

107TH CONGRESS
2^D SESSION

H. R. 4708

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 25, 2002

Received; read twice and referred to the Committee on Energy and Natural
Resources

AN ACT

To authorize the Secretary of the Interior to convey certain facilities to the Fremont-Madison Irrigation District, 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,*

1 **TITLE I—FREMONT-MADISON IR-**
2 **RIGATION FACILITIES CON-**
3 **VEYANCE**

4 **SEC. 101. SHORT TITLE.**

5 This title may be cited as the “Fremont-Madison
6 Conveyance Act”.

7 **SEC. 102. CONVEYANCE OF FACILITIES.**

8 (a) CONVEYANCE REQUIREMENT.—The Secretary of
9 the Interior shall convey to the Fremont-Madison Irriga-
10 tion District, Idaho, as soon as practicable after the date
11 of enactment of this Act and in accordance with all appli-
12 cable law and pursuant to the terms of the memorandum
13 of agreement between the District and the Secretary (Con-
14 tract No. 1425–01–MA–10–3310). The Secretary shall in-
15 clude in the facilities conveyed under this section all right,
16 title, and interest of the United States in and to the ca-
17 nals, laterals, drains, and other components of the water
18 distribution and drainage system that is operated or main-
19 tained by the District for delivery of water to and drainage
20 of water from lands within the boundaries of the District
21 as they exist upon the date of enactment of this Act, con-
22 sistent with section 107.

23 (b) REPORT.—If the Secretary has not completed any
24 conveyance required under this title by September 13,
25 2003, the Secretary shall, by no later than that date, sub-

1 mit a report to the Congress explaining the reasons that
2 conveyance has not been completed and stating the date
3 by which the conveyance will be completed.

4 **SEC. 103. COSTS.**

5 (a) IN GENERAL.—The Secretary shall require, as a
6 condition of the conveyance under section 102, that the
7 District pay the administrative costs of the conveyance
8 and related activities, including the costs of any review
9 required under the National Environmental Policy Act of
10 1969 (42 U.S.C. 4321 et seq.) as described in Contract
11 No. 1425–01–MA–10–3310.

12 (b) VALUE OF FACILITIES TO BE TRANSFERRED.—
13 In addition to subsection (a) the Secretary shall also re-
14 quire, as condition of the conveyance under section 102,
15 that the District pay to the United States the lesser of
16 the net present value of the remaining obligations owed
17 by the District to the United States with respect to the
18 facilities conveyed, or \$280,000. Amounts received by the
19 United States under this subsection shall be deposited into
20 the reclamation fund.

21 **SEC. 104. TETON EXCHANGE WELLS.**

22 (a) CONTRACTS AND PERMIT.—In conveying the
23 Teton Exchange Wells under section 102, the Secretary
24 shall also convey to the District—

1 (1) Idaho Department of Water Resources per-
2 mit number 22-7022, including drilled wells under
3 the permit, as described in Contract No. 1425-01-
4 MA-10-3310; and

5 (2) all equipment appurtenant to such wells.

6 (b) **EXTENSION OF WATER SERVICE CONTRACT.**—
7 The water service contract between the Secretary and the
8 District (Contract No. 7-07-10-W0179, dated September
9 16, 1977) is hereby extended and shall continue in full
10 force and effect until all conditions described in this title
11 are fulfilled.

12 **SEC. 105. NATIONAL ENVIRONMENTAL POLICY ACT OF 1969.**

13 Prior to conveyance the Secretary shall complete all
14 actions as may be required under the National Environ-
15 mental Policy Act of 1969 (42 U.S.C. 4321 et seq.), the
16 Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.),
17 and all other applicable laws.

18 **SEC. 106. LIABILITY.**

19 Effective on the date of the conveyance of the facili-
20 ties described in section 102, the United States shall not
21 be held liable by any court for damages of any kind arising
22 out of any act, omission, or occurrence relating to the con-
23 veyed facilities, except for damages caused by acts of neg-
24 ligence committed by the United States or by its employ-
25 ees, agents, or contractors prior to the date of conveyance.

1 Nothing in this section may be deemed to increase the li-
2 ability of the United States beyond that currently provided
3 in chapter 171 of title 28, United States Code, popularly
4 known as the Federal Tort Claims Act.

5 **SEC. 107. WATER SUPPLY TO DISTRICT LANDS.**

6 The Secretary shall increase the number of acres
7 within the District that are eligible to receive water from
8 the Minidoka Project and the Teton Basin Projects to re-
9 flect the number of acres within the District as of the date
10 of enactment of this Act, which includes lands annexed
11 into the District prior to enactment of this Act as intended
12 by the Teton Basin Project. This section does not in any
13 way authorize the use of any additional Federal Reclama-
14 tion project water beyond that which is currently author-
15 ized under their existing water storage contracts and as
16 allowed by State water law.

17 **SEC. 108. EXISTING RIGHTS NOT AFFECTED.**

18 Nothing in this title affects the rights of any person
19 except as provided in this title. Any conveyance under this
20 title shall not affect or abrogate any provision of any con-
21 tract executed by the United States or State law regarding
22 any irrigation district's right to use water developed in the
23 facilities conveyed.

24 **SEC. 109. DEFINITIONS.**

25 In this title:

1 (1) DISTRICT.—The term “District” means the
2 Fremont-Madison Irrigation District, an irrigation
3 district organized under the law of the State of
4 Idaho.

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

7 **TITLE II—HUMBOLT PROJECT**
8 **CONVEYANCE**

9 **SEC. 201. SHORT TITLE.**

10 This title may be cited as the “Humboldt Project
11 Conveyance Act”.

12 **SEC. 202. DEFINITIONS.**

13 For purposes of this title:

14 (1) SECRETARY.—The term “Secretary” means
15 the Secretary of the Interior.

16 (2) STATE.—The term “State” means the State
17 of Nevada.

18 (3) PCWCD.—The term “PCWCD” means the
19 Pershing County Water Conservation District, a
20 public entity organized under the laws of the State
21 of Nevada.

22 (4) PERSHING COUNTY.—The term “Pershing
23 County” means the Pershing County government, a
24 political subunit of the State of Nevada.

1 (5) LANDER COUNTY.—The term “Lander
2 County” means the Lander County government, a
3 political subunit of the State of Nevada.

4 **SEC. 203. AUTHORITY TO CONVEY TITLE.**

5 (a) IN GENERAL.—As soon as practicable after the
6 date of enactment of this Act and in accordance with all
7 applicable law, the Secretary shall convey all right, title,
8 and interest in and to the lands and features of the Hum-
9 boldt Project, including all water rights for storage and
10 diversion, to PCWCD, the State, Pershing County, and
11 Lander County, consistent with the terms and conditions
12 set forth in the Memorandum of Agreement between
13 PCWCD and Lander County dated January 24, 2000, the
14 Conceptual Agreement between PCWCD and the State
15 dated October 18, 2001, the Letter of Agreement between
16 Pershing County and the State dated April 16, 2002, and
17 any agreements between the Bureau of Reclamation and
18 PCWCD.

19 (b) COMPLIANCE WITH AGREEMENTS.—All parties
20 to the conveyance under subsection (a) shall comply with
21 the terms and conditions of the agreements cited in sub-
22 section (a).

23 (c) REPORT.—If the conveyance required by this sec-
24 tion has not been completed within 18 months after the
25 date of enactment of this Act, the Secretary shall submit

1 a report to the Committee on Resources of the House of
2 Representatives and the Committee on Energy and Nat-
3 ural Resources of the Senate that describes—

4 (1) the status of the conveyance;

5 (2) any obstacles to completion of the convey-
6 ance; and

7 (3) the anticipated date for completion of the
8 conveyance.

9 **SEC. 204. PAYMENT.**

10 (a) **IN GENERAL.**—As consideration for any convey-
11 ance required by section 203, PCWCD shall pay to the
12 United States the net present value of miscellaneous reve-
13 nues associated with the lands and facilities to be con-
14 veyed.

15 (b) **WITHDRAWN LANDS.**—As consideration for any
16 conveyance of withdrawn lands required by section 203,
17 the entity receiving title shall pay the United States (in
18 addition to amounts paid under subsection (a)) the fair
19 market value for any such lands conveyed that were with-
20 drawn from the public domain pursuant to the Secretarial
21 Orders dated March 16, 1934, and April 6, 1956.

22 (c) **ADMINISTRATIVE COSTS.**—Administrative costs
23 for conveyance of any land or facility under this title shall
24 be paid in equal shares by the Secretary and the entity

1 receiving title to the land or facility, except costs identified
2 in subsections (d) and (e).

3 (d) REAL ESTATE TRANSFER COSTS.—As a condi-
4 tion of any conveyance of any land or facility required by
5 section 203, costs of all boundary surveys, title searches,
6 cadastral surveys, appraisals, and other real estate trans-
7 actions required for the conveyance shall be paid by the
8 entity receiving title to the land or facility.

9 (e) NEPA COSTS.—Costs associated with any review
10 required under the National Environmental Policy Act of
11 1969 (42 U.S.C. 4321 et seq.) for conveyance of any land
12 or facility under section 203 shall be paid in equal shares
13 by the Secretary and the entity receiving title to the land
14 or facility.

15 (f) STATE OF NEVADA.—The State shall not be re-
16 sponsible for any payments for land or facilities under this
17 section. Any proposal by the State to reconvey to another
18 entity land conveyed by the Secretary under this title shall
19 be pursuant to an agreement with the Secretary providing
20 for fair market value to the United States for the lands,
21 and for continued management of the lands for recreation,
22 wildlife habitat, wetlands, or resource conservation.

23 **SEC. 205. COMPLIANCE WITH OTHER LAWS.**

24 Following the conveyance required by section 203,
25 the district, the State, Pershing County, and Lander

1 County shall, with respect to the interests conveyed, com-
2 ply with all requirements of Federal, State, and local law
3 applicable to non-Federal water distribution systems.

4 **SEC. 206. REVOCATION OF WITHDRAWALS.**

5 Effective on the date of the conveyance required by
6 section 203, the Secretarial Orders dated March 16, 1934,
7 and April 6, 1956, that withdrew public lands for the Rye
8 Patch Reservoir and the Humboldt Sink, are hereby re-
9 voked.

10 **SEC. 207. LIABILITY.**

11 Effective on the date of the conveyance required by
12 section 203, the United States shall not be held liable by
13 any court for damages of any kind arising out of any act,
14 omission, or occurrence relating to the Humboldt Project,
15 except for damages caused by acts of negligence com-
16 mitted by the United States or by its employees or agents
17 prior to the date of conveyance. Nothing in this section
18 shall be considered to increase the liability of the United
19 States beyond that currently provided in chapter 171 of
20 title 28, United States Code, popularly known as the Fed-
21 eral Tort Claims Act.

22 **SEC. 208. NATIONAL ENVIRONMENTAL POLICY ACT.**

23 Prior to any conveyance under this title, the Sec-
24 retary shall complete all actions as may be required under
25 the National Environmental Policy Act of 1969 (42 U.S.C.

1 4321 et seq.), the Endangered Species Act of 1973 (16
2 U.S.C. 1531 et seq.), and all other applicable laws.

3 **SEC. 209. FUTURE BENEFITS.**

4 Upon conveyance of the lands and facilities by the
5 Secretary under this title, the Humboldt Project shall no
6 longer be a Federal reclamation project and the district
7 shall not be entitled to receive any future reclamation ben-
8 efits with respect to that project, except those benefits
9 that would be available to other nonreclamation districts.

10 **TITLE III—JICARILLA APACHE**
11 **RESERVATION RURAL WATER**
12 **SYSTEM**

13 **SEC. 301. SHORT TITLE.**

14 This title may be cited as the “Jicarilla Apache Res-
15 ervation Rural Water System Act”.

16 **SEC. 302. PURPOSES.**

17 The purposes of this title are as follows:

18 (1) To ensure a safe and adequate rural, mu-
19 nicipal, and water supply and wastewater systems
20 for the residents of the Jicarilla Apache Reservation
21 in the State of New Mexico in accordance with Pub-
22 lic Law 106–243.

23 (2) To authorize the Secretary of the Interior,
24 through the Bureau of Reclamation, in consultation
25 and collaboration with the Jicarilla Apache Nation—

1 (A) to plan, design, and construct the
2 water supply, delivery, and wastewater collec-
3 tion systems on the Jicarilla Apache Reserva-
4 tion in the State of New Mexico; and

5 (B) to include service connections to facili-
6 ties within the town of Dulce and the sur-
7 rounding area, and to individuals as part of the
8 construction.

9 (3) To require the Secretary, at the request of
10 the Jicarilla Apache Nation, to enter into a self-de-
11 termination contract with the Jicarilla Apache Na-
12 tion under title I of the Indian Self-Determination
13 and Education Assistance Act (25 U.S.C. 450f et
14 seq.) under which—

15 (A) the Jicarilla Apache Nation shall plan,
16 design, and construct the water supply, deliv-
17 ery, and wastewater collection systems, includ-
18 ing service connections to communities and in-
19 dividuals; and

20 (B) the Bureau of Reclamation shall pro-
21 vide technical assistance and oversight responsi-
22 bility for such project.

23 (4) To establish a process in which the Jicarilla
24 Apache Nation shall assume title and responsibility

1 for the ownership, operation, maintenance, and re-
2 placement of the system.

3 **SEC. 303. DEFINITIONS.**

4 As used in this title:

5 (1) BIA.—The term “BIA” means the Bureau
6 of Indian Affairs, an agency within the Department
7 of the Interior.

8 (2) IRRIGATION.—The term “irrigation” means
9 the commercial application of water to land for the
10 purpose of establishing or maintaining commercial
11 agriculture in order to produce field crops and vege-
12 tables for sale.

13 (3) RECLAMATION.—The term “Reclamation”
14 means the Bureau of Reclamation, an agency within
15 the Department of the Interior.

16 (4) REPORT.—The term “Report” means the
17 report entitled “Planning Report/Environmental As-
18 sessment, Water and Wastewater Improvements,
19 Jicarilla Apache Nation, Dulce, New Mexico”, dated
20 September 2001, which was completed pursuant to
21 Public Law 106–243.

22 (5) RESERVATION.—The term “Reservation”
23 means the Jicarilla Apache Reservation in the State
24 of New Mexico, including all lands and interests in

1 land that are held in trust by the United States for
2 the Tribe.

3 (6) RURAL WATER SUPPLY PROJECT.—The
4 term “Rural Water Supply Project” means a munic-
5 ipal, domestic, rural, and industrial water supply
6 and wastewater facility area and project identified to
7 serve a group of towns, communities, cities, tribal
8 reservations, or dispersed farmsteads with access to
9 clean, safe domestic and industrial water, to include
10 the use of livestock.

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

13 (8) SECRETARY.—The term “Secretary” means
14 the Secretary of the Interior, acting through the Bu-
15 reau of Reclamation.

16 (9) TRIBE.—The term “Tribe” means the
17 Jicarilla Apache Nation.

18 **SEC. 304. JICARILLA APACHE RESERVATION RURAL WATER**
19 **SYSTEM.**

20 (a) CONSTRUCTION.—The Secretary, in consultation
21 and collaboration with the Tribe, shall plan, design, and
22 construct the Rural Water Supply Project to improve the
23 water supply, delivery, and wastewater facilities to the
24 town of Dulce, New Mexico, and surrounding communities
25 for the purpose of providing the benefits of clean, safe,

1 and reliable water supply, delivery, and wastewater facili-
2 ties.

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

5 (1) Facilities to provide water supply, delivery,
6 and wastewater services for the community of Dulce,
7 the Mundo Ranch Development, and surrounding
8 areas on the Reservation.

9 (2) Pumping and treatment facilities located on
10 the Reservation.

11 (3) Distribution, collection, and treatment fa-
12 cilities to serve the needs of the Reservation, includ-
13 ing, but not limited to, construction, replacement,
14 improvement, and repair of existing water and
15 wastewater systems, including systems owned by in-
16 dividual tribal members and other residents on the
17 Reservation.

18 (4) Appurtenant buildings and access roads.

19 (5) Necessary property and property rights.

20 (6) Such other electrical power transmission
21 and distribution facilities, pipelines, pumping plants,
22 and facilities as the Secretary deems necessary or
23 appropriate to meet the water supply, economic,
24 public health, and environmental needs of the Res-
25 ervation, including, but not limited to, water storage

1 tanks, water lines, maintenance equipment, and
2 other facilities for the Tribe on the Reservation.

3 (c) COST SHARING.—

4 (1) TRIBAL SHARE.—Subject to paragraph (3)
5 and subsection (d), the tribal share of the cost of the
6 Rural Water Supply Project is comprised of the
7 costs to design and initiate construction of the
8 wastewater treatment plant, to replace the diversion
9 structure on the Navajo River, and to construct raw
10 water settling ponds, a water treatment plant, water
11 storage plants, a water transmission pipeline, and
12 distribution pipelines, and has been satisfied.

13 (2) FEDERAL SHARE.—Subject to paragraph
14 (3) and subsection (d), the Federal share of the cost
15 of the Rural Water Supply Project shall be all re-
16 maining costs of the project identified in the Report.

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

23 (d) OPERATION, MAINTENANCE, AND REPLACEMENT
24 AFTER COMPLETION.—Upon determination by the Sec-
25 retary that the Rural Water Supply Project is substan-

1 tially complete, the Tribe shall assume responsibility for
2 and liability related to the annual operation, maintenance,
3 and replacement cost of the project in accordance with this
4 title and the Operation, Maintenance, and Replacement
5 Plan under chapter IV of the Report.

6 **SEC. 305. GENERAL AUTHORITY.**

7 The Secretary is authorized to enter into contracts,
8 grants, cooperative agreements, and other such agree-
9 ments and to promulgate such regulations as may be nec-
10 essary to carry out the purposes and provisions of this
11 title and the Indian Self-Determination Act (Public Law
12 93–638; 25 U.S.C. 450 et seq.).

13 **SEC. 306. PROJECT REQUIREMENTS.**

14 (a) PLANS.—

15 (1) PROJECT PLAN.—Not later than 60 days
16 after funds are made available for this purpose, the
17 Secretary shall prepare a recommended project plan,
18 which shall include a general map showing the loca-
19 tion of the proposed physical facilities, conceptual
20 engineering drawings of structures, and general
21 standards for design for the Rural Water Supply
22 Project.

23 (2) OM&R PLAN.—The Tribe shall develop an
24 operation, maintenance, and replacement plan, which
25 shall provide the necessary framework to assist the

1 Tribe in establishing rates and fees for customers of
2 the Rural Water Supply Project.

3 (b) CONSTRUCTION MANAGER.—The Secretary,
4 through Reclamation and in consultation with the Tribe,
5 shall select a project construction manager to work with
6 the Tribe in the planning, design, and construction of the
7 Rural Water Supply Project.

8 (c) MEMORANDUM OF AGREEMENT.—The Secretary
9 shall enter into a memorandum of agreement with the
10 Tribe that commits Reclamation and BIA to a transition
11 plan that addresses operations and maintenance of the
12 Rural Water Supply Project while the facilities are under
13 construction and after completion of construction.

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

18 (e) TECHNICAL ASSISTANCE.—The Secretary shall
19 provide such technical assistance as may be necessary to
20 the Tribe to plan, develop, and construct the Rural Water
21 Supply Project, including, but not limited to, operation
22 and management training.

23 (f) SERVICE AREA.—The service area of the Rural
24 Water Supply Project shall be within the boundaries of
25 the Reservation.

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

5 (h) REPORT.—During the year that construction of
6 the Rural Water Supply Project begins and annually until
7 such construction is completed, the Secretary, through
8 Reclamation and in consultation with the Tribe, shall re-
9 port to Congress on the status of the planning, design,
10 and construction of the Rural Water Supply Project.

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

15 **SEC. 307. AUTHORIZATION OF APPROPRIATIONS.**

16 (a) IN GENERAL.—There is authorized to be appro-
17 priated to carry out this title \$45,000,000 (January 2002
18 dollars) plus or minus such amounts, if any, as may be
19 justified by reason of changes in construction costs as in-
20 dicated by engineering cost indexes applicable to the types
21 of construction involved for the planning, design, and con-
22 struction of the Rural Water Supply Project as generally
23 described in the Report dated September 2001.

1 (b) CONDITIONS.—Funds may not be appropriated
2 for the construction of any project authorized under this
3 title until after—

4 (1) an appraisal investigation and a feasibility
5 study have been completed by the Secretary and the
6 Tribe; and

7 (2) the Secretary has determined that the plan
8 required by section 306(a)(2) is completed.

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

14 **SEC. 308. PROHIBITION ON USE OF FUNDS FOR IRRIGATION**
15 **PURPOSES.**

16 None of the funds made available to the Secretary
17 for planning or construction of the Rural Water Supply
18 Project may be used to plan or construct facilities used
19 to supply water for the purposes of irrigation.

20 **SEC. 309. WATER RIGHTS.**

21 The water rights of the Tribe are part of and in-
22 cluded in the Jicarilla Apache Tribe Water Rights Settle-
23 ment Act (Public Law 102–441). These rights are adju-
24 dicated under New Mexico State law as a partial final
25 judgment and decree entered in the Eleventh Judicial Dis-

1 triet Court of New Mexico. That Act and decree provide
2 for sufficient water rights under “historic and existing
3 uses” to supply water for the municipal water system.
4 These water rights are recognized depletions within the
5 San Juan River basin and no new depletions are associ-
6 ated with the Rural Water Supply Project. In consultation
7 with the United States Fish and Wildlife Service, Rec-
8 lamation has determined that there shall be no significant
9 impact to endangered species as a result of water deple-
10 tions associated with this project. No other water rights
11 of the Tribe shall be impacted by the Rural Water Supply
12 Project.

13 **TITLE IV—TOM GREEN COUNTY**
14 **WATER CONTROL AND IM-**
15 **PROVEMENT DISTRICT NO. 1**
16 **REPAYMENT CONTRACT EX-**
17 **TENSION**

18 **SEC. 401. TOM GREEN COUNTY WATER CONTROL AND IM-**
19 **PROVEMENT DISTRICT NO. 1; REPAYMENT**
20 **PERIOD EXTENDED.**

21 The Secretary of the Interior may revise the repay-
22 ment contract with the Tom Green County Water Control
23 and Improvement District No. 1 numbered 14–06–500–
24 369, by extending the period authorized for repayment of

- 1 reimbursable constructions costs of the San Angelo project
- 2 from 40 years to 50 years.

Passed the House of Representatives September 24,
2002.

Attest:

JEFF TRANDAHL,

Clerk.