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111TH CONGRESS
2^D SESSION**H. R. 3342**

IN THE SENATE OF THE UNITED STATES

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AN ACT

To authorize the Secretary of the Interior, acting through the Commissioner of Reclamation, to develop water infrastructure in the Rio Grande Basin, and to approve the settlement of the water rights claims of the Pueblos of Nambe, Pojoaque, San Ildefonso, and Tesuque.

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 “Aamodt Litigation 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. Definitions.

TITLE I—POJOAQUE BASIN REGIONAL WATER SYSTEM

- Sec. 101. Authorization of Regional Water System.
 Sec. 102. Operating Agreement.
 Sec. 103. Acquisition of Pueblo water supply for the Regional Water System.
 Sec. 104. Delivery and allocation of Regional Water System capacity and water.
 Sec. 105. Aamodt Settlement Pueblos' Fund.
 Sec. 106. Environmental compliance.
 Sec. 107. Authorization of appropriations.

TITLE II—POJOAQUE BASIN INDIAN WATER RIGHTS
 SETTLEMENT

- Sec. 201. Settlement Agreement and contract approval.
 Sec. 202. Environmental compliance.
 Sec. 203. Conditions precedent and enforcement date.
 Sec. 204. Waivers and releases.
 Sec. 205. Effect.

1 **SEC. 2. DEFINITIONS.**

2 In this Act:

3 (1) AAMODT CASE.—The term “Aamodt Case”
 4 means the civil action entitled State of New Mexico,
 5 ex rel. State Engineer and United States of Amer-
 6 ica, Pueblo de Nambe, Pueblo de Pojoaque, Pueblo
 7 de San Ildefonso, and Pueblo de Tesuque v. R. Lee
 8 Aamodt, et al., No. 66 CV 6639 MV/LCS (D.N.M.).

9 (2) ACRE-FEET.—The term “acre-feet” means
 10 acre-feet of water per year.

11 (3) AUTHORITY.—The term “Authority” means
 12 the Pojoaque Basin Regional Water Authority de-
 13 scribed in section 9.5 of the Settlement Agreement
 14 or an alternate entity acceptable to the Pueblos and
 15 the County to operate and maintain the diversion
 16 and treatment facilities, certain transmission pipe-

1 lines, and other facilities of the Regional Water Sys-
2 tem.

3 (4) CITY.—The term “City” means the city of
4 Santa Fe, New Mexico.

5 (5) COST-SHARING AND SYSTEM INTEGRATION
6 AGREEMENT.—The term “Cost-Sharing and System
7 Integration Agreement” means the agreement to be
8 executed by the United States, the State, the Pueb-
9 los, the County, and the City that—

10 (A) describes the location, capacity, and
11 management (including the distribution of
12 water to customers) of the Regional Water Sys-
13 tem; and

14 (B) allocates the costs of the Regional
15 Water System with respect to—

16 (i) the construction, operation, main-
17 tenance, and repair of the Regional Water
18 System;

19 (ii) rights-of-way for the Regional
20 Water System; and

21 (iii) the acquisition of water rights.

22 (6) COUNTY.—The term “County” means
23 Santa Fe County, New Mexico.

24 (7) COUNTY DISTRIBUTION SYSTEM.—The term
25 “County Distribution System” means the portion of

1 the Regional Water System that serves water cus-
2 tomers on non-Pueblo land in the Pojoaque Basin.

3 (8) COUNTY WATER UTILITY.—The term
4 “County Water Utility” means the water utility or-
5 ganized by the County to—

6 (A) receive water distributed by the Au-
7 thority; and

8 (B) provide the water received under sub-
9 paragraph (A) to customers on non-Pueblo land
10 in the Pojoaque Basin.

11 (9) ENGINEERING REPORT.—The term “Engi-
12 neering Report” means the report entitled
13 “Pojoaque Regional Water System Engineering Re-
14 port” dated September 2008 and any amendments
15 thereto, including any modifications which may be
16 required by section 101(d)(2).

17 (10) FUND.—The term “Fund” means the
18 Aamodt Settlement Pueblos’ Fund established by
19 section 105(a).

20 (11) OPERATING AGREEMENT.—The term “Op-
21 erating Agreement” means the agreement between
22 the Pueblos and the County executed under section
23 102(a).

24 (12) OPERATIONS, MAINTENANCE, AND RE-
25 PLACEMENT COSTS.—

1 (A) IN GENERAL.—The term “operations,
2 maintenance, and replacement costs” means all
3 costs for the operation of the Regional Water
4 System that are necessary for the safe, effi-
5 cient, and continued functioning of the Regional
6 Water System to produce the benefits described
7 in the Settlement Agreement.

8 (B) EXCLUSION.—The term “operations,
9 maintenance, and replacement costs” does not
10 include construction costs or costs related to
11 construction design and planning.

12 (13) POJOAQUE BASIN.—

13 (A) IN GENERAL.—The term “Pojoaque
14 Basin” means the geographic area limited by a
15 surface water divide (which can be drawn on a
16 topographic map), within which area rainfall
17 and runoff flow into arroyos, drainages, and
18 named tributaries that eventually drain to—

19 (i) the Rio Pojoaque; or

20 (ii) the 2 unnamed arroyos imme-
21 diately south; and

22 (iii) 2 arroyos (including the Arroyo
23 Alamo) that are north of the confluence of
24 the Rio Pojoaque and the Rio Grande.

1 (B) INCLUSION.—The term “Pojoaque
2 Basin” includes the San Ildefonso Eastern Res-
3 ervation recognized by section 8 of Public Law
4 87–231 (75 Stat. 505).

5 (14) PUEBLO.—The term “Pueblo” means each
6 of the pueblos of Nambe, Pojoaque, San Ildefonso,
7 or Tesuque.

8 (15) PUEBLOS.—The term “Pueblos” means
9 collectively the Pueblos of Nambe, Pojoaque, San
10 Ildefonso, and Tesuque.

11 (16) PUEBLO LAND.—The term “Pueblo land”
12 means any real property that is—

13 (A) held by the United States in trust for
14 a Pueblo within the Pojoaque Basin;

15 (B)(i) owned by a Pueblo within the
16 Pojoaque Basin before the date on which a
17 court approves the Settlement Agreement; or

18 (ii) acquired by a Pueblo on or after the
19 date on which a court approves the Settlement
20 Agreement, if the real property is located—

21 (I) within the exterior boundaries of
22 the Pueblo, as recognized and conformed
23 by a patent issued under the Act of De-
24 cember 22, 1858 (11 Stat. 374, chapter
25 V); or

1 (II) within the exterior boundaries of
2 any territory set aside for the Pueblo by
3 law, executive order, or court decree;

4 (C) owned by a Pueblo or held by the
5 United States in trust for the benefit of a
6 Pueblo outside the Pojoaque Basin that is lo-
7 cated within the exterior boundaries of the
8 Pueblo as recognized and confirmed by a patent
9 issued under the Act of December 22, 1858 (11
10 Stat. 374, chapter V); or

11 (D) within the exterior boundaries of any
12 real property located outside the Pojoaque
13 Basin set aside for a Pueblo by law, executive
14 order, or court decree, if the land is within or
15 contiguous to land held by the United States in
16 trust for the Pueblo as of January 1, 2005.

17 (17) PUEBLO WATER FACILITY.—

18 (A) IN GENERAL.—The term “Pueblo
19 Water Facility” means—

20 (i) a portion of the Regional Water
21 System that serves only water customers
22 on Pueblo land; and

23 (ii) portions of a Pueblo water system
24 in existence on the date of enactment of
25 this Act that serve water customers on

1 non-Pueblo land, also in existence on the
2 date of enactment of this Act, or their suc-
3 cessors, that are—

4 (I) depicted in the final project
5 design, as modified by the drawings
6 reflecting the completed Regional
7 Water System; and

8 (II) described in the Operating
9 Agreement.

10 (B) INCLUSIONS.—The term “Pueblo
11 Water Facility” includes—

12 (i) the barrier dam and infiltration
13 project on the Rio Pojoaque described in
14 the Engineering Report; and

15 (ii) the Tesuque Pueblo infiltration
16 pond described in the Engineering Report.

17 (18) REGIONAL WATER SYSTEM.—

18 (A) IN GENERAL.—The term “Regional
19 Water System” means the Regional Water Sys-
20 tem described in section 101(a).

21 (B) EXCLUSIONS.—The term “Regional
22 Water System” does not include the County or
23 Pueblo water supply delivered through the Re-
24 gional Water System.

1 (19) SAN JUAN-CHAMA PROJECT.—The term
2 “San Juan-Chama Project” means the Project au-
3 thorized by section 8 of the Act of June 13, 1962
4 (76 Stat. 96, 97), and the Act of April 11, 1956 (70
5 Stat. 105).

6 (20) SAN JUAN-CHAMA PROJECT ACT.—The
7 term “San Juan-Chama Project Act” means sections
8 8 through 18 of the Act of June 13, 1962 (76 Stat.
9 96, 97).

10 (21) SECRETARY.—The term “Secretary”
11 means the Secretary of the Interior.

12 (22) SETTLEMENT AGREEMENT.—The term
13 “Settlement Agreement” means the stipulated and
14 binding agreement among the State, the Pueblos,
15 the United States, the County, and the City dated
16 January 19, 2006, and signed by all of the govern-
17 ment parties to the Settlement Agreement (other
18 than the United States) on May 3, 2006, and as
19 amended in conformity with this Act.

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

1 **TITLE I—POJOAQUE BASIN**
2 **REGIONAL WATER SYSTEM**

3 **SEC. 101. AUTHORIZATION OF REGIONAL WATER SYSTEM.**

4 (a) IN GENERAL.—The Secretary, acting through the
5 Commissioner of Reclamation, shall plan, design, and con-
6 struct a regional water system in accordance with the Set-
7 tlement Agreement, to be known as the “Regional Water
8 System”—

9 (1) to divert and distribute water to the Pueb-
10 los and to the County Water Utility, in accordance
11 with the Engineering Report; and

12 (2) that consists of—

13 (A) surface water diversion facilities at
14 San Ildefonso Pueblo on the Rio Grande; and

15 (B) any treatment, transmission, storage
16 and distribution facilities and wellfields for the
17 County Distribution System and Pueblo Water
18 Facilities that are necessary to supply 4,000
19 acre-feet of water within the Pojoaque Basin,
20 unless modified in accordance with subsection
21 (d)(2).

22 (b) FINAL PROJECT DESIGN.—The Secretary shall
23 issue a final project design within 90 days of completion
24 of the environmental compliance described in section 106
25 for the Regional Water System that—

1 (1) is consistent with the Engineering Report;
2 and

3 (2) includes a description of any Pueblo Water
4 Facilities.

5 (c) ACQUISITION OF LAND; WATER RIGHTS.—

6 (1) ACQUISITION OF LAND.—Upon request, and
7 in exchange for the funding which shall be provided
8 in section 107(c), the Pueblos shall consent to the
9 grant of such easements and rights-of-way as may
10 be necessary for the construction of the Regional
11 Water System at no cost to the Secretary. To the
12 extent that the State or County own easements or
13 rights-of-way that may be used for construction of
14 the Regional Water System, the State or County
15 shall provide that land or interest in land as nec-
16 essary for construction at no cost to the Secretary.
17 The Secretary shall acquire any other land or inter-
18 est in land that is necessary for the construction of
19 the Regional Water System.

20 (2) WATER RIGHTS.—The Secretary shall not
21 condemn water rights for purposes of the Regional
22 Water System.

23 (d) CONDITIONS FOR CONSTRUCTION.—

1 (1) IN GENERAL.—The Secretary shall not
2 begin construction of the Regional Water System fa-
3 cilities until the date on which—

4 (A) the Secretary executes—

5 (i) the Settlement Agreement; and

6 (ii) the Cost-Sharing and System In-
7 tegration Agreement; and

8 (B) the State and the County have entered
9 into an agreement with the Secretary to con-
10 tribute the non-Federal share of the costs of the
11 construction in accordance with the Cost-Shar-
12 ing and System Integration Agreement.

13 (2) MODIFICATIONS TO REGIONAL WATER SYS-
14 TEM.—

15 (A) IN GENERAL.—The State and the
16 County, in agreement with the Pueblos, the
17 City, and other signatories to the Cost-Sharing
18 and System Integration Agreement, may modify
19 the extent, size, and capacity of the County
20 Distribution System as set forth in the Cost-
21 Sharing and System Integration Agreement.

22 (B) EFFECT.—A modification under sub-
23 paragraph (A)—

1 (i) shall not affect implementation of
2 the Settlement Agreement so long as the
3 provisions in section 203 are satisfied; and

4 (ii) may result in an adjustment of
5 the State and County cost-share allocation
6 as set forth in the Cost-Sharing and Sys-
7 tem Integration Agreement.

8 (e) APPLICABLE LAW.—The Indian Self-Determina-
9 tion and Education Assistance Act (25 U.S.C. 450 et seq.)
10 shall not apply to the design and construction of the Re-
11 gional Water System.

12 (f) CONSTRUCTION COSTS.—

13 (1) PUEBLO WATER FACILITIES.—

14 (A) IN GENERAL.—Except as provided in
15 subparagraph (B), the expenditures of the Sec-
16 retary to construct the Pueblo Water Facilities
17 under this section shall not exceed
18 \$106,400,000.

19 (B) EXCEPTION.—The amount described
20 in subparagraph (A) shall be increased or de-
21 creased, as appropriate, based on ordinary fluc-
22 tuations in construction costs since October 1,
23 2006, as determined using applicable engineer-
24 ing cost indices.

1 (2) COSTS TO PUEBLO.—The costs incurred by
2 the Secretary in carrying out activities to construct
3 the Pueblo Water Facilities under this section shall
4 not be reimbursable to the United States.

5 (3) COUNTY DISTRIBUTION SYSTEM.—The costs
6 of constructing the County Distribution System shall
7 be at State and local expense.

8 (g) STATE AND LOCAL CAPITAL OBLIGATIONS.—The
9 State and local capital obligations for the Regional Water
10 System described in the Cost-Sharing and System Integra-
11 tion Agreement shall be satisfied on the payment of the
12 State and local capital obligations described in the Cost-
13 Sharing and System Integration Agreement.

14 (h) CONVEYANCE OF REGIONAL WATER SYSTEM FA-
15 CILITIES.—

16 (1) IN GENERAL.—Subject to paragraph (2), on
17 completion of the construction of the Regional Water
18 System, the Secretary, in accordance with the Oper-
19 ating Agreement, shall convey to—

20 (A) each Pueblo the portion of any Pueblo
21 Water Facility that is located within the bound-
22 aries of the Pueblo, including any land or inter-
23 est in land located within the boundaries of the
24 Pueblo that is acquired by the United States

1 for the construction of the Pueblo Water Facil-
2 ity;

3 (B) the County the County Distribution
4 System, including any land or interest in land
5 acquired by the United States for the construc-
6 tion of the County Distribution System; and

7 (C) the Authority any portions of the Re-
8 gional Water System that remain after making
9 the conveyances under subparagraphs (A) and
10 (B), including any land or interest in land ac-
11 quired by the United States for the construc-
12 tion of the portions of the Regional Water Sys-
13 tem.

14 (2) CONDITIONS FOR CONVEYANCE.—The Sec-
15 retary shall not convey any portion of the Regional
16 Water System facilities under paragraph (1) until
17 the date on which—

18 (A) construction of the Regional Water
19 System is complete; and

20 (B) the Operating Agreement is executed
21 in accordance with section 102.

22 (3) SUBSEQUENT CONVEYANCE.—On convey-
23 ance by the Secretary under paragraph (1), the
24 Pueblos, the County, and the Authority shall not re-
25 convey any portion of the Regional Water System

1 conveyed to the Pueblos, the County, and the Au-
2 thority, respectively, unless the reconveyance is au-
3 thorized by an Act of Congress enacted after the
4 date of enactment of this Act.

5 (4) INTEREST OF THE UNITED STATES.—On
6 conveyance of a portion of the Regional Water Sys-
7 tem under paragraph (1), the United States shall
8 have no further right, title, or interest in and to the
9 portion of the Regional Water System conveyed.

10 (5) ADDITIONAL CONSTRUCTION.—On convey-
11 ance of a portion of the Regional Water System
12 under paragraph (1), the Pueblos, County, or the
13 Authority, as applicable, may, at the expense of the
14 Pueblos, County, or the Authority, construct any ad-
15 ditional infrastructure that is necessary to fully use
16 the water delivered by the Regional Water System.

17 (6) LIABILITY.—

18 (A) IN GENERAL.—Effective on the date of
19 conveyance of any land or facility under this
20 section, the United States shall not be held lia-
21 ble by any court for damages of any kind aris-
22 ing out of any act, omission, or occurrence re-
23 lating to the land and facilities conveyed, other
24 than damages caused by acts of negligence by
25 the United States, or by employees or agents of

1 the United States, prior to the date of convey-
2 ance.

3 (B) TORT CLAIMS.—Nothing in this sec-
4 tion increases the liability of the United States
5 beyond the liability provided in chapter 171 of
6 title 28, United States Code (commonly known
7 as the “Federal Tort Claims Act”).

8 (7) EFFECT.—Nothing in any transfer of own-
9 ership provided or any conveyance thereto as pro-
10 vided in this section shall extinguish the right of any
11 Pueblo, the County, or the Regional Water Author-
12 ity to the continuous use and benefit of each ease-
13 ment or right of way for the use, operation, mainte-
14 nance, repair, and replacement of Pueblo Water Fa-
15 cilities, the County Distribution System or the Re-
16 gional Water System or for wastewater purposes as
17 provided in the Cost-Sharing and System Integra-
18 tion Agreement.

19 **SEC. 102. OPERATING AGREEMENT.**

20 (a) IN GENERAL.—The Pueblos and the County shall
21 submit to the Secretary an executed Operating Agreement
22 for the Regional Water System that is consistent with this
23 Act, the Settlement Agreement, and the Cost-Sharing and
24 System Integration Agreement not later than 180 days
25 after the later of—

1 (1) the date of completion of environmental
2 compliance and permitting; or

3 (2) the date of issuance of a final project design
4 for the Regional Water System under section
5 101(b).

6 (b) APPROVAL.—Not later than 180 days after re-
7 ceipt of the operating agreement described in subsection
8 (a), the Secretary shall approve the Operating Agreement
9 upon determination that the Operating Agreement is con-
10 sistent with this Act, the Settlement Agreement, and the
11 Cost-Sharing and System Integration Agreement.

12 (c) CONTENTS.—The Operating Agreement shall in-
13 clude—

14 (1) provisions consistent with the Settlement
15 Agreement and the Cost-Sharing and System Inte-
16 gration Agreement and necessary to implement the
17 intended benefits of the Regional Water System de-
18 scribed in those documents;

19 (2) provisions for—

20 (A) the distribution of water conveyed
21 through the Regional Water System, including
22 a delineation of—

23 (i) distribution lines for the County
24 Distribution System;

1 (ii) distribution lines for the Pueblo
2 Water Facilities; and

3 (iii) distribution lines that serve
4 both—

5 (I) the County Distribution Sys-
6 tem; and

7 (II) the Pueblo Water Facilities;

8 (B) the allocation of the Regional Water
9 System capacity;

10 (C) the terms of use of unused water ca-
11 pacity in the Regional Water System;

12 (D) the construction of additional infra-
13 structure and the acquisition of associated
14 rights-of-way or easements necessary to enable
15 any of the Pueblos or the County to fully use
16 water allocated to the Pueblos or the County
17 from the Regional Water System, including pro-
18 visions addressing when the construction of
19 such additional infrastructure requires approval
20 by the Authority;

21 (E) the allocation and payment of annual
22 operation, maintenance, and replacement costs
23 for the Regional Water System, including the
24 portions of the Regional Water System that are
25 used to treat, transmit, and distribute water to

1 both the Pueblo Water Facilities and the Coun-
2 ty Water Utility;

3 (F) the operation of wellfields located on
4 Pueblo land;

5 (G) the transfer of any water rights nec-
6 essary to provide the Pueblo water supply de-
7 scribed in section 103(a);

8 (H) the operation of the Regional Water
9 System with respect to the water supply, includ-
10 ing the allocation of the water supply in accord-
11 ance with section 3.1.8.4.2 of the Settlement
12 Agreement so that, in the event of a shortage
13 of supply to the Regional Water System, the
14 supply to each of the Pueblos' and to the Coun-
15 ty's distribution system shall be reduced on a
16 prorata basis, in proportion to each distribution
17 system's most current annual use; and

18 (I) dispute resolution; and

19 (3) provisions for operating and maintaining
20 the Regional Water System facilities before and
21 after conveyance under section 101(h), including
22 provisions to—

23 (A) ensure that—

24 (i) the operation of, and the diversion
25 and conveyance of water by, the Regional

1 Water System is in accordance with the
2 Settlement Agreement;

3 (ii) the wells in the Regional Water
4 System are used in conjunction with the
5 surface water supply of the Regional
6 Water System to ensure a reliable firm
7 supply of water to all users of the Regional
8 Water System, consistent with the intent
9 of the Settlement Agreement that surface
10 supplies will be used to the maximum ex-
11 tent feasible;

12 (iii) the respective obligations regard-
13 ing delivery, payment, operation, and man-
14 agement are enforceable; and

15 (iv) the County has the right to serve
16 any new water users located on non-Pueblo
17 land in the Pojoaque Basin; and

18 (B) allow for any aquifer storage and re-
19 covery projects that are approved by the Office
20 of the New Mexico State Engineer.

21 (d) EFFECT.—Nothing in this Act precludes the Op-
22 erating Agreement from authorizing phased or interim op-
23 erations if the Regional Water System is constructed in
24 phases.

1 **SEC. 103. ACQUISITION OF PUEBLO WATER SUPPLY FOR**
2 **THE REGIONAL WATER SYSTEM.**

3 (a) IN GENERAL.—For the purpose of providing a
4 reliable firm supply of water from the Regional Water Sys-
5 tem for the Pueblos in accordance with the Settlement
6 Agreement, the Secretary, on behalf of the Pueblos,
7 shall—

8 (1) acquire water rights to—

9 (A) 302 acre-feet of Nambe reserved water
10 described in section 2.6.2 of the Settlement
11 Agreement pursuant to section 107(c)(1)(C);
12 and

13 (B) 1141 acre-feet from water acquired by
14 the County for water rights commonly referred
15 to as “Top of the World” rights in the Aamodt
16 Case;

17 (2) enter into a contract with the Pueblos for
18 1,079 acre-feet in accordance with section 11 of the
19 San Juan-Chama Project Act; and

20 (3) by application to the State Engineer, seek
21 approval to divert the water acquired and made
22 available under paragraphs (1) and (2) at the points
23 of diversion for the Regional Water System, con-
24 sistent with the Settlement Agreement and the Cost-
25 Sharing and System Integration Agreement.

1 (b) FORFEITURE.—The nonuse of the water supply
2 secured by the Secretary for the Pueblos under subsection
3 (a) shall in no event result in forfeiture, abandonment, re-
4 linquishment, or other loss thereof.

5 (c) TRUST.—The Pueblo water supply secured under
6 subsection (a) shall be held by the United States in trust
7 for the Pueblos.

8 (d) APPLICABLE LAW.—The water supply made
9 available pursuant to subsection (a)(2) shall be subject to
10 the San Juan-Chama Project Act, and no preference shall
11 be provided to the Pueblos as a result of subsection (c)
12 with regard to the delivery or distribution of San Juan-
13 Chama Project water or the management or operation of
14 the San Juan-Chama Project.

15 (e) CONTRACT FOR SAN JUAN-CHAMA PROJECT
16 WATER SUPPLY.—With respect to the contract for the
17 water supply required by subsection (a)(2), such San
18 Juan-Chama Project contract shall be pursuant to the fol-
19 lowing terms:

20 (1) WAIVERS.—Notwithstanding the provisions
21 of the San Juan-Chama Project Act, or any other
22 provision of law—

23 (A) the Secretary shall waive the entirety
24 of the Pueblos' share of the construction costs
25 for the San Juan-Chama Project, and pursuant

1 to that waiver, the Pueblos' share of all con-
2 struction costs for the San Juan-Chama
3 Project, inclusive of both principal and interest,
4 due from 1972 to the execution of the contract
5 required by subsection (a)(2), shall be nonreim-
6 bursable;

7 (B) the Secretary's waiver of each Pueblo's
8 share of the construction costs for the San
9 Juan-Chama Project will not result in an in-
10 crease in the pro rata shares of other San
11 Juan-Chama Project water contractors, but
12 such costs shall be absorbed by the United
13 States Treasury or otherwise appropriated to
14 the Department of the Interior; and

15 (C) the costs associated with any water
16 made available from the San Juan-Chama
17 Project which were determined nonreimbursable
18 and nonreturnable pursuant to Public Law No.
19 88-293, 78 Stat. 171 (March 26, 1964), shall
20 remain nonreimbursable and nonreturnable.

21 (2) TERMINATION.—The contract shall provide
22 that it shall terminate only upon the following condi-
23 tions—

24 (A) failure of the United States District
25 Court for the District of New Mexico to enter

1 a final decree for the Aamodt Case by Decem-
2 ber 15, 2012, or within the time period of any
3 extension of that deadline granted by the court;
4 or

5 (B) entry of an order by the United States
6 District Court for the District of New Mexico
7 voiding the final decree and Settlement Agree-
8 ment for the Aamodt Case pursuant to section
9 10.3 of the Settlement Agreement.

10 (f) LIMITATION.—The Secretary shall use the water
11 supply secured under subsection (a) only for the purposes
12 described in the Settlement Agreement.

13 (g) FULFILLMENT OF WATER SUPPLY ACQUISITION
14 OBLIGATIONS.—Compliance with subsections (a) through
15 (f) shall satisfy any and all obligations of the Secretary
16 to acquire or secure a water supply for the Pueblos pursu-
17 ant to the Settlement Agreement.

18 (h) RIGHTS OF PUEBLOS IN SETTLEMENT AGREE-
19 MENT UNAFFECTED.—Notwithstanding the provisions of
20 subsections (a) through (g), the Pueblos, the County or
21 the Regional Water Authority may acquire any additional
22 water rights to ensure all parties to the Settlement Agree-
23 ment receive the full allocation of water provided by the
24 Settlement Agreement and nothing in this Act amends or

1 modifies the quantities of water allocated to the Pueblos
2 thereunder.

3 **SEC. 104. DELIVERY AND ALLOCATION OF REGIONAL**
4 **WATER SYSTEM CAPACITY AND WATER.**

5 (a) ALLOCATION OF REGIONAL WATER SYSTEM CA-
6 PACITY.—

7 (1) IN GENERAL.—The Regional Water System
8 shall have the capacity to divert from the Rio
9 Grande a quantity of water sufficient to provide—

10 (A) up to 4,000 acre-feet of consumptive
11 use of water; and

12 (B) the requisite peaking capacity de-
13 scribed in—

14 (i) the Engineering Report; and

15 (ii) the final project design.

16 (2) ALLOCATION TO THE PUEBLOS AND COUN-
17 TY WATER UTILITY.—Of the capacity described in
18 paragraph (1)—

19 (A) there shall be allocated to the Pueb-
20 los—

21 (i) sufficient capacity for the convey-
22 ance of 2,500 acre-feet consumptive use;
23 and

1 (ii) the requisite peaking capacity for
2 the quantity of water described in clause
3 (i); and

4 (B) there shall be allocated to the County
5 Water Utility—

6 (i) sufficient capacity for the convey-
7 ance of up to 1,500 acre-feet consumptive
8 use; and

9 (ii) the requisite peaking capacity for
10 the quantity of water described in clause
11 (i).

12 (3) APPLICABLE LAW.—Water shall be allo-
13 cated to the Pueblos and the County Water Utility
14 under this subsection in accordance with—

15 (A) this title;

16 (B) the Settlement Agreement; and

17 (C) the Operating Agreement.

18 (b) DELIVERY OF REGIONAL WATER SYSTEM
19 WATER.—The Authority shall deliver water from the Re-
20 gional Water System—

21 (1) to the Pueblos water in a quantity sufficient
22 to allow full consumptive use of up to 2,500 acre-
23 feet per year of water rights by the Pueblos in ac-
24 cordance with—

25 (A) the Settlement Agreement;

1 (B) the Operating Agreement; and

2 (C) this title; and

3 (2) to the County water in a quantity sufficient
4 to allow full consumptive use of up to 1,500 acre-
5 feet per year of water rights by the County Water
6 Utility in accordance with—

7 (A) the Settlement Agreement;

8 (B) the Operating Agreement; and

9 (C) this title.

10 (c) ADDITIONAL USE OF ALLOCATION QUANTITY
11 AND UNUSED CAPACITY.—The Regional Water System
12 may be used to—

13 (1) provide for use of return flow credits to
14 allow for full consumptive use of the water allocated
15 in the Settlement Agreement to each of the Pueblos
16 and to the County; and

17 (2) convey water allocated to one of the Pueblos
18 or the County Water Utility for the benefit of an-
19 other Pueblo or the County Water Utility or allow
20 use of unused capacity by each other through the
21 Regional Water System in accordance with an inter-
22 governmental agreement between the Pueblos, or be-
23 tween a Pueblo and County Water Utility, as appli-
24 cable, if—

1 (A) such intergovernmental agreements are
2 consistent with the Operating Agreement, the
3 Settlement Agreement, and this Act;

4 (B) capacity is available without reducing
5 water delivery to any Pueblo or the County
6 Water Utility in accordance with the Settlement
7 Agreement, unless the County Water Utility or
8 Pueblo contracts for a reduction in water deliv-
9 ery or Regional Water System capacity;

10 (C) the Pueblo or County Water Utility
11 contracting for use of the unused capacity or
12 water has the right to use the water under ap-
13 plicable law; and

14 (D) any agreement for the use of unused
15 capacity or water provides for payment of the
16 operation, maintenance, and replacement costs
17 associated with the use of capacity or water.

18 **SEC. 105. AAMODT SETTLEMENT PUEBLOS' FUND.**

19 (a) ESTABLISHMENT OF THE AAMODT SETTLEMENT
20 PUEBLOS' FUND.—There is established in the Treasury
21 of the United States a fund, to be known as the “Aamodt
22 Settlement Pueblos' Fund,” consisting of—

23 (1) such amounts as are made available to the
24 Fund under section 107(c) or other authorized
25 sources; and

1 (2) any interest earned from investment of
2 amounts in the Fund under subsection (b).

3 (b) MANAGEMENT OF THE FUND.—The Secretary
4 shall manage the Fund, invest amounts in the Fund, and
5 make amounts available from the Fund for distribution
6 to the Pueblos in accordance with—

7 (1) the American Indian Trust Fund Manage-
8 ment Reform Act of 1994 (25 U.S.C. 4001 et seq.);
9 and

10 (2) this Act.

11 (c) INVESTMENT OF THE FUND.—On the date set
12 forth in section 203(a)(1), the Secretary shall invest
13 amounts in the Fund in accordance with—

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

15 (2) the first section of the Act of June 24,
16 1938 (25 U.S.C. 162a); and

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

19 (d) TRIBAL MANAGEMENT PLAN.—

20 (1) IN GENERAL.—A Pueblo may withdraw all
21 or part of the Pueblo’s portion of the Fund on ap-
22 proval by the Secretary of a tribal management plan
23 as described in the American Indian Trust Fund
24 Management Reform Act of 1994 (25 U.S.C. 4001
25 et seq.).

1 (2) REQUIREMENTS.—In addition to the re-
2 quirements under the American Indian Trust Fund
3 Management Reform Act of 1994 (25 U.S.C. 4001
4 et seq.), the tribal management plan shall require
5 that a Pueblo spend any amounts withdrawn from
6 the Fund in accordance with the purposes described
7 in section 107(c).

8 (3) ENFORCEMENT.—The Secretary may take
9 judicial or administrative action to enforce the provi-
10 sions of any tribal management plan to ensure that
11 any amounts withdrawn from the Fund under an
12 approved tribal management plan are used in ac-
13 cordance with this title.

14 (4) LIABILITY.—If a Pueblo or the Pueblos ex-
15 ercise the right to withdraw amounts from the
16 Fund, neither the Secretary nor the Secretary of the
17 Treasury shall retain any liability for the expendi-
18 ture or investment of the amounts withdrawn.

19 (5) EXPENDITURE PLAN.—

20 (A) IN GENERAL.—The Pueblos shall sub-
21 mit to the Secretary for approval an expendi-
22 ture plan for any portion of the amounts in the
23 Fund that the Pueblos do not withdraw under
24 this subsection.

1 (B) DESCRIPTION.—The expenditure plan
2 shall describe the manner in which, and the
3 purposes for which, amounts remaining in the
4 Fund will be used.

5 (C) APPROVAL.—On receipt of an expendi-
6 ture plan under subparagraph (A), the Sec-
7 retary shall approve the plan if the Secretary
8 determines that the plan is reasonable and con-
9 sistent with this Act, the Settlement Agree-
10 ment, and the Cost-Sharing and System Inte-
11 gration Agreement.

12 (D) ANNUAL REPORT.—The Pueblos shall
13 submit to the Secretary an annual report that
14 describes all expenditures from the Fund during
15 the year covered by the report.

16 (6) NO PER CAPITA PAYMENTS.—No part of
17 the principal of the Fund, or the interest or income
18 accruing on the principal shall be distributed to any
19 member of a Pueblo on a per capita basis.

20 (7) AVAILABILITY OF AMOUNTS FROM THE
21 FUND.—

22 (A) APPROVAL OF SETTLEMENT AGREE-
23 MENT.—Amounts made available under sub-
24 paragraphs (A) and (C) of section 107(c)(1) or
25 from other authorized sources shall be available

1 for expenditure or withdrawal only after the
2 date on which the United States District Court
3 for the District of New Mexico issues an order
4 approving the Settlement Agreement.

5 (B) COMPLETION OF CERTAIN PORTIONS
6 OF REGIONAL WATER SYSTEM.—Amounts made
7 available under section 107(c)(1)(B) or from
8 other authorized sources shall be available for
9 expenditure or withdrawal only after those por-
10 tions of the Regional Water System described
11 in section 1.5.24 of the Settlement Agreement
12 have been declared substantially complete by
13 the Secretary.

14 (C) FAILURE TO FULFILL CONDITIONS
15 PRECEDENT.—If the conditions precedent in
16 section 203 have not been fulfilled by Sep-
17 tember 15, 2017, the United States shall be en-
18 titled to set off any funds expended or with-
19 drawn from the amounts appropriated pursuant
20 to section 107(c), together with any interest ac-
21 crued, against any claims asserted by the Pueb-
22 los against the United States relating to the
23 water rights in the Pojoaque Basin.

1 **SEC. 106. ENVIRONMENTAL COMPLIANCE.**

2 (a) IN GENERAL.—In carrying out this title, the Sec-
3 retary shall comply with each law of the Federal Govern-
4 ment relating to the protection of the environment, includ-
5 ing—

6 (1) the National Environmental Policy Act of
7 1969 (42 U.S.C. 4321 et seq.); and

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

10 (b) NATIONAL ENVIRONMENTAL POLICY ACT.—

11 Nothing in this Act affects the outcome of any analysis
12 conducted by the Secretary or any other Federal official
13 under the National Environmental Policy Act of 1969 (42
14 U.S.C. 4321 et seq.).

15 **SEC. 107. AUTHORIZATION OF APPROPRIATIONS.**

16 (a) REGIONAL WATER SYSTEM.—

17 (1) IN GENERAL.—Subject to paragraph (4),
18 there is authorized to be appropriated to the Sec-
19 retary for the planning, design, and construction of
20 the Regional Water System and the conduct of envi-
21 ronmental compliance activities under section 106 an
22 amount not to exceed \$106,400,000, as adjusted
23 under paragraph (3), for the period of fiscal years
24 2010 through 2022, to remain available until ex-
25 pended.

1 (2) PRIORITY OF FUNDING.—Of the amounts
2 authorized under paragraph (1), the Secretary shall
3 give priority to funding—

4 (A) the construction of the San Ildefonso
5 portion of the Regional Water System, con-
6 sisting of—

7 (i) the surface water diversion, treat-
8 ment, and transmission facilities at San
9 Ildefonso Pueblo; and

10 (ii) the San Ildefonso Pueblo portion
11 of the Pueblo Water Facilities; and

12 (B) that part of the Regional Water Sys-
13 tem providing 475 acre-feet to Pojoaque Pueblo
14 pursuant to section 2.2 of the Settlement
15 Agreement.

16 (3) ADJUSTMENT.—The amount authorized
17 under paragraph (1) shall be adjusted annually to
18 account for increases in construction costs since Oc-
19 tober 1, 2006, as determined using applicable engi-
20 neering cost indices.

21 (4) LIMITATIONS.—

22 (A) IN GENERAL.—No amounts shall be
23 made available under paragraph (1) for the
24 construction of the Regional Water System
25 until the date on which the United States Dis-

1 trict Court for the District of New Mexico
2 issues an order approving the Settlement Agree-
3 ment.

4 (B) RECORD OF DECISION.—No amounts
5 made available under paragraph (1) shall be ex-
6 pended unless the record of decision issued by
7 the Secretary after completion of an environ-
8 mental impact statement provides for a pre-
9 ferred alternative that is in substantial compli-
10 ance with the proposed Regional Water System,
11 as defined in the Engineering Report.

12 (b) ACQUISITION OF WATER RIGHTS.—There is au-
13 thorized to be appropriated to the Secretary funds for the
14 acquisition of the water rights under section
15 103(a)(1)(B)—

16 (1) in the amount of \$5,400,000.00 if such ac-
17 quisition is completed by December 31, 2010; and

18 (2) the amount authorized under paragraph
19 (b)(1) shall be adjusted according to the CPI Urban
20 Index commencing January 1, 2011.

21 (c) AAMODT SETTLEMENT PUEBLOS' FUND.—

22 (1) IN GENERAL.—There is authorized to be
23 appropriated to the Fund the following amounts for
24 the period of fiscal years 2010 through 2022:

1 (A) \$15,000,000, which shall be allocated
2 to the Pueblos, in accordance with section 2.7.1
3 of the Settlement Agreement, for the rehabilita-
4 tion, improvement, operation, maintenance, and
5 replacement of the agricultural delivery facili-
6 ties, waste water systems, and other water-re-
7 lated infrastructure of the applicable Pueblo.
8 The amount authorized herein shall be adjusted
9 according to the CPI Urban Index commencing
10 October 1, 2006.

11 (B) \$37,500,000, which shall be allocated
12 to an account, to be established not later than
13 January 1, 2016, to assist the Pueblos in pay-
14 ing the Pueblos' share of the cost of operating,
15 maintaining, and replacing the Pueblo Water
16 Facilities and the Regional Water System.

17 (C) \$5,000,000 and any interest thereon,
18 which shall be allocated to the Pueblo of Nambe
19 for the acquisition of the Nambe reserved water
20 rights in accordance with section 103(a)(1)(A).
21 The amount authorized herein shall be adjusted
22 according to the CPI Urban Index commencing
23 January 1, 2011. The funds provided under
24 this section may be used by the Pueblo of
25 Nambe only for the acquisition of land, other

1 real property interests, or economic develop-
2 ment.

3 (2) OPERATION, MAINTENANCE, AND REPLACE-
4 MENT COSTS.—

5 (A) IN GENERAL.—Prior to conveyance of
6 the Regional Water System pursuant to section
7 101, the Secretary is authorized to and shall
8 pay any operation, maintenance or replacement
9 costs associated with the Pueblo Water Facili-
10 ties or the Regional Water System up to an
11 amount that does not exceed \$5,000,000, which
12 is authorized to be appropriated to the Sec-
13 retary.

14 (B) OBLIGATION OF FEDERAL GOVERN-
15 MENT AFTER COMPLETION.—The amount au-
16 thorized under subparagraph (A) shall expire
17 after the date on which construction of the Re-
18 gional Water System is completed and the
19 amounts required to be deposited in the account
20 have been deposited under this section by the
21 Federal Government.

1 **TITLE II—POJOAQUE BASIN IN-**
2 **DIAN WATER RIGHTS SETTLE-**
3 **MENT**

4 **SEC. 201. SETTLEMENT AGREEMENT AND CONTRACT AP-**
5 **PROVAL.**

6 (a) APPROVAL.—To the extent the Settlement Agree-
7 ment and the Cost-Sharing and System Integration Agree-
8 ment do not conflict with this Act, the Settlement Agree-
9 ment and the Cost-Sharing and System Integration Agree-
10 ment (including any amendments to the Settlement Agree-
11 ment and the Cost-Sharing and System Integration Agree-
12 ment that are executed to make the Settlement Agreement
13 or the Cost-Sharing and System Integration Agreement
14 consistent with this Act) are authorized, ratified, and con-
15 firmed.

16 (b) EXECUTION.—To the extent the Settlement
17 Agreement and the Cost-Sharing and System Integration
18 Agreement do not conflict with this Act, the Secretary
19 shall execute the Settlement Agreement and the Cost-
20 Sharing and System Integration Agreement (including
21 any amendments that are necessary to make the Settle-
22 ment Agreement or the Cost-Sharing and System Integra-
23 tion Agreement consistent with this Act).

24 (c) AUTHORITIES OF THE PUEBLOS.—

1 (1) IN GENERAL.—Each of the Pueblos may
2 enter into contracts to lease or exchange water
3 rights or to forbear undertaking new or expanded
4 water uses for water rights recognized in section 2.1
5 of the Settlement Agreement for use within the
6 Pojoaque Basin in accordance with the other limita-
7 tions of section 2.1.5 of the Settlement Agreement
8 provided that section 2.1.5 is amended accordingly.

9 (2) EXECUTION.—The Secretary shall not exe-
10 cute the Settlement Agreement until such amend-
11 ment is accomplished under paragraph (1).

12 (3) APPROVAL BY SECRETARY.—Consistent
13 with the Settlement Agreement as amended under
14 paragraph (1), the Secretary shall approve or dis-
15 approve a lease entered into under paragraph (1).

16 (4) PROHIBITION ON PERMANENT ALIEN-
17 ATION.—No lease or contract under paragraph (1)
18 shall be for a term exceeding 99 years, nor shall any
19 such lease or contract provide for permanent alien-
20 ation of any portion of the water rights made avail-
21 able to the Pueblos under the Settlement Agreement.

22 (5) APPLICABLE LAW.—Section 2116 of the Re-
23 vised Statutes (25 U.S.C. 177) shall not apply to
24 any lease or contract entered into under paragraph
25 (1).

1 (6) LEASING OR MARKETING OF WATER SUP-
2 PLY.—The water supply provided on behalf of the
3 Pueblos pursuant to section 103(a)(1) may only be
4 leased or marketed by any of the Pueblos pursuant
5 to the intergovernmental agreements described in
6 section 104(c)(2).

7 (d) AMENDMENTS TO CONTRACTS.—The Secretary
8 shall amend the contracts relating to the Nambe Falls
9 Dam and Reservoir that are necessary to use water sup-
10 plied from the Nambe Falls Dam and Reservoir in accord-
11 ance with the Settlement Agreement.

12 **SEC. 202. ENVIRONMENTAL COMPLIANCE.**

13 (a) EFFECT OF EXECUTION OF SETTLEMENT
14 AGREEMENT.—The execution of the Settlement Agree-
15 ment under section 201(b) shall not constitute a major
16 Federal action under the National Environmental Policy
17 Act of 1969 (42 U.S.C. 4321 et seq.).

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

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

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

1 **SEC. 203. CONDITIONS PRECEDENT AND ENFORCEMENT**

2 **DATE.**

3 (a) CONDITIONS PRECEDENT.—

4 (1) IN GENERAL.—Upon the fulfillment of the
5 conditions precedent described in paragraph (2), the
6 Secretary shall publish in the Federal Register by
7 September 15, 2017, a statement of finding that the
8 conditions have been fulfilled.

9 (2) REQUIREMENTS.—The conditions precedent
10 referred to in paragraph (1) are the conditions
11 that—

12 (A) to the extent that the Settlement
13 Agreement conflicts with this title, the Settle-
14 ment Agreement has been revised to conform
15 with this title;

16 (B) the Settlement Agreement, so revised,
17 including waivers and releases pursuant to sec-
18 tion 204, has been executed by the appropriate
19 parties and the Secretary;

20 (C) Congress has fully appropriated, or the
21 Secretary has provided from other authorized
22 sources, all funds authorized by section 107,
23 with the exception of subsection (a)(1) of that
24 section, by December 15, 2016;

1 (D) the Secretary has acquired and en-
2 tered into appropriate contracts for the water
3 rights described in section 103(a);

4 (E) for purposes of section 103(a), permits
5 have been issued by the New Mexico State En-
6 gineer to the Regional Water Authority to
7 change the points of diversion to the mainstem
8 of the Rio Grande for the diversion and con-
9 sumptive use of at least 2,381 acre-feet by the
10 Pueblos as part of the water supply for the Re-
11 gional Water System, subject to the conditions
12 that—

13 (i) the permits shall be free of any
14 condition that materially adversely affects
15 the ability of the Pueblos or the Regional
16 Water Authority to divert or use the Pueb-
17 lo water supply described in section
18 103(a), including water rights acquired in
19 addition to those described in section
20 103(a), in accordance with section 103(g);
21 and

22 (ii) the Settlement Agreement shall
23 establish the means to address any permit
24 conditions to ensure the ability of the
25 Pueblos to fully divert and consume at

1 least 2,381 acre-feet as part of the water
2 supply for the Regional Water System, in-
3 cluding defining the conditions that will
4 not constitute a material adverse affect;

5 (F) the State has enacted any necessary
6 legislation and provided any funding that may
7 be required under the Settlement Agreement;

8 (G) a partial final decree that sets forth
9 the water rights and other rights to water to
10 which the Pueblos are entitled under the Settle-
11 ment Agreement and this title and that sub-
12 stantially conforms to the Settlement Agree-
13 ment has been approved by the United States
14 District Court for the District of New Mexico;
15 and

16 (H) a final decree that sets forth the water
17 rights for all parties to the Aamodt Case and
18 that substantially conforms to the Settlement
19 Agreement has been approved by the United
20 States District Court for the District of New
21 Mexico by June 15, 2017.

22 (b) EXPIRATION DATE.—If all the conditions prece-
23 dent described in subsection (a)(2) have not been fulfilled
24 by September 15, 2017—

1 (1) the Settlement Agreement and this Act in-
2 cluding waivers described in those documents shall
3 no longer be effective; and

4 (2) any funds that have been appropriated
5 under this Act but not expended shall immediately
6 revert to the general fund of the United States
7 Treasury.

8 (c) ENFORCEMENT DATE.—The Settlement Agree-
9 ment shall become enforceable as of the date that the
10 United States District Court for the District of New Mex-
11 ico enters a partial final decree pursuant to subsection
12 (a)(2)(E) and an Interim Administrative Order consistent
13 with the Settlement Agreement.

14 (d) EFFECTIVENESS OF WAIVERS.—The waivers and
15 releases executed pursuant to section 204 shall become ef-
16 fective as of the date that the Secretary publishes the no-
17 tice required by subsection (a)(1).

18 (e) REQUIREMENTS FOR DETERMINATION OF SUB-
19 STANTIAL COMPLETION OF THE REGIONAL WATER SYS-
20 TEM.—

21 (1) CRITERIA FOR SUBSTANTIAL COMPLETION
22 OF REGIONAL WATER SYSTEM.—Subject to the pro-
23 visions in section 101(d) concerning the extent, size,
24 and capacity of the County Distribution System, the
25 Regional Water System shall be determined to be

1 substantially completed if the infrastructure has
2 been constructed capable of—

3 (A) diverting, treating, transmitting, and
4 distributing a supply of 2,500 acre-feet of water
5 to the Pueblos; and

6 (B) diverting, treating, and transmitting
7 the quantity of water specified in the Engineer-
8 ing Report to the County Distribution System.

9 (2) CONSULTATION.—On or after June 30,
10 2021, at the request of 1 or more of the Pueblos,
11 the Secretary shall consult with the Pueblos and
12 confer with the County and the State on whether the
13 criteria in paragraph (1) for substantial completion
14 of the Regional Water System have been met or will
15 be met by June 30, 2024.

16 (3) WRITTEN DETERMINATION BY SEC-
17 RETARY.—Not earlier than June 30, 2021, at the
18 request of 1 or more of the Pueblos and after the
19 consultation required by paragraph (2), the Sec-
20 retary shall—

21 (A) determine whether the Regional Water
22 System has been substantially completed based
23 on the criteria described in paragraph (1); and

24 (B) submit a written notice of the deter-
25 mination under subparagraph (A) to—

- 1 (i) the Pueblos;
2 (ii) the County; and
3 (iii) the State.

4 (4) RIGHT TO REVIEW.—

5 (A) IN GENERAL.—A determination by the
6 Secretary under paragraph (3)(A) shall be con-
7 sidered to be a final agency action subject to ju-
8 dicial review by the Decree Court under sec-
9 tions 701 through 706 of title 5, United States
10 Code.

11 (B) FAILURE TO MAKE TIMELY DETER-
12 MINATION.—

13 (i) IN GENERAL.—If a Pueblo re-
14 quests a written determination under para-
15 graph (3) and the Secretary fails to make
16 such a written determination by the date
17 described in clause (ii), there shall be a re-
18 buttable presumption that the failure con-
19 stitutes agency action unlawfully withheld
20 or unreasonably delayed under section 706
21 of title 5, United States Code.

22 (ii) DATE.—The date referred to in
23 clause (i) is the date that is the later of—

24 (I) the date that is 180 days
25 after the date of receipt by the Sec-

1 retary of the request by the Pueblo;
2 and

3 (II) June 30, 2023.

4 (C) EFFECT OF ACT.—Nothing in this Act
5 gives any Pueblo or Settlement Party the right
6 to judicial review of a determination of the Sec-
7 retary regarding whether the Regional Water
8 System has been substantially completed except
9 under subchapter II of chapter 5, and chapter
10 7, of title 5, United States Code (commonly
11 known as the “Administrative Procedure Act”).

12 (5) RIGHT TO VOID FINAL DECREE.—

13 (A) IN GENERAL.—Not later than June
14 30, 2024, on a determination by the Secretary,
15 after consultation with the Pueblos, that the
16 Regional Water System is not substantially
17 complete, 1 or more of the Pueblos, or the
18 United States acting on behalf of a Pueblo,
19 shall have the right to notify the Decree Court
20 of the determination.

21 (B) EFFECT.—The Final Decree shall
22 have no force or effect on a finding by the De-
23 cree Court that a Pueblo, or the United States
24 acting on behalf of a Pueblo, has submitted
25 proper notification under subparagraph (A).

1 (f) VOIDING OF WAIVERS.—If the Final Decree is
2 void under subsection (e)(5)—

3 (1) the Settlement Agreement shall no longer
4 be effective;

5 (2) the waivers and releases executed pursuant
6 to section 204 shall no longer be effective; and

7 (3) any unexpended Federal funds, together
8 with any interest earned on those funds, and title to
9 any property acquired or constructed with expended
10 Federal funds shall be returned to the Federal Gov-
11 ernment, unless otherwise agreed to by the Pueblos
12 and the United States and approved by Congress.

13 **SEC. 204. WAIVERS AND RELEASES.**

14 (a) CLAIMS BY THE PUEBLOS AND THE UNITED
15 STATES.—In return for recognition of the Pueblos' water
16 rights and other benefits, including waivers and releases
17 by non-Pueblo parties, as set forth in the Settlement
18 Agreement and this Act, the Pueblos, on behalf of them-
19 selves and their members, and the United States acting
20 in its capacity as trustee for the Pueblos are authorized
21 to execute a waiver and release of—

22 (1) all claims for water rights in the Pojoaque
23 Basin that the Pueblos, or the United States acting
24 in its capacity as trustee for the Pueblos, asserted,
25 or could have asserted, in any proceeding, including

1 the Aamodt Case, up to and including the waiver ef-
2 fectiveness date identified in section 203(d), except
3 to the extent that such rights are recognized in the
4 Settlement Agreement or this Act;

5 (2) all claims for water rights for lands in the
6 Pojoaque Basin and for rights to use water in the
7 Pojoaque Basin that the Pueblos, or the United
8 States acting in its capacity as trustee for the Pueb-
9 los, might be able to otherwise assert in any pro-
10 ceeding not initiated on or before the date of enact-
11 ment of this title, except to the extent that such
12 rights are recognized in the Settlement Agreement
13 or this Act;

14 (3) all claims for damages, losses or injuries to
15 water rights or claims of interference with, diversion
16 or taking of water (including claims for injury to
17 land resulting from such damages, losses, injuries,
18 interference with, diversion, or taking) for land with-
19 in the Pojoaque Basin that accrued at any time up
20 to and including the waiver effectiveness date identi-
21 fied in section 203(d);

22 (4) their defenses in the Aamodt Case to the
23 claims previously asserted therein by other parties to
24 the Settlement Agreement;

1 (5) all pending and future inter se challenges to
2 the quantification and priority of water rights of
3 non-Pueblo wells in the Pojoaque Basin, except as
4 provided by section 2.8 of the Settlement Agree-
5 ment;

6 (6) all pending and future inter se challenges
7 against other parties to the Settlement Agreement;

8 (7) all claims for damages, losses, or injuries to
9 water rights or claims of interference with, diversion
10 or taking of water (including claims for injury to
11 land resulting from such damages, losses, injuries,
12 interference with, diversion, or taking of water) at-
13 tributable to City of Santa Fe pumping of ground-
14 water that has effects on the ground and surface
15 water supplies of the Pojoaque Basin, provided that
16 this waiver shall not be effective by the Pueblo of
17 Tesuque unless there is a water resources agreement
18 executed between the Pueblo of Tesuque and the
19 City of Santa Fe; and

20 (8) all claims for damages, losses, or injuries to
21 water rights or claims of interference with, diversion
22 or taking of water (including claims for injury to
23 land resulting from such damages, losses, injuries,
24 interference with, diversion, or taking of water) at-
25 tributable to County of Santa Fe pumping of

1 groundwater that has effects on the ground and sur-
2 face water supplies of the Pojoaque Basin.

3 (b) CLAIMS BY THE PUEBLOS AGAINST THE UNITED
4 STATES.—The Pueblos, on behalf of themselves and their
5 members, are authorized to execute a waiver and release
6 of—

7 (1) all claims against the United States, its
8 agencies, or employees, relating to claims for water
9 rights in or water of the Pojoaque Basin or for
10 rights to use water in the Pojoaque Basin that the
11 United States acting in its capacity as trustee for
12 the Pueblos asserted, or could have asserted, in any
13 proceeding, including the Aamodt Case;

14 (2) all claims against the United States, its
15 agencies, or employees relating to damages, losses,
16 or injuries to water, water rights, land, or natural
17 resources due to loss of water or water rights (in-
18 cluding damages, losses or injuries to hunting, fish-
19 ing, gathering or cultural rights due to loss of water
20 or water rights; claims relating to interference with,
21 diversion or taking of water or water rights; or
22 claims relating to failure to protect, acquire, replace,
23 or develop water, water rights or water infrastruc-
24 ture) within the Pojoaque Basin that first accrued

1 at any time up to and including the waiver effective-
2 ness date identified in section 203(d);

3 (3) all claims against the United States, its
4 agencies, or employees for an accounting of funds
5 appropriated by Acts, including the Act of December
6 22, 1927 (45 Stat. 2), the Act of March 4, 1929 (45
7 Stat. 1562), the Act of March 26, 1930 (46 Stat.
8 90), the Act of February 14, 1931 (46 Stat. 1115),
9 the Act of March 4, 1931 (46 Stat. 1552), the Act
10 of July 1, 1932 (47 Stat. 525), the Act of June 22,
11 1936 (49 Stat. 1757), the Act of August 9, 1937
12 (50 Stat. 564), and the Act of May 9, 1938 (52
13 Stat. 291), as authorized by the Pueblo Lands Act
14 of June 7, 1924 (43 Stat. 636), and the Pueblo
15 Lands Act of May 31, 1933 (48 Stat. 108), and for
16 breach of Trust relating to funds for water replace-
17 ment appropriated by said Acts that first accrued
18 before the date of enactment of this Act;

19 (4) all claims against the United States, its
20 agencies, or employees relating to the pending litiga-
21 tion of claims relating to the Pueblos' water rights
22 in the Aamodt Case; and

23 (5) all claims against the United States, its
24 agencies, or employees relating to the negotiation,
25 Execution or the adoption of the Settlement Agree-

1 ment, exhibits thereto, the Partial Final Decree, the
2 Final Decree, or this Act.

3 (c) RESERVATION OF RIGHTS AND RETENTION OF
4 CLAIMS.—Notwithstanding the waivers and releases au-
5 thorized in this Act, the Pueblos on behalf of themselves
6 and their members and the United States acting in its
7 capacity as trustee for the Pueblos retain.—

8 (1) all claims for enforcement of the Settlement
9 Agreement, the Cost-Sharing and System Integra-
10 tion Agreement, the Final Decree, including the Par-
11 tial Final Decree, the San Juan-Chama Project con-
12 tract between the Pueblos and the United States or
13 this Act;

14 (2) all rights to use and protect water rights ac-
15 quired after the date of enactment of this Act;

16 (3) all rights to use and protect water rights ac-
17 quired pursuant to state law to the extent not incon-
18 sistent with the Partial Final Decree, Final Decree,
19 and the Settlement Agreement;

20 (4) all claims against persons other than Par-
21 ties to the Settlement Agreement for damages, losses
22 or injuries to water rights or claims of interference
23 with, diversion or taking of water (including claims
24 for injury to lands resulting from such damages,
25 losses, injuries, interference with, diversion, or tak-

1 ing of water) within the Pojoaque Basin arising out
2 of activities occurring outside the Pojoaque Basin;

3 (5) all claims relating to activities affecting the
4 quality of water including any claims the Pueblos
5 may have under the Comprehensive Environmental
6 Response, Compensation, and Liability Act of 1980
7 (42 U.S.C. 9601 et seq.) (including claims for dam-
8 ages to natural resources), the Safe Drinking Water
9 Act (42 U.S.C. 300f et seq.), the Federal Water Pol-
10 lution Control Act (33 U.S.C. 1251 et seq.), and the
11 regulations implementing those laws;

12 (6) all claims against the United States relating
13 to damages, losses, or injuries to land or natural re-
14 sources not due to loss of water or water rights (in-
15 cluding hunting, fishing, gathering or cultural
16 rights);

17 (7) all claims for water rights from water
18 sources outside the Pojoaque Basin for land outside
19 the Pojoaque Basin owned by a Pueblo or held by
20 the United States for the benefit of any of the Pueb-
21 los; and

22 (8) all rights, remedies, privileges, immunities,
23 powers and claims not specifically waived and re-
24 leased pursuant to this Act or the Settlement Agree-
25 ment.

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

3 (1) affects the ability of the United States act-
4 ing in its sovereign capacity to take actions author-
5 ized by law, including any laws relating to health,
6 safety, or the environment, including the Com-
7 prehensive Environmental Response, Compensation,
8 and Liability Act of 1980 (42 U.S.C. 9601 et seq.),
9 the Safe Drinking Water Act (42 U.S.C. 300f et
10 seq.), the Federal Water Pollution Control Act (33
11 U.S.C. 1251 et seq.), the Solid Waste Disposal Act
12 (42 U.S.C. 6901 et seq.), and the regulations imple-
13 menting those laws;

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

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

18 (A) interpret Federal law regarding health,
19 safety, or the environment or determine the du-
20 ties of the United States or other parties pursu-
21 ant to such Federal law; or

22 (B) conduct judicial review of Federal
23 agency action;

24 (e) TOLLING OF CLAIMS.—

Calendar No. 265

11TH CONGRESS
2^D SESSION
H. R. 3342

AN ACT

To authorize the Secretary of the Interior, acting through the Commissioner of Reclamation, to develop water infrastructure in the Rio Grande Basin, and to approve the settlement of the water rights claims of the Pueblos of Nambe, Pojoaque, San Ildefonso, and Tesuque.

FEBRUARY 1, 2010

Read twice and placed on the calendar