

Calendar No. 266

111TH CONGRESS
2^D SESSION**H. R. 3254**

IN THE SENATE OF THE UNITED STATES

JANUARY 22, 2010

Received

FEBRUARY 1, 2010

Read twice and placed on the calendar

AN ACT

To approve the Taos Pueblo Indian Water Rights Settlement Agreement, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Taos Pueblo Indian Water Rights Settlement Act”.

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

- Sec. 1. Short title; table of contents.
- Sec. 2. Purpose.
- Sec. 3. Definitions.
- Sec. 4. Pueblo rights.
- Sec. 5. Pueblo water infrastructure and watershed enhancement.
- Sec. 6. Taos Pueblo Water Development Fund.

- Sec. 7. Marketing.
- Sec. 8. Mutual-Benefit Projects.
- Sec. 9. San Juan-Chama Project contracts.
- Sec. 10. Authorizations, ratifications, confirmations, and conditions precedent.
- Sec. 11. Waivers and releases.
- Sec. 12. Interpretation and enforcement.
- Sec. 13. Disclaimer.

1 **SEC. 2. PURPOSE.**

2 The purposes of this Act are—

3 (1) to approve, ratify, and confirm the Taos
4 Pueblo Indian Water Rights Settlement Agreement;

5 (2) to authorize and direct the Secretary to exe-
6 cute the Settlement Agreement and to perform all
7 obligations of the Secretary under the Settlement
8 Agreement and this Act; and

9 (3) to authorize all actions and appropriations
10 necessary for the United States to meet its obliga-
11 tions under the Settlement Agreement and this Act.

12 **SEC. 3. DEFINITIONS.**

13 In this Act:

14 (1) **ELIGIBLE NON-PUEBLO ENTITIES.**—The
15 term “Eligible Non-Pueblo Entities” means the
16 Town of Taos, El Prado Water and Sanitation Dis-
17 trict (“EPWSD”), and the New Mexico Department
18 of Finance and Administration Local Government
19 Division on behalf of the Acequia Madre del Rio
20 Lucero y del Arroyo Seco, the Acequia Madre del
21 Prado, the Acequia del Monte, the Acequia Madre
22 del Rio Chiquito, the Upper Ranchitos Mutual Do-

1 mestic Water Consumers Association, the Upper Ar-
2 royo Hondo Mutual Domestic Water Consumers As-
3 sociation, and the Llano Quemado Mutual Domestic
4 Water Consumers Association.

5 (2) ENFORCEMENT DATE.—The term “Enforce-
6 ment Date” means the date upon which the Sec-
7 retary publishes the notice required by section
8 10(f)(1).

9 (3) MUTUAL-BENEFIT PROJECTS.—The term
10 “Mutual-Benefit Projects” means the projects de-
11 scribed and identified in articles 6 and 10.1 of the
12 Settlement Agreement.

13 (4) PARTIAL FINAL DECREE.—The term “Par-
14 tial Final Decree” means the Decree entered in New
15 Mexico v. Abeyta and New Mexico v. Arellano, Civil
16 Nos. 7896–BB (U.S.6 D.N.M.) and 7939–BB (U.S.
17 D.N.M.) (consolidated), for the resolution of the
18 Pueblo’s water right claims and which is substan-
19 tially in the form agreed to by the Parties and at-
20 tached to the Settlement Agreement as Attachment
21 5.

22 (5) PARTIES.—The term “Parties” means the
23 Parties to the Settlement Agreement, as identified in
24 article 1 of the Settlement Agreement.

1 (6) PUEBLO.—The term “Pueblo” means the
2 Taos Pueblo, a sovereign Indian tribe duly recog-
3 nized by the United States of America.

4 (7) PUEBLO LANDS.—The term “Pueblo lands”
5 means those lands located within the Taos Valley to
6 which the Pueblo, or the United States in its capac-
7 ity as trustee for the Pueblo, holds title subject to
8 Federal law limitations on alienation. Such lands in-
9 clude Tracts A, B, and C, the Pueblo’s land grant,
10 the Blue Lake Wilderness Area, and the Tenorio
11 and Karavas Tracts and are generally depicted in
12 Attachment 2 to the Settlement Agreement.

13 (8) SAN JUAN-CHAMA PROJECT.—The term
14 “San Juan-Chama Project” means the Project au-
15 thorized by section 8 of the Act of June 13, 1962
16 (76 Stat. 96 and 97), and the Act of April 11, 1956
17 (70 Stat. 105).

18 (9) SECRETARY.—The term “Secretary” means
19 the Secretary of the Interior.

20 (10) SETTLEMENT AGREEMENT.—The term
21 “Settlement Agreement” means the contract dated
22 March 31, 2006, between and among—

23 (A) the United States, acting solely in its
24 capacity as trustee for Taos Pueblo;

25 (B) the Taos Pueblo, on its own behalf;

1 (C) the State of New Mexico;

2 (D) the Taos Valley Acequia Association
3 and its 55 member ditches (“TVAA”);

4 (E) the Town of Taos;

5 (F) EPWSD; and

6 (G) the 12 Taos area Mutual Domestic
7 Water Consumers Associations (“MDWCAs”),
8 as amended to conform with this Act.

9 (11) STATE ENGINEER.—The term “State En-
10 gineer” means the New Mexico State Engineer.

11 (12) TAOS VALLEY.—The term “Taos Valley”
12 means the geographic area depicted in Attachment 4
13 of the Settlement Agreement.

14 **SEC. 4. PUEBLO RIGHTS.**

15 (a) IN GENERAL.—Those rights to which the Pueblo
16 is entitled under the Partial Final Decree shall be held
17 in trust by the United States on behalf of the Pueblo and
18 shall not be subject to forfeiture, abandonment, or perma-
19 nent alienation.

20 (b) SUBSEQUENT ACT OF CONGRESS.—The Pueblo
21 shall not be denied all or any part of its rights held in
22 trust absent its consent unless such rights are explicitly
23 abrogated by an Act of Congress hereafter enacted.

1 **SEC. 5. PUEBLO WATER INFRASTRUCTURE AND WATER-**
2 **SHED ENHANCEMENT.**

3 (a) IN GENERAL.—The Secretary, acting through the
4 Commissioner of Reclamation, shall provide grants and
5 technical assistance to the Pueblo on a nonreimbursable
6 basis to—

7 (1) plan, permit, design, engineer, construct, re-
8 construct, replace, or rehabilitate water production,
9 treatment, and delivery infrastructure;

10 (2) restore, preserve, and protect the environ-
11 ment associated with the Buffalo Pasture area; and

12 (3) protect and enhance watershed conditions.

13 (b) AVAILABILITY OF GRANTS.—Upon the Enforce-
14 ment Date, all amounts appropriated pursuant to section
15 10(c)(1) or made available from other authorized sources,
16 shall be available in grants to the Pueblo after the require-
17 ments of subsection (c) have been met.

18 (c) PLAN.—The Secretary shall provide financial as-
19 sistance pursuant to subsection (a) upon the Pueblo's sub-
20 mittal of a plan that identifies the projects to be imple-
21 mented consistent with the purposes of this section and
22 describes how such projects are consistent with the Settle-
23 ment Agreement.

24 (d) EARLY FUNDS.—Notwithstanding subsection (b),
25 \$10,000,000 of the monies authorized to be appropriated
26 pursuant to section 10(c)(1)—

1 (1) shall be made available in grants to the
2 Pueblo by the Secretary upon appropriation or avail-
3 ability of the funds from other authorized sources;
4 and

5 (2) shall be distributed by the Secretary to the
6 Pueblo on receipt by the Secretary from the Pueblo
7 of a written notice, a Tribal Council resolution that
8 describes the purposes under subsection (a) for
9 which the monies will be used, and a plan under
10 subsection (c) for this portion of the funding.

11 **SEC. 6. TAOS PUEBLO WATER DEVELOPMENT FUND.**

12 (a) ESTABLISHMENT.—There is established in the
13 Treasury of the United States a fund to be known as the
14 “Taos Pueblo Water Development Fund” (hereinafter,
15 “Fund”) to be used to pay or reimburse costs incurred
16 by the Pueblo for—

17 (1) acquiring water rights;

18 (2) planning, permitting, designing, engineer-
19 ing, constructing, reconstructing, replacing, rehabili-
20 tating, operating, or repairing water production,
21 treatment or delivery infrastructure, on-farm im-
22 provements, or wastewater infrastructure;

23 (3) restoring, preserving and protecting the
24 Buffalo Pasture, including planning, permitting, de-
25 signing, engineering, constructing, operating, man-

1 aging and replacing the Buffalo Pasture Recharge
2 Project;

3 (4) administering the Pueblo's water rights ac-
4 quisition program and water management and ad-
5 ministration system; and

6 (5) for watershed protection and enhancement,
7 support of agriculture, water-related Pueblo commu-
8 nity welfare and economic development, and costs
9 related to the negotiation, authorization, and imple-
10 mentation of the Settlement Agreement.

11 (b) MANAGEMENT OF THE FUND.—The Secretary
12 shall manage the Fund, invest amounts in the Fund, and
13 make monies available from the Fund for distribution to
14 the Pueblo consistent with the American Indian Trust
15 Fund Management Reform Act of 1994 (25 U.S.C. 4001
16 et seq.) (hereinafter, “Trust Fund Reform Act”), this Act,
17 and the Settlement Agreement.

18 (c) INVESTMENT OF THE FUND.—Upon the Enforce-
19 ment Date, the Secretary shall invest amounts in the
20 Fund in accordance with—

21 (1) the Act of April 1, 1880 (21 Stat. 70, ch.
22 41, 25 U.S.C. 161);

23 (2) the first section of the Act of June 24,
24 1938 (52 Stat. 1037, ch. 648, 25 U.S.C. 162a); and

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

3 (d) AVAILABILITY OF AMOUNTS FROM THE FUND.—

4 Upon the Enforcement Date, all monies deposited in the
5 Fund pursuant to section 10(c)(2) or made available from
6 other authorized sources shall be available to the Pueblo
7 for expenditure or withdrawal after the requirements of
8 subsection (e) have been met.

9 (e) EXPENDITURES AND WITHDRAWAL.—

10 (1) TRIBAL MANAGEMENT PLAN.—

11 (A) IN GENERAL.—The Pueblo may with-
12 draw all or part of the Fund on approval by the
13 Secretary of a tribal management plan as de-
14 scribed in the Trust Fund Reform Act.

15 (B) REQUIREMENTS.—In addition to the
16 requirements under the Trust Fund Reform
17 Act, the tribal management plan shall require
18 that the Pueblo spend any funds in accordance
19 with the purposes described in subsection (a).

20 (2) ENFORCEMENT.—The Secretary may take
21 judicial or administrative action to enforce the re-
22 quirement that monies withdrawn from the Fund
23 are used for the purposes specified in subsection (a).

24 (3) LIABILITY.—If the Pueblo exercises the
25 right to withdraw monies from the Fund, neither the

1 Secretary nor the Secretary of the Treasury shall re-
2 tain any liability for the expenditure or investment
3 of the monies withdrawn.

4 (4) EXPENDITURE PLAN.—

5 (A) IN GENERAL.—The Pueblo shall sub-
6 mit to the Secretary for approval an expendi-
7 ture plan for any portions of the funds made
8 available under this Act that the Pueblo does
9 not withdraw under paragraph (1)(A).

10 (B) DESCRIPTION.—The expenditure plan
11 shall describe the manner in which, and the
12 purposes for which, amounts remaining in the
13 Fund will be used.

14 (C) APPROVAL.—On receipt of an expendi-
15 ture plan under subparagraph (A), the Sec-
16 retary shall approve the plan if the Secretary
17 determines that the plan is reasonable and con-
18 sistent with this Act.

19 (5) ANNUAL REPORT.—The Pueblo shall submit
20 to the Secretary an annual report that describes all
21 expenditures from the Fund during the year covered
22 by the report.

23 (f) FUNDS AVAILABLE UPON APPROPRIATION.—Not-
24 withstanding subsection (d), \$15,000,000 of the monies

1 authorized to be appropriated pursuant to section
2 10(c)(2)—

3 (1) shall be available upon appropriation or
4 made available from other authorized sources for the
5 Pueblo's acquisition of water rights pursuant to Ar-
6 ticle 5.1.1.2.3 of the Settlement Agreement, the Buf-
7 falo Pasture Recharge Project, implementation of
8 the Pueblo's water rights acquisition program and
9 water management and administration system, the
10 design, planning, and permitting of water or waste-
11 water infrastructure eligible for funding under sec-
12 tion 5 or 6, or costs related to the negotiation, au-
13 thorization, and implementation of the Settlement
14 Agreement; and

15 (2) shall be distributed by the Secretary to the
16 Pueblo on receipt by the Secretary from the Pueblo
17 of a written notice and a Tribal Council resolution
18 that describes the purposes under paragraph (1) for
19 which the monies will be used.

20 (g) NO PER CAPITA DISTRIBUTIONS.—No part of the
21 Fund shall be distributed on a per capita basis to members
22 of the Pueblo.

23 **SEC. 7. MARKETING.**

24 (a) PUEBLO WATER RIGHTS.—Subject to the ap-
25 proval of the Secretary in accordance with subsection (e),

1 the Pueblo may market water rights secured to it under
2 the Settlement Agreement and Partial Final Decree, pro-
3 vided that such marketing is in accordance with this sec-
4 tion.

5 (b) PUEBLO CONTRACT RIGHTS TO SAN JUAN-
6 CHAMA PROJECT WATER.—Subject to the approval of the
7 Secretary in accordance with subsection (e), the Pueblo
8 may subcontract water made available to the Pueblo under
9 the contract authorized under section 9(b)(1)(A) to third
10 parties to supply water for use within or without the Taos
11 Valley, provided that the delivery obligations under such
12 subcontract are not inconsistent with the Secretary’s exist-
13 ing San Juan-Chama Project obligations and such sub-
14 contract is in accordance with this section.

15 (c) LIMITATION.—

16 (1) IN GENERAL.—Diversion or use of water off
17 Pueblo lands pursuant to Pueblo water rights or
18 Pueblo contract rights to San Juan-Chama Project
19 water shall be subject to and not inconsistent with
20 the same requirements and conditions of State law,
21 any applicable Federal law, and any applicable inter-
22 state compact as apply to the exercise of water
23 rights or contract rights to San Juan-Chama Project
24 water held by non-Federal, non-Indian entities, in-

1 cluding all applicable State Engineer permitting and
2 reporting requirements.

3 (2) EFFECT ON WATER RIGHTS.—Such diver-
4 sion or use off Pueblo lands under paragraph (1)
5 shall not impair water rights or increase surface
6 water depletions within the Taos Valley.

7 (d) MAXIMUM TERM.—

8 (1) IN GENERAL.—The maximum term of any
9 water use lease or subcontract, including all renew-
10 als, shall not exceed 99 years in duration.

11 (2) ALIENATION OF RIGHTS.—The Pueblo shall
12 not permanently alienate any rights it has under the
13 Settlement Agreement, the Partial Final Decree,
14 and this Act.

15 (e) APPROVAL OF SECRETARY.—The Secretary shall
16 approve or disapprove any lease or subcontract submitted
17 by the Pueblo for approval not later than—

18 (1) 180 days after submission; or

19 (2) 60 days after compliance, if required, with
20 section 102(2)(C) of the National Environmental
21 Policy Act of 1969 (42 U.S.C. 4332(2)(C)), or any
22 other requirement of Federal law, whichever is later,
23 provided that no Secretarial approval shall be re-
24 quired for any water use lease with a term of less
25 than 7 years.

1 (f) NO FORFEITURE OR ABANDONMENT.—The non-
2 use by a lessee or subcontractor of the Pueblo of any right
3 to which the Pueblo is entitled under the Partial Final
4 Decree shall in no event result in a forfeiture, abandon-
5 ment, relinquishment, or other loss of all or any part of
6 those rights.

7 (g) NO PREEMPTION.—

8 (1) IN GENERAL.—The approval authority of
9 the Secretary provided under subsection (e) shall not
10 amend, construe, supersede, or preempt any State or
11 Federal law, interstate compact, or international
12 treaty that pertains to the Colorado River, the Rio
13 Grande, or any of their tributaries, including the ap-
14 propriation, use, development, storage, regulation,
15 allocation, conservation, exportation, or quantity of
16 those waters.

17 (2) APPLICABLE LAW.—The provisions of sec-
18 tion 2116 of the Revised Statutes (25 U.S.C. 177)
19 shall not apply to any water made available under
20 the Settlement Agreement.

21 (h) NO PREJUDICE.—Nothing in this Act shall be
22 construed to establish, address, prejudice, or prevent any
23 party from litigating whether or to what extent any appli-
24 cable State law, Federal law, or interstate compact does

1 or does not permit, govern, or apply to the use of the
2 Pueblo's water outside of New Mexico.

3 **SEC. 8. MUTUAL-BENEFIT PROJECTS.**

4 (a) IN GENERAL.—Upon the Enforcement Date, the
5 Secretary, acting through the Commissioner of Reclama-
6 tion, shall provide financial assistance in the form of
7 grants on a nonreimbursable basis to Eligible Non-Pueblo
8 Entities to plan, permit, design, engineer, and construct
9 the Mutual-Benefit Projects in accordance with the Settle-
10 ment Agreement—

11 (1) to minimize adverse impacts on the Pueblo's
12 water resources by moving future non-Indian ground
13 water pumping away from the Pueblo's Buffalo Pas-
14 ture; and

15 (2) to implement the resolution of a dispute
16 over the allocation of certain surface water flows be-
17 tween the Pueblo and non-Indian irrigation water
18 right owners in the community of Arroyo Seco
19 Arriba.

20 (b) COST-SHARING.—

21 (1) FEDERAL SHARE.—The Federal share of
22 the total cost of planning, designing, and con-
23 structing the Mutual-Benefit Projects authorized in
24 subsection (a) shall be 75 percent and shall be non-
25 reimbursable.

1 (2) NON-FEDERAL SHARE.—The non-Federal
2 share of the total cost of planning, designing, and
3 constructing the Mutual-Benefit Projects shall be 25
4 percent and may be in the form of in-kind contribu-
5 tions, including the contribution of any valuable
6 asset or service that the Secretary determines would
7 substantially contribute to completing the Mutual-
8 Benefit Projects.

9 **SEC. 9. SAN JUAN-CHAMA PROJECT CONTRACTS.**

10 (a) IN GENERAL.—Contracts issued under this sec-
11 tion shall be in accordance with this Act and the Settle-
12 ment Agreement.

13 (b) CONTRACTS FOR SAN JUAN-CHAMA PROJECT
14 WATER.—

15 (1) IN GENERAL.—The Secretary shall enter
16 into 3 repayment contracts by not later than 180
17 days after the date of enactment of this Act, for the
18 delivery of San Juan-Chama Project water in the
19 following amounts:

20 (A) 2,215 acre-feet/annum to the Pueblo.

21 (B) 366 acre-feet/annum to the Town of
22 Taos.

23 (C) 40 acre-feet/annum to EPWSD.

24 (2) REQUIREMENTS.—Each such contract shall
25 provide that if the conditions precedent set forth in

1 section 10(f)(2) have not been fulfilled by December
2 31, 2016, the contract shall expire on that date.

3 (3) APPLICABLE LAW.—Public Law 87–483 (76
4 Stat. 97) applies to the contracts entered into under
5 paragraph (1) and no preference shall be applied as
6 a result of section 4(a) with regard to the delivery
7 or distribution of San Juan-Chama Project water or
8 the management or operation of the San Juan-
9 Chama Project.

10 (c) WAIVER.—With respect to the contract author-
11 ized and required by subsection (b)(1)(A) and notwith-
12 standing the provisions of Public Law 87–483 (76 Stat.
13 96) or any other provision of law—

14 (1) the Secretary shall waive the entirety of the
15 Pueblo’s share of the construction costs, both prin-
16 cipal and the interest, for the San Juan-Chama
17 Project and pursuant to that waiver, the Pueblo’s
18 share of all construction costs for the San Juan-
19 Chama Project, inclusive of both principal and inter-
20 est shall be nonreimbursable; and

21 (2) the Secretary’s waiver of the Pueblo’s share
22 of the construction costs for the San Juan-Chama
23 Project will not result in an increase in the pro rata
24 shares of other San Juan-Chama Project water con-
25 tractors, but such costs shall be absorbed by the

1 United States Treasury or otherwise appropriated to
2 the Department of the Interior.

3 **SEC. 10. AUTHORIZATIONS, RATIFICATIONS, CONFIRMA-**
4 **TIONS, AND CONDITIONS PRECEDENT.**

5 (a) RATIFICATION.—

6 (1) IN GENERAL.—Except to the extent that
7 any provision of the Settlement Agreement conflicts
8 with any provision of this Act, the Settlement Agree-
9 ment is authorized, ratified, and confirmed.

10 (2) AMENDMENTS.—To the extent amendments
11 are executed to make the Settlement Agreement con-
12 sistent with this Act, such amendments are also au-
13 thorized, ratified, and confirmed.

14 (b) EXECUTION OF SETTLEMENT AGREEMENT.—To
15 the extent that the Settlement Agreement does not conflict
16 with this Act, the Secretary shall execute the Settlement
17 Agreement, including all exhibits to the Settlement Agree-
18 ment requiring the signature of the Secretary and any
19 amendments necessary to make the Settlement Agreement
20 consistent with this Act, after the Pueblo has executed the
21 Settlement Agreement and any such amendments.

22 (c) AUTHORIZATION OF APPROPRIATIONS.—

23 (1) TAOS PUEBLO INFRASTRUCTURE AND WA-
24 TERSHED FUND.—There is authorized to be appro-
25 priated to the Secretary to provide grants pursuant

1 to section 5, \$30,000,000, as adjusted under para-
2 graph (4), for the period of fiscal years 2010
3 through 2016.

4 (2) TAOS PUEBLO WATER DEVELOPMENT
5 FUND.—There is authorized to be appropriated to
6 the Taos Pueblo Water Development Fund, estab-
7 lished at section 6(a), \$58,000,000, as adjusted
8 under paragraph (4), for the period of fiscal years
9 2010 through 2016.

10 (3) MUTUAL-BENEFIT PROJECTS FUNDING.—
11 There is further authorized to be appropriated to the
12 Secretary to provide grants pursuant to section 8, a
13 total of \$33,000,000, as adjusted under paragraph
14 (4), for the period of fiscal years 2010 through
15 2016.

16 (4) ADJUSTMENTS TO AMOUNTS AUTHOR-
17 IZED.—The amounts authorized to be appropriated
18 under paragraphs (1) through (3) shall be adjusted
19 by such amounts as may be required by reason of
20 changes since April 1, 2007, in construction costs,
21 as indicated by engineering cost indices applicable to
22 the types of construction or rehabilitation involved.

23 (5) DEPOSIT IN FUND.—Except for the funds
24 to be provided to the Pueblo pursuant to section
25 5(d), the Secretary shall deposit the funds made

1 available pursuant to paragraphs (1) and (3) into a
2 Taos Settlement Fund to be established within the
3 Treasury of the United States so that such funds
4 may be made available to the Pueblo and the Eligi-
5 ble Non-Pueblo Entities upon the Enforcement Date
6 as set forth in sections 5(b) and 8(a).

7 (d) AUTHORITY OF THE SECRETARY.—The Secretary
8 is authorized to enter into such agreements and to take
9 such measures as the Secretary may deem necessary or
10 appropriate to fulfill the intent of the Settlement Agree-
11 ment and this Act.

12 (e) ENVIRONMENTAL COMPLIANCE.—

13 (1) EFFECT OF EXECUTION OF SETTLEMENT
14 AGREEMENT.—The Secretary's execution of the Set-
15 tlement Agreement shall not constitute a major Fed-
16 eral action under the National Environmental Policy
17 Act of 1969 (42 U.S.C. 4321 et seq.).

18 (2) COMPLIANCE WITH ENVIRONMENTAL
19 LAWS.—In carrying out this Act, the Secretary shall
20 comply with each law of the Federal Government re-
21 lating to the protection of the environment, includ-
22 ing—

23 (A) the National Environmental Policy Act
24 of 1969 (42 U.S.C. 4321 et seq.); and

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

3 (f) CONDITIONS PRECEDENT AND SECRETARIAL
4 FINDING.—

5 (1) IN GENERAL.—Upon the fulfillment of the
6 conditions precedent described in paragraph (2), the
7 Secretary shall publish in the Federal Register a
8 statement of finding that the conditions have been
9 fulfilled.

10 (2) CONDITIONS.—The conditions precedent re-
11 ferred to in paragraph (1) are the following:

12 (A) The President has signed into law the
13 Taos Pueblo Indian Water Rights Settlement
14 Act.

15 (B) To the extent that the Settlement
16 Agreement conflicts with this Act, the Settle-
17 ment Agreement has been revised to conform
18 with this Act.

19 (C) The Settlement Agreement, so revised,
20 including waivers and releases pursuant to sec-
21 tion 11, has been executed by the Parties and
22 the Secretary prior to the Parties' motion for
23 entry of the Partial Final Decree.

24 (D) Congress has fully appropriated or the
25 Secretary has provided from other authorized

1 sources all funds authorized by paragraphs (1)
2 through (3) of subsection (c) so that the entire
3 amounts so authorized have been previously
4 provided to the Pueblo pursuant to sections 5
5 and 6, or placed in the Taos Pueblo Water De-
6 velopment Fund or the Taos Settlement Fund
7 as directed in subsection (c).

8 (E) The Legislature of the State of New
9 Mexico has fully appropriated the funds for the
10 State contributions as specified in the Settle-
11 ment Agreement, and those funds have been de-
12 posited in appropriate accounts.

13 (F) The State of New Mexico has enacted
14 legislation that amends NMSA 1978, section
15 72-6-3 to state that a water use due under a
16 water right secured to the Pueblo under the
17 Settlement Agreement or the Partial Final De-
18 cree may be leased for a term, including all re-
19 newals, not to exceed 99 years, provided that
20 this condition shall not be construed to require
21 that said amendment state that any State law
22 based water rights acquired by the Pueblo or by
23 the United States on behalf of the Pueblo may
24 be leased for said term.

1 (G) A Partial Final Decree that sets forth
2 the water rights and contract rights to water to
3 which the Pueblo is entitled under the Settle-
4 ment Agreement and this Act and that substan-
5 tially conforms to the Settlement Agreement
6 and Attachment 5 thereto has been approved by
7 the Court and has become final and nonappeal-
8 able.

9 (g) ENFORCEMENT DATE.—The Settlement Agree-
10 ment shall become enforceable, and the waivers and re-
11 leases executed pursuant to section 11 and the limited
12 waiver of sovereign immunity set forth in section 12(a)
13 shall become effective, as of the date that the Secretary
14 publishes the notice required by subsection (f)(1).

15 (h) EXPIRATION DATE.—

16 (1) IN GENERAL.—If all of the conditions
17 precedent described in section (f)(2) have not been
18 fulfilled by December 31, 2016, the Settlement
19 Agreement shall be null and void, the waivers and
20 releases executed pursuant to section 11 and the
21 sovereign immunity waivers in section 12(a) shall
22 not become effective, and any unexpended Federal
23 funds, together with any income earned thereon, and
24 title to any property acquired or constructed with
25 expended Federal funds, shall be returned to the

1 Federal Government, unless otherwise agreed to by
2 the Parties in writing and approved by Congress.

3 (2) EXCEPTION.—Notwithstanding subsection
4 (h)(1) or any other provision of law, any unexpended
5 Federal funds, together with any income earned
6 thereon, made available under sections 5(d) and 6(f)
7 and title to any property acquired or constructed
8 with expended Federal funds made available under
9 sections 5(d) and 6(f) shall be retained by the Pueb-
10 lo.

11 (3) RIGHT TO SET-OFF.—In the event the con-
12 ditions precedent set forth in subsection (f)(2) have
13 not been fulfilled by December 31, 2016, the United
14 States shall be entitled to set off any funds expended
15 or withdrawn from the amount appropriated pursu-
16 ant to paragraphs (1) and (2) of subsection (c) or
17 made available from other authorized sources, to-
18 gether with any interest accrued, against any claims
19 asserted by the Pueblo against the United States re-
20 lating to water rights in the Taos Valley.

21 **SEC. 11. WAIVERS AND RELEASES.**

22 (a) CLAIMS BY THE PUEBLO AND THE UNITED
23 STATES.—In return for recognition of the Pueblo’s water
24 rights and other benefits, including but not limited to the
25 commitments by non-Pueblo parties, as set forth in the

1 Settlement Agreement and this Act, the Pueblo, on behalf
2 of itself and its members, and the United States acting
3 in its capacity as trustee for the Pueblo are authorized
4 to execute a waiver and release of claims against the par-
5 ties to *New Mexico v. Abeyta* and *New Mexico v. Arellano*,
6 Civil Nos. 7896–BB (U.S.6 D.N.M.) and 7939–BB (U.S.
7 D.N.M.) (consolidated) from—

8 (1) all claims for water rights in the Taos Val-
9 ley that the Pueblo, or the United States acting in
10 its capacity as trustee for the Pueblo, asserted, or
11 could have asserted, in any proceeding, including but
12 not limited to in *New Mexico v. Abeyta* and *New*
13 *Mexico v. Arellano*, Civil Nos. 7896–BB (U.S.6
14 D.N.M.) and 7939–BB (U.S. D.N.M.) (consoli-
15 dated), up to and including the Enforcement Date,
16 except to the extent that such rights are recognized
17 in the Settlement Agreement or this Act;

18 (2) all claims for water rights, whether for con-
19 sumptive or nonconsumptive use, in the Rio Grande
20 mainstream or its tributaries that the Pueblo, or the
21 United States acting in its capacity as trustee for
22 the Pueblo, asserted or could assert in any water
23 rights adjudication proceedings except those claims
24 based on Pueblo or United States ownership of lands
25 or water rights acquired after the Enforcement

1 Date, provided that nothing in this paragraph shall
2 prevent the Pueblo or the United States from fully
3 participating in the inter se phase of any such water
4 rights adjudication proceedings;

5 (3) all claims for damages, losses or injuries to
6 water rights or claims of interference with, diversion
7 or taking of water (including but not limited to
8 claims for injury to lands resulting from such dam-
9 ages, losses, injuries, interference with, diversion, or
10 taking) in the Rio Grande mainstream or its tribu-
11 taries or for lands within the Taos Valley that ac-
12 crued at any time up to and including the Enforce-
13 ment Date; and

14 (4) all claims against the State of New Mexico,
15 its agencies, or employees relating to the negotiation
16 or the adoption of the Settlement Agreement.

17 (b) CLAIMS BY THE PUEBLO AGAINST THE UNITED
18 STATES.—The Pueblo, on behalf of itself and its members,
19 is authorized to execute a waiver and release of—

20 (1) all claims against the United States, its
21 agencies, or employees relating to claims for water
22 rights in or water of the Taos Valley that the United
23 States acting in its capacity as trustee for the Pueb-
24 lo asserted, or could have asserted, in any pro-
25 ceeding, including but not limited to in New Mexico

1 v. Abeyta and New Mexico v. Arellano, Civil Nos.
2 7896–BB (U.S.6 D.N.M.) and 7939–BB (U.S.
3 D.N.M.) (consolidated);

4 (2) all claims against the United States, its
5 agencies, or employees relating to damages, losses,
6 or injuries to water, water rights, land, or natural
7 resources due to loss of water or water rights (in-
8 cluding but not limited to damages, losses or injuries
9 to hunting, fishing, gathering, or cultural rights due
10 to loss of water or water rights, claims relating to
11 interference with, diversion or taking of water or
12 water rights, or claims relating to failure to protect,
13 acquire, replace, or develop water, water rights or
14 water infrastructure) in the Rio Grande mainstream
15 or its tributaries or within the Taos Valley that first
16 accrued at any time up to and including the En-
17 forcement Date;

18 (3) all claims against the United States, its
19 agencies, or employees for an accounting of funds
20 appropriated by the Act of March 4, 1929 (45 Stat.
21 1562), the Act of March 4, 1931 (46 Stat. 1552),
22 the Act of June 22, 1936 (49 Stat. 1757), the Act
23 of August 9, 1937 (50 Stat. 564), and the Act of
24 May 9, 1938 (52 Stat. 291), as authorized by the
25 Pueblo Lands Act of June 7, 1924 (43 Stat. 636),

1 and the Pueblo Lands Act of May 31, 1933 (48
2 Stat. 108), and for breach of trust relating to funds
3 for water replacement appropriated by said Acts
4 that first accrued before the date of enactment of
5 this Act;

6 (4) all claims against the United States, its
7 agencies, or employees relating to the pending litiga-
8 tion of claims relating to the Pueblo's water rights
9 in *New Mexico v. Abeyta* and *New Mexico v.*
10 *Arellano*, Civil Nos. 7896–BB (U.S. 6 D.N.M.) and
11 7939–BB (U.S. D.N.M.) (consolidated); and

12 (5) all claims against the United States, its
13 agencies, or employees relating to the negotiation,
14 Execution or the adoption of the Settlement Agree-
15 ment, exhibits thereto, the Final Decree, or this Act.

16 (c) RESERVATION OF RIGHTS AND RETENTION OF
17 CLAIMS.—Notwithstanding the waivers and releases au-
18 thorized in this Act, the Pueblo on behalf of itself and
19 its members and the United States acting in its capacity
20 as trustee for the Pueblo retain—

21 (1) all claims for enforcement of the Settlement
22 Agreement, the Final Decree, including the Partial
23 Final Decree, the San Juan-Chama Project contract
24 between the Pueblo and the United States, or this
25 Act;

1 (2) all claims against persons other than the
2 Parties to the Settlement Agreement for damages,
3 losses or injuries to water rights or claims of inter-
4 ference with, diversion or taking of water rights (in-
5 cluding but not limited to claims for injury to lands
6 resulting from such damages, losses, injuries, inter-
7 ference with, diversion, or taking of water rights)
8 within the Taos Valley arising out of activities oc-
9 curring outside the Taos Valley or the Taos Valley
10 Stream System;

11 (3) all rights to use and protect water rights ac-
12 quired after the date of enactment of this Act;

13 (4) all rights to use and protect water rights ac-
14 quired pursuant to State law, to the extent not in-
15 consistent with the Partial Final Decree and the
16 Settlement Agreement (including water rights for
17 the land the Pueblo owns in Questa, New Mexico);

18 (5) all claims relating to activities affecting the
19 quality of water including but not limited to any
20 claims the Pueblo might have under the Comprehen-
21 sive Environmental Response, Compensation, and
22 Liability Act of 1980 (42 U.S.C. 9601 et seq.) (in-
23 cluding but not limited to claims for damages to nat-
24 ural resources), the Safe Drinking Water Act (42
25 U.S.C. 300f et seq.), the Federal Water Pollution

1 Control Act (33 U.S.C. 1251 et seq.), and the regu-
2 lations implementing those Acts;

3 (6) all claims relating to damages, losses, or in-
4 juries to land or natural resources not due to loss
5 of water or water rights (including but not limited
6 to hunting, fishing, gathering, or cultural rights);
7 and

8 (7) all rights, remedies, privileges, immunities,
9 powers, and claims not specifically waived and re-
10 leased pursuant to this Act and the Settlement
11 Agreement.

12 (d) EFFECT OF SECTION.—Nothing in the Settle-
13 ment Agreement or this Act—

14 (1) affects the ability of the United States act-
15 ing in its sovereign capacity to take actions author-
16 ized by law, including but not limited to any laws re-
17 lating to health, safety, or the environment, includ-
18 ing but not limited to the Federal Water Pollution
19 Control Act (33 U.S.C. 1251 et seq.), the Safe
20 Drinking Water Act (42 U.S.C. 300f et seq.), the
21 Comprehensive Environmental Response, Compensa-
22 tion, and Liability Act of 1980 (42 U.S.C. 9601 et
23 seq.), the Solid Waste Disposal Act (42 U.S.C. 6901
24 et seq.), and the regulations implementing such
25 Acts;

1 (2) affects the ability of the United States to
2 take actions acting in its capacity as trustee for any
3 other Indian tribe or allottee;

4 (3) confers jurisdiction on any State court to—

5 (A) interpret Federal law regarding health,
6 safety, or the environment or determine the du-
7 ties of the United States or other parties pursu-
8 ant to such Federal law; or

9 (B) conduct judicial review of Federal
10 agency action; or

11 (4) waives any claim of a member of the Pueblo
12 in an individual capacity that does not derive from
13 a right of the Pueblo.

14 (e) TOLLING OF CLAIMS.—

15 (1) IN GENERAL.—Each applicable period of
16 limitation and time-based equitable defense relating
17 to a claim described in this section shall be tolled for
18 the period beginning on the date of enactment of
19 this Act and ending on the earlier of—

20 (A) December 31, 2016; or

21 (B) the Enforcement Date.

22 (2) EFFECT OF SUBSECTION.—Nothing in this
23 subsection revives any claim or tolls any period of
24 limitation or time-based equitable defense that ex-
25 pired before the date of enactment of this Act.

1 (3) LIMITATION.—Nothing in this subsection
2 precludes the tolling of any period of limitations or
3 any time-based equitable defense under any other
4 applicable law.

5 **SEC. 12. INTERPRETATION AND ENFORCEMENT.**

6 (a) LIMITED WAIVER OF SOVEREIGN IMMUNITY.—
7 Upon and after the Enforcement Date, if any Party to
8 the Settlement Agreement brings an action in any court
9 of competent jurisdiction over the subject matter relating
10 only and directly to the interpretation or enforcement of
11 the Settlement Agreement or this Act, and names the
12 United States or the Pueblo as a party, then the United
13 States, the Pueblo, or both may be added as a party to
14 any such action, and any claim by the United States or
15 the Pueblo to sovereign immunity from the action is
16 waived, but only for the limited and sole purpose of such
17 interpretation or enforcement, and no waiver of sovereign
18 immunity is made for any action against the United States
19 or the Pueblo that seeks money damages.

20 (b) SUBJECT MATTER JURISDICTION NOT AF-
21 FECTED.—Nothing in this Act shall be deemed as confer-
22 ring, restricting, enlarging, or determining the subject
23 matter jurisdiction of any court, including the jurisdiction
24 of the court that enters the Partial Final Decree adjudi-
25 cating the Pueblo’s water rights.

Calendar No. 266

11TH CONGRESS
2^D Session

H. R. 3254

AN ACT

To approve the Taos Pueblo Indian Water Rights Settlement Agreement, and for other purposes.

FEBRUARY 1, 2010

Read twice and placed on the calendar