

107TH CONGRESS
1ST SESSION

H. R. 3223

To authorize the Secretary of the Interior, through the Bureau of Reclamation, to construct the Jicarilla Apache Nation Municipal Water Delivery and Wastewater Collection Systems in the State of New Mexico, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 1, 2001

Mr. UDALL of Mexico (for himself, Mrs. WILSON, Mr. KILDEE, Mr. YOUNG of Alaska, Mr. SKEEN, Mr. KENNEDY of Rhode Island, Mr. HAYWORTH, Mr. GEORGE MILLER of California, and Mr. THOMPSON of California) introduced the following bill; which was referred to the Committee on Resources

A BILL

To authorize the Secretary of the Interior, through the Bureau of Reclamation, to construct the Jicarilla Apache Nation Municipal Water Delivery and Wastewater Collection Systems 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.**

4 This Act may be cited as the “Jicarilla Apache Res-
5 ervation Rural Water System Act”.

1 **SEC. 2. PURPOSES.**

2 The purposes of this Act are as follows:

3 (1) To ensure a safe and adequate rural, mu-
4 nicipal, and water supply and wastewater systems
5 for the residents of the Jicarilla Apache Reservation
6 in the State of New Mexico in accordance with Pub-
7 lic Law 106–243.

8 (2) To authorize the Secretary of the Interior,
9 through the Bureau of Reclamation, in consultation
10 and collaboration with the Jicarilla Apache Nation—

11 (A) to plan, design, and construct the
12 water supply, delivery, and wastewater collec-
13 tion systems on the Jicarilla Apache Reserva-
14 tion in the State of New Mexico; and

15 (B) to include service connections to facili-
16 ties within the town of Dulce and the sur-
17 rounding area, and to individuals as part of the
18 construction.

19 (3) To require the Secretary, at the request of
20 the Jicarilla Apache Nation, to enter into a self-de-
21 termination contract with the Jicarilla Apache Na-
22 tion under title I of the Indian Self-Determination
23 and Education Assistance Act (25 U.S.C. 450f et
24 seq.) under which—

25 (A) the Jicarilla Apache Nation shall plan,
26 design, and construct the water supply, deliv-

1 ery, and wastewater collection systems, includ-
2 ing service connections to communities and in-
3 dividuals; and

4 (B) the Bureau of Reclamation shall pro-
5 vide technical assistance and oversight responsi-
6 bility for said project.

7 (4) To establish a process in which the Jicarilla
8 Apache Nation shall assume title and responsibility
9 for the ownership, operation, maintenance, and re-
10 placement of the system.

11 **SEC. 3. DEFINITIONS.**

12 As used in this Act:

13 (1) ACT.—The term “Act” means the Jicarilla
14 Apache Reservation Rural Water System Act.

15 (2) BIA.—The term “BIA” means the Bureau
16 of Indian Affairs, an agency within the Department
17 of the Interior.

18 (3) IRRIGATION.—The term “irrigation” means
19 the commercial application of water to land for the
20 purpose of establishing or maintaining commercial
21 agriculture in order to produce field crops and vege-
22 tables for sale.

23 (4) RECLAMATION.—The term “Reclamation”
24 means the Bureau of Reclamation, an agency within
25 the Department of the Interior.

1 (5) REPORT.—The term “Report” means the
2 report entitled “Planning Report/Environmental As-
3 sessment, Water and Wastewater Improvements,
4 Jicarilla Apache Nation, Dulce, New Mexico”, dated
5 September 2000, which was completed pursuant to
6 Public Law 106–243.

7 (6) RESERVATION.—The term “Reservation”
8 means the Jicarilla Apache Reservation in the State
9 of New Mexico, including all lands and interests in
10 land that are held in trust by the United States for
11 the Tribe.

12 (7) RURAL WATER SUPPLY PROJECT.—The
13 term “Rural Water Supply Project” means a munic-
14 ipal, domestic, rural, and industrial water supply
15 and wastewater facility area and project identified to
16 serve a group of towns, communities, cities, tribal
17 reservations, or dispersed farmsteads with access to
18 clean, safe domestic and industrial water, to include
19 the use of livestock.

20 (8) STATE.—The term “State” means the State
21 of New Mexico.

22 (9) SECRETARY.—The term “Secretary” means
23 the Secretary of the Interior, acting through the Bu-
24 reau of Reclamation.

1 (10) TRIBE.—The term “Tribe” means the
2 Jicarilla Apache Nation.

3 **SEC. 4. JICARILLA APACHE RESERVATION RURAL WATER**
4 **SYSTEM.**

5 (a) CONSTRUCTION.—The Secretary, in consultation
6 and collaboration with the Tribe, shall plan, design, and
7 construct the Rural Water Supply Project to improve the
8 water supply, delivery, and wastewater facilities to the
9 town of Dulce, New Mexico, and surrounding communities
10 for the purpose of providing the benefits of clean, safe,
11 and reliable water supply, delivery, and wastewater facili-
12 ties.

13 (b) SCOPE OF PROJECT.—The Rural Water Supply
14 Project shall consist of the following:

15 (1) Facilities to provide water supply, delivery,
16 and wastewater services for the community of Dulce,
17 the Mundo Ranch Development, and surrounding
18 areas on the Reservation.

19 (2) Pumping and treatment facilities located on
20 the Reservation.

21 (3) Distribution, collection, and treatment fa-
22 cilities to serve the needs of the Reservation, includ-
23 ing, but not limited to, construction, replacement,
24 improvement, and repair of existing water and
25 wastewater systems, including systems owned by in-

1 dividual tribal members and other residents on the
2 Reservation.

3 (4) Appurtenant buildings and access roads.

4 (5) Necessary property and property rights.

5 (6) Such other electrical power transmission
6 and distribution facilities, pipelines, pumping plants,
7 and facilities as the Secretary deems necessary or
8 appropriate to meet the water supply, economic,
9 public health, and environmental needs of the Res-
10 ervation, including, but not limited to, water storage
11 tanks, water lines, maintenance equipment, and
12 other facilities for the Tribe on the Reservation.

13 (c) FEDERAL SHARE.—

14 (1) CONSTRUCTION.—The Federal share of the
15 cost of construction of the Rural Water Supply
16 Project shall be 100 percent, subject to the tribal
17 share set forth in subsection (d).

18 (2) OPERATION AND MAINTENANCE.—The Fed-
19 eral share of the cost of operation and maintenance
20 of the Rural Water Supply Project shall continue to
21 be available for operation and maintenance in ac-
22 cordance with the Indian Self-Determination Act, as
23 set forth in this Act.

24 (d) TRIBAL SHARE.—The \$7,300,000 which the
25 Tribe has expended on improvements to the federally

1 owned municipal water systems, as documented in the Re-
2 port, shall be deemed to have satisfied the tribal share
3 of the Rural Water Supply Project.

4 (e) OPERATION; MAINTENANCE; COSTS.—Upon com-
5 pletion of the Rural Water Supply Project and transfer
6 of title of that project to the Tribe, the Tribe shall assume
7 responsibility for and liability related to the annual oper-
8 ation, maintenance, and replacement cost of the project
9 in accordance with this Act and the Operation, Mainte-
10 nance, and Replacement Plan under chapter IV of the Re-
11 port.

12 **SEC. 5. GENERAL AUTHORITY.**

13 The Secretary is authorized to enter into contracts,
14 grants, cooperative agreements, and other such agree-
15 ments and to promulgate such regulations as may be nec-
16 essary to carry out the purposes and provisions of this
17 Act and the Indian Self-Determination Act (Public Law
18 93–638; 25 U.S.C. 450 et seq.).

19 **SEC. 6. PROJECT REQUIREMENTS.**

20 (a) PLANS.—

21 (1) PROJECT PLAN.—Not later than 60 days
22 after funds are made available for this purpose, the
23 Secretary shall prepare a recommended project plan,
24 which shall include a general map showing the loca-
25 tion of the proposed physical facilities, conceptual

1 engineering drawings of structures, and general
2 standards for design for the Rural Water Supply
3 Project.

4 (2) OM&R PLAN.—The Tribe shall develop an
5 operation, maintenance, and replacement plan, which
6 shall provide the necessary framework to assist the
7 Tribe in establishing rates and fees for customers of
8 the Rural Water Supply Project.

9 (b) CONSTRUCTION MANAGER.—The Secretary,
10 through Reclamation and in consultation with the Tribe,
11 shall select a project construction manager to work with
12 the Tribe in the planning, design, and construction of the
13 Rural Water Supply Project.

14 (c) MEMORANDUM OF AGREEMENT.—The Secretary
15 shall enter into a memorandum of agreement with the
16 Tribe that commits Reclamation and BIA to a transition
17 plan that addresses operations and maintenance of the
18 Rural Water Supply Project while the facilities are under
19 construction and after completion of construction.

20 (d) OVERSIGHT.—The Secretary shall have oversight
21 responsibility with the Tribe and its constructing entity
22 and shall incorporate value engineering analysis as appro-
23 priate to the Rural Water Supply Project.

24 (e) TECHNICAL ASSISTANCE.—The Secretary shall
25 provide such technical assistance as may be necessary to

1 the Tribe to plan, develop, and construct the Rural Water
2 Supply Project, including, but not limited to, operation
3 and management training.

4 (f) SERVICE AREA.—The service area of the Rural
5 Water Supply Project shall be within the boundaries of
6 the Reservation.

7 (g) OTHER LAW.—The planning, design, construc-
8 tion, operation, and maintenance of the Rural Water Sup-
9 ply Project shall be subject to the provisions of the Indian
10 Self-Determination Act (25 U.S.C. 450 et seq.).

11 (h) REPORT.—During the year that construction of
12 the Rural Water Supply Project begins and annually until
13 such construction is completed, the Secretary, through
14 Reclamation and in consultation with the Tribe, shall re-
15 port to Congress on the status of the planning, design,
16 and construction of the Rural Water Supply Project.

17 (i) TITLE.—Title to the Rural Water Supply Project
18 shall be held in trust for the Tribe by the United States
19 and shall not be transferred or encumbered without a sub-
20 sequent Act of Congress.

21 **SEC. 7. AUTHORIZATION OF APPROPRIATIONS.**

22 (a) IN GENERAL.—There is authorized to be appro-
23 priated to carry out this Act \$45,000,000 (January 2002
24 dollars) plus or minus such amounts, if any, as may be
25 justified by reason of changes in construction costs as in-

1 dicated by engineering cost indexes applicable to the types
2 of construction involved for the planning, design, and con-
3 struction of the Rural Water Supply Project as generally
4 described in the Report dated September 2001.

5 (b) CONDITIONS.—Funds may not be appropriated
6 for the construction of any project authorized under this
7 Act until after—

8 (1) an appraisal investigation and a feasibility
9 study have been completed by the Secretary and the
10 Tribe; and

11 (2) the Secretary has determined that the plan
12 required by section 6(a)(2) is completed.

13 (c) NEPA.—The Secretary shall not obligate funds
14 for construction until after the requirements of the Na-
15 tional Environmental Policy Act of 1969 (42 U.S.C. 4321
16 et seq.) are met with respect to Rural Water Supply
17 Project.

18 (d) NO REDUCTION IN FUNDS.—The amounts au-
19 thorized by this Act and appropriated by Congress shall
20 not be reduced and shall not be subject to the under-
21 financing requirements within Reclamation’s budget for
22 any year as long as the Rural Water Supply Project is
23 authorized.

1 **SEC. 8. PROHIBITION ON USE OF FUNDS FOR IRRIGATION**
2 **PURPOSES.**

3 None of the funds made available to the Secretary
4 for planning or construction of the Rural Water Supply
5 Project may be used to plan or construct facilities used
6 to supply water for the purposes of irrigation.

7 **SEC. 9. WATER RIGHTS.**

8 The water rights of the Tribe are part of and in-
9 cluded in the Jicarilla Apache Tribe Water Rights Settle-
10 ment Act (Public Law 102–441). These rights are adju-
11 dicated under New Mexico State law as a partial final
12 judgment and decree entered in the Eleventh Judicial Dis-
13 trict Court of New Mexico. That Act and decree provide
14 for sufficient water rights under “historic and existing
15 uses” to supply water for the municipal water system.
16 These water rights are recognized depletions within the
17 San Juan River basin and no new depletions are associ-
18 ated with the Rural Water Supply Project. In consultation
19 with the Fish and Wildlife Service, Reclamation has deter-
20 mined that there shall be no significant impact to endan-
21 gered species as a result of water depletions associated
22 with this project. No other water rights of the Tribe shall
23 be impacted by the Rural Water Supply Project.

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