

## Union Calendar No. 455

110<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 5710

[Report No. 110-714]

To authorize the Secretary of the Interior to provide financial assistance to the Eastern New Mexico Rural Water Authority for the planning, design, and construction of the Eastern New Mexico Rural Water System, and for other purposes.

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### IN THE HOUSE OF REPRESENTATIVES

APRIL 3, 2008

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

JUNE 17, 2008

Additional sponsors: Mrs. WILSON of New Mexico and Mr. PEARCE

JUNE 17, 2008

Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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## A BILL

To authorize the Secretary of the Interior to provide financial assistance to the Eastern New Mexico Rural Water Authority for the planning, design, and construction of the Eastern New Mexico Rural Water System, 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 “Eastern New Mexico  
5 Rural Water System Authorization Act”.

6 **SEC. 2. DEFINITIONS.**

7        In this Act:

8            (1) **AUTHORITY.**—The term “Authority” means  
9        the Eastern New Mexico Rural Water Authority, an  
10        entity formed under State law for the purposes of  
11        planning, financing, developing, and operating the  
12        System.

13            (2) **ENGINEERING REPORT.**—The term “engi-  
14        neering report” means the report entitled “Eastern  
15        New Mexico Rural Water System Preliminary Engi-  
16        neering Report” and dated October 2006.

17            (3) **PLAN.**—The term “plan” means the oper-  
18        ation, maintenance, and replacement plan required  
19        by section 4(b).

20            (4) **SECRETARY.**—The term “Secretary” means  
21        the Secretary of the Interior.

22            (5) **STATE.**—The term “State” means the State  
23        of New Mexico.

24            (6) **SYSTEM.**—

1 (A) IN GENERAL.—The term “System”  
2 means the Eastern New Mexico Rural Water  
3 System, a water delivery project designed to de-  
4 liver approximately 16,500 acre-feet of water  
5 per year from the Ute Reservoir to the cities of  
6 Clovis, Elida, Grady, Melrose, Portales, and  
7 Texico and other locations in Curry, Roosevelt,  
8 and Quay Counties in the State.

9 (B) INCLUSIONS.—The term “System” in-  
10 cludes the major components and associated in-  
11 frastructure identified as the “Best Technical  
12 Alternative” in the engineering report.

13 (7) UTE RESERVOIR.—The term “Ute Res-  
14 ervoir” means the impoundment of water created in  
15 1962 by the construction of the Ute Dam on the Ca-  
16 nadian River, located approximately 32 miles up-  
17 stream of the border between New Mexico and  
18 Texas.

19 **SEC. 3. EASTERN NEW MEXICO RURAL WATER SYSTEM.**

20 (a) FINANCIAL ASSISTANCE.—

21 (1) IN GENERAL.—The Secretary may provide  
22 financial and technical assistance to the Authority to  
23 assist in planning, designing, conducting related  
24 preconstruction activities for, and constructing the  
25 System.

1 (2) USE.—

2 (A) IN GENERAL.—Any financial assist-  
3 ance provided under paragraph (1) shall be ob-  
4 ligated and expended only in accordance with a  
5 cooperative agreement entered into under sec-  
6 tion 5(a)(2).

7 (B) LIMITATIONS.—Financial assistance  
8 provided under paragraph (1) shall not be  
9 used—

10 (i) for any activity that is inconsistent  
11 with constructing the System; or

12 (ii) to plan or construct facilities used  
13 to supply irrigation water for irrigated ag-  
14 ricultural purposes.

15 (b) COST-SHARING REQUIREMENT.—

16 (1) IN GENERAL.—The Federal share of the  
17 total cost of any activity or construction carried out  
18 using amounts made available under this Act shall  
19 be not more than 75 percent of the total cost of the  
20 System.

21 (2) SYSTEM DEVELOPMENT COSTS.—For pur-  
22 poses of paragraph (1), the total cost of the System  
23 shall include any costs incurred by the Authority or  
24 the State on or after October 1, 2003, for the devel-  
25 opment of the System.

1 (c) LIMITATION.—No amounts made available under  
2 this Act may be used for the construction of the System  
3 until—

4 (1) a plan is developed under section 4(b); and

5 (2) the Secretary and the Authority have com-  
6 plied with any requirements of the National Envi-  
7 ronmental Policy Act of 1969 (42 U.S.C. 4321 et  
8 seq.) applicable to the System.

9 (d) TITLE TO PROJECT WORKS.—Title to the infra-  
10 structure of the System shall be held by the Authority or  
11 as may otherwise be specified under State law.

12 **SEC. 4. OPERATION, MAINTENANCE, AND REPLACEMENT**  
13 **COSTS.**

14 (a) IN GENERAL.—The Authority shall be responsible  
15 for the annual operation, maintenance, and replacement  
16 costs associated with the System.

17 (b) OPERATION, MAINTENANCE, AND REPLACEMENT  
18 PLAN.—The Authority, in consultation with the Secretary,  
19 shall develop an operation, maintenance, and replacement  
20 plan that establishes the rates and fees for beneficiaries  
21 of the System in the amount necessary to ensure that the  
22 System is properly maintained and capable of delivering  
23 approximately 16,500 acre-feet of water per year.

24 **SEC. 5. ADMINISTRATIVE PROVISIONS.**

25 (a) COOPERATIVE AGREEMENTS.—

1           (1) IN GENERAL.—The Secretary may enter  
2 into any contract, grant, cooperative agreement, or  
3 other agreement that is necessary to carry out this  
4 Act.

5           (2) COOPERATIVE AGREEMENT FOR PROVISION  
6 OF FINANCIAL ASSISTANCE.—

7           (A) IN GENERAL.—The Secretary shall  
8 enter into a cooperative agreement with the Au-  
9 thority to provide financial assistance and any  
10 other assistance requested by the Authority for  
11 planning, design, related preconstruction activi-  
12 ties, and construction of the System.

13           (B) REQUIREMENTS.—The cooperative  
14 agreement entered into under subparagraph (A)  
15 shall, at a minimum, specify the responsibilities  
16 of the Secretary and the Authority with respect  
17 to—

18                   (i) ensuring that the cost-share re-  
19 quirements established by section 3(b) are  
20 met;

21                   (ii) completing the planning and final  
22 design of the System;

23                   (iii) any environmental and cultural  
24 resource compliance activities required for  
25 the System; and

1 (iv) the construction of the System.

2 (b) TECHNICAL ASSISTANCE.—At the request of the  
3 Authority, the Secretary may provide to the Authority any  
4 technical assistance that is necessary to assist the Author-  
5 ity in planning, designing, constructing, and operating the  
6 System.

7 (c) BIOLOGICAL ASSESSMENT.—The Secretary shall  
8 consult with the New Mexico Interstate Stream Commis-  
9 sion and the Authority in preparing any biological assess-  
10 ment under the Endangered Species Act of 1973 (16  
11 U.S.C. 1531 et seq.) that may be required for planning  
12 and constructing the System.

13 (d) EFFECT.—Nothing in this Act—

14 (1) affects or preempts—

15 (A) State water law; or

16 (B) an interstate compact relating to the  
17 allocation of water; or

18 (2) confers on any non-Federal entity the abil-  
19 ity to exercise any Federal rights to—

20 (A) the water of a stream; or

21 (B) any groundwater resource.

22 **SEC. 6. AUTHORIZATION OF APPROPRIATIONS.**

23 (a) IN GENERAL.—In accordance with the adjust-  
24 ment carried out under subsection (b), there is authorized

1 to be appropriated to the Secretary to carry out this Act  
2 an amount not greater than \$327,000,000.

3 (b) ADJUSTMENT.—The amount made available  
4 under subsection (a) shall be adjusted to reflect changes  
5 in construction costs occurring after January 1, 2007, as  
6 indicated by engineering cost indices applicable to the  
7 types of construction necessary to carry out this Act.

8 (c) NONREIMBURSABLE AMOUNTS.—Amounts made  
9 available to the Authority in accordance with the cost-  
10 sharing requirement under section 3(b) shall be non-  
11 reimbursable and nonreturnable to the United States.

12 (d) AVAILABILITY OF FUNDS.—At the end of each  
13 fiscal year, any unexpended funds appropriated pursuant  
14 to this Act shall be retained for use in future fiscal years  
15 consistent with this Act.



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