

107TH CONGRESS  
1ST SESSION

# H. R. 3223

To authorize the Secretary of the Interior, through the Bureau of Reclamation, to construct the Jicarilla Apache Nation Municipal Water Delivery and Wastewater Collection Systems in the State of New Mexico, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 1, 2001

Mr. UDALL of Mexico (for himself, Mrs. WILSON, Mr. KILDEE, Mr. YOUNG of Alaska, Mr. SKEEN, Mr. KENNEDY of Rhode Island, Mr. HAYWORTH, Mr. GEORGE MILLER of California, and Mr. THOMPSON of California) introduced the following bill; which was referred to the Committee on Resources

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## A BILL

To authorize the Secretary of the Interior, through the Bureau of Reclamation, to construct the Jicarilla Apache Nation Municipal Water Delivery and Wastewater Collection Systems in the State of New Mexico, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Jicarilla Apache Res-  
5 ervation Rural Water System Act”.

1 **SEC. 2. PURPOSES.**

2 The purposes of this Act are as follows:

3 (1) To ensure a safe and adequate rural, mu-  
4 nicipal, and water supply and wastewater systems  
5 for the residents of the Jicarilla Apache Reservation  
6 in the State of New Mexico in accordance with Pub-  
7 lic Law 106–243.

8 (2) To authorize the Secretary of the Interior,  
9 through the Bureau of Reclamation, in consultation  
10 and collaboration with the Jicarilla Apache Nation—

11 (A) to plan, design, and construct the  
12 water supply, delivery, and wastewater collec-  
13 tion systems on the Jicarilla Apache Reserva-  
14 tion in the State of New Mexico; and

15 (B) to include service connections to facili-  
16 ties within the town of Dulce and the sur-  
17 rounding area, and to individuals as part of the  
18 construction.

19 (3) To require the Secretary, at the request of  
20 the Jicarilla Apache Nation, to enter into a self-de-  
21 termination contract with the Jicarilla Apache Na-  
22 tion under title I of the Indian Self-Determination  
23 and Education Assistance Act (25 U.S.C. 450f et  
24 seq.) under which—

25 (A) the Jicarilla Apache Nation shall plan,  
26 design, and construct the water supply, deliv-

1           ery, and wastewater collection systems, includ-  
2           ing service connections to communities and in-  
3           dividuals; and

4                   (B) the Bureau of Reclamation shall pro-  
5           vide technical assistance and oversight responsi-  
6           bility for said project.

7           (4) To establish a process in which the Jicarilla  
8           Apache Nation shall assume title and responsibility  
9           for the ownership, operation, maintenance, and re-  
10          placement of the system.

11 **SEC. 3. DEFINITIONS.**

12          As used in this Act:

13           (1) ACT.—The term “Act” means the Jicarilla  
14          Apache Reservation Rural Water System Act.

15           (2) BIA.—The term “BIA” means the Bureau  
16          of Indian Affairs, an agency within the Department  
17          of the Interior.

18           (3) IRRIGATION.—The term “irrigation” means  
19          the commercial application of water to land for the  
20          purpose of establishing or maintaining commercial  
21          agriculture in order to produce field crops and vege-  
22          tables for sale.

23           (4) RECLAMATION.—The term “Reclamation”  
24          means the Bureau of Reclamation, an agency within  
25          the Department of the Interior.

1           (5) REPORT.—The term “Report” means the  
2 report entitled “Planning Report/Environmental As-  
3 sessment, Water and Wastewater Improvements,  
4 Jicarilla Apache Nation, Dulce, New Mexico”, dated  
5 September 2000, which was completed pursuant to  
6 Public Law 106–243.

7           (6) RESERVATION.—The term “Reservation”  
8 means the Jicarilla Apache Reservation in the State  
9 of New Mexico, including all lands and interests in  
10 land that are held in trust by the United States for  
11 the Tribe.

12           (7) RURAL WATER SUPPLY PROJECT.—The  
13 term “Rural Water Supply Project” means a munic-  
14 ipal, domestic, rural, and industrial water supply  
15 and wastewater facility area and project identified to  
16 serve a group of towns, communities, cities, tribal  
17 reservations, or dispersed farmsteads with access to  
18 clean, safe domestic and industrial water, to include  
19 the use of livestock.

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

22           (9) SECRETARY.—The term “Secretary” means  
23 the Secretary of the Interior, acting through the Bu-  
24 reau of Reclamation.

1           (10) TRIBE.—The term “Tribe” means the  
2           Jicarilla Apache Nation.

3 **SEC. 4. JICARILLA APACHE RESERVATION RURAL WATER**  
4           **SYSTEM.**

5           (a) CONSTRUCTION.—The Secretary, in consultation  
6 and collaboration with the Tribe, shall plan, design, and  
7 construct the Rural Water Supply Project to improve the  
8 water supply, delivery, and wastewater facilities to the  
9 town of Dulce, New Mexico, and surrounding communities  
10 for the purpose of providing the benefits of clean, safe,  
11 and reliable water supply, delivery, and wastewater facili-  
12 ties.

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

15           (1) Facilities to provide water supply, delivery,  
16 and wastewater services for the community of Dulce,  
17 the Mundo Ranch Development, and surrounding  
18 areas on the Reservation.

19           (2) Pumping and treatment facilities located on  
20 the Reservation.

21           (3) Distribution, collection, and treatment fa-  
22 cilities to serve the needs of the Reservation, includ-  
23 ing, but not limited to, construction, replacement,  
24 improvement, and repair of existing water and  
25 wastewater systems, including systems owned by in-

1       dividual tribal members and other residents on the  
2       Reservation.

3               (4) Appurtenant buildings and access roads.

4               (5) Necessary property and property rights.

5               (6) Such other electrical power transmission  
6       and distribution facilities, pipelines, pumping plants,  
7       and facilities as the Secretary deems necessary or  
8       appropriate to meet the water supply, economic,  
9       public health, and environmental needs of the Res-  
10      ervation, including, but not limited to, water storage  
11      tanks, water lines, maintenance equipment, and  
12      other facilities for the Tribe on the Reservation.

13      (c) FEDERAL SHARE.—

14              (1) CONSTRUCTION.—The Federal share of the  
15      cost of construction of the Rural Water Supply  
16      Project shall be 100 percent, subject to the tribal  
17      share set forth in subsection (d).

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

24              (d) TRIBAL SHARE.—The \$7,300,000 which the  
25      Tribe has expended on improvements to the federally

1 owned municipal water systems, as documented in the Re-  
2 port, shall be deemed to have satisfied the tribal share  
3 of the Rural Water Supply Project.

4 (e) OPERATION; MAINTENANCE; COSTS.—Upon com-  
5 pletion of the Rural Water Supply Project and transfer  
6 of title of that project to the Tribe, the Tribe shall assume  
7 responsibility for and liability related to the annual oper-  
8 ation, maintenance, and replacement cost of the project  
9 in accordance with this Act and the Operation, Mainte-  
10 nance, and Replacement Plan under chapter IV of the Re-  
11 port.

12 **SEC. 5. GENERAL AUTHORITY.**

13 The Secretary is authorized to enter into contracts,  
14 grants, cooperative agreements, and other such agree-  
15 ments and to promulgate such regulations as may be nec-  
16 essary to carry out the purposes and provisions of this  
17 Act and the Indian Self-Determination Act (Public Law  
18 93–638; 25 U.S.C. 450 et seq.).

19 **SEC. 6. PROJECT REQUIREMENTS.**

20 (a) PLANS.—

21 (1) PROJECT PLAN.—Not later than 60 days  
22 after funds are made available for this purpose, the  
23 Secretary shall prepare a recommended project plan,  
24 which shall include a general map showing the loca-  
25 tion of the proposed physical facilities, conceptual

1        engineering drawings of structures, and general  
2        standards for design for the Rural Water Supply  
3        Project.

4            (2) OM&R PLAN.—The Tribe shall develop an  
5        operation, maintenance, and replacement plan, which  
6        shall provide the necessary framework to assist the  
7        Tribe in establishing rates and fees for customers of  
8        the Rural Water Supply Project.

9            (b) CONSTRUCTION MANAGER.—The Secretary,  
10       through Reclamation and in consultation with the Tribe,  
11       shall select a project construction manager to work with  
12       the Tribe in the planning, design, and construction of the  
13       Rural Water Supply Project.

14           (c) MEMORANDUM OF AGREEMENT.—The Secretary  
15       shall enter into a memorandum of agreement with the  
16       Tribe that commits Reclamation and BIA to a transition  
17       plan that addresses operations and maintenance of the  
18       Rural Water Supply Project while the facilities are under  
19       construction and after completion of construction.

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

24           (e) TECHNICAL ASSISTANCE.—The Secretary shall  
25       provide such technical assistance as may be necessary to

1 the Tribe to plan, develop, and construct the Rural Water  
2 Supply Project, including, but not limited to, operation  
3 and management training.

4 (f) SERVICE AREA.—The service area of the Rural  
5 Water Supply Project shall be within the boundaries of  
6 the Reservation.

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

11 (h) REPORT.—During the year that construction of  
12 the Rural Water Supply Project begins and annually until  
13 such construction is completed, the Secretary, through  
14 Reclamation and in consultation with the Tribe, shall re-  
15 port to Congress on the status of the planning, design,  
16 and construction of the Rural Water Supply Project.

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

21 **SEC. 7. AUTHORIZATION OF APPROPRIATIONS.**

22 (a) IN GENERAL.—There is authorized to be appro-  
23 priated to carry out this Act \$45,000,000 (January 2002  
24 dollars) plus or minus such amounts, if any, as may be  
25 justified by reason of changes in construction costs as in-

1 dicated by engineering cost indexes applicable to the types  
2 of construction involved for the planning, design, and con-  
3 struction of the Rural Water Supply Project as generally  
4 described in the Report dated September 2001.

5 (b) CONDITIONS.—Funds may not be appropriated  
6 for the construction of any project authorized under this  
7 Act until after—

8 (1) an appraisal investigation and a feasibility  
9 study have been completed by the Secretary and the  
10 Tribe; and

11 (2) the Secretary has determined that the plan  
12 required by section 6(a)(2) is completed.

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

18 (d) NO REDUCTION IN FUNDS.—The amounts au-  
19 thorized by this Act and appropriated by Congress shall  
20 not be reduced and shall not be subject to the under-  
21 financing requirements within Reclamation's budget for  
22 any year as long as the Rural Water Supply Project is  
23 authorized.

1 **SEC. 8. PROHIBITION ON USE OF FUNDS FOR IRRIGATION**  
2 **PURPOSES.**

3 None of the funds made available to the Secretary  
4 for planning or construction of the Rural Water Supply  
5 Project may be used to plan or construct facilities used  
6 to supply water for the purposes of irrigation.

7 **SEC. 9. WATER RIGHTS.**

8 The water rights of the Tribe are part of and in-  
9 cluded in the Jicarilla Apache Tribe Water Rights Settle-  
10 ment Act (Public Law 102–441). These rights are adju-  
11 dicated under New Mexico State law as a partial final  
12 judgment and decree entered in the Eleventh Judicial Dis-  
13 trict Court of New Mexico. That Act and decree provide  
14 for sufficient water rights under “historic and existing  
15 uses” to supply water for the municipal water system.  
16 These water rights are recognized depletions within the  
17 San Juan River basin and no new depletions are associ-  
18 ated with the Rural Water Supply Project. In consultation  
19 with the Fish and Wildlife Service, Reclamation has deter-  
20 mined that there shall be no significant impact to endan-  
21 gered species as a result of water depletions associated  
22 with this project. No other water rights of the Tribe shall  
23 be impacted by the Rural Water Supply Project.

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