

# Union Calendar No. 378

107<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 3223

[Report No. 107-629]

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.

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## 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

SEPTEMBER 4, 2002

Additional sponsors: Mr. NEY, Mrs. NAPOLITANO, Ms. SOLIS, and Mr. GALLEGLY

SEPTEMBER 4, 2002

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

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

[For text of introduced bill, see copy of bill as introduced on November 1, 2001]

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## 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 Collec-

tion 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”.*

6 **SEC. 2. PURPOSES.**

7       *The purposes of this Act are as follows:*

8           (1) *To ensure a safe and adequate rural, munic-*  
9 *icipal, and water supply and wastewater systems for*  
10 *the residents of the Jicarilla Apache Reservation in*  
11 *the State of New Mexico in accordance with Public*  
12 *Law 106–243.*

13           (2) *To authorize the Secretary of the Interior,*  
14 *through the Bureau of Reclamation, in consultation*  
15 *and collaboration with the Jicarilla Apache Nation—*

16               (A) *to plan, design, and construct the water*  
17 *supply, delivery, and wastewater collection sys-*  
18 *tems on the Jicarilla Apache Reservation in the*  
19 *State of New Mexico; and*

20               (B) *to include service connections to facili-*  
21 *ties within the town of Dulce and the sur-*  
22 *rounding area, and to individuals as part of the*  
23 *construction.*

1           (3) *To require the Secretary, at the request of the*  
2 *Jicarilla Apache Nation, to enter into a self-deter-*  
3 *mination contract with the Jicarilla Apache Nation*  
4 *under title I of the Indian Self-Determination and*  
5 *Education Assistance Act (25 U.S.C. 450f et seq.)*  
6 *under which—*

7                   (A) *the Jicarilla Apache Nation shall plan,*  
8 *design, and construct the water supply, delivery,*  
9 *and wastewater collection systems, including*  
10 *service connections to communities and individ-*  
11 *uals; and*

12                   (B) *the Bureau of Reclamation shall pro-*  
13 *vide technical assistance and oversight responsi-*  
14 *bility for said project.*

15           (4) *To establish a process in which the Jicarilla*  
16 *Apache Nation shall assume title and responsibility*  
17 *for the ownership, operation, maintenance, and re-*  
18 *placement of the system.*

19 **SEC. 3. DEFINITIONS.**

20 *As used in this Act:*

21           (1) *ACT.*—*The term “Act” means the Jicarilla*  
22 *Apache Reservation Rural Water System Act.*

23           (2) *BIA.*—*The term “BIA” means the Bureau of*  
24 *Indian Affairs, an agency within the Department of*  
25 *the Interior.*

1           (3) *IRRIGATION.*—*The term “irrigation” means*  
2 *the commercial application of water to land for the*  
3 *purpose of establishing or maintaining commercial*  
4 *agriculture in order to produce field crops and vegeta-*  
5 *bles for sale.*

6           (4) *RECLAMATION.*—*The term “Reclamation”*  
7 *means the Bureau of Reclamation, an agency within*  
8 *the Department of the Interior.*

9           (5) *REPORT.*—*The term “Report” means the re-*  
10 *port entitled “Planning Report/Environmental As-*  
11 *essment, Water and Wastewater Improvements,*  
12 *Jicarilla Apache Nation, Dulce, New Mexico”, dated*  
13 *September 2001, which was completed pursuant to*  
14 *Public Law 106–243.*

15           (6) *RESERVATION.*—*The term “Reservation”*  
16 *means the Jicarilla Apache Reservation in the State*  
17 *of New Mexico, including all lands and interests in*  
18 *land that are held in trust by the United States for*  
19 *the Tribe.*

20           (7) *RURAL WATER SUPPLY PROJECT.*—*The term*  
21 *“Rural Water Supply Project” means a municipal,*  
22 *domestic, rural, and industrial water supply and*  
23 *wastewater facility area and project identified to*  
24 *serve a group of towns, communities, cities, tribal res-*  
25 *ervations, or dispersed farmsteads with access to*

1       *clean, safe domestic and industrial water, to include*  
2       *the use of livestock.*

3               (8) *STATE.*—*The term “State” means the State*  
4       *of New Mexico.*

5               (9) *SECRETARY.*—*The term “Secretary” means*  
6       *the Secretary of the Interior, acting through the Bu-*  
7       *reau of Reclamation.*

8               (10) *TRIBE.*—*The term “Tribe” means the*  
9       *Jicarilla Apache Nation.*

10 **SEC. 4. JICARILLA APACHE RESERVATION RURAL WATER**  
11               **SYSTEM.**

12               (a) *CONSTRUCTION.*—*The Secretary, in consultation*  
13       *and collaboration with the Tribe, shall plan, design, and*  
14       *construct the Rural Water Supply Project to improve the*  
15       *water supply, delivery, and wastewater facilities to the*  
16       *town of Dulce, New Mexico, and surrounding communities*  
17       *for the purpose of providing the benefits of clean, safe, and*  
18       *reliable water supply, delivery, and wastewater facilities.*

19               (b) *SCOPE OF PROJECT.*—*The Rural Water Supply*  
20       *Project shall consist of the following:*

21                       (1) *Facilities to provide water supply, delivery,*  
22       *and wastewater services for the community of Dulce,*  
23       *the Mundo Ranch Development, and surrounding*  
24       *areas on the Reservation.*

1           (2) *Pumping and treatment facilities located on*  
2 *the Reservation.*

3           (3) *Distribution, collection, and treatment facili-*  
4 *ties to serve the needs of the Reservation, including,*  
5 *but not limited to, construction, replacement, im-*  
6 *provement, and repair of existing water and waste-*  
7 *water systems, including systems owned by individual*  
8 *tribal members and other residents on the Reserva-*  
9 *tion.*

10           (4) *Appurtenant buildings and access roads.*

11           (5) *Necessary property and property rights.*

12           (6) *Such other electrical power transmission and*  
13 *distribution facilities, pipelines, pumping plants, and*  
14 *facilities as the Secretary deems necessary or appro-*  
15 *priate to meet the water supply, economic, public*  
16 *health, and environmental needs of the Reservation,*  
17 *including, but not limited to, water storage tanks,*  
18 *water lines, maintenance equipment, and other facili-*  
19 *ties for the Tribe on the Reservation.*

20           (c) *COST SHARING.—*

21           (1) *TRIBAL SHARE.—Subject to paragraph (3)*  
22 *and subsection (d), the tribal share of the cost of the*  
23 *Rural Water Supply Project is comprised of the costs*  
24 *to design and initiate construction of the wastewater*  
25 *treatment plant, to replace the diversion structure on*

1        *the Navajo River, and to construct raw water settling*  
2        *ponds, a water treatment plant, water storage plants,*  
3        *a water transmission pipeline, and distribution pipe-*  
4        *lines, and has been satisfied.*

5            (2) *FEDERAL SHARE.*—*Subject to paragraph (3)*  
6        *and subsection (d), the Federal share of the cost of the*  
7        *Rural Water Supply Project shall be all remaining*  
8        *costs of the project identified in the Report.*

9            (3) *OPERATION AND MAINTENANCE.*—*The Fed-*  
10        *eral share of the cost of operation and maintenance*  
11        *of the Rural Water Supply Project shall continue to*  
12        *be available for operation and maintenance in ac-*  
13        *cordance with the Indian Self-Determination Act, as*  
14        *set forth in this Act.*

15            (d) *OPERATION, MAINTENANCE, AND REPLACEMENT*  
16        *AFTER COMPLETION.*—*Upon determination by the Sec-*  
17        *retary that the Rural Water Supply Project is substantially*  
18        *complete, the Tribe shall assume responsibility for and li-*  
19        *ability related to the annual operation, maintenance, and*  
20        *replacement cost of the project in accordance with this Act*  
21        *and the Operation, Maintenance, and Replacement Plan*  
22        *under chapter IV of the Report.*

23        **SEC. 5. GENERAL AUTHORITY.**

24            *The Secretary is authorized to enter into contracts,*  
25        *grants, cooperative agreements, and other such agreements*

1 *and to promulgate such regulations as may be necessary*  
2 *to carry out the purposes and provisions of this Act and*  
3 *the Indian Self-Determination Act (Public Law 93–638; 25*  
4 *U.S.C. 450 et seq.).*

5 **SEC. 6. PROJECT REQUIREMENTS.**

6 (a) *PLANS.—*

7 (1) *PROJECT PLAN.—Not later than 60 days*  
8 *after funds are made available for this purpose, the*  
9 *Secretary shall prepare a recommended project plan,*  
10 *which shall include a general map showing the loca-*  
11 *tion of the proposed physical facilities, conceptual en-*  
12 *gineering drawings of structures, and general stand-*  
13 *ards for design for the Rural Water Supply Project.*

14 (2) *OM&R PLAN.—The Tribe shall develop an*  
15 *operation, maintenance, and replacement plan, which*  
16 *shall provide the necessary framework to assist the*  
17 *Tribe in establishing rates and fees for customers of*  
18 *the Rural Water Supply Project.*

19 (b) *CONSTRUCTION MANAGER.—The Secretary,*  
20 *through Reclamation and in consultation with the Tribe,*  
21 *shall select a project construction manager to work with the*  
22 *Tribe in the planning, design, and construction of the Rural*  
23 *Water Supply Project.*

24 (c) *MEMORANDUM OF AGREEMENT.—The Secretary*  
25 *shall enter into a memorandum of agreement with the Tribe*



1 *that commits Reclamation and BIA to a transition plan*  
2 *that addresses operations and maintenance of the Rural*  
3 *Water Supply Project while the facilities are under con-*  
4 *struction and after completion of construction.*

5 (d) *OVERSIGHT.—The Secretary shall have oversight*  
6 *responsibility with the Tribe and its constructing entity*  
7 *and shall incorporate value engineering analysis as appro-*  
8 *priate to the Rural Water Supply Project.*

9 (e) *TECHNICAL ASSISTANCE.—The Secretary shall*  
10 *provide such technical assistance as may be necessary to*  
11 *the Tribe to plan, develop, and construct the Rural Water*  
12 *Supply Project, including, but not limited to, operation and*  
13 *management training.*

14 (f) *SERVICE AREA.—The service area of the Rural*  
15 *Water Supply Project shall be within the boundaries of the*  
16 *Reservation.*

17 (g) *OTHER LAW.—The planning, design, construction,*  
18 *operation, and maintenance of the Rural Water Supply*  
19 *Project shall be subject to the provisions of the Indian Self-*  
20 *Determination Act (25 U.S.C. 450 et seq.).*

21 (h) *REPORT.—During the year that construction of the*  
22 *Rural Water Supply Project begins and annually until*  
23 *such construction is completed, the Secretary, through Rec-*  
24 *lamation and in consultation with the Tribe, shall report*

1 *to Congress on the status of the planning, design, and con-*  
2 *struction of the Rural Water Supply Project.*

3 (i) *TITLE.—Title to the Rural Water Supply Project*  
4 *shall be held in trust for the Tribe by the United States*  
5 *and shall not be transferred or encumbered without a subse-*  
6 *quent Act of Congress.*

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

8 (a) *IN GENERAL.—There is authorized to be appro-*  
9 *priated to carry out this Act \$45,000,000 (January 2002*  
10 *dollars) plus or minus such amounts, if any, as may be*  
11 *justified by reason of changes in construction costs as indi-*  
12 *cated by engineering cost indexes applicable to the types*  
13 *of construction involved for the planning, design, and con-*  
14 *struction of the Rural Water Supply Project as generally*  
15 *described in the Report dated September 2001.*

16 (b) *CONDITIONS.—Funds may not be appropriated for*  
17 *the construction of any project authorized under this Act*  
18 *until after—*

19 (1) *an appraisal investigation and a feasibility*  
20 *study have been completed by the Secretary and the*  
21 *Tribe; and*

22 (2) *the Secretary has determined that the plan*  
23 *required by section 6(a)(2) is completed.*

24 (c) *NEPA.—The Secretary shall not obligate funds for*  
25 *construction until after the requirements of the National*

1 *Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.)*  
2 *are met with respect to the Rural Water Supply Project.*

3 **SEC. 8. PROHIBITION ON USE OF FUNDS FOR IRRIGATION**

4 **PURPOSES.**

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

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

10 *The water rights of the Tribe are part of and included*  
11 *in the Jicarilla Apache Tribe Water Rights Settlement Act*  
12 *(Public Law 102-441). These rights are adjudicated under*  
13 *New Mexico State law as a partial final judgment and de-*  
14 *cree entered in the Eleventh Judicial District Court of New*  
15 *Mexico. That Act and decree provide for sufficient water*  
16 *rights under “historic and existing uses” to supply water*  
17 *for the municipal water system. These water rights are rec-*  
18 *ognized depletions within the San Juan River basin and*  
19 *no new depletions are associated with the Rural Water Sup-*  
20 *ply Project. In consultation with the Fish and Wildlife*  
21 *Service, Reclamation has determined that there shall be no*  
22 *significant impact to endangered species as a result of*  
23 *water depletions associated with this project. No other water*  
24 *rights of the Tribe shall be impacted by the Rural Water*  
25 *Supply Project.*

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2<sup>D</sup> SESSION

**H. R. 3223**

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