

109TH CONGRESS
2^D SESSION

H. R. 6436

To amend the Colorado River Storage Project Act and Public Law 87–483, to authorize the construction and rehabilitation of water infrastructure in Northwestern New Mexico, to authorize the use of the reclamation fund to fund the Reclamation Water Settlements Fund, to authorize the conveyance of certain Reclamation land and infrastructure, to authorize the Commissioner of Reclamation to provide for the delivery of water, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 8, 2006

Mr. UDALL of New Mexico introduced the following bill; which was referred to the Committee on Resources

A BILL

To amend the Colorado River Storage Project Act and Public Law 87–483, to authorize the construction and rehabilitation of water infrastructure in Northwestern New Mexico, to authorize the use of the reclamation fund to fund the Reclamation Water Settlements Fund, to authorize the conveyance of certain Reclamation land and infrastructure, to authorize the Commissioner of Reclamation to provide for the delivery of water, 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 **SECTION 1. SHORT TITLE.**

2 (a) SHORT TITLE.—This Act may be cited as the
3 “Northwestern New Mexico Rural Water Projects Act”.

4 (b) TABLE OF CONTENTS.—The table of contents of
5 this Act is as follows:

- Sec. 1. Short title.
- Sec. 2. Definitions.
- Sec. 3. Compliance with environmental laws.

TITLE I—AMENDMENTS TO THE COLORADO RIVER STORAGE
PROJECT ACT AND PUBLIC LAW 87-483

- Sec. 101. Amendments to the Colorado River Storage Project Act.
- Sec. 102. Amendments to Public Law 87-483.
- Sec. 103. Effect on Federal water law.

TITLE II—RECLAMATION WATER SETTLEMENTS FUND

- Sec. 201. Reclamation Water Settlements Fund.

TITLE III—NORTHWESTERN NEW MEXICO RURAL WATER
SUPPLY PROJECT

- Sec. 301. Purposes.
- Sec. 302. Authorization of Northwestern New Mexico Rural Water Supply Project.
- Sec. 303. Delivery and use of Northwestern New Mexico Rural Water Supply Project water.
- Sec. 304. Project contracts.
- Sec. 305. Use of Navajo Nation Municipal Pipeline.
- Sec. 306. Authorization of conjunctive use wells.
- Sec. 307. San Juan River Irrigation Projects.
- Sec. 308. Authorization of appropriations.

TITLE IV—NAVAJO NATION WATER RIGHTS

- Sec. 401. Agreement.
- Sec. 402. Navajo Nation Water Resources Development Trust Fund.
- Sec. 403. Waivers and releases.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

8 (1) ACRE-FEET.—The term “acre-feet” means
9 acre-feet per year.

1 (2) AGREEMENT.—The term “Agreement”
2 means the agreement among the State of New Mex-
3 ico, the Nation, and the United States setting forth
4 a stipulated and binding agreement signed by the
5 State of New Mexico and the Nation on April 19,
6 2005.

7 (3) ANIMAS-LA PLATA PROJECT.—The term
8 “Animas-La Plata Project” has the meaning given
9 the term in section 3 of Public Law 100–585 (102
10 Stat. 2973), including Ridges Basin Dam, Lake
11 Nighthorse, the Pipeline, and any other features or
12 modifications made pursuant to the Colorado Ute
13 Settlement Act Amendments of 2000 (Public Law
14 106–554; 114 Stat. 2763A–258).

15 (4) CITY.—The term “City” means the city of
16 Gallup, New Mexico.

17 (5) COMPACT.—The term “Compact” means
18 the Upper Colorado River Basin Compact as con-
19 sented to by the Act of April 6, 1949 (63 Stat. 31,
20 chapter 48).

21 (6) CONTRACT.—The term “Contract” means
22 the contract between the United States and the Na-
23 tion setting forth certain commitments, rights, and
24 obligations of the United States and the Nation, as
25 described in paragraph 6.0 of the Agreement.

1 (7) DEPLETION.—The term “depletion” means
2 the depletion of the flow of the San Juan River
3 stream system in New Mexico by a particular use of
4 water (including any depletion incident to the use)
5 and represents the diversion from the stream system
6 by the use, less return flows to the stream system
7 from the use.

8 (8) DRAFT IMPACT STATEMENT.—The term
9 “Draft Impact Statement” means the draft environ-
10 mental impact statement prepared by the Bureau of
11 Reclamation for the Project.

12 (9) FUND.—The term “Fund” means the Rec-
13 lamation Waters Settlements Fund established by
14 section 201(a).

15 (10) HYDROLOGIC DETERMINATION.—The term
16 “hydrologic determination” means the draft hydro-
17 logic determination entitled “Water Availability from
18 Navajo Reservoir and the Upper Colorado River
19 Basin for Use in New Mexico,” prepared by the Bu-
20 reau of Reclamation pursuant to section 11 of the
21 Act of June 13, 1962 (Public Law 87–483; 76 Stat.
22 99), and dated May 2006.

23 (11) NATION.—The term “Nation” means the
24 Navajo Nation, a body politic and federally-recog-
25 nized Indian nation as provided for in section 101(2)

1 of the Federally Recognized Indian Tribe List of
2 1994 (25 U.S.C. 497a(2)), also known variously as
3 the “Navajo Tribe,” the “Navajo Tribe of Arizona,
4 New Mexico & Utah,” and the “Navajo Tribe of In-
5 dians” and other similar names, and includes all
6 bands of Navajo Indians and chapters of the Navajo
7 Nation.

8 (12) NAVAJO INDIAN IRRIGATION PROJECT.—
9 The term “Navajo Indian Irrigation Project” means
10 the Navajo Indian irrigation project authorized by
11 section 2 of Public Law 87–483 (76 Stat. 96).

12 (13) NAVAJO RESERVOIR.—The term “Navajo
13 Reservoir” means the reservoir created by the im-
14 poundment of the San Juan River at Navajo Dam,
15 as authorized by the April 11, 1956 (commonly
16 known as the “Colorado River Storage Project Act”)
17 (43 U.S.C. 620 et seq.).

18 (14) NAVAJO NATION MUNICIPAL PIPELINE.—
19 The term “Navajo Nation Municipal Pipeline”
20 means the pipeline used to convey the water of the
21 Animas-La Plata Project of the Navajo Nation from
22 the City of Farmington, New Mexico, to commu-
23 nities of the Navajo Nation located in close prox-
24 imity to the San Juan River Valley in New Mexico
25 (including the City of Shiprock), as authorized by

1 section 15(b) of the Colorado Ute Indian Water
2 Rights Settlement Act of 1988 (Public Law 100–
3 585; 102 Stat. 2973; 114 Stat. 2763A–263).

4 (15) PROJECT.—The term “Project” means the
5 Northwestern New Mexico Rural Water Supply
6 Project (commonly known as the “Navajo-Gallup
7 Pipeline Project”) authorized under section 302(a),
8 as substantially described as the preferred alter-
9 native in the Draft Impact Statement.

10 (16) PROJECT PARTICIPANTS.—The term
11 “Project Participants” means the City, the Nation,
12 and the Jicarilla Apache Nation.

13 (17) RESOLUTION.—The term “Resolution”
14 means the Resolution of the Upper Colorado River
15 Commission entitled “Use and Accounting of Upper
16 Basin Water Supplied to the Lower Basin in New
17 Mexico by the Proposed Project” and dated June
18 17, 2003.

19 (18) SAN JUAN RIVER RECOVERY IMPLEMENTA-
20 TION PROGRAM.—The term “San Juan River Recov-
21 ery Implementation Program” means the intergov-
22 ernmental program established pursuant to the coop-
23 erative agreement dated October 21, 1992 (including
24 any amendments to the program).

1 (19) SECRETARY.—The term “Secretary”
2 means the Secretary of the Interior, acting through
3 the Commissioner of Reclamation or any other des-
4 ignee.

5 (20) STREAM ADJUDICATION.—The term
6 “stream adjudication” means the general stream ad-
7 judication that is the subject of *New Mexico v.*
8 *United States, et al.*, No. 75–185 (11th Jud. Dist.,
9 San Juan County, New Mexico) (involving claims to
10 waters of the San Juan River and the tributaries of
11 that river).

12 (21) TRUST FUND.—The term “Trust Fund”
13 means the Navajo Nation Water Resources Develop-
14 ment Trust Fund established by section 402(a).

15 **SEC. 3. COMPLIANCE WITH ENVIRONMENTAL LAWS.**

16 (a) EFFECT OF EXECUTION OF AGREEMENT.—The
17 execution of the Agreement under section 401(a)(2) shall
18 not constitute a major Federal action under the National
19 Environmental Policy Act of 1969 (42 U.S.C. 4321 et
20 seq.).

21 (b) COMPLIANCE WITH ENVIRONMENTAL LAWS.—In
22 carrying out this Act, the Secretary shall comply with each
23 law of the Federal Government relating to the protection
24 of the environment, including—

1 (1) the National Environmental Policy Act of
2 1969 (42 U.S.C. 4321 et seq.); and

3 (2) the Endangered Species Act of 1973 (16
4 U.S.C. 1531 et seq.).

5 **TITLE I—AMENDMENTS TO THE**
6 **COLORADO RIVER STORAGE**
7 **PROJECT ACT AND PUBLIC**
8 **LAW 87-483**

9 **SEC. 101. AMENDMENTS TO THE COLORADO RIVER STOR-**
10 **AGE PROJECT ACT.**

11 (a) PARTICIPATING PROJECTS.—Paragraph (2) of
12 the first section of the Act of April 11, 1956 (commonly
13 known as the “Colorado River Storage Project Act”) (43
14 U.S.C. 620(2)) is amended by inserting “the North-
15 western New Mexico Rural Water Supply Project,” after
16 “Fruitland Mesa,”.

17 (b) POWERPLANT OPERATIONS.—Section 7 of the
18 Act of April 11, 1956 (commonly known as the “Colorado
19 River Storage Project Act”) (43 U.S.C. 620f) is amended
20 by adding at the end the following: “The Northwestern
21 New Mexico Rural Water Supply Project facilities con-
22 structed under section 302(b) of the Northwestern New
23 Mexico Rural Water Projects Act may use power produced
24 under this Act and administered through the Western
25 Area Power Administration. If the power necessary for op-

1 erating the Northwestern New Mexico Rural Water Sup-
2 ply Project is anticipated to be in excess of 22 megawatts,
3 the Secretary shall consult with the Navajo Nation and
4 power users of the Colorado River Storage Project to de-
5 termine methods by which to minimize the impact of that
6 use on third parties.”.

7 (c) NAVAJO RESERVOIR WATER BANK.—The Act of
8 April 11, 1956 (commonly known as the “Colorado River
9 Storage Project Act”) is amended—

10 (1) by redesignating section 16 (43 U.S.C.
11 620o) as section 17; and

12 (2) by inserting after section 15 (43 U.S.C.
13 620n) the following:

14 “SEC. 16. (a) The Secretary of the Interior may cre-
15 ate and operate within the available capacity of Navajo
16 Reservoir a top water bank.

17 “(b) Water made available for the top water bank in
18 accordance with subsections (c) and (d) shall not be sub-
19 ject to section 11 of Public Law 87–483 (76 Stat. 99).

20 “(c) The top water bank authorized under subsection
21 (a) shall be operated in a manner that—

22 “(1) is consistent with applicable law; and

23 “(2) does not impair the ability of the Secretary
24 of the Interior to deliver water under contracts en-
25 tered into under—

1 “(A) Public Law 87–483 (76 Stat. 96);

2 and

3 “(B) New Mexico State Engineer File Nos.

4 2847, 2848, 2849, and 2917.

5 “(d)(1) The Secretary of the Interior, in cooperation
6 with the State of New Mexico (acting through the Inter-
7 state Stream Commission), shall develop any terms and
8 procedures for the storage, accounting, and release of
9 water in the top water bank that are necessary to comply
10 with subsection (c).

11 “(2) The terms and procedures developed under para-
12 graph (1) shall include provisions requiring that—

13 “(A) the storage of banked water shall be sub-
14 ject to approval under State law by the New Mexico
15 State Engineer to ensure that impairment of any ex-
16 isting water right does not occur, including storage
17 of water under New Mexico State Engineer File No.
18 2849;

19 “(B) water in the top water bank be subject to
20 evaporation and other losses during storage;

21 “(C) water in the top water bank be released
22 for delivery to the owner or assigns of the banked
23 water on request of the owner, subject to reasonable
24 scheduling requirements for making the release; and

1 “(D) water in the top water bank be the first
2 water spilled or released for flood control purposes
3 in anticipation of a spill, on the condition that top
4 water bank water shall not be released or included
5 for purposes of calculating whether a release should
6 occur for purposes of satisfying releases required
7 under the San Juan River Recovery Implementation
8 Program.

9 “(e) The Secretary of the Interior may charge fees
10 to water users that use the top water bank in amounts
11 sufficient to cover the costs incurred by the United States
12 in administering the water bank.”.

13 **SEC. 102. AMENDMENTS TO PUBLIC LAW 87-483.**

14 (a) NAVAJO INDIAN IRRIGATION PROJECT.—Public
15 Law 87-483 (76 Stat. 96) is amended by striking section
16 2 and inserting the following:

17 “SEC. 2. (a) In accordance with the Act of April 11,
18 1956 (commonly known as the ‘Colorado River Storage
19 Project Act’) (43 U.S.C. 620 et seq.), the Secretary of
20 the Interior may construct, operate, and maintain the
21 Navajo Indian Irrigation Project to provide irrigation
22 water to a service area of not more than 110,630 acres
23 of land.

24 “(b)(1) Subject to paragraph (2), the average diver-
25 sion by the Navajo Indian Irrigation Project from the

1 Navajo Reservoir over any consecutive 10-year period shall
2 be the lesser of—

3 “(A) 508,000 acre-feet per year; or

4 “(B) the quantity of water necessary to supply
5 an average depletion of 270,000 acre-feet per year.

6 “(2) The quantity of water diverted for any 1 year
7 shall not be more than 15 percent of the average diversion
8 determined under paragraph (1).

9 “(c) In addition to being used for irrigation, the
10 water diverted by the Navajo Indian Irrigation Project
11 under subsection (b) may be used within the area served
12 by Navajo Indian Irrigation Project facilities for the fol-
13 lowing purposes:

14 “(1) Aquaculture purposes, including the
15 rearing of fish in support of the San Juan River
16 Basin Recovery Implementation Program authorized
17 by Public Law 106–392 (114 Stat. 1602).

18 “(2) Domestic, industrial, or commercial pur-
19 poses relating to agricultural production and proc-
20 essing.

21 “(3) The generation of hydroelectric power as
22 an incident to the diversion of water by the Navajo
23 Indian Irrigation Project for authorized purposes.

24 “(4) The implementation of the alternate water
25 source provisions described in subparagraph 9.2 of

1 the agreement executed under section 401(a)(2) of
2 the Northwestern New Mexico Rural Water Projects
3 Act.

4 “(d) The Navajo Indian Irrigation Project water di-
5 verted under subsection (b) may be transferred to areas
6 located within or outside the area served by Navajo Indian
7 Irrigation Project facilities, and within or outside the
8 boundaries of the Navajo Nation, for any beneficial use
9 in accordance with—

10 “(1) the agreement executed under section
11 401(a)(2) of the Northwestern New Mexico Rural
12 Water Projects Act;

13 “(2) the contract executed under section
14 304(a)(2)(B) of the Northwestern New Mexico
15 Rural Water Projects Act; and

16 “(3) any other applicable law.

17 “(e)(1) The Secretary may use the capacity of the
18 Navajo Indian Irrigation Project works to convey water
19 supplies for—

20 “(A) the Northwestern New Mexico Rural
21 Water Supply Project under section 302 of the
22 Northwestern New Mexico Rural Water Projects
23 Act; or

24 “(B) other nonirrigation purposes authorized
25 under subsection (c) or (d).

1 “(2) The Secretary shall not reallocate, or require re-
2 payment of, construction costs of the Navajo Indian Irri-
3 gation Project because of the conveyance of water supplies
4 under paragraph (1).”.

5 (b) RUNOFF ABOVE NAVAJO DAM.—Section 11 of
6 Public Law 87–483 (76 Stat. 100) is amended by adding
7 at the end the following:

8 “(d)(1) For purposes of implementing in a year of
9 prospective shortage the water allocation procedures es-
10 tablished by subsection (a), the Secretary of the Interior
11 shall determine the quantity of any shortages and the ap-
12 propriate apportionment of water using the normal diver-
13 sion requirements on the flow of the San Juan River origi-
14 nating above Navajo Dam based on the following criteria:

15 “(A) The quantity of diversion or water delivery
16 for the current year anticipated to be necessary to
17 irrigate land in accordance with cropping plans pre-
18 pared by contractors.

19 “(B) The annual diversion or water delivery de-
20 mands for the current year anticipated for non-irri-
21 gation uses under water delivery contracts, including
22 the demand for delivery for uses in the State of Ari-
23 zona under the Northwestern New Mexico Rural
24 Water Supply Project authorized by section 302(a)
25 of the Northwestern New Mexico Rural Water

1 Projects Act, but excluding any current demand for
2 surface water for placement into aquifer storage for
3 future recovery and use.

4 “(C) An annual normal diversion demand of
5 135,000 acre-feet for the initial stage of the San
6 Juan-Chama Project authorized by section 8.

7 “(2) The Secretary shall not include in the normal
8 diversion requirements—

9 “(A) the quantity of water that reliably can be
10 anticipated to be diverted or delivered under a con-
11 tract from inflows to the San Juan River arising
12 below Navajo Dam under New Mexico State Engi-
13 neer File No. 3215; or

14 “(B) the quantity of water anticipated to be
15 supplied through reuse.

16 “(3) If the State of New Mexico determines that
17 water uses under Navajo Reservoir water supply contracts
18 or diversions by the San Juan-Chama Project need to be
19 reduced in any 1 year for the State to comply with the
20 Upper Colorado River Basin Compact, as consented to by
21 the Act of April 6, 1949 (63 Stat. 31, chapter 48), the
22 Secretary shall reduce the normal diversion requirements
23 for the year to reflect the water use or diversion limita-
24 tions imposed by the State of New Mexico.

1 “(e)(1) If the Secretary determines that there is a
2 shortage of water under subsection (a), the Secretary shall
3 allocate the shortage to the demands on the Navajo Res-
4 ervoir water supply in the following order of priority:

5 “(A) The demand for delivery for uses in the
6 State of Arizona under the Northwestern New Mex-
7 ico Rural Water Supply Project authorized by sec-
8 tion 303 of the Northwestern New Mexico Rural
9 Water Projects Act, excluding the quantity of water
10 anticipated to be diverted for the uses from inflows
11 to the San Juan River that arise below Navajo Dam
12 in accordance with New Mexico State Engineer File
13 No. 3215.

14 “(B) The demand for delivery for uses allocated
15 under paragraph 8.2 of the agreement executed
16 under section 401(a)(2) of the Northwestern New
17 Mexico Rural Water Projects Act, excluding the
18 quantity of water anticipated to be diverted for such
19 uses under State Engineer File No. 3215.

20 “(C) The uses in the State of New Mexico that
21 are determined under subsection (d), in accordance
22 with the procedure for apportioning the water supply
23 under subsection (a).

24 “(2) For any year for which the Secretary determines
25 and allocates a shortage in the Navajo Reservoir water

1 supply, the Secretary shall not deliver, and contractors of
2 the water supply shall not divert, any of the water supply
3 for placement into aquifer storage for future recovery and
4 use.

5 “(3) To determine the occurrence and amount of any
6 shortage to contracts entered into under this section, the
7 Secretary shall not include as available storage any water
8 stored in a top water bank in Navajo Reservoir established
9 under section 16(a) of the Act of April 11, 1956 (com-
10 monly known as the ‘Colorado River Storage Project Act’).

11 “(f) The Secretary of the Interior shall apply the
12 sharing and apportionment of water determined under
13 subsections (a), (d), and (e) on an annual volume basis.

14 “(g) The Secretary of the Interior may revise a deter-
15 mination of shortages, apportionments, or allocations of
16 water under subsections (a), (d), and (e) on the basis of
17 information relating to water supply conditions that was
18 not available at the time at which the determination was
19 made.

20 “(h) Nothing in this section prohibits the Secretary
21 from reallocating water for any year, including a year in
22 which a shortage is determined under subsection (a), in
23 accordance with cooperative water agreements between
24 water users providing for a sharing of water supplies.

1 “(i) Any water available for diversion under New
2 Mexico State Engineer File No. 3215 shall be distributed,
3 to the maximum extent practicable, in proportionate
4 amounts to the diversion demands of all contractors and
5 subcontractors of the Navajo Reservoir water supply that
6 are diverting water below Navajo Dam.”.

7 **SEC. 103. EFFECT ON FEDERAL WATER LAW.**

8 Unless expressly provided in this Act, nothing in this
9 Act modifies, conflicts with, preempts, or otherwise af-
10 fects—

11 (1) the Boulder Canyon Project Act (43 U.S.C.
12 617 et seq.);

13 (2) the Boulder Canyon Project Adjustment Act
14 (54 Stat. 774, chapter 643);

15 (3) the Act of April 11, 1956 (commonly known
16 as the “Colorado River Storage Project Act”) (43
17 U.S.C. 620 et seq.);

18 (4) the Act of September 30, 1968 (commonly
19 known as the “Colorado River Basin Project Act”) (82
20 Stat. 885);

21 (5) Public Law 87–483 (76 Stat. 96);

22 (6) the Treaty between the United States of
23 America and Mexico representing utilization of wa-
24 ters of the Colorado and Tijuana Rivers and of the

1 Rio Grande, signed at Washington February 3, 1944
2 (59 Stat. 1219);

3 (7) the Colorado River Compact of 1922, as ap-
4 proved by the Presidential Proclamation of June 25,
5 1929 (46 Stat. 3000);

6 (8) the Compact;

7 (9) the Act of April 6, 1949 (63 Stat. 31, chap-
8 ter 48);

9 (10) the Jicarilla Apache Tribe Water Rights
10 Settlement Act (106 Stat. 2237); or

11 (11) section 205 of the Energy and Water De-
12 velopment Appropriations Act, 2005 (118 Stat.
13 2949).

14 **TITLE II—RECLAMATION WATER** 15 **SETTLEMENTS FUND**

16 **SEC. 201. RECLAMATION WATER SETTLEMENTS FUND.**

17 (a) ESTABLISHMENT.—There is established in the
18 Treasury of the United States a fund, to be known as the
19 “Reclamation Water Settlements Fund”, consisting of—

20 (1) such amounts as are deposited to the Fund
21 under subsection (b); and

22 (2) any interest earned on investment of
23 amounts in the Fund under subsection (d).

24 (b) DEPOSITS TO FUND.—

1 (1) IN GENERAL.—For each of fiscal years
2 2018 through 2028, the Secretary of the Treasury
3 shall deposit in the Fund \$90,000,000 of the reve-
4 nues that would otherwise be deposited for the fiscal
5 year in the fund established by the first section of
6 the Act of June 17, 1902 (32 Stat. 388, chapter
7 1093).

8 (2) AVAILABILITY OF AMOUNTS.—Amounts de-
9 posited in the Fund under paragraph (1) shall be
10 made available pursuant to this section—

11 (A) without further appropriation; and

12 (B) in addition to amounts appropriated
13 pursuant to any authorization that is contained
14 in—

15 (i) any settlement that is approved by
16 Congress; or

17 (ii) any other provision of law.

18 (c) EXPENDITURES FROM FUND.—

19 (1) IN GENERAL.—For each of fiscal years
20 2018 through 2030, on request by the Secretary
21 pursuant to paragraphs (2) and (3), the Secretary
22 of the Treasury shall transfer from the Fund to the
23 Secretary an amount not to exceed \$90,000,000 for
24 the fiscal year to implement water-related judicial

1 settlements or other agreements involving the Bu-
2 reau of Reclamation that are approved by Congress.

3 (2) REQUESTS.—The Secretary may request a
4 transfer from the Fund to implement a settlement
5 agreement approved by Congress that resolves, in
6 whole or in part, litigation involving the United
7 States or any other agreement approved by Congress
8 that is entered into by the Secretary, if the agree-
9 ment requires the Bureau of Reclamation to plan,
10 design, and construct—

11 (A) water supply infrastructure; or

12 (B) a project—

13 (i) to rehabilitate a water delivery sys-
14 tem to conserve water; or

15 (ii) to restore fish or wildlife habitat
16 or otherwise improve environmental condi-
17 tions associated with or affected by a rec-
18 lamation project that is in existence on the
19 date of enactment of this Act.

20 (3) USE FOR COMPLETION OF PROJECT.—

21 (A) PRIORITIES.—

22 (i) FIRST PRIORITY.—The first pri-
23 ority for expenditure of amounts in the
24 Fund shall be for the purposes described in
25 subparagraph (B).

1 (ii) OTHER PURPOSES.—Any amounts
2 in the Fund that are not needed for the
3 purposes described in subparagraph (B)
4 may be used for other purposes authorized
5 in paragraph (2).

6 (B) EXPEDITED COMPLETION OF
7 PROJECT.—Effective beginning January 1,
8 2018, if, in the judgment of the Secretary, the
9 deadline described in section 401(f)(1)(A)(ix) is
10 unlikely to be met because a sufficient amount
11 of funding is not otherwise available through
12 appropriations made available pursuant to sec-
13 tion 308(a), the Secretary shall request the Sec-
14 retary of the Treasury to transfer from the
15 Fund to the Secretary such amounts (subject to
16 paragraph (1)) as are necessary to pay the Fed-
17 eral share of the costs, and substantially com-
18 plete as expeditiously as practicable, the con-
19 struction of the water supply infrastructure au-
20 thorized as part of the Project.

21 (C) PROHIBITED USE OF FUND.—The Sec-
22 retary shall not use any amount transferred
23 from the Fund under subparagraph (A) to
24 carry out any other feature or activity described
25 in title IV other than a feature or activity relat-

1 ing to the construction of the water supply in-
2 frastructure authorized as part of the Project.

3 (d) INVESTMENT OF AMOUNTS.—

4 (1) IN GENERAL.—The Secretary of the Treas-
5 ury shall invest such portion of the Fund as is not,
6 in the judgment of the Secretary of the Treasury,
7 required to meet current withdrawals.

8 (2) INTEREST-BEARING OBLIGATIONS.—Invest-
9 ments may be made only in interest-bearing obliga-
10 tions of the United States.

11 (3) ACQUISITION OF OBLIGATIONS.—For the
12 purpose of investments under paragraph (1), obliga-
13 tions may be acquired—

14 (A) on original issue at the issue price; or

15 (B) by purchase of outstanding obligations
16 at the market price.

17 (4) SALE OF OBLIGATIONS.—Any obligation ac-
18 quired by the Fund may be sold by the Secretary of
19 the Treasury at the market price.

20 (5) CREDITS TO FUND.—The interest on, and
21 the proceeds from the sale or redemption of, any ob-
22 ligations held in the Fund shall be credited to, and
23 form a part of, the Fund.

24 (e) TRANSFERS OF AMOUNTS.—

1 (1) IN GENERAL.—The amounts required to be
2 transferred to the Fund under this section shall be
3 transferred at least monthly from the general fund
4 of the Treasury to the Fund on the basis of esti-
5 mates made by the Secretary of the Treasury.

6 (2) ADJUSTMENTS.—Proper adjustment shall
7 be made in amounts subsequently transferred to the
8 extent prior estimates were in excess of or less than
9 the amounts required to be transferred.

10 (f) TERMINATION.—On September 30, 2030—

11 (1) the Fund shall terminate; and

12 (2) the unexpended and unobligated balance of
13 the Fund shall be transferred to the general fund of
14 the Treasury.

15 **TITLE III—NORTHWESTERN NEW**
16 **MEXICO RURAL WATER SUP-**
17 **PLY PROJECT**

18 **SEC. 301. PURPOSES.**

19 The purposes of this subtitle are—

20 (1) to authorize the Secretary to construct the
21 Northwestern New Mexico Rural Water Supply
22 Project;

23 (2) to allocate the water supply for the Project
24 among the Nation, the city of Gallup, New Mexico,
25 and the Jicarilla Apache Nation; and

1 (3) to authorize the Secretary to enter into
2 Project repayment contracts with the city of Gallup
3 and the Jicarilla Apache Nation.

4 **SEC. 302. AUTHORIZATION OF NORTHWESTERN NEW MEX-**
5 **ICO RURAL WATER SUPPLY PROJECT.**

6 (a) IN GENERAL.—The Secretary, acting through the
7 Commissioner of Reclamation, may design, construct, op-
8 erate, and maintain the Project in substantial accordance
9 with the preferred alternative in the Draft Impact State-
10 ment.

11 (b) PROJECT FACILITIES.—To provide for the deliv-
12 ery of San Juan River water to Project Participants, the
13 Secretary may construct, operate, and maintain the
14 Project facilities described in the preferred alternative in
15 the Draft Impact Statement, including:

16 (1) A pumping plant on the San Juan River in
17 the vicinity of Kirtland, New Mexico.

18 (2)(A) A main pipeline from the San Juan
19 River near Kirtland, New Mexico, to Shiprock, New
20 Mexico, and Gallup, New Mexico, which follows
21 United States Highway 491.

22 (B) Any pumping plants associated with the
23 pipeline authorized under subparagraph (A).

1 (3)(A) A main pipeline from Cutter Reservoir
2 to Ojo Encino, New Mexico, which follows United
3 States Highway 550.

4 (B) Any pumping plants associated with the
5 pipeline authorized under subparagraph (A).

6 (4)(A) Lateral pipelines from the main pipelines
7 to Nation communities in the States of New Mexico
8 and Arizona.

9 (B) Any pumping plants associated with the
10 pipelines authorized under subparagraph (A).

11 (5) Any water regulation, storage or treatment
12 facility, service connection to an existing public
13 water supply system, power substation, power dis-
14 tribution works, or other appurtenant works (includ-
15 ing a building or access road) that is related to the
16 Project facilities authorized by paragraphs (1)
17 through (4), including power transmission facilities
18 to connect Project facilities to existing high-voltage
19 transmission facilities.

20 (c) ACQUISITION OF LAND.—

21 (1) IN GENERAL.—Except as provided in para-
22 graph (2), the Secretary may acquire any land or in-
23 terest in land that is necessary to construct, operate,
24 and maintain the Project facilities authorized under
25 subsection (b).

1 (2) LIMITATION.—The Secretary may not con-
2 demn water rights for purposes of the Project.

3 (d) CONDITIONS.—

4 (1) IN GENERAL.—The Secretary shall not com-
5 mence construction of the facilities authorized under
6 subsection (b) until such time as—

7 (A) the Secretary executes the Agreement
8 and the Contract;

9 (B) the contracts authorized under section
10 304 are executed;

11 (C) the Secretary—

12 (i) completes an environmental impact
13 statement for the Project; and

14 (ii) has issued a record of decision
15 that provides for a preferred alternative;
16 and

17 (D) the State of New Mexico has made ar-
18 rangements with the Secretary to contribute
19 \$25,000,000 toward the construction costs of
20 the Project.

21 (2) COST SHARING.—State contributions re-
22 quired under paragraph (1)(D) shall be in addition
23 to amounts that the State of New Mexico contrib-
24 utes for the planning and construction of regional
25 facilities to distribute Project water to the City and

1 surrounding Nation communities before the date on
2 which the City executes a repayment contract under
3 section 304(b).

4 (3) EFFECT.—The design and construction of
5 the Project shall not be subject to the Indian Self-
6 Determination and Education Assistance Act (25
7 U.S.C. 450 et seq.).

8 (e) CONVEYANCE OF PROJECT FACILITIES.—

9 (1) IN GENERAL.—The Secretary may enter
10 into separate agreements with the City and the Na-
11 tion to convey each Project facility authorized under
12 subsection (b) to the City and the Nation after—

13 (A) completion of construction of the
14 Project; and

15 (B) execution of a Project operations
16 agreement approved by the Secretary and the
17 Project Participants that sets forth—

18 (i) any terms and conditions that the
19 Secretary determines are necessary—

20 (I) to ensure the continuation of
21 the intended benefits of the Project;
22 and

23 (II) to fulfill the purposes of this
24 subtitle;

1 (ii) requirements acceptable to the
2 Secretary and the Project Participants
3 for—

4 (I) the distribution of water
5 under the Project; and

6 (II) the allocation and payment
7 of annual operation, maintenance, and
8 replacement costs of the Project based
9 on the proportionate uses of Project
10 facilities; and

11 (iii) conditions and requirements ac-
12 ceptable to the Secretary and the Project
13 Participants for operating and maintaining
14 each Project facility on completion of the
15 conveyance, including the requirement that
16 the City and the Nation shall—

17 (I) comply with—

18 (aa) the Compact; and

19 (bb) other applicable law;

20 and

21 (II) be responsible for—

22 (aa) the operation, mainte-
23 nance, and replacement of each
24 Project facility; and

1 (bb) the accounting and
2 management of water conveyance
3 and Project finances, as nec-
4 essary to administer and fulfill
5 the conditions of the Contract ex-
6 ecuted under section
7 304(a)(2)(B).

8 (2) CONVEYANCE TO THE CITY OF GALLUP OR
9 NAVAJO NATION.—In conveying a Project facility
10 under this subsection, the Secretary shall convey
11 to—

12 (A) the City the facilities and any land or
13 interest in land acquired by the United States
14 for the construction, operation, and mainte-
15 nance of the Project that are located within the
16 corporate boundaries of the City; and

17 (B) the Nation the facilities and any land
18 or interests in land acquired by the United
19 States for the construction, operation, and
20 maintenance of the Project that are located out-
21 side the corporate boundaries of the City.

22 (3) EFFECT OF CONVEYANCE.—The conveyance
23 of each Project facility shall not affect the applica-
24 tion of the Endangered Species Act of 1973 (16

1 U.S.C. 1531 et seq.) relating to the use of the water
2 associated with the Project.

3 (4) NOTICE OF PROPOSED CONVEYANCE.—Not
4 later than 45 days before the date of a proposed
5 conveyance of any Project facility, the Secretary
6 shall submit to the Committee on Resources of the
7 House of Representatives and to the Committee on
8 Energy and Natural Resources of the Senate notice
9 of the conveyance of each Project facility.

10 (f) COLORADO RIVER STORAGE PROJECT POWER.—
11 The conveyance of Project facilities under subsection (e)
12 shall not affect the availability of Colorado River Storage
13 Project power to the Project under section 7 of the Act
14 of April 11, 1956 (commonly known as the “Colorado
15 River Storage Project Act”) (43 U.S.C. 620f).

16 (g) REGIONAL USE OF PROJECT FACILITIES.—

17 (1) IN GENERAL.—Subject to paragraph (2),
18 Project facilities constructed under subsection (b)
19 may be used to treat and convey non-Project water
20 or water that is not allocated by subsection 303(b)
21 if—

22 (A) capacity is available without impairing
23 any water delivery to a Project Participant; and

24 (B) the unallocated or non-Project water
25 beneficiary—

1 (i) has the right to use the water;

2 (ii) agrees to pay the operation, main-
3 tenance, and replacement costs assignable
4 to the beneficiary for the use of the Project
5 facilities; and

6 (iii) agrees to pay a fee established by
7 the Secretary to assist in the recovery of
8 any capital cost relating to that use.

9 (2) EFFECT OF PAYMENTS.—Any payments to
10 the United States or the Nation for the use of un-
11 used capacity under this subsection or for water
12 under any subcontract with the Nation or the
13 Jicarilla Apache Nation shall not alter the construc-
14 tion repayment requirements or the operation, main-
15 tenance, and replacement payment requirements of
16 the Project Participants.

17 **SEC. 303. DELIVERY AND USE OF NORTHWESTERN NEW**
18 **MEXICO RURAL WATER SUPPLY PROJECT**
19 **WATER.**

20 (a) USE OF PROJECT WATER.—

21 (1) IN GENERAL.—In accordance with this Act
22 and other applicable law, water supply from the
23 Project shall be used for municipal, industrial, com-
24 mercial, domestic, and stock watering purposes.

25 (2) USE ON CERTAIN LAND.—

1 (A) IN GENERAL.—Subject to subpara-
2 graph (B), the Nation may use Project water
3 allocations on—

4 (i) land held by the United States in
5 trust for the Nation and members of the
6 Nation; and

7 (ii) land held in fee by the Nation.

8 (B) TRANSFER.—The Nation may transfer
9 the purposes and places of use of the allocated
10 water in accordance with the Agreement and
11 applicable law.

12 (3) HYDROELECTRIC POWER.—Hydroelectric
13 power may be generated as an incident to the deliv-
14 ery of Project water under paragraph (1).

15 (4) STORAGE.—

16 (A) IN GENERAL.—Subject to subpara-
17 graph (B), any water contracted for delivery
18 under paragraph (1) that is not needed for cur-
19 rent water demands or uses may be delivered by
20 the Project for placement in underground stor-
21 age in the State of New Mexico for future re-
22 covery and use.

23 (B) STATE APPROVAL.—Delivery of water
24 under subparagraph (A) is subject to—

- 1 (i) approval by the State of New Mex-
2 ico under applicable provisions of State law
3 relating to aquifer storage and recovery;
4 and
5 (ii) the provisions of the Agreement
6 and this Act.

7 (b) PROJECT WATER AND CAPACITY ALLOCA-
8 TIONS.—

9 (1) DIVERSION.—The Project shall divert from
10 the Navajo Reservoir and the San Juan River a
11 quantity of water that does not exceed the lesser
12 of—

13 (A) 37,760 acre-feet of water; or

14 (B) the quantity of water necessary to sup-
15 ply a depletion from the San Juan River of
16 35,890 acre-feet.

17 (2) ALLOCATION.—

18 (A) IN GENERAL.—Water diverted under
19 paragraph (1) shall be allocated to the Project
20 Participants in accordance with subparagraphs
21 (B) through (E), other provisions of this Act,
22 and other applicable law.

23 (B) ALLOCATION TO THE CITY OF GAL-
24 LUP.—The Project shall deliver at the point of
25 diversion from the San Juan River not more

1 than 7,500 acre-feet of water for use by the
2 City.

3 (C) ALLOCATION TO NAVAJO NATION COM-
4 MUNITIES IN NEW MEXICO.—For use by the
5 Nation in the State of New Mexico, the Project
6 shall deliver at the points of diversion from the
7 San Juan River or at Navajo Reservoir the less-
8 er of—

- 9 (i) 22,650 acre-feet of water; or
10 (ii) the quantity of water necessary to
11 supply a depletion from the San Juan
12 River of 20,780 acre-feet of water.

13 (D) ALLOCATION TO NAVAJO NATION COM-
14 MUNITIES IN ARIZONA.—In accordance with
15 subsection (d), the Project may deliver at the
16 point of diversion from the San Juan River not
17 more than 6,411 acre-feet of water for use by
18 the Nation in the State of Arizona.

19 (E) ALLOCATION TO JICARILLA APACHE
20 NATION.—The Project shall deliver at Navajo
21 Reservoir not more than 1,200 acre-feet of
22 water for use by the Jicarilla Apache Nation in
23 the southern portion of the Jicarilla Apache
24 Nation Reservation in the State of New Mexico.

1 (3) USE IN EXCESS OF ALLOCATION QUAN-
2 TITY.—Notwithstanding each allocation quantity
3 limit described in subparagraphs (B), (C), and (E)
4 of paragraph (2), the Secretary may authorize a
5 Project Participant to exceed the allocation quantity
6 limit of that Project Participant if—

7 (A) capacity is available without impairing
8 any water delivery to any other Project Partici-
9 pant; and

10 (B) the Project Participant benefitting
11 from the increased allocation quantity—

12 (i) has the right to use the additional
13 water;

14 (ii) agrees to pay the operation, main-
15 tenance, and replacement costs relating to
16 the additional use any Project facility; and

17 (iii) agrees to pay a fee established by
18 the Secretary to assist in recovering capital
19 costs relating to that additional use.

20 (c) SOURCES OF WATER.—The sources of water for
21 the Project allocated by subsection (b) shall be water origi-
22 nating in—

23 (1) drainage of the San Juan River above Nav-
24 ajo Dam, to be supplied under New Mexico State
25 Engineer File No. 2849; and

1 (2) inflow to the San Juan River arising below
2 Navajo Dam, to be supplied under New Mexico
3 State Engineer File No. 3215.

4 (d) CONDITIONS FOR USE IN ARIZONA.—

5 (1) REQUIREMENTS.—Project water shall not
6 be delivered for use by any community of the Nation
7 in the State of Arizona under subsection (b)(2)(D)
8 until the date on which—

9 (A) the Secretary determines by hydrologic
10 investigation that sufficient water is reasonably
11 likely to be available to supply uses from water
12 of the Colorado River system allocated to the
13 State of Arizona;

14 (B) the Secretary submits to Congress the
15 determination described in subparagraph (A);

16 (C) the Secretary determines that the uses
17 in the State of Arizona are within the appor-
18 tionment of the water of the Colorado River
19 made to the State of Arizona through compact,
20 statute, or court decree;

21 (D) Congress has approved a Navajo Res-
22ervoir supply contract between the Nation and
23 the United States to provide for the delivery of
24 Project water for the uses in Arizona;

1 (E) the Navajo Nation and the State of
2 Arizona have entered into an agreement pro-
3 viding for delivery of water of the Project for
4 uses in Arizona; and

5 (F) any other determination is made as
6 may be required by the Compact.

7 (2) ACCOUNTING OF USES IN ARIZONA.—Any
8 depletion of water from the San Juan River stream
9 system in the State of New Mexico that results from
10 the diversion of water by the Project for uses within
11 the State of Arizona (including depletion incidental
12 to the diversion, impounding, or conveyance of water
13 in the State of New Mexico for uses in the State of
14 Arizona)—

15 (A) shall be accounted for as a part of the
16 Colorado River System apportionments to the
17 State of Arizona; and

18 (B) shall not increase the total quantity of
19 water to which the State of Arizona is entitled
20 to use under any compact, statute, or court de-
21 cree.

22 (e) FORBEARANCE.—

23 (1) IN GENERAL.—Subject to paragraphs (2)
24 and (3), during any year in which a shortage to the
25 normal diversion requirement for any use relating to

1 the Project within the State of Arizona occurs (as
2 determined under section 11 of Public Law 87–483
3 (76 Stat. 99)), the Nation may temporarily forbear
4 the delivery of the water supply of the Navajo Res-
5 ervoir for uses in the State of New Mexico under the
6 apportionments of water to the Navajo Indian Irri-
7 gation Project and the normal diversion require-
8 ments of the Project to allow an equivalent quantity
9 of water to be delivered from the Navajo Reservoir
10 water supply for municipal and domestic uses of the
11 Nation in the State of Arizona under the Project.

12 (2) LIMITATION OF FORBEARANCE.—The Na-
13 tion may forebear the delivery of water under para-
14 graph (1) of a quantity not exceeding the quantity
15 of the shortage to the normal diversion requirement
16 for any use relating to the Project within the State
17 of Arizona.

18 (3) EFFECT.—The forbearance of the delivery
19 of water under paragraph (1) shall be subject to the
20 requirements relating to accounting and water quan-
21 tity described in subsection (d)(2).

22 (f) EFFECT.—Nothing in this Act—

23 (1) authorizes the marketing, leasing, or trans-
24 fer of the water supplies made available to the Na-

1 tion under the Contract to non-Navajo water users
2 in States other than the State of New Mexico; or

3 (2) authorizes the forbearance of water uses in
4 the State of New Mexico to allow uses of water in
5 other States other than as authorized under sub-
6 section (e).

7 (g) CONSISTENCY WITH UPPER COLORADO RIVER
8 BASIN COMPACT.—Notwithstanding any other provision
9 of law, in accordance with the Resolution, water diverted
10 by the Project for use in the Lower Colorado River Basin
11 in the State of New Mexico shall be a part of the consump-
12 tive use apportionment made to the State of New Mexico
13 by Article III(a) of the Compact.

14 **SEC. 304. PROJECT CONTRACTS.**

15 (a) NAVAJO NATION CONTRACT.—

16 (1) HYDROLOGIC DETERMINATION.—Congress
17 recognizes that the Hydrologic Determination satis-
18 factory to support approval of the Contract has been
19 completed.

20 (2) CONTRACT APPROVAL.—

21 (A) APPROVAL.—

22 (i) IN GENERAL.—Except to the ex-
23 tent that any provision of the Contract
24 conflicts with this Act, Congress approves,

1 ratifies, and incorporates by reference the
2 Contract.

3 (ii) AMENDMENTS.—To the extent
4 any amendment is executed to make the
5 Contract consistent with this Act, that
6 amendment is authorized, ratified, and
7 confirmed.

8 (B) EXECUTION OF CONTRACT.—The Sec-
9 retary, acting on behalf of the United States,
10 shall enter into the Contract to the extent that
11 the Contract does not conflict with this Act (in-
12 cluding any amendment that is required to
13 make the Contract consistent with this Act).

14 (3) NO REPAYMENT OBLIGATION.—The Nation
15 is not obligated to repay—

16 (A) any share of the construction costs of
17 the Nation relating to the Project authorized by
18 section 302(a); or

19 (B) any costs relating to the construction
20 of the Navajo Indian Irrigation Project that
21 may otherwise be allocable to the Nation for
22 use of any facility of the Navajo Indian Irriga-
23 tion Project to convey water to each Navajo
24 community under the Project.

1 (4) OPERATION, MAINTENANCE, AND REPLACE-
2 MENT OBLIGATION.—Subject to subsection (f), the
3 Nation shall pay any costs relating to the operation,
4 maintenance, and replacement of each facility of the
5 Project that are allocable to the Nation.

6 (5) LIMITATION, CANCELLATION, TERMINATION,
7 AND RESCISSION.—The Contract may be limited by
8 a term of years, canceled, terminated, or rescinded
9 only by an Act of Congress.

10 (b) CITY OF GALLUP CONTRACT.—

11 (1) CONTRACT AUTHORIZATION.—To the extent
12 consistent with this Act, the Secretary may enter
13 into a repayment contract with the City that re-
14 quires the City—

15 (A) to repay, within a 50-year period, the
16 share of any construction cost of the City relat-
17 ing to the Project; and

18 (B) to pay the operation, maintenance, and
19 replacement costs of the Project that are allo-
20 cable to the City.

21 (2) SHARE OF CONSTRUCTION COSTS.—

22 (A) IN GENERAL.—Subject to subpara-
23 graph (B), the Secretary shall determine the
24 share of the construction costs of the City relat-
25 ing to the Project, based on the ability of the

1 City to pay the construction costs of each facil-
2 ity of the Project that is allocable to the City.

3 (B) MINIMUM PERCENTAGE.—The share
4 of the construction costs of the City shall be at
5 least 25 percent of the construction costs of the
6 Project that are allocable to the City

7 (3) EXCESS CONSTRUCTION COSTS.—Any con-
8 struction costs of the Project allocable to providing
9 capacity to deliver water to the City that are in ex-
10 cess of the share of the City of the construction
11 costs of the Project, as determined under paragraph
12 (2), shall be nonreimbursable.

13 (4) GRANT FUNDS.—A grant from any other
14 Federal source shall not be credited toward the
15 amount required to be repaid by the City under a
16 repayment contract.

17 (5) TITLE TRANSFER.—If title is transferred to
18 the City prior to repayment under section 302(e),
19 the City shall be required to provide assurances sat-
20 isfactory to the Secretary of fulfillment of the re-
21 maining repayment obligation of the City.

22 (6) OPERATION, MAINTENANCE AND REPLACE-
23 MENT OBLIGATION.—The City shall pay the oper-
24 ation, maintenance, and replacement costs for each
25 facility of the Project that is allocable to the City.

1 (7) WATER DELIVERY SUBCONTRACT.—

2 (A) IN GENERAL.—Except as provided in
3 subparagraph (B), the Secretary shall not enter
4 into a contract under paragraph (1) with the
5 City until the City has secured a water supply
6 for the portion of the Project for which the City
7 is responsible by entering into, as approved by
8 the Secretary, a water delivery subcontract for
9 a period of not less than 40 years beginning on
10 the date on which the construction of any facil-
11 ity of the Project serving the City is completed,
12 but for a period not exceeding 99 years, with—

13 (i) the Nation, as authorized by the
14 Contract; or

15 (ii) the Jicarilla Apache Nation, as
16 authorized by the settlement contract be-
17 tween the United States and the Jicarilla
18 Apache Tribe, authorized by the Jicarilla
19 Apache Tribe Water Rights Settlement Act
20 (Public Law 102–441; 106 Stat. 2237).

21 (B) EFFECT.—Nothing in this para-
22 graph—

23 (i) prevents the City from obtaining
24 an alternate source of water for the por-
25 tion of the Project for which the City is re-

1 sponsible, subject to approval of the Sec-
2 retary and the State of New Mexico, acting
3 through the New Mexico Interstate Stream
4 Commission and the New Mexico State
5 Engineer; or

6 (ii) obligates the Nation or the
7 Jicarilla Apache Nation to enter into a
8 water delivery subcontract with the City.

9 (c) JICARILLA APACHE NATION CONTRACT.—

10 (1) CONTRACT AUTHORIZATION.—To the extent
11 consistent with this Act, the Secretary may enter
12 into a repayment contract with the Jicarilla Apache
13 Nation that requires the Jicarilla Apache Nation—

14 (A) to repay, within a 50-year period, the
15 share of any construction cost of the Jicarilla
16 Apache Nation relating to the Project; and

17 (B) to pay the operation, maintenance, and
18 replacement costs of the Project that are allo-
19 cable to the Jicarilla Apache Nation.

20 (2) SHARE OF CONSTRUCTION COSTS.—

21 (A) IN GENERAL.—Subject to subpara-
22 graph (B), the Secretary shall determine the
23 share of the Jicarilla Apache Nation of the con-
24 struction costs of the Project, based on the abil-
25 ity of the Jicarilla Apache Nation to pay the

1 construction costs of the Project facilities that
2 are allocable to the Jicarilla Apache Nation.

3 (B) MINIMUM PERCENTAGE.—The share
4 of the Jicarilla Apache Nation under subpara-
5 graph (A) shall be at least 25 percent of the
6 construction costs of the Project that are allo-
7 cable to the Jicarilla Apache Nation.

8 (3) EXCESS CONSTRUCTION COSTS.—Any con-
9 struction costs of the Project allocable to providing
10 capacity to deliver water to the Jicarilla Apache Na-
11 tion that are in excess of the share of the Jicarilla
12 Apache Nation of the construction costs of the
13 Project, as determined under paragraph (2), shall be
14 nonreimbursable.

15 (4) GRANT FUNDS.—A grant from any other
16 Federal source shall not be credited toward the
17 share of the Jicarilla Apache Nation of construction
18 costs.

19 (5) NAVAJO INDIAN IRRIGATION PROJECT
20 COSTS.—The Jicarilla Apache Nation shall have no
21 obligation to repay any Navajo Indian Irrigation
22 Project construction costs that might otherwise be
23 allocable to the Jicarilla Apache Nation for use of
24 the Navajo Indian Irrigation Project facilities to
25 convey water to the Jicarilla Apache Nation.

1 (6) OPERATION, MAINTENANCE AND REPLACE-
2 MENT OBLIGATION.—The Jicarilla Apache Nation
3 shall pay the operation, maintenance, and replace-
4 ment costs relating to each facility of the Project
5 that are allocable to the Jicarilla Apache Nation.

6 (d) CAPITAL COST ALLOCATIONS.—For purposes of
7 determining the capital repayment requirements of the
8 Project Participants under this section, the Secretary shall
9 review and, as appropriate, update the report prepared by
10 the Bureau of Reclamation in the Draft Impact Statement
11 allocating capital construction costs for the Project.

12 (e) OPERATION, MAINTENANCE, AND REPLACEMENT
13 COST ALLOCATIONS.—For purposes of determining the
14 operation, maintenance, and replacement obligations of
15 the Project Participants under this section, the Secretary
16 shall review and, as appropriate, update the report pre-
17 pared by the Bureau of Reclamation in the Draft Impact
18 Statement that allocates operation, maintenance, and re-
19 placement costs for the Project.

20 (f) TEMPORARY WAIVERS OF PAYMENTS.—

21 (1) IN GENERAL.—On the date on which the
22 Project is substantially complete and the Nation re-
23 ceives a delivery of water generated by the Project,
24 the Secretary may waive, for a period of not more
25 than 10 years, the operation, maintenance, and re-

1 placement costs of the Project allocable to the Na-
2 tion that the Secretary determines are in excess of
3 the ability of the Nation to pay.

4 (2) PAYMENT BY UNITED STATES.—Any oper-
5 ation, maintenance, or replacement costs waived by
6 the Secretary under paragraph (1) shall be paid by
7 the United States.

8 (3) EFFECT ON CONTRACTS.—Failure of the
9 Secretary to waive costs under paragraph (1) be-
10 cause of a lack of availability of Federal funding to
11 pay the costs under paragraph (2) shall not alter the
12 obligations of the Nation or the United States under
13 a repayment contract.

14 (4) TERMINATION OF AUTHORITY.—The au-
15 thority of the Secretary to waive costs under para-
16 graph (1) with respect to a Project facility trans-
17 ferred to the Nation under section 302(e) shall ter-
18minate on the date on which the Project facility is
19 transferred.

20 **SEC. 305. USE OF NAVAJO NATION MUNICIPAL PIPELINE.**

21 In addition to use of the Navajo Nation Municipal
22 Pipeline to convey the Animas-La Plata Project water of
23 the Nation, the Nation may use the Navajo Nation Munic-
24 ipal Pipeline to convey water for other purposes (including
25 purposes relating to the Project).

1 **SEC. 306. AUTHORIZATION OF CONJUNCTIVE USE WELLS.**

2 (a) CONJUNCTIVE GROUNDWATER DEVELOPMENT
3 PLAN.—Not later than 1 year after the date of enactment
4 of this Act, the Nation, in consultation with the Secretary,
5 shall complete a conjunctive groundwater development
6 plan for the wells described in subsections (b) and (c).

7 (b) WELLS IN THE SAN JUAN RIVER BASIN.—In ac-
8 cordance with the conjunctive groundwater development
9 plan, the Secretary may construct or rehabilitate wells and
10 related pipeline facilities to provide capacity for the diver-
11 sion and distribution of not more than 1,670 acre-feet of
12 groundwater in the San Juan River Basin in the State
13 of New Mexico for municipal and domestic uses.

14 (c) WELLS IN THE LITTLE COLORADO AND RIO
15 GRANDE BASINS.—

16 (1) IN GENERAL.—In accordance with the
17 Project and conjunctive groundwater development
18 plan for the Nation, the Secretary may construct or
19 rehabilitate wells and related pipeline facilities to
20 provide capacity for the diversion and distribution
21 of—

22 (A) not more than 680 acre-feet of ground-
23 water in the Little Colorado River Basin in the
24 State of New Mexico;

1 (B) not more than 80 acre-feet of ground-
2 water in the Rio Grande Basin in the State of
3 New Mexico; and

4 (C) not more than 770 acre-feet of ground-
5 water in the Little Colorado River Basin in the
6 State of Arizona.

7 (2) USE.—Groundwater diverted and distrib-
8 uted under paragraph (1) shall be used for munic-
9 ipal and domestic uses.

10 (d) ACQUISITION OF LAND.—

11 (1) IN GENERAL.—Except as provided in para-
12 graph (2), the Secretary may acquire any land or in-
13 terest in land that is necessary for the construction,
14 operation, and maintenance of the wells and related
15 pipeline facilities authorized under subsections (b)
16 and (c).

17 (2) LIMITATION.—Nothing in this subsection
18 authorizes the Secretary to condemn water rights for
19 the purposes described in paragraph (1).

20 (e) CONDITION.—The Secretary shall not commence
21 any construction activity relating to the wells described in
22 subsections (b) and (c) until the Secretary executes the
23 Agreement.

24 (f) CONVEYANCE OF WELLS.—

1 (1) IN GENERAL.—The Secretary shall enter
2 into an agreement with the Nation to convey to the
3 Nation—

4 (A) any well or related pipeline facility
5 constructed or rehabilitated under subsections
6 (a) and (b) after the wells and related facilities
7 have been completed; and

8 (B) any land or interest in land acquired
9 by the United States for the construction, oper-
10 ation, and maintenance of the well or related
11 pipeline facility.

12 (2) OPERATION, MAINTENANCE, AND REPLACE-
13 MENT.—On completion of a conveyance under para-
14 graph (1), the Nation shall assume responsibility for
15 the operation, maintenance, and replacement of the
16 well or related pipeline facility conveyed.

17 (3) EFFECT OF CONVEYANCE.—The conveyance
18 to the Nation of the conjunctive use wells under
19 paragraph (1) shall not affect the application of the
20 Endangered Species Act of 1973 (16 U.S.C. 1531 et
21 seq.).

22 (g) USE OF PROJECT FACILITIES.—The capacities of
23 the treatment facilities, main pipelines, and lateral pipe-
24 lines of the Project authorized by section 302(b) may be
25 used to treat and convey groundwater to Nation commu-

1 nities if the Nation provides for payment of the operation,
2 maintenance, and replacement costs associated with the
3 use of the facilities or pipelines.

4 (h) LIMITATIONS.—The diversion and use of ground-
5 water by wells constructed or rehabilitated under this sec-
6 tion shall be made in a manner consistent with applicable
7 Federal and State law.

8 **SEC. 307. SAN JUAN RIVER IRRIGATION PROJECTS.**

9 (a) REHABILITATION.—Subject to subsection (b), the
10 Secretary shall rehabilitate—

11 (1) the Fruitland-Cambridge Irrigation Project
12 to serve not more than 3,335 acres of land, which
13 shall be considered to be the total serviceable area
14 of the Project; and

15 (2) the Hogback-Cudei Irrigation Project to
16 serve not more than 8,830 acres of land, which shall
17 be considered to be the total serviceable area of the
18 Project.

19 (b) CONDITION.—The Secretary shall not commence
20 any construction activity relating to the rehabilitation of
21 the Fruitland-Cambridge Irrigation Project or the Hog-
22 back-Cudei Irrigation Project under subsection (a) until
23 the Secretary executes the Agreement.

24 (c) OPERATION, MAINTENANCE, AND REPLACEMENT
25 OBLIGATION.—Upon the date of completion of the reha-

1 bilitation, the Nation shall assume the obligations for the
2 operation, maintenance, and replacement of each facility
3 rehabilitated under this section.

4 **SEC. 308. AUTHORIZATION OF APPROPRIATIONS.**

5 (a) AUTHORIZATION OF APPROPRIATIONS FOR
6 NORTHWESTERN NEW MEXICO RURAL WATER SUPPLY
7 PROJECT.—

8 (1) IN GENERAL.—There is authorized to be
9 appropriated to the Secretary to construct the
10 Project such sums as are necessary for the period of
11 fiscal years 2008 through 2022.

12 (2) ADJUSTMENTS.—The amount under para-
13 graph (1) shall be adjusted by such amounts as may
14 be required by reason of changes since 2005 in con-
15 struction costs, as indicated by engineering cost indi-
16 ces applicable to the types of construction involved.

17 (3) USE.—In addition to the uses authorized
18 under paragraph (1), amounts made available under
19 that paragraph may be used for the conduct of re-
20 lated activities to comply with Federal environmental
21 laws.

22 (b) APPROPRIATIONS FOR CONJUNCTIVE USE
23 WELLS.—

24 (1) SAN JUAN WELLS.—There is authorized to
25 be appropriated to the Secretary for the construction

1 or rehabilitation of conjunctive use wells under sec-
2 tion 306(b) \$30,000,000, as adjusted under para-
3 graph (3), for the period of fiscal years 2008
4 through 2018.

5 (2) WELLS IN THE LITTLE COLORADO AND RIO
6 GRANDE BASINS.—There is authorized to be appro-
7 priated to the Secretary for the construction or reha-
8 bilitation of conjunctive use wells under section
9 306(c) such sums as are necessary for the period of
10 fiscal years 2008 through 2024.

11 (3) ADJUSTMENTS.—The amount under para-
12 graph (1) shall be adjusted by such amounts as may
13 be required by reason of changes since 2004 in con-
14 struction costs, as indicated by engineering cost indi-
15 ces applicable to the types of construction or reha-
16 bilitation involved.

17 (4) NONREIMBURSABLE EXPENDITURES.—
18 Amounts made available under paragraphs (1) and
19 (2) shall be nonreimbursable to the United States.

20 (5) USE.—In addition to the uses authorized
21 under paragraphs (1) and (2), amounts made avail-
22 able under that paragraph may be used for the con-
23 duct of related activities to comply with Federal en-
24 vironmental laws.

25 (c) SAN JUAN RIVER IRRIGATION PROJECTS.—

1 (1) IN GENERAL.—There are authorized to be
2 appropriated to the Secretary—

3 (A) to carry out subsection 307(a)(1), not
4 more than \$7,700,000, as adjusted under para-
5 graph (2), for the period of fiscal years 2008
6 through 2014; and

7 (B) to carry out subsection 307(a)(2), not
8 more than \$15,400,000, as adjusted under
9 paragraph (2), for the period of fiscal years
10 2008 through 2017.

11 (2) ADJUSTMENT.—The amounts made avail-
12 able under paragraph (1) shall be adjusted by such
13 amounts as may be required by reason of changes
14 since January 1, 2004, in construction costs, as in-
15 dicated by engineering cost indices applicable to the
16 types of construction involved in the rehabilitation.

17 (3) NONREIMBURSABLE EXPENDITURES.—
18 Amounts made available under this subsection shall
19 be nonreimbursable to the United States.

20 (d) CULTURAL RESOURCES.—

21 (1) IN GENERAL.—The Secretary may use not
22 more than 4 percent of amounts made available
23 under subsections (a) and (b) for the survey, recov-
24 ery, protection, preservation, and display of archae-

1 ological resources in the area of a Project facility or
2 conjunctive use well.

3 (2) NONREIMBURSABLE EXPENDITURES.—Any
4 amounts made available under paragraph (1) shall
5 be nonreimbursable and nonreturnable to the United
6 States.

7 (e) FISH AND WILDLIFE FACILITIES.—

8 (1) IN GENERAL.—In association with the de-
9 velopment of the Project, the Secretary may use not
10 more than 4 percent of amounts made available
11 under subsections (a) and (b) to purchase land and
12 construct and maintain facilities to mitigate the loss
13 of, and improve conditions for the propagation of,
14 fish and wildlife if any such purchase, construction,
15 or maintenance will not affect the operation of any
16 water project or use of water.

17 (2) NONREIMBURSABLE EXPENDITURES.—Any
18 amounts expended under paragraph (1) shall be
19 nonreimbursable and nonreturnable to the United
20 States.

21 **TITLE IV—NAVAJO NATION**
22 **WATER RIGHTS**

23 **SEC. 401. AGREEMENT.**

24 (a) AGREEMENT APPROVAL.—

1 (1) APPROVAL BY CONGRESS.—Except to the
2 extent that any provision of the Agreement conflicts
3 with this Act, Congress approves, ratifies, and incor-
4 porates by reference the Agreement (including any
5 amendments to the Agreement that are executed to
6 make the Agreement consistent with this Act).

7 (2) EXECUTION BY SECRETARY.—The Sec-
8 retary, acting on behalf of the United States, shall
9 enter into the Agreement to the extent that the
10 Agreement does not conflict with this Act, includ-
11 ing—

12 (A) any exhibits to the Agreement requir-
13 ing the signature of the Secretary; and

14 (B) any amendments to the Agreement
15 necessary to make the Agreement consistent
16 with this Act.

17 (3) AUTHORITY OF SECRETARY.—The Sec-
18 retary may carry out any action that the Secretary
19 determines is necessary or appropriate to implement
20 the Agreement, the Contract, and this section.

21 (4) ADMINISTRATION OF NAVAJO RESERVOIR
22 RELEASES.—The State of New Mexico may admin-
23 ister releases of stored water from Navajo Reservoir
24 in accordance with subparagraph 9.1 of the Agree-
25 ment.

1 (b) WATER AVAILABLE UNDER CONTRACT.—

2 (1) QUANTITIES OF WATER AVAILABLE.—

3 (A) IN GENERAL.—Water shall be made
 4 available annually under the Contract for
 5 projects in the State of New Mexico supplied
 6 from the Navajo Reservoir and the San Juan
 7 River (including tributaries of the River) under
 8 New Mexico State Engineer File Numbers
 9 2849, 2883, and 3215 in the quantities de-
 10 scribed in subparagraph (B).

11 (B) WATER QUANTITIES.—The quantities
 12 of water referred to in subparagraph (A) are as
 13 follows:

| | Diver- sion (acre- feet/ year) | Deple- tion (acre- feet/ year) |
|--|--|--|
| Navajo Indian Irrigation Project | 508,000 | 270,000 |
| Northwestern New Mexico Rural Water Supply Project | 22,650 | 20,780 |
| Animas-La Plata Project | 4,680 | 2,340 |
| Total | 535,330 | 293,120 |

14 (C) MAXIMUM QUANTITY.—A diversion of
 15 water to the Nation under the Contract for a
 16 project described in subparagraph (B) shall not
 17 exceed the quantity of water necessary to sup-
 18 ply the amount of depletion for the project.

19 (D) TERMS, CONDITIONS, AND LIMITA-
 20 TIONS.—The diversion and use of water under

1 the Contract shall be subject to and consistent
2 with the terms, conditions, and limitations of
3 the Agreement, this Act, and any other applica-
4 ble law.

5 (2) AMENDMENTS TO CONTRACT.—The Sec-
6 retary, with the consent of the Nation, may amend
7 the Contract if the Secretary determines that the
8 amendment is—

9 (A) consistent with the Agreement; and

10 (B) in the interest of conserving water or
11 facilitating beneficial use by the Nation or a
12 subcontractor of the Nation.

13 (3) RIGHTS OF THE NATION.—The Nation may,
14 under the Contract—

15 (A) use tail water, wastewater, and return
16 flows attributable to a use of the water by the
17 Nation or a subcontractor of the Nation if—

18 (i) the depletion of water does not ex-
19 ceed the quantities described in paragraph
20 (1); and

21 (ii) the use of tail water, wastewater,
22 or return flows is consistent with the
23 terms, conditions, and limitations of the
24 Agreement, the Resolution, and any other
25 applicable law; and

1 (B) change a point of diversion, change a
2 purpose or place of use, and transfer a right for
3 depletion under this Act (except for a point of
4 diversion, purpose or place of use, or right for
5 depletion for use in the State of Arizona under
6 section 303(b)(2)(D)), to another use, purpose,
7 place, or depletion in the State of New Mexico
8 to meet a water resource or economic need of
9 the Nation if—

10 (i) the change or transfer is subject to
11 and consistent with the terms of the
12 Agreement, the Partial Final Decree de-
13 scribed in paragraph 3.0 of the Agreement,
14 the Contract, and any other applicable law;
15 and

16 (ii) a change or transfer of water use
17 by the Nation does not alter any obligation
18 of the United States, the Nation, or an-
19 other party to pay or repay project con-
20 struction, operation, maintenance, or re-
21 placement costs under this Act and the
22 Contract.

23 (c) SUBCONTRACTS.—

24 (1) IN GENERAL.—

1 (A) SUBCONTRACTS BETWEEN NATION
2 AND THIRD PARTIES.—The Nation may enter
3 into subcontracts for the delivery of Project
4 water under the Contract to third parties for
5 any beneficial use in the State of New Mexico
6 (on or off land held by the United States in
7 trust for the Nation or a member of the Nation
8 or land held in fee by the Nation).

9 (B) APPROVAL REQUIRED.—A subcontract
10 entered into under subparagraph (A) shall not
11 be effective until approved by the Secretary in
12 accordance with this subsection and the Con-
13 tract.

14 (C) SUBMITTAL.—The Nation shall submit
15 to the Secretary for approval or disapproval any
16 subcontract entered into under this subsection.

17 (D) DEADLINE.—The Secretary shall ap-
18 prove or disapprove a subcontract submitted to
19 the Secretary under subparagraph (C) not later
20 than the later of—

21 (i) the date that is 180 days after the
22 date on which the subcontract is submitted
23 to the Secretary; and

1 (ii) the date that is 60 days after the
2 date on which a subcontractor complies
3 with—

4 (I) section 102(2)(C) of the Na-
5 tional Environmental Policy Act of
6 1969 (42 U.S.C. 4332(2)(C)); and

7 (II) any other requirement of
8 Federal law.

9 (E) ENFORCEMENT.—A party to a sub-
10 contract may enforce the deadline described in
11 subparagraph (D) under section 1361 of title
12 28, United States Code.

13 (F) COMPLIANCE WITH OTHER LAW.—A
14 subcontract described in subparagraph (A) shall
15 comply with the Agreement, the Partial Final
16 Decree described in paragraph 3.0 of the Agree-
17 ment, and any other applicable law.

18 (2) ALIENATION.—

19 (A) PERMANENT ALIENATION.—The Na-
20 tion shall not permanently alienate any right
21 granted to the Nation under the Contract.

22 (B) MAXIMUM TERM.—The term of any
23 water use subcontract (including a renewal)
24 under this subsection shall be not more than 99
25 years.

1 (3) NONINTERCOURSE ACT COMPLIANCE.—This
2 subsection—

3 (A) provides congressional authorization
4 for the subcontracting rights of the Nation; and

5 (B) is deemed to fulfill any requirement
6 that may be imposed by section 2116 of the Re-
7 vised Statutes (25 U.S.C. 177).

8 (4) FORFEITURE.—The nonuse of the water
9 supply secured by a subcontractor of the Nation
10 under this subsection shall not result in forfeiture,
11 abandonment, relinquishment, or other loss of any
12 part of a right decreed to the Nation under the Con-
13 tract or this section.

14 (5) NO PER CAPITA PAYMENTS.—No part of
15 the revenue from a water use subcontract under this
16 subsection shall be distributed to any member of the
17 Nation on a per capita basis.

18 (d) WATER LEASES NOT REQUIRING SUB-
19 CONTRACTS.—

20 (1) AUTHORITY OF NATION.—

21 (A) IN GENERAL.—The Nation may lease,
22 contract, or otherwise transfer to another party
23 or to another purpose or place of use in the
24 State of New Mexico (on or off land that is held
25 by the United States in trust for the Nation or

1 a member of the Nation or held in fee by the
2 Nation) a water right that—

3 (i) is decreed to the Nation under the
4 Agreement; and

5 (ii) is not subject to the Contract.

6 (B) COMPLIANCE WITH OTHER LAW.—In
7 carrying out an action under this subsection,
8 the Nation shall comply with the Agreement,
9 the Partial Final Decree described in paragraph
10 3.0 of the Agreement, the Supplemental Partial
11 Final Decree described in paragraph 4.0 of the
12 Agreement, and any other applicable law.

13 (2) ALIENATION; MAXIMUM TERM.—

14 (A) ALIENATION.—The Nation shall not
15 permanently alienate any right granted to the
16 Nation under the Agreement.

17 (B) MAXIMUM TERM.—The term of any
18 water use lease, contract, or other arrangement
19 (including a renewal) under this subsection
20 shall be not more than 99 years.

21 (3) NONINTERCOURSE ACT COMPLIANCE.—This
22 subsection—

23 (A) provides congressional authorization
24 for the lease, contracting, and transfer of any
25 water right described in paragraph (1)(A); and

1 (B) is deemed to fulfill any requirement
2 that may be imposed by the provisions of sec-
3 tion 2116 of the Revised Statutes (25 U.S.C.
4 177).

5 (4) FORFEITURE.—The nonuse of a water right
6 of the Nation by a lessee or contractor to the Nation
7 under this subsection shall not result in forfeiture,
8 abandonment, relinquishment, or other loss of any
9 part of a right decreed to the Nation under the Con-
10 tract or this section.

11 (e) HYDROGRAPHIC SURVEY.—

12 (1) PREPARATION.—The Secretary, on behalf of
13 the United States, shall prepare a hydrographic sur-
14 vey under the joint supervision of the Secretary and
15 the State of New Mexico (acting through the New
16 Mexico State Engineer) to identify and quantify any
17 historic or existing diversion or use of water (includ-
18 ing from surface water and underground water
19 sources) by the Nation or a member of the Nation
20 from the San Juan River Basin in the State of New
21 Mexico, as described in subparagraph 4.2 of the
22 Agreement.

23 (2) AUTHORIZATION OF APPROPRIATIONS.—

24 (A) IN GENERAL.—Subject to subpara-
25 graph (B), there is authorized to be appro-

1 pried to the Bureau of Indian Affairs to carry
2 out paragraph (1) \$5,000,000 for the period of
3 fiscal years 2008 through 2013.

4 (B) ADJUSTMENT.—The amounts made
5 available under subparagraph (A) shall be ad-
6 justed by such amounts as are necessary to ac-
7 count for increases in the costs of preparing a
8 hydrographic survey after January 1, 2004, as
9 determined using cost indices applicable to the
10 types of technical and engineering work in-
11 volved in preparing the hydrographic survey.

12 (C) NONREIMBURSABLE EXPENDI-
13 TURES.—Any amounts made available under
14 this paragraph shall be nonreimbursable to the
15 United States.

16 (f) NULLIFICATION.—

17 (1) DEADLINES.—

18 (A) IN GENERAL.—In carrying out this
19 section, the following deadlines apply with re-
20 spect to implementation of the Agreement:

21 (i) AGREEMENT.—Not later than De-
22 cember 31, 2008, the Secretary shall exe-
23 cute the Agreement.

1 (ii) CONTRACT.—Not later than De-
2 cember 31, 2009, the Secretary and the
3 Nation shall execute the Contract.

4 (iii) PARTIAL FINAL DECREE.—Not
5 later than December 31, 2012, the court in
6 the stream adjudication shall have entered
7 the Partial Final Decree described in para-
8 graph 3.0 of the Agreement.

9 (iv) HYDROGRAPHIC SURVEY.—Not
10 later than December 31, 2013, the Sec-
11 retary shall complete the hydrographic sur-
12 vey described in subsection (e).

13 (v) FRUITLAND-CAMBRIDGE IRRIGA-
14 TION PROJECT.—Not later than December
15 31, 2014, the rehabilitation construction of
16 the Fruitland-Cambridge Irrigation Project
17 authorized under section 307(a)(1) shall be
18 completed.

19 (vi) SUPPLEMENTAL PARTIAL FINAL
20 DECREE.—Not later than December 31,
21 2015, the court in the stream adjudication
22 shall enter the Supplemental Partial Final
23 Decree described in subparagraph 4.0 of
24 the Agreement.

1 (vii) HOGBACK-CUDEI IRRIGATION
2 PROJECT.—Not later than December 31,
3 2017, the rehabilitation construction of the
4 Hogback-Cudei Irrigation Project author-
5 ized under section 307(a)(2) shall be com-
6 pleted.

7 (viii) TRUST FUND.—Not later than
8 December 31, 2018, the United States
9 shall make all deposits into the Trust
10 Fund under section 402.

11 (ix) NORTHWESTERN NEW MEXICO
12 RURAL WATER SUPPLY PROJECT.—Not
13 later than December 31, 2022, the con-
14 struction of all Project facilities shall be
15 completed.

16 (x) CONJUNCTIVE WELLS.—Not later
17 than December 31, 2018, the funds au-
18 thorized to be appropriated under section
19 308(b)(1) for the conjunctive use wells au-
20 thorized under section 306(b) should be
21 appropriated.

22 (B) EXTENSION.—A deadline described in
23 subparagraph (A) may be extended if the Na-
24 tion, the United States (acting through the Sec-
25 retary), and the State of New Mexico (acting

1 through the New Mexico Interstate Stream
2 Commission) agree that an extension is reason-
3 ably necessary.

4 (2) REVOCABILITY OF AGREEMENT, CONTRACT
5 AND AUTHORIZATIONS.—

6 (A) PETITION.—If the Nation determines
7 that a deadline described in paragraph (1)(A) is
8 not substantially met, the Nation may submit
9 to the court in the stream adjudication a peti-
10 tion to enter an order terminating the Agree-
11 ment and Contract.

12 (B) TERMINATION.—On issuance of an
13 order to terminate the Agreement and Contract
14 under subparagraph (A)—

15 (i) the Trust Fund shall be termi-
16 nated;

17 (ii) the balance of the Trust Fund
18 shall be deposited in the general fund of
19 the Treasury;

20 (iii) the authorizations for construc-
21 tion and rehabilitation of water projects
22 under this Act shall be revoked and any
23 Federal activity related to that construc-
24 tion and rehabilitation shall be suspended;
25 and

1 (iv) this title and titles I and III shall
2 be null and void.

3 (3) CONDITIONS NOT CAUSING NULLIFICATION
4 OF SETTLEMENT.—

5 (A) IN GENERAL.—If a condition described
6 in subparagraph (B) occurs, the Agreement and
7 Contract shall not be nullified or terminated.

8 (B) CONDITIONS.—The conditions referred
9 to in subparagraph (A) are as follows:

10 (i) A lack of right to divert at the ca-
11 pacities of conjunctive use wells con-
12 structed or rehabilitated under section
13 306.

14 (ii) A failure—

15 (I) to determine or resolve an ac-
16 counting of the use of water under
17 this Act in the State of Arizona;

18 (II) to obtain a necessary water
19 right for the consumptive use of water
20 in Arizona;

21 (III) to contract for the delivery
22 of water for use in Arizona; or

23 (IV) to construct and operate a
24 lateral facility to deliver water to a

1 community of the Nation in Arizona,
2 under the Project.

3 (4) RIGHTS OF THE NATION.—A tribal right
4 under the Contract, a water right adjudicated con-
5 sistent with the Contract in the stream adjudication
6 by the Partial Final Decree described in paragraph
7 3.0 of the Agreement, and any other tribal water
8 right stipulated, adjudicated, or decreed as described
9 in the Agreement and this Act shall be held in trust
10 by the United States in perpetuity for the benefit of
11 the Nation.

12 (g) EFFECT ON RIGHTS OF INDIAN TRIBES.—

13 (1) IN GENERAL.—Except as provided in para-
14 graph (2), nothing in the Agreement, the Contract,
15 or this section quantifies or adversely affects the
16 land and water rights, or claims or entitlements to
17 water, of any Indian tribe or community other than
18 the rights, claims, or entitlements of the Nation in,
19 to, and from the San Juan River Basin in the State
20 of New Mexico.

21 (2) EXCEPTION.—The right of the Nation to
22 use water under water rights the Nation has in
23 other river basins in the State of New Mexico shall
24 be forborne to the extent that the Nation supplies
25 the uses for which the water rights exist by diver-

1 sions of water from the San Juan River Basin under
2 the Project consistent with subparagraph 9.13 of the
3 Agreement.

4 **SEC. 402. TRUST FUND.**

5 (a) ESTABLISHMENT.—There is established in the
6 Treasury a fund to be known as the “Navajo Nation
7 Water Resources Development Trust Fund”, consisting
8 of—

9 (1) such amounts as are appropriated to the
10 Trust Fund under subsection (f); and

11 (2) any interest earned on investment of
12 amounts in the Trust Fund under subsection (d).

13 (b) USE OF FUNDS.—The Nation may use amounts
14 in the Trust Fund—

15 (1) to investigate, construct, operate, maintain,
16 or replace water project facilities, including facilities
17 conveyed to the Nation under this Act; and

18 (2) to investigate, implement, or improve a
19 water conservation measure (including a metering or
20 monitoring activity) necessary for the Nation to
21 make use of a water right of the Nation under the
22 Agreement.

23 (c) MANAGEMENT.—The Secretary shall manage the
24 Trust Fund, invest amounts in the Trust Fund, and make
25 amounts available from the Trust Fund for distribution

1 to the Nation in accordance with the American Indian
2 Trust Fund Management Reform Act of 1994 (25 U.S.C.
3 4001 et seq.).

4 (d) INVESTMENT OF THE TRUST FUND.—The Sec-
5 retary shall invest amounts in the Trust Fund in accord-
6 ance with—

7 (1) the Act of April 1, 1880 (25 U.S.C. 161);

8 (2) the first section of the Act of June 24,
9 1938 (25 U.S.C. 162a); and

10 (3) the American Indian Trust Fund Manage-
11 ment Reform Act of 1994 (25 U.S.C. 4001 et seq.).

12 (e) CONDITIONS FOR EXPENDITURES AND WITH-
13 DRAWALS.—

14 (1) TRIBAL MANAGEMENT PLAN.—

15 (A) IN GENERAL.—Subject to paragraph
16 (7), on approval by the Secretary of a tribal
17 management plan in accordance with the Amer-
18 ican Indian Trust Fund Management Reform
19 Act of 1994 (25 U.S.C. 4001 et seq.), the Na-
20 tion may withdraw all or a portion of the
21 amounts in the Trust Fund.

22 (B) REQUIREMENTS.—In addition to any
23 requirements under the American Indian Trust
24 Fund Management Reform Act of 1994 (25
25 U.S.C. 4001 et seq.), the tribal management

1 plan shall require that the Nation only use
2 amounts in the Trust Fund for the purposes
3 described in subsection (b).

4 (2) ENFORCEMENT.—The Secretary may take
5 judicial or administrative action to enforce the provi-
6 sions of any tribal management plan to ensure that
7 any amounts withdrawn from the Trust Fund are
8 used in accordance with this Act.

9 (3) NO LIABILITY.—Neither the Secretary nor
10 the Secretary of the Treasury shall be liable for the
11 expenditure or investment of any amounts with-
12 drawn from the Trust Fund by the Nation.

13 (4) EXPENDITURE PLAN.—

14 (A) IN GENERAL.—The Nation shall sub-
15 mit to the Secretary for approval an expendi-
16 ture plan for any portion of the amounts in the
17 Trust Fund made available under this section
18 that the Nation does not withdraw under this
19 subsection.

20 (B) DESCRIPTION.—The expenditure plan
21 shall describe the manner in which, and the
22 purposes for which, funds of the Nation remain-
23 ing in the Trust Fund will be used.

24 (C) APPROVAL.—On receipt of an expendi-
25 ture plan under subparagraph (A), the Sec-

1 retary shall approve the plan if the Secretary
2 determines that the plan is reasonable and con-
3 sistent with this Act.

4 (5) ANNUAL REPORT.—The Nation shall sub-
5 mit to the Secretary an annual report that describes
6 any expenditures from the Trust Fund during the
7 year covered by the report.

8 (6) LIMITATION.—No portion of the amounts in
9 the Trust Fund shall be distributed to any Nation
10 member on a per capita basis.

11 (7) CONDITIONS.—Any amount authorized to
12 be appropriated to the Trust Fund under subsection
13 (f) shall not be available for expenditure or with-
14 drawal—

15 (A) before December 31, 2018; and

16 (B) until the date on which the court in
17 the stream adjudication has entered—

18 (i) the Partial Final Decree described
19 in paragraph 3.0 of the Agreement; and

20 (ii) the Supplemental Partial Final
21 Decree described in paragraph 4.0 of the
22 Agreement.

23 (f) AUTHORIZATION OF APPROPRIATIONS.—There is
24 authorized to be appropriated for deposit in the Trust
25 Fund—

1 (1) \$6,000,000 for each of fiscal years 2008
2 through 2012; and

3 (2) \$4,000,000 for each of fiscal years 2013
4 through 2017.

5 **SEC. 403. WAIVERS AND RELEASES.**

6 (a) EXECUTION.—The Nation, on behalf of itself and
7 members of the Nation (other than members in their ca-
8 pacity as allottees), and the United States, acting through
9 the Secretary and in its capacity as trustee for the Nation,
10 shall execute waivers and releases in accordance with
11 paragraph 7.0 of the Agreement.

12 (b) RESERVATION.—Notwithstanding subsection (a),
13 the Nation and its members (including members in their
14 capacity as allottees) and the United States, as trustee
15 for the Nation and allottees, shall retain the rights and
16 claims specified in paragraph 7.0 of the Agreement.

17 (c) EFFECTIVE DATE.—

18 (1) IN GENERAL.—The waivers and releases de-
19 scribed in subsection (a) shall be effective on the
20 date on which the Secretary publishes in the Federal
21 Register a statement of findings documenting that
22 each of the deadlines described in section 401(f)(1)
23 have been met.

24 (2) DEADLINE.—If the deadlines in section
25 401(f)(1)(A) have not been met by the later of

1 March 1, 2023, or the date of any extension under
2 section 401(f)(1)(B)—

3 (A) the waivers and releases described in
4 subsection (a) shall be of no effect; and

5 (B) section 401(f)(2)(B) shall apply.

○