

2009 Omnibus Bill

Subtitle B – Northwestern New Mexico Rural Water Projects

SEC. 10301. SHORT TITLE.

This subtitle may be cited as the “Northwestern New Mexico Rural Water Projects Act”.

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”, 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 (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.

SEC. 10303. COMPLIANCE WITH ENVIRONMENTAL LAWS.

(a) EFFECT OF EXECUTION OF AGREEMENT. – The execution of the Agreement under section 10701(a)(2) shall not constitute a major Federal action under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(b) COMPLIANCE WITH ENVIRONMENTAL LAWS. – In carrying out this subtitle, the Secretary shall comply with each law of the Federal Government relating to the protection of the environment, including –

- (1) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and
- (2) the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

SEC. 10304. NO REALLOCATION OF COSTS.

(a) EFFECT OF ACT. – Notwithstanding any other provision of law, the Secretary shall not reallocate or reassign any costs of projects that have been authorized under the Act of April 11, 1956 (commonly known as the “Colorado River Storage Project Act”) (43 U.S.C. 620 et seq.), as of the date of enactment of this Act because of –

- (1) the authorization of the Navajo-Gallup Water Supply Project under this subtitle; or
- (2) the changes in the uses of the water diverted by the Navajo Indian Irrigation Project or the waters stored in the Navajo Reservoir authorized under this subtitle.

(b) USE OF POWER REVENUES. – Notwithstanding any other provision of law, no power revenues under the Act of April 11, 1956 (commonly known as the “Colorado River Storage Project Act”) (43 U.S.C. 620 et seq.), shall be used to pay or reimburse any costs of the Navajo Indian Irrigation Project or Navajo-Gallup Water Supply Project.

SEC. 10305. INTEREST RATE.

Notwithstanding any other provision of law, the interest rate applicable to any repayment contract entered into under section 10604 shall be equal to the discount rate for Federal water resources planning, as determined by the Secretary.

PART II – RECLAMATION WATER SETTLEMENTS FUND

SEC. 10501. RECLAMATION WATER SETTLEMENTS FUND.

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

- (1) such amounts as are deposited to the Fund under subsection (b); and
- (2) any interest earned on investment of amounts in the Fund under subsection (d).

(b) DEPOSITS TO FUND. –

(1) IN GENERAL. – For each of fiscal years 2020 through 2029, the secretary of the Treasury shall deposit in the Fund, if available, \$120,000,000 of the revenues that would otherwise be deposited for the fiscal year in the fund established by the first section of the Act of June 17, 1902 (32 Stat. 388, chapter 1093).

(2) AVAILABILITY OF AMOUNTS. – Amounts deposited in the Fund under paragraph (1) shall be made available pursuant to this section –

- (A) without further appropriation; and
- (B) in addition to amounts appropriated pursuant to any authorization contained in any other provision of law.

(c) EXPENDITURES FROM FUND. –

(1) IN GENERAL. –

(A) EXPENDITURES. – Subject to subparagraph (B), for each of fiscal years 2020 through 2034, the Secretary may expend from the Fund an amount not to exceed \$120,000,000, plus the interest accrued in the Fund, for the fiscal year in which expenditures are made pursuant to paragraphs (2) and (3).

- (B) ADDITIONAL EXPENDITURES. — The Secretary may expend more than \$120,000,000 for any fiscal year if such amounts are available in the Fund due to expenditures not reaching \$120,000,000 for prior fiscal years.
- (2) AUTHORITY. — The Secretary may expend money from the Fund to implement a settlement agreement approved by Congress that resolves, in whole or in part, litigation involving the United States, if the settlement agreement or implementing legislation requires the Bureau of Reclamation to provide financial assistance for, or plan, design, and construct —
- (A) water supply infrastructure; or
 - (B) a project —
 - (i) to rehabilitate a water delivery system to conserve water; or
 - (ii) to restore fish and wildlife habitat or otherwise improve environmental conditions associated with or affected by, or located within the same river basin as, a Federal reclamation project that is in existence on the date of enactment of this Act.
- (3) USE FOR COMPLETION OF PROJECT AND OTHER SETTLEMENTS. —
- (A) PRIORITIES. —
 - (i) FIRST PRIORITY. —
 - (I) IN GENERAL. — The first priority for expenditure of amounts in the Fund during the entire period in which the Fund is in existence shall be for the purposes described in, and in the order of, clauses (i) through (iv) of subparagraph (B).
 - (II) RESERVED AMOUNTS. — The Secretary shall reserve and use amounts deposited into the Fund in accordance with subclause (I).
 - (ii) OTHER PURPOSES. — Any amounts in the Fund that are not needed for the purposes described in subparagraph (B) may be used for other purposes authorized in paragraph (2).
 - (B) COMPLETION OF PROJECT. —
 - (i) NAVAJO-GALLUP WATER SUPPLY PROJECT. —
 - (I) IN GENERAL. — Subject to subclause (II), effective beginning January 1, 2020, if, in the judgment of the Secretary on an annual basis the deadline described in section 10701(e)(1)(A)(ix) is unlikely to be met because a sufficient amount of funding is not otherwise available through appropriations made available pursuant to section 10609(a), the Secretary shall expend from the Fund such amounts on an annual basis consistent with paragraphs (1) and (2), as are necessary to pay the Federal share of the costs, and substantially complete as expeditiously as practicable, the construction of the water supply infrastructure authorized as part of the Project.
 - (II) MAXIMUM AMOUNT. —

(aa) IN GENERAL. – Except as provided under item (bb), the amount expended under subclause (I) shall not exceed \$500,000,000 for the period of fiscal years 2020 through 2029.

(bb) EXCEPTION. – The limitation on the expenditure amount under item (aa) may be exceeded during the entire period in which the Fund is in existence if such additional funds can be expended without limiting the amounts identified in clauses (ii) through (iv).

(ii) OTHER NEW MEXICO SETTLEMENTS. –

(I) IN GENERAL. – Subject to subclause (II), effective beginning January 1, 2020, in addition to the funding made available under clause (i), if in the judgment of the Secretary on an annual basis a sufficient amount of funding is not otherwise available through annual appropriations, the Secretary shall expend from the Fund such amounts on an annual basis consistent with paragraphs (1) and (2), as are necessary to pay the Federal share of the remaining costs of implementing the Indian water rights settlement agreements entered into by the State of New Mexico in the **Aamodt** adjudication and the Abeyta adjudication, if such settlements are subsequently approved and authorized by an Act of Congress and the implementation period has not already expired.

(II) MAXIMUM AMOUNT. – The amount expended under subclause (I) shall not exceed \$250,000,000.

(iii) MONTANA SETTLEMENTS. –

(I) IN GENERAL. – Subject to subclause (II), effective beginning January 1, 2020, in addition to funding made available pursuant to clauses (i) and (ii), if in the judgment of the Secretary on an annual basis a sufficient amount of funding is not otherwise available through annual appropriations, the Secretary shall expend from the Fund such amounts on an annual basis consistent with paragraphs (1) and (2), as are necessary to pay the Federal share of the remaining costs of implementing Indian water rights settlement agreements entered into by the State of Montana with the Blackfeet Tribe, the Crow Tribe, or the Gros Ventre and Assiniboine Tribes of the Fort Belknap Indian Reservation in the judicial proceeding entitled “In re the General Adjudication of All the Rights to Use Surface and Groundwater in the State of Montana”, if a settlement or settlements are subsequently approved and authorized by an Act of Congress and the implementation period has not already expired.

(II) MAXIMUM AMOUNT. —

(aa) IN GENERAL. — Except as provided under item (bb), the amount expended under subclause (I) shall not exceed \$350,000,000 for the period of fiscal years 2020 through 2029.

(bb) EXCEPTION. — The limitation on the expenditure amount under item (aa) may be exceeded during the entire period in which the Fund is in existence if such additional funds can be expended without limiting the amounts identified in clause (i), (ii), and (iv).

(cc) OTHER FUNDING. — The Secretary shall ensure that any funding under this clause shall be provided in a manner that does not limit the funding available pursuant to clauses (i) and (ii).

(iv) ARIZONA SETTLEMENT. —

(I) IN GENERAL. — Subject to subclause (II), effective beginning January 1, 2020, in addition to funding made available pursuant to clauses (i), (ii), and (iii), if in the judgment of the Secretary on an annual basis a sufficient amount of funding is not otherwise available through annual appropriations, the Secretary shall expend from the Fund such amounts on an annual basis consistent with paragraphs (1) and (2), as are necessary to pay the Federal share of the remaining costs of implementing an Indian water rights settlement agreement entered into by the State of Arizona with the Navajo Nation to resolve the water rights claims of the Nation in the Lower Colorado River basin in Arizona, if a settlement is subsequently approved and authorized by an Act of Congress and the implementation period has not already expired.

(II) MAXIMUM AMOUNT. —

(aa) IN GENERAL. — Except as provided under item (bb), the amount expended under subclause (I) shall not exceed \$100,000,000 for the period of fiscal years 2020 through 2029.

(bb) EXCEPTION. — The limitation on the expenditure amount under item (aa) may be exceeded during the entire period in which the Fund is in existence if such additional funds can be expended without limiting the amounts identified in clauses (i) through (iii).

(cc) OTHER FUNDING. — The Secretary shall ensure that any funding under this clause shall be provided in a manner that does not limit the funding available pursuant to clauses (i) and (ii).

(C) REVERSION. — If the settlements described in clauses (ii) through (iv) of subparagraph (B) have not been approved and authorized by an Act of Congress by December 31, 2019, the amounts reserved for the settlements

shall no longer be reserved by the Secretary pursuant to subparagraph (A)(i) and shall revert to the Fund for any authorized use, as determined by the Secretary.

(D) INVESTMENT OF AMOUNTS. —

(1) IN GENERAL. — The Secretary shall invest such portion of the Fund as is not, in the judgment of the Secretary, required to meet current withdrawals.

(2) CREDITS TO FUND. — The interest on, and the proceeds from the sale or redemption of, any obligations held in the Fund shall be credited to, and form a part of, the Fund.

(E) TRANSFERS OF AMOUNTS. —

(1) IN GENERAL. — The amounts required to be transferred to the Fund under this section shall be transferred at least monthly from the general fund of the Treasury to the Fund on the basis of estimates made by the Secretary of the Treasury.

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

(F) TERMINATION. — On September 30, 2034 —

(1) the Fund shall terminate; and

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