

108TH CONGRESS
2D SESSION

S. 2513

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

IN THE SENATE OF THE UNITED STATES

JUNE 9, 2004

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

A BILL

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

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Eastern New Mexico
5 Rural Water System Act of 2004”.

6 **SEC. 2. FINDINGS AND PURPOSES.**

7 (a) FINDINGS.—Congress finds that—

1 (1) the Entrada Aquifer and the Southern High
2 Plains (Ogallala) Aquifer—

3 (A) provide 100 percent of the municipal
4 and industrial water supplies for communities
5 in East Central New Mexico; and

6 (B) serve a large majority of the agricul-
7 tural water users in East Central New Mexico;

8 (2) the Entrada and Southern High Plains
9 Aquifers are declining in quantity and deteriorating
10 in quality;

11 (3) despite voluntary conservation efforts and
12 improvements in agricultural water use efficiencies,
13 current estimates indicate that present levels of
14 groundwater use in some areas of eastern New Mex-
15 ico are not sustainable beyond 12 to 25 years after
16 the date of enactment of this Act;

17 (4) in 1959, the State of New Mexico began
18 construction of the Ute Dam and Reservoir on the
19 Canadian River to develop a long-term sustainable
20 water supply for eastern New Mexico;

21 (5) section 2 of Public Law 89–561 (80 Stat.
22 711) authorized the development of a feasibility
23 study for a water supply project in eastern New
24 Mexico;

1 (6) since the feasibility study was authorized, a
2 number of studies have been completed as part of
3 the feasibility study process, including a 1994 study
4 by the New Mexico Interstate Stream Commission
5 estimating the firm annual yield of water from Ute
6 Reservoir at 24,000 acre-feet per year;

7 (7) in March 1997, the New Mexico Interstate
8 Stream Commission and the Ute Water Commission
9 entered into an agreement for the purchase of
10 24,000 acre-feet of water per year for beneficial con-
11 sumptive use in eastern New Mexico;

12 (8) the Eastern New Mexico Rural Water Au-
13 thority was established to plan, finance, develop, and
14 operate the Eastern New Mexico Rural Water Sys-
15 tem;

16 (9) the conceptual design report for the Eastern
17 New Mexico Rural Water System—

18 (A) was finalized in August 2003;

19 (B) incorporates a Bureau of Reclamation
20 willingness and ability to pay report prepared in
21 August 2002; and

22 (C) was subject to a peer review process
23 that resulted in a supplement to the conceptual
24 design report, the Eastern New Mexico Rural

1 Water System Conceptual Design Peer Review
2 Final Report (December 2003);

3 (10) the State of New Mexico—

4 (A) strongly supports the development of
5 the Eastern New Mexico Rural Water System;
6 and

7 (B) has appropriated amounts to the New
8 Mexico Water Trust Fund to assist commu-
9 nities in eastern New Mexico in securing the fi-
10 nancial resources necessary to provide an ac-
11 ceptable cost share for development of the sys-
12 tem; and

13 (11) completion of the Eastern New Mexico
14 Rural Water System would provide Quay, Roosevelt,
15 and Curry Counties in the State of New Mexico with
16 a long-term reliable and renewable source of water
17 that would—

18 (A) sustain current economic activity; and

19 (B) support future economic development
20 and growth in the region.

21 (b) PURPOSE.—The purpose of this Act is to author-
22 ize the Secretary of the Interior to provide financial and
23 technical assistance to the Eastern New Mexico Rural
24 Water Authority to plan, design, and construct the East-
25 ern New Mexico Rural Water System to provide a long-

1 term reliable and renewable source of water to commu-
2 nities in eastern New Mexico.

3 **SEC. 3. DEFINITIONS.**

4 In this Act:

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

10 (2) **CONCEPTUAL DESIGN REPORT.**—The term
11 “Conceptual Design Report” means the Eastern
12 New Mexico Rural Water System final report dated
13 August, 2003, as supplemented by the Eastern New
14 Mexico Rural Water System Conceptual Design Peer
15 Review Final Report (December 2003).

16 (3) **LOGAN SEWER PROJECT.**—The term
17 “Logan sewer project” means the project to improve
18 the water quality in Ute Reservoir, as described in
19 the Village of Logan Wastewater System Prelimi-
20 nary Engineering Report (November 2003).

21 (4) **PLAN.**—The term “plan” means the oper-
22 ation, maintenance, and replacement plan required
23 by section 5(b)(1).

24 (5) **PORTALES ENERGY RECOVERY SYSTEM.**—
25 The term “Portales energy recovery system” means

1 the infrastructure to reduce pressure in the water
 2 system and generate useable power, as described in
 3 the Eastern New Mexico Rural Water System Con-
 4 ceptual Design Peer Review Final Report (December
 5 2003).

6 (6) SECRETARY.—The term “Secretary” means
 7 the Secretary of the Interior.

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

10 (8) SYSTEM.—

11 (A) IN GENERAL.—The term “System”
 12 means the Eastern New Mexico Rural Water
 13 System, a water delivery project designed to de-
 14 liver approximately 24,000 acre-feet of water
 15 per year from the Ute Reservoir to communities
 16 located in Quay, Roosevelt, and Curry Counties
 17 in eastern New Mexico, as described in the Con-
 18 ceptual Design Report.

19 (B) INCLUSIONS.—The term “System” in-
 20 cludes—

21 (i) the Logan sewer project;

22 (ii) the Tucumcari advanced waste-
 23 water treatment facility; and

24 (iii) the Portales energy recovery sys-
 25 tem.

1 (9) TUCUMCARI ADVANCED WASTEWATER
 2 TREATMENT FACILITY.—The term “Tucumcari ad-
 3 vanced wastewater treatment facility” means the
 4 project to improve the water quality in the Ute Res-
 5 ervoir, as described in the Eastern New Mexico
 6 Rural Water System Conceptual Design Peer Review
 7 Final Report (December 2003).

8 (10) UTE RESERVOIR.—The term “Ute Res-
 9 ervoir” means the impoundment of water created in
 10 1962 by the construction of the Ute Dam on the Ca-
 11 nadian River, located approximately 32 miles up-
 12 stream of the border between New Mexico and
 13 Texas.

14 **SEC. 4. EASTERN NEW MEXICO RURAL WATER SYSTEM.**

15 (a) FINANCIAL ASSISTANCE.—

16 (1) IN GENERAL.—The Secretary may provide
 17 financial assistance to the Authority to assist in
 18 planning, designing, conducting related
 19 preconstruction activities for, and constructing the
 20 System.

21 (2) USE.—

22 (A) IN GENERAL.—Any financial assist-
 23 ance provided under paragraph (1) shall be ob-
 24 ligated and expended only in accordance with a

1 cooperative agreement entered into under sec-
2 tion 6(a)(2).

3 (B) LIMITATIONS.—Financial assistance
4 provided under paragraph (1) shall not be
5 used—

6 (i) for any activity that is inconsistent
7 with developing the facilities described in
8 the Conceptual Design Report, including
9 development of the Logan sewer project;
10 and

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

14 (b) COST-SHARING REQUIREMENT.—

15 (1) IN GENERAL.—The Federal share of the
16 total cost of any activity or construction carried out
17 using amounts made available under this Act shall
18 be 80 percent of the total cost of the System.

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

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

4 (1) a plan is developed under section 5(b); and

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

9 (d) TITLE TO PROJECT WORKS.—Title to the infra-
 10 structure of the System shall be held by the Authority,
 11 the Town of Logan, New Mexico, the City of Tucumcari,
 12 New Mexico, or as may otherwise be specified under State
 13 law.

14 **SEC. 5. OPERATION, MAINTENANCE, AND REPLACEMENT**
 15 **COSTS.**

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

19 (b) OPERATION, MAINTENANCE, AND REPLACEMENT
 20 PLAN.—

21 (1) IN GENERAL.—The Authority, in consulta-
 22 tion with the Secretary, shall develop an operation,
 23 maintenance, and replacement plan that establishes
 24 the rates and fees for beneficiaries of the System in
 25 the amount necessary to ensure that the System is

1 properly maintained and capable of delivering the
2 quantities of water described in the Conceptual De-
3 sign Report.

4 (2) MODIFICATIONS.—The allocation of water
5 to the communities specified in the Conceptual De-
6 sign Report may be modified to adjust the rates and
7 fees in a manner that ensures that the purposes of
8 the plan are addressed.

9 **SEC. 6. ADMINISTRATIVE PROVISIONS.**

10 (a) COOPERATIVE AGREEMENTS.—

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

15 (2) COOPERATIVE AGREEMENT FOR PROVISION
16 OF FINANCIAL ASSISTANCE.—

17 (A) IN GENERAL.—The Secretary shall
18 enter into a cooperative agreement with the Au-
19 thority to provide financial assistance or any
20 other assistance requested by the Authority for
21 planning, design, related preconstruction activi-
22 ties, and construction of the System.

23 (B) REQUIREMENTS.—The cooperative
24 agreement entered into under subparagraph (A)
25 shall, at a minimum, specify the responsibilities

1 of the Secretary and the Authority with respect
2 to—

3 (i) ensuring that the cost-share re-
4 quirements established by section 4(b) are
5 met;

6 (ii) completing the planning and final
7 design of the System;

8 (iii) any environmental and cultural
9 resource compliance activities required for
10 the System; and

11 (iv) the construction of the System.

12 (b) TECHNICAL ASSISTANCE.—At the request of the
13 Authority, the Secretary may provide to the Authority any
14 technical assistance that is necessary to assist the Author-
15 ity in planning, designing, constructing, and operating the
16 System.

17 (c) EFFECT.—Nothing in this Act—

18 (1) affects or preempts—

19 (A) State water law; or

20 (B) an interstate compact relating to the
21 allocation of water; or

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

24 (A) the water of a stream; or

25 (B) any groundwater resource.

1 **SEC. 7. AUTHORIZATION OF APPROPRIATIONS.**

2 (a) IN GENERAL.—There is authorized to be appro-
3 priated to the Secretary to carry out this Act
4 \$250,000,000 for the period of fiscal years 2005 through
5 2016.

6 (b) ADJUSTMENTS.—

7 (1) IN GENERAL.—The amount authorized
8 under subsection (a) shall be adjusted as necessary
9 to account for increases in development costs after
10 the date of enactment of this Act, as determined
11 using appropriate engineering cost indices (as deter-
12 mined by the Secretary).

13 (2) ALLOCATION.—The Federal share and non-
14 Federal share of the cost increases determined under
15 paragraph (1) shall be allocated in accordance with
16 the cost-sharing requirements established by section
17 4(b).

18 (c) NONREIMBURSABLE AMOUNTS.—Amounts made
19 available to the Authority in accordance with the cost-
20 sharing requirement under section 4(b) shall be non-
21 reimbursable and nonreturnable to the United States.

22 (d) AVAILABILITY OF FUNDS.—At the end of each
23 fiscal year, any unexpended funds appropriated pursuant
24 to this Act shall be retained for use in future fiscal years
25 consistent with the purposes of this Act.

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