To amend the Northwestern New Mexico Rural Water Projects Act to make improvements to that Act, and for other purposes.

IN THE SENATE OF THE UNITED STATES
JUNE 8, 2023
Mr. LUJÁN (for himself and Mr. HEINRICH) introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

A BILL
To amend the Northwestern New Mexico Rural Water Projects Act to make improvements to that Act, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.
This Act may be cited as the “Navajo-Gallup Water Supply Project Amendments Act of 2023”.

SEC. 2. DEFINITIONS.
Section 10302 of the Northwestern New Mexico Rural Water Projects Act (43 U.S.C. 407 note; Public Law 111–11) is amended—

(1) by striking paragraph (29);
(2) by redesignating paragraphs (12), (13), (14), (15), (16), (17), (18), (19), (20), (21), (22), (23), (24), (25), (26), (27), (28), and (30) as paragraphs (13), (14), (15), (16), (17), (18), (19), (20), (21), (22), (23), (24), (25), (27), (28), (30), (31), and (32), respectively;

(3) by inserting after paragraph (11) the following:

“(12) DEFERRED CONSTRUCTION FUND.—The term ‘Deferred Construction Fund’ means the Navajo Nation’s Navajo-Gallup Water Supply Project Deferred Construction Fund established by section 10602(i)(1)(A).”;

(4) in paragraph (14) (as so redesignated)—

(A) in the paragraph heading, by striking “DRAFT” and inserting “FINAL ENVIRONMENTAL”;

(B) by striking “Draft Impact” and inserting “Final Environmental”;

(C) by striking “draft environmental” and inserting “final environmental”; and

(D) by striking “March 2007” and inserting “July 6, 2009”;
(5) in paragraph (19) (as so redesignated), by striking “Draft” and inserting “Final Environmental”;

(6) by inserting after paragraph (25) (as so redesignated) the following:

“(26) PROJECT SERVICE AREA.—The term ‘Project Service Area’ means the area that encompasses the 43 Nation chapters, the southwest portion of the Jicarilla Apache Reservation, and the City that is identified to be served by the Project, as illustrated in figure IV–5 (Drawing No. 1695–406–49) of the Final Environmental Impact Statement.”;

(7) by inserting after paragraph (28) (as so redesignated) the following:

“(29) SETTLEMENT TRUST FUNDS.—The term ‘Settlement Trust Funds’ means—

“(A) the Navajo Nation Water Resources Development Trust Fund established by subsection (a)(1) of section 10702;

“(B) the Navajo Nation Operations, Maintenance, and Replacement Trust Fund established under subsection (b)(1) of that section; and
“(C) the Jicarilla Apache Nation Operations, Maintenance, and Replacement Trust Fund established under subsection (c)(2) of that section.”; and

(8) by adding at the end the following:

“(33) Working Cost Estimate.—The term ‘Working Cost Estimate’ means the Bureau of Reclamation document entitled ‘NGWSP October 2022 WCE’ and dated February 26, 2023, that details the costs totaling $2,138,387,000, at the October 2022 price level, of the Project, as configured on that date.”.

SEC. 3. NAVAJO-GALLUP WATER SUPPLY PROJECT.

(a) Authorization of Navajo-Gallup Water Supply Project.—Section 10602 of the Northwestern New Mexico Rural Water Projects Act (Public Law 111–11; 123 Stat. 1379) is amended—

(1) in subsection (a)—

(A) in the subsection heading, by striking “IN GENERAL” and inserting “AUTHORIZATION”;

(B) by striking “The Secretary” and inserting the following:

“(1) IN GENERAL.—The Secretary”;}
(C) in paragraph (1) (as so designated), by striking “Draft Impact Statement” and inserting “Final Environmental Impact Statement, as further refined in, and including the facilities identified in, the Working Cost Estimate and any subsequent supplemental documents prepared in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).”; and

(D) by adding at the end the following:

“(2) ADDITIONAL SERVICE AREAS.—

“(A) FINDINGS.—Congress finds that—

“(i) expanding the Project Service Area would create opportunities to increase service for additional Nation Tribal members and would not increase the cost of the Project beyond authorization levels described in section 10609(a); and

“(ii) the unit operations and maintenance costs of the Project would be reduced by adding more customers to the Project.

“(B) AUTHORIZATIONS FOR ADDITIONAL PROJECT SERVICE AREAS.—
“(i) NEW MEXICO.—In addition to delivering water supply from the Project to the Nation communities in the San Juan River Basin, the Nation may expand the Project Service Area in order to deliver water supply from the Project to communities of the Nation within the Rio San Jose Basin, New Mexico.

“(ii) ARIZONA.—In addition to delivering water supply from the Project to the Nation communities of Fort Defiance and Window Rock, Arizona, and subject to section 10603(c)(1), the Nation may expand the Project Service Area in order to deliver water supply from the Project to the Nation community of Lupton, Arizona, within the Little Colorado River Basin, Arizona.”;

(2) in subsection (b)—

(A) in the matter preceding paragraph (1)—

(i) by inserting “acquire,” before “construct,”; and

(ii) by striking “Draft Impact Statement” and inserting “Final Environmental Impact Statement, as further refined in,
and including the facilities identified in, the Working Cost Estimate and any subsequent supplemental documents prepared in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.”);

(B) by striking paragraph (1) and inserting the following:

“(1) The water conveyance and storage facilities associated with the San Juan Generating Station (the coal-fired, 4-unit electric power plant and ancillary features located by the San Juan Mine near Waterflow, New Mexico), including the diversion dam, the intake structure, the river pumping plant, the pipeline from the river to the reservoir, the dam and associated reservoir, and any associated land, or interest in land, or ancillary features.”;

(C) in paragraph (2)(A)—

(i) by striking “River near Kirtland, New Mexico,” and inserting “Generating Station Reservoir”; and

(ii) by inserting “generally” before “follows United States Highway 491”;
(D) in paragraph (3)(A), by inserting “generally” before “follows United States Highway 550”; and

(E) in paragraph (5), by inserting “(including any reservoir facility)” after “treatment facility”;

(3) in subsection (e)—

(A) in the subsection heading, by inserting “AND FACILITIES” after “LAND”;

(B) in paragraph (1), by striking “any land or interest in land that is” and inserting “any land or facilities, or interest in land or facilities, that are”; and

(C) by adding at the end the following:

“(4) LAND TO BE TAKEN INTO TRUST.—

“(A) IN GENERAL.—On satisfaction of the conditions described in paragraph (7) of the Agreement and after the requirements of sections 10701(e) and 10703 are met, the Secretary shall take legal title to the following land and, subject to subparagraph (D), hold that land in trust for the benefit of the Nation:

“(i) Fee land of the Nation, including—
“(I) the parcels of land on which
the Tohlakai Pumping Plant, Reach
12A and Reach 12B, are located, in-
cluding, in McKinley County, New
Mexico—

“(aa) sec. 5, T. 16 N., R. 18
W., New Mexico Prime Meridian;
and

“(bb) sec. 33, T. 17 N., R.
17 W., New Mexico Prime Merid-
ian (except lot 9 and the NW¼
of lot 4);

“(II) the parcel of land on which
Reach 12.1 is located, including—

“(aa) NW¼ and SW¼ sec.
5, T. 16 N., R. 18 W.;

“(bb) N½ sec. 11, T. 16 N.,
R. 19 W.; and

“(cc) sec. 12, T. 16 N., R.
20 W.; and

“(III) the parcel of land on which
Reach 12.2 is located, including
NW¼. sec. 2, T. 16 N., R. 21 W.
“(ii) Public domain land managed by
the Bureau of Land Management, includ-
ing—

“(I) the parcel of land on which
the Cutter Lateral Water Treatment
Plant is located, including S 1⁄2 sec. 9,
T. 25 N., R. 9 W., New Mexico Prime
Meridian; and

“(II) the parcel of land on which
the Navajo Agricultural Products In-
dustry turnout is located, including
NW 1⁄4 and NE 1⁄4 sec. 34, T. 26 N.,
R. 9 W., New Mexico Prime Meridian.

“(iii) The land underlying the San
Juan Generating Station (the coal-fired, 4-
unit electric power plant and ancillary fea-
tures located by the San Juan Mine near
Waterflow, New Mexico) acquired by the
United States, as described in subsection
(b)(1).

“(B) PART OF NAVAJO NATION.—The land
taken into trust under subparagraph (A) shall
be part of the Navajo Reservation and adminis-
tered in accordance with the laws and regula-
tions generally applicable to land held in trust
by the United States for the benefit of an Indian Tribe.

“(C) Restrictions.—

“(i) Fee land of the Nation.—The fee land of the Nation taken into trust under subparagraph (A)(i) shall be subject to valid existing rights, contracts, and management agreements, including easements and rights-of-way, unless the holder of the right, contract, lease, permit, or right-of-way requests an earlier termination in accordance with existing law.

“(ii) Public domain land.—

“(I) In general.—The public domain land managed by the Bureau of Land Management taken into trust under subparagraph (A)(ii) shall be subject to valid existing rights, contracts, leases, permits, and rights-of-way, unless the holder of the right, contract, lease, permit, or right-of-way requests an earlier termination in accordance with existing law.
“(II) BIA ASSUMPTION OF BENEFITS AND OBLIGATIONS.—The Bureau of Indian Affairs shall—

“(aa) assume all benefits and obligations of the previous land management agency under the existing rights, contracts, leases, permits, or rights-of-way described in subclause (I); and

“(bb) disburse to the Nation any amounts that accrue to the United States from those rights, contracts, leases, permits, or rights-of-ways after the date on which the land described in clause (ii) of subparagraph (A) is taken into trust for the benefit of the Nation from any sale, bonus, royalty, or rental relating to that land in the same manner as amounts received from other land held by the Secretary in trust for the Nation.

“(iii) LAND UNDERLYING THE SAN JUAN GENERATING STATION.—
“(I) IN GENERAL.—The land underly-
ing the San Juan Generating
Station (the coal-fired, 4-unit electric
power plant and ancillary features lo-
cated by the San Juan Mine near Wa-
terflow, New Mexico) taken into trust
under subparagraph (A)(iii) shall be
subject to a perpetual easement on
and over all of the land underlying the
San Juan Generating Station reserved
to the United States for use by the
Bureau of Reclamation and its con-
tractors and assigns—

“(aa) for ingress and egress;

“(bb) to continue construc-
tion of the Project; and

“(cc) for operation and
maintenance of Project facilities
located on that land.

“(II) RESERVED PERPETUAL
EASEMENT.—The reserved perpetual
easement described in subclause (I)
shall remain vested in the United
States unless title to the Project fa-
cilities and appropriate interests in
land are conveyed pursuant to subsection (f).

“(D) **Savings Clause.**—Nothing in this paragraph affects any—

“(i) water right of the Nation in existence on the day before the date of enactment of the Navajo-Gallup Water Supply Project Amendments Act of 2023; and

“(ii) right or claim of the Nation to any land or interest in land in existence on the day before the date of enactment of the Navajo-Gallup Water Supply Project Amendments Act of 2023.”;

(4) in subsection (d)(1)(D), by striking “Draft” and inserting “Final Environmental”;

(5) in subsection (e)—

(A) by striking “The Secretary” and inserting the following:

“(1) **In General.**—The Secretary”; and

(B) by adding at the end the following:

“(2) **Renewable Energy and Hydro-Electric Power.**—

“(A) **Renewable Energy.**—For any portion of the Project that does not have access to Colorado River Storage Project power, the Sec-
Secretary may use not more than $6,250,000 of the amounts made available under section 10609(a)(1) to develop renewable energy.

“(B) HYDROELECTRIC POWER.—Notwithstanding whether a Project facility has access to Colorado River Storage Project power, the Secretary may use not more than $1,250,000 of the $6,250,000 authorized to be used to develop renewable energy under subparagraph (A) to develop hydroelectric power for any Project facility that can use hydraulic head to produce electricity.”;

(6) in subsection (h)(1), in the matter preceding subparagraph (A), by inserting “, store,” after “treat”; and

(7) by adding at the end the following:

“(i) DEFERRED CONSTRUCTION OF PROJECT FACILITIES.—

“(1) DEFERRED CONSTRUCTION OF PROJECT FACILITIES.—On mutual agreement between the Nation and the Secretary, and the Jicarilla Apache Nation if the deferred Project facilities benefit the Jicarilla Apache Nation, construction of selected Project facilities may be deferred to save operation
and maintenance expenses associated with that construction.

“(2) DEFERRED CONSTRUCTION FUND.—

“(A) ESTABLISHMENT.—There is established in the Treasury a fund, to be known as the ‘Navajo Nation’s Navajo-Gallup Water Supply Project Deferred Construction Fund’, to consist of—

“(i) amounts that correspond to portions of the Project that have been deferred under paragraph (1); and

“(ii) any interest or other gains on amounts referred to in clause (i).

“(B) USE OF THE DEFERRED CONSTRUCTION FUND.—The Nation may use amounts in the Deferred Construction Fund—

“(i) to construct Project facilities that have been deferred under paragraph (1); or

“(ii) to construct alternate facilities agreed on under subparagraph (C).

“(C) ALTERNATE FACILITIES CONSISTENT WITH THE PURPOSE OF THE PROJECT.—On agreement between the Nation and the Secretary, and the Jicarilla Apache Nation if the
deferred Project facilities benefit the Jicarilla Apache Nation, and in compliance with all applicable environmental and cultural resource protection laws, facilities other than those previously agreed to be deferred under paragraph (1) may be constructed if those alternate facilities are consistent with the purposes of the Project described in section 10601.

“(3) AMOUNTS TO BE DEPOSITED.—Funds allocated from the amounts made available under section 10609(a)(1) to build facilities referred to in paragraph (1) shall be deposited into the Deferred Construction Fund.

“(4) ADJUSTMENTS.—On deposit of amounts into the Deferred Construction Fund under paragraph (3), the adjustments to authorized appropriations under section 10609(a)(2) shall no longer apply to those amounts.

“(5) DEADLINE TO CONSTRUCT PROJECT FACILITIES.—On deposit of all amounts into the Deferred Construction Fund for construction of Project facilities agreed on under paragraph (1), the Secretary shall be deemed to have met the obligation under section 10701(e)(1)(A)(ix).
“(6) Future construction of project facilities.—On agreement between the Nation and the Secretary, and the Jicarilla Apache Nation if the deferred Project facilities benefit the Jicarilla Apache Nation, the Nation shall use amounts deposited into the Deferred Construction Fund to construct—

“(A) Project facilities deferred under paragraph (1); or

“(B) alternate Project facilities described in paragraph (2)(C).”.

(b) Delivery and use of Navajo-Gallup Water Supply Project water.—Section 10603 of the Northwestern New Mexico Rural Water Projects Act (Public Law 111–11; 123 Stat. 1382) is amended—

(1) in subsection (a)(3)(B)—

(A) in clause (i), by inserting “or, if generated on City-owned facilities, by the City” after “the Nation”; and

(B) in clause (ii), by inserting “, except that the City shall retain all revenue from the sale of hydroelectric power that is generated on City-owned facilities” after “hydroelectric power”; and
(2) in subsection (g)(2), by striking “, except as provided in section 10604(f)”.

(c) PROJECT CONTRACTS.—Section 10604 of the Northwestern New Mexico Rural Water Projects Act (Public Law 111–11; 123 Stat. 1388) is amended—

(1) in subsection (a)(4), by striking “Subject to subsection (f), the” and inserting “The”;

(2) in subsection (b)(3)—

(A) in subparagraph (A), by striking “subparagraph (B)” and inserting “subparagraphs (B) and (C)”;

(B) in subparagraph (B)—

(i) in the subparagraph heading, by striking “MINIMUM PERCENTAGE” and inserting “MAXIMUM PERCENTAGE”;

(ii) by striking “at least 25 percent” and inserting “not more than 25 percent”; and

(iii) by striking “, but shall in no event exceed 35 percent”; and

(C) by adding at the end the following:

“(C) MAXIMUM REPAYMENT OBLIGATION.—The repayment obligation of the City referred to in subparagraphs (A) and (B) shall not exceed $76,000,000.”;
(3) in subsection (e)(1)(B), by inserting “subsection (f) and” before “section 10603(g)”;

(4) in subsection (d)(1), by striking “Draft” and inserting “Final Environmental”;

(5) in subsection (e), by striking “Draft” and inserting “Final Environmental”;

(6) by striking subsection (f); and

(7) by redesignating subsection (g) as subsection (f).

(d) Authorization of Appropriations.—Section 10609 of the Northwestern New Mexico Rural Water Projects Act (Public Law 111–11; 123 Stat. 1395; 129 Stat. 528) is amended—

(1) in subsection (a)—

(A) in paragraph (1), by striking “$870,000,000 for the period of fiscal years 2009 through 2024” and inserting “$2,175,000,000 for the period of fiscal years 2009 through 2029”;

(B) by striking paragraph (2) and inserting the following:

“(2) Adjustments.—

“(A) In General.—The amount under paragraph (1) shall be adjusted by such amounts as may be required—
“(i) by reason of changes since October 2022 in construction cost changes in applicable regulatory standards, as indicated by engineering cost indices applicable to the types of construction involved; and

“(ii) to address construction cost changes necessary to account for unforeseen market volatility that may not otherwise be captured by engineering cost indices described in clause (i), as determined by the Secretary, including repricing applicable to the types of construction and current industry standards involved.

“(B) Deferred Construction Fund.—

Amounts deposited in the Deferred Construction Fund shall not be adjusted pursuant to this paragraph.”; and

(C) in paragraph (4)(B), by striking “10 years” and inserting “15 years”; and

(2) in subsection (b)—

(A) in paragraph (1), by striking “$30,000,000, as adjusted under paragraph (3), for the period of fiscal years 2009 through 2019” and inserting “$37,500,000, as adjusted
under paragraph (4), for the period of fiscal years 2009 through 2032’’;

(B) in paragraph (2), by striking ‘‘2024’’ and inserting ‘‘2032’’; and

(C) in paragraph (3), by striking ‘‘The amount under paragraph (1)’’ and inserting ‘‘The amount under paragraphs (1) and (2)’’.

(e) TAXATION OF CONSTRUCTION, OPERATION, AND MAINTENANCE OF PROJECT FACILITIES.—Part III of the Northwestern New Mexico Rural Water Projects Act (Public Law 111–11; 123 Stat. 1379) is amended by adding at the end the following:

‘‘SEC. 10610. TAXATION OF CONSTRUCTION, OPERATION, AND MAINTENANCE OF PROJECT FACILITIES.

‘‘(a) NATION LAND.—Any activity constituting the construction, operation, or maintenance of Project facilities—

‘‘(1) shall, if the activity takes place on land that is held in trust by the United States for the benefit of the Nation, be subject to taxation by the Nation; and

‘‘(2) shall not be subject to any fee, tax, assessment, levy, or other charge imposed by any State or political subdivision of a State.
“(b) OTHER LAND.—Any activity constituting the construction, operation, or maintenance of Project facilities—

“(1) shall, if the activity takes place on land other than the land described in subsection (a)(1), be subject to taxation by the State in which the land is located, or by a political subdivision of that State to the extent authorized by the laws of that State; and

“(2) shall not be subject to any fee, tax, assessment, levy, or other charge imposed by the Nation.”.

SEC. 4. NAVAJO NATION WATER RIGHTS.

(a) AGREEMENT.—Section 10701(e) of the Northwestern New Mexico Rural Water Projects Act (Public Law 111–11; 123 Stat. 1400; 129 Stat. 528) is amended—

(1) in paragraph (1)(A)—

(A) by striking clause (vii) and inserting the following:

“(vii) NAVAJO NATION WATER RESOURCES DEVELOPMENT TRUST FUND.— Not later than December 31, 2019, the United States shall make all deposits into the Navajo Nation Water Resources Devel-
opment Trust Fund established by section 10702(a)(1).”;

(B) in clause (ix), by striking “2024” and inserting “2029”; and

(C) by adding at the end the following:

“(x) DEFERRED CONSTRUCTION FUND.—

“(I) IN GENERAL.—Not later than December 31, 2029, the United States shall make all deposits into the Deferred Construction Fund in accordance with section 10602(i)(3).

“(II) PROJECT DEADLINE.—On deposit of the amounts into the Deferred Construction Fund under subclause (I), even if certain Project facilities have not yet been constructed, the Secretary shall be deemed to have met the deadline described in clause (ix).”; and

(2) in paragraph (2)(B)—

(A) in clause (i), by striking “Trust Fund” and inserting “Settlement Trust Funds”; and
(B) in clause (ii), by striking “Trust Fund” and inserting “Settlement Trust Funds”.

(b) Settlememnt Trust Funds.—Section 10702 of the Northwestern New Mexico Rural Water Projects Act (Public Law 111–11; 123 Stat. 1402) is amended to read as follows:

“SEC. 10702. SETTLEMENT TRUST FUNDS.

“(a) Navajo Nation Water Resources Development Trust Fund.—

“(1) Establishment.—There is established in the Treasury a fund, to be known as the ‘Navajo Nation Water Resources Development Trust Fund’, consisting of—

“(A) such amounts as are appropriated to the Navajo Nation Water Resources Development Trust Fund under paragraph (5); and

“(B) any interest earned on investment of amounts in the Navajo Nation Water Resources Development Trust Fund under paragraph (3).

“(2) Use of Funds.—The Nation may use amounts in the Navajo Nation Water Resources Development Trust Fund—

“(A) to investigate, construct, operate, maintain, or replace water project facilities, in-
including facilities conveyed to the Nation under this subtitle and facilities owned by the United States for which the Nation is responsible for operation, maintenance, and replacement costs; and

“(B) to investigate, implement, or improve a water conservation measure (including a metering or monitoring activity) necessary for the Nation to make use of a water right of the Nation under the Agreement.

“(3) INVESTMENT.—Beginning on October 1, 2019, the Secretary shall invest amounts in the Navajo Nation Water Resources Development Trust Fund in accordance with subsection (e).

“(4) INVESTMENT EARNINGS.—Any investment earnings, including interest, credited to amounts held in the Navajo Nation Water Resources Development Trust Fund are authorized to be used in accordance with paragraph (2).

“(5) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for deposit in the Navajo Nation Water Resources Development Trust Fund—

“(A) $6,000,000 for each of fiscal years 2010 through 2014; and
“(B) $4,000,000 for each of fiscal years 2015 through 2019.

“(6) Availability.—Any amount authorized to be appropriated to the Navajo Nation Water Resources Development Trust Fund under paragraph (5) shall not be available for expenditure or withdrawal—

“(A) before December 31, 2019; and

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

“(i) the Partial Final Decree; and

“(ii) the Supplemental Partial Final Decree.

“(7) Management.—The Secretary shall manage the Navajo Nation Water Resources Development Trust Fund in accordance with subsection (d).

“(8) Conditions for Expenditure and Withdrawal.—After the funds become available pursuant to paragraph (6), all expenditures and withdrawals by the Nation of funds in the Navajo Nation Water Resources Development Trust Fund must comply with the requirements of subsection (f).

“(b) Navajo Nation Operations, Maintenance, and Replacement Trust Fund.—
“(1) Establishment.—The Secretary shall establish a trust fund to be known as the ‘Navajo Nation Operations, Maintenance, and Replacement Trust Fund’ for the purposes set forth in paragraph (2), to be managed, invested, and distributed by the Secretary, and to remain available until expended, withdrawn, or reverted to the general fund of the Treasury, consisting of the amounts deposited in the trust fund under paragraph (3), together with any interests earned on those amounts under paragraph (4).

“(2) Use of Funds.—The Nation may use amounts in the Navajo Nation Operations, Maintenance, and Replacement Trust Fund to pay operations, maintenance, and replacement costs of the Project allocable to the Nation under section 10604.

“(3) Authorization of Appropriations.—There are authorized to be appropriated for deposit in the Navajo Nation Operations, Maintenance, and Replacement Trust Fund $250,000,000.

“(4) Investment.—Upon deposit of funding into the Navajo Nation Operations, Maintenance, and Replacement Trust Fund pursuant to paragraph (3), the Secretary shall invest amounts deposited in accordance with subsection (e).
“(5) Investment Earnings.—Any investment earnings, including interest, credited to amounts held in the Navajo Nation Operations, Maintenance, and Replacement Trust Fund are authorized to be used in accordance with paragraph (2).

“(6) Availability.—Any amount authorized to be appropriated to the Navajo Nation Operations, Maintenance, and Replacement Trust Fund under paragraph (3) shall not be available for expenditure or withdrawal until the Nation is responsible for payment of operation, maintenance, and replacement costs as set forth in section 10603(g).

“(7) Fluctuation in Costs.—

“(A) In General.—The amounts authorized to be appropriated under paragraph (3) shall be increased or decreased, as appropriate, by such amounts as may be justified by reason of ordinary fluctuations in costs occurring after October 2022 as indicated by the Bureau of Reclamation Operation and Maintenance Cost Index.

“(B) Repetition.—The adjustment process under this subparagraph shall be repeated for each subsequent amount appropriated until
the amount authorized, as adjusted, has been appropriated.

“(C) Period of Indexing.—The period of indexing adjustment under this subparagraph for any increment of funding shall end on the date on which the funds are deposited into the Navajo Nation Operations, Maintenance, and Replacement Trust Fund.

“(8) Management.—The Secretary shall manage the Navajo Nation Operations, Maintenance, and Replacement Trust Fund in accordance with subsection (d).

“(9) Conditions for Expenditure and Withdrawal.—All expenditures and withdrawals by the Nation of funds in the Navajo Nation Operations, Maintenance, and Replacement Trust Fund must comply with the requirements of subsection (f).

“(c) Jicarilla Apache Nation Operations, Maintenance, and Replacement Trust Fund.—

“(1) Prerequisite to Establishment.—Prior to establishment of the trust fund under paragraph (2), the Secretary shall conduct an Ability to Pay study to determine what operation, maintenance, and replacement costs of that section of the Project serving the Jicarilla Apache Nation are in
excess of the ability of the Jicarilla Apache Nation to pay.

“(2) Establishment.—Upon completion of the Ability to Pay study as set forth in paragraph (1), the Secretary shall establish a trust fund to be known as the ‘Jicarilla Apache Nation Operations, Maintenance, and Replacement Trust Fund’ for the purposes set forth in paragraph (3), to be managed, invested, and distributed by the Secretary and to remain available until expended, withdrawn, or reverted to the general fund of the Treasury, consisting of the amounts deposited in the trust fund under paragraph (4), together with any interests earned on those amounts under paragraph (5).

“(3) Use of Funds.—The Jicarilla Apache Nation may use amounts in the Jicarilla Apache Nation Operations, Maintenance, and Replacement Trust Fund to pay operations, maintenance, and replacement costs of the Project allocable to the Jicarilla Nation under section 10604.

“(4) Authorization of Appropriations.—There are authorized to be appropriated for deposit in the Jicarilla Apache Nation Operations, Maintenance, and Replacement Trust Fund the amounts the Secretary has determined are in excess of the
ability of the Jicarilla Apache Nation to pay in the
Ability to Pay study required under paragraph (1)
up to a maximum of $10,000,000.

“(5) INVESTMENT.—Upon deposit of funding
into the Jicarilla Apache Nation Operations, Mainte-
nance, and Replacement Trust Fund pursuant to
paragraph (4), the Secretary shall invest amounts in
the fund in accordance with subsection (e).

“(6) INVESTMENT EARNINGS.—Any investment
earnings, including interest, credited to amounts
held in the Jicarilla Apache Nation Operations,
Maintenance, and Replacement Trust Fund are au-
thorized to be used in accordance with paragraph
(3).

“(7) AVAILABILITY.—Any amount authorized to
be appropriated to the Jicarilla Apache Nation Op-
erations, Maintenance, and Replacement Trust Fund
under paragraph (4) shall not be available for ex-
penditure or withdrawal until the Jicarilla Apache
Nation is responsible for payment of operation,
maintenance, and replacement costs as set forth in
section 10603(g).

“(8) FLUCTUATION IN COSTS.—

“(A) IN GENERAL.—The amounts author-
ized to be appropriated under paragraph (4)
shall be increased or decreased, as appropriate, by such amounts as may be justified by reason of ordinary fluctuations in costs occurring after October 2022 as indicated by the Bureau of Reclamation Operation and Maintenance Cost Index.

“(B) Repetition.—The adjustment process under this subparagraph shall be repeated for each subsequent amount appropriated until the amount authorized, as adjusted, has been appropriated.

“(C) Period of Indexing.—The period of indexing adjustment under this subparagraph for any increment of funding shall end on the date on which the funds are deposited into the Jicarilla Apache Nation Operations, Maintenance, and Replacement Trust Fund.

“(9) Management.—The Secretary shall manage the Jicarilla Apache Nation Operations, Maintenance, and Replacement Trust Fund in accordance with subsection (d).

“(10) Conditions for Expenditure and Withdrawal.—All expenditures and withdrawals by the Jicarilla Apache Nation of funds in the Jicarilla Apache Nation Operations, Maintenance, and Re-
placement Trust Fund must comply with the requirements of subsection (f).

“(d) MANAGEMENT.—The Secretary shall manage the Settlement Trust Funds, invest amounts in the Settlement Trust Funds pursuant to subsection (e), and make amounts available from the Settlement Trust Funds for distribution to the Nation and the Jicarilla Apache Nation in accordance with the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4001 et seq.).

“(e) INVESTMENT OF THE TRUST FUNDS.—The Secretary shall invest amounts in the Settlement Trust Funds in accordance with—

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

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


“(f) CONDITIONS FOR EXPENDITURES AND WITHDRAWALS.—

“(1) TRIBAL MANAGEMENT PLAN.—

“(A) IN GENERAL.—On approval by the Secretary of a Tribal management plan in accordance with the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4001 et seq.), the Nation and the Jicarilla
Apache Nation may withdraw all or a portion of the amounts in the Settlement Trust Funds.

“(B) REQUIREMENTS.—In addition to any requirements under the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4001 et seq.), a Tribal management plan shall require that the Nation and Jicarilla Apache Nation only use amounts in the Settlement Trust Funds for the purposes described in subsection (a)(2), (b)(2), or (c)(3), as applicable.

“(2) ENFORCEMENT.—The Secretary may take judicial or administrative action to enforce the provisions of any Tribal management plan to ensure that any amounts withdrawn from the Settlement Trust Funds are used in accordance with this subtitle.

“(3) NO LIABILITY.—The Secretary or the Secretary of the Treasury shall not be liable for the expenditure or investment of any amounts withdrawn from the Settlement Trust Funds by the Nation or the Jicarilla Apache Nation.

“(4) EXPENDITURE PLAN.—

“(A) IN GENERAL.—The Nation and Jicarilla Apache Nation shall submit to the Secretary for approval an expenditure plan for any
portion of the amounts in the Settlement Trust Funds made available under this section that the Nation or the Jicarilla Apache Nation does not withdraw under this subsection.

“(B) DESCRIPTION.—An expenditure plan submitted under subparagraph (A) shall describe the manner in which, and the purposes for which, funds of the Nation or the Jicarilla Apache Nation remaining in the Settlement Trust Funds will be used.

“(C) APPROVAL.—On receipt of an expenditure plan under subparagraph (A), the Secretary shall approve the plan if the Secretary determines that the plan is reasonable and consistent with this subtitle.

“(5) ANNUAL REPORT.—The Nation and Jicarilla Apache Nation shall submit to the Secretary an annual report that describes any expenditures from the Settlement Trust Funds during the year covered by the report.

“(6) LIMITATION.—No portion of the amounts in the Settlement Trust Funds shall be distributed to any Nation or Jicarilla Apache Nation member on a per capita basis.”.
(c) WAIVERS AND RELEASES.—Section 10703 of the Northwestern New Mexico Rural Water Projects Act (Public Law 111–11; 123 Stat. 1403) is amended—

(1) in subsection (d)(1)(A), by striking “2025” and inserting “2030”; and

(2) in subsection (e)(2), in the matter preceding subparagraph (A), by striking “2025” and inserting “2030”.

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