

110TH CONGRESS
2D SESSION

S. 3381

To authorize the Secretary of the Interior, acting through the Commissioner of Reclamation, to develop water infrastructure in the Rio Grande Basin, and to approve the settlement of the water rights claims of the Pueblos of Nambe, Pojoaque, San Ildefonso, Tesuque, and Taos.

IN THE SENATE OF THE UNITED STATES

JULY 31, 2008

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

A BILL

To authorize the Secretary of the Interior, acting through the Commissioner of Reclamation, to develop water infrastructure in the Rio Grande Basin, and to approve the settlement of the water rights claims of the Pueblos of Nambe, Pojoaque, San Ildefonso, Tesuque, and Taos.

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. TABLE OF CONTENTS.**

4 The table of contents of this Act is as follows:

Sec. 1. Table of contents.

TITLE I—AAMODT LITIGATION SETTLEMENT ACT

Sec. 101. Short title.

Sec. 102. Definitions.

Subtitle A—Pojoaque Basin Regional Water System

- Sec. 111. Authorization of Regional Water System.
- Sec. 112. Operating Agreement.
- Sec. 113. Acquisition of Pueblo water supply for the Regional Water System.
- Sec. 114. Delivery and allocation of Regional Water System capacity and water.
- Sec. 115. Aamodt Settlement Pueblos' Fund.
- Sec. 116. Environmental compliance.
- Sec. 117. Authorization of appropriations.

Subtitle B—Pojoaque Basin Indian Water Rights Settlement

- Sec. 121. Settlement Agreement and contract approval.
- Sec. 122. Environmental compliance.
- Sec. 123. Conditions precedent and enforcement date.
- Sec. 124. Waivers and releases.
- Sec. 125. Effect.

TITLE II—TAOS PUEBLO INDIAN WATER RIGHTS SETTLEMENT
ACT

- Sec. 201. Short title.
- Sec. 202. Purpose.
- Sec. 203. Definitions.
- Sec. 204. Pueblo rights.
- Sec. 205. Pueblo water infrastructure and watershed enhancement.
- Sec. 206. Taos Pueblo Water Development Fund.
- Sec. 207. Marketing.
- Sec. 208. Mutual-benefit projects.
- Sec. 209. San Juan-Chama Project contracts.
- Sec. 210. Authorizations, ratifications, confirmations, and conditions precedent.
- Sec. 211. Waivers and releases.
- Sec. 212. Interpretation and enforcement.
- Sec. 213. Disclaimer.

1 **TITLE I—AAMODT LITIGATION**
2 **SETTLEMENT ACT**

3 **SEC. 101. SHORT TITLE.**

4 This title may be cited as the “Aamodt Litigation
5 Settlement Act”.

6 **SEC. 102. DEFINITIONS.**

7 In this title:

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

1 (2) AAMODT CASE.—The term “Aamodt Case”
2 means the civil action entitled State of New Mexico,
3 ex rel. State Engineer and United States of Amer-
4 ica, Pueblo de Nambe, Pueblo de Pojoaque, Pueblo
5 de San Ildefonso, and Pueblo de Tesuque v. R. Lee
6 Aamodt, et al., No. 66 CV 6639 MV/LCS (D.N.M.).

7 (3) AUTHORITY.—The term “Authority” means
8 the Pojoaque Basin Regional Water Authority de-
9 scribed in section 9.5 of the Settlement Agreement
10 or an alternate entity acceptable to the Pueblos and
11 the County to operate and maintain the diversion
12 and treatment facilities, certain transmission pipe-
13 lines, and other facilities of the Regional Water Sys-
14 tem.

15 (4) BISHOP’S LODGE EXTENSION.—The term
16 “Bishop’s Lodge Extension” has the meaning given
17 the term in the Engineering Report.

18 (5) CITY.—The term “City” means the city of
19 Santa Fe, New Mexico.

20 (6) COST-SHARING AND SYSTEM INTEGRATION
21 AGREEMENT.—The term “Cost-Sharing and System
22 Integration Agreement” means the agreement exe-
23 cuted by the United States, the State, the Pueblos,
24 the County, and the City that—

1 (A) describes the location, capacity, and
 2 management (including the distribution of
 3 water to customers) of the Regional Water Sys-
 4 tem; and

5 (B) allocates the costs of the Regional
 6 Water System with respect to—

7 (i) the construction, operation, main-
 8 tenance, and repair of the Regional Water
 9 System;

10 (ii) rights-of-way for the Regional
 11 Water System; and

12 (iii) the acquisition of water rights.

13 (7) COUNTY.—The term “County” means
 14 Santa Fe County, New Mexico.

15 (8) COUNTY DISTRIBUTION SYSTEM.—The term
 16 “County Distribution System” means the portion of
 17 the Regional Water System that serves water cus-
 18 tomers on non-Pueblo land in the Pojoaque Basin.

19 (9) COUNTY WATER UTILITY.—The term
 20 “County Water Utility” means the water utility or-
 21 ganized by the County to—

22 (A) receive water distributed by the Au-
 23 thority; and

1 (B) provide the water received under sub-
2 paragraph (A) to customers on non-Pueblo land
3 in the Pojoaque Basin.

4 (10) ENGINEERING REPORT.—The term “Engi-
5 neering Report” means the report entitled
6 “Pojoaque Regional Water System Engineering Re-
7 port” and dated April 2007 and any amendments
8 thereto.

9 (11) FUND.—The term “Fund” means the
10 Aamodt Settlement Pueblos’ Fund established by
11 section 115(a).

12 (12) OPERATING AGREEMENT.—The term “Op-
13 erating Agreement” means the agreement between
14 the Pueblos and the County executed under section
15 112(a).

16 (13) OPERATIONS, MAINTENANCE, AND RE-
17 PLACEMENT COSTS.—

18 (A) IN GENERAL.—The term “operations,
19 maintenance, and replacement costs” means all
20 costs for the operation of the Regional Water
21 System that are necessary for the safe, effi-
22 cient, and continued functioning of the Regional
23 Water System to produce the benefits described
24 in the Settlement Agreement.

1 (B) EXCLUSION.—The term “operations,
 2 maintenance, and replacement costs” does not
 3 include construction costs or costs related to
 4 construction design and planning.

5 (14) POJOAQUE BASIN.—

6 (A) IN GENERAL.—The term “Pojoaque
 7 Basin” means the geographic area limited by a
 8 surface water divide (which can be drawn on a
 9 topographic map), within which area rainfall
 10 and runoff flow into arroyos, drainages, and
 11 named tributaries that eventually drain to—

12 (i) the Rio Pojoaque; or

13 (ii) the 2 unnamed arroyos imme-
 14 diately south; and

15 (iii) 2 arroyos (including the Arroyo
 16 Alamo) that are north of the confluence of
 17 the Rio Pojoaque and the Rio Grande.

18 (B) INCLUSION.—The term “Pojoaque
 19 Basin” includes the San Ildefonso Eastern Res-
 20 ervation recognized by section 8 of Public Law
 21 87–231 (75 Stat. 505).

22 (15) PUEBLO.—The term “Pueblo” means each
 23 of the pueblos of Nambe, Pojoaque, San Ildefonso,
 24 or Tesuque.

1 (16) PUEBLOS.—The term “Pueblos” means
2 collectively the Pueblos of Nambe, Pojoaque, San
3 Ildefonso, and Tesuque.

4 (17) PUEBLO LAND.—The term “Pueblo land”
5 means any real property that is—

6 (A) held by the United States in trust for
7 a Pueblo within the Pojoaque Basin;

8 (B)(i) owned by a Pueblo within the
9 Pojoaque Basin before the date on which a
10 court approves the Settlement Agreement; or

11 (ii) acquired by a Pueblo on or after the
12 date on which a court approves the Settlement
13 Agreement, if the real property is located—

14 (I) within the exterior boundaries of
15 the Pueblo, as recognized and conformed
16 by a patent issued under the Act of De-
17 cember 22, 1858 (11 Stat. 374, chapter
18 V); or

19 (II) within the exterior boundaries of
20 any territory set aside for the Pueblo by
21 law, executive order, or court decree;

22 (C) owned by a Pueblo or held by the
23 United States in trust for the benefit of a
24 Pueblo outside the Pojoaque Basin that is lo-
25 cated within the exterior boundaries of the

1 Pueblo as recognized and confirmed by a patent
2 issued under the Act of December 22, 1858 (11
3 Stat. 374, chapter V); or

4 (D) within the exterior boundaries of any
5 real property located outside the Pojoaque
6 Basin set aside for a Pueblo by law, executive
7 order, or court decree, if the land is within or
8 contiguous to land held by the United States in
9 trust for the Pueblo as of January 1, 2005.

10 (18) PUEBLO WATER FACILITY.—

11 (A) IN GENERAL.—The term “Pueblo
12 Water Facility” means—

13 (i) a portion of the Regional Water
14 System that serves only water customers
15 on Pueblo land; and

16 (ii) portions of a Pueblo water system
17 in existence on the date of enactment of
18 this Act that serve water customers on
19 non-Pueblo land, also in existence on the
20 date of enactment of this Act, or their suc-
21 cessors, that are—

22 (I) depicted in the final project
23 design, as modified by the drawings
24 reflecting the completed Regional
25 Water System; and

1 (II) described in the Operating
2 Agreement.

3 (B) INCLUSIONS.—The term “Pueblo
4 Water Facility” includes—

5 (i) the barrier dam and infiltration
6 project on the Rio Pojoaque described in
7 the Engineering Report; and

8 (ii) the Tesuque Pueblo infiltration
9 pond described in the Engineering Report.

10 (19) REGIONAL WATER SYSTEM.—

11 (A) IN GENERAL.—The term “Regional
12 Water System” means the Regional Water Sys-
13 tem described in section 111(a).

14 (B) EXCLUSIONS.—The term “Regional
15 Water System” does not include the County or
16 Pueblo water supply delivered through the Re-
17 gional Water System.

18 (20) SAN JUAN-CHAMA PROJECT.—The term
19 “San Juan-Chama Project” means the Project au-
20 thorized by section 8 of the Act of June 13, 1962
21 (76 Stat. 96, 97), and the Act of April 11, 1956 (70
22 Stat. 105).

23 (21) SECRETARY.—The term “Secretary”
24 means the Secretary of the Interior.

1 (22) SETTLEMENT AGREEMENT.—The term
 2 “Settlement Agreement” means the stipulated and
 3 binding agreement among the State, the Pueblos,
 4 the United States, the County, and the City dated
 5 January 19, 2006, and signed by all of the govern-
 6 ment parties to the Settlement Agreement (other
 7 than the United States) on May 3, 2006, and as
 8 amended in conformity with this Act.

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

11 **Subtitle A—Pojoaque Basin**
 12 **Regional Water System**

13 **SEC. 111. AUTHORIZATION OF REGIONAL WATER SYSTEM.**

14 (a) IN GENERAL.—The Secretary, acting through the
 15 Commissioner of Reclamation, shall plan, design, and con-
 16 struct a regional water system in accordance with the Set-
 17 tlement Agreement, to be known as the “Regional Water
 18 System”—

19 (1) to divert and distribute water to the Pueb-
 20 los and to the County Water Utility, in accordance
 21 with the Engineering Report; and

22 (2) that consists of—

23 (A) surface water diversion facilities at
 24 San Ildefonso Pueblo on the Rio Grande; and

1 (B) any treatment, transmission, storage
2 and distribution facilities and wellfields for the
3 County Distribution System and Pueblo Water
4 Facilities that are necessary to supply a min-
5 imum of 4,000 acre-feet of water within the
6 Pojoaque Basin, in accordance with the Engi-
7 neering Report.

8 (b) FINAL PROJECT DESIGN.—The Secretary shall
9 issue a final project design within 90 days of completion
10 of the environmental compliance described in section 116
11 for the Regional Water System that—

12 (1) is consistent with the Engineering Report;

13 and

14 (2) includes a description of any Pueblo Water
15 Facilities.

16 (c) ACQUISITION OF LAND; WATER RIGHTS.—

17 (1) ACQUISITION OF LAND.—Upon request, and
18 in exchange for the funding which shall be provided
19 in section 117(c), the Pueblos shall consent to the
20 grant of such easements and rights-of-way as may
21 be necessary for the construction of the Regional
22 Water System at no cost to the Secretary. To the
23 extent that the State or County own easements or
24 rights-of-way that may be used for construction of
25 the Regional Water System, the State or County

1 shall provide that land or interest in land as nec-
2 essary for construction at no cost to the Secretary.
3 The Secretary shall acquire any other land or inter-
4 est in land that is necessary for the construction of
5 the Regional Water System with the exception of the
6 Bishop's Lodge Extension.

7 (2) WATER RIGHTS.—The Secretary shall not
8 condemn water rights for purposes of the Regional
9 Water System.

10 (d) CONDITIONS FOR CONSTRUCTION.—

11 (1) IN GENERAL.—The Secretary shall not
12 begin construction of the Regional Water System fa-
13 cilities until the date on which—

14 (A) the Secretary executes—

15 (i) the Settlement Agreement; and

16 (ii) the Cost-Sharing and System In-
17 tegration Agreement; and

18 (B) the State and the County have entered
19 into an agreement with the Secretary to con-
20 tribute the non-Federal share of the costs of the
21 construction in accordance with the Cost-Shar-
22 ing and System Integration Agreement.

23 (e) APPLICABLE LAW.—The Indian Self-Determina-
24 tion and Education Assistance Act (25 U.S.C. 450 et seq.)

1 shall not apply to the design and construction of the Re-
2 gional Water System.

3 (f) CONSTRUCTION COSTS.—

4 (1) PUEBLO WATER FACILITIES.—The costs of
5 constructing the Pueblo Water Facilities, as deter-
6 mined by the final project design and the Engineer-
7 ing Report—

8 (A) shall be at full Federal expense subject
9 to the amount authorized in section 117(a)(1);
10 and

11 (B) shall be nonreimbursable to the United
12 States.

13 (2) COUNTY DISTRIBUTION SYSTEM.—The costs
14 of constructing the County Distribution System shall
15 be at State and local expense.

16 (g) STATE AND LOCAL CAPITAL OBLIGATIONS.—The
17 State and local capital obligations for the Regional Water
18 System described in the Cost-Sharing and System Integra-
19 tion Agreement shall be satisfied on the payment of the
20 State and local capital obligations described in the Cost-
21 Sharing and System Integration Agreement.

22 (h) CONVEYANCE OF REGIONAL WATER SYSTEM FA-
23 CILITIES.—

24 (1) IN GENERAL.—Subject to paragraph (2), on
25 completion of the construction of the Regional Water

1 System (other than the Bishop's Lodge Extension if
2 construction of the Bishop's Lodge Extension is de-
3 ferred pursuant to the Cost-Sharing and System In-
4 tegration Agreement), the Secretary, in accordance
5 with the Operating Agreement, shall convey to—

6 (A) each Pueblo the portion of any Pueblo
7 Water Facility that is located within the bound-
8 aries of the Pueblo, including any land or inter-
9 est in land located within the boundaries of the
10 Pueblo that is acquired by the United States
11 for the construction of the Pueblo Water Facil-
12 ity;

13 (B) the County the County Distribution
14 System, including any land or interest in land
15 acquired by the United States for the construc-
16 tion of the County Distribution System; and

17 (C) the Authority any portions of the Re-
18 gional Water System that remain after making
19 the conveyances under subparagraphs (A) and
20 (B), including any land or interest in land ac-
21 quired by the United States for the construc-
22 tion of the portions of the Regional Water Sys-
23 tem.

24 (2) CONDITIONS FOR CONVEYANCE.—The Sec-
25 retary shall not convey any portion of the Regional

1 Water System facilities under paragraph (1) until
2 the date on which—

3 (A) construction of the Regional Water
4 System (other than the Bishop’s Lodge Exten-
5 sion if construction of the Bishop’s Lodge Ex-
6 tension is deferred pursuant to the Cost-Shar-
7 ing and System Integration Agreement) is com-
8 plete; and

9 (B) the Operating Agreement is executed
10 in accordance with section 112.

11 (3) SUBSEQUENT CONVEYANCE.—On convey-
12 ance by the Secretary under paragraph (1), the
13 Pueblos, the County, and the Authority shall not re-
14 convey any portion of the Regional Water System
15 conveyed to the Pueblos, the County, and the Au-
16 thority, respectively, unless the reconveyance is au-
17 thorized by an Act of Congress enacted after the
18 date of enactment of this Act.

19 (4) INTEREST OF THE UNITED STATES.—On
20 conveyance of a portion of the Regional Water Sys-
21 tem under paragraph (1), the United States shall
22 have no further right, title, or interest in and to the
23 portion of the Regional Water System conveyed.

24 (5) ADDITIONAL CONSTRUCTION.—On convey-
25 ance of a portion of the Regional Water System

1 under paragraph (1), the Pueblos, County, or the
2 Authority, as applicable, may, at the expense of the
3 Pueblos, County, or the Authority, construct any ad-
4 ditional infrastructure that is necessary to fully use
5 the water delivered by the Regional Water System.

6 (6) LIABILITY.—

7 (A) IN GENERAL.—Effective on the date of
8 conveyance of any land or facility under this
9 section, the United States shall not be held lia-
10 ble by any court for damages of any kind aris-
11 ing out of any act, omission, or occurrence re-
12 lating to the land and facilities conveyed, other
13 than damages caused by acts of negligence by
14 the United States, or by employees or agents of
15 the United States, prior to the date of convey-
16 ance.

17 (B) TORT CLAIMS.—Nothing in this sec-
18 tion increases the liability of the United States
19 beyond the liability provided in chapter 171 of
20 title 28, United States Code (commonly known
21 as the “Federal Tort Claims Act”).

22 (7) EFFECT.—Nothing in any transfer of own-
23 ership provided or any conveyance thereto as pro-
24 vided in this section shall extinguish the right of any
25 Pueblo, the County, or the Regional Water Author-

1 ity to the continuous use and benefit of each ease-
2 ment or right of way for the use, operation, mainte-
3 nance, repair, and replacement of Pueblo Water Fa-
4 cilities, the County Distribution System or the Re-
5 gional Water System or for wastewater purposes as
6 provided in the Cost-Sharing and System Integra-
7 tion Agreement.

8 **SEC. 112. OPERATING AGREEMENT.**

9 (a) IN GENERAL.—The Pueblos and the County shall
10 submit to the Secretary an executed Operating Agreement
11 for the Regional Water System that is consistent with this
12 Act, the Settlement Agreement, and the Cost-Sharing and
13 System Integration Agreement not later than 180 days
14 after the later of—

15 (1) the date of completion of environmental
16 compliance and permitting; or

17 (2) the date of issuance of a final project design
18 for the Regional Water System under section
19 111(b).

20 (b) APPROVAL.—Not later than 180 days after re-
21 ceipt of the operating agreement described in subsection
22 (a), the Secretary shall approve the Operating Agreement
23 upon determination that the Operating Agreement is con-
24 sistent with this Act, the Settlement Agreement, and the
25 Cost-Sharing and System Integration Agreement.

1 (c) CONTENTS.—The Operating Agreement shall in-
2 clude—

3 (1) provisions consistent with the Settlement
4 Agreement and the Cost-Sharing and System Inte-
5 gration Agreement and necessary to implement the
6 intended benefits of the Regional Water System de-
7 scribed in those documents;

8 (2) provisions for—

9 (A) the distribution of water conveyed
10 through the Regional Water System, including
11 a delineation of—

12 (i) distribution lines for the County
13 Distribution System;

14 (ii) distribution lines for the Pueblo
15 Water Facilities; and

16 (iii) distribution lines that serve
17 both—

18 (I) the County Distribution Sys-
19 tem; and

20 (II) the Pueblo Water Facilities;

21 (B) the allocation of the Regional Water
22 System capacity;

23 (C) the terms of use of unused water ca-
24 pacity in the Regional Water System;

1 (D) the construction of additional infra-
2 structure and the acquisition of associated
3 rights-of-way or easements necessary to enable
4 any of the Pueblos or the County to fully use
5 water allocated to the Pueblos or the County
6 from the Regional Water System, including pro-
7 visions addressing when the construction of
8 such additional infrastructure requires approval
9 by the Authority;

10 (E) the allocation and payment of annual
11 operation, maintenance, and replacement costs
12 for the Regional Water System, including the
13 portions of the Regional Water System that are
14 used to treat, transmit, and distribute water to
15 both the Pueblo Water Facilities and the Coun-
16 ty Water Utility;

17 (F) the operation of wellfields located on
18 Pueblo land;

19 (G) the transfer of any water rights nec-
20 essary to provide the Pueblo water supply de-
21 scribed in section 113(a);

22 (H) the operation of the Regional Water
23 System with respect to the water supply, includ-
24 ing the allocation of the water supply in accord-
25 ance with section 3.1.8.4.2 of the Settlement

1 Agreement so that, in the event of a shortage
2 of supply to the Regional Water System, the
3 supply to each of the Pueblos' and to the Coun-
4 ty's distribution system shall be reduced on a
5 prorata basis, in proportion to each distribution
6 system's most current annual use; and

7 (I) dispute resolution; and

8 (3) provisions for operating and maintaining
9 the Regional Water System facilities before and
10 after conveyance under section 111(h), including
11 provisions to—

12 (A) ensure that—

13 (i) the operation of, and the diversion
14 and conveyance of water by, the Regional
15 Water System is in accordance with the
16 Settlement Agreement;

17 (ii) the wells in the Regional Water
18 System are used in conjunction with the
19 surface water supply of the Regional
20 Water System to ensure a reliable firm
21 supply of water to all users of the Regional
22 Water System, consistent with the intent
23 of the Settlement Agreement that surface
24 supplies will be used to the maximum ex-
25 tent feasible;

1 (iii) the respective obligations regard-
 2 ing delivery, payment, operation, and man-
 3 agement are enforceable; and

4 (iv) the County has the right to serve
 5 any new water users located on non-Pueblo
 6 land in the Pojoaque Basin; and

7 (B) allow for any aquifer storage and re-
 8 covery projects that are approved by the Office
 9 of the New Mexico State Engineer.

10 (d) EFFECT.—Nothing in this title precludes the Op-
 11 erating Agreement from authorizing phased or interim op-
 12 erations if the Regional Water System is constructed in
 13 phases.

14 **SEC. 113. ACQUISITION OF PUEBLO WATER SUPPLY FOR**
 15 **THE REGIONAL WATER SYSTEM.**

16 (a) IN GENERAL.—For the purpose of providing a
 17 reliable firm supply of water from the Regional Water Sys-
 18 tem for the Pueblos in accordance with the Settlement
 19 Agreement, the Secretary, on behalf of the Pueblos,
 20 shall—

21 (1) acquire water rights to—

22 (A) 302 acre-feet of Nambe reserved water
 23 described in section 2.6.2 of the Settlement
 24 Agreement pursuant to section 117(c)(1)(C);
 25 and

1 (B) 1141 acre-feet from water acquired by
2 the County for water rights commonly referred
3 to as “Top of the World” rights in the Aamodt
4 case;

5 (2) make available 1079 acre-feet to the Pueb-
6 los pursuant to a contract entered into among the
7 Pueblos and the Secretary in accordance with sec-
8 tion 11 of the Act of June 13, 1962 (76 Stat. 96,
9 97) (San Juan-Chama Project Act), under water
10 rights held by the Secretary; and

11 (3) by application to the State Engineer, obtain
12 approval to divert the water acquired and made
13 available under paragraphs (1) and (2) at the points
14 of diversion for the Regional Water System, con-
15 sistent with the Settlement Agreement and the Cost-
16 Sharing and System Integration Agreement.

17 (b) FORFEITURE.—The nonuse of the water supply
18 secured by the Secretary for the Pueblos under subsection
19 (a) shall in no event result in forfeiture, abandonment, re-
20 linquishment, or other loss thereof.

21 (c) TRUST.—The Pueblo water supply secured under
22 subsection (a) shall be held by the United States in trust
23 for the Pueblos.

24 (d) CONTRACT FOR SAN JUAN-CHAMA PROJECT
25 WATER SUPPLY.—With respect to the contract for the

1 water supply required by subsection (a)(2), such San
2 Juan-Chama Project contract shall be pursuant to the fol-
3 lowing terms:

4 (1) WAIVERS.—Notwithstanding the provisions
5 of the Act of June 13, 1962 (76 Stat, 96, 97), or
6 any other provision of law—

7 (A) the Secretary shall waive the entirety
8 of the Pueblos' share of the construction costs
9 for the San Juan-Chama Project, and pursuant
10 to that waiver, the Pueblos' share of all con-
11 struction costs for the San Juan-Chama
12 Project, inclusive of both principal and interest,
13 due from 1972 to the execution of the contract
14 required by subsection (a)(2), shall be non-
15 reimbursable;

16 (B) the Secretary's waiver of each Pueblo's
17 share of the construction costs for the San
18 Juan-Chama Project will not result in an in-
19 crease in the pro rata shares of other San
20 Juan-Chama Project water contractors, but
21 such costs shall be absorbed by the United
22 States Treasury or otherwise appropriated to
23 the Department of the Interior; and

24 (C) the costs associated with any water
25 made available from the San Juan-Chama

1 Project which were determined nonreimbursable
2 and nonreturnable pursuant to Public Law No.
3 88–293, 78 Stat. 171 (March 26, 1964) shall
4 remain nonreimbursable and nonreturnable.

5 (2) TERMINATION.—The contract shall provide
6 that it shall terminate only upon the following condi-
7 tions—

8 (A) failure of the United States District
9 Court for the District of New Mexico to enter
10 a final decree for the Aamodt case by December
11 15, 2012, or within the time period of any ex-
12 tension of that deadline granted by the court;
13 or

14 (B) entry of an order by the United States
15 District Court for the District of New Mexico
16 voiding the final decree and Settlement Agree-
17 ment for the Aamodt case pursuant to section
18 10.3 of the Settlement Agreement.

19 (e) LIMITATION.—The Secretary shall use the water
20 supply secured under subsection (a) only for the purposes
21 described in the Settlement Agreement.

22 (f) FULFILLMENT OF WATER SUPPLY ACQUISITION
23 OBLIGATIONS.—Compliance with subsections (a) through
24 (e) shall satisfy any and all obligations of the Secretary

1 to acquire or secure a water supply for the Pueblos pursu-
 2 ant to the Settlement Agreement.

3 (g) RIGHTS OF PUEBLOS IN SETTLEMENT AGREE-
 4 MENT UNAFFECTED.—Notwithstanding the provisions of
 5 subsections (a) through (f), the Pueblos, the County or
 6 the Regional Water Authority may acquire any additional
 7 water rights to ensure all parties to the Settlement Agree-
 8 ment receive the full allocation of water provided by the
 9 Settlement Agreement and nothing in this Act amends or
 10 modifies the quantities of water allocated to the Pueblos
 11 thereunder.

12 **SEC. 114. DELIVERY AND ALLOCATION OF REGIONAL**
 13 **WATER SYSTEM CAPACITY AND WATER.**

14 (a) ALLOCATION OF REGIONAL WATER SYSTEM CA-
 15 PACITY.—

16 (1) IN GENERAL.—The Regional Water System
 17 shall have the capacity to divert from the Rio
 18 Grande a quantity of water sufficient to provide—

19 (A) 4,000 acre-feet of consumptive use of
 20 water; and

21 (B) the requisite peaking capacity de-
 22 scribed in—

23 (i) the Engineering Report; and

24 (ii) the final project design.

1 (2) ALLOCATION TO THE PUEBLOS AND COUN-
2 TY WATER UTILITY.—Of the capacity described in
3 paragraph (1)—

4 (A) there shall be allocated to the Pueb-
5 los—

6 (i) sufficient capacity for the convey-
7 ance of 2,500 acre-feet consumptive use;
8 and

9 (ii) the requisite peaking capacity for
10 the quantity of water described in clause
11 (i); and

12 (B) there shall be allocated to the County
13 Water Utility—

14 (i) sufficient capacity for the convey-
15 ance of 1,500 acre-feet consumptive use;
16 and

17 (ii) the requisite peaking capacity for
18 the quantity of water described in clause
19 (i).

20 (3) APPLICABLE LAW.—Water shall be allo-
21 cated to the Pueblos and the County Water Utility
22 under this subsection in accordance with—

23 (A) this title;

24 (B) the Settlement Agreement; and

25 (C) the Operating Agreement.

1 (b) DELIVERY OF REGIONAL WATER SYSTEM
2 WATER.—The Authority shall deliver water from the Re-
3 gional Water System—

4 (1) to the Pueblos water in a quantity sufficient
5 to allow full consumptive use of up to 2,500 acre-
6 feet rights by the Pueblos in accordance with—

7 (A) the Settlement Agreement;

8 (B) the Operating Agreement; and

9 (C) this Title; and

10 (2) to the County water in a quantity sufficient
11 to allow full consumptive use of up to 1,500 acre-
12 feet per year of water rights by the County Water
13 Utility in accordance with—

14 (A) the Settlement Agreement;

15 (B) the Operating Agreement; and

16 (C) this title.

17 (c) ADDITIONAL USE OF ALLOCATION QUANTITY
18 AND UNUSED CAPACITY.—The Regional Water System
19 may be used to—

20 (1) provide for use of return flow credits to
21 allow for full consumptive use of the water allocated
22 in the Settlement Agreement to each of the Pueblos
23 and to the County; and

24 (2) convey water allocated to one of the Pueblos
25 or the County Water Utility for the benefit of an-

1 other Pueblo or the County Water Utility or allow
2 use of unused capacity by each other through the
3 Regional Water System in accordance with an inter-
4 governmental agreement between the Pueblos, or be-
5 tween a Pueblo and County Water Utility, as appli-
6 cable, if—

7 (A) such intergovernmental agreements are
8 consistent with the Operating Agreement, the
9 Settlement Agreement and this Act;

10 (B) capacity is available without reducing
11 water delivery to any Pueblo or the County
12 Water Utility in accordance with the Settlement
13 Agreement, unless the County Water Utility or
14 Pueblo contracts for a reduction in water deliv-
15 ery or Regional Water System capacity;

16 (C) the Pueblo or County Water Utility
17 contracting for use of the unused capacity or
18 water has the right to use the water under ap-
19 plicable law; and

20 (D) any agreement for the use of unused
21 capacity or water provides for payment of the
22 operation, maintenance, and replacement costs
23 associated with the use of capacity or water.

1 **SEC. 115. AAMODT SETTLEMENT PUEBLOS' FUND.**

2 (a) ESTABLISHMENT OF THE AAMODT SETTLEMENT
3 PUEBLOS' FUND.—There is established in the Treasury
4 of the United States a fund, to be known as the “Aamodt
5 Settlement Pueblos' Fund,” consisting of—

6 (1) such amounts as are made available to the
7 Fund under section 117(c); and

8 (2) any interest earned from investment of
9 amounts in the Fund under subsection (b).

10 (b) MANAGEMENT OF THE FUND.—The Secretary
11 shall manage the Fund, invest amounts in the Fund, and
12 make amounts available from the Fund for distribution
13 to the Pueblos in accordance with—

14 (1) the American Indian Trust Fund Manage-
15 ment Reform Act of 1994 (25 U.S.C. 4001 et seq.);
16 and

17 (2) this title.

18 (c) INVESTMENT OF THE FUND.—The Secretary
19 shall invest amounts in the Fund in accordance with—

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

21 (2) the first section of the Act of June 24,
22 1938 (25 U.S.C. 162a); and

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

25 (d) TRIBAL MANAGEMENT PLAN.—

1 (1) IN GENERAL.—A Pueblo may withdraw all
2 or part of the Pueblo’s portion of the Fund on ap-
3 proval by the Secretary of a tribal management plan
4 as described in the American Indian Trust Fund
5 Management Reform Act of 1994 (25 U.S.C. 4001
6 et seq.).

7 (2) REQUIREMENTS.—In addition to the re-
8 quirements under the American Indian Trust Fund
9 Management Reform Act of 1994 (25 U.S.C. 4001
10 et seq.), the tribal management plan shall require
11 that a Pueblo spend any amounts withdrawn from
12 the Fund in accordance with the purposes described
13 in section 117(c).

14 (3) ENFORCEMENT.—The Secretary may take
15 judicial or administrative action to enforce the provi-
16 sions of any tribal management plan to ensure that
17 any amounts withdrawn from the Fund under an
18 approved tribal management plan are used in ac-
19 cordance with this title.

20 (4) LIABILITY.—If a Pueblo or the Pueblos ex-
21 ercise the right to withdraw amounts from the
22 Fund, neither the Secretary nor the Secretary of the
23 Treasury shall retain any liability for the expendi-
24 ture or investment of the amounts withdrawn.

25 (5) EXPENDITURE PLAN.—

1 (A) IN GENERAL.—The Pueblos shall sub-
2 mit to the Secretary for approval an expendi-
3 ture plan for any portion of the amounts in the
4 Fund that the Pueblos do not withdraw under
5 this subsection.

6 (B) DESCRIPTION.—The expenditure plan
7 shall describe the manner in which, and the
8 purposes for which, amounts remaining in the
9 Fund will be used.

10 (C) APPROVAL.—On receipt of an expendi-
11 ture plan under subparagraph (A), the Sec-
12 retary shall approve the plan if the Secretary
13 determines that the plan is reasonable and con-
14 sistent with this title, the Settlement Agree-
15 ment, and the Cost-Sharing and System Inte-
16 gration Agreement.

17 (D) ANNUAL REPORT.—The Pueblos shall
18 submit to the Secretary an annual report that
19 describes all expenditures from the Fund during
20 the year covered by the report.

21 (6) NO PER CAPITA PAYMENTS.—No part of
22 the principal of the Fund, or the interest or income
23 accruing on the principal shall be distributed to any
24 member of a Pueblo on a per capita basis.

1 (7) AVAILABILITY OF AMOUNTS FROM THE
2 FUND.—

3 (A) APPROVAL OF SETTLEMENT AGREE-
4 MENT.—Amounts made available under sub-
5 paragraphs (A) and (C) of section 117(c)(1)
6 shall be available for expenditure or withdrawal
7 only after the date on which the United States
8 District Court for the District of New Mexico
9 issues an order approving the Settlement Agree-
10 ment.

11 (B) COMPLETION OF CERTAIN PORTIONS
12 OF REGIONAL WATER SYSTEM.—Amounts made
13 available under section 117(c)(1)(B) shall be
14 available for expenditure or withdrawal only
15 after those portions of the Regional Water Sys-
16 tem described in section 1.5.24 of the Settle-
17 ment Agreement have been declared substan-
18 tially complete by the Secretary.

19 (C) FAILURE TO FULFILL CONDITIONS
20 PRECEDENT.—If the conditions precedent in
21 section 123 have not been fulfilled by June 30,
22 2016, the United States shall be entitled to set
23 off any funds expended or withdrawn from the
24 amounts appropriated pursuant to section
25 117(c), together with any interest accrued,

1 against any claims asserted by the Pueblos
2 against the United States relating to the water
3 rights in the Pojoaque Basin.

4 **SEC. 116. ENVIRONMENTAL COMPLIANCE.**

5 (a) IN GENERAL.—In carrying out this subtitle, the
6 Secretary shall comply with each law of the Federal Gov-
7 ernment relating to the protection of the environment, in-
8 cluding—

9 (1) the National Environmental Policy Act of
10 1969 (42 U.S.C. 4321 et seq.); and

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

13 (b) NATIONAL ENVIRONMENTAL POLICY ACT.—
14 Nothing in this title affects the outcome of any analysis
15 conducted by the Secretary or any other Federal official
16 under the National Environmental Policy Act of 1969 (42
17 U.S.C. 4321 et seq.).

18 **SEC. 117. AUTHORIZATION OF APPROPRIATIONS.**

19 (a) REGIONAL WATER SYSTEM.—

20 (1) IN GENERAL.—Subject to paragraph (4),
21 there is authorized to be appropriated to the Sec-
22 retary for the planning, design, and construction of
23 the Regional Water System and the conduct of envi-
24 ronmental compliance activities under section 116 a

1 total of \$106,400,000 between fiscal years 2009 and
2 2021.

3 (2) PRIORITY OF FUNDING.—Of the amounts
4 authorized under paragraph (1), the Secretary shall
5 give priority to funding—

6 (A) the construction of the San Ildefonso
7 portion of the Regional Water System, con-
8 sisting of—

9 (i) the surface water diversion, treat-
10 ment, and transmission facilities at San
11 Ildefonso Pueblo; and

12 (ii) the San Ildefonso Pueblo portion
13 of the Pueblo Water Facilities; and

14 (B) that part of the Regional Water Sys-
15 tem providing 475 acre-feet to Pojoaque Pueblo
16 pursuant to section 2.2 of the Settlement
17 Agreement.

18 (3) ADJUSTMENT.—The amount authorized
19 under paragraph (1) shall be adjusted annually to
20 account for increases in construction costs since Oc-
21 tober 1, 2006, as determined using applicable engi-
22 neering cost indices.

23 (4) LIMITATIONS.—

24 (A) IN GENERAL.—No amounts shall be
25 made available under paragraph (1) for the

1 construction of the Regional Water System
2 until the date on which the United States Dis-
3 trict Court for the District of New Mexico
4 issues an order approving the Settlement Agree-
5 ment.

6 (B) RECORD OF DECISION.—No amounts
7 made available under paragraph (1) shall be ex-
8 pended unless the record of decision issued by
9 the Secretary after completion of an environ-
10 mental impact statement provides for a pre-
11 ferred alternative that is in substantial compli-
12 ance with the proposed Regional Water System,
13 as defined in the Engineering Report.

14 (b) ACQUISITION OF WATER RIGHTS.—There is au-
15 thorized to be appropriated to the Secretary funds for the
16 acquisition of the water rights under section
17 113(a)(1)(B)—

18 (1) in the amount of \$5,400,000.00 if such ac-
19 quisition is completed by December 31, 2009; and

20 (2) the amount authorized under paragraph
21 (b)(1) shall be adjusted according to the CPI Urban
22 Index commencing January 1, 2010.

23 (c) AAMODT SETTLEMENT PUEBLOS' FUND.—

1 (1) IN GENERAL.—There is authorized to be
2 appropriated to the Fund the following amounts for
3 the period of fiscal years 2009 through 2021:

4 (A) \$8,000,000, which shall be allocated to
5 the Pueblos, in accordance with section 2.7.1 of
6 the Settlement Agreement, for the rehabilita-
7 tion, improvement, operation, maintenance, and
8 replacement of the agricultural delivery facili-
9 ties, waste water systems, and other water-re-
10 lated infrastructure of the applicable Pueblo.
11 The amount authorized herein shall be adjusted
12 according to the CPI Urban Index commencing
13 October 1, 2006.

14 (B) \$37,500,000, which shall be allocated
15 to an account, to be established not later than
16 January 1, 2016, to assist the Pueblos in pay-
17 ing the Pueblos' share of the cost of operating,
18 maintaining, and replacing the Pueblo Water
19 Facilities and the Regional Water System.

20 (C) \$5,000,000 and any interest thereon,
21 which shall be allocated to the Pueblo of Nambé
22 for the acquisition of the Nambé reserved water
23 rights in accordance with section 113(a)(1)(A).
24 The amount authorized herein shall be adjusted
25 according to the CPI Urban Index commencing

1 January 1, 2011. The funds provided under
2 this section may be used by the Pueblo of
3 Nambé only for the acquisition of land, other
4 real property interests, or economic develop-
5 ment.

6 (2) OPERATION, MAINTENANCE, AND REPLACE-
7 MENT COSTS.—

8 (A) IN GENERAL.—Prior to conveyance of
9 the Regional Water System pursuant to section
10 111, the Secretary shall pay any operation,
11 maintenance or replacement costs associated
12 with the Pueblo Water Facilities or the Re-
13 gional Water System up to an amount that does
14 not exceed \$5,000,000, which is authorized to
15 be appropriated to the Secretary.

16 (B) OBLIGATION OF THE FEDERAL GOV-
17 ERNMENT AFTER COMPLETION.—Except as
18 provided in section 113(a)(4)(B), after con-
19 struction of the Regional Water System is com-
20 pleted and the amounts required to be deposited
21 in the account have been deposited under this
22 section the Federal Government shall have no
23 obligation to pay for the operation, mainte-
24 nance, and replacement costs of the Regional
25 Water System.

1 **Subtitle B—Pojoaque Basin Indian**
2 **Water Rights Settlement**

3 **SEC. 121. SETTLEMENT AGREEMENT AND CONTRACT AP-**
4 **PROVAL.**

5 (a) APPROVAL.—To the extent the Settlement Agree-
6 ment and the Cost-Sharing and System Integration Agree-
7 ment do not conflict with this title, the Settlement Agree-
8 ment and the Cost-Sharing and System Integration Agree-
9 ment (including any amendments to the Settlement Agree-
10 ment and the Cost-Sharing and System Integration Agree-
11 ment that are executed to make the Settlement Agreement
12 or the Cost-Sharing and System Integration Agreement
13 consistent with this title) are authorized, ratified, and con-
14 firmed.

15 (b) EXECUTION.—To the extent the Settlement
16 Agreement and the Cost-Sharing and System Integration
17 Agreement do not conflict with this title, the Secretary
18 shall execute the Settlement Agreement and the Cost-
19 Sharing and System Integration Agreement (including
20 any amendments that are necessary to make the Settle-
21 ment Agreement or the Cost-Sharing and System Integra-
22 tion Agreement consistent with this title).

23 (c) AUTHORITIES OF THE PUEBLOS.—

24 (1) IN GENERAL.—Each of the Pueblos may
25 enter into contracts to lease or exchange water

1 rights or to forbear undertaking new or expanded
2 water uses for water rights recognized in section 2.1
3 of the Settlement Agreement for use within the
4 Pojoaque Basin in accordance with the other limita-
5 tions of section 2.1.5 of the Settlement Agreement
6 provided that section 2.1.5 is amended accordingly.

7 (2) EXECUTION.—The Secretary shall not exe-
8 cute the Settlement Agreement until such amend-
9 ment is accomplished under paragraph (1).

10 (3) APPROVAL BY SECRETARY.—Consistent
11 with the Settlement Agreement as amended under
12 paragraph (1), the Secretary shall approve or dis-
13 approve a lease entered into under paragraph (1).

14 (4) PROHIBITION ON PERMANENT ALIEN-
15 ATION.—No lease or contract under paragraph (1)
16 shall be for a term exceeding 99 years, nor shall any
17 such lease or contract provide for permanent alien-
18 ation of any portion of the water rights made avail-
19 able to the Pueblos under the Settlement Agreement.

20 (5) APPLICABLE LAW.—Section 2116 of the Re-
21 vised Statutes (25 U.S.C. 177) shall not apply to
22 any lease or contract entered into under paragraph
23 (1).

24 (6) LEASING OR MARKETING OF WATER SUP-
25 PLY.—The water supply provided on behalf of the

1 Pueblos pursuant to section 113(a)(1) may only be
2 leased or marketed by any of the Pueblos pursuant
3 to the intergovernmental agreements described in
4 section 114(c)(2).

5 (d) AMENDMENTS TO CONTRACTS.—The Secretary
6 shall amend the contracts relating to the Nambe Falls
7 Dam and Reservoir that are necessary to use water sup-
8 plied from the Nambe Falls Dam and Reservoir in accord-
9 ance with the Settlement Agreement.

10 **SEC. 122. ENVIRONMENTAL COMPLIANCE.**

11 (a) EFFECT OF EXECUTION OF SETTLEMENT
12 AGREEMENT.—The execution of the Settlement Agree-
13 ment under section 121(b) shall not constitute a major
14 Federal action under the National Environmental Policy
15 Act of 1969 (42 U.S.C. 4321 et seq.).

16 (b) COMPLIANCE WITH ENVIRONMENTAL LAWS.—In
17 carrying out this subtitle, the Secretary shall comply with
18 each law of the Federal Government relating to the protec-
19 tion of the environment, including—

20 (1) the National Environmental Policy Act of
21 1969 (42 U.S.C. 4321 et seq.); and

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

1 **SEC. 123. CONDITIONS PRECEDENT AND ENFORCEMENT**

2 **DATE.**

3 (a) **CONDITIONS PRECEDENT.—**

4 (1) **IN GENERAL.—**Upon the fulfillment of the
5 conditions precedent described in paragraph (2), the
6 Secretary shall publish in the Federal Register a
7 statement of finding that the conditions have been
8 fulfilled.

9 (2) **REQUIREMENTS.—**The conditions prece-
10 dents referred to in paragraph (1) are the conditions
11 that—

12 (A) to the extent that the Settlement
13 Agreement conflicts with this title, the Settle-
14 ment Agreement has been revised to conform
15 with this title;

16 (B) the Settlement Agreement, so revised,
17 including waivers and releases pursuant to sec-
18 tion 124, has been executed by the appropriate
19 parties and the Secretary;

20 (C) Congress has fully appropriated, or the
21 Secretary has provided from other authorized
22 sources, all funds authorized by section 117,
23 with the exception of subsection (a)(1) of that
24 section, by June 30, 2016;

25 (D) the State of New Mexico has enacted
26 any necessary legislation and provided any

1 funding that may be required under the Settle-
2 ment Agreement;

3 (E) a partial final decree that sets forth
4 the water rights and other rights to water to
5 which the Pueblos are entitled under the Settle-
6 ment Agreement and this title and that sub-
7 stantially conforms to the Settlement Agree-
8 ment has been approved by the United States
9 District Court for the District of New Mexico;
10 and

11 (F) a final decree that sets forth the water
12 rights for all parties to the Aamodt Case and
13 that substantially conforms to the Settlement
14 Agreement has been approved by the United
15 States District Court for the District of New
16 Mexico by December 15, 2012, or within the
17 time period of any extension of that deadline
18 granted by that court.

19 (b) ENFORCEMENT DATE.—The Settlement Agree-
20 ment shall become enforceable as of the date that the
21 United States District Court for the District of New Mex-
22 ico enters a partial final decree pursuant to subsection
23 (a)(2)(E) and an Interim Administrative Order consistent
24 with the Settlement Agreement. The waivers and releases
25 executed pursuant to section 124 shall become effective

1 as of the date that the conditions precedent described in
2 subsection (a)(2) have been fulfilled.

3 (c) EXPIRATION.—If the parties to the Settlement
4 Agreement entitled to provide notice regarding the lack
5 of substantial completion of the Regional Water System
6 provide such notice in accordance with section 10.3 of the
7 Settlement Agreement, the Settlement Agreement shall no
8 longer be effective, the waivers and releases executed pur-
9 suant to section 124 shall no longer be effective, and any
10 unexpended Federal funds, together with any income
11 earned thereon, and title to any property acquired or con-
12 structed with expended Federal funds, shall be returned
13 to the Federal Government unless otherwise agreed to by
14 the appropriate parties in writing and approved by Con-
15 gress.

16 **SEC. 124. WAIVERS AND RELEASES.**

17 (a) CLAIMS BY THE PUEBLO AND THE UNITED
18 STATES.—The Pueblos, on behalf of themselves and their
19 members, and the United States, acting in its capacity as
20 trustee for the Pueblos, as part of their obligations under
21 the Settlement Agreement, shall each execute a waiver and
22 release of—

23 (1) all past, present, and future claims to sur-
24 face and groundwater rights that the Pueblos, or the

1 United States on behalf of the Pueblos, asserted or
2 could have asserted in the Aamodt Case;

3 (2) all past, present, and future claims for dam-
4 ages, losses or injuries to water rights or claims of
5 interference, diversion or taking of water for lands
6 within the Pojoaque Basin that accrued at any time
7 up to and including the enforcement date identified
8 in section 123(b), that the Pueblos or their mem-
9 bers, or the United States on behalf of the Pueblos,
10 asserted or could have asserted against the parties
11 to the Aamodt Case;

12 (3) their defenses in the Aamodt Case to the
13 claims previously asserted therein by the other Set-
14 tlement Parties; and

15 (4) all pending inter se challenges against other
16 parties to the Settlement Agreement.

17 (b) CLAIMS BY THE PUEBLOS.—The Pueblos, on be-
18 half of themselves and their members, as part of their obli-
19 gations under the Settlement Agreement, shall execute a
20 waiver and release of—

21 (1) all causes of action against the United
22 States, its agencies, or employees, arising out of all
23 past, present, and future claims for water rights
24 that were asserted, or could have been asserted, by

1 the United States as trustee for the Pueblos and on
2 behalf of the Pueblos in the Aamodt case;

3 (2) all claims for damages, losses or injuries to
4 water rights or claims of interference, diversion or
5 taking of water for lands within the Pojoaque Basin
6 that accrued at any time up to and including the en-
7 forcement date identified in section 123(b), that the
8 Pueblos or their members may have against the
9 United States, its agencies, or employees; and

10 (3) all claims arising out of or resulting from
11 the negotiation or the adoption of the Settlement
12 Agreement, exhibits thereto, the Final Decree, or
13 this title, that the Pueblos or their members may
14 have against the United States, its agencies, agents
15 or employees.

16 (c) RESERVATION OF RIGHTS AND RETENTION OF
17 CLAIMS.—Notwithstanding subsections (a) and (b), and
18 except as otherwise provided in the Settlement Agreement,
19 the Pueblos and the United States shall retain—

20 (1) all claims for water rights or injuries to
21 water rights arising out of activities occurring out-
22 side the Pojoaque Basin except insofar as such
23 claims are specifically addressed in the Cost-Sharing
24 and System Integration Agreement;

1 (2) all claims for enforcement of the Settlement
2 Agreement, the Final Decree, or this title, through
3 such legal and equitable remedies as may be avail-
4 able in any court of competent jurisdiction;

5 (3) all rights to use and protect water rights ac-
6 quired pursuant to state law to the extent not incon-
7 sistent with the Final Decree and the Settlement
8 Agreement;

9 (4) all claims relating to activities affecting the
10 quality of water; and

11 (5) all rights, remedies, privileges, immunities,
12 powers, and claims not specifically waived and re-
13 leased pursuant to the Settlement Agreement or this
14 title.

15 (d) TOLLING OF CLAIMS.—

16 (1) IN GENERAL.—Each applicable period of
17 limitation and time-based equitable defense relating
18 to a claim described in this section shall be tolled for
19 the period beginning on the date of enactment of
20 this Act and ending on the Enforcement Date.

21 (2) NO REVIVAL OF CLAIMS.—Nothing in this
22 subsection revives any claim or tolls any period of
23 limitation or time-based equitable defense that ex-
24 pired before the date of enactment of this Act.

1 **SEC. 125. EFFECT.**

2 Nothing in this title or the Settlement Agreement af-
 3 fects the land and water rights, claims, or entitlements
 4 to water of any Indian tribe, pueblo, or community other
 5 than the Pueblos.

6 **TITLE II—TAOS PUEBLO INDIAN**
 7 **WATER RIGHTS SETTLEMENT**
 8 **ACT**

9 **SEC. 201. SHORT TITLE.**

10 This title may be cited as the “Taos Pueblo Indian
 11 Water Rights Settlement Act”.

12 **SEC. 202. PURPOSE.**

13 The purposes of this title are—

14 (1) to approve, ratify, and confirm the Taos
 15 Pueblo Indian Water Rights Settlement Agreement;

16 (2) to authorize and direct the Secretary to exe-
 17 cute the Settlement Agreement and to perform all
 18 obligations of the Secretary under the Settlement
 19 Agreement and this title; and

20 (3) to authorize all actions and appropriations
 21 necessary for the United States to meet its obliga-
 22 tions under the Settlement Agreement and this title.

23 **SEC. 203. DEFINITIONS.**

24 In this title:

25 (1) **ELIGIBLE NON-PUEBLO ENTITIES.**—The
 26 term “Eligible Non-Pueblo Entities” means the

1 Town of Taos, EPWSD, and the New Mexico De-
2 partment of Finance and Administration Local Gov-
3 ernment Division on behalf of the Acequia Madre del
4 Rio Lucero y del Arroyo Seco, the Acequia Madre
5 del Prado, the Acequia del Monte, the Acequia
6 Madre del Rio Chiquito, the Upper Ranchitos Mu-
7 tual Domestic Water Consumers Association, the
8 Upper Arroyo Hondo Mutual Domestic Water Con-
9 sumers Association, and the Llano Quemado Mutual
10 Domestic Water Consumers Association.

11 (2) ENFORCEMENT DATE.—The term “Enforce-
12 ment Date” means the date upon which all condi-
13 tions precedent set forth in section 210(f)(2) have
14 been fulfilled.

15 (3) MUTUAL-BENEFIT PROJECTS.—The term
16 “Mutual-Benefit Projects” means the projects de-
17 scribed and identified in Articles 6 and 10.1 of the
18 Settlement Agreement.

19 (4) PARTIAL FINAL DECREE.—The term “Par-
20 tial Final Decree” means the Decree entered in New
21 Mexico v. Abeyta and New Mexico v. Arellano, Civil
22 Nos. 7896–BB (U.S. D.N.M.) and 7939–BB (U.S.
23 D.N.M) (consolidated), for the resolution of the
24 Pueblo’s water right claims and which is substan-
25 tially in the form agreed to by the Parties and at-

1 tached to the Settlement Agreement as Attachment
2 5.

3 (5) PARTIES.—The term “Parties” means the
4 Parties to the Settlement Agreement, as identified in
5 Article 1 of the Settlement Agreement.

6 (6) PUEBLO.—The term “Pueblo” means the
7 Taos Pueblo, a sovereign Indian Tribe duly recog-
8 nized by the United States of America.

9 (7) PUEBLO LANDS.—The term “Pueblo lands”
10 means those lands located within the Taos Valley to
11 which the Pueblo, or the United States in its capac-
12 ity as trustee for the Pueblo, holds title subject to
13 Federal law limitations on alienation. Such lands in-
14 clude Tracts A, B, and C, the Pueblo’s land grant,
15 the Blue Lake Wilderness Area, and the Tenorio
16 and Karavas Tracts and are generally depicted in
17 Attachment 2 to the Settlement Agreement.

18 (8) SAN JUAN-CHAMA PROJECT.—The term
19 “San Juan-Chama Project” means the Project au-
20 thorized by section 8 of the Act of June 13, 1962
21 (76 Stat. 96, 97), and the Act of April 11, 1956 (70
22 Stat. 105).

23 (9) SECRETARY.—The term “Secretary” means
24 the Secretary of the Interior.

1 (10) SETTLEMENT AGREEMENT.—The term
2 “Settlement Agreement” means the contract dated
3 March 31, 2006, between and among—

4 (A) the United States, acting solely in its
5 capacity as trustee for Taos Pueblo;

6 (B) the Taos Pueblo, on its own behalf;

7 (C) the State of New Mexico;

8 (D) the Taos Valley Acequia Association
9 and its 55 member ditches (“TVAA”);

10 (E) the Town of Taos;

11 (F) El Prado Water and Sanitation Dis-
12 trict (“EPWSD”); and

13 (G) the 12 Taos area Mutual Domestic
14 Water Consumers Associations (“MDWCAs”),
15 as amended to conform with this title.

16 (11) STATE ENGINEER.—The term “State En-
17 gineer” means the New Mexico State Engineer.

18 (12) TAOS VALLEY.—The term “Taos Valley”
19 means the geographic area depicted in Attachment 4
20 of the Settlement Agreement.

21 **SEC. 204. PUEBLO RIGHTS.**

22 (a) IN GENERAL.—Those rights to which the Pueblo
23 is entitled under the Partial Final Decree shall be held
24 in trust by the United States on behalf of the Pueblo and

1 shall not be subject to forfeiture, abandonment or perma-
2 nent alienation.

3 (b) SUBSEQUENT ACT OF CONGRESS.—The Pueblo
4 shall not be denied all or any part of its rights held in
5 trust absent its consent unless such rights are explicitly
6 abrogated by an Act of Congress hereafter enacted.

7 **SEC. 205. PUEBLO WATER INFRASTRUCTURE AND WATER-**
8 **SHED ENHANCEMENT.**

9 (a) IN GENERAL.—The Secretary, acting through the
10 Commissioner of Reclamation, shall provide grants and
11 technical assistance to the Pueblo on a nonreimbursable
12 basis to—

13 (1) plan, permit, design, engineer, construct, re-
14 construct, replace, or rehabilitate water production,
15 treatment, and delivery infrastructure;

16 (2) restore, preserve, and protect the environ-
17 ment associated with the Buffalo Pasture area; and

18 (3) protect and enhance watershed conditions.

19 (b) AVAILABILITY OF GRANTS.—Upon the Enforce-
20 ment Date, all amounts appropriated pursuant to section
21 210(c)(1) shall be available in grants to the Pueblo after
22 the requirements of subsection (c) have been met.

23 (c) PLAN.—The Secretary shall provide financial as-
24 sistance pursuant to subsection (a) upon the Pueblo's sub-
25 mittal of a plan that identifies the projects to be imple-

1 mented consistent with the purposes of this section and
2 describes how such projects are consistent with the Settle-
3 ment Agreement.

4 (d) EARLY FUNDS.—Notwithstanding subsection (b),
5 \$10,000,000 of the monies authorized to be appropriated
6 pursuant to section 210(c)(1)—

7 (1) shall be made available in grants to the
8 Pueblo by the Secretary upon appropriation or avail-
9 ability of the funds from other authorized sources;
10 and

11 (2) shall be distributed by the Secretary to the
12 Pueblo on receipt by the Secretary from the Pueblo
13 of a written notice, a Tribal Council resolution that
14 describes the purposes under subsection (a) for
15 which the monies will be used, and a plan under
16 subsection (c) for this portion of the funding.

17 **SEC. 206. TAOS PUEBLO WATER DEVELOPMENT FUND.**

18 (a) ESTABLISHMENT.—There is established in the
19 Treasury of the United States a fund to be known as the
20 “Taos Pueblo Water Development Fund” (hereinafter,
21 “Fund”) to be used to pay or reimburse costs incurred
22 by the Pueblo for—

23 (1) acquiring water rights;

24 (2) planning, permitting, designing, engineer-
25 ing, constructing, reconstructing, replacing, rehabili-

1 tating, operating, or repairing water production,
2 treatment or delivery infrastructure, on-farm im-
3 provements, or wastewater infrastructure;

4 (3) restoring, preserving and protecting the
5 Buffalo Pasture, including planning, permitting, de-
6 signing, engineering, constructing, operating, man-
7 aging and replacing the Buffalo Pasture Recharge
8 Project;

9 (4) administering the Pueblo's water rights ac-
10 quisition program and water management and ad-
11 ministration system; and

12 (5) for watershed protection and enhancement,
13 support of agriculture, water-related Pueblo commu-
14 nity welfare and economic development, and costs
15 related to the negotiation, authorization, and imple-
16 mentation of the Settlement Agreement.

17 (b) MANAGEMENT OF THE FUND.—The Secretary
18 shall manage the Fund, invest amounts in the Fund, and
19 make monies available from the Fund for distribution to
20 the Pueblo consistent with the American Indian Trust
21 Fund Management Reform Act of 1994 (25 U.S.C. 4001,
22 et seq.) (hereinafter, “Trust Fund Reform Act”), this
23 title, and the Settlement Agreement.

24 (c) INVESTMENT OF THE FUND.—The Secretary
25 shall invest amounts in the Fund in accordance with—

1 (1) the Act of April 1, 1880 (21 Stat. 70, ch.
2 41, 25 U.S.C. 161);

3 (2) the first section of the Act of June 24,
4 1938 (52 Stat. 1037, ch. 648, 25 U.S.C. 162a); and

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

7 (d) AVAILABILITY OF AMOUNTS FROM THE FUND.—
8 Upon the Enforcement Date, all monies deposited in the
9 Fund pursuant to section 210(c)(2) shall be available to
10 the Pueblo for expenditure or withdrawal after the re-
11 quirements of subsection (e) have been met.

12 (e) EXPENDITURES AND WITHDRAWAL.—

13 (1) TRIBAL MANAGEMENT PLAN.—

14 (A) IN GENERAL.—The Pueblo may with-
15 draw all or part of the Fund on approval by the
16 Secretary of a tribal management plan as de-
17 scribed in the Trust Fund Reform Act.

18 (B) REQUIREMENTS.—In addition to the
19 requirements under the Trust Fund Reform
20 Act, the tribal management plan shall require
21 that the Pueblo spend any funds in accordance
22 with the purposes described in subsection (a).

23 (2) ENFORCEMENT.—The Secretary may take
24 judicial or administrative action to enforce the re-

1 requirement that monies withdrawn from the Fund
2 are used for the purposes specified in subsection (a).

3 (3) LIABILITY.—If the Pueblo exercises the
4 right to withdraw monies from the Fund, neither the
5 Secretary nor the Secretary of the Treasury shall re-
6 tain any liability for the expenditure or investment
7 of the monies withdrawn.

8 (4) EXPENDITURE PLAN.—

9 (A) IN GENERAL.—The Pueblo shall sub-
10 mit to the Secretary for approval an expendi-
11 ture plan for any portions of the funds made
12 available under this title that the Pueblo does
13 not withdraw under paragraph (1)(A) .

14 (B) DESCRIPTION.—The expenditure plan
15 shall describe the manner in which, and the
16 purposes for which, amounts remaining in the
17 Fund will be used.

18 (C) APPROVAL.—On receipt of an expendi-
19 ture plan under subparagraph (A), the Sec-
20 retary shall approve the plan if the Secretary
21 determines that the plan is reasonable and con-
22 sistent with this title.

23 (5) ANNUAL REPORT.—The Pueblo shall submit
24 to the Secretary an annual report that describes all

1 expenditures from the Fund during the year covered
2 by the report.

3 (f) FUNDS AVAILABLE UPON APPROPRIATION.—Not-
4 withstanding subsection (d), \$15,000,000 of the monies
5 authorized to be appropriated pursuant to section
6 210(c)(2)—

7 (1) shall be available upon appropriation for the
8 Pueblo's acquisition of water rights in fulfillment of
9 the Settlement Agreement, the Buffalo Pasture Re-
10 charge Project, implementation of the Pueblo's
11 water rights acquisition program and water manage-
12 ment and administration system, the design, plan-
13 ning, and permitting of water or wastewater infra-
14 structure eligible for funding under sections 205 or
15 206, or costs related to the negotiation, authoriza-
16 tion, and implementation of the Settlement Agree-
17 ment; and

18 (2) shall be distributed by the Secretary to the
19 Pueblo on receipt by the Secretary from the Pueblo
20 of a written notice and a Tribal Council resolution
21 that describes the purposes under paragraph (1) for
22 which the monies will be used.

23 (g) NO PER CAPITA DISTRIBUTIONS.—No part of the
24 Fund shall be distributed on a per capita basis to members
25 of the Pueblo.

1 **SEC. 207. MARKETING.**

2 (a) PUEBLO WATER RIGHTS.—Subject to the ap-
3 proval of the Secretary in accordance with subsection (e),
4 the Pueblo may market water rights secured to it under
5 the Settlement Agreement and Partial Final Decree, pro-
6 vided that such marketing is in accordance with this sec-
7 tion.

8 (b) PUEBLO CONTRACT RIGHTS TO SAN JUAN-
9 CHAMA PROJECT WATER.—Subject to the approval of the
10 Secretary in accordance with subsection (e), the Pueblo
11 may subcontract water made available to the Pueblo under
12 the contract authorized under section 209(b)(1)(A) to
13 third parties to supply water for use within or without the
14 Taos Valley, provided that the delivery obligations under
15 such subcontract are not inconsistent with the Secretary's
16 existing San Juan-Chama Project obligations and such
17 subcontract is in accordance with this section.

18 (c) LIMITATION.—

19 (1) IN GENERAL.—Diversion or use of water off
20 Pueblo Lands pursuant to Pueblo water rights or
21 Pueblo contract rights to San Juan-Chama Project
22 water shall be subject to and not inconsistent with
23 the same requirements and conditions of State law,
24 any applicable Federal law, and any applicable inter-
25 state compact as apply to the exercise of water
26 rights or contract rights to San Juan-Chama Project

1 water held by non-Federal, non-Indian entities, in-
2 cluding all applicable State Engineer permitting and
3 reporting requirements.

4 (2) EFFECT ON WATER RIGHTS.—Such diver-
5 sion or use off Pueblo Lands under paragraph (1)
6 shall not impair water rights or increase surface
7 water depletions within the Taos Valley.

8 (d) MAXIMUM TERM.—

9 (1) IN GENERAL.—The maximum term of any
10 water use lease or subcontract, including all renew-
11 als, shall not exceed 99 years in duration.

12 (2) ALIENATION OF RIGHTS.—The Pueblo shall
13 not permanently alienate any rights it has under the
14 Settlement Agreement, the Partial Final Decree,
15 and this title.

16 (e) APPROVAL OF SECRETARY.—The Secretary shall
17 approve or disapprove any lease or subcontract submitted
18 by the Pueblo for approval not later than—

19 (1) 180 days after submission; or

20 (2) 60 days after compliance, if required, with
21 the National Environmental Policy Act of 1969 (42
22 U.S.C. 4332(2)(C)), or any other requirement of
23 Federal law, whichever is later, provided that no
24 Secretarial approval shall be required for any water

1 use lease or subcontract with a term of less than 7
2 years.

3 (f) NO FORFEITURE OR ABANDONMENT.—The non-
4 use by a lessee or subcontractor of the Pueblo of any right
5 to which the Pueblo is entitled under the Partial Final
6 Decree shall in no event result in a forfeiture, abandon-
7 ment, relinquishment, or other loss of all or any part of
8 those rights.

9 (g) NO PREEMPTION.—

10 (1) IN GENERAL.—The approval authority of
11 the Secretary provided under subsection (e) shall not
12 amend, construe, supersede, or preempt any State or
13 Federal law, interstate compact, or international
14 treaty that pertains to the Colorado River, the Rio
15 Grande, or any of their tributaries, including the ap-
16 propriation, use, development, storage, regulation,
17 allocation, conservation, exportation, or quantity of
18 those waters.

19 (2) APPLICABLE LAW.—The provisions of sec-
20 tion 2116 of the Revised Statutes (25 U.S.C. 177)
21 shall not apply to any water made available under
22 the Settlement Agreement.

23 (h) NO PREJUDICE.—Nothing in this title shall be
24 construed to establish, address, prejudice, or prevent any
25 party from litigating whether or to what extent any appli-

1 cable State law, Federal law or interstate compact does
2 or does not permit, govern, or apply to the use of the
3 Pueblo's water outside of New Mexico.

4 **SEC. 208. MUTUAL-BENEFIT PROJECTS.**

5 (a) IN GENERAL.—Upon the Enforcement Date, the
6 Secretary, acting through the Commissioner of Reclama-
7 tion, shall provide financial assistance in the form of
8 grants on a nonreimbursable basis to Eligible Non-Pueblo
9 Entities to plan, permit, design, engineer, and construct
10 the Mutual Benefits Projects in accordance with the Set-
11 tlement Agreement—

12 (1) to minimize adverse impacts on the Pueblo's
13 water resources by moving future non-Indian ground
14 water pumping away from the Pueblo's Buffalo Pas-
15 ture; and

16 (2) to implement the resolution of a dispute
17 over the allocation of certain surface water flows be-
18 tween the Pueblo and non-Indian irrigation water
19 right owners in the community of Arroyo Seco
20 Arriba.

21 (b) COST-SHARING.—

22 (1) FEDERAL SHARE.—The Federal share of
23 the total cost of planning, designing, and con-
24 structing the Mutual Benefit Projects authorized in

1 subsection (a) shall be 75 percent and shall be non-
2 reimbursable.

3 (2) NON-FEDERAL SHARE.—The non-Federal
4 share of the total cost of planning, designing, and
5 constructing the Mutual Benefit Projects shall be 25
6 percent and may be in the form of in-kind contribu-
7 tions, including the contribution of any valuable
8 asset or service that the Secretary determines would
9 substantially contribute to completing the Mutual
10 Benefit Projects.

11 **SEC. 209. SAN JUAN-CHAMA PROJECT CONTRACTS.**

12 (a) IN GENERAL.—Contracts issued under this sec-
13 tion shall be in accordance with this title and the Settle-
14 ment Agreement.

15 (b) CONTRACTS FOR SAN JUAN-CHAMA PROJECT
16 WATER.—

17 (1) IN GENERAL.—The Secretary shall enter
18 into 3 repayment contracts by December 31, 2009,
19 for the delivery of San Juan-Chama Project water in
20 the following amounts:

21 (A) 2,215 acre-feet/annum to the Pueblo.

22 (B) 366 acre-feet/annum to the Town of
23 Taos.

24 (C) 40 acre-feet/annum to EPWSD.

1 (2) REQUIREMENTS.—Each such contract shall
2 provide that if the conditions precedent set forth in
3 section 210(f)(2) have not been fulfilled by Decem-
4 ber 31, 2015, the contract shall expire on that date.

5 (c) WAIVER.—With respect to the contracts author-
6 ized and required by subsection (b)(1) and notwith-
7 standing the provisions of Public Law 87–483 (76 Stat.
8 96) or any other provision of law—

9 (1) the Secretary shall waive the entirety of the
10 Pueblo’s share of the construction costs, both prin-
11 cipal and the interest, for the San Juan-Chama
12 Project and pursuant to that waiver, the Pueblo’s
13 share of all construction costs for the San Juan-
14 Chama Project, inclusive of both principal and inter-
15 est shall be nonreimbursable; and

16 (2) the Secretary’s waiver of the Pueblo’s share
17 of the construction costs for the San Juan-Chama
18 Project will not result in an increase in the pro rata
19 shares of other San Juan-Chama Project water con-
20 tractors, but such costs shall be absorbed by the
21 United States Treasury or otherwise appropriated to
22 the Department of the Interior.

23 **SEC. 210. AUTHORIZATIONS, RATIFICATIONS, CONFIRMA-**
24 **TIONS, AND CONDITIONS PRECEDENT.**

25 (a) RATIFICATION.—

1 (1) IN GENERAL.—Except to the extent that
2 any provision of the Settlement Agreement conflicts
3 with any provision of this title, the Settlement
4 Agreement is authorized, ratified, and confirmed.

5 (2) AMENDMENTS.—To the extent amendments
6 are executed to make the Settlement Agreement con-
7 sistent with this title, such amendments are also au-
8 thorized, ratified, and confirmed.

9 (b) EXECUTION OF SETTLEMENT AGREEMENT.—To
10 the extent that the Settlement Agreement does not conflict
11 with this title, the Secretary shall execute the Settlement
12 Agreement, including all exhibits to the Settlement Agree-
13 ment requiring the signature of the Secretary and any
14 amendments necessary to make the Settlement Agreement
15 consistent with this title, after the Pueblo has executed
16 the Settlement Agreement and any such amendments.

17 (c) AUTHORIZATION OF APPROPRIATIONS.—

18 (1) TAOS PUEBLO INFRASTRUCTURE AND WA-
19 TERSHERD FUND.—There is authorized to be appro-
20 priated to the Secretary to provide grants pursuant
21 to section 205, \$30,000,000, as adjusted under
22 paragraph (4), for the period of fiscal years 2009
23 through 2015.

24 (2) TAOS PUEBLO WATER DEVELOPMENT
25 FUND.—There is authorized to be appropriated to

1 the Taos Pueblo Water Development Fund, estab-
2 lished at section 206(a), \$50,000,000, as adjusted
3 under paragraph (4), for the period of fiscal years
4 2009 through 2015.

5 (3) MUTUAL-BENEFIT PROJECTS FUNDING.—
6 There is further authorized to be appropriated to the
7 Secretary to provide grants pursuant to section 208,
8 a total of \$33,000,000, as adjusted under paragraph
9 (4), for the period of fiscal years 2009 through
10 2015.

11 (4) ADJUSTMENTS TO AMOUNTS AUTHOR-
12 IZED.—The amounts authorized to be appropriated
13 under paragraphs (1) through (3) shall be adjusted
14 by such amounts as may be required by reason of
15 changes since April 1, 2007, in construction costs,
16 as indicated by engineering cost indices applicable to
17 the types of construction or rehabilitation involved.

18 (5) DEPOSIT IN FUND.—Except for the funds
19 to be provided to the Pueblo pursuant to section
20 205(d), the Secretary shall deposit the funds made
21 available pursuant to paragraphs (1) and (3) into a
22 Taos Settlement Fund to be established within the
23 Treasury of the United States so that such funds
24 may be made available to the Pueblo and the Eligi-

1 ble Non-Pueblo Entities upon the Enforcement Date
2 as set forth in sections 205(b) and 208(a).

3 (d) AUTHORITY OF THE SECRETARY.—The Secretary
4 is authorized to enter into such agreements and to take
5 such measures as the Secretary may deem necessary or
6 appropriate to fulfill the intent of the Settlement Agree-
7 ment and this title.

8 (e) ENVIRONMENTAL COMPLIANCE.—

9 (1) EFFECT OF EXECUTION OF SETTLEMENT
10 AGREEMENT.—The Secretary's execution of the Set-
11 tlement Agreement shall not constitute a major Fed-
12 eral action under the National Environmental Policy
13 Act of 1969 (42 U.S.C. 4321 et seq.).

14 (2) COMPLIANCE WITH ENVIRONMENTAL
15 LAWS.—In carrying out this title, the Secretary shall
16 comply with each law of the Federal Government re-
17 lating to the protection of the environment, includ-
18 ing—

19 (A) the National Environmental Policy Act
20 of 1969 (42 U.S.C. 4321 et seq.); and

21 (B) the Endangered Species Act of 1973
22 (16 U.S.C. 1531 et seq.).

23 (f) CONDITIONS PRECEDENT AND SECRETARIAL
24 FINDING.—

1 (1) IN GENERAL.—Upon the fulfillment of the
2 conditions precedent described in paragraph (2), the
3 Secretary shall publish in the Federal Register a
4 statement of finding that the conditions have been
5 fulfilled.

6 (2) CONDITIONS.—The conditions precedent re-
7 ferred to in paragraph (1) are the following:

8 (A) The President has signed into law the
9 Taos Pueblo Indian Water Rights Settlement
10 Act.

11 (B) To the extent that the Settlement
12 Agreement conflicts with this title, the Settle-
13 ment Agreement has been revised to conform
14 with this title.

15 (C) The Settlement Agreement, so revised,
16 including waivers and releases pursuant to sec-
17 tion 211, has been executed by the Parties and
18 the Secretary prior to the Parties' motion for
19 entry of the Partial Final Decree.

20 (D) Congress has fully appropriated or the
21 Secretary has provided from other authorized
22 sources all funds authorized by paragraphs (1)
23 through (3) of subsection (c) so that the entire
24 amounts so authorized have been previously
25 provided to the Pueblo pursuant to sections 205

1 and 206, or placed in the Taos Pueblo Water
2 Development Fund or the Taos Settlement
3 Fund as directed in subsection (c).

4 (E) The Legislature of the State of New
5 Mexico has fully appropriated the funds for the
6 State contributions as specified in the Settle-
7 ment Agreement, and those funds have been de-
8 posited in appropriate accounts.

9 (F) The State of New Mexico has enacted
10 legislation that amends NMSA 1978, section
11 72-6-3 to state that a water use due under a
12 water right secured to the Pueblo under the
13 Settlement Agreement or the Partial Final De-
14 cree may be leased for a term, including all re-
15 newals, not to exceed 99 years, provided that
16 this condition shall not be construed to require
17 that said amendment state that any State law
18 based water rights acquired by the Pueblo or by
19 the United States on behalf of the Pueblo may
20 be leased for said term.

21 (G) A Partial Final Decree that sets forth
22 the water rights and contract rights to water to
23 which the Pueblo is entitled under the Settle-
24 ment Agreement and this title and that sub-
25 stantially conforms to the Settlement Agree-

1 ment and Attachment 5 thereto has been ap-
2 proved by the Court and has become final and
3 nonappealable.

4 (g) ENFORCEMENT DATE.—The Settlement Agree-
5 ment shall become enforceable, and the waivers and re-
6 leases executed pursuant to section 211 and the limited
7 waiver of sovereign immunity set forth in section 212(a)
8 shall become effective, as of the date that the conditions
9 precedent described in subsection (f)(2) have been ful-
10 filled.

11 (h) EXPIRATION DATE.—

12 (1) IN GENERAL.—If all of the conditions
13 precedent described in section (f)(2) have not been
14 fulfilled by December 31, 2015, the Settlement
15 Agreement shall be null and void, the waivers and
16 releases executed pursuant to section 211 shall not
17 become effective, and any unexpended Federal
18 funds, together with any income earned thereon, and
19 title to any property acquired or constructed with
20 expended Federal funds, shall be returned to the
21 Federal Government, unless otherwise agreed to by
22 the Parties in writing and approved by Congress.

23 (2) EXCEPTION.—Notwithstanding subsection
24 (h)(1) or any other provision of law, any unexpended
25 Federal funds, together with any income earned

1 thereon, made available under sections 205(d) and
2 206(f) and title to any property acquired or con-
3 structed with expended Federal funds made available
4 under sections 205(d) and 206(f) shall be retained
5 by the Pueblo.

6 (3) RIGHT TO SET-OFF.—In the event the con-
7 ditions precedent set forth in subsection (f)(2) have
8 not been fulfilled by December 31, 2015, the United
9 States shall be entitled to set off any funds expended
10 or withdrawn from the amount appropriated pursu-
11 ant to paragraphs (1) and (2) of subsection (c) or
12 made available from other authorized sources, to-
13 gether with any interest accrued, against any claims
14 asserted by the Pueblo against the United States re-
15 lating to water rights in the Taos Valley.

16 **SEC. 211. WAIVERS AND RELEASES.**

17 (a) CLAIMS BY THE PUEBLO AND THE UNITED
18 STATES.—The Pueblo, on behalf of itself and its members,
19 and the United States, acting through the Secretary in
20 its capacity as trustee for the Pueblo, as part of their obli-
21 gations under the Settlement Agreement, shall each exe-
22 cute a waiver and release of claims against all Parties to
23 the Settlement Agreement, including individual members
24 of signatory Acequias, from—

1 (1) all past, present, and future claims to sur-
2 face and groundwater rights that the Pueblo, or the
3 United States on behalf of the Pueblo, asserted or
4 could have asserted in *New Mexico v. Abeyta and*
5 *New Mexico v. Arellano*, Civil Nos. 7896–BB (U.S.
6 D.N.M.) and 7939–BB (U.S. D.N.M.) (consoli-
7 dated);

8 (2) all past, present, and future claims for dam-
9 ages, losses or injuries to water rights or claims of
10 interference, diversion or taking of water for lands
11 within the Taos Valley that accrued from time im-
12 memorial through the Enforcement Date that the
13 Pueblo, or the United States on behalf of the Pueb-
14 lo, asserted or could have asserted;

15 (3) all past, present, and future claims to sur-
16 face and groundwater rights to the use of Rio
17 Grande mainstream or tributary water, whether
18 presently known or unknown, whether for consump-
19 tive or nonconsumptive use, that the Pueblo, or the
20 United States on behalf of the Pueblo, could assert
21 in any present or future water rights adjudication
22 proceeding that are not based on ownership of land
23 or that are based on Pueblo or United States owner-
24 ship of lands or water rights at any time prior to the
25 Enforcement Date, except that nothing in this para-

1 graph shall be construed to prevent the Pueblo or
2 the United States from fully participating in the
3 inter se phase of any such present or future water
4 rights adjudication proceeding;

5 (4) all past, present, and future claims for dam-
6 ages, losses or injuries to water rights or claims of
7 interference, diversion or taking of Rio Grande
8 mainstream or tributary water that accrued from
9 time immemorial through the Enforcement Date
10 that the Pueblo, or the United States on behalf of
11 the Pueblo, asserted or could have asserted; and

12 (5) all past, present, and future claims arising
13 out of or resulting from the negotiation or the adop-
14 tion of the Settlement Agreement, attachments
15 thereto, or any specific terms and provisions thereof,
16 against the State of New Mexico, its agencies,
17 agents or employees.

18 (b) CLAIMS BY THE PUEBLO.—The Pueblo, on behalf
19 of itself and its members, as part of its obligations under
20 the Settlement Agreement, shall execute a waiver and re-
21 lease of claims against the United States, its agencies, and
22 its employees from—

23 (1) all past, present, and future claims for
24 water rights that were asserted, or could have been
25 asserted, by the United States as trustee for the

1 Pueblo and on behalf of the Pueblo in New Mexico
2 v. Abeyta and New Mexico v. Arellano, Civil Nos.
3 7896–BB (U.S. D.N.M.) and 7939–BB (U.S.
4 D.N.M) (consolidated);

5 (2) all past, present, and future claims for dam-
6 ages, losses or injuries to water rights or all past,
7 present, and future claims for failure to intervene or
8 act on the Pueblo’s behalf in the protection of its
9 water rights, or all past, present, and future claims
10 for failure to acquire and/or develop the water rights
11 and resources of the Pueblo, that accrued from time
12 immemorial through the Enforcement Date; and

13 (3) all past, present, and future claims arising
14 out of or resulting from the negotiation or the adop-
15 tion of the Settlement Agreement, attachments
16 thereto, or negotiation and enactment of this title or
17 any specific terms and provisions thereof, against
18 the United States, its agencies, agents or employees.

19 (c) RESERVATION OF RIGHTS AND RETENTION OF
20 CLAIMS.—Notwithstanding subsections (a) and (b), the
21 Pueblo and its members, and the United States, as trustee
22 for the Pueblo and its members, shall retain the following
23 rights and claims:

24 (1) All claims against persons other than the
25 Parties to the Settlement Agreement for injuries to

1 water rights arising out of activities occurring out-
2 side the Taos Valley or the Taos Valley Stream Sys-
3 tem.

4 (2) All claims for enforcement of the Settlement
5 Agreement, the San Juan-Chama Project contract
6 between the Pueblo and the United States, the Par-
7 tial Final Decree, or this title, through such legal
8 and equitable remedies as may be available in any
9 court of competent jurisdiction.

10 (3) All rights to use and protect water rights
11 acquired pursuant to state law, to the extent not in-
12 consistent with the Partial Final Decree and the
13 Settlement Agreement.

14 (4) All claims relating to activities affecting the
15 quality of water.

16 (5) All rights, remedies, privileges, immunities,
17 powers, and claims not specifically waived and re-
18 leased pursuant to the Settlement Agreement or this
19 title.

20 (d) TOLLING OF CLAIMS.—

21 (1) IN GENERAL.—Each applicable period of
22 limitation and time-based equitable defense relating
23 to a claim described in this section shall be tolled for
24 the period beginning on the date of enactment of
25 this Act and ending on the Enforcement Date.

1 (2) NO REVIVAL OF CLAIMS.—Nothing in this
2 subsection revives any claim or tolls any period of
3 limitation or time-based equitable defense that ex-
4 pired before the date of enactment of this title.

5 (3) LIMITATION.—Nothing in this section pre-
6 cludes the tolling of any period of limitations or any
7 time-based equitable defense under any other appli-
8 cable law.

9 **SEC. 212. INTERPRETATION AND ENFORCEMENT.**

10 (a) LIMITED WAIVER OF SOVEREIGN IMMUNITY.—
11 Upon and after the Enforcement Date, if any Party to
12 the Settlement Agreement brings an action in any court
13 of competent jurisdiction over the subject matter relating
14 only and directly to the interpretation or enforcement of
15 the Settlement Agreement or this title, and names the
16 United States or the Pueblo as a party, then the United
17 States, the Pueblo, or both may be added as a party to
18 any such action, and any claim by the United States or
19 the Pueblo to sovereign immunity from the action is
20 waived, but only for the limited and sole purpose of such
21 interpretation or enforcement, and no waiver of sovereign
22 immunity is made for any action against the United States
23 or the Pueblo that seeks money damages.

24 (b) SUBJECT MATTER JURISDICTION NOT AF-
25 FECTED.—Nothing in this title shall be deemed as confer-

1 ring, restricting, enlarging, or determining the subject
2 matter jurisdiction of any court, including the jurisdiction
3 of the court that enters the Partial Final Decree adjudi-
4 cating the Pueblo's water rights.

5 (c) REGULATORY AUTHORITY NOT AFFECTED.—
6 Nothing in this title shall be deemed to determine or limit
7 any authority of the State or the Pueblo to regulate or
8 administer waters or water rights now or in the future.

9 **SEC. 213. DISCLAIMER.**

10 Nothing in the Settlement Agreement or this title
11 shall be construed in any way to quantify or otherwise ad-
12 versely affect the land and water rights, claims, or entitle-
13 ments to water of any other Indian tribe.

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