretary may deem necessary or appropriate to fulfill the intent of the Settlement Contract and this Act.

SEC. 6. WATER AVAILABLE UNDER THE CONTRACT.

(a) **WATER AVAILABLE.**—Water made available annually under the Settlement Contract approved by section 5 of this Act is in the following amounts under water rights held by the Secretary for the following projects or sources:

	Total diversion (acre-feet/year)	Total depletion (acre-feet/year)
Navajo Reservoir or Navajo River	33,500	25,500
San Juan-Chama Project	6,500	6,500
Total	40,000	32,000

(b) **AMENDMENTS TO CONTRACT.**—The Secretary may enter into amendments to the Settlement Contract which would in his judgment be in the interest of water conservation and in the spirit of this settlement of the claims of the Tribe, but the water depletions shall not exceed the amounts set forth in this section.

(c) **RIGHTS OF THE TRIBE.**—The Tribe will be entitled under the Settlement Contract to use any and all return flows attributable to uses of the water by the Tribe or its contractors, as long as the water depletions do not exceed the amounts set forth in this section.

SEC. 7. SUBCONTRACTS.

(a) **AUTHORITY OF TRIBE.**—When water made available under the Settlement Contract approved by section 5 of this Act is not being used by the Tribe, the Tribe may subcontract with third parties, subject to the approval of the Secretary in accordance with this section, to supply water for beneficial use outside of the reservation, subject to and not inconsistent with the same requirements and conditions of State law, any applicable Federal law, interstate compact, and international law as apply to the exercise of water rights held by non-Federal, non-Indian entities. Nothing in this Act shall be construed to establish, address, prejudice, or prevent any party from litigating, whether or to what extent any of the aforementioned laws do or do not permit, govern, or apply to the use of the Tribe's water outside the State.

(b) **MAXIMUM TERM.**—The Tribe shall not permanently alienate any rights it has under the Settlement Contract. The maximum term of any water use subcontract, including all renewals, shall not exceed 99 years in duration.

(c) **APPROVAL OF SECRETARY.**—(1) The Secretary shall approve or disapprove any subcontracts submitted to him for approval within—

(A) 180 days after submission; or

(B) 60 days after compliance, if required, with section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)), or any other requirement of Federal law, whichever is later.

(2) Any party to a subcontract may enforce the provision of this subsection pursuant to section 1361 of title 28, United States Code.

(d) **PREEMPTION.**—The authorization provided for in subsection (a) and the approval authority of the Secretary provided for in subsection (c) shall not amend, construe, supersede, or preempt any Federal law, interstate compact, or international treaty that pertains to the Colorado River or its tributaries, including the appropriation, use, development, storage, regulation, allocation, conservation, exportation, or quality of those waters. The provisions of section 2116 of the Revised Statutes (25 U.S.C. 177) shall not apply to any water made available under the Settlement Contract.

(e) **FORFEITURE.**—The nonuse of the water supply secured herein by a subcontractor of the Tribe shall in no event result in a forfeiture, abandonment, relinquishment, or other loss of all or any part of the rights exercised by the Tribe under the Settlement Contract.

SEC. 8. TRUST FUND; AUTHORIZATION OF APPROPRIATIONS.

(a) **ESTABLISHMENT OF TRUST FUND.**—There is hereby established in the Treasury a fund to be known as the Jicarilla Apache Water Resources Development Trust Fund (hereafter in this section referred to as the "Fund").

(b) **AUTHORIZATION.**—There are authorized to be appropriated:

(1) \$6,000,000 for deposit, in accordance with the following schedule, in the Fund, to be expended by the Tribe for any

water resource development costs, including costs associated with this settlement:

(A) \$2,000,000 shall be deposited in the first fiscal year which commences following the date of the enactment of this Act;

(B) \$2,000,000 during the fiscal year next following the first fiscal year referred to in subparagraph (A); and

(C) \$2,000,000 during the fiscal year next following the second fiscal year referred to in subparagraph (B); and

(2) such amounts as are necessary, for expenditures by the Secretary, to pay the Tribe's share of the operation, maintenance, and replacement costs for the San Juan-Chama Project, when the Secretary has waived the Tribe's obligation to pay such costs pursuant to subsection (c)(1) and section 10(f) of the Settlement Contract.

(c) NO PER CAPITA PAYMENTS.—No part of the principal of the fund, or of the income accruing to such fund, or the revenue from any water use subcontract, shall be distributed to any member of the Tribe on a per capita basis.

(d) WAIVERS.—Notwithstanding the provisions of the Act of August 4, 1939 (53 Stat. 1187), or any other provision of law:

(1) When the conditions specified in section 10(f) of the Settlement Contract are satisfied, the Secretary may waive all or part of the Tribe's share of the construction costs, and the operation, maintenance, and replacement costs for the Navajo Reservoir and the San Juan-Chama Project.

(2) When all or part of the Tribe's share of the construction costs for the San Juan-Chama Project are waived by the Secretary, that portion of those costs waived shall be nonreimbursable.

(3) The Tribe's share of the construction cost obligation for the San Juan-Chama Project, both principal and interest, due from 1972 to the execution of the Settlement Contract shall be nonreimbursable.

(e) DISMISSAL OF CLAIMS.—(1) Amounts authorized to be appropriated to the Fund under subsection (b)(1) may not be expended until the following conditions are met:

(A) The following actions brought by the Tribe against the United States have been dismissed:

(i) Jicarilla Apache Tribe against United States, et al., Civil No. 82-1327 JP (D.N.M.).

(ii) Claims 3 and 4 in Jicarilla Apache Tribe against United States, No. 112-77 (U.S. Claims Ct.).

(B) Partial final decrees which would quantify the Tribe's reserved water right claims have been entered in the following general stream adjudications:

(i) New Mexico against United States, et al., No. 75-184 (11th Jud. Dist., San Juan County, New Mexico), involving claims to the waters of the San Juan River and its tributaries.

(ii) New Mexico against Aragon, et al., Civil No. 79-41 SC (D.N.M.), involving claims to the Rio Chama and its tributaries.

(2) Within a reasonable time after the date of the enactment of this Act and the execution of the Settlement Contract pursuant to section 5(a), the United States, the Tribe, and the State of New Mexico shall file joint motions in the general stream adjudications specified in paragraph (1)(B) for the entry of partial final decrees, agreed to by the United States, the Tribe, and the State of New Mexico on July 9, 1992, to quantify the Tribe's reserved water right claims consistent with the Settlement Contract, subject to amendments.

(3) If the two partial final decrees specified in paragraph (1)(B) are not entered by December 31, 1996, the Fund shall be terminated, and amounts contributed to the Fund by the United States, shall be deposited in the general fund of the Treasury.

SEC. 9. ENVIRONMENTAL COMPLIANCE.

Execution of the Settlement Contract shall not constitute a major Federal action under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). The Secretary shall comply with all aspects of the National Environmental Policy Act of 1969, the Endangered Species Act, and other applicable environmental laws and regulations in fulfilling the terms of the Settlement Contract.

SEC. 10. PROTECTION OF RIGHTS.

The tribal rights under the Settlement Contract approved by section 5 of this Act, and the water rights adjudicated by final decrees in general stream adjudications consistent with such contract, shall inure to the benefit of the Tribe, and the Tribe shall not be denied all or any part of such rights absent its consent unless such rights are explicitly abrogated by an Act of Congress hereafter enacted.

SEC. 11. DISCLAIMER.

(a) IN GENERAL.—Nothing in this Act shall be construed to alter, amend, repeal, construe, interpret, modify, or be in conflict with the provisions of the Boulder Canyon Project Act (45 Stat. 1057); the Boulder Canyon Project Adjustment Act (54 Stat. 774); the Colorado River Storage Project Act (70 Stat. 105); the Colorado River Basin Project Act (82 Stat. 885); the Act of June 13, 1962 (76 Stat. 96); the Colorado River Compact of 1922 made effective by Public Proclamation of the President of the United States on June 25, 1929 (46 Stat. 3000); the Upper Colorado River Basin Compact (63 Stat. 31); the Rio Grande Compact (53 Stat. 785); or the Treaty between the United States of America and the United Mexican States (59 Stat. 1219).

(b) **RELATIVE TO OTHER TRIBES.**—Nothing in the Settlement Contract or this Act shall be construed in any way to quantify or otherwise adversely affect the land and water rights, claims, or entitlements to water of the Navajo Nation, or any Indian tribe, pueblo, or community, other than the Jicarilla Apache Tribe.

Approved October 23, 1992.

LEGISLATIVE HISTORY—H.R. 5122:

HOUSE REPORTS: No. 102-955 (Comm. on Interior and Insular Affairs).

CONGRESSIONAL RECORD, Vol. 138 (1992):

Sept. 29, considered and passed House.

Oct. 7, considered and passed Senate.