

NEW MEXICO NAVAJO WATER SETTLEMENT TECHNICAL  
CORRECTIONS ACT

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SEPTEMBER 8, 2015.—Committed to the Committee of the Whole House on the State  
of the Union and ordered to be printed

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Mr. BISHOP of Utah, from the Committee on Natural Resources,  
submitted the following

R E P O R T

[To accompany S. 501]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (S. 501) to make technical corrections to the Navajo water rights settlement in the State of New Mexico, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE BILL

The purpose of S. 501 is to make technical corrections to the Navajo water rights settlement in the State of New Mexico.

BACKGROUND AND NEED FOR LEGISLATION

S. 501 makes technical corrections and adds some federal responsibilities to five subsections related to Indian water projects in New Mexico originally authorized in Title X of Public Law 111-11. The Water, Power and Oceans Subcommittee held a hearing on an identical House bill (H.R. 1406) on June 25, 2015.

S. 501 specifically corrects misspellings, citations, and makes other technical corrections. Section 2 of the bill adds “design and planning” activities to the “construction and rehabilitation” financial responsibilities of the federal government for well drilling in certain locations. The bill also rearranges spending ceilings for cultural resource assessments and fish and wildlife facilities affiliated with the water infrastructure.

## COMMITTEE ACTION

S. 501 was introduced on February 12, 2015, by Senator Tom Udall (D–NM). It passed the Senate without amendment by unanimous consent on May 21, 2015. The bill was referred to the Committee on Natural Resources, and within the Committee to the Subcommittee on Water, Power and Oceans. On July 8, 2015, the Natural Resources Committee met to consider the bill. The Subcommittee was discharged by unanimous consent. No amendments were offered and the bill was ordered favorably reported by unanimous consent on July 9, 2015.

## COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Natural Resources' oversight findings and recommendations are reflected in the body of this report.

## COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. Clause 3(d)(1) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out this bill. However, clause 3(d)(2)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974. Under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of the Congressional Budget Office:

*S. 501—New Mexico Navajo Water Settlement Technical Corrections Act*

S. 501 would amend the Navajo Settlement Act to authorize the Bureau of Reclamation (bureau) to participate in planning and designing groundwater well projects in the Navajo Nation in New Mexico. The bill also would clarify the intent of certain provisions of that act and shift some amounts of authorized spending among authorized activities. Based on information from the bureau and the Bureau of Indian Affairs (BIA), CBO estimates that implementing the legislation would not have a significant effect on the federal budget. Because enacting S. 501 would not affect revenues or direct spending, pay-as-you-go procedures do not apply.

Under current law, the bureau is authorized to construct and rehabilitate groundwater wells and related pipeline facilities for municipal and domestic use by the Navajo Nation. The bureau is also authorized to participate in the planning and design of groundwater wells, subject to funding from local sponsors. S. 501 would clarify the bureau's authority to allocate federal resources to planning and design of such projects. Based on information from the bureau and the BIA, those activities would be accommodated under the existing authorization ceiling for those projects.

S. 501 also would clarify that the Navajo Nation can take delivery of non-project water but is responsible for any associated oper-

ation and maintenance costs. Finally, S. 501 would reallocate a portion of spending for fish and wildlife facilities to the preservation of archaeological resources near water projects. CBO estimates that those changes would have no significant effect on federal spending.

S. 501 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

On March 19, 2015, CBO transmitted a cost estimate for S. 501, the New Mexico Navajo Water Settlement Technical Corrections Act, as ordered reported by the Senate Committee on Indian Affairs on February 25, 2015. The two versions of the legislation are identical, and the CBO cost estimates are the same.

The CBO staff contact for this estimate is Aurora Swanson. The estimate was approved by Theresa Gullo, Assistant Director for Budget Analysis.

2. Section 308(a) of Congressional Budget Act. As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this bill does not contain any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures. According to the Congressional Budget Office, enactment of this bill “would not have a significant effect on the federal budget”.

3. General Performance Goals and Objectives. As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill is to make technical corrections to the Navajo water rights settlement in the State of New Mexico.

#### EARMARK STATEMENT

This bill does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined under clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives.

#### COMPLIANCE WITH PUBLIC LAW 104-4

This bill contains no unfunded mandates.

#### COMPLIANCE WITH H. RES. 5

Directed Rule Making. The Chairman does not believe that this bill directs any executive branch official to conduct any specific rule-making proceedings.

Duplication of Existing Programs. This bill does not establish or reauthorize a program of the federal government known to be duplicative of another program. Such program was not included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111-139 or identified in the most recent Catalog of Federal Domestic Assistance published pursuant to the Federal Program Information Act (Public Law 95-220, as amended by Public Law 98-169) as relating to other programs.

#### PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

## CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

## OMNIBUS PUBLIC LAND MANAGEMENT ACT OF 2009

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**TITLE X—WATER SETTLEMENTS SUB-  
TITLE A—SAN JOAQUIN RIVER RES-  
TORATION SETTLEMENT**

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**Subtitle B—Northwestern New Mexico  
Rural Water Projects**

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**SEC. 10302. DEFINITIONS.**

In this subtitle:

(1) **AAMODT ADJUDICATION.**—The term “Aamodt adjudication” means the general stream adjudication that is the subject of the civil action entitled “State of New Mexico, ex rel. State Engineer and United States of America, Pueblo de Nambe, Pueblo de Pojoaque, Pueblo de San Ildefonso, and Pueblo de Tesuque v. R. Lee Aamodt, et al.”, No. 66 CV 6639 MV/LCS (D.N.M.).

(2) **ABEYTA ADJUDICATION.**—The term “Abeyta adjudication” means the general stream adjudication that is the subject of the civil actions entitled “State of New Mexico v. Abeyta and State of New Mexico v. [Arrellano] *Arrellano*”, Civil Nos. 7896-BB (D.N.M) and 7939-BB (D.N.M.) (consolidated).

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

(4) **AGREEMENT.**—The term “Agreement” means the agreement among the State of New Mexico, the Nation, and the United States setting forth a stipulated and binding agreement signed by the State of New Mexico and the Nation on April 19, 2005.

(5) **ALLOTTEE.**—The term “allottee” means a person that holds a beneficial real property interest in a Navajo allotment that—

(A) is located within the Navajo Reservation or the State of New Mexico;

(B) is held in trust by the United States; and

(C) was originally granted to an individual member of the Nation by public land order or otherwise.

(6) **ANIMAS-LA PLATA PROJECT.**—The term “Animas-La Plata Project” has the meaning given the term in section 3 of Public

Law 100-585 (102 Stat. 2973), including Ridges Basin Dam, Lake Nighthorse, the Navajo Nation Municipal Pipeline, and any other features or modifications made pursuant to the Colorado Ute Settlement Act Amendments of 2000 (Public Law 106-554; 114 Stat. 2763A-258).

(7) CITY.—The term “City” means the city of Gallup, New Mexico, or a designee of the City, with authority to provide water to the Gallup, New Mexico service area.

(8) COLORADO RIVER COMPACT.—The term “Colorado River Compact” means the Colorado River Compact of 1922 as approved by Congress in the Act of December 21, 1928 (45 Stat. 1057) and by the Presidential Proclamation of June 25, 1929 (46 Stat. 3000).

(9) COLORADO RIVER SYSTEM.—The term “Colorado River System” has the same meaning given the term in Article II(a) of the Colorado River Compact.

(10) COMPACT.—The term “Compact” means the Upper Colorado River Basin Compact as consented to by the Act of April 6, 1949 (63 Stat. 31, chapter 48).

(11) CONTRACT.—The term “Contract” means the contract between the United States and the Nation setting forth certain commitments, rights, and obligations of the United States and the Nation, as described in paragraph 6.0 of the Agreement.

(12) DEPLETION.—The term “depletion” means the depletion of the flow of the San Juan River stream system in the State of New Mexico by a particular use of water (including any depletion incident to the use) and represents the diversion from the stream system by the use, less return flows to the stream system from the use.

(13) DRAFT IMPACT STATEMENT.—The term “Draft Impact Statement” means the draft environmental impact statement prepared by the Bureau of Reclamation for the Project dated March 2007.

(14) FUND.—The term “Fund” means the Reclamation Waters Settlements Fund established by section 10501(a).

(15) HYDROLOGIC DETERMINATION.—The term “hydrologic determination” means the hydrologic determination entitled “Water Availability from Navajo Reservoir and the Upper Colorado River Basin for Use in New Mexico,” prepared by the Bureau of Reclamation pursuant to section 11 of the Act of June 13, 1962 (Public Law 87-483; 76 Stat. 99), and dated May 23, 2007.

(16) LOWER BASIN.—The term “Lower Basin” has the same meaning given the term in Article II(g) of the Colorado River Compact.

(17) NATION.—The term “Nation” means the Navajo Nation, a body politic and federally-recognized Indian nation as provided for in section 101(2) of the Federally Recognized Indian Tribe List of 1994 (25 U.S.C. 497a(2)), also known variously as the “Navajo Tribe,” the “Navajo Tribe of Arizona, New Mexico & Utah,” and the “Navajo Tribe of Indians” and other similar names, and includes all bands of Navajo Indians and chapters of the Navajo Nation.

(18) NAVAJO-GALLUP WATER SUPPLY PROJECT; PROJECT.—The term “Navajo-Gallup Water Supply Project” or “Project” means

the Navajo-Gallup Water Supply Project authorized under section 10602(a), as described as the preferred alternative in the Draft Impact Statement.

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

(20) NAVAJO RESERVOIR.—The term “Navajo Reservoir” means the reservoir created by the impoundment of the San Juan River at Navajo Dam, as authorized by the Act of April 11, 1956 (commonly known as the “Colorado River Storage Project Act”) (43 U.S.C. 620 et seq.).

(21) NAVAJO NATION MUNICIPAL PIPELINE; PIPELINE.—The term “Navajo Nation Municipal Pipeline” or “Pipeline” means the pipeline used to convey the water of the Animas-La Plata Project of the Navajo Nation from the City of Farmington, New Mexico, to communities of the Navajo Nation located in close proximity to the San Juan River Valley in the State of New Mexico (including the City of Shiprock), as authorized by section 15(b) of the Colorado Ute Indian Water Rights Settlement Act of 1988 (Public Law 100-585; 102 Stat. 2973; 114 Stat. 2763A-263).

(22) NON-NAVAJO IRRIGATION DISTRICTS.—The term “Non-Navajo Irrigation Districts” means—

(A) the Hammond Conservancy District;

(B) the Bloomfield Irrigation District; and

(C) any other community ditch organization in the San Juan River basin in the State of New Mexico.

(23) PARTIAL FINAL DECREE.—The term “Partial Final Decree” means a final and binding judgment and decree entered by a court in the stream adjudication, setting forth the rights of the Nation to use and administer waters of the San Juan River Basin in New Mexico, as set forth in Appendix 1 of the Agreement.

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

(25) SAN JUAN RIVER BASIN RECOVERY IMPLEMENTATION PROGRAM.—The term “San Juan River Basin Recovery Implementation Program” means the intergovernmental program established pursuant to the cooperative agreement dated October 21, 1992 (including any amendments to the program).

(26) SECRETARY.—The term “Secretary” means the Secretary of the Interior, acting through the Commissioner of Reclamation or any other designee.

(27) STREAM ADJUDICATION.—The term “stream adjudication” means the general stream adjudication that is the subject of *New Mexico v. United States, et al.*, No. [75-185] 75-184 (11th Jud. Dist., San Juan County, New Mexico) (involving claims to waters of the San Juan River and the tributaries of that river).

(28) SUPPLEMENTAL PARTIAL FINAL DECREE.—The term “Supplemental Partial Final Decree” means a final and binding judgment and decree entered by a court in the stream adjudication, setting forth certain water rights of the Nation, as set forth in Appendix 2 of the Agreement.

(29) TRUST FUND.—The term “Trust Fund” means the Navajo Nation Water Resources Development Trust Fund established by section 10702(a).

(30) UPPER BASIN.—The term “Upper Basin” has the same meaning given the term in Article II(f) of the Colorado River Compact.

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### **PART III—NAVAJO-GALLUP WATER SUPPLY PROJECT**

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#### **SEC. 10603. DELIVERY AND USE OF NAVAJO-GALLUP WATER SUPPLY PROJECT WATER.**

(a) USE OF PROJECT WATER.—

(1) IN GENERAL.—In accordance with this subtitle and other applicable law, water supply from the Project shall be used for municipal, industrial, commercial, domestic, and stock watering purposes.

(2) USE ON CERTAIN LAND.—

(A) IN GENERAL.—Subject to subparagraph (B), the Nation may use Project water allocations on—

- (i) land held by the United States in trust for the Nation and members of the Nation; and
- (ii) land held in fee by the Nation.

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

(3) HYDROELECTRIC POWER.—

(A) IN GENERAL.—Hydroelectric power may be generated as an incident to the delivery of Project water for authorized purposes under paragraph (1).

(B) ADMINISTRATION.—Notwithstanding any other provision of law—

- (i) any hydroelectric power generated under this paragraph shall be used or marketed by the Nation;
- (ii) the Nation shall retain any revenues from the sale of the hydroelectric power; and
- (iii) the United States shall have no trust obligation or other obligation to monitor, administer, or account for the revenues received by the Nation, or the expenditure of the revenues.

(4) STORAGE.—

(A) IN GENERAL.—Subject to subparagraph (B), any water contracted for delivery under paragraph (1) that is not needed for current water demands or uses may be delivered by the Project for placement in underground storage in the State of New Mexico for future recovery and use.

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

- (i) approval by the State of New Mexico under applicable provisions of State law relating to aquifer storage and recovery; and

(ii) the provisions of the Agreement and this subtitle.

(b) PROJECT WATER AND CAPACITY ALLOCATIONS.—

(1) DIVERSION.—Subject to availability and consistent with Federal and State law, the Project may divert from the Navajo Reservoir and the San Juan River a quantity of water to be allocated and used consistent with the Agreement and this subtitle, that does not exceed in any 1 year, the lesser of—

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

(B) the quantity of water necessary to supply a depletion from the San Juan River of 35,890 acre-feet.

(2) PROJECT DELIVERY CAPACITY ALLOCATIONS.—

(A) IN GENERAL.—The capacity of the Project shall be allocated to the Project Participants in accordance with subparagraphs (B) through (E), other provisions of this subtitle, and other applicable law.

(B) DELIVERY CAPACITY ALLOCATION TO THE CITY.—The Project may deliver at the point of diversion from the San Juan River not more than 7,500 acre-feet of water in any 1 year for which the City has secured rights for the use of the City.

(C) DELIVERY CAPACITY ALLOCATION TO NAVAJO NATION COMMUNITIES IN NEW MEXICO.—For use by the Nation in the State of New Mexico, the Project may deliver water out of the water rights held by the Secretary for the Nation and confirmed under this subtitle, at the points of diversion from the San Juan River or at Navajo Reservoir in any 1 year, the lesser of—

(i) 22,650 acre-feet of water; or

(ii) the quantity of water necessary to supply a depletion from the San Juan River of 20,780 acre-feet of water.

(D) DELIVERY CAPACITY ALLOCATION TO NAVAJO NATION COMMUNITIES IN ARIZONA.—Subject to subsection (c), the Project may deliver at the point of diversion from the San Juan River not more than 6,411 acre-feet of water in any 1 year for use by the Nation in the State of Arizona.

(E) DELIVERY CAPACITY ALLOCATION TO JICARILLA APACHE NATION.—The Project may deliver at Navajo Reservoir not more than 1,200 acre-feet of water in any 1 year of the water rights of the Jicarilla Apache Nation, held by the Secretary and confirmed by the Jicarilla Apache Tribe Water Rights Settlement Act (Public Law 102-441; 106 Stat. 2237), for use by the Jicarilla Apache Nation in the southern portion of the Jicarilla Apache Nation Reservation in the State of New Mexico.

(3) USE IN EXCESS OF DELIVERY CAPACITY ALLOCATION QUANTITY.—Notwithstanding each delivery capacity allocation quantity limit described in subparagraphs (B), (C), and (E) of paragraph (2), the Secretary may authorize a Project Participant to exceed the delivery capacity allocation quantity limit of that Project Participant if—

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



(B) the Project Participant benefitting from the increased allocation of delivery capacity—

(i) has the right under applicable law to use the additional water;

(ii) agrees to pay the operation, maintenance, and replacement costs relating to the additional use of any Project facility; and

(iii) agrees, if the Project title is held by the Secretary, to pay a fee established by the Secretary to assist in recovering capital costs relating to that additional use.

(c) CONDITIONS FOR USE IN ARIZONA.—

(1) REQUIREMENTS.—Project water shall not be delivered for use by any community of the Nation located in the State of Arizona under subsection (b)(2)(D) until—

(A) the Nation and the State of Arizona have entered into a water rights settlement agreement approved by an Act of Congress that settles and waives the Nation's claims to water in the Lower Basin and the Little Colorado River Basin in the State of Arizona, including those of the United States on the Nation's behalf; and

(B) the Secretary and the Navajo Nation have entered into a Navajo Reservoir water supply delivery contract for the physical delivery and diversion of water via the Project from the San Juan River system to supply uses in the State of Arizona.

(2) ACCOUNTING OF USES IN ARIZONA.—

(A) IN GENERAL.—Pursuant to paragraph (1) and notwithstanding any other provision of law, water may be diverted by the Project from the San Juan River in the State of New Mexico in accordance with an appropriate permit issued under New Mexico law for use in the State of Arizona within the Navajo Reservation in the Lower Basin; provided that any depletion of water that results from the diversion of water by the Project from the San Juan River in the State of New Mexico for uses within the State of Arizona (including depletion incidental to the diversion, impounding, or conveyance of water in the State of New Mexico for uses in the State of Arizona) shall be administered and accounted for as either—

(i) a part of, and charged against, the available consumptive use apportionment made to the State of Arizona by Article III(a) of the Compact and to the Upper Basin by Article III(a) of the Colorado River Compact, in which case any water so diverted by the Project into the Lower Basin for use within the State of Arizona shall not be credited as water reaching Lee Ferry pursuant to ~~Article III(c)~~ *Articles III(c)* and III(d) of the Colorado River Compact; or

(ii) subject to subparagraph (B), a part of, and charged against, the consumptive use apportionment made to the Lower Basin by Article III(a) of the Colorado River Compact, in which case it shall—

(I) be a part of the Colorado River water that is apportioned to the State of Arizona in Article II(B)

of the Consolidated Decree of the Supreme Court of the United States in *Arizona v. California* (547 U.S. 150) (as may be amended or supplemented);

(II) be credited as water reaching Lee Ferry pursuant to **Article III(c)** *Articles III(c)* and III(d) of the Colorado River Compact; and

(III) be accounted as the water identified in section 104(a)(1)(B)(ii) of the Arizona Water Settlements Act, (118 Stat. 3478).

(B) LIMITATION.—Notwithstanding subparagraph (A)(ii), no water diverted by the Project shall be accounted for pursuant to subparagraph (A)(ii) until such time that—

(i) the Secretary has developed and, as necessary and appropriate, modified, in consultation with the Upper Colorado River Commission and the Governors' Representatives on Colorado River Operations from each State signatory to the Colorado River Compact, all operational and decisional criteria, policies, contracts, guidelines or other documents that control the operations of the Colorado River System reservoirs and diversion works, so as to adjust, account for, and offset the diversion of water apportioned to the State of Arizona, pursuant to the Boulder Canyon Project Act (43 U.S.C. 617 et seq.), from a point of diversion on the San Juan River in New Mexico; provided that all such modifications shall be consistent with the provisions of this Section, and the modifications made pursuant to this clause shall be applicable only for the duration of any such diversions pursuant to section 10603(c)(2)(A)(ii); and

(ii) Article II(B) of the Decree of the Supreme Court of the United States in *Arizona v. California* (547 U.S. 150 as may be amended or supplemented) is administered so that diversions from the main stream for the Central Arizona Project, as served under existing contracts with the United States by diversion works heretofore constructed, shall be limited and reduced to offset any diversions made pursuant to section 10603(c)(2)(A)(ii) of this Act. This clause shall not affect, in any manner, the amount of water apportioned to Arizona pursuant to the Boulder Canyon Project Act (43 U.S.C. 617 et seq.), or amend any provisions of said decree or the Colorado River Basin Project Act (43 U.S.C. 1501 et. seq.).

(3) UPPER BASIN PROTECTIONS.—

(A) CONSULTATIONS.—Henceforth, in any consultation pursuant to 16 U.S.C. 1536(a) with respect to water development in the San Juan River Basin, the Secretary shall confer with the States of Colorado and New Mexico, consistent with the provisions of section 5 of the "Principles for Conducting Endangered Species Act Section 7 Consultations on Water Development and Water Management Activities Affecting Endangered Fish Species in the San Juan River Basin" as adopted by the Coordination Committee, San Juan River Basin Recovery Implementation

Program, on June 19, 2001, and as may be amended or modified.

(B) PRESERVATION OF EXISTING RIGHTS.—Rights to the consumptive use of water available to the Upper Basin from the Colorado River System under the Colorado River Compact and the Compact shall not be reduced or prejudiced by any use of water pursuant to subsection 10603(c). Nothing in this Act shall be construed so as to impair, conflict with, or otherwise change the duties and powers of the Upper Colorado River Commission.

(d) FORBEARANCE.—

(1) IN GENERAL.—Subject to paragraphs (2) and (3), during any year in which a shortage to the normal diversion requirement for any use relating to the Project within the State of Arizona occurs (as determined under section 11 of Public Law 87-483 (76 Stat. 99)), the Nation may temporarily forbear the delivery of the water supply of the Navajo Reservoir for uses in the State of New Mexico under the apportionments of water to the Navajo Indian Irrigation Project and the normal diversion requirements of the Project to allow an equivalent quantity of water to be delivered from the Navajo Reservoir water supply for municipal and domestic uses of the Nation in the State of Arizona under the Project.

(2) LIMITATION OF FORBEARANCE.—The Nation may forebear the delivery of water under paragraph (1) of a quantity not exceeding the quantity of the shortage to the normal diversion requirement for any use relating to the Project within the State of Arizona.

(3) EFFECT.—The forbearance of the delivery of water under paragraph (1) shall be subject to the requirements in subsection (c).

(e) EFFECT.—Nothing in this subtitle—

(1) authorizes the marketing, leasing, or transfer of the water supplies made available to the Nation under the Contract to non-Navajo water users in States other than the State of New Mexico; or

(2) authorizes the forbearance of water uses in the State of New Mexico to allow uses of water in other States other than as authorized under subsection (d).

(f) COLORADO RIVER COMPACTS.—Notwithstanding any other provision of law—

(1) water may be diverted by the Project from the San Juan River in the State of New Mexico for use within New Mexico in the lower basin, as that term is used in the Colorado River Compact;

(2) any water diverted under paragraph (1) shall be a part of, and charged against, the consumptive use apportionment made to the State of New Mexico by Article III(a) of the Compact and to the upper basin by Article III(a) of the Colorado River Compact; and

(3) any water so diverted by the Project into the lower basin within the State of New Mexico shall not be credited as water reaching Lee Ferry pursuant to Articles III(c) and III(d) of the Colorado River Compact.

(g) PAYMENT OF OPERATION, MAINTENANCE, AND REPLACEMENT COSTS.—

(1) IN GENERAL.—The Secretary is authorized to pay the operation, maintenance, and replacement costs of the Project allocable to the Project Participants under section 10604 until the date on which the Secretary declares any section of the Project to be substantially complete and delivery of water generated by, and through, that section of the Project can be made to a Project participant.

(2) PROJECT PARTICIPANT PAYMENTS.—Beginning on the date described in paragraph (1), each Project Participant shall pay all allocated operation, maintenance, and replacement costs for that substantially completed section of the Project, in accordance with contracts entered into pursuant to section 10604, except as provided in section 10604(f).

(h) NO PRECEDENT.—Nothing in this Act shall be construed as authorizing or establishing a precedent for any type of transfer of Colorado River System water between the Upper Basin and Lower Basin. Nor shall anything in this Act be construed as expanding the Secretary's authority in the Upper Basin.

(i) UNIQUE SITUATION.—Diversions by the Project consistent with this section address critical tribal and non-Indian water supply needs under unique circumstances, which include, among other things—

- (1) the intent to benefit an American Indian tribe;
- (2) the Navajo Nation's location in both the Upper and Lower Basin;
- (3) the intent to address critical Indian water needs in the State of Arizona and Indian and non-Indian water needs in the State of New Mexico,
- (4) the location of the Navajo Nation's capital city of Window Rock in the State of Arizona in close proximity to the border of the State of New Mexico and the pipeline route for the Project;
- (5) the lack of other reasonable options available for developing a firm, sustainable supply of municipal water for the Navajo Nation at Window Rock in the State of Arizona; and
- (6) the limited volume of water to be diverted by the Project to supply municipal uses in the Window Rock area in the State of Arizona.

(j) CONSENSUS.—Congress notes the consensus of the Governors' Representatives on Colorado River Operations of the States that are signatory to the Colorado River Compact regarding the diversions authorized for the Project under this section.

(k) EFFICIENT USE.—The diversions and uses authorized for the Project under this Section represent unique and efficient uses of Colorado River apportionments in a manner that Congress has determined would be consistent with the obligations of the United States to the Navajo Nation.

**SEC. 10604. PROJECT CONTRACTS.**

(a) NAVAJO NATION CONTRACT.—

(1) HYDROLOGIC DETERMINATION.—Congress recognizes that the Hydrologic Determination necessary to support approval of the Contract has been completed.

(2) CONTRACT APPROVAL.—

## (A) APPROVAL.—

(i) IN GENERAL.—Except to the extent that any provision of the Contract conflicts with this subtitle, Congress approves, ratifies, and confirms the Contract.

(ii) AMENDMENTS.—To the extent any amendment is executed to make the Contract consistent with this subtitle, that amendment is authorized, ratified, and confirmed.

(B) EXECUTION OF CONTRACT.—The Secretary, acting on behalf of the United States, shall enter into the Contract to the extent that the Contract does not conflict with this subtitle (including any amendment that is required to make the Contract consistent with this subtitle).

(3) NONREIMBURSABILITY OF ALLOCATED COSTS.—The following costs shall be nonreimbursable and not subject to repayment by the Nation or any other Project beneficiary:

(A) Any share of the construction costs of the Nation relating to the Project authorized by section 10602(a).

(B) Any costs relating to the construction of the Navajo Indian Irrigation Project that may otherwise be allocable to the Nation for use of any facility of the Navajo Indian Irrigation Project to convey water to each Navajo community under the Project.

(C) Any costs relating to the construction of Navajo Dam that may otherwise be allocable to the Nation for water deliveries under the Contract.

(4) OPERATION, MAINTENANCE, AND REPLACEMENT OBLIGATION.—Subject to subsection (f), the Contract shall include provisions under which the Nation shall pay any costs relating to the operation, maintenance, and replacement of each facility of the Project that are allocable to the Nation.

(5) LIMITATION, CANCELLATION, TERMINATION, AND RESCIS-  
SION.—The Contract may be limited by a term of years, canceled, terminated, or rescinded only by an Act of Congress.

## (b) CITY OF GALLUP CONTRACT.—

(1) CONTRACT AUTHORIZATION.—Consistent with this subtitle, the Secretary is authorized to enter into a repayment contract with the City that requires the City—

(A) to repay, within a 50-year period, the share of the construction costs of the City relating to the Project, with interest as provided under section 10305; and

(B) consistent with section 10603(g), to pay the operation, maintenance, and replacement costs of the Project that are allocable to the City.

## (2) CONTRACT PREPAYMENT.—

(A) IN GENERAL.—The contract authorized under paragraph (1) may allow the City to satisfy the repayment obligation of the City for construction costs of the Project on the payment of the share of the City prior to the initiation of construction.

(B) AMOUNT.—The amount of the share of the City described in subparagraph (A) shall be determined by agreement between the Secretary and the City.

(C) REPAYMENT OBLIGATION.—Any repayment obligation established by the Secretary and the City pursuant to sub-

paragraph (A) shall be subject to a final cost allocation by the Secretary on project completion and to the limitations set forth in paragraph (3).

(3) SHARE OF CONSTRUCTION COSTS.—

(A) IN GENERAL.—Subject to subparagraph (B), the Secretary shall determine the share of the construction costs of the Project allocable to the City and establish the percentage of the allocated construction costs that the City shall be required to repay pursuant to the contract entered into under paragraph (1), based on the ability of the City to pay.

(B) MINIMUM PERCENTAGE.—Notwithstanding subparagraph (A), the repayment obligation of the City shall be at least 25 percent of the construction costs of the Project that are allocable to the City, but shall in no event exceed 35 percent.

(4) EXCESS CONSTRUCTION COSTS.—Any construction costs of the Project allocable to the City in excess of the repayment obligation of the City, as determined under paragraph (3), shall be nonreimbursable.

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

(6) TITLE TRANSFER.—If title is transferred to the City prior to repayment under section 10602(f), the City shall be required to provide assurances satisfactory to the Secretary of fulfillment of the remaining repayment obligation of the City.

(7) WATER DELIVERY SUBCONTRACT.—The Secretary shall not enter into a contract under paragraph (1) with the City until the City has secured a water supply for the City's portion of the Project described in section 10603(b)(2)(B), by entering into, as approved by the Secretary, a water delivery subcontract for a period of not less than 40 years beginning on the date on which the construction of any facility of the Project serving the City is completed, with—

(A) the Nation, as authorized by the Contract;

(B) the Jicarilla Apache Nation, as authorized by the settlement contract between the United States and the Jicarilla Apache Tribe, authorized by the Jicarilla Apache Tribe Water Rights Settlement Act (Public Law 102-441; 106 Stat. 2237); or

(C) an acquired alternate source of water, subject to approval of the Secretary and the State of New Mexico, acting through the New Mexico Interstate Stream Commission and the New Mexico State Engineer.

(c) JICARILLA APACHE NATION CONTRACT.—

(1) CONTRACT AUTHORIZATION.—Consistent with this subtitle, the Secretary is authorized to enter into a repayment contract with the Jicarilla Apache Nation that requires the Jicarilla Apache Nation—

(A) to repay, within a 50-year period, the share of any construction cost of the Jicarilla Apache Nation relating to the Project, with interest as provided under section 10305; and

(B) consistent with section 10603(g), to pay the operation, maintenance, and replacement costs of the Project that are allocable to the Jicarilla Apache Nation.

(2) CONTRACT PREPAYMENT.—

(A) IN GENERAL.—The contract authorized under paragraph (1) may allow the Jicarilla Apache Nation to satisfy the repayment obligation of the Jicarilla Apache Nation for construction costs of the Project on the payment of the share of the Jicarilla Apache Nation prior to the initiation of construction.

(B) AMOUNT.—The amount of the share of Jicarilla Apache Nation described in subparagraph (A) shall be determined by agreement between the Secretary and the Jicarilla Apache Nation.

(C) REPAYMENT OBLIGATION.—Any repayment obligation established by the Secretary and the Jicarilla Apache Nation pursuant to subparagraph (A) shall be subject to a final cost allocation by the Secretary on project completion and to the limitations set forth in paragraph (3).

(3) SHARE OF CONSTRUCTION COSTS.—

(A) IN GENERAL.—Subject to subparagraph (B), the Secretary shall determine the share of the construction costs of the Project allocable to the Jicarilla Apache Nation and establish the percentage of the allocated construction costs of the Jicarilla Apache Nation that the Jicarilla Apache Nation shall be required to repay based on the ability of the Jicarilla Apache Nation to pay.

(B) MINIMUM PERCENTAGE.—Notwithstanding subparagraph (A), the repayment obligation of the Jicarilla Apache Nation shall be at least 25 percent of the construction costs of the Project that are allocable to the Jicarilla Apache Nation, but shall in no event exceed 35 percent.

(4) EXCESS CONSTRUCTION COSTS.—Any construction costs of the Project allocable to the Jicarilla Apache Nation in excess of the repayment obligation of the Jicarilla Apache Nation as determined under paragraph (3), shall be nonreimbursable.

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

(6) NAVAJO INDIAN IRRIGATION PROJECT COSTS.—The Jicarilla Apache Nation shall have no obligation to repay any Navajo Indian Irrigation Project construction costs that might otherwise be allocable to the Jicarilla Apache Nation for use of the Navajo Indian Irrigation Project facilities to convey water to the Jicarilla Apache Nation, and any such costs shall be nonreimbursable.

(d) CAPITAL COST ALLOCATIONS.—

(1) IN GENERAL.—For purposes of estimating the capital repayment requirements of the Project Participants under this section, the Secretary shall review and, as appropriate, update the Draft Impact Statement allocating capital construction costs for the Project.

(2) FINAL COST ALLOCATION.—The repayment contracts entered into with Project Participants under this section shall require that the Secretary perform a final cost allocation when

construction of the Project is determined to be substantially complete.

(3) REPAYMENT OBLIGATION.—The Secretary shall determine the repayment obligation of the Project Participants based on the final cost allocation identifying reimbursable and nonreimbursable capital costs of the Project consistent with this subtitle.

(e) OPERATION, MAINTENANCE, AND REPLACEMENT COST ALLOCATIONS.—For purposes of determining the operation, maintenance, and replacement obligations of the Project Participants under this section, the Secretary shall review and, as appropriate, update the Draft Impact Statement that allocates operation, maintenance, and replacement costs for the Project.

(f) TEMPORARY WAIVERS OF PAYMENTS.—

(1) IN GENERAL.—On the date on which the Secretary declares a section of the Project to be substantially complete and delivery of *Project* water generated by and through that section of the Project can be made to the Nation, the Secretary may waive, for a period of not more than 10 years, the operation, maintenance, and replacement costs allocable to the Nation for that section of the Project that the Secretary determines are in excess of the ability of the Nation to pay.

(2) SUBSEQUENT PAYMENT BY NATION.—After a waiver under paragraph (1), the Nation shall pay all allocated operation, maintenance, and replacement costs of that section of the Project.

(3) PAYMENT BY UNITED STATES.—Any operation, maintenance, or replacement costs waived by the Secretary under paragraph (1) shall be paid by the United States and shall be nonreimbursable.

(4) EFFECT ON CONTRACTS.—Failure of the Secretary to waive costs under paragraph (1) because of a lack of availability of Federal funding to pay the costs under paragraph (3) shall not alter the obligations of the Nation or the United States under a repayment contract.

(5) TERMINATION OF AUTHORITY.—The authority of the Secretary to waive costs under paragraph (1) with respect to a Project facility transferred to the Nation under section 10602(f) shall terminate on the date on which the Project facility is transferred.

(g) PROJECT CONSTRUCTION COMMITTEE.—The Secretary shall facilitate the formation of a project construction committee with the Project Participants and the State of New Mexico—

(1) to review cost factors and budgets for construction and operation and maintenance activities;

(2) to improve construction management through enhanced communication; and

(3) to seek additional ways to reduce overall Project costs.

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**SEC. 10609. AUTHORIZATION OF APPROPRIATIONS.**

(a) AUTHORIZATION OF APPROPRIATIONS FOR NAVAJO-GALLUP WATER SUPPLY PROJECT.—

(1) IN GENERAL.—There is authorized to be appropriated to the Secretary to plan, design, and construct the Project



\$870,000,000 for the period of fiscal years 2009 through 2024, to remain available until expended.

(2) ADJUSTMENTS.—The amount under paragraph (1) shall be adjusted by such amounts as may be required by reason of changes since 2007 in construction costs, as indicated by engineering cost indices applicable to the types of construction involved.

(3) USE.—In addition to the uses authorized under paragraph (1), amounts made available under that paragraph may be used for the conduct of related activities to comply with Federal environmental laws.

(4) OPERATION AND MAINTENANCE.—

(A) IN GENERAL.—There are authorized to be appropriated such sums as are necessary to operate and maintain the Project consistent with this subtitle.

(B) EXPIRATION.—The authorization under subparagraph (A) shall expire 10 years after the year the Secretary declares the Project to be substantially complete.

(b) APPROPRIATIONS FOR CONJUNCTIVE USE WELLS.—

(1) SAN JUAN WELLS.—There is authorized to be appropriated to the Secretary for the [construction or rehabilitation] *planning, design, construction, rehabilitation,* and operation and maintenance of conjunctive use wells under section 10606(b) \$30,000,000, as adjusted under paragraph (3), for the period of fiscal years 2009 through 2019.

(2) WELLS IN THE LITTLE COLORADO AND RIO GRANDE BASINS.—There are authorized to be appropriated to the Secretary for the [construction or rehabilitation] *planning, design, construction, rehabilitation,* and operation and maintenance of conjunctive use wells under section 10606(c) such sums as are necessary for the period of fiscal years 2009 through 2024.

(3) ADJUSTMENTS.—The amount under paragraph (1) shall be adjusted by such amounts as may be required by reason of changes since 2008 in construction costs, as indicated by engineering cost indices applicable to the types of construction or rehabilitation involved.

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

(5) USE.—In addition to the uses authorized under paragraphs (1) and (2), amounts made available under that paragraph may be used for the conduct of related activities to comply with Federal environmental laws.

(6) LIMITATION.—Appropriations authorized under paragraph (1) shall not be used for operation or maintenance of any conjunctive use wells at a time in excess of 3 years after the well is declared substantially complete.

(c) SAN JUAN RIVER IRRIGATION PROJECTS.—

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

(A) to carry out section 10607(a)(1), not more than \$7,700,000, as adjusted under paragraph (2), for the period of fiscal years 2009 through 2016, to remain available until expended; and

- (B) to carry out section 10607(a)(2), not more than \$15,400,000, as adjusted under paragraph (2), for the period of fiscal years 2009 through 2019, to remain available until expended.
- (2) ADJUSTMENT.—The amounts made available under paragraph (1) shall be adjusted by such amounts as may be required by reason of changes since January 1, 2004, in construction costs, as indicated by engineering cost indices applicable to the types of construction involved in the rehabilitation.
- (3) NONREIMBURSABLE EXPENDITURES.—Amounts made available under this subsection shall be nonreimbursable to the United States.
- (d) OTHER IRRIGATION PROJECTS.—There are authorized to be appropriated to the Secretary to carry out section 10608 \$11,000,000 for the period of fiscal years 2009 through 2019.
- (e) CULTURAL RESOURCES.—
  - (1) IN GENERAL.—The Secretary may use not more than **2 percent** *4 percent* of amounts made available under subsections (a), (b), and (c) for the survey, recovery, protection, preservation, and display of archaeological resources in the area of a Project facility or conjunctive use well.
  - (2) NONREIMBURSABLE EXPENDITURES.—Any amounts made available under paragraph (1) shall be nonreimbursable.
- (f) FISH AND WILDLIFE FACILITIES.—
  - (1) IN GENERAL.—In association with the development of the Project, the Secretary may use not more than **4 percent** *2 percent* of amounts made available under subsections (a), (b), and (c) to purchase land and construct and maintain facilities to mitigate the loss of, and improve conditions for the propagation of, fish and wildlife if any such purchase, construction, or maintenance will not affect the operation of any water project or use of water.
  - (2) NONREIMBURSABLE EXPENDITURES.—Any amounts expended under paragraph (1) shall be nonreimbursable.

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## PART IV—NAVAJO NATION WATER RIGHTS

### SEC. 10701. AGREEMENT.

- (a) AGREEMENT APPROVAL.—
  - (1) APPROVAL BY CONGRESS.—Except to the extent that any provision of the Agreement conflicts with this subtitle, Congress approves, ratifies, and confirms the Agreement (including any amendments to the Agreement that are executed to make the Agreement consistent with this subtitle).
  - (2) EXECUTION BY SECRETARY.—The Secretary shall enter into the Agreement to the extent that the Agreement does not conflict with this subtitle, including—
    - (A) any exhibits to the Agreement requiring the signature of the Secretary; and
    - (B) any amendments to the Agreement necessary to make the Agreement consistent with this subtitle.
  - (3) AUTHORITY OF SECRETARY.—The Secretary may carry out any action that the Secretary determines is necessary or appro-

appropriate to implement the Agreement, the Contract, and this section.

(4) ADMINISTRATION OF NAVAJO RESERVOIR RELEASES.—The State of New Mexico may administer water that has been released from storage in Navajo Reservoir in accordance with subparagraph 9.1 of the Agreement.

(b) WATER AVAILABLE UNDER CONTRACT.—

(1) QUANTITIES OF WATER AVAILABLE.—

(A) IN GENERAL.—Water shall be made available annually under the Contract for projects in the State of New Mexico supplied from the Navajo Reservoir and the San Juan River (including tributaries of the River) under New Mexico State Engineer File Numbers 2849, 2883, and 3215 in the quantities described in subparagraph (B).

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

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

(C) MAXIMUM QUANTITY.—A diversion of water to the Nation under the Contract for a project described in subparagraph (B) shall not exceed the quantity of water necessary to supply the amount of depletion for the project.

(D) TERMS, CONDITIONS, AND LIMITATIONS.—The diversion and use of water under the Contract shall be subject to and consistent with the terms, conditions, and limitations of the Agreement, this subtitle, and any other applicable law.

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

(A) consistent with the Agreement; and

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

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

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

(i) the depletion of water does not exceed the quantities described in paragraph (1); and

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

(B) change a point of diversion, change a purpose or place of use, and transfer a right for depletion under this subtitle (except for a point of diversion, purpose or place of use, or right for depletion for use in the State of Arizona under section 10603(b)(2)(D)), to another use, purpose, place, or depletion in the State of New Mexico to meet a water resource or economic need of the Nation if—

(i) the change or transfer is subject to and consistent with the terms of the Agreement, the Partial Final Decree described in paragraph 3.0 of the Agreement, the Contract, and any other applicable law; and

(ii) a change or transfer of water use by the Nation does not alter any obligation of the United States, the Nation, or another party to pay or repay project construction, operation, maintenance, or replacement costs under this subtitle and the Contract.

(c) SUBCONTRACTS.—

(1) IN GENERAL.—

(A) SUBCONTRACTS BETWEEN NATION AND THIRD PARTIES.—The Nation may enter into subcontracts for the delivery of Project water under the Contract to third parties for any beneficial use in the State of New Mexico (on or off land held by the United States in trust for the Nation or a member of the Nation or land held in fee by the Nation).

(B) APPROVAL REQUIRED.—A subcontract entered into under subparagraph (A) shall not be effective until approved by the Secretary in accordance with this subsection and the Contract.

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

(D) DEADLINE.—The Secretary shall approve or disapprove a subcontract submitted to the Secretary under subparagraph (C) not later than the later of—

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

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

(I) section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)); and

(II) any other requirement of Federal law.

(E) ENFORCEMENT.—A party to a subcontract may enforce the deadline described in subparagraph (D) under section 1361 of title 28, United States Code.

(F) COMPLIANCE WITH OTHER LAW.—A subcontract described in subparagraph (A) shall comply with the Agreement, the Partial Final Decree described in paragraph 3.0 of the Agreement, and any other applicable law.

- (G) NO LIABILITY.—The Secretary shall not be liable to any party, including the Nation, for any term of, or any loss or other detriment resulting from, a lease, contract, or other agreement entered into pursuant to this subsection.
- (2) ALIENATION.—
- (A) PERMANENT ALIENATION.—The Nation shall not permanently alienate any right granted to the Nation under the Contract.
- (B) MAXIMUM TERM.—The term of any water use subcontract (including a renewal) under this subsection shall be not more than 99 years.
- (3) NONINTERCOURSE ACT COMPLIANCE.—This subsection—
- (A) provides congressional authorization for the subcontracting rights of the Nation; and
- (B) is deemed to fulfill any requirement that may be imposed by section 2116 of the Revised Statutes (25 U.S.C. 177).
- (4) FORFEITURE.—The nonuse of the water supply secured by a subcontractor of the Nation under this subsection shall not result in forfeiture, abandonment, relinquishment, or other loss of any part of a right decreed to the Nation under the Contract or this section.
- (5) NO PER CAPITA PAYMENTS.—No part of the revenue from a water use subcontract under this subsection shall be distributed to any member of the Nation on a per capita basis.
- (d) WATER LEASES NOT REQUIRING SUBCONTRACTS.—
- (1) AUTHORITY OF NATION.—
- (A) IN GENERAL.—The Nation may lease, contract, or otherwise transfer to another party or to another purpose or place of use in the State of New Mexico (on or off land that is held by the United States in trust for the Nation or a member of the Nation or held in fee by the Nation) a water right that—
- (i) is decreed to the Nation under the Agreement; and
- (ii) is not subject to the Contract.
- (B) COMPLIANCE WITH OTHER LAW.—In carrying out an action under this subsection, the Nation shall comply with the Agreement, the Partial Final Decree described in paragraph 3.0 of the Agreement, the Supplemental Partial Final Decree described in paragraph 4.0 of the Agreement, and any other applicable law.
- (2) ALIENATION; MAXIMUM TERM.—
- (A) ALIENATION.—The Nation shall not permanently alienate any right granted to the Nation under the Agreement.
- (B) MAXIMUM TERM.—The term of any water use lease, contract, or other arrangement (including a renewal) under this subsection shall be not more than 99 years.
- (3) NO LIABILITY.—The Secretary shall not be liable to any party, including the Nation, for any term of, or any loss or other detriment resulting from, a lease, contract, or other agreement entered into pursuant to this subsection.
- (4) NONINTERCOURSE ACT COMPLIANCE.—This subsection—

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

(B) is deemed to fulfill any requirement that may be imposed by the provisions of section 2116 of the Revised Statutes (25 U.S.C. 177).

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

(e) NULLIFICATION.—

(1) DEADLINES.—

(A) IN GENERAL.—In carrying out this section, the following deadlines apply with respect to implementation of the Agreement:

(i) AGREEMENT.—Not later than December 31, 2010, the Secretary shall execute the Agreement.

(ii) CONTRACT.—Not later than December 31, 2010, the Secretary and the Nation shall execute the Contract.

(iii) PARTIAL FINAL DECREE.—Not later than December 31, 2013, the court in the stream adjudication shall have entered the Partial Final Decree described in paragraph 3.0 of the Agreement.

(iv) FRUITLAND-CAMBRIDGE IRRIGATION PROJECT.—Not later than December 31, 2016, the rehabilitation construction of the Fruitland-Cambridge Irrigation Project authorized under section 10607(a)(1) shall be completed.

(v) SUPPLEMENTAL PARTIAL FINAL DECREE.—Not later than December 31, 2016, the court in the stream adjudication shall enter the Supplemental Partial Final Decree described in subparagraph 4.0 of the Agreement.

(vi) HOGBACK-CUDEI IRRIGATION PROJECT.—Not later than December 31, 2019, the rehabilitation construction of the Hogback-Cudei Irrigation Project authorized under section 10607(a)(2) shall be completed.

(vii) TRUST FUND.—Not later than December 31, 2019, the United States shall make all deposits into the Trust Fund under section 10702.

(viii) CONJUNCTIVE WELLS.—Not later than December 31, 2019, the funds authorized to be appropriated under section 10609(b)(1) for the conjunctive use wells authorized under section 10606(b) should be appropriated.

(ix) NAVAJO-GALLUP WATER SUPPLY PROJECT.—Not later than December 31, 2024, the construction of all Project facilities shall be completed.

(B) EXTENSION.—A deadline described in subparagraph (A) may be extended if the Nation, the United States (acting through the Secretary), and the State of New Mexico (acting through the New Mexico Interstate Stream Commission) agree that an extension is reasonably necessary.

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

(A) PETITION.—If the Nation determines that a deadline described in paragraph (1)(A) is not substantially met, the Nation may submit to the court in the stream adjudication a petition to enter an order terminating the Agreement **[and Contract]**.

(B) TERMINATION.—On issuance of an order to terminate the Agreement **[and Contract]** under subparagraph (A)—

- (i) the Trust Fund shall be terminated;
- (ii) the balance of the Trust Fund shall be deposited in the general fund of the Treasury;
- (iii) the authorizations for construction and rehabilitation of water projects under this subtitle shall be revoked and any Federal activity related to that construction and rehabilitation shall be suspended; and
- (iv) this part and parts I and III shall be null and void.

## (3) CONDITIONS NOT CAUSING NULLIFICATION OF SETTLEMENT.—

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

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

- (i) A lack of right to divert at the capacities of conjunctive use wells constructed or rehabilitated under section 10606.
- (ii) A failure—
  - (I) to determine or resolve an accounting of the use of water under this subtitle in the State of Arizona;
  - (II) to obtain a necessary water right for the consumptive use of water in Arizona;
  - (III) to contract for the delivery of water for use in Arizona; or
  - (IV) to construct and operate a lateral facility to deliver water to a community of the Nation in Arizona, under the Project.

## (f) EFFECT ON RIGHTS OF INDIAN TRIBES.—

(1) IN GENERAL.—Except as provided in paragraph (2), nothing in the Agreement, the Contract, or this section quantifies or adversely affects the land and water rights, or claims or entitlements to water, of any Indian tribe or community other than the rights, claims, or entitlements of the Nation in, to, and from the San Juan River Basin in the State of New Mexico.

(2) EXCEPTION.—The right of the Nation to use water under water rights the Nation has in other river basins in the State of New Mexico shall be forborne to the extent that the Nation supplies the uses for which the water rights exist by diversions

of water from the San Juan River Basin under the Project consistent with subparagraph 9.13 of the Agreement.

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