

110TH CONGRESS
1ST SESSION

S. 1171

To amend the Colorado River Storage Project Act and Public Law 87–483 to authorize the construction and rehabilitation of water infrastructure in Northwestern New Mexico, to authorize the use of the reclamation fund to fund the Reclamation Water Settlements Fund, to authorize the conveyance of certain Reclamation land and infrastructure, to authorize the Commissioner of Reclamation to provide for the delivery of water, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 19, 2007

Mr. BINGAMAN (for himself and Mr. DOMENICI) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

A BILL

To amend the Colorado River Storage Project Act and Public Law 87–483 to authorize the construction and rehabilitation of water infrastructure in Northwestern New Mexico, to authorize the use of the reclamation fund to fund the Reclamation Water Settlements Fund, to authorize the conveyance of certain Reclamation land and infrastructure, to authorize the Commissioner of Reclamation to provide for the delivery of water, 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,*

1 **SECTION 1. SHORT TITLE.**

2 (a) **SHORT TITLE.**—This Act may be cited as the
 3 “Northwestern New Mexico Rural Water Projects Act”.

4 (b) **TABLE OF CONTENTS.**—The table of contents of
 5 this Act is as follows:

- Sec. 1. Short title.
- Sec. 2. Definitions.
- Sec. 3. Compliance with environmental laws.

TITLE I—AMENDMENTS TO THE COLORADO RIVER STORAGE
PROJECT ACT AND PUBLIC LAW 87-483

- Sec. 101. Amendments to the Colorado River Storage Project Act.
- Sec. 102. Amendments to Public Law 87-483.
- Sec. 103. Effect on Federal water law.

TITLE II—RECLAMATION WATER SETTLEMENTS FUND

- Sec. 201. Reclamation Water Settlements Fund.

TITLE III—NORTHWESTERN NEW MEXICO RURAL WATER
SUPPLY PROJECT

- Sec. 301. Purposes.
- Sec. 302. Authorization of Northwestern New Mexico Rural Water Supply Project.
- Sec. 303. Delivery and use of Northwestern New Mexico Rural Water Supply Project water.
- Sec. 304. Project contracts.
- Sec. 305. Use of Navajo Nation Municipal Pipeline.
- Sec. 306. Authorization of conjunctive use wells.
- Sec. 307. San Juan River Navajo Irrigation Projects.
- Sec. 308. Other irrigation projects.
- Sec. 309. Authorization of appropriations.

TITLE IV—NAVAJO NATION WATER RIGHTS

- Sec. 401. Agreement.
- Sec. 402. Trust Fund.
- Sec. 403. Waivers and releases.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

8 (1) **ACRE-FEET.**—The term “acre-feet” means
 9 acre-feet per year.

1 (2) AGREEMENT.—The term “Agreement”
2 means the agreement among the State of New Mex-
3 ico, the Nation, and the United States setting forth
4 a stipulated and binding agreement signed by the
5 State of New Mexico and the Nation on April 19,
6 2005.

7 (3) ANIMAS-LA PLATA PROJECT.—The term
8 “Animas-La Plata Project” has the meaning given
9 the term in section 3 of Public Law 100–585 (102
10 Stat. 2973), including Ridges Basin Dam, Lake
11 Nighthorse, the Pipeline, and any other features or
12 modifications made pursuant to the Colorado Ute
13 Settlement Act Amendments of 2000 (Public Law
14 106–554; 114 Stat. 2763A–258).

15 (4) CITY.—The term “City” means the city of
16 Gallup, New Mexico.

17 (5) COMPACT.—The term “Compact” means
18 the Upper Colorado River Basin Compact as con-
19 sented to by the Act of April 6, 1949 (63 Stat. 31,
20 chapter 48).

21 (6) CONTRACT.—The term “Contract” means
22 the contract between the United States and the Na-
23 tion setting forth certain commitments, rights, and
24 obligations of the United States and the Nation, as
25 described in paragraph 6.0 of the Agreement.

1 (7) DEPLETION.—The term “depletion” means
2 the depletion of the flow of the San Juan River
3 stream system in State of New Mexico by a par-
4 ticular use of water (including any depletion incident
5 to the use) and represents the diversion from the
6 stream system by the use, less return flows to the
7 stream system from the use.

8 (8) DRAFT IMPACT STATEMENT.—The term
9 “Draft Impact Statement” means the draft environ-
10 mental impact statement prepared by the Bureau of
11 Reclamation for the Project dated March 2007.

12 (9) FUND.—The term “Fund” means the Rec-
13 lamation Waters Settlements Fund established by
14 section 201(a).

15 (10) HYDROLOGIC DETERMINATION.—The term
16 “hydrologic determination” means the draft hydro-
17 logic determination entitled “Water Availability from
18 Navajo Reservoir and the Upper Colorado River
19 Basin for Use in New Mexico,” prepared by the Bu-
20 reau of Reclamation pursuant to section 11 of the
21 Act of June 13, 1962 (Public Law 87–483; 76 Stat.
22 99), and dated May 2006.

23 (11) NATION.—The term “Nation” means the
24 Navajo Nation, a body politic and federally-recog-
25 nized Indian nation as provided for in section 101(2)

1 of the Federally Recognized Indian Tribe List of
2 1994 (25 U.S.C. 497a(2)), also known variously as
3 the “Navajo Tribe,” the “Navajo Tribe of Arizona,
4 New Mexico & Utah,” and the “Navajo Tribe of In-
5 dians” and other similar names, and includes all
6 bands of Navajo Indians and chapters of the Navajo
7 Nation.

8 (12) NAVAJO INDIAN IRRIGATION PROJECT.—
9 The term “Navajo Indian Irrigation Project” means
10 the Navajo Indian irrigation project authorized by
11 section 2 of Public Law 87–483 (76 Stat. 96).

12 (13) NAVAJO RESERVOIR.—The term “Navajo
13 Reservoir” means the reservoir created by the im-
14 poundment of the San Juan River at Navajo Dam,
15 as authorized by the Act of April 11, 1956 (com-
16 monly known as the “Colorado River Storage
17 Project Act”) (43 U.S.C. 620 et seq.).

18 (14) NAVAJO NATION MUNICIPAL PIPELINE.—
19 The term “Navajo Nation Municipal Pipeline”
20 means the pipeline used to convey the water of the
21 Animas-La Plata Project of the Navajo Nation from
22 the City of Farmington, New Mexico, to commu-
23 nities of the Navajo Nation located in close prox-
24 imity to the San Juan River Valley in State of New
25 Mexico (including the City of Shiprock), as author-

1 ized by section 15(b) of the Colorado Ute Indian
2 Water Rights Settlement Act of 1988 (Public Law
3 100–585; 102 Stat. 2973; 114 Stat. 2763A–263).

4 (15) NON-NAVAJO IRRIGATION DISTRICT.—The
5 term “Non-Navajo Irrigation Districts” means—

6 (A) the Hammond Conservancy District;

7 (B) the Bloomfield Irrigation District; and

8 (C) any other community ditch organiza-
9 tion in the San Juan River basin in State of
10 New Mexico.

11 (16) PROJECT.—The term “Project” means the
12 Northwestern New Mexico Rural Water Supply
13 Project (commonly known as the “Navajo-Gallup
14 Pipeline Project”) authorized under section 302(a),
15 as substantially described as the preferred alter-
16 native in the Draft Impact Statement.

17 (17) PROJECT PARTICIPANTS.—The term
18 “Project Participants” means the City, the Nation,
19 and the Jicarilla Apache Nation.

20 (18) RESOLUTION.—The term “Resolution”
21 means the Resolution of the Upper Colorado River
22 Commission entitled “Use and Accounting of Upper
23 Basin Water Supplied to the Lower Basin in New
24 Mexico by the Proposed Project” and dated June
25 17, 2003.

1 (19) SAN JUAN RIVER RECOVERY IMPLEMENTA-
2 TION PROGRAM.—The term “San Juan River Recov-
3 ery Implementation Program” means the intergov-
4 ernmental program established pursuant to the coop-
5 erative agreement dated October 21, 1992 (including
6 any amendments to the program).

7 (20) SECRETARY.—The term “Secretary”
8 means the Secretary of the Interior, acting through
9 the Commissioner of Reclamation or any other des-
10 ignee.

11 (21) STREAM ADJUDICATION.—The term
12 “stream adjudication” means the general stream ad-
13 judication that is the subject of *New Mexico v.*
14 *United States, et al.*, No. 75–185 (11th Jud. Dist.,
15 San Juan County, New Mexico) (involving claims to
16 waters of the San Juan River and the tributaries of
17 that river).

18 (22) TRUST FUND.—The term “Trust Fund”
19 means the Navajo Nation Water Resources Develop-
20 ment Trust Fund established by section 402(a).

21 **SEC. 3. COMPLIANCE WITH ENVIRONMENTAL LAWS.**

22 (a) EFFECT OF EXECUTION OF AGREEMENT.—The
23 execution of the Agreement under section 401(a)(2) shall
24 not constitute a major Federal action under the National

1 Environmental Policy Act of 1969 (42 U.S.C. 4321 et
2 seq.).

3 (b) COMPLIANCE WITH ENVIRONMENTAL LAWS.—In
4 carrying out this Act, the Secretary shall comply with each
5 law of the Federal Government relating to the protection
6 of the environment, including—

7 (1) the National Environmental Policy Act of
8 1969 (42 U.S.C. 4321 et seq.); and

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

11 **TITLE I—AMENDMENTS TO THE**
12 **COLORADO RIVER STORAGE**
13 **PROJECT ACT AND PUBLIC**
14 **LAW 87-483**

15 **SEC. 101. AMENDMENTS TO THE COLORADO RIVER STOR-**
16 **AGE PROJECT ACT.**

17 (a) PARTICIPATING PROJECTS.—Paragraph (2) of
18 the first section of the Act of April 11, 1956 (commonly
19 known as the “Colorado River Storage Project Act”) (43
20 U.S.C. 620(2)) is amended by inserting “the North-
21 western New Mexico Rural Water Supply Project,” after
22 “Fruitland Mesa,”.

23 (b) NAVAJO RESERVOIR WATER BANK.—The Act of
24 April 11, 1956 (commonly known as the “Colorado River
25 Storage Project Act”) is amended—

1 (1) by redesignating section 16 (43 U.S.C.
2 620o) as section 17; and

3 (2) by inserting after section 15 (43 U.S.C.
4 620n) the following:

5 “SEC. 16. (a) The Secretary of the Interior may cre-
6 ate and operate within the available capacity of Navajo
7 Reservoir a top water bank.

8 “(b) Water made available for the top water bank in
9 accordance with subsections (c) and (d) shall not be sub-
10 ject to section 11 of Public Law 87–483 (76 Stat. 99).

11 “(c) The top water bank authorized under subsection
12 (a) shall be operated in a manner that—

13 “(1) is consistent with applicable law; and

14 “(2) does not impair the ability of the Secretary
15 of the Interior to deliver water under contracts en-
16 tered into under—

17 “(A) Public Law 87–483 (76 Stat. 96);

18 and

19 “(B) New Mexico State Engineer File Nos.
20 2847, 2848, 2849, and 2917.

21 “(d)(1) The Secretary of the Interior, in cooperation
22 with the State of New Mexico (acting through the Inter-
23 state Stream Commission), shall develop any terms and
24 procedures for the storage, accounting, and release of

1 water in the top water bank that are necessary to comply
2 with subsection (c).

3 “(2) The terms and procedures developed under para-
4 graph (1) shall include provisions requiring that—

5 “(A) the storage of banked water shall be sub-
6 ject to approval under State law by the New Mexico
7 State Engineer to ensure that impairment of any ex-
8 isting water right does not occur, including storage
9 of water under New Mexico State Engineer File No.
10 2849;

11 “(B) water in the top water bank be subject to
12 evaporation and other losses during storage;

13 “(C) water in the top water bank be released
14 for delivery to the owner or assigns of the banked
15 water on request of the owner, subject to reasonable
16 scheduling requirements for making the release; and

17 “(D) water in the top water bank be the first
18 water spilled or released for flood control purposes
19 in anticipation of a spill, on the condition that top
20 water bank water shall not be released or included
21 for purposes of calculating whether a release should
22 occur for purposes of satisfying releases required
23 under the San Juan River Recovery Implementation
24 Program.

1 “(e) The Secretary of the Interior may charge fees
2 to water users that use the top water bank in amounts
3 sufficient to cover the costs incurred by the United States
4 in administering the water bank.”.

5 **SEC. 102. AMENDMENTS TO PUBLIC LAW 87-483.**

6 (a) NAVAJO INDIAN IRRIGATION PROJECT.—Public
7 Law 87-483 (76 Stat. 96) is amended by striking section
8 2 and inserting the following:

9 “SEC. 2. (a) In accordance with the Act of April 11,
10 1956 (commonly known as the ‘Colorado River Storage
11 Project Act’) (43 U.S.C. 620 et seq.), the Secretary of
12 the Interior is authorized to construct, operate, and main-
13 tain the Navajo Indian Irrigation Project to provide irriga-
14 tion water to a service area of not more than 110,630
15 acres of land.

16 “(b)(1) Subject to paragraph (2), the average diver-
17 sion by the Navajo Indian Irrigation Project from the
18 Navajo Reservoir over any consecutive 10-year period shall
19 be the lesser of—

20 “(A) 508,000 acre-feet per year; or

21 “(B) the quantity of water necessary to supply
22 an average depletion of 270,000 acre-feet per year.

23 “(2) The quantity of water diverted for any 1 year
24 shall not be more than 15 percent of the average diversion
25 determined under paragraph (1).

1 “(c) In addition to being used for irrigation, the
2 water diverted by the Navajo Indian Irrigation Project
3 under subsection (b) may be used within the area served
4 by Navajo Indian Irrigation Project facilities for the fol-
5 lowing purposes:

6 “(1) Aquaculture purposes, including the
7 rearing of fish in support of the San Juan River
8 Basin Recovery Implementation Program authorized
9 by Public Law 106–392 (114 Stat. 1602).

10 “(2) Domestic, industrial, or commercial pur-
11 poses relating to agricultural production and proc-
12 essing.

13 “(3) The generation of hydroelectric power as
14 an incident to the diversion of water by the Navajo
15 Indian Irrigation Project for authorized purposes.

16 “(4) The implementation of the alternate water
17 source provisions described in subparagraph 9.2 of
18 the agreement executed under section 401(a)(2) of
19 the Northwestern New Mexico Rural Water Projects
20 Act.

21 “(d) The Navajo Indian Irrigation Project water di-
22 verted under subsection (b) may be transferred to areas
23 located within or outside the area served by Navajo Indian
24 Irrigation Project facilities, and within or outside the

1 boundaries of the Navajo Nation, for any beneficial use
2 in accordance with—

3 “(1) the agreement executed under section
4 401(a)(2) of the Northwestern New Mexico Rural
5 Water Projects Act;

6 “(2) the contract executed under section
7 304(a)(2)(B) of the Northwestern New Mexico
8 Rural Water Projects Act; and

9 “(3) any other applicable law.

10 “(e)(1) The Secretary may use the capacity of the
11 Navajo Indian Irrigation Project works to convey water
12 supplies for—

13 “(A) the Northwestern New Mexico Rural
14 Water Supply Project under section 302 of the
15 Northwestern New Mexico Rural Water Projects
16 Act; or

17 “(B) other nonirrigation purposes authorized
18 under subsection (c) or (d).

19 “(2) The Secretary shall not reallocate, or require re-
20 payment of, construction costs of the Navajo Indian Irri-
21 gation Project because of the conveyance of water supplies
22 under paragraph (1).”.

23 (b) RUNOFF ABOVE NAVAJO DAM.—Section 11 of
24 Public Law 87–483 (76 Stat. 100) is amended by adding
25 at the end the following:

1 “(d)(1) For purposes of implementing in a year of
2 prospective shortage the water allocation procedures es-
3 tablished by subsection (a), the Secretary of the Interior
4 shall determine the quantity of any shortages and the ap-
5 propriate apportionment of water using the normal diver-
6 sion requirements on the flow of the San Juan River origi-
7 nating above Navajo Dam based on the following criteria:

8 “(A) The quantity of diversion or water delivery
9 for the current year anticipated to be necessary to
10 irrigate land in accordance with cropping plans pre-
11 pared by contractors.

12 “(B) The annual diversion or water delivery de-
13 mands for the current year anticipated for non-irri-
14 gation uses under water delivery contracts, including
15 the demand for delivery for uses in the State of Ari-
16 zona under the Northwestern New Mexico Rural
17 Water Supply Project authorized by section 302(a)
18 of the Northwestern New Mexico Rural Water
19 Projects Act, but excluding any current demand for
20 surface water for placement into aquifer storage for
21 future recovery and use.

22 “(C) An annual normal diversion demand of
23 135,000 acre-feet for the initial stage of the San
24 Juan-Chama Project authorized by section 8.

1 “(2) The Secretary shall not include in the normal
2 diversion requirements—

3 “(A) the quantity of water that reliably can be
4 anticipated to be diverted or delivered under a con-
5 tract from inflows to the San Juan River arising
6 below Navajo Dam under New Mexico State Engi-
7 neer File No. 3215; or

8 “(B) the quantity of water anticipated to be
9 supplied through reuse.

10 “(3) If the State of New Mexico determines that
11 water uses under Navajo Reservoir water supply contracts
12 or diversions by the San Juan-Chama Project need to be
13 reduced in any 1 year for the State to comply with the
14 Upper Colorado River Basin Compact, as consented to by
15 the Act of April 6, 1949 (63 Stat. 31, chapter 48), the
16 Secretary shall reduce the normal diversion requirements
17 for the year to reflect the water use or diversion limita-
18 tions imposed by the State of New Mexico.

19 “(e)(1) If the Secretary determines that there is a
20 shortage of water under subsection (a), the Secretary shall
21 allocate the shortage to the demands on the Navajo Res-
22 ervoir water supply in the following order of priority:

23 “(A) The demand for delivery for uses in the
24 State of Arizona under the Northwestern New Mex-
25 ico Rural Water Supply Project authorized by sec-

1 tion 303 of the Northwestern New Mexico Rural
2 Water Projects Act, excluding the quantity of water
3 anticipated to be diverted for the uses from inflows
4 to the San Juan River that arise below Navajo Dam
5 in accordance with New Mexico State Engineer File
6 No. 3215.

7 “(B) The demand for delivery for uses allocated
8 under paragraph 8.2 of the agreement executed
9 under section 401(a)(2) of the Northwestern New
10 Mexico Rural Water Projects Act, excluding the
11 quantity of water anticipated to be diverted for such
12 uses under State Engineer File No. 3215.

13 “(C) The uses in the State of New Mexico that
14 are determined under subsection (d), in accordance
15 with the procedure for apportioning the water supply
16 under subsection (a).

17 “(2) For any year for which the Secretary determines
18 and allocates a shortage in the Navajo Reservoir water
19 supply, the Secretary shall not deliver, and contractors of
20 the water supply shall not divert, any of the water supply
21 for placement into aquifer storage for future recovery and
22 use.

23 “(3) To determine the occurrence and amount of any
24 shortage to contracts entered into under this section, the
25 Secretary shall not include as available storage any water

1 stored in a top water bank in Navajo Reservoir established
2 under section 16(a) of the Act of April 11, 1956 (com-
3 monly known as the ‘Colorado River Storage Project Act’).

4 “(f) The Secretary of the Interior shall apply the
5 sharing and apportionment of water determined under
6 subsections (a), (d), and (e) on an annual volume basis.

7 “(g) The Secretary of the Interior may revise a deter-
8 mination of shortages, apportionments, or allocations of
9 water under subsections (a), (d), and (e) on the basis of
10 information relating to water supply conditions that was
11 not available at the time at which the determination was
12 made.

13 “(h) Nothing in this section prohibits the Secretary
14 from reallocating water for any year, including a year in
15 which a shortage is determined under subsection (a), in
16 accordance with cooperative water agreements between
17 water users providing for a sharing of water supplies.

18 “(i) Any water available for diversion under New
19 Mexico State Engineer File No. 3215 shall be distributed,
20 to the maximum extent practicable, in proportionate
21 amounts to the diversion demands of all contractors and
22 subcontractors of the Navajo Reservoir water supply that
23 are diverting water below Navajo Dam.”.

1 **SEC. 103. EFFECT ON FEDERAL WATER LAW.**

2 Unless expressly provided in this Act, nothing in this
3 Act modifies, conflicts with, preempts, or otherwise af-
4 fects—

5 (1) the Boulder Canyon Project Act (43 U.S.C.
6 617 et seq.);

7 (2) the Boulder Canyon Project Adjustment Act
8 (54 Stat. 774, chapter 643);

9 (3) the Act of April 11, 1956 (commonly known
10 as the “Colorado River Storage Project Act”) (43
11 U.S.C. 620 et seq.);

12 (4) the Act of September 30, 1968 (commonly
13 known as the “Colorado River Basin Project Act”)
14 (82 Stat. 885);

15 (5) Public Law 87–483 (76 Stat. 96);

16 (6) the Treaty between the United States of
17 America and Mexico representing utilization of wa-
18 ters of the Colorado and Tijuana Rivers and of the
19 Rio Grande, signed at Washington February 3, 1944
20 (59 Stat. 1219);

21 (7) the Colorado River Compact of 1922, as ap-
22 proved by the Presidential Proclamation of June 25,
23 1929 (46 Stat. 3000);

24 (8) the Compact;

25 (9) the Act of April 6, 1949 (63 Stat. 31, chap-
26 ter 48);

1 (10) the Jicarilla Apache Tribe Water Rights
2 Settlement Act (106 Stat. 2237); or

3 (11) section 205 of the Energy and Water De-
4 velopment Appropriations Act, 2005 (118 Stat.
5 2949).

6 **TITLE II—RECLAMATION WATER**
7 **SETTLEMENTS FUND**

8 **SEC. 201. RECLAMATION WATER SETTLEMENTS FUND.**

9 (a) ESTABLISHMENT.—There is established in the
10 Treasury of the United States a fund, to be known as the
11 “Reclamation Water Settlements Fund”, consisting of—

12 (1) such amounts as are deposited to the Fund
13 under subsection (b); and

14 (2) any interest earned on investment of
15 amounts in the Fund under subsection (d).

16 (b) DEPOSITS TO FUND.—

17 (1) IN GENERAL.—For each of fiscal years
18 2018 through 2028, the Secretary of the Treasury
19 shall deposit in the Fund, if available, \$100,000,000
20 of the revenues that would otherwise be deposited
21 for the fiscal year in the fund established by the
22 first section of the Act of June 17, 1902 (32 Stat.
23 388, chapter 1093).

1 (2) AVAILABILITY OF AMOUNTS.—Amounts de-
2 posited in the Fund under paragraph (1) shall be
3 made available pursuant to this section—

4 (A) without further appropriation; and

5 (B) in addition to amounts appropriated
6 pursuant to any authorization contained in any
7 other provision of law.

8 (c) EXPENDITURES FROM FUND.—

9 (1) IN GENERAL.—For each of fiscal years
10 2018 through 2030, on request by the Secretary
11 pursuant to paragraphs (2) and (3), the Secretary
12 of the Treasury shall transfer from the Fund to the
13 Secretary an amount not to exceed \$100,000,000 for
14 the fiscal year requested.

15 (2) REQUESTS.—The Secretary may request a
16 transfer from the Fund to implement a settlement
17 agreement approved by Congress that resolves, in
18 whole or in part, litigation involving the United
19 States or any other agreement approved by Congress
20 that is entered into by the Secretary, if the settle-
21 ment or other agreement requires the Bureau of
22 Reclamation to plan, design, and construct—

23 (A) water supply infrastructure; or

24 (B) a project—

1 (i) to rehabilitate a water delivery sys-
2 tem to conserve water; or

3 (ii) to restore fish and wildlife habitat
4 or otherwise improve environmental condi-
5 tions associated with or affected by a rec-
6 lamation project that is in existence on the
7 date of enactment of this Act.

8 (3) USE FOR COMPLETION OF PROJECT.—

9 (A) PRIORITIES.—

10 (i) FIRST PRIORITY.—The first pri-
11 ority for expenditure of amounts in the
12 Fund shall be for the purposes described in
13 subparagraph (B).

14 (ii) OTHER PURPOSES.—Any amounts
15 in the Fund that are not needed for the
16 purposes described in subparagraph (B)
17 may be used for other purposes authorized
18 in paragraph (2).

19 (B) COMPLETION OF PROJECT.—Effective
20 beginning January 1, 2018, if, in the judgment
21 of the Secretary, the deadline described in sec-
22 tion 401(f)(1)(A)(ix) is unlikely to be met be-
23 cause a sufficient amount of funding is not oth-
24 erwise available through appropriations made
25 available pursuant to section 309(a), the Sec-

1 retary shall request the Secretary of the Treas-
2 ury to transfer from the Fund to the Secretary
3 such amounts on an annual basis pursuant to
4 paragraph (1), not to exceed a total of
5 \$500,000,000, as are necessary to pay the Fed-
6 eral share of the costs, and substantially com-
7 plete as expeditiously as practicable, the con-
8 struction of the water supply infrastructure au-
9 thorized as part of the Project.

10 (C) PROHIBITED USE OF FUND.—The Sec-
11 retary shall not use any amount transferred
12 from the Fund under subparagraph (A) to
13 carry out any other feature or activity described
14 in title IV other than a feature or activity relat-
15 ing to the construction of the water supply in-
16 frastructure authorized as part of the Project.

17 (d) INVESTMENT OF AMOUNTS.—

18 (1) IN GENERAL.—The Secretary of the Treas-
19 ury shall invest such portion of the Fund as is not,
20 in the judgment of the Secretary of the Treasury,
21 required to meet current withdrawals.

22 (2) INTEREST-BEARING OBLIGATIONS.—Invest-
23 ments may be made only in interest-bearing obliga-
24 tions of the United States.

1 (3) ACQUISITION OF OBLIGATIONS.—For the
2 purpose of investments under paragraph (1), obliga-
3 tions may be acquired—

4 (A) on original issue at the issue price; or

5 (B) by purchase of outstanding obligations
6 at the market price.

7 (4) SALE OF OBLIGATIONS.—Any obligation ac-
8 quired by the Fund may be sold by the Secretary of
9 the Treasury at the market price.

10 (5) CREDITS TO FUND.—The interest on, and
11 the proceeds from the sale or redemption of, any ob-
12 ligations held in the Fund shall be credited to, and
13 form a part of, the Fund.

14 (e) TRANSFERS OF AMOUNTS.—

15 (1) IN GENERAL.—The amounts required to be
16 transferred to the Fund under this section shall be
17 transferred at least monthly from the general fund
18 of the Treasury to the Fund on the basis of esti-
19 mates made by the Secretary of the Treasury.

20 (2) ADJUSTMENTS.—Proper adjustment shall
21 be made in amounts subsequently transferred to the
22 extent prior estimates were in excess of or less than
23 the amounts required to be transferred.

24 (f) TERMINATION.—On September 30, 2030—

25 (1) the Fund shall terminate; and

1 (2) the unexpended and unobligated balance of
2 the Fund shall be transferred to the general fund of
3 the Treasury.

4 **TITLE III—NORTHWESTERN NEW**
5 **MEXICO RURAL WATER SUP-**
6 **PLY PROJECT**

7 **SEC. 301. PURPOSES.**

8 The purposes of this subtitle are—

9 (1) to authorize the Secretary to construct the
10 Northwestern New Mexico Rural Water Supply
11 Project;

12 (2) to allocate the water supply for the Project
13 among the Nation, the city of Gallup, New Mexico,
14 and the Jicarilla Apache Nation; and

15 (3) to authorize the Secretary to enter into
16 Project repayment contracts with the city of Gallup
17 and the Jicarilla Apache Nation.

18 **SEC. 302. AUTHORIZATION OF NORTHWESTERN NEW MEX-**
19 **ICO RURAL WATER SUPPLY PROJECT.**

20 (a) IN GENERAL.—The Secretary, acting through the
21 Commissioner of Reclamation, is authorized to design,
22 construct, operate, and maintain the Project in substantial
23 accordance with the preferred alternative in the Draft Im-
24 pact Statement.

1 (b) PROJECT FACILITIES.—To provide for the deliv-
2 ery of San Juan River water to Project Participants, the
3 Secretary may construct, operate, and maintain the
4 Project facilities described in the preferred alternative in
5 the Draft Impact Statement, including:

6 (1) A pumping plant on the San Juan River in
7 the vicinity of Kirtland, New Mexico.

8 (2)(A) A main pipeline from the San Juan
9 River near Kirtland, New Mexico, to Shiprock, New
10 Mexico, and Gallup, New Mexico, which follows
11 United States Highway 491.

12 (B) Any pumping plants associated with the
13 pipeline authorized under subparagraph (A).

14 (3)(A) A main pipeline from Cutter Reservoir
15 to Ojo Encino, New Mexico, which follows United
16 States Highway 550.

17 (B) Any pumping plants associated with the
18 pipeline authorized under subparagraph (A).

19 (4)(A) Lateral pipelines from the main pipelines
20 to Nation communities in the States of New Mexico
21 and Arizona.

22 (B) Any pumping plants associated with the
23 pipelines authorized under subparagraph (A).

24 (5) Any water regulation, storage or treatment
25 facility, service connection to an existing public

1 water supply system, power substation, power dis-
2 tribution works, or other appurtenant works (includ-
3 ing a building or access road) that is related to the
4 Project facilities authorized by paragraphs (1)
5 through (4), including power transmission facilities
6 to connect Project facilities to existing high-voltage
7 transmission facilities.

8 (c) ACQUISITION OF LAND.—

9 (1) IN GENERAL.—Except as provided in para-
10 graph (2), the Secretary may acquire any land or in-
11 terest in land that is necessary to construct, operate,
12 and maintain the Project facilities authorized under
13 subsection (b).

14 (2) LIMITATION.—The Secretary may not con-
15 demn water rights for purposes of the Project.

16 (d) CONDITIONS.—

17 (1) IN GENERAL.—The Secretary shall not com-
18 mence construction of the facilities authorized under
19 subsection (b) until such time as—

20 (A) the Secretary executes the Agreement
21 and the Contract;

22 (B) the contracts authorized under section
23 304 are executed;

24 (C) the Secretary—

1 (i) completes an environmental impact
2 statement for the Project; and

3 (ii) has issued a record of decision
4 that provides for a preferred alternative;
5 and

6 (D) the State of New Mexico has made ar-
7 rangements with the Secretary to contribute
8 \$25,000,000 toward the construction costs of
9 the Project.

10 (2) COST SHARING.—State contributions re-
11 quired under paragraph (1)(D) shall be in addition
12 to amounts that the State of New Mexico contrib-
13 utes for the planning and construction of regional
14 facilities to distribute Project water to the City and
15 surrounding Nation communities before the date on
16 which the City executes a repayment contract under
17 section 304(b).

18 (3) EFFECT.—The design and construction of
19 the Project shall not be subject to the Indian Self-
20 Determination and Education Assistance Act (25
21 U.S.C. 450 et seq.).

22 (e) POWER ISSUES.—

23 (1) RESERVATION.—The Secretary shall re-
24 serve, from existing reservations of Colorado River
25 Storage Project power for Bureau of Reclamation

1 projects, up to 26 megawatts of power for use by the
2 Project.

3 (2) REALLOCATION OF COSTS.—Notwith-
4 standing the Act of April 11, 1956 (commonly
5 known as the “Colorado River Storage Project Act”) (43 U.S.C. 620 et seq.), the Secretary shall not re-
6 allocate or reassign any cost associated with the
7 Project from an entity covered by this title to the
8 power function.
9

10 (f) CONVEYANCE OF PROJECT FACILITIES.—

11 (1) IN GENERAL.—The Secretary is authorized
12 to enter into separate agreements with the City and
13 the Nation to convey each Project facility authorized
14 under subsection (b) to the City and the Nation
15 after—

16 (A) completion of construction of the
17 Project; and

18 (B) execution of a Project operations
19 agreement approved by the Secretary and the
20 Project Participants that sets forth—

21 (i) any terms and conditions that the
22 Secretary determines are necessary—

23 (I) to ensure the continuation of
24 the intended benefits of the Project;
25 and

1 (II) to fulfill the purposes of this
2 subtitle;

3 (ii) requirements acceptable to the
4 Secretary and the Project Participants
5 for—

6 (I) the distribution of water
7 under the Project; and

8 (II) the allocation and payment
9 of annual operation, maintenance, and
10 replacement costs of the Project based
11 on the proportionate uses of Project
12 facilities; and

13 (iii) conditions and requirements ac-
14 ceptable to the Secretary and the Project
15 Participants for operating and maintaining
16 each Project facility on completion of the
17 conveyance, including the requirement that
18 the City and the Nation shall—

19 (I) comply with—

20 (aa) the Compact; and

21 (bb) other applicable law;

22 and

23 (II) be responsible for—

1 (aa) the operation, mainte-
2 nance, and replacement of each
3 Project facility; and

4 (bb) the accounting and
5 management of water conveyance
6 and Project finances, as nec-
7 essary to administer and fulfill
8 the conditions of the Contract ex-
9 ecuted under section
10 304(a)(2)(B).

11 (2) CONVEYANCE TO THE CITY OF GALLUP OR
12 NAVAJO NATION.—In conveying a Project facility
13 under this subsection, the Secretary shall convey
14 to—

15 (A) the City the facilities and any land or
16 interest in land acquired by the United States
17 for the construction, operation, and mainte-
18 nance of the Project that are located within the
19 corporate boundaries of the City; and

20 (B) the Nation the facilities and any land
21 or interests in land acquired by the United
22 States for the construction, operation, and
23 maintenance of the Project that are located out-
24 side the corporate boundaries of the City.

1 (3) EFFECT OF CONVEYANCE.—The conveyance
2 of each Project facility shall not affect the applica-
3 tion of the Endangered Species Act of 1973 (16
4 U.S.C. 1531 et seq.) relating to the use of the water
5 associated with the Project.

6 (4) NOTICE OF PROPOSED CONVEYANCE.—Not
7 later than 45 days before the date of a proposed
8 conveyance of any Project facility, the Secretary
9 shall submit to the Committee on Resources of the
10 House of Representatives and to the Committee on
11 Energy and Natural Resources of the Senate notice
12 of the conveyance of each Project facility.

13 (g) COLORADO RIVER STORAGE PROJECT POWER.—
14 The conveyance of Project facilities under subsection (f)
15 shall not affect the availability of Colorado River Storage
16 Project power to the Project under subsection (e).

17 (h) REGIONAL USE OF PROJECT FACILITIES.—

18 (1) IN GENERAL.—Subject to paragraph (2),
19 Project facilities constructed under subsection (b)
20 may be used to treat and convey non-Project water
21 or water that is not allocated by subsection 303(b)
22 if—

23 (A) capacity is available without impairing
24 any water delivery to a Project Participant; and

1 (B) the unallocated or non-Project water
2 beneficiary—

3 (i) has the right to use the water;

4 (ii) agrees to pay the operation, main-
5 tenance, and replacement costs assignable
6 to the beneficiary for the use of the Project
7 facilities; and

8 (iii) agrees to pay a fee established by
9 the Secretary to assist in the recovery of
10 any capital cost relating to that use.

11 (2) EFFECT OF PAYMENTS.—Any payments to
12 the United States or the Nation for the use of un-
13 used capacity under this subsection or for water
14 under any subcontract with the Nation or the
15 Jicarilla Apache Nation shall not alter the construc-
16 tion repayment requirements or the operation, main-
17 tenance, and replacement payment requirements of
18 the Project Participants.

19 **SEC. 303. DELIVERY AND USE OF NORTHWESTERN NEW**
20 **MEXICO RURAL WATER SUPPLY PROJECT**
21 **WATER.**

22 (a) USE OF PROJECT WATER.—

23 (1) IN GENERAL.—In accordance with this Act
24 and other applicable law, water supply from the

1 Project shall be used for municipal, industrial, com-
2 mercial, domestic, and stock watering purposes.

3 (2) USE ON CERTAIN LAND.—

4 (A) IN GENERAL.—Subject to subpara-
5 graph (B), the Nation may use Project water
6 allocations on—

7 (i) land held by the United States in
8 trust for the Nation and members of the
9 Nation; and

10 (ii) land held in fee by the Nation.

11 (B) TRANSFER.—The Nation may transfer
12 the purposes and places of use of the allocated
13 water in accordance with the Agreement and
14 applicable law.

15 (3) HYDROELECTRIC POWER.—Hydroelectric
16 power may be generated as an incident to the deliv-
17 ery of Project water under paragraph (1).

18 (4) STORAGE.—

19 (A) IN GENERAL.—Subject to subpara-
20 graph (B), any water contracted for delivery
21 under paragraph (1) that is not needed for cur-
22 rent water demands or uses may be delivered by
23 the Project for placement in underground stor-
24 age in the State of New Mexico for future re-
25 covery and use.

1 (B) STATE APPROVAL.—Delivery of water
2 under subparagraph (A) is subject to—

3 (i) approval by the State of New Mex-
4 ico under applicable provisions of State law
5 relating to aquifer storage and recovery;
6 and

7 (ii) the provisions of the Agreement
8 and this Act.

9 (b) PROJECT WATER AND CAPACITY ALLOCA-
10 TIONS.—

11 (1) DIVERSION.—The Project shall divert from
12 the Navajo Reservoir and the San Juan River a
13 quantity of water that does not exceed the lesser
14 of—

15 (A) 37,760 acre-feet of water; or

16 (B) the quantity of water necessary to sup-
17 ply a depletion from the San Juan River of
18 35,890 acre-feet.

19 (2) ALLOCATION.—

20 (A) IN GENERAL.—Water diverted under
21 paragraph (1) shall be allocated to the Project
22 Participants in accordance with subparagraphs
23 (B) through (E), other provisions of this Act,
24 and other applicable law.

1 (B) ALLOCATION TO THE CITY OF GAL-
2 LUP.—The Project shall deliver at the point of
3 diversion from the San Juan River not more
4 than 7,500 acre-feet of water for use by the
5 City.

6 (C) ALLOCATION TO NAVAJO NATION COM-
7 MUNITIES IN NEW MEXICO.—For use by the
8 Nation in the State of New Mexico, the Project
9 shall deliver at the points of diversion from the
10 San Juan River or at Navajo Reservoir the less-
11 er of—

- 12 (i) 22,650 acre-feet of water; or
13 (ii) the quantity of water necessary to
14 supply a depletion from the San Juan
15 River of 20,780 acre-feet of water.

16 (D) ALLOCATION TO NAVAJO NATION COM-
17 MUNITIES IN ARIZONA.—In accordance with
18 subsection (d), the Project may deliver at the
19 point of diversion from the San Juan River not
20 more than 6,411 acre-feet of water for use by
21 the Nation in the State of Arizona.

22 (E) ALLOCATION TO JICARILLA APACHE
23 NATION.—The Project shall deliver at Navajo
24 Reservoir not more than 1,200 acre-feet of
25 water for use by the Jicarilla Apache Nation in

1 the southern portion of the Jicarilla Apache
2 Nation Reservation in the State of New Mexico.

3 (3) USE IN EXCESS OF ALLOCATION QUAN-
4 TITY.—Notwithstanding each allocation quantity
5 limit described in subparagraphs (B), (C), and (E)
6 of paragraph (2), the Secretary may authorize a
7 Project Participant to exceed the allocation quantity
8 limit of that Project Participant if—

9 (A) capacity is available without impairing
10 any water delivery to any other Project Partici-
11 pant; and

12 (B) the Project Participant benefitting
13 from the increased allocation quantity—

14 (i) has the right to use the additional
15 water;

16 (ii) agrees to pay the operation, main-
17 tenance, and replacement costs relating to
18 the additional use any Project facility; and

19 (iii) agrees to pay a fee established by
20 the Secretary to assist in recovering capital
21 costs relating to that additional use.

22 (c) SOURCES OF WATER.—The sources of water for
23 the Project allocated by subsection (b) shall be water origi-
24 nating in—

1 (1) drainage of the San Juan River above Nav-
2 ajo Dam, to be supplied under New Mexico State
3 Engineer File No. 2849; and

4 (2) inflow to the San Juan River arising below
5 Navajo Dam, to be supplied under New Mexico
6 State Engineer File No. 3215.

7 (d) CONDITIONS FOR USE IN ARIZONA.—

8 (1) REQUIREMENTS.—Project water shall not
9 be delivered for use by any community of the Nation
10 in the State of Arizona under subsection (b)(2)(D)
11 until the date on which—

12 (A) the Secretary determines by hydrologic
13 investigation that sufficient water is reasonably
14 likely to be available to supply uses from water
15 of the Colorado River system allocated to the
16 State of Arizona;

17 (B) the Secretary submits to Congress the
18 determination described in subparagraph (A);

19 (C) the Secretary determines that the uses
20 in the State of Arizona are within the appor-
21 tionment of the water of the Colorado River
22 made to the State of Arizona through compact,
23 statute, or court decree;

24 (D) Congress has approved a Navajo Res-
25 ervoir supply contract between the Nation and

1 the United States to provide for the delivery of
2 Project water for the uses in Arizona;

3 (E) the Navajo Nation and the State of
4 Arizona have entered into an agreement pro-
5 viding for delivery of water of the Project for
6 uses in Arizona; and

7 (F) any other determination is made as
8 may be required by the Compact.

9 (2) ACCOUNTING OF USES IN ARIZONA.—Any
10 depletion of water from the San Juan River stream
11 system in the State of New Mexico that results from
12 the diversion of water by the Project for uses within
13 the State of Arizona (including depletion incidental
14 to the diversion, impounding, or conveyance of water
15 in the State of New Mexico for uses in the State of
16 Arizona)—

17 (A) shall be accounted for as a part of the
18 Colorado River System apportionments to the
19 State of Arizona; and

20 (B) shall not increase the total quantity of
21 water to which the State of Arizona is entitled
22 to use under any compact, statute, or court de-
23 cree.

24 (e) FORBEARANCE.—

1 (1) IN GENERAL.—Subject to paragraphs (2)
2 and (3), during any year in which a shortage to the
3 normal diversion requirement for any use relating to
4 the Project within the State of Arizona occurs (as
5 determined under section 11 of Public Law 87–483
6 (76 Stat. 99)), the Nation may temporarily forbear
7 the delivery of the water supply of the Navajo Res-
8 ervoir for uses in the State of New Mexico under the
9 apportionments of water to the Navajo Indian Irri-
10 gation Project and the normal diversion require-
11 ments of the Project to allow an equivalent quantity
12 of water to be delivered from the Navajo Reservoir
13 water supply for municipal and domestic uses of the
14 Nation in the State of Arizona under the Project.

15 (2) LIMITATION OF FORBEARANCE.—The Na-
16 tion may forebear the delivery of water under para-
17 graph (1) of a quantity not exceeding the quantity
18 of the shortage to the normal diversion requirement
19 for any use relating to the Project within the State
20 of Arizona.

21 (3) EFFECT.—The forbearance of the delivery
22 of water under paragraph (1) shall be subject to the
23 requirements relating to accounting and water quan-
24 tity described in subsection (d)(2).

25 (f) EFFECT.—Nothing in this Act—

1 (1) authorizes the marketing, leasing, or trans-
2 fer of the water supplies made available to the Na-
3 tion under the Contract to non-Navajo water users
4 in States other than the State of New Mexico; or

5 (2) authorizes the forbearance of water uses in
6 the State of New Mexico to allow uses of water in
7 other States other than as authorized under sub-
8 section (e).

9 (g) **CONSISTENCY WITH UPPER COLORADO RIVER**
10 **BASIN COMPACT.**—In accordance with the Resolution and
11 notwithstanding any other provision of law—

12 (1) water may be diverted by the Project from
13 the San Juan River in the State of New Mexico for
14 use in the Lower Colorado River Basin in the State
15 of New Mexico; and

16 (2) water diverted under paragraph (1) shall be
17 a part of the consumptive use apportionment made
18 to the State of New Mexico by Article III(a) of the
19 Compact.

20 **SEC. 304. PROJECT CONTRACTS.**

21 (a) **NAVAJO NATION CONTRACT.**—

22 (1) **HYDROLOGIC DETERMINATION.**—Congress
23 recognizes that the Hydrologic Determination satis-
24 factory to support approval of the Contract has been
25 completed.

1 (2) CONTRACT APPROVAL.—

2 (A) APPROVAL.—

3 (i) IN GENERAL.—Except to the ex-
4 tent that any provision of the Contract
5 conflicts with this Act, Congress approves,
6 ratifies, and incorporates by reference the
7 Contract.

8 (ii) AMENDMENTS.—To the extent
9 any amendment is executed to make the
10 Contract consistent with this Act, that
11 amendment is authorized, ratified, and
12 confirmed.

13 (B) EXECUTION OF CONTRACT.—The Sec-
14 retary, acting on behalf of the United States,
15 shall enter into the Contract to the extent that
16 the Contract does not conflict with this Act (in-
17 cluding any amendment that is required to
18 make the Contract consistent with this Act).

19 (3) NO REPAYMENT OBLIGATION.—The Nation
20 is not obligated to repay—

21 (A) any share of the construction costs of
22 the Nation relating to the Project authorized by
23 section 302(a); or

24 (B) any costs relating to the construction
25 of the Navajo Indian Irrigation Project that

1 may otherwise be allocable to the Nation for
2 use of any facility of the Navajo Indian Irriga-
3 tion Project to convey water to each Navajo
4 community under the Project.

5 (4) OPERATION, MAINTENANCE, AND REPLACE-
6 MENT OBLIGATION.—Subject to subsection (f), the
7 Nation shall pay any costs relating to the operation,
8 maintenance, and replacement of each facility of the
9 Project that are allocable to the Nation.

10 (5) LIMITATION, CANCELLATION, TERMINATION,
11 AND RESCISSION.—The Contract may be limited by
12 a term of years, canceled, terminated, or rescinded
13 only by an Act of Congress.

14 (b) CITY OF GALLUP CONTRACT.—

15 (1) CONTRACT AUTHORIZATION.—To the extent
16 consistent with this Act, the Secretary is authorized
17 to enter into a repayment contract with the City
18 that requires the City—

19 (A) to repay, within a 50-year period, the
20 share of any construction cost of the City relat-
21 ing to the Project; and

22 (B) to pay the operation, maintenance, and
23 replacement costs of the Project that are allo-
24 cable to the City.

25 (2) SHARE OF CONSTRUCTION COSTS.—

1 (A) IN GENERAL.—Subject to subpara-
2 graph (B), the Secretary shall determine the
3 share of the construction costs of the City relat-
4 ing to the Project, based on the ability of the
5 City to pay the construction costs of each facil-
6 ity of the Project that is allocable to the City.

7 (B) MINIMUM PERCENTAGE.—The share
8 of the construction costs of the City shall be at
9 least 25 percent of the construction costs of the
10 Project that are allocable to the City.

11 (3) EXCESS CONSTRUCTION COSTS.—Any con-
12 struction costs of the Project allocable to providing
13 capacity to deliver water to the City that are in ex-
14 cess of the share of the City of the construction
15 costs of the Project, as determined under paragraph
16 (2), shall be nonreimbursable.

17 (4) GRANT FUNDS.—A grant from any other
18 Federal source shall not be credited toward the
19 amount required to be repaid by the City under a
20 repayment contract.

21 (5) TITLE TRANSFER.—If title is transferred to
22 the City prior to repayment under section 302(f),
23 the City shall be required to provide assurances sat-
24 isfactory to the Secretary of fulfillment of the re-
25 maining repayment obligation of the City.

1 (6) OPERATION, MAINTENANCE AND REPLACE-
2 MENT OBLIGATION.—The City shall pay the oper-
3 ation, maintenance, and replacement costs for each
4 facility of the Project that is allocable to the City.

5 (7) WATER DELIVERY SUBCONTRACT.—

6 (A) IN GENERAL.—Except as provided in
7 subparagraph (B), the Secretary shall not enter
8 into a contract under paragraph (1) with the
9 City until the City has secured a water supply
10 for the portion of the Project for which the City
11 is responsible by entering into, as approved by
12 the Secretary, a water delivery subcontract for
13 a period of not less than 40 years beginning on
14 the date on which the construction of any facil-
15 ity of the Project serving the City is completed,
16 but for a period not exceeding 99 years, with—

17 (i) the Nation, as authorized by the
18 Contract; or

19 (ii) the Jicarilla Apache Nation, as
20 authorized by the settlement contract be-
21 tween the United States and the Jicarilla
22 Apache Tribe, authorized by the Jicarilla
23 Apache Tribe Water Rights Settlement Act
24 (Public Law 102–441; 106 Stat. 2237).

1 (B) EFFECT.—Nothing in this para-
2 graph—

3 (i) prevents the City from obtaining
4 an alternate source of water for the por-
5 tion of the Project for which the City is re-
6 sponsible, subject to approval of the Sec-
7 retary and the State of New Mexico, acting
8 through the New Mexico Interstate Stream
9 Commission and the New Mexico State
10 Engineer; or

11 (ii) obligates the Nation or the
12 Jicarilla Apache Nation to enter into a
13 water delivery subcontract with the City.

14 (c) JICARILLA APACHE NATION CONTRACT.—

15 (1) CONTRACT AUTHORIZATION.—To the extent
16 consistent with this Act, the Secretary is authorized
17 to enter into a repayment contract with the Jicarilla
18 Apache Nation that requires the Jicarilla Apache
19 Nation—

20 (A) to repay, within a 50-year period, the
21 share of any construction cost of the Jicarilla
22 Apache Nation relating to the Project; and

23 (B) to pay the operation, maintenance, and
24 replacement costs of the Project that are allo-
25 cable to the Jicarilla Apache Nation.

1 (2) SHARE OF CONSTRUCTION COSTS.—

2 (A) IN GENERAL.—Subject to subpara-
3 graph (B), the Secretary shall determine the
4 share of the Jicarilla Apache Nation of the con-
5 struction costs of the Project, based on the abil-
6 ity of the Jicarilla Apache Nation to pay the
7 construction costs of the Project facilities that
8 are allocable to the Jicarilla Apache Nation.

9 (B) MINIMUM PERCENTAGE.—The share
10 of the Jicarilla Apache Nation under subpara-
11 graph (A) shall be at least 25 percent of the
12 construction costs of the Project that are allo-
13 cable to the Jicarilla Apache Nation.

14 (3) EXCESS CONSTRUCTION COSTS.—Any con-
15 struction costs of the Project allocable to providing
16 capacity to deliver water to the Jicarilla Apache Na-
17 tion that are in excess of the share of the Jicarilla
18 Apache Nation of the construction costs of the
19 Project, as determined under paragraph (2), shall be
20 nonreimbursable.

21 (4) GRANT FUNDS.—A grant from any other
22 Federal source shall not be credited toward the
23 share of the Jicarilla Apache Nation of construction
24 costs.

1 (5) NAVAJO INDIAN IRRIGATION PROJECT
2 COSTS.—The Jicarilla Apache Nation shall have no
3 obligation to repay any Navajo Indian Irrigation
4 Project construction costs that might otherwise be
5 allocable to the Jicarilla Apache Nation for use of
6 the Navajo Indian Irrigation Project facilities to
7 convey water to the Jicarilla Apache Nation.

8 (6) OPERATION, MAINTENANCE AND REPLACE-
9 MENT OBLIGATION.—The Jicarilla Apache Nation
10 shall pay the operation, maintenance, and replace-
11 ment costs relating to each facility of the Project
12 that are allocable to the Jicarilla Apache Nation.

13 (d) CAPITAL COST ALLOCATIONS.—For purposes of
14 determining the capital repayment requirements of the
15 Project Participants under this section, the Secretary shall
16 review and, as appropriate, update the report prepared by
17 the Bureau of Reclamation in the Draft Impact Statement
18 allocating capital construction costs for the Project.

19 (e) OPERATION, MAINTENANCE, AND REPLACEMENT
20 COST ALLOCATIONS.—For purposes of determining the
21 operation, maintenance, and replacement obligations of
22 the Project Participants under this section, the Secretary
23 shall review and, as appropriate, update the report pre-
24 pared by the Bureau of Reclamation in the Draft Impact

1 Statement that allocates operation, maintenance, and re-
2 placement costs for the Project.

3 (f) TEMPORARY WAIVERS OF PAYMENTS.—

4 (1) IN GENERAL.—On the date on which the
5 Project is substantially complete and the Nation re-
6 ceives a delivery of water generated by the Project,
7 the Secretary may waive, for a period of not more
8 than 10 years, the operation, maintenance, and re-
9 placement costs of the Project allocable to the Na-
10 tion that the Secretary determines are in excess of
11 the ability of the Nation to pay.

12 (2) PAYMENT BY UNITED STATES.—Any oper-
13 ation, maintenance, or replacement costs waived by
14 the Secretary under paragraph (1) shall be paid by
15 the United States.

16 (3) EFFECT ON CONTRACTS.—Failure of the
17 Secretary to waive costs under paragraph (1) be-
18 cause of a lack of availability of Federal funding to
19 pay the costs under paragraph (2) shall not alter the
20 obligations of the Nation or the United States under
21 a repayment contract.

22 (4) TERMINATION OF AUTHORITY.—The au-
23 thority of the Secretary to waive costs under para-
24 graph (1) with respect to a Project facility trans-
25 ferred to the Nation under section 302(f) shall ter-

1 minate on the date on which the Project facility is
2 transferred.

3 **SEC. 305. USE OF NAVAJO NATION MUNICIPAL PIPELINE.**

4 In addition to use of the Navajo Nation Municipal
5 Pipeline to convey the Animas-La Plata Project water of
6 the Nation, the Nation may use the Navajo Nation Munic-
7 ipal Pipeline to convey water for other purposes (including
8 purposes relating to the Project).

9 **SEC. 306. AUTHORIZATION OF CONJUNCTIVE USE WELLS.**

10 (a) CONJUNCTIVE GROUNDWATER DEVELOPMENT
11 PLAN.—Not later than 1 year after the date of enactment
12 of this Act, the Nation, in consultation with the Secretary,
13 shall complete a conjunctive groundwater development
14 plan for the wells described in subsections (b) and (c).

15 (b) WELLS IN THE SAN JUAN RIVER BASIN.—In ac-
16 cordance with the conjunctive groundwater development
17 plan, the Secretary may construct or rehabilitate wells and
18 related pipeline facilities to provide capacity for the diver-
19 sion and distribution of not more than 1,670 acre-feet of
20 groundwater in the San Juan River Basin in the State
21 of New Mexico for municipal and domestic uses.

22 (c) WELLS IN THE LITTLE COLORADO AND RIO
23 GRANDE BASINS.—

24 (1) IN GENERAL.—In accordance with the
25 Project and conjunctive groundwater development

1 plan for the Nation, the Secretary may construct or
2 rehabilitate wells and related pipeline facilities to
3 provide capacity for the diversion and distribution
4 of—

5 (A) not more than 680 acre-feet of ground-
6 water in the Little Colorado River Basin in the
7 State of New Mexico;

8 (B) not more than 80 acre-feet of ground-
9 water in the Rio Grande Basin in the State of
10 New Mexico; and

11 (C) not more than 770 acre-feet of ground-
12 water in the Little Colorado River Basin in the
13 State of Arizona.

14 (2) USE.—Groundwater diverted and distrib-
15 uted under paragraph (1) shall be used for munic-
16 ipal and domestic uses.

17 (d) ACQUISITION OF LAND.—

18 (1) IN GENERAL.—Except as provided in para-
19 graph (2), the Secretary may acquire any land or in-
20 terest in land that is necessary for the construction,
21 operation, and maintenance of the wells and related
22 pipeline facilities authorized under subsections (b)
23 and (c).

1 (2) LIMITATION.—Nothing in this subsection
2 authorizes the Secretary to condemn water rights for
3 the purposes described in paragraph (1).

4 (e) CONDITION.—The Secretary shall not commence
5 any construction activity relating to the wells described in
6 subsections (b) and (c) until the Secretary executes the
7 Agreement.

8 (f) CONVEYANCE OF WELLS.—

9 (1) IN GENERAL.—The Secretary shall enter
10 into an agreement with the Nation to convey to the
11 Nation—

12 (A) any well or related pipeline facility
13 constructed or rehabilitated under subsections
14 (a) and (b) after the wells and related facilities
15 have been completed; and

16 (B) any land or interest in land acquired
17 by the United States for the construction, oper-
18 ation, and maintenance of the well or related
19 pipeline facility.

20 (2) OPERATION, MAINTENANCE, AND REPLACE-
21 MENT.—On completion of a conveyance under para-
22 graph (1), the Nation shall assume responsibility for
23 the operation, maintenance, and replacement of the
24 well or related pipeline facility conveyed.

1 (3) EFFECT OF CONVEYANCE.—The conveyance
2 to the Nation of the conjunctive use wells under
3 paragraph (1) shall not affect the application of the
4 Endangered Species Act of 1973 (16 U.S.C. 1531 et
5 seq.).

6 (g) USE OF PROJECT FACILITIES.—The capacities of
7 the treatment facilities, main pipelines, and lateral pipe-
8 lines of the Project authorized by section 302(b) may be
9 used to treat and convey groundwater to Nation commu-
10 nities if the Nation provides for payment of the operation,
11 maintenance, and replacement costs associated with the
12 use of the facilities or pipelines.

13 (h) LIMITATIONS.—The diversion and use of ground-
14 water by wells constructed or rehabilitated under this sec-
15 tion shall be made in a manner consistent with applicable
16 Federal and State law.

17 **SEC. 307. SAN JUAN RIVER NAVAJO IRRIGATION PROJECTS.**

18 (a) REHABILITATION.—Subject to subsection (b), the
19 Secretary shall rehabilitate—

20 (1) the Fruitland-Cambridge Irrigation Project
21 to serve not more than 3,335 acres of land, which
22 shall be considered to be the total serviceable area
23 of the Project; and

24 (2) the Hogback-Cudei Irrigation Project to
25 serve not more than 8,830 acres of land, which shall

1 be considered to be the total serviceable area of the
2 Project.

3 (b) CONDITION.—The Secretary shall not commence
4 any construction activity relating to the rehabilitation of
5 the Fruitland-Cambridge Irrigation Project or the Hog-
6 back-Cudei Irrigation Project under subsection (a) until
7 the Secretary executes the Agreement.

8 (c) OPERATION, MAINTENANCE, AND REPLACEMENT
9 OBLIGATION.—Upon the date of completion of the reha-
10 bilitation, the Nation shall assume the obligations for the
11 operation, maintenance, and replacement of each facility
12 rehabilitated under this section.

13 **SEC. 308. OTHER IRRIGATION PROJECTS.**

14 (a) IN GENERAL.—Not later than 2 years after the
15 date of enactment of this Act, the Secretary, in consulta-
16 tion with the State of New Mexico (acting through the
17 Interstate Stream Commission) and the Non-Navajo Irri-
18 gation Districts that elect to participate, shall—

19 (1) conduct a study of Non-Navajo Irrigation
20 District diversion and ditch facilities; and

21 (2) based on the study, identify and prioritize
22 a list of projects, with associated cost estimates, that
23 are recommended to be implemented to repair, reha-
24 bilitate, or reconstruct irrigation diversion and ditch
25 facilities to improve water use efficiency.

1 (b) GRANTS.—The Secretary may provide grants to,
2 and enter into cooperative agreements with, the Non-Nav-
3 ajo Irrigation Districts to plan, design, or otherwise imple-
4 ment the projects identified under subsection (a)(2).

5 (c) COST-SHARING.—

6 (1) FEDERAL SHARE.—The Federal share of
7 the total cost of carrying out a project under sub-
8 section (b) shall be not more than 50 percent.

9 (2) FORM.—The non-Federal share required
10 under paragraph (1) may be in the form of in-kind
11 contributions, including the contribution of any valu-
12 able asset or service that the Secretary determines
13 would substantially contribute to a project carried
14 out under subsection (b).

15 (3) STATE CONTRIBUTION.—The Secretary may
16 accept from the State of New Mexico a partial or
17 total contribution toward the non-Federal share for
18 a project carried out under subsection (b).

19 **SEC. 309. AUTHORIZATION OF APPROPRIATIONS.**

20 (a) AUTHORIZATION OF APPROPRIATIONS FOR
21 NORTHWESTERN NEW MEXICO RURAL WATER SUPPLY
22 PROJECT.—

23 (1) IN GENERAL.—There is authorized to be
24 appropriated to the Secretary to construct the

1 Project such sums as are necessary for the period of
2 fiscal years 2008 through 2022.

3 (2) ADJUSTMENTS.—The amount under para-
4 graph (1) shall be adjusted by such amounts as may
5 be required by reason of changes since 2005 in con-
6 struction costs, as indicated by engineering cost indi-
7 ces applicable to the types of construction involved.

8 (3) USE.—In addition to the uses authorized
9 under paragraph (1), amounts made available under
10 that paragraph may be used for the conduct of re-
11 lated activities to comply with Federal environmental
12 laws.

13 (b) APPROPRIATIONS FOR CONJUNCTIVE USE
14 WELLS.—

15 (1) SAN JUAN WELLS.—There is authorized to
16 be appropriated to the Secretary for the construction
17 or rehabilitation of conjunctive use wells under sec-
18 tion 306(b) \$30,000,000, as adjusted under para-
19 graph (3), for the period of fiscal years 2008
20 through 2018.

21 (2) WELLS IN THE LITTLE COLORADO AND RIO
22 GRANDE BASINS.—There is authorized to be appro-
23 priated to the Secretary for the construction or reha-
24 bilitation of conjunctive use wells under section

1 306(c) such sums as are necessary for the period of
2 fiscal years 2008 through 2024.

3 (3) ADJUSTMENTS.—The amount under para-
4 graph (1) shall be adjusted by such amounts as may
5 be required by reason of changes since 2004 in con-
6 struction costs, as indicated by engineering cost indi-
7 ces applicable to the types of construction or reha-
8 bilitation involved.

9 (4) NONREIMBURSABLE EXPENDITURES.—
10 Amounts made available under paragraphs (1) and
11 (2) shall be nonreimbursable to the United States.

12 (5) USE.—In addition to the uses authorized
13 under paragraphs (1) and (2), amounts made avail-
14 able under that paragraph may be used for the con-
15 duct of related activities to comply with Federal en-
16 vironmental laws.

17 (c) SAN JUAN RIVER IRRIGATION PROJECTS.—

18 (1) IN GENERAL.—There are authorized to be
19 appropriated to the Secretary—

20 (A) to carry out section 307(a)(1), not
21 more than \$7,700,000, as adjusted under para-
22 graph (2), for the period of fiscal years 2008
23 through 2014; and

24 (B) to carry out section 307(a)(2), not
25 more than \$15,400,000, as adjusted under

1 paragraph (2), for the period of fiscal years
2 2008 through 2017.

3 (2) ADJUSTMENT.—The amounts made avail-
4 able under paragraph (1) shall be adjusted by such
5 amounts as may be required by reason of changes
6 since January 1, 2004, in construction costs, as in-
7 dicated by engineering cost indices applicable to the
8 types of construction involved in the rehabilitation.

9 (3) NONREIMBURSABLE EXPENDITURES.—
10 Amounts made available under this subsection shall
11 be nonreimbursable to the United States.

12 (d) OTHER IRRIGATION PROJECTS.—There are au-
13 thorized to be appropriated to the Secretary to carry out
14 section 308 \$11,000,000 for the period of fiscal years
15 2008 through 2017.

16 (e) CULTURAL RESOURCES.—

17 (1) IN GENERAL.—The Secretary may use not
18 more than 4 percent of amounts made available
19 under subsections (a) and (b) for the survey, recov-
20 ery, protection, preservation, and display of archae-
21 ological resources in the area of a Project facility or
22 conjunctive use well.

23 (2) NONREIMBURSABLE EXPENDITURES.—Any
24 amounts made available under paragraph (1) shall

1 be nonreimbursable and nonreturnable to the United
2 States.

3 (f) FISH AND WILDLIFE FACILITIES.—

4 (1) IN GENERAL.—In association with the de-
5 velopment of the Project, the Secretary may use not
6 more than 4 percent of amounts made available
7 under subsections (a) and (b) to purchase land and
8 construct and maintain facilities to mitigate the loss
9 of, and improve conditions for the propagation of,
10 fish and wildlife if any such purchase, construction,
11 or maintenance will not affect the operation of any
12 water project or use of water.

13 (2) NONREIMBURSABLE EXPENDITURES.—Any
14 amounts expended under paragraph (1) shall be
15 nonreimbursable and nonreturnable to the United
16 States.

17 **TITLE IV—NAVAJO NATION**
18 **WATER RIGHTS**

19 **SEC. 401. AGREEMENT.**

20 (a) AGREEMENT APPROVAL.—

21 (1) APPROVAL BY CONGRESS.—Except to the
22 extent that any provision of the Agreement conflicts
23 with this Act, Congress approves, ratifies, and incor-
24 porates by reference the Agreement (including any

1 amendments to the Agreement that are executed to
2 make the Agreement consistent with this Act).

3 (2) EXECUTION BY SECRETARY.—The Sec-
4 retary, acting on behalf of the United States, shall
5 enter into the Agreement to the extent that the
6 Agreement does not conflict with this Act, includ-
7 ing—

8 (A) any exhibits to the Agreement requir-
9 ing the signature of the Secretary; and

10 (B) any amendments to the Agreement
11 necessary to make the Agreement consistent
12 with this Act.

13 (3) AUTHORITY OF SECRETARY.—The Sec-
14 retary may carry out any action that the Secretary
15 determines is necessary or appropriate to implement
16 the Agreement, the Contract, and this section.

17 (4) ADMINISTRATION OF NAVAJO RESERVOIR
18 RELEASES.—The State of New Mexico may admin-
19 ister releases of stored water from Navajo Reservoir
20 in accordance with subparagraph 9.1 of the Agree-
21 ment.

22 (b) WATER AVAILABLE UNDER CONTRACT.—

23 (1) QUANTITIES OF WATER AVAILABLE.—

24 (A) IN GENERAL.—Water shall be made
25 available annually under the Contract for

1 projects in the State of New Mexico supplied
 2 from the Navajo Reservoir and the San Juan
 3 River (including tributaries of the River) under
 4 New Mexico State Engineer File Numbers
 5 2849, 2883, and 3215 in the quantities de-
 6 scribed in subparagraph (B).

7 (B) WATER QUANTITIES.—The quantities
 8 of water referred to in subparagraph (A) are as
 9 follows:

	Diver- sion (acre- feet/ year)	Deple- tion (acre- feet/ year)
Navajo Indian Irrigation Project	508,000	270,000
Northwestern New Mexico Rural Water Supply Project	22,650	20,780
Animas-La Plata Project	4,680	2,340
Total	535,330	293,120

10 (C) MAXIMUM QUANTITY.—A diversion of
 11 water to the Nation under the Contract for a
 12 project described in subparagraph (B) shall not
 13 exceed the quantity of water necessary to sup-
 14 ply the amount of depletion for the project.

15 (D) TERMS, CONDITIONS, AND LIMITA-
 16 TIONS.—The diversion and use of water under
 17 the Contract shall be subject to and consistent
 18 with the terms, conditions, and limitations of
 19 the Agreement, this Act, and any other applica-
 20 ble law.

1 (2) AMENDMENTS TO CONTRACT.—The Sec-
2 retary, with the consent of the Nation, may amend
3 the Contract if the Secretary determines that the
4 amendment is—

5 (A) consistent with the Agreement; and

6 (B) in the interest of conserving water or
7 facilitating beneficial use by the Nation or a
8 subcontractor of the Nation.

9 (3) RIGHTS OF THE NATION.—The Nation may,
10 under the Contract—

11 (A) use tail water, wastewater, and return
12 flows attributable to a use of the water by the
13 Nation or a subcontractor of the Nation if—

14 (i) the depletion of water does not ex-
15 ceed the quantities described in paragraph
16 (1); and

17 (ii) the use of tail water, wastewater,
18 or return flows is consistent with the
19 terms, conditions, and limitations of the
20 Agreement, the Resolution, and any other
21 applicable law; and

22 (B) change a point of diversion, change a
23 purpose or place of use, and transfer a right for
24 depletion under this Act (except for a point of
25 diversion, purpose or place of use, or right for

1 depletion for use in the State of Arizona under
 2 section 303(b)(2)(D)), to another use, purpose,
 3 place, or depletion in the State of New Mexico
 4 to meet a water resource or economic need of
 5 the Nation if—

6 (i) the change or transfer is subject to
 7 and consistent with the terms of the
 8 Agreement, the Partial Final Decree de-
 9 scribed in paragraph 3.0 of the Agreement,
 10 the Contract, and any other applicable law;
 11 and

12 (ii) a change or transfer of water use
 13 by the Nation does not alter any obligation
 14 of the United States, the Nation, or an-
 15 other party to pay or repay project con-
 16 struction, operation, maintenance, or re-
 17 placement costs under this Act and the
 18 Contract.

19 (c) SUBCONTRACTS.—

20 (1) IN GENERAL.—

21 (A) SUBCONTRACTS BETWEEN NATION
 22 AND THIRD PARTIES.—The Nation may enter
 23 into subcontracts for the delivery of Project
 24 water under the Contract to third parties for
 25 any beneficial use in the State of New Mexico

1 (on or off land held by the United States in
2 trust for the Nation or a member of the Nation
3 or land held in fee by the Nation).

4 (B) APPROVAL REQUIRED.—A subcontract
5 entered into under subparagraph (A) shall not
6 be effective until approved by the Secretary in
7 accordance with this subsection and the Con-
8 tract.

9 (C) SUBMITTAL.—The Nation shall submit
10 to the Secretary for approval or disapproval any
11 subcontract entered into under this subsection.

12 (D) DEADLINE.—The Secretary shall ap-
13 prove or disapprove a subcontract submitted to
14 the Secretary under subparagraph (C) not later
15 than the later of—

16 (i) the date that is 180 days after the
17 date on which the subcontract is submitted
18 to the Secretary; and

19 (ii) the date that is 60 days after the
20 date on which a subcontractor complies
21 with—

22 (I) section 102(2)(C) of the Na-
23 tional Environmental Policy Act of
24 1969 (42 U.S.C. 4332(2)(C)); and

1 (II) any other requirement of
2 Federal law.

3 (E) ENFORCEMENT.—A party to a sub-
4 contract may enforce the deadline described in
5 subparagraph (D) under section 1361 of title
6 28, United States Code.

7 (F) COMPLIANCE WITH OTHER LAW.—A
8 subcontract described in subparagraph (A) shall
9 comply with the Agreement, the Partial Final
10 Decree described in paragraph 3.0 of the Agree-
11 ment, and any other applicable law.

12 (2) ALIENATION.—

13 (A) PERMANENT ALIENATION.—The Na-
14 tion shall not permanently alienate any right
15 granted to the Nation under the Contract.

16 (B) MAXIMUM TERM.—The term of any
17 water use subcontract (including a renewal)
18 under this subsection shall be not more than 99
19 years.

20 (3) NONINTERCOURSE ACT COMPLIANCE.—This
21 subsection—

22 (A) provides congressional authorization
23 for the subcontracting rights of the Nation; and

1 (B) is deemed to fulfill any requirement
2 that may be imposed by section 2116 of the Re-
3 vised Statutes (25 U.S.C. 177).

4 (4) FORFEITURE.—The nonuse of the water
5 supply secured by a subcontractor of the Nation
6 under this subsection shall not result in forfeiture,
7 abandonment, relinquishment, or other loss of any
8 part of a right decreed to the Nation under the Con-
9 tract or this section.

10 (5) NO PER CAPITA PAYMENTS.—No part of
11 the revenue from a water use subcontract under this
12 subsection shall be distributed to any member of the
13 Nation on a per capita basis.

14 (d) WATER LEASES NOT REQUIRING SUB-
15 CONTRACTS.—

16 (1) AUTHORITY OF NATION.—

17 (A) IN GENERAL.—The Nation may lease,
18 contract, or otherwise transfer to another party
19 or to another purpose or place of use in the
20 State of New Mexico (on or off land that is held
21 by the United States in trust for the Nation or
22 a member of the Nation or held in fee by the
23 Nation) a water right that—

24 (i) is decreed to the Nation under the
25 Agreement; and

1 (ii) is not subject to the Contract.

2 (B) COMPLIANCE WITH OTHER LAW.—In
3 carrying out an action under this subsection,
4 the Nation shall comply with the Agreement,
5 the Partial Final Decree described in paragraph
6 3.0 of the Agreement, the Supplemental Partial
7 Final Decree described in paragraph 4.0 of the
8 Agreement, and any other applicable law.

9 (2) ALIENATION; MAXIMUM TERM.—

10 (A) ALIENATION.—The Nation shall not
11 permanently alienate any right granted to the
12 Nation under the Agreement.

13 (B) MAXIMUM TERM.—The term of any
14 water use lease, contract, or other arrangement
15 (including a renewal) under this subsection
16 shall be not more than 99 years.

17 (3) NONINTERCOURSE ACT COMPLIANCE.—This
18 subsection—

19 (A) provides congressional authorization
20 for the lease, contracting, and transfer of any
21 water right described in paragraph (1)(A); and

22 (B) is deemed to fulfill any requirement
23 that may be imposed by the provisions of sec-
24 tion 2116 of the Revised Statutes (25 U.S.C.
25 177).

1 (4) FORFEITURE.—The nonuse of a water right
2 of the Nation by a lessee or contractor to the Nation
3 under this subsection shall not result in forfeiture,
4 abandonment, relinquishment, or other loss of any
5 part of a right decreed to the Nation under the Con-
6 tract or this section.

7 (e) HYDROGRAPHIC SURVEY.—

8 (1) PREPARATION.—The Secretary, on behalf of
9 the United States, shall prepare a hydrographic sur-
10 vey under the joint supervision of the Secretary and
11 the State of New Mexico (acting through the New
12 Mexico State Engineer) to identify and quantify any
13 historic or existing diversion or use of water (includ-
14 ing from surface water and underground water
15 sources) by the Nation or a member of the Nation
16 from the San Juan River Basin in the State of New
17 Mexico, as described in subparagraph 4.2 of the
18 Agreement.

19 (2) AUTHORIZATION OF APPROPRIATIONS.—

20 (A) IN GENERAL.—Subject to subpara-
21 graph (B), there is authorized to be appro-
22 priated to the Bureau of Indian Affairs to carry
23 out paragraph (1) \$5,000,000 for the period of
24 fiscal years 2008 through 2013.

1 (B) ADJUSTMENT.—The amounts made
2 available under subparagraph (A) shall be ad-
3 justed by such amounts as are necessary to ac-
4 count for increases in the costs of preparing a
5 hydrographic survey after January 1, 2004, as
6 determined using cost indices applicable to the
7 types of technical and engineering work in-
8 volved in preparing the hydrographic survey.

9 (C) NONREIMBURSABLE EXPENDI-
10 TURES.—Any amounts made available under
11 this paragraph shall be nonreimbursable to the
12 United States.

13 (f) NULLIFICATION.—

14 (1) DEADLINES.—

15 (A) IN GENERAL.—In carrying out this
16 section, the following deadlines apply with re-
17 spect to implementation of the Agreement:

18 (i) AGREEMENT.—Not later than De-
19 cember 31, 2008, the Secretary shall exe-
20 cute the Agreement.

21 (ii) CONTRACT.—Not later than De-
22 cember 31, 2009, the Secretary and the
23 Nation shall execute the Contract.

24 (iii) PARTIAL FINAL DECREE.—Not
25 later than December 31, 2012, the court in

1 the stream adjudication shall have entered
2 the Partial Final Decree described in para-
3 graph 3.0 of the Agreement.

4 (iv) HYDROGRAPHIC SURVEY.—Not
5 later than December 31, 2013, the Sec-
6 retary shall complete the hydrographic sur-
7 vey described in subsection (e).

8 (v) FRUITLAND-CAMBRIDGE IRRIGA-
9 TION PROJECT.—Not later than December
10 31, 2014, the rehabilitation construction of
11 the Fruitland-Cambridge Irrigation Project
12 authorized under section 307(a)(1) shall be
13 completed.

14 (vi) SUPPLEMENTAL PARTIAL FINAL
15 DECREE.—Not later than December 31,
16 2015, the court in the stream adjudication
17 shall enter the Supplemental Partial Final
18 Decree described in subparagraph 4.0 of
19 the Agreement.

20 (vii) HOGBACK-CUDEI IRRIGATION
21 PROJECT.—Not later than December 31,
22 2017, the rehabilitation construction of the
23 Hogback-Cudei Irrigation Project author-
24 ized under section 307(a)(2) shall be com-
25 pleted.

1 (viii) TRUST FUND.—Not later than
2 December 31, 2018, the United States
3 shall make all deposits into the Trust
4 Fund under section 402.

5 (ix) CONJUNCTIVE WELLS.—Not later
6 than December 31, 2018, the funds au-
7 thorized to be appropriated under section
8 309(b)(1) for the conjunctive use wells au-
9 thorized under section 306(b) should be
10 appropriated.

11 (x) NORTHWESTERN NEW MEXICO
12 RURAL WATER SUPPLY PROJECT.—Not
13 later than December 31, 2022, the con-
14 struction of all Project facilities shall be
15 completed.

16 (B) EXTENSION.—A deadline described in
17 subparagraph (A) may be extended if the Na-
18 tion, the United States (acting through the Sec-
19 retary), and the State of New Mexico (acting
20 through the New Mexico Interstate Stream
21 Commission) agree that an extension is reason-
22 ably necessary.

23 (2) REVOCABILITY OF AGREEMENT, CONTRACT
24 AND AUTHORIZATIONS.—

1 (A) PETITION.—If the Nation determines
2 that a deadline described in paragraph (1)(A) is
3 not substantially met, the Nation may submit
4 to the court in the stream adjudication a peti-
5 tion to enter an order terminating the Agree-
6 ment and Contract.

7 (B) TERMINATION.—On issuance of an
8 order to terminate the Agreement and Contract
9 under subparagraph (A)—

10 (i) the Trust Fund shall be termi-
11 nated;

12 (ii) the balance of the Trust Fund
13 shall be deposited in the general fund of
14 the Treasury;

15 (iii) the authorizations for construc-
16 tion and rehabilitation of water projects
17 under this Act shall be revoked and any
18 Federal activity related to that construc-
19 tion and rehabilitation shall be suspended;
20 and

21 (iv) this title and titles I and III shall
22 be null and void.

23 (3) CONDITIONS NOT CAUSING NULLIFICATION
24 OF SETTLEMENT.—

1 (A) IN GENERAL.—If a condition described
2 in subparagraph (B) occurs, the Agreement and
3 Contract shall not be nullified or terminated.

4 (B) CONDITIONS.—The conditions referred
5 to in subparagraph (A) are as follows:

6 (i) A lack of right to divert at the ca-
7 pacities of conjunctive use wells con-
8 structed or rehabilitated under section
9 306.

10 (ii) A failure—

11 (I) to determine or resolve an ac-
12 counting of the use of water under
13 this Act in the State of Arizona;

14 (II) to obtain a necessary water
15 right for the consumptive use of water
16 in Arizona;

17 (III) to contract for the delivery
18 of water for use in Arizona; or

19 (IV) to construct and operate a
20 lateral facility to deliver water to a
21 community of the Nation in Arizona,
22 under the Project.

23 (4) RIGHTS OF THE NATION.—A tribal right
24 under the Contract, a water right adjudicated con-
25 sistent with the Contract in the stream adjudication

1 by the Partial Final Decree described in paragraph
2 3.0 of the Agreement, and any other tribal water
3 right stipulated, adjudicated, or decreed as described
4 in the Agreement and this Act shall be held in trust
5 by the United States in perpetuity for the benefit of
6 the Nation.

7 (g) EFFECT ON RIGHTS OF INDIAN TRIBES.—

8 (1) IN GENERAL.—Except as provided in para-
9 graph (2), nothing in the Agreement, the Contract,
10 or this section quantifies or adversely affects the
11 land and water rights, or claims or entitlements to
12 water, of any Indian tribe or community other than
13 the rights, claims, or entitlements of the Nation in,
14 to, and from the San Juan River Basin in the State
15 of New Mexico.

16 (2) EXCEPTION.—The right of the Nation to
17 use water under water rights the Nation has in
18 other river basins in the State of New Mexico shall
19 be forborne to the extent that the Nation supplies
20 the uses for which the water rights exist by diver-
21 sions of water from the San Juan River Basin under
22 the Project consistent with subparagraph 9.13 of the
23 Agreement.

1 **SEC. 402. TRUST FUND.**

2 (a) ESTABLISHMENT.—There is established in the
3 Treasury a fund to be known as the “Navajo Nation
4 Water Resources Development Trust Fund”, consisting
5 of—

6 (1) such amounts as are appropriated to the
7 Trust Fund under subsection (f); and

8 (2) any interest earned on investment of
9 amounts in the Trust Fund under subsection (d).

10 (b) USE OF FUNDS.—The Nation may use amounts
11 in the Trust Fund—

12 (1) to investigate, construct, operate, maintain,
13 or replace water project facilities, including facilities
14 conveyed to the Nation under this Act; and

15 (2) to investigate, implement, or improve a
16 water conservation measure (including a metering or
17 monitoring activity) necessary for the Nation to
18 make use of a water right of the Nation under the
19 Agreement.

20 (c) MANAGEMENT.—The Secretary shall manage the
21 Trust Fund, invest amounts in the Trust Fund, and make
22 amounts available from the Trust Fund for distribution
23 to the Nation in accordance with the American Indian
24 Trust Fund Management Reform Act of 1994 (25 U.S.C.
25 4001 et seq.).

1 (d) INVESTMENT OF THE TRUST FUND.—The Sec-
2 retary shall invest amounts in the Trust Fund in accord-
3 ance with—

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

5 (2) the first section of the Act of June 24,
6 1938 (25 U.S.C. 162a); and

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

9 (e) CONDITIONS FOR EXPENDITURES AND WITH-
10 DRAWALS.—

11 (1) TRIBAL MANAGEMENT PLAN.—

12 (A) IN GENERAL.—Subject to paragraph
13 (7), on approval by the Secretary of a tribal
14 management plan in accordance with the Amer-
15 ican Indian Trust Fund Management Reform
16 Act of 1994 (25 U.S.C. 4001 et seq.), the Na-
17 tion may withdraw all or a portion of the
18 amounts in the Trust Fund.

19 (B) REQUIREMENTS.—In addition to any
20 requirements under the American Indian Trust
21 Fund Management Reform Act of 1994 (25
22 U.S.C. 4001 et seq.), the tribal management
23 plan shall require that the Nation only use
24 amounts in the Trust Fund for the purposes
25 described in subsection (b), including the identi-

1 fication of water conservation measures to be
2 implemented in association with the agricultural
3 water use of the Nation.

4 (2) ENFORCEMENT.—The Secretary may take
5 judicial or administrative action to enforce the provi-
6 sions of any tribal management plan to ensure that
7 any amounts withdrawn from the Trust Fund are
8 used in accordance with this Act.

9 (3) NO LIABILITY.—Neither the Secretary nor
10 the Secretary of the Treasury shall be liable for the
11 expenditure or investment of any amounts with-
12 drawn from the Trust Fund by the Nation.

13 (4) EXPENDITURE PLAN.—

14 (A) IN GENERAL.—The Nation shall sub-
15 mit to the Secretary for approval an expendi-
16 ture plan for any portion of the amounts in the
17 Trust Fund made available under this section
18 that the Nation does not withdraw under this
19 subsection.

20 (B) DESCRIPTION.—The expenditure plan
21 shall describe the manner in which, and the
22 purposes for which, funds of the Nation remain-
23 ing in the Trust Fund will be used.

24 (C) APPROVAL.—On receipt of an expendi-
25 ture plan under subparagraph (A), the Sec-

1 retary shall approve the plan if the Secretary
2 determines that the plan is reasonable and con-
3 sistent with this Act.

4 (5) ANNUAL REPORT.—The Nation shall sub-
5 mit to the Secretary an annual report that describes
6 any expenditures from the Trust Fund during the
7 year covered by the report.

8 (6) LIMITATION.—No portion of the amounts in
9 the Trust Fund shall be distributed to any Nation
10 member on a per capita basis.

11 (7) CONDITIONS.—Any amount authorized to
12 be appropriated to the Trust Fund under subsection
13 (f) shall not be available for expenditure or with-
14 drawal—

15 (A) before December 31, 2018; and

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

18 (i) the Partial Final Decree described
19 in paragraph 3.0 of the Agreement; and

20 (ii) the Supplemental Partial Final
21 Decree described in paragraph 4.0 of the
22 Agreement.

23 (f) AUTHORIZATION OF APPROPRIATIONS.—There is
24 authorized to be appropriated for deposit in the Trust
25 Fund—

1 (1) \$6,000,000 for each of fiscal years 2008
2 through 2012; and

3 (2) \$4,000,000 for each of fiscal years 2013
4 through 2017.

5 **SEC. 403. WAIVERS AND RELEASES.**

6 (a) EXECUTION.—The Nation, on behalf of itself and
7 members of the Nation (other than members in their ca-
8 pacity as allottees), and the United States, acting through
9 the Secretary and in its capacity as trustee for the Nation,
10 shall execute waivers and releases in accordance with
11 paragraph 7.0 of the Agreement.

12 (b) RESERVATION.—Notwithstanding subsection (a),
13 the Nation and its members (including members in their
14 capacity as allottees) and the United States, as trustee
15 for the Nation and allottees, shall retain the rights and
16 claims specified in paragraph 7.0 of the Agreement.

17 (c) EFFECTIVE DATE.—

18 (1) IN GENERAL.—The waivers and releases de-
19 scribed in subsection (a) shall be effective on the
20 date on which the Secretary publishes in the Federal
21 Register a statement of findings documenting that
22 each of the deadlines described in section 401(f)(1)
23 have been met.

24 (2) DEADLINE.—If the deadlines in section
25 401(f)(1)(A) have not been met by the later of

1 March 1, 2023, or the date of any extension under
2 section 401(f)(1)(B)—

3 (A) the waivers and releases described in
4 subsection (a) shall be of no effect; and

5 (B) section 401(f)(2)(B) shall apply.

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