

110TH CONGRESS  
2D SESSION

# S. 2805

To direct the Secretary of the Interior, acting through the Commissioner of Reclamation, to assess the irrigation infrastructure of the Rio Grande Pueblos in the State of New Mexico and provide grants to, and enter into cooperative agreements with, the Rio Grande Pueblos to repair, rehabilitate, or reconstruct existing infrastructure, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

APRIL 2, 2008

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

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## A BILL

To direct the Secretary of the Interior, acting through the Commissioner of Reclamation, to assess the irrigation infrastructure of the Rio Grande Pueblos in the State of New Mexico and provide grants to, and enter into cooperative agreements with, the Rio Grande Pueblos to repair, rehabilitate, or reconstruct existing infrastructure, 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 This Act may be cited as the “Rio Grande Pueblos  
3 Irrigation Infrastructure Improvement Act”.

4 **SEC. 2. FINDINGS AND PURPOSE.**

5 (a) FINDINGS.—Congress finds that—

6 (1) drought, population increases, and environ-  
7 mental needs are exacerbating water supply issues  
8 across the western United States, including the Rio  
9 Grande Basin in New Mexico;

10 (2) a report developed by the Bureau of Rec-  
11 lamation and the Bureau of Indian Affairs in 2000  
12 identified a serious need for the rehabilitation and  
13 repair of irrigation infrastructure of the Rio Grande  
14 Pueblos;

15 (3) inspection of existing irrigation infrastruc-  
16 ture of the Rio Grande Pueblos shows that many  
17 key facilities, such as diversion structures and main  
18 conveyance ditches, are unsafe and barely, if at all,  
19 operable;

20 (4) the benefits of rehabilitating and repairing  
21 irrigation infrastructure of the Rio Grande Pueblos  
22 include—

23 (A) water conservation;

24 (B) extending available water supplies;

25 (C) increased agricultural productivity;

26 (D) economic benefits;

1 (E) safer facilities; and

2 (F) the preservation of the culture of In-  
3 dian Pueblos in the State;

4 (5) certain Indian Pueblos in the Rio Grande  
5 Basin receive water from facilities operated or owned  
6 by the Bureau of Reclamation; and

7 (6) rehabilitation and repair of irrigation infra-  
8 structure of the Rio Grande Pueblos would im-  
9 prove—

10 (A) overall water management by the Bu-  
11 reau of Reclamation; and

12 (B) the ability of the Bureau of Reclama-  
13 tion to help address potential water supply con-  
14 flicts in the Rio Grande Basin.

15 (b) PURPOSE.—The purpose of this Act is to direct  
16 the Secretary—

17 (1) to assess the condition of the irrigation in-  
18 frastructure of the Rio Grande Pueblos;

19 (2) to establish priorities for the rehabilitation  
20 of irrigation infrastructure of the Rio Grande Pueb-  
21 los in accordance with specified criteria; and

22 (3) to implement projects to rehabilitate and  
23 improve the irrigation infrastructure of the Rio  
24 Grande Pueblos.

1 **SEC. 3. DEFINITIONS.**

2 In this Act:

3 (1) 2004 AGREEMENT.—The term “2004  
4 Agreement” means the agreement entitled “Agree-  
5 ment By and Between the United States of America  
6 and the Middle Rio Grande Conservancy District,  
7 Providing for the Payment of Operation and Mainte-  
8 nance Charges on Newly Reclaimed Pueblo Indian  
9 Lands in the Middle Rio Grande Valley, New Mex-  
10 ico” and executed in September 2004 (including any  
11 successor agreements and amendments to the agree-  
12 ment).

13 (2) DESIGNATED ENGINEER.—The term “des-  
14 ignated engineer” means a Federal employee des-  
15 ignated under the Act of February 14, 1927 (69  
16 Stat. 1098, chapter 138) to represent the United  
17 States in any action involving the maintenance, re-  
18 habilitation, or preservation of the condition of any  
19 irrigation structure or facility on land located in the  
20 Six Middle Rio Grande Pueblos.

21 (3) DISTRICT.—The term “District” means the  
22 Middle Rio Grande Conservancy District, a political  
23 subdivision of the State established in 1925.

24 (4) PUEBLO IRRIGATION INFRASTRUCTURE.—  
25 The term “Pueblo irrigation infrastructure” means  
26 any diversion structure, conveyance facility, or

1 drainage facility located on land of a Rio Grande  
2 Pueblo that is associated with the delivery of water  
3 for the irrigation of agricultural land.

4 (5) RIO GRANDE BASIN.—The term “Rio  
5 Grande Basin” means the headwaters of the Rio  
6 Chama and the Rio Grande Rivers (including any  
7 tributaries) from the State line between Colorado  
8 and New Mexico downstream to the elevation cor-  
9 responding with the spillway crest of Elephant Butte  
10 Dam at 4,457.3 feet mean sea level.

11 (6) RIO GRANDE PUEBLO.—The term “Rio  
12 Grande Pueblo” means any of the 18 Pueblos that—

13 (A) occupy land in the Rio Grande Basin;  
14 and

15 (B) are included on the list of federally  
16 recognized Indian tribes published by the Sec-  
17 retary in accordance with section 104 of the  
18 Federally Recognized Indian Tribe List Act of  
19 1994 (25 U.S.C. 479a–1).

20 (7) SECRETARY.—The term “Secretary” means  
21 the Secretary of the Interior, acting through the  
22 Commissioner of Reclamation.

23 (8) SIX MIDDLE RIO GRANDE PUEBLOS.—The  
24 term “Six Middle Rio Grande Pueblos” means each

1 of the Pueblos of Cochiti, Santo Domingo, San  
2 Felipe, Santa Ana, Sandia, and Isleta.

3 (9) SPECIAL PROJECT.—The term “special  
4 project” has the meaning given the term in the 2004  
5 Agreement.

6 (10) STATE.—The term “State” means the  
7 State of New Mexico.

8 **SEC. 4. IRRIGATION INFRASTRUCTURE STUDY.**

9 (a) STUDY.—

10 (1) IN GENERAL.—On the date of enactment of  
11 this Act, the Secretary, in accordance with para-  
12 graph (2), and in consultation with the Rio Grande  
13 Pueblos, shall—

14 (A) conduct a study of Pueblo irrigation  
15 infrastructure; and

16 (B) based on the results of the study, de-  
17 velop a list of projects (including a cost esti-  
18 mate for each project), that are recommended  
19 to be implemented over a 10-year period to re-  
20 pair, rehabilitate, or reconstruct Pueblo irriga-  
21 tion infrastructure.

22 (2) REQUIRED CONSENT.—The Secretary shall  
23 carry out paragraph (1) with the consent of each  
24 Pueblo that notifies the Secretary of the intention of  
25 the Pueblo to participate in—

1 (A) the conduct of the study under para-  
2 graph (1)(A); and

3 (B) the development of the list of projects  
4 under paragraph (1)(B).

5 (b) PRIORITY.—

6 (1) CONSIDERATION OF FACTORS.—

7 (A) IN GENERAL.—In developing the list of  
8 projects under subsection (a)(1)(B), the Sec-  
9 retary shall—

10 (i) consider each of the factors de-  
11 scribed in paragraph (2); and

12 (ii) prioritize the projects rec-  
13 ommended for implementation based on—

14 (I) a review of each of the fac-  
15 tors; and

16 (II) a consideration of the pro-  
17 jected benefits of the project on com-  
18 pletion of the project.

19 (B) ELIGIBILITY OF PROJECTS.—A project  
20 is eligible to be considered and prioritized by  
21 the Secretary if the project addresses at least 1  
22 factor described in paragraph (2).

23 (2) FACTORS.—The factors referred to in para-  
24 graph (1) are—

1 (A)(i) the extent of disrepair of the Pueblo  
2 irrigation infrastructure; and

3 (ii) the effect of the disrepair on the ability  
4 of the applicable Rio Grande Pueblo to irrigate  
5 agricultural land using Pueblo irrigation infra-  
6 structure;

7 (B) whether, and the extent that, the re-  
8 pair, rehabilitation, or reconstruction of the  
9 Pueblo irrigation infrastructure would provide  
10 an opportunity to conserve water;

11 (C)(i) the economic and cultural impacts  
12 that the Pueblo irrigation infrastructure that is  
13 in disrepair has on the applicable Rio Grande  
14 Pueblo; and

15 (ii) the economic and cultural benefits that  
16 the repair, rehabilitation, or reconstruction of  
17 the Pueblo irrigation infrastructure would have  
18 on the applicable Rio Grande Pueblo;

19 (D) the opportunity to address water sup-  
20 ply or environmental conflicts in the applicable  
21 river basin if the Pueblo irrigation infrastruc-  
22 ture is repaired, rehabilitated, or reconstructed;  
23 and

1           (E) the overall benefits of the project to ef-  
2           ficient water operations on the land of the ap-  
3           plicable Rio Grande Pueblo.

4           (c) CONSULTATION.—In developing the list of  
5 projects under subsection (a)(1)(B), the Secretary shall  
6 consult with the Director of the Bureau of Indian Affairs  
7 (including the designated engineer with respect to each  
8 proposed project that affects the Six Middle Rio Grande  
9 Pueblos), the Chief of the Natural Resources Conservation  
10 Service, and the Chief of Engineers to evaluate the extent  
11 to which programs under the jurisdiction of the respective  
12 agencies may be used—

13           (1) to assist in evaluating projects to repair, re-  
14           habilitate, or reconstruct Pueblo irrigation infra-  
15           structure; and

16           (2) to implement—

17           (A) a project recommended for implemen-  
18           tation under subsection (a)(1)(B); or

19           (B) any other related project (including  
20           on-farm improvements) that may be appro-  
21           priately coordinated with the repair, rehabilita-  
22           tion, or reconstruction of Pueblo irrigation in-  
23           frastructure to improve the efficient use of  
24           water in the Rio Grande Basin.

1 (d) REPORT.—Not later than 18 months after the  
2 date of enactment of this Act, the Secretary shall submit  
3 to the Committee on Energy and Natural Resources of  
4 the Senate and the Committee on Resources of the House  
5 of Representatives a report that includes—

6 (1) the list of projects recommended for imple-  
7 mentation under subsection (a)(1)(B); and

8 (2) any findings of the Secretary with respect  
9 to—

10 (A) the study conducted under subsection  
11 (a)(1)(A);

12 (B) the consideration of the factors under  
13 subsection (b)(2); and

14 (C) the consultations under subsection (c).

15 (e) BIENNIAL REVIEW.—Not later than 2 years after  
16 the date on which the Secretary submits the report under  
17 subsection (d) and biennially thereafter, the Secretary, in  
18 consultation with each Rio Grande Pueblo, shall—

19 (1) review the report submitted under sub-  
20 section (d); and

21 (2) update the list of projects described in sub-  
22 section (d)(1) in accordance with each factor de-  
23 scribed in subsection (b)(2), as the Secretary deter-  
24 mines to be appropriate.

1 **SEC. 5. IRRIGATION INFRASTRUCTURE GRANTS.**

2 (a) IN GENERAL.—The Secretary may provide grants  
3 to, and enter into cooperative agreements with, the Rio  
4 Grande Pueblos to plan, design, construct, or otherwise  
5 implement projects to repair, rehabilitate, reconstruct, or  
6 replace Pueblo irrigation infrastructure that are rec-  
7 ommended for implementation under section 4(a)(1)(B)—

8 (1) to increase water use efficiency and agricul-  
9 tural productivity for the benefit of a Rio Grande  
10 Pueblo;

11 (2) to conserve water; or

12 (3) to otherwise enhance water management or  
13 help avert water supply conflicts in the Rio Grande  
14 Basin.

15 (b) LIMITATION.—Assistance provided under sub-  
16 section (a) shall not be used for—

17 (1) the repair, rehabilitation, or reconstruction  
18 of any major impoundment structure;

19 (2) any on-farm improvements; or

20 (3) the rehabilitation of any Pueblo irrigation  
21 infrastructure for the purpose of irrigating Rio  
22 Grande Pueblo land that has not been historically ir-  
23 rigated.

24 (c) CONSULTATION.—In carrying out a project under  
25 subsection (a), the Secretary shall—

1 (1) consult with, and obtain the approval of, the  
2 applicable Rio Grande Pueblo;

3 (2) consult with the Director of the Bureau of  
4 Indian Affairs; and

5 (3) as appropriate, coordinate the project with  
6 any work being conducted under the irrigation oper-  
7 ations and maintenance program of the Bureau of  
8 Indian Affairs.

9 (d) COST-SHARING REQUIREMENT.—

10 (1) FEDERAL SHARE.—

11 (A) IN GENERAL.—Except as provided in  
12 subparagraph (B), the Federal share of the  
13 total cost of carrying out a project under sub-  
14 section (a) shall be not more than 75 percent.

15 (B) EXCEPTION.—The Secretary may  
16 waive or limit the non-Federal share required  
17 under subparagraph (A) if the Secretary deter-  
18 mines, based on a demonstration of financial  
19 hardship by the Rio Grande Pueblo, that the  
20 Rio Grande Pueblo is unable to contribute the  
21 required non-Federal share.

22 (2) DISTRICT CONTRIBUTIONS.—

23 (A) IN GENERAL.—The Secretary may ac-  
24 cept from the District a partial or total con-  
25 tribution toward the non-Federal share required

1 for a project carried out under subsection (a)  
2 on land located in any of the Six Middle Rio  
3 Grande Pueblos if the Secretary determines  
4 that the project is a special project.

5 (B) LIMITATION.—Nothing in subpara-  
6 graph (A) requires the District to contribute to  
7 the non-Federal share of the cost of a project  
8 carried out under subsection (a).

9 (3) STATE CONTRIBUTIONS.—

10 (A) IN GENERAL.—The Secretary may ac-  
11 cept from the State a partial or total contribu-  
12 tion toward the non-Federal share for a project  
13 carried out under subsection (a).

14 (B) LIMITATION.—Nothing in subpara-  
15 graph (A) requires the State to contribute to  
16 the non-Federal share of the cost of a project  
17 carried out under subsection (a).

18 (4) FORM OF NON-FEDERAL SHARE.—The non-  
19 Federal share under paragraph (1)(A) may be in the  
20 form of in-kind contributions, including the contribu-  
21 tion of any valuable asset or service that the Sec-  
22 retary determines would substantially contribute to a  
23 project carried out under subsection (a).

24 (e) OPERATION AND MAINTENANCE.—The Secretary  
25 may not use any amount made available under section

1 8(b) to carry out the operation or maintenance of any  
2 project carried out under subsection (a).

3 **SEC. 6. EFFECT ON EXISTING AUTHORITY AND RESPON-**  
4 **SIBILITIES.**

5 Nothing in this Act—

6 (1) affects any existing project-specific funding  
7 authority; or

8 (2) limits or absolves the United States from  
9 any responsibility to any Rio Grande Pueblo (includ-  
10 ing any responsibility arising from a trust relation-  
11 ship or from any Federal law (including regula-  
12 tions), Executive order, or agreement between the  
13 Federal Government and any Rio Grande Pueblo).

14 **SEC. 7. EFFECT ON PUEBLO WATER RIGHTS OR STATE**  
15 **WATER LAW.**

16 (a) PUEBLO WATER RIGHTS.—Nothing in this Act  
17 (including the implementation of any project carried out  
18 in accordance with this Act) affects the right of any Pueb-  
19 lo to receive, divert, store, or claim a right to water, in-  
20 cluding the priority of right and the quantity of water as-  
21 sociated with the water right under Federal or State law.

22 (b) STATE WATER LAW.—Nothing in this Act pre-  
23 empts or affects—

24 (1) State water law; or

25 (2) an interstate compact governing water.

1 **SEC. 8. AUTHORIZATION OF APPROPRIATIONS.**

2 (a) STUDY.—There is authorized to be appropriated  
3 to carry out section 4 \$4,000,000.

4 (b) PROJECTS.—There is authorized to be appro-  
5 priated to carry out section 5 \$6,000,000 for each of fiscal  
6 years 2010 through 2019.

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