

AAMODT LITIGATION SETTLEMENT ACT

JANUARY 12, 2010.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. RAHALL, from the Committee on Natural Resources,
submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany H.R. 3342]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 3342) 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, and Tesuque, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “Aamodt Litigation Settlement Act”.

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Definitions.

TITLE I—POJOAQUE BASIN REGIONAL WATER SYSTEM

Sec. 101. Authorization of Regional Water System.
Sec. 102. Operating Agreement.
Sec. 103. Acquisition of Pueblo water supply for the Regional Water System.
Sec. 104. Delivery and allocation of Regional Water System capacity and water.
Sec. 105. Aamodt Settlement Pueblos’ Fund.
Sec. 106. Environmental compliance.
Sec. 107. Authorization of appropriations.

TITLE II—POJOAQUE BASIN INDIAN WATER RIGHTS SETTLEMENT

- Sec. 201. Settlement Agreement and contract approval.
 Sec. 202. Environmental compliance.
 Sec. 203. Conditions precedent and enforcement date.
 Sec. 204. Waivers and releases.
 Sec. 205. Effect.

SEC. 2. DEFINITIONS.

In this Act:

- (1) **AAMODT CASE.**—The term “Aamodt Case” means the civil action entitled State of New Mexico, ex rel. State Engineer and United States of America, Pueblo de Nambe, Pueblo de Pojoaque, Pueblo de San Ildefonso, and Pueblo de Tesuque v. R. Lee Aamodt, et al., No. 66 CV 6639 MV/LCS (D.N.M.).
- (2) **ACRE-FEET.**—The term “acre-feet” means acre-feet of water per year.
- (3) **AUTHORITY.**—The term “Authority” means the Pojoaque Basin Regional Water Authority described in section 9.5 of the Settlement Agreement or an alternate entity acceptable to the Pueblos and the County to operate and maintain the diversion and treatment facilities, certain transmission pipelines, and other facilities of the Regional Water System.
- (4) **CITY.**—The term “City” means the city of Santa Fe, New Mexico.
- (5) **COST-SHARING AND SYSTEM INTEGRATION AGREEMENT.**—The term “Cost-Sharing and System Integration Agreement” means the agreement to be executed by the United States, the State, the Pueblos, the County, and the City that—
- (A) describes the location, capacity, and management (including the distribution of water to customers) of the Regional Water System; and
 - (B) allocates the costs of the Regional Water System with respect to—
 - (i) the construction, operation, maintenance, and repair of the Regional Water System;
 - (ii) rights-of-way for the Regional Water System; and
 - (iii) the acquisition of water rights.
- (6) **COUNTY.**—The term “County” means Santa Fe County, New Mexico.
- (7) **COUNTY DISTRIBUTION SYSTEM.**—The term “County Distribution System” means the portion of the Regional Water System that serves water customers on non-Pueblo land in the Pojoaque Basin.
- (8) **COUNTY WATER UTILITY.**—The term “County Water Utility” means the water utility organized by the County to—
- (A) receive water distributed by the Authority; and
 - (B) provide the water received under subparagraph (A) to customers on non-Pueblo land in the Pojoaque Basin.
- (9) **ENGINEERING REPORT.**—The term “Engineering Report” means the report entitled “Pojoaque Regional Water System Engineering Report” dated September 2008 and any amendments thereto, including any modifications which may be required by section 101(d)(2).
- (10) **FUND.**—The term “Fund” means the Aamodt Settlement Pueblos’ Fund established by section 105(a).
- (11) **OPERATING AGREEMENT.**—The term “Operating Agreement” means the agreement between the Pueblos and the County executed under section 102(a).
- (12) **OPERATIONS, MAINTENANCE, AND REPLACEMENT COSTS.**—
- (A) **IN GENERAL.**—The term “operations, maintenance, and replacement costs” means all costs for the operation of the Regional Water System that are necessary for the safe, efficient, and continued functioning of the Regional Water System to produce the benefits described in the Settlement Agreement.
 - (B) **EXCLUSION.**—The term “operations, maintenance, and replacement costs” does not include construction costs or costs related to construction design and planning.
- (13) **POJOAQUE BASIN.**—
- (A) **IN GENERAL.**—The term “Pojoaque Basin” means the geographic area limited by a surface water divide (which can be drawn on a topographic map), within which area rainfall and runoff flow into arroyos, drainages, and named tributaries that eventually drain to—
 - (i) the Rio Pojoaque; or
 - (ii) the 2 unnamed arroyos immediately south; and
 - (iii) 2 arroyos (including the Arroyo Alamo) that are north of the confluence of the Rio Pojoaque and the Rio Grande.
 - (B) **INCLUSION.**—The term “Pojoaque Basin” includes the San Ildefonso Eastern Reservation recognized by section 8 of Public Law 87–231 (75 Stat. 505).

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

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

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

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

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

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

(I) within the exterior boundaries of the Pueblo, as recognized and conformed by a patent issued under the Act of December 22, 1858 (11 Stat. 374, chapter V); or

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

(C) owned by a Pueblo or held by the United States in trust for the benefit of a Pueblo outside the Pojoaque Basin that is located within the exterior boundaries of the Pueblo as recognized and confirmed by a patent issued under the Act of December 22, 1858 (11 Stat. 374, chapter V); or

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

(17) PUEBLO WATER FACILITY.—

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

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

(ii) portions of a Pueblo water system in existence on the date of enactment of this Act that serve water customers on non-Pueblo land, also in existence on the date of enactment of this Act, or their successors, that are—

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

(II) described in the Operating Agreement.

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

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

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

(18) REGIONAL WATER SYSTEM.—

(A) IN GENERAL.—The term “Regional Water System” means the Regional Water System described in section 101(a).

(B) EXCLUSIONS.—The term “Regional Water System” does not include the County or Pueblo water supply delivered through the Regional Water System.

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

(20) SAN JUAN-CHAMA PROJECT ACT.—The term “San Juan-Chama Project Act” means sections 8 through 18 of the Act of June 13, 1962 (76 Stat. 96, 97).

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

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

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

TITLE I—POJOAQUE BASIN REGIONAL WATER SYSTEM

SEC. 101. AUTHORIZATION OF REGIONAL WATER SYSTEM.

(a) IN GENERAL.—The Secretary, acting through the Commissioner of Reclamation, shall plan, design, and construct a regional water system in accordance with the Settlement Agreement, to be known as the “Regional Water System”—

(1) to divert and distribute water to the Pueblos and to the County Water Utility, in accordance with the Engineering Report; and

(2) that consists of—

- (A) surface water diversion facilities at San Ildefonso Pueblo on the Rio Grande; and
- (B) any treatment, transmission, storage and distribution facilities and wellfields for the County Distribution System and Pueblo Water Facilities that are necessary to supply 4,000 acre-feet of water within the Pojoaque Basin, unless modified in accordance with subsection (d)(2).
- (b) FINAL PROJECT DESIGN.—The Secretary shall issue a final project design within 90 days of completion of the environmental compliance described in section 106 for the Regional Water System that—
 - (1) is consistent with the Engineering Report; and
 - (2) includes a description of any Pueblo Water Facilities.
- (c) ACQUISITION OF LAND; WATER RIGHTS.—
 - (1) ACQUISITION OF LAND.—Upon request, and in exchange for the funding which shall be provided in section 107(c), the Pueblos shall consent to the grant of such easements and rights-of-way as may be necessary for the construction of the Regional Water System at no cost to the Secretary. To the extent that the State or County own easements or rights-of-way that may be used for construction of the Regional Water System, the State or County shall provide that land or interest in land as necessary for construction at no cost to the Secretary. The Secretary shall acquire any other land or interest in land that is necessary for the construction of the Regional Water System.
 - (2) WATER RIGHTS.—The Secretary shall not condemn water rights for purposes of the Regional Water System.
- (d) CONDITIONS FOR CONSTRUCTION.—
 - (1) IN GENERAL.—The Secretary shall not begin construction of the Regional Water System facilities until the date on which—
 - (A) the Secretary executes—
 - (i) the Settlement Agreement; and
 - (ii) the Cost-Sharing and System Integration Agreement; and
 - (B) the State and the County have entered into an agreement with the Secretary to contribute the non-Federal share of the costs of the construction in accordance with the Cost-Sharing and System Integration Agreement.
 - (2) MODIFICATIONS TO REGIONAL WATER SYSTEM.—
 - (A) IN GENERAL.—The State and the County, in agreement with the Pueblos, the City, and other signatories to the Cost-Sharing and System Integration Agreement, may modify the extent, size, and capacity of the County Distribution System as set forth in the Cost-Sharing and System Integration Agreement.
 - (B) EFFECT.—A modification under subparagraph (A)—
 - (i) shall not affect implementation of the Settlement Agreement so long as the provisions in section 203 are satisfied; and
 - (ii) may result in an adjustment of the State and County cost-share allocation as set forth in the Cost-Sharing and System Integration Agreement.
- (e) APPLICABLE LAW.—The Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) shall not apply to the design and construction of the Regional Water System.
- (f) CONSTRUCTION COSTS.—
 - (1) PUEBLO WATER FACILITIES.—
 - (A) IN GENERAL.—Except as provided in subparagraph (B), the expenditures of the Secretary to construct the Pueblo Water Facilities under this section shall not exceed \$106,400,000.
 - (B) EXCEPTION.—The amount described in subparagraph (A) shall be increased or decreased, as appropriate, based on ordinary fluctuations in construction costs since October 1, 2006, as determined using applicable engineering cost indices.
 - (2) COSTS TO PUEBLO.—The costs incurred by the Secretary in carrying out activities to construct the Pueblo Water Facilities under this section shall not be reimbursable to the United States.
 - (3) COUNTY DISTRIBUTION SYSTEM.—The costs of constructing the County Distribution System shall be at State and local expense.
- (g) STATE AND LOCAL CAPITAL OBLIGATIONS.—The State and local capital obligations for the Regional Water System described in the Cost-Sharing and System Integration Agreement shall be satisfied on the payment of the State and local capital obligations described in the Cost-Sharing and System Integration Agreement.
- (h) CONVEYANCE OF REGIONAL WATER SYSTEM FACILITIES.—

(1) **IN GENERAL.**—Subject to paragraph (2), on completion of the construction of the Regional Water System, the Secretary, in accordance with the Operating Agreement, shall convey to—

(A) each Pueblo the portion of any Pueblo Water Facility that is located within the boundaries of the Pueblo, including any land or interest in land located within the boundaries of the Pueblo that is acquired by the United States for the construction of the Pueblo Water Facility;

(B) the County the County Distribution System, including any land or interest in land acquired by the United States for the construction of the County Distribution System; and

(C) the Authority any portions of the Regional Water System that remain after making the conveyances under subparagraphs (A) and (B), including any land or interest in land acquired by the United States for the construction of the portions of the Regional Water System.

(2) **CONDITIONS FOR CONVEYANCE.**—The Secretary shall not convey any portion of the Regional Water System facilities under paragraph (1) until the date on which—

(A) construction of the Regional Water System is complete; and

(B) the Operating Agreement is executed in accordance with section 102.

(3) **SUBSEQUENT CONVEYANCE.**—On conveyance by the Secretary under paragraph (1), the Pueblos, the County, and the Authority shall not reconvey any portion of the Regional Water System conveyed to the Pueblos, the County, and the Authority, respectively, unless the reconveyance is authorized by an Act of Congress enacted after the date of enactment of this Act.

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

(5) **ADDITIONAL CONSTRUCTION.**—On conveyance of a portion of the Regional Water System under paragraph (1), the Pueblos, County, or the Authority, as applicable, may, at the expense of the Pueblos, County, or the Authority, construct any additional infrastructure that is necessary to fully use the water delivered by the Regional Water System.

(6) **LIABILITY.**—

(A) **IN GENERAL.**—Effective on the date of conveyance of any land or facility under this section, the United States shall not be held liable by any court for damages of any kind arising out of any act, omission, or occurrence relating to the land and facilities conveyed, other than damages caused by acts of negligence by the United States, or by employees or agents of the United States, prior to the date of conveyance.

(B) **TORT CLAIMS.**—Nothing in this section increases the liability of the United States beyond the liability provided in chapter 171 of title 28, United States Code (commonly known as the “Federal Tort Claims Act”).

(7) **EFFECT.**—Nothing in any transfer of ownership provided or any conveyance thereto as provided in this section shall extinguish the right of any Pueblo, the County, or the Regional Water Authority to the continuous use and benefit of each easement or right of way for the use, operation, maintenance, repair, and replacement of Pueblo Water Facilities, the County Distribution System or the Regional Water System or for wastewater purposes as provided in the Cost-Sharing and System Integration Agreement.

SEC. 102. OPERATING AGREEMENT.

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

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

(2) the date of issuance of a final project design for the Regional Water System under section 101(b).

(b) **APPROVAL.**—Not later than 180 days after receipt of the operating agreement described in subsection (a), the Secretary shall approve the Operating Agreement upon determination that the Operating Agreement is consistent with this Act, the Settlement Agreement, and the Cost-Sharing and System Integration Agreement.

(c) **CONTENTS.**—The Operating Agreement shall include—

(1) provisions consistent with the Settlement Agreement and the Cost-Sharing and System Integration Agreement and necessary to implement the intended benefits of the Regional Water System described in those documents;

(2) provisions for—

- (A) the distribution of water conveyed through the Regional Water System, including a delineation of—
 - (i) distribution lines for the County Distribution System;
 - (ii) distribution lines for the Pueblo Water Facilities; and
 - (iii) distribution lines that serve both—
 - (I) the County Distribution System; and
 - (II) the Pueblo Water Facilities;
 - (B) the allocation of the Regional Water System capacity;
 - (C) the terms of use of unused water capacity in the Regional Water System;
 - (D) the construction of additional infrastructure and the acquisition of associated rights-of-way or easements necessary to enable any of the Pueblos or the County to fully use water allocated to the Pueblos or the County from the Regional Water System, including provisions addressing when the construction of such additional infrastructure requires approval by the Authority;
 - (E) the allocation and payment of annual operation, maintenance, and replacement costs for the Regional Water System, including the portions of the Regional Water System that are used to treat, transmit, and distribute water to both the Pueblo Water Facilities and the County Water Utility;
 - (F) the operation of wellfields located on Pueblo land;
 - (G) the transfer of any water rights necessary to provide the Pueblo water supply described in section 103(a);
 - (H) the operation of the Regional Water System with respect to the water supply, including the allocation of the water supply in accordance with section 3.1.8.4.2 of the Settlement Agreement so that, in the event of a shortage of supply to the Regional Water System, the supply to each of the Pueblos' and to the County's distribution system shall be reduced on a prorata basis, in proportion to each distribution system's most current annual use; and
 - (I) dispute resolution; and
- (3) provisions for operating and maintaining the Regional Water System facilities before and after conveyance under section 101(h), including provisions to—
- (A) ensure that—
 - (i) the operation of, and the diversion and conveyance of water by, the Regional Water System is in accordance with the Settlement Agreement;
 - (ii) the wells in the Regional Water System are used in conjunction with the surface water supply of the Regional Water System to ensure a reliable firm supply of water to all users of the Regional Water System, consistent with the intent of the Settlement Agreement that surface supplies will be used to the maximum extent feasible;
 - (iii) the respective obligations regarding delivery, payment, operation, and management are enforceable; and
 - (iv) the County has the right to serve any new water users located on non-Pueblo land in the Pojoaque Basin; and
 - (B) allow for any aquifer storage and recovery projects that are approved by the Office of the New Mexico State Engineer.
- (d) EFFECT.—Nothing in this Act precludes the Operating Agreement from authorizing phased or interim operations if the Regional Water System is constructed in phases.

SEC. 103. ACQUISITION OF PUEBLO WATER SUPPLY FOR THE REGIONAL WATER SYSTEM.

- (a) IN GENERAL.—For the purpose of providing a reliable firm supply of water from the Regional Water System for the Pueblos in accordance with the Settlement Agreement, the Secretary, on behalf of the Pueblos, shall—
- (1) acquire water rights to—
 - (A) 302 acre-feet of Nambe reserved water described in section 2.6.2 of the Settlement Agreement pursuant to section 107(c)(1)(C); and
 - (B) 1141 acre-feet from water acquired by the County for water rights commonly referred to as “Top of the World” rights in the Aamodt Case;
 - (2) enter into a contract with the Pueblos for 1,079 acre-feet in accordance with section 11 of the San Juan-Chama Project Act; and
 - (3) by application to the State Engineer, seek approval to divert the water acquired and made available under paragraphs (1) and (2) at the points of diversion for the Regional Water System, consistent with the Settlement Agreement and the Cost-Sharing and System Integration Agreement.

(b) **FORFEITURE.**—The nonuse of the water supply secured by the Secretary for the Pueblos under subsection (a) shall in no event result in forfeiture, abandonment, relinquishment, or other loss thereof.

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

(d) **APPLICABLE LAW.**—The water supply made available pursuant to subsection (a)(2) shall be subject to the San Juan-Chama Project Act, and no preference shall be provided to the Pueblos as a result of subsection (c) with regard to the delivery or distribution of San Juan-Chama Project water or the management or operation of the San Juan-Chama Project.

(e) **CONTRACT FOR SAN JUAN-CHAMA PROJECT WATER SUPPLY.**—With respect to the contract for the water supply required by subsection (a)(2), such San Juan-Chama Project contract shall be pursuant to the following terms:

(1) **WAIVERS.**—Notwithstanding the provisions of the San Juan-Chama Project Act, or any other provision of law—

(A) the Secretary shall waive the entirety of the Pueblos' share of the construction costs for the San Juan-Chama Project, and pursuant to that waiver, the Pueblos' share of all construction costs for the San Juan-Chama Project, inclusive of both principal and interest, due from 1972 to the execution of the contract required by subsection (a)(2), shall be nonreimbursable;

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

(C) the costs associated with any water made available from the San Juan-Chama Project which were determined nonreimbursable and nonreturnable pursuant to Public Law No. 88-293, 78 Stat. 171 (March 26, 1964), shall remain nonreimbursable and nonreturnable.

(2) **TERMINATION.**—The contract shall provide that it shall terminate only upon the following conditions—

(A) failure of the United States District Court for the District of New Mexico to enter a final decree for the Aamodt Case by December 15, 2012, or within the time period of any extension of that deadline granted by the court; or

(B) entry of an order by the United States District Court for the District of New Mexico voiding the final decree and Settlement Agreement for the Aamodt Case pursuant to section 10.3 of the Settlement Agreement.

(f) **LIMITATION.**—The Secretary shall use the water supply secured under subsection (a) only for the purposes described in the Settlement Agreement.

(g) **FULFILLMENT OF WATER SUPPLY ACQUISITION OBLIGATIONS.**—Compliance with subsections (a) through (f) shall satisfy any and all obligations of the Secretary to acquire or secure a water supply for the Pueblos pursuant to the Settlement Agreement.

(h) **RIGHTS OF PUEBLOS IN SETTLEMENT AGREEMENT UNAFFECTED.**—Notwithstanding the provisions of subsections (a) through (g), the Pueblos, the County or the Regional Water Authority may acquire any additional water rights to ensure all parties to the Settlement Agreement receive the full allocation of water provided by the Settlement Agreement and nothing in this Act amends or modifies the quantities of water allocated to the Pueblos thereunder.

SEC. 104. DELIVERY AND ALLOCATION OF REGIONAL WATER SYSTEM CAPACITY AND WATER.

(a) **ALLOCATION OF REGIONAL WATER SYSTEM CAPACITY.**—

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

(A) up to 4,000 acre-feet of consumptive use of water; and

(B) the requisite peaking capacity described in—

(i) the Engineering Report; and

(ii) the final project design.

(2) **ALLOCATION TO THE PUEBLOS AND COUNTY WATER UTILITY.**—Of the capacity described in paragraph (1)—

(A) there shall be allocated to the Pueblos—

(i) sufficient capacity for the conveyance of 2,500 acre-feet consumptive use; and

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

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

(i) sufficient capacity for the conveyance of up to 1,500 acre-feet consumptive use; and

- (ii) the requisite peaking capacity for the quantity of water described in clause (i).
 - (3) APPLICABLE LAW.—Water shall be allocated to the Pueblos and the County Water Utility under this subsection in accordance with—
 - (A) this title;
 - (B) the Settlement Agreement; and
 - (C) the Operating Agreement.
 - (b) DELIVERY OF REGIONAL WATER SYSTEM WATER.—The Authority shall deliver water from the Regional Water System—
 - (1) to the Pueblos water in a quantity sufficient to allow full consumptive use of up to 2,500 acre-feet per year of water rights by the Pueblos in accordance with—
 - (A) the Settlement Agreement;
 - (B) the Operating Agreement; and
 - (C) this title; and
 - (2) to the County water in a quantity sufficient to allow full consumptive use of up to 1,500 acre-feet per year of water rights by the County Water Utility in accordance with—
 - (A) the Settlement Agreement;
 - (B) the Operating Agreement; and
 - (C) this title.
 - (c) ADDITIONAL USE OF ALLOCATION QUANTITY AND UNUSED CAPACITY.—The Regional Water System may be used to—
 - (1) provide for use of return flow credits to allow for full consumptive use of the water allocated in the Settlement Agreement to each of the Pueblos and to the County; and
 - (2) convey water allocated to one of the Pueblos or the County Water Utility for the benefit of another Pueblo or the County Water Utility or allow use of unused capacity by each other through the Regional Water System in accordance with an intergovernmental agreement between the Pueblos, or between a Pueblo and County Water Utility, as applicable, if—
 - (A) such intergovernmental agreements are consistent with the Operating Agreement, the Settlement Agreement, and this Act;
 - (B) capacity is available without reducing water delivery to any Pueblo or the County Water Utility in accordance with the Settlement Agreement, unless the County Water Utility or Pueblo contracts for a reduction in water delivery or Regional Water System capacity;
 - (C) the Pueblo or County Water Utility contracting for use of the unused capacity or water has the right to use the water under applicable law; and
 - (D) any agreement for the use of unused capacity or water provides for payment of the operation, maintenance, and replacement costs associated with the use of capacity or water.
- SEC. 105. AAMODT SETTLEMENT PUEBLOS' FUND.**
- (a) ESTABLISHMENT OF THE AAMODT SETTLEMENT PUEBLOS' FUND.—There is established in the Treasury of the United States a fund, to be known as the “Aamodt Settlement Pueblos' Fund,” consisting of—
 - (1) such amounts as are made available to the Fund under section 107(c) or other authorized sources; and
 - (2) any interest earned from investment of amounts in the Fund under subsection (b).
 - (b) MANAGEMENT OF THE FUND.—The Secretary shall manage the Fund, invest amounts in the Fund, and make amounts available from the Fund for distribution to the Pueblos in accordance with—
 - (1) the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4001 et seq.); and
 - (2) this Act.
 - (c) INVESTMENT OF THE FUND.—On the date set forth in section 203(a)(1), the Secretary shall invest amounts in the Fund in accordance with—
 - (1) the Act of April 1, 1880 (25 U.S.C. 161);
 - (2) the first section of the Act of June 24, 1938 (25 U.S.C. 162a); and
 - (3) the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4001 et seq.).
 - (d) TRIBAL MANAGEMENT PLAN.—
 - (1) IN GENERAL.—A Pueblo may withdraw all or part of the Pueblo's portion of the Fund on approval by the Secretary of a tribal management plan as described in the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4001 et seq.).

(2) **REQUIREMENTS.**—In addition to the requirements under the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4001 et seq.), the tribal management plan shall require that a Pueblo spend any amounts withdrawn from the Fund in accordance with the purposes described in section 107(c).

(3) **ENFORCEMENT.**—The Secretary may take judicial or administrative action to enforce the provisions of any tribal management plan to ensure that any amounts withdrawn from the Fund under an approved tribal management plan are used in accordance with this title.

(4) **LIABILITY.**—If a Pueblo or the Pueblos exercise the right to withdraw amounts from the Fund, neither the Secretary nor the Secretary of the Treasury shall retain any liability for the expenditure or investment of the amounts withdrawn.

(5) **EXPENDITURE PLAN.**—

(A) **IN GENERAL.**—The Pueblos shall submit to the Secretary for approval an expenditure plan for any portion of the amounts in the Fund that the Pueblos do not withdraw under this subsection.

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

(C) **APPROVAL.**—On receipt of an expenditure plan under subparagraph (A), the Secretary shall approve the plan if the Secretary determines that the plan is reasonable and consistent with this Act, the Settlement Agreement, and the Cost-Sharing and System Integration Agreement.

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

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

(7) **AVAILABILITY OF AMOUNTS FROM THE FUND.**—

(A) **APPROVAL OF SETTLEMENT AGREEMENT.**—Amounts made available under subparagraphs (A) and (C) of section 107(c)(1) or from other authorized sources shall be available for expenditure or withdrawal only after the date on which the United States District Court for the District of New Mexico issues an order approving the Settlement Agreement.

(B) **COMPLETION OF CERTAIN PORTIONS OF REGIONAL WATER SYSTEM.**—Amounts made available under section 107(c)(1)(B) or from other authorized sources shall be available for expenditure or withdrawal only after those portions of the Regional Water System described in section 1.5.24 of the Settlement Agreement have been declared substantially complete by the Secretary.

(C) **FAILURE TO FULFILL CONDITIONS PRECEDENT.**—If the conditions precedent in section 203 have not been fulfilled by September 15, 2017, the United States shall be entitled to set off any funds expended or withdrawn from the amounts appropriated pursuant to section 107(c), together with any interest accrued, against any claims asserted by the Pueblos against the United States relating to the water rights in the Pojoaque Basin.

SEC. 106. ENVIRONMENTAL COMPLIANCE.

(a) **IN GENERAL.**—In carrying out this title, the Secretary shall comply with each law of the Federal Government relating to the protection of the environment, including—

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

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

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

SEC. 107. AUTHORIZATION OF APPROPRIATIONS.

(a) **REGIONAL WATER SYSTEM.**—

(1) **IN GENERAL.**—Subject to paragraph (4), there is authorized to be appropriated to the Secretary for the planning, design, and construction of the Regional Water System and the conduct of environmental compliance activities under section 106 an amount not to exceed \$106,400,000, as adjusted under paragraph (3), for the period of fiscal years 2010 through 2022, to remain available until expended.

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

- (A) the construction of the San Ildefonso portion of the Regional Water System, consisting of—
- (i) the surface water diversion, treatment, and transmission facilities at San Ildefonso Pueblo; and
 - (ii) the San Ildefonso Pueblo portion of the Pueblo Water Facilities; and
- (B) that part of the Regional Water System providing 475 acre-feet to Pojoaque Pueblo pursuant to section 2.2 of the Settlement Agreement.
- (3) ADJUSTMENT.—The amount authorized under paragraph (1) shall be adjusted annually to account for increases in construction costs since October 1, 2006, as determined using applicable engineering cost indices.
- (4) LIMITATIONS.—
- (A) IN GENERAL.—No amounts shall be made available under paragraph (1) for the construction of the Regional Water System until the date on which the United States District Court for the District of New Mexico issues an order approving the Settlement Agreement.
 - (B) RECORD OF DECISION.—No amounts made available under paragraph (1) shall be expended unless the record of decision issued by the Secretary after completion of an environmental impact statement provides for a preferred alternative that is in substantial compliance with the proposed Regional Water System, as defined in the Engineering Report.
- (b) ACQUISITION OF WATER RIGHTS.—There is authorized to be appropriated to the Secretary funds for the acquisition of the water rights under section 103(a)(1)(B)—
- (1) in the amount of \$5,400,000.00 if such acquisition is completed by December 31, 2010; and
 - (2) the amount authorized under paragraph (b)(1) shall be adjusted according to the CPI Urban Index commencing January 1, 2011.
- (c) AAMODT SETTLEMENT PUEBLOS' FUND.—
- (1) IN GENERAL.—There is authorized to be appropriated to the Fund the following amounts for the period of fiscal years 2010 through 2022:
 - (A) \$15,000,000, which shall be allocated to the Pueblos, in accordance with section 2.7.1 of the Settlement Agreement, for the rehabilitation, improvement, operation, maintenance, and replacement of the agricultural delivery facilities, waste water systems, and other water-related infrastructure of the applicable Pueblo. The amount authorized herein shall be adjusted according to the CPI Urban Index commencing October 1, 2006.
 - (B) \$37,500,000, which shall be allocated to an account, to be established not later than January 1, 2016, to assist the Pueblos in paying the Pueblos' share of the cost of operating, maintaining, and replacing the Pueblo Water Facilities and the Regional Water System.
 - (C) \$5,000,000 and any interest thereon, which shall be allocated to the Pueblo of Nambe for the acquisition of the Nambe reserved water rights in accordance with section 103(a)(1)(A). The amount authorized herein shall be adjusted according to the CPI Urban Index commencing January 1, 2011. The funds provided under this section may be used by the Pueblo of Nambe only for the acquisition of land, other real property interests, or economic development.
 - (2) OPERATION, MAINTENANCE, AND REPLACEMENT COSTS.—
 - (A) IN GENERAL.—Prior to conveyance of the Regional Water System pursuant to section 101, the Secretary is authorized to and shall pay any operation, maintenance or replacement costs associated with the Pueblo Water Facilities or the Regional Water System up to an amount that does not exceed \$5,000,000, which is authorized to be appropriated to the Secretary.
 - (B) OBLIGATION OF FEDERAL GOVERNMENT AFTER COMPLETION.—The amount authorized under subparagraph (A) shall expire after the date on which construction of the Regional Water System is completed and the amounts required to be deposited in the account have been deposited under this section by the Federal Government.

TITLE II—POJOAQUE BASIN INDIAN WATER RIGHTS SETTLEMENT

SEC. 201. SETTLEMENT AGREEMENT AND CONTRACT APPROVAL.

(a) APPROVAL.—To the extent the Settlement Agreement and the Cost-Sharing and System Integration Agreement do not conflict with this Act, the Settlement Agreement and the Cost-Sharing and System Integration Agreement (including any amendments to the Settlement Agreement and the Cost-Sharing and System Integration Agreement that are executed to make the Settlement Agreement or the Cost-Sharing and System Integration Agreement consistent with this Act) are authorized, ratified, and confirmed.

(b) EXECUTION.—To the extent the Settlement Agreement and the Cost-Sharing and System Integration Agreement do not conflict with this Act, the Secretary shall execute the Settlement Agreement and the Cost-Sharing and System Integration Agreement (including any amendments that are necessary to make the Settlement Agreement or the Cost-Sharing and System Integration Agreement consistent with this Act).

(c) AUTHORITIES OF THE PUEBLOS.—

(1) IN GENERAL.—Each of the Pueblos may enter into contracts to lease or exchange water rights or to forbear undertaking new or expanded water uses for water rights recognized in section 2.1 of the Settlement Agreement for use within the Pojoaque Basin in accordance with the other limitations of section 2.1.5 of the Settlement Agreement provided that section 2.1.5 is amended accordingly.

(2) EXECUTION.—The Secretary shall not execute the Settlement Agreement until such amendment is accomplished under paragraph (1).

(3) APPROVAL BY SECRETARY.—Consistent with the Settlement Agreement as amended under paragraph (1), the Secretary shall approve or disapprove a lease entered into under paragraph (1).

(4) PROHIBITION ON PERMANENT ALIENATION.—No lease or contract under paragraph (1) shall be for a term exceeding 99 years, nor shall any such lease or contract provide for permanent alienation of any portion of the water rights made available to the Pueblos under the Settlement Agreement.

(5) APPLICABLE LAW.—Section 2116 of the Revised Statutes (25 U.S.C. 177) shall not apply to any lease or contract entered into under paragraph (1).

(6) LEASING OR MARKETING OF WATER SUPPLY.—The water supply provided on behalf of the Pueblos pursuant to section 103(a)(1) may only be leased or marketed by any of the Pueblos pursuant to the intergovernmental agreements described in section 104(c)(2).

(d) AMENDMENTS TO CONTRACTS.—The Secretary shall amend the contracts relating to the Nambe Falls Dam and Reservoir that are necessary to use water supplied from the Nambe Falls Dam and Reservoir in accordance with the Settlement Agreement.

SEC. 202. ENVIRONMENTAL COMPLIANCE.

(a) EFFECT OF EXECUTION OF SETTLEMENT AGREEMENT.—The execution of the Settlement Agreement under section 201(b) shall not constitute a major Federal action under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

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

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

SEC. 203. CONDITIONS PRECEDENT AND ENFORCEMENT DATE.

(a) CONDITIONS PRECEDENT.—

(1) IN GENERAL.—Upon the fulfillment of the conditions precedent described in paragraph (2), the Secretary shall publish in the Federal Register by September 15, 2017, a statement of finding that the conditions have been fulfilled.

(2) REQUIREMENTS.—The conditions precedent referred to in paragraph (1) are the conditions that—

(A) to the extent that the Settlement Agreement conflicts with this title, the Settlement Agreement has been revised to conform with this title;

(B) the Settlement Agreement, so revised, including waivers and releases pursuant to section 204, has been executed by the appropriate parties and the Secretary;

(C) Congress has fully appropriated, or the Secretary has provided from other authorized sources, all funds authorized by section 107, with the exception of subsection (a)(1) of that section, by December 15, 2016;

(D) the Secretary has acquired and entered into appropriate contracts for the water rights described in section 103(a);

(E) for purposes of section 103(a), permits have been issued by the New Mexico State Engineer to the Regional Water Authority to change the points of diversion to the mainstem of the Rio Grande for the diversion and consumptive use of at least 2,381 acre-feet by the Pueblos as part of the water supply for the Regional Water System, subject to the conditions that—

- (i) the permits shall be free of any condition that materially adversely affects the ability of the Pueblos or the Regional Water Authority to divert or use the Pueblo water supply described in section 103(a), includ-

ing water rights acquired in addition to those described in section 103(a), in accordance with section 103(g); and

(ii) the Settlement Agreement shall establish the means to address any permit conditions to ensure the ability of the Pueblos to fully divert and consume at least 2,381 acre-feet as part of the water supply for the Regional Water System, including defining the conditions that will not constitute a material adverse affect;

(F) the State has enacted any necessary legislation and provided any funding that may be required under the Settlement Agreement;

(G) a partial final decree that sets forth the water rights and other rights to water to which the Pueblos are entitled under the Settlement Agreement and this title and that substantially conforms to the Settlement Agreement has been approved by the United States District Court for the District of New Mexico; and

(H) a final decree that sets forth the water rights for all parties to the Aamodt Case and that substantially conforms to the Settlement Agreement has been approved by the United States District Court for the District of New Mexico by June 15, 2017.

(b) EXPIRATION DATE.—If all the conditions precedent described in subsection (a)(2) have not been fulfilled by September 15, 2017—

(1) the Settlement Agreement and this Act including waivers described in those documents shall no longer be effective; and

(2) any funds that have been appropriated under this Act but not expended shall immediately revert to the general fund of the United States Treasury.

(c) ENFORCEMENT DATE.—The Settlement Agreement shall become enforceable as of the date that the United States District Court for the District of New Mexico enters a partial final decree pursuant to subsection (a)(2)(E) and an Interim Administrative Order consistent with the Settlement Agreement.

(d) EFFECTIVENESS OF WAIVERS.—The waivers and releases executed pursuant to section 204 shall become effective as of the date that the Secretary publishes the notice required by subsection (a)(1).

(e) REQUIREMENTS FOR DETERMINATION OF SUBSTANTIAL COMPLETION OF THE REGIONAL WATER SYSTEM.—

(1) CRITERIA FOR SUBSTANTIAL COMPLETION OF REGIONAL WATER SYSTEM.—Subject to the provisions in section 101(d) concerning the extent, size, and capacity of the County Distribution System, the Regional Water System shall be determined to be substantially completed if the infrastructure has been constructed capable of—

(A) diverting, treating, transmitting, and distributing a supply of 2,500 acre-feet of water to the Pueblos; and

(B) diverting, treating, and transmitting the quantity of water specified in the Engineering Report to the County Distribution System.

(2) CONSULTATION.—On or after June 30, 2021, at the request of 1 or more of the Pueblos, the Secretary shall consult with the Pueblos and confer with the County and the State on whether the criteria in paragraph (1) for substantial completion of the Regional Water System have been met or will be met by June 30, 2024.

(3) WRITTEN DETERMINATION BY SECRETARY.—Not earlier than June 30, 2021, at the request of 1 or more of the Pueblos and after the consultation required by paragraph (2), the Secretary shall—

(A) determine whether the Regional Water System has been substantially completed based on the criteria described in paragraph (1); and

(B) submit a written notice of the determination under subparagraph (A) to—

- (i) the Pueblos;
- (ii) the County; and
- (iii) the State.

(4) RIGHT TO REVIEW.—

(A) IN GENERAL.—A determination by the Secretary under paragraph (3)(A) shall be considered to be a final agency action subject to judicial review by the Decree Court under sections 701 through 706 of title 5, United States Code.

(B) FAILURE TO MAKE TIMELY DETERMINATION.—

(i) IN GENERAL.—If a Pueblo requests a written determination under paragraph (3) and the Secretary fails to make such a written determination by the date described in clause (ii), there shall be a rebuttable presumption that the failure constitutes agency action unlawfully withheld or unreasonably delayed under section 706 of title 5, United States Code.

(ii) DATE.—The date referred to in clause (i) is the date that is the later of—

(I) the date that is 180 days after the date of receipt by the Secretary of the request by the Pueblo; and

(II) June 30, 2023.

(C) EFFECT OF ACT.—Nothing in this Act gives any Pueblo or Settlement Party the right to judicial review of a determination of the Secretary regarding whether the Regional Water System has been substantially completed except under subchapter II of chapter 5, and chapter 7, of title 5, United States Code (commonly known as the “Administrative Procedure Act”).

(5) RIGHT TO VOID FINAL DECREE.—

(A) IN GENERAL.—Not later than June 30, 2024, on a determination by the Secretary, after consultation with the Pueblos, that the Regional Water System is not substantially complete, 1 or more of the Pueblos, or the United States acting on behalf of a Pueblo, shall have the right to notify the Decree Court of the determination.

(B) EFFECT.—The Final Decree shall have no force or effect on a finding by the Decree Court that a Pueblo, or the United States acting on behalf of a Pueblo, has submitted proper notification under subparagraph (A).

(f) VOIDING OF WAIVERS.—If the Final Decree is void under subsection (e)(5)—

(1) the Settlement Agreement shall no longer be effective;

(2) the waivers and releases executed pursuant to section 204 shall no longer be effective; and

(3) any unexpended Federal funds, together with any interest earned on those funds, and title to any property acquired or constructed with expended Federal funds shall be returned to the Federal Government, unless otherwise agreed to by the Pueblos and the United States and approved by Congress.

SEC. 204. WAIVERS AND RELEASES.

(a) CLAIMS BY THE PUEBLOS AND THE UNITED STATES.—In return for recognition of the Pueblos’ water rights and other benefits, including waivers and releases by non-Pueblo parties, as set forth in the Settlement Agreement and this Act, the Pueblos, on behalf of themselves and their members, and the United States acting in its capacity as trustee for the Pueblos are authorized to execute a waiver and release of—

(1) all claims for water rights in the Pojoaque Basin that the Pueblos, or the United States acting in its capacity as trustee for the Pueblos, asserted, or could have asserted, in any proceeding, including the Aamodt Case, up to and including the waiver effectiveness date identified in section 203(d), except to the extent that such rights are recognized in the Settlement Agreement or this Act;

(2) all claims for water rights for lands in the Pojoaque Basin and for rights to use water in the Pojoaque Basin that the Pueblos, or the United States acting in its capacity as trustee for the Pueblos, might be able to otherwise assert in any proceeding not initiated on or before the date of enactment of this title, except to the extent that such rights are recognized in the Settlement Agreement or this Act;

(3) all claims for damages, losses or injuries to water rights or claims of interference with, diversion or taking of water (including claims for injury to land resulting from such damages, losses, injuries, interference with, diversion, or taking) for land within the Pojoaque Basin that accrued at any time up to and including the waiver effectiveness date identified in section 203(d);

(4) their defenses in the Aamodt Case to the claims previously asserted therein by other parties to the Settlement Agreement;

(5) all pending and future inter se challenges to the quantification and priority of water rights of non-Pueblo wells in the Pojoaque Basin, except as provided by section 2.8 of the Settlement Agreement;

(6) all pending and future inter se challenges against other parties to the Settlement Agreement;

(7) all claims for damages, losses, or injuries to water rights or claims of interference with, diversion or taking of water (including claims for injury to land resulting from such damages, losses, injuries, interference with, diversion, or taking of water) attributable to City of Santa Fe pumping of groundwater that has effects on the ground and surface water supplies of the Pojoaque Basin, provided that this waiver shall not be effective by the Pueblo of Tesuque unless there is a water resources agreement executed between the Pueblo of Tesuque and the City of Santa Fe; and

(8) all claims for damages, losses, or injuries to water rights or claims of interference with, diversion or taking of water (including claims for injury to land

resulting from such damages, losses, injuries, interference with, diversion, or taking of water) attributable to County of Santa Fe pumping of groundwater that has effects on the ground and surface water supplies of the Pojoaque Basin.

(b) CLAIMS BY THE PUEBLOS AGAINST THE UNITED STATES.—The Pueblos, on behalf of themselves and their members, are authorized to execute a waiver and release of—

(1) all claims against the United States, its agencies, or employees, relating to claims for water rights in or water of the Pojoaque Basin or for rights to use water in the Pojoaque Basin that the United States acting in its capacity as trustee for the Pueblos asserted, or could have asserted, in any proceeding, including the Aamodt Case;

(2) all claims against the United States, its agencies, or employees relating to damages, losses, or injuries to water, water rights, land, or natural resources due to loss of water or water rights (including damages, losses or injuries to hunting, fishing, gathering or cultural rights due to loss of water or water rights; claims relating to interference with, diversion or taking of water or water rights; or claims relating to failure to protect, acquire, replace, or develop water, water rights or water infrastructure) within the Pojoaque Basin that first accrued at any time up to and including the waiver effectiveness date identified in section 203(d);

(3) all claims against the United States, its agencies, or employees for an accounting of funds appropriated by Acts, including the Act of December 22, 1927 (45 Stat. 2), the Act of March 4, 1929 (45 Stat. 1562), the Act of March 26, 1930 (46 Stat. 90), the Act of February 14, 1931 (46 Stat. 1115), the Act of March 4, 1931 (46 Stat. 1552), the Act of July 1, 1932 (47 Stat. 525), the Act of June 22, 1936 (49 Stat. 1757), the Act of August 9, 1937 (50 Stat. 564), and the Act of May 9, 1938 (52 Stat. 291), as authorized by the Pueblo Lands Act of June 7, 1924 (43 Stat. 636), and the Pueblo Lands Act of May 31, 1933 (48 Stat. 108), and for breach of Trust relating to funds for water replacement appropriated by said Acts that first accrued before the date of enactment of this Act;

(4) all claims against the United States, its agencies, or employees relating to the pending litigation of claims relating to the Pueblos' water rights in the Aamodt Case; and

(5) all claims against the United States, its agencies, or employees relating to the negotiation, Execution or the adoption of the Settlement Agreement, exhibits thereto, the Partial Final Decree, the Final Decree, or this Act.

(c) RESERVATION OF RIGHTS AND RETENTION OF CLAIMS.—Notwithstanding the waivers and releases authorized in this Act, the Pueblos on behalf of themselves and their members and the United States acting in its capacity as trustee for the Pueblos retain.—

(1) all claims for enforcement of the Settlement Agreement, the Cost-Sharing and System Integration Agreement, the Final Decree, including the Partial Final Decree, the San Juan-Chama Project contract between the Pueblos and the United States or this Act;

(2) all rights to use and protect water rights acquired after the date of enactment of this Act;

(3) all rights to use and protect water rights acquired pursuant to state law to the extent not inconsistent with the Partial Final Decree, Final Decree, and the Settlement Agreement;

(4) all claims against persons other than Parties to the Settlement Agreement for damages, losses or injuries to water rights or claims of interference with, diversion or taking of water (including claims for injury to lands resulting from such damages, losses, injuries, interference with, diversion, or taking of water) within the Pojoaque Basin arising out of activities occurring outside the Pojoaque Basin;

(5) all claims relating to activities affecting the quality of water including any claims the Pueblos may have under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) (including claims for damages to natural resources), the Safe Drinking Water Act (42 U.S.C. 300f et seq.), the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), and the regulations implementing those laws;

(6) all claims against the United States relating to damages, losses, or injuries to land or natural resources not due to loss of water or water rights (including hunting, fishing, gathering or cultural rights);

(7) all claims for water rights from water sources outside the Pojoaque Basin for land outside the Pojoaque Basin owned by a Pueblo or held by the United States for the benefit of any of the Pueblos; and

(8) all rights, remedies, privileges, immunities, powers and claims not specifically waived and released pursuant to this Act or the Settlement Agreement.

- (d) EFFECT OF SECTION.—Nothing in the Settlement Agreement or this Act—
- (1) affects the ability of the United States acting in its sovereign capacity to take actions authorized by law, including any laws relating to health, safety, or the environment, including the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.), the Safe Drinking Water Act (42 U.S.C. 300f et seq.), the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.), and the regulations implementing those laws;
 - (2) affects the ability of the United States to take actions acting in its capacity as trustee for any other Indian tribe or allottee; or
 - (3) confers jurisdiction on any State court to—
 - (A) interpret Federal law regarding health, safety, or the environment or determine the duties of the United States or other parties pursuant to such Federal law; or
 - (B) conduct judicial review of Federal agency action;
- (e) TOLLING OF CLAIMS.—
- (1) IN GENERAL.—Each applicable period of limitation and time-based equitable defense relating to a claim described in this section shall be tolled for the period beginning on the date of enactment of this Act and ending on June 30, 2021.
 - (2) EFFECT OF SUBPARAGRAPH.—Nothing in this subsection revives any claim or tolls any period of limitation or time-based equitable defense that expired before the date of enactment of this Act.
 - (3) LIMITATION.—Nothing in this section precludes the tolling of any period of limitations or any time-based equitable defense under any other applicable law.

SEC. 205. EFFECT.

Nothing in this Act or the Settlement Agreement affects the land and water rights, claims, or entitlements to water of any Indian tribe, pueblo, or community other than the Pueblos.

PURPOSE OF THE BILL

The purpose of H.R. 3342 is 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, and Tesuque.

BACKGROUND AND NEED FOR LEGISLATION

The Aamodt water rights claims litigation (*State of New Mexico, ex rel. State Engineer v. Aamodt*, No. 66 CV 6639 (D.N.M.)) was filed in 1966, making it 43 years old in 2009. The litigation involves more than 2,500 defendants. A comprehensive Settlement Agreement was signed by the State of New Mexico and affected parties in May 2006. The Settlement Agreement preserves and respects existing non-Pueblo water uses while acknowledging that the Pueblos have a historic water right that pre-dates non-pueblo water rights. The core of the agreement incorporates the Pueblos' commitment to abstain from making water priority calls against non-Pueblo users provided that the non-Pueblo users agree to specific options outlined in the Settlement Agreement. These commitments, by both the pueblo and non-pueblo entities, resulted from extensive negotiations and discussions. Independently and concurrently, the Federal Indian Water Settlement Team negotiated the technical aspects of the Settlement Agreement.

The Nambe, Pojoaque, San Ildefonso and Tesuque Pueblos ("Four Pueblos") are located in the Pojoaque River Basin ("Basin"), a tributary of the Rio Grande in northern New Mexico. The Basin is largely rural and agricultural, although residential development is increasing. Sources of employment include the Los Alamos Na-

tional Laboratory, businesses in the City of Santa Fe, and increasingly the Pueblos or their commercial enterprises. The Pueblo of Pojoaque is the commercial hub of the Basin and commercial development along the major highway in the Basin is growing.

H.R. 3342 would ratify the Settlement Agreement and authorize the Secretary of the Interior, acting through the Bureau of Reclamation, to plan, design and construct a Regional Water System that would divert and distribute water to the Four Pueblos and to the Santa Fe County Water Utility. The Regional Water System would be the benefit of the County's non-pueblo and pueblo residents. The Pueblos and Santa Fe County would jointly operate the Regional Water System through the formation of a Regional Water Authority. The Regional Water System would provide 60 percent of its capacity and water to the Four Pueblos, with the remaining 40 percent of the water and capacity provided to and maintained by the Santa Fe County Water Utility.

The Settlement Agreement quantifies the water rights for the Four Pueblos, summarized in Table One, below. The Settlement Agreement requires the United States to provide 2,500 acre-feet per year (AFY) of imported water for Pueblo use through the System.

TABLE ONE: QUANTIFICATION SUMMARY OF PUEBLO WATER RIGHTS

Water Rights (AFY)	Pojoaque	Nambe	San Ildefonso	Tesuque
First priority rights	236	1,459	1,246	719
Reserved water	0	302	482	0
Total	1,217.25	2,267	1,757.07	1,225.25

COMMITTEE ACTION

H.R. 3342 was introduced on July 24, 2009 by Representative Ben Ray Lujan (D-NM). The bill was referred to the Committee on Natural Resources, and within the Committee to the Subcommittee on Water and Power. On September 9, 2009, the Subcommittee held a legislative hearing on the bill.

On September 30, 2009, the Subcommittee was discharged from the further consideration of H.R. 3342 and the full Natural Resources Committee met to consider the bill. Subcommittee Chair Grace F. Napolitano (D-CA) offered an amendment in the nature of a substitute that in large part responded to concerns raised by the Department of the Interior and that addressed a majority of the Administration's concerns, including language limiting total construction costs. The amendment in the nature of a substitute was adopted by voice vote. The bill, as amended, was then ordered favorably reported to the House of Representatives by voice vote.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title; table of contents

Section 1 provides that this Act may be cited as the "Aamodt Litigation Settlement Act," and provides the table of contents.

Section 2. Definitions

Section 2 provides definitions for terms used in the Act.

TITLE I—THE POJOAQUE BASIN REGIONAL WATER SYSTEM

Section 101. Authorization of regional water system

Subsection 101(a) authorizes the Secretary of the Interior, acting through the Commissioner of Reclamation, to assist in the planning, design, and construction of the Regional Water System. Subsection 101(a) also describes the Regional Water System components and construction requirements.

Subsection 101(b) directs the Secretary to issue a final project design with conditions, within 90 days of completion of the environmental compliance described in Section 106. This final project design must be consistent with the engineering report as defined in this Act (“Engineering Report”) and include a description of any Pueblo Water Facilities.

Subsection 101(c) requires the Four Pueblos to consent to any easements or rights-of-way that are necessary for the construction of the Regional Water System at no cost to the United States. Section 101(c)(1) also requires the State of New Mexico (“the State”) or Santa Fe County to provide easements or rights-of-way for the construction of the Regional Water System at no cost to the United States. To the extent that additional lands or interests in land are necessary for the construction of the Regional Water System, section 101(c)(1) requires the Secretary to acquire those lands or interests in land. Section 101(c)(2) prohibits the Secretary from condemning water rights for the purpose of the Regional Water System.

Subsection 101(d) lists the conditions necessary to begin construction.

Subsection 101(e) provides that the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) does not apply to the design and construction of the Regional Water System.

Subsection 101(f) provides that expenditures by the Secretary to construct the Pueblos Water Facilities shall not exceed \$106.4 million, indexed to October 1, 2006 dollars. The costs of construction of the Pueblo Water Facilities shall not be reimbursable to the United States. The subsection further provides that the costs of constructing the Santa Fe County Distribution System shall be at state and local expense.

Subsection 101(g) provides that state and local capital obligations will be satisfied on payment of the state and local capital obligations as described in the Cost Sharing and System Integration Agreement.

Subsection 101(h) provides that, once constructed, the Secretary will convey to each Pueblo that portion of the Pueblo Water Facility that is located within the boundaries of that Pueblo, and will convey to the County the County Distribution System, once conditions are met for conveyance. This subsection also describes the liability of the United States upon conveyance of the facilities.

Section 102. Operating agreement

Section 102 requires the Pueblos and the County to submit to the Secretary an executed Operating Agreement for the Regional Water System with the contents listed in this section, no later than 180 days after the date of completion of environmental compliance and permitting or the date of the issuance of a final project design.

The Secretary must approve the Operating Agreement no later than 180 days of receipt if the Secretary determines that the Operating Agreement is consistent with this Act and associated agreements. This section further provides that the Operating Agreement can be authorized in phases if the Regional Water System is constructed in phases.

Section 103. Acquisition of Pueblo water supply for the regional water system

Subsection 103(a) directs the Secretary to acquire water rights to 302 acre-feet of Nambe reserved water and 1141 acre-feet from water acquired by the County for water rights commonly referred to as “Top of the World” rights in the *New Mexico v. Aamodt* case. This subsection also directs the Secretary to make available 1079 acre-feet to the Four Pueblos pursuant to a contract entered into by the Four Pueblos and the Secretary in accordance with section 11 of the San Juan-Chama Project Act (P.L. 87-483), involving water rights held by the Secretary; and by applying to the New Mexico State Engineer, obtain approval to divert the water acquired and made available at the points of diversion for the Regional Water System, consistent with the Settlement Agreement and the Cost-Sharing and System Integration Agreements.

Subsection 103(b) provides that the non-use of the water supply secured by the Secretary for the Four Pueblos under subsection 103(a) will not result in forfeiture, abandonment, relinquishment, or other loss.

Subsection 103(c) directs the United States to hold the water rights secured under subsection 103(a) in trust for the Four Pueblos.

Subsection 103(d) provides that the water made available pursuant to subsection 103(a)(2) must comply with the San Juan-Chama Project Act, and provides that no preference will be given to the Pueblos in delivery or distribution of San Juan-Chama water or in the management or operation and maintenance of the San Juan-Chama Project.

Subsection 103(e) lists certain terms to which the contracted San Juan-Chama water will be subject.

Subsection 103(f) states that the San Juan-Chama water secured for the Four Pueblos under subsection 103(a) is only to be used for the purposes in Settlement Agreement.

Subsection 103(g) provides that compliance with subsections 103(a) through (f) shall satisfy the Secretary’s obligation to acquire and secure a water supply for the Four Pueblos, pursuant to the Settlement Agreement.

Subsection 103(h) authorizes the Four Pueblos, Santa Fe County, or the Regional Water Authority to acquire more water rights, consistent with the Act and Settlement Agreement. It further provides that nothing in this Act amends or modifies the Pueblos’ water rights as quantified in the Settlement Agreement.

Section 104. Delivery and allocation of Regional Water System capacity and water

Subsection 104(a) provides that the Regional Water System shall have the capacity to divert up to 4,000 acre-feet of consumptive use of water, as well as water as well as the requisite peaking capacity

described in the Engineering Report and the final project design. This subsection also allocates sufficient capacity to convey up to 2,500 acre-feet of consumptive use of water to the Four Pueblos and 1,500 acre-feet of consumptive use of water capacity to convey to the County Water Utility. Water allocated to the Pueblos and the County under this subsection must be in accordance to this title, the Settlement Agreement and Operating Agreement.

Subsection 104(b) directs the Regional Water Authority to deliver 2,500 acre-feet of water from the Regional Water System to the Four Pueblos and 1,500 acre-feet of water to the County. Water allocated to the Pueblo and the County under this subsection must be in accordance to this title, the Settlement Agreement and the Operating Agreement.

Subsection 104(c) authorizes the Regional Water System to be used to provide for the use of return flow credits to allow for a full consumptive use of the allocated water and to convey water allocated to one of the Pueblos or the County Utility for the benefit of another Pueblo or the County Water Utility. This subsection also authorizes the use of unused capacity of the Regional Water System between the Pueblos or a Pueblo and the County Water Utility, with conditions.

Section 105. Aamodt Settlement Pueblos' Fund

Subsection 105(a) establishes in the Treasury of the United States the "Aamodt Settlement Pueblos' Fund" consisting of funds made available under section 107(c) and any interest earned from investment of amounts in the Fund.

Subsections 105(b) and 105(c) directs the Secretary of the Interior to manage and invest the amounts in the Fund.

Subsection 105(d) requires the Four Pueblos to submit to the Secretary for approval a tribal management plan outlining the proposed uses of the Fund. The Secretary of the Interior may take judicial or administrative action to ensure that any funds withdrawn under the approved tribal management plan are used in accordance with this Title. This subsection also provides that if a Pueblo or Pueblos opt to withdraw and manage all or part of the Fund's proceeds, neither the Secretary of the Interior nor the Secretary of the Treasury will be liable for the withdrawal or expenditure of the amounts withdrawn.

Subsection 105(d) also requires the Four Pueblos to submit to the Secretary for approval an expenditure plan that would describe how portions of the Fund that are not withdrawn will be used. The Pueblos must submit an annual report that describes the expenditures from the Fund. Subsection 105(d)(6) prohibits amounts in the Fund from being distributed to any member of a Pueblo on a per capita basis. The United States is further entitled under this subsection to set off any funds expended or withdrawn from the amounts appropriated and with any interest accrued if the conditions listed in section 203 are not met by September 15, 2017.

Section 106. Environmental compliance

Section 106 directs the Secretary to comply with any and all environmental activities required by federal law including the National Environmental Policy Act of 1969 and the Endangered Species Act of 1973. The section further provides that nothing in this

Act affects the outcome of any analysis conducted by the Secretary or any other federal official under the National Environmental Policy Act of 1969.

Section 107. Authorization of appropriations

Subsection 107(a) authorizes to be appropriated to the Secretary for the planning, design, and construction of the Regional Water System and environmental compliance activities a total of \$106,400,000 between Fiscal Years 2010 and 2022, as adjusted to account for increases in construction costs since October 1, 2007 as determined using applicable engineering cost indices. This section also establishes priorities for the use of these authorized funds, and provides that this funding shall not be available for construction unless the record of decision issued by the Secretary after completion of an environmental impact statement provides for a preferred alternative that is in substantial compliance with the proposed Regional Water System as defined in the Engineering Report.

Subsection 107(b) authorizes to be appropriated \$5,400,000 to the Secretary for the acquisition of water rights pursuant to section 103(a)(1)(B), adjusted according to the CPI Urban Index starting on January 1, 2011.

Subsection 107(c) authorizes to be appropriated \$15,000,000 for the rehabilitation, improvement, operation, maintenance, and replacement of the agricultural delivery facilities, waste water systems, and other water-related infrastructure of the applicable Pueblo; \$37,500,000 to assist the Pueblos in paying the Pueblos' share of the costs of operating, maintaining, and replacing the Pueblo Water Facilities and the Regional Water System; and \$5,000,000 to the Pueblo of Nambe for the acquisition of Nambe reserved water rights pursuant to section 103(a)(1)(A). This section further provides that the Secretary is authorized to and shall pay any operation, maintenance or replacement costs associated with the Pueblo Water Facilities or the Regional Water System up to an amount that does not exceed \$5,000,000, which is authorized to be appropriated to the Secretary.

TITLE II—POJOAQUE BASIN INDIAN WATER RIGHTS
SETTLEMENT

Section 201. Settlement Agreement and contract approval

Subsection 201(a) authorizes, ratifies, and confirms the Settlement Agreement and the Cost-Sharing and System Integration Agreement, including any amendments necessary to make the Settlement Agreement and the Cost-Sharing and System Integration Agreement consistent with this Act.

Subsection 201(b) directs the Secretary to execute the Settlement Agreement and the Cost-Sharing and System Integration Agreement, including any amendments necessary to make the Settlement Agreement and the Cost-Sharing System Integration Agreement consistent with this Act.

Subsection 201(c) provides the conditions under which the Pueblos may enter into contracts to lease or exchange water or to forbear undertaking new or expanded water uses for water rights.

Subsection 201(d) directs the Secretary to amend the contracts relating to the Nambe Falls Dam and Reservoir in accordance with the Settlement Agreement.

Section 202. Environmental compliance

Section 202 provides that the Secretarial execution of the Settlement Agreement does not constitute a “major Federal action” under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), and directs the Secretary to comply with any and all environmental activities required by federal law including the National Environmental Policy Act of 1969 and the Endangered Species Act of 1973.

Section 203. Conditions precedent and enforcement date

Subsection 203(a) provides the conditions precedent and requires the Secretary to publish in the Federal Register a statement of finding that the conditions have been met by September 15, 2017, once the listed conditions are, in fact, satisfied.

Subsections 203(b) and (f) provide that the agreement will be no longer effective, including waivers, if the conditions precedent listed in subsection 203(a) are not fulfilled by September 15, 2017, with certain exceptions. Funds appropriated under this Act but not expended will return immediately to the general fund of the United States Treasury.

Subsection 203(c) provides that the Settlement Agreement shall become enforceable on the date that the United States District Court for the District of New Mexico enters a partial final decree and an Interim Administrative Order consistent with the Settlement Agreement.

Subsection 203(d) provides that the waivers and releases executed pursuant to Section 204 will become effective on the date the Secretary publishes the notice in the Federal Register that the conditions precedent have been met.

Subsection 203(e) provides criteria to determine whether the Regional Water System has been substantially completed, as follows: the infrastructure is substantially complete and has been constructed sufficiently to be capable of (A) diverting, treating, transmitting, and distributing a supply of 2,500 acre-feet of water to the Pueblos; and (B) diverting, treating, and transmitting the quantity of water specified in the Engineering Report to the County Distribution System. This subsection also establishes a process under which the Pueblos retain the right to withdraw the waivers authorized under the settlement and trigger nullification of the entire settlement if the system is not substantially complete by June 30, 2021. Under this process, the Secretary of the Interior, subject to review under the Administrative Procedure Act, determines whether the system is substantially complete.

Section 204. Waivers and releases

Section 204 requires the Pueblos to execute a waiver and release of: all past, present or future claims to surface and groundwater rights the Pueblos, or the U.S. on behalf of the Pueblos, could have asserted in the Aamodt case; all past, present or future claims for damages, losses, or injuries to water rights or claims of interference with, diversion, or taking of water for lands within the Pojoaque

Basin that could have been asserted in the Aamodt case; their defenses in the Aamodt case to claims previously asserted by other parties in the Aamodt case; and, all pending and future *inter se* challenges against other parties to the Settlement Agreement.

Section 204 also requires the Pueblos to execute similar waivers and releases of: (1) all causes of action against the U.S. arising out of past, present, or future claims for water rights that were asserted or could have been by the United States in the Aamodt case; (2) all past, present or future claims for damages, losses, or injuries to water, water rights, lands or natural resources due to the loss of water and water rights within the Pojoaque Basin that could have been asserted by the Pueblos against the United States in the Aamodt case; (3) all claims against the U.S. for an accounting of funds appropriated by various Acts; and (4) all claims arising out of the negotiation or adoption of the Settlement Agreement that the Pueblos may have against the United States.

Section 204 further provides that notwithstanding the above waivers and releases, the Pueblos and the United States retain claims regarding water rights outside the Pojoaque Basin; all claims for the enforcement of the Settlement Agreement, the Final Decree or Act; all rights to use and protect water rights acquired pursuant to state law to the extent not inconsistent with the Settlement Agreement, the Partial Final Decree or the Final Decree; and all rights, remedies, privileges, immunities, powers, and claims not specifically waived and released pursuant to the Settlement Agreement or this Act.

Section 204 also provides that applicable statutes of limitation will be tolled from the date of enactment of Act and end on the date of enforcement. It also provides that nothing in section 204 revives any claims or tolls any period of limitation that expired before the enactment of this Act.

Section 205. Effect

Section 205 states that nothing in this Act or the Settlement Agreement affects any land or water rights claims or entitlements to water of any Indian tribe, pueblo, band or community other than the Pueblos of Nambe, Pojoaque, San Ildefonso, and Tesuque.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

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

CONSTITUTIONAL AUTHORITY STATEMENT

Article I, section 8 of the Constitution of the United States grants Congress the authority to enact this bill.

COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out this bill. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has in-

cluded in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974.

2. Congressional Budget Act. As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this bill does not contain any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

3. General Performance Goals and Objectives. As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill is to 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, and Tesuque.

4. Congressional Budget Office Cost Estimate. Under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of the Congressional Budget Office:

H.R. 3342—Aamodt Litigation Settlement Act

Summary: H.R. 3342 would approve and ratify a settlement agreement between four Pueblos and the state of New Mexico. The agreement would settle the Pueblos' claims to water rights in the state. As part of the settlement agreement, the bill would authorize the appropriation of funds to construct a regional water system in the Rio Grande River Basin. The bill also would create a trust fund for the Pueblos to maintain that system. In addition, the bill would authorize appropriations for the Department of the Interior (DOI) to operate and maintain certain portions of the system until they are conveyed to the Pueblos. Finally, the bill would authorize appropriations for the Secretary of the Interior to acquire certain water rights on behalf of the Pueblos.

Based on information from DOI and assuming appropriation of the authorized and necessary amounts, CBO estimates that implementing H.R. 3342 would cost \$71 million over the 2010–2014 period and \$128 million after 2014. Enacting H.R. 3342 would not affect direct spending or revenues.

H.R. 3342 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

If the Secretary of the Interior acquires property through eminent domain in order to construct the regional water system under the Aamodt litigation settlement, H.R. 3342 would impose a private-sector mandate as defined in UMRA. Based on information from DOI, CBO expects that the Secretary would use that authority sparingly and that the cost of the mandate, if imposed, would fall well below the annual threshold established in UMRA for private-sector mandates (\$139 million in 2009, adjusted annually for inflation).

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 3342 is shown in the following table. The costs of this legislation fall within budget functions 300 (natural re-

sources and environment) and 450 (community and regional development).

	By fiscal year, in millions of dollars—					
	2010	2011	2012	2013	2014	2010–2014
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
Regional Water System:						
Estimated Authorization Level	0	0	10	25	35	70
Estimated Outlays	0	0	6	18	29	53
Settlement Trust Fund:						
Estimated Authorization Level	0	0	3	3	4	10
Estimated Outlays	0	0	3	3	4	10
DOI Operation and Maintenance Costs:						
Estimated Authorization Level	0	0	1	1	1	3
Estimated Outlays	0	0	1	1	1	3
Water Rights:						
Authorization Level	5	0	0	0	0	5
Estimated Outlays	2	2	1	0	0	5
Total Changes:						
Estimated Authorization Level	5	0	14	29	40	88
Estimated Outlays	2	2	11	22	34	71

Note: DOI = Department of the Interior.

Basis of estimate: For this estimate, CBO assumes that H.R. 3342 will be enacted early in fiscal year 2010 and that the necessary amounts will be appropriated for each year. Enforcement of the settlement agreement depends on the completion of a number of actions by federal, state, local, and tribal governments. Based on information from DOI, CBO expects that those actions will be completed by fiscal year 2017. Cost estimates for the authorized water projects are based on information from DOI and on historical spending patterns for similar activities.

In 2006, four Pueblos in New Mexico (Nambe, Pojoaque, San Ildefonso, and Tesuque) and the city and county of Santa Fe, New Mexico, signed a settlement agreement resolving a water rights dispute (known as the Aamodt case) in the Rio Grande River Basin. The United States would become party to that agreement upon enactment of H.R. 3342, provided that certain conditions are met. Among other actions, the Secretary of the Interior would have to publish a statement of findings in the Federal Register indicating that all parties have executed the agreement; the U.S. district court would have to issue a judgment and final decree concerning the agreement; Congress would have to appropriate certain amounts specified in the bill (about \$68 million) to carry out part of the agreement; and New Mexico would have to appropriate funds for the Pueblos.

Based on information from DOI and assuming appropriation of the necessary amounts, CBO estimates that implementing the legislation would cost \$71 million over the 2010–2014 period and \$128 million after 2014. Should the Secretary not publish the required statement of findings by September 15, 2017, verifying that all conditions necessary to execute the agreement have been met, the agreement would not take effect, and no federal funds could be spent after that date.

Regional water system

Section 101 would authorize the Secretary of the Interior, acting through the Commissioner of Reclamation, to construct a regional

water system in the Rio Grande River Basin in New Mexico. The system would divert water from the Rio Grande River to certain Pueblos and to the Santa Fe County Water Utility. The state of New Mexico and Santa Fe County would be required to pay a portion of the system's cost. Once construction of that system is complete, the Secretary would be required to convey components of the system to state, local, and tribal entities. Assuming appropriation of the necessary amounts, CBO estimates that constructing the water system would cost \$53 million over the 2010–2014 period and an additional \$75 million after 2014.

Settlement Trust Fund

Section 105 would authorize the appropriation of \$57.5 million to be deposited into the Aamodt Settlement Pueblos' Fund. A portion of that amount would be adjusted for increases in construction costs. Once certain conditions have been met, the Secretary of the Interior would be required to invest amounts in the fund in U.S. Treasury obligations. The fund would be used by the Pueblos to operate and maintain certain portions of the regional water system owned by the Pueblos.

Amounts in the fund could not be spent by the Pueblos until certain conditions specified in the bill are met. About 35 percent of the funds would be available for expenditure after the United States District Court approves the settlement agreement, which we expect would occur in 2012. Those funds would be used by the Pueblos to acquire certain water rights and to operate and maintain certain water systems. CBO expects that the Pueblos would spend between \$3 million and \$5 million a year over the 2012–2016 period for those purposes.

The remaining 65 percent of the funds could be spent when the Secretary determines that certain portions of the new regional water system are substantially complete. Information from DOI suggests that the system would be substantially complete by the end of 2017. At that time, we expect that the settlement agreement would be executed, the remaining funds would be available to the Pueblos, and the budget would record an expenditure of \$42 million. In total, CBO estimates that implementing this provision would cost \$10 million over the 2010–2014 period and \$51 million after 2014.

Payments to certain tribal trust funds that are held and managed in a fiduciary capacity by the federal government on behalf of Indian tribes are treated as payments to a nonfederal entity. As a result, CBO expects that the entire amount deposited into the Aamodt Settlement Pueblos' Fund (excluding amounts made available for certain Pueblo water systems) would be recorded as an outlay in 2017 when the funds could be spent by the Pueblos. Subsequently, any use of such funds would have no effect on the federal budget. Because H.R. 3342 directs the Secretary to invest amounts in the fund only after those amounts are available to the Pueblos, CBO expects that no interest would accrue on the amounts in the fund until 2017 when federal payments could first be spent by the Pueblos.

DOI operation and maintenance costs

Section 107 would authorize the appropriation of \$5 million for DOI to pay operation and maintenance costs associated with certain portions of the regional water system prior to their conveyance to the Pueblos. Based on information from DOI, CBO expects that land and infrastructure associated with those projects would be conveyed to the Pueblos in 2017. Assuming appropriation of the authorized amounts, CBO estimates that operating and maintaining those projects would cost about \$1 million a year over the 2012–2016 period.

Water rights

Section 103 would authorize the appropriation of \$5.4 million for the acquisition of water rights pursuant to the settlement agreement. Those funds would be used by the Secretary of the Interior to acquire, on behalf of the Pueblos, a specified amount of water from Santa Fe County. Assuming appropriation of the authorized amounts, CBO estimates that acquiring those water rights would cost \$5.4 million over the 2010–2012 period.

Estimated impact on state, local, and tribal governments: H.R. 3342 contains no intergovernmental mandates as defined in UMRA. The bill would authorize water projects and provide other assistance that would benefit state, local, and tribal governments. Any costs to those governments would be incurred voluntarily as a condition of federal assistance.

Estimated impact on the private sector: If the Secretary of the Interior acquires property through eminent domain in order to construct the regional water system under the proposed settlement, the bill would impose a private-sector mandate as defined in UMRA. The cost of the mandate would be the fair market value of the property and any expenses incurred by the owners in transferring that property to the federal government. Based on information from the DOI, CBO expects that only a few small tracts of private land may need to be acquired and that the value of that land is small. CBO therefore expects that the cost of the mandate, if imposed, would fall well below the annual threshold established in UMRA for private-sector mandates (\$139 million in 2009, adjusted annually for inflation).

Previous CBO estimate: On October 13, 2009, CBO transmitted a cost estimate for S. 1105, the Aamodt Litigation Settlement Act, as ordered reported by the Senate Committee on Indian Affairs on September 10, 2009. The House and Senate versions of the legislation are similar, and our cost estimates are the same.

Estimate prepared by: Federal Costs: Jeff LaFave; Impact on State, Local, and Tribal Governments: Melissa Merrell; Impact on the Private Sector: Amy Petz.

Estimate approved by: Theresa Gullo, Deputy Assistant Director for Budget Analysis.

COMPLIANCE WITH PUBLIC LAW 104–4

This bill contains no unfunded mandates.

EARMARK STATEMENT

H.R. 3342 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

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

CHANGES IN EXISTING LAW

If enacted, this bill would make no changes in existing law.

ADDITIONAL VIEWS

The Aamodt Litigation Settlement Act (H.R. 3342) would quantify the Indian water rights of the Pueblos of Nambe, Pojoaque, San Ildefonso, and Tesuque (“Four Pueblos”) and end 43 years of Federal litigation involving over 2,500 defendants (State of New Mexico, ex rel. State Engineer v. Aamodt). The Settlement will also bring long-term certainty and stability to Pueblo and non-Pueblo water users in the Pojoaque Basin.

H.R. 3342 would ratify the comprehensive settlement agreement and related cost-sharing agreements, entered into by the State of New Mexico, the Four Pueblos, other local governments, and individual water users dated May 2006. The settlement agreement evolved out of the efforts of the Federal Indian Water Settlement Negotiations Team, which included the Department of the Interior and the Department of Justice.

Similar to the Taos Pueblo Settlement Act, H.R. 3342 reflects significant work, time and diligent efforts by the Four Pueblos and their local, state and Federal partners. This settlement agreement is consistent with the Administration’s views of supporting negotiations as an inherent responsibility as Federal trustee to Indian tribes and their members.

Included with these views is a November 4, 2009, letter submitted by the Northern Pueblos Tributary Association (“Association”) in response to the October 22, 2009, letter to the Subcommittee on Water and Power by Commissioner Michael L. Connor regarding H.R. 3342.

Responding to the Commissioner’s concern that unanticipated cost increases and the legislation’s budget authorization, the Association stated that the cost-sharing agreement should be executed as a condition of beginning construction—a requirement already included in H.R. 3342 at section 101(d)(1).

The Commissioner also suggested that Bureau of Reclamation be required to consult with the Four Pueblos and the other non-Federal parties, a requirement the Association and the Committee believe is already incumbent on the Bureau. Further, as the Association points out, this consultation will present the best opportunity to discuss any change in the allocation of cost overruns which may arise.

The Association agreed to language changes proposed by the Commissioner as regards access to San Juan Chama project water to fulfill the terms of the settlement by inserting the word “construction” before the word “cost” in Section 103(e)(1)(C), as well as a clarification of the Secretary’s authorization to pay operation, maintenance, and replacement costs for the regional water systems in Section 107(c).

In summary, the Aamodt Litigation Settlement Act resolves long-standing water-related claims by the Four Pueblos, reduces the

Federal government's probable legal exposure regarding Federally-reserved water rights, and saves the American taxpayer significant financial resources compared to the probable cost to the United States were the Four Pueblos Indian water rights claims brought to trial. In settling these water rights claims, the non-Pueblo residents in the Pojoaque Basin will acquire a stable source of water for the foreseeable future and a water distribution system. This settlement will result in quantifying water rights, protecting water rights, and as a result, providing water certainty in northern New Mexico.

Enclosure (1).

GRACE F. NAPOLITANO.
MARTIN HEINRICH.

**NORTHERN PUEBLOS TRIBUTARY WATER RIGHTS ASSOCIATION
P.O. Box 27190
Albuquerque, New Mexico 87125**

Pueblo of Nambe
Pueblo of Tesuque
Pueblo of Pojoaque
Pueblo of San Ildefonso

Charlie Dorame, Chairman, Tesuque Pueblo
Governor George Rivera, Vice-Chairman, Pojoaque Pueblo
Peter C. Chestnut, Secretary

November 4, 2009

The Honorable Nick J. Rahall, Chairman
Attn: Jim Zoia
COMMITTEE ON NATURAL RESOURCES
U.S. HOUSE OF REPRESENTATIVES
Washington, D.C. 20510

Re: H.R. 3342

Dear Chairman Rahall,

The non-federal parties to the Aamodt Litigation Settlement received a copy of the October 22, 2009 letter to the Senate Indian Affairs Committee from Commissioner Michael L. Connor regarding the Aamodt Litigation Settlement Act. After discussion with our Settlement Judge, representatives of the seven local government parties to this settlement and leadership of the Pueblos of San Ildefonso, Nambe, Pojoaque, and Tesuque, we submit the following response. We use the numbering in Commissioner Connor's letter for your convenience.

First. The Commissioner expressed concerns about the allocation of risk in the event that the cost of constructing the Regional Water System exceeds the budget authorization. The non-federal settlement parties agree that execution of the Cost-Sharing Agreement should be made a condition of beginning construction and that requirement is already in Section 101(d)(1) of H.R. 3342.

The Commissioner also suggested that the Bureau of Reclamation be required to consult with the State and the Pueblos regarding any cost increases. The State, Santa Fe County and the Pueblos all expect that the Bureau of Reclamation will consult with us during the design, and construction phases. If there are any cost increases, the regular on-going consultation process will provide the best opportunity to allocate responsibility for such increases. It is difficult, if not impossible, to allocate the responsibility for cost overruns in the abstract. The non-federal parties strongly urge the Congress to proceed with this legislation with that understanding but without additional language added to address this concern.

Second. The Commissioner proposed to revise the language pertaining to the San Juan-Chama project water required to fulfill terms of this settlement. The language proposed by the Commissioner is acceptable to the Pueblos. This change involves inserting the word "construction" before the word "cost" in Section 103(e)(1)(C).

Third. The non-federal parties think the language in the Bill as written adequately address the concern raised by the United States about Section 107(c)(2)(B). However, we do not

H.R. 3342
November 4, 2009
Page 2

object to the clarification suggested by the Commissioner on behalf of the United States, that the legislation state “both that the Secretary is authorized to pay operation, maintenance, or replacement costs for the Regional Water System until the Regional Water System is completed and the amount authorized in section 107(c) for the Aamodt Settlement Pueblos' Fund has been appropriated to that Fund, and that thereafter the Federal Government shall have no obligation to pay for the operation, maintenance, and replacement costs of the Regional System”.

Fourth. The non-federal parties agree that there is value in harmonizing the language in Sections 105(d)(7)(C) and Section 203(f). We propose the following three changes to achieve that:

- Insert as new section 203(f)(4)

Right to Set-Off. The United States shall be entitled to set off any funds expended or withdrawn from the amounts appropriated pursuant to section 107(c) together with any interest accrued against any claims against the United States relating to water rights in the Pojoaque Basin asserted by a Pueblo that received the direct benefit of such funds.

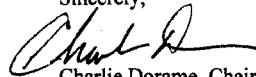
- Section 105(d)(7)(C) should be similarly modified to read “If the conditions precedent in section 203 have not been fulfilled by September 15, 2017, the United States shall be entitled to set off any funds expended or withdrawn from the amounts appropriated pursuant to section 107(c) for the direct benefit of a Pueblo, together with any interest accrued, against any claims asserted by that Pueblo against the United States relating to the water rights in the Pojoaque Basin.”
- Section 203(b)(2) should be modified to parallel Section 203(f)(3).

We believe the concerns raised by the United States are adequately addressed with these changes.

The 5th, 6th, and 7th items in the Commissioner’s letter acknowledge the United States’ approval for changes previously proposed by the non-local parties, and included in the committee mark-up, to address earlier concerns of the Administration. We hope that with these changes, the Congress and Administration can fully support this Legislation.

Thank you for your efforts in moving this Legislation forward.

Sincerely,



Charlie Dorame, Chairman
 On behalf of Non-Federal
 Settlement Parties

H.R. 3342
November 4, 2009
Page 3

Cc: The Honorable Doc Hastings, Ranking Member
Attn: Todd Young
COMMITTEE ON NATURAL RESOURCES
U.S. HOUSE OF REPRESENTATIVES
The Honorable Grace Napolitano, Chairwoman,
WATER AND POWER SUBCOMMITTEE
The Honorable Tom McClintock, Ranking Member,
WATER AND POWER SUBCOMMITTEE
Michael L. Connor, Commissioner,
U.S. DEPARTMENT OF THE INTERIOR, BUREAU OF RECLAMATION
The Honorable Ben Ray Lujan
The Honorable Martin Heinrich

ADDITIONAL VIEWS OF
THE HONORABLE TOM McCLINTOCK

On September 30, 2009, the Full Natural Resources Committee marked up H.R. 3342, the Aamodt Litigation Settlement Act. This bill, sponsored by Congressman Ben Ray Lujan (D–NM), authorizes the Secretary of the Interior to approve the settlement of water rights claims of five Pueblo Indian Tribes located in the Pojoaque River Basin, New Mexico.

This bill rightly attempts to resolve longstanding Indian water rights claims, but Congress lacks sufficient information to assess whether the \$199 million authorized in this legislation is appropriate. Therefore, as Ranking Republican of the House Water and Power Subcommittee, I have serious fiscal concerns with this well-intended bill.

Another area of concern I have is that this legislation does not have support from all non-Indian water users. The Pojoaque Basin Water Alliance has raised some very serious concerns regarding the protection of private property rights and the proper governing structure set forth in the legislation. While some of these concerns were raised during a legislative hearing held on H.R. 3342, it is still important to acknowledge that support for H.R. 3342 is not unanimous.

It is important that Congress play a role in settling Indian water rights claims, some of which comprise the oldest standing litigation in the federal court system. Settling legal claims not only resolves litigation but also can help establish water supply certainty for water users on and off-reservations.

However, Congress still must answer key questions when it considers these and other settlements and should not be just a rubber stamp. For example, one of the most important questions involving a settlement—especially when American taxpayer dollars will be used—is whether resolving the litigation will be advantageous to the federal government compared to its liability under current law. That question has not been answered for H.R. 3342.

If Congress were the board of directors of a private corporation deciding whether to approve a negotiated legal settlement, we would be guilty of breaching our fiduciary responsibility to stockholders if we made that decision without consulting legal counsel regarding the company's financial exposure in litigation should the settlement not be accepted.

Since this question remains unanswered, Congress is forced to be the arbitrator between sides involved in the litigation. This is a role Congress should not be forced to assume without sufficient information. Given the astounding fact that the current Administration has expressed general fiscal and other reservations about this bill, Congress should ask for and deserves answers. As part of this, Department of the Interior was asked for its views on the bill as

passed by the Natural Resources Committee. The Department's response to Congress, which is attached, clearly indicates there are numerous issues that still need to be resolved.

I also sent a letter on September 25, 2009, to the Department of Justice asking for opinions on this legislation. The letter specifically asks the Attorney General to provide his view on the "likelihood that the recipients of water rights and funds transferred by these settlements would prevail on the merits of their claims and whether these settlement amounts represent a net benefit to the taxpayers as compared to the consequences and costs of litigation." To date, I have not received a response to this letter, and I fundamentally believe that Congress needs this and other answers before moving forward with spending nearly 200 million American taxpayer dollars.

My request is based on precedent. In an appearance before the Natural Resources Committee on legislation resolving Colville Indian claims, a Clinton Administration Justice Department official testified in 1994, "[T]he Federal government is not that well postured for a victory on this claim which has been pending for over 40 years. Absent the settlement, we could well litigate it for another ten years and the outcome could easily be a significant cost to the taxpayers and the public." This testimony was very helpful in moving that legislation forward. According to the Congressional Research Service, Justice Department officials have testified about additional settlements pending before Congress, so there is no reason why this Congress should act without similar information on this bill.

Without these transparent answers and the amount of taxpayer funding in this bill—estimated by the Congressional Budget Office as \$71 million in 2010–2014 and \$128 million after 2014—I have serious concerns with the way this Congress and the Obama Administration are moving forward on H.R. 3342, and on Indian water rights settlement bills in general.

TOM MCCLINTOCK.



IN REPLY REFER TO:

United States Department of the Interior

BUREAU OF RECLAMATION
Washington, DC 20240



OCT 22 2009

The Honorable Grace F. Napolitano
Chairwoman, Subcommittee on Water and Power
Committee on Natural Resources
House of Representatives
Washington, DC 20515

Dear Ms. Napolitano:

In response to your request, this letter presents the views of the Administration regarding H.R. 3342, the "Aamodt Litigation Settlement Act," as reported by the Subcommittee on Water and Power on September 30, 2009. For overall views regarding the purposes and importance of this settlement, I would refer to my testimony delivered to the House Committee on Natural Resources, Subcommittee on Water and Power, on September 9, 2009, prior to changes made during the markup.

I want to begin by emphasizing, as I did in the testimony delivered at the September 9 hearing, that for over twenty years, the federal government has acknowledged that negotiated Indian water rights settlements are preferable to protracted and divisive litigation. Our policy of support for negotiations is premised on a set of general principles including that the United States participate in water settlements consistent with its responsibilities as trustee to Indians; that Indian tribes receive equivalent benefits for rights which they, and the United States as trustee, may release as part of a settlement; that Indian tribes should realize value from confirmed water rights resulting from a settlement; and that settlements are to contain appropriate cost-sharing proportionate to the benefits received by all parties benefiting from the settlement. Ultimately this Administration's goal is to engage with settlement parties early so that we can address issues during negotiation rather than waiting until legislation is introduced in Congress.

The settlement that would be approved by H.R. 3342 would resolve a contentious water dispute in northern New Mexico, as well as a federal court proceeding that has been ongoing for over 40 years. We recognize that substantial work and refinements have been made to this settlement by the parties and the New Mexico delegation. We would like to continue to work with the parties and the sponsors to address certain remaining concerns, such as ensuring an appropriate non-Federal cost share that could make this a settlement that the Administration could wholeheartedly support. I will not reiterate the entire statement made by the Administration during the September 9, 2009 House hearing but instead will focus this set of comments on the areas in this legislation that were improved by the Senate markup as well as those areas where the Administration believes additional work and changes to the legislation are needed.

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First, changes were made in section 101(f) of H.R. 3342 that limited the amount of funding to be expended by the Secretary of the Interior (Secretary) to construct the Pueblo Water Facilities under this Act to an amount certain, indexed based on construction cost fluctuations. Although the United States agrees with the concept that the amount it is required to pay should be known in advance of bill authorization and limited to an agreed upon figure, as we stated in our testimony in the House, the Administration is concerned about the validity of the cost estimates that the settlement parties are relying on for the regional water system. The parties rely on an engineering report dated June 2007 that has not been verified by the level of study that the Bureau of Reclamation would recommend in order to assure reliability. Much of the cost information contained in the engineering report was arrived at three years ago, none of the costs have been indexed to 2007, and the total project cost estimates cannot be relied upon.

Although section 101(f) of the bill as reported by the Committee establishes a limit on the amount of funding that the United States can expend for construction of the Pueblo Water facilities, it is important for Congress to understand that the provisions of section 203 allow the settlement and this Act to be voided if the water system is not completed by 2021. This nullification provision creates the risk that, even if the United States, the County, the State, and the Pueblos all follow through on their commitments under the Agreement and this bill, the settlement could fail in the event that the costs for the system turn out to be higher than the current cost estimates contemplate or than the authorizations allow.

This is a scenario that all of the parties, including the United States, must strive to avoid, because it would mean a return to litigation and conflict after the expenditure of significant resources by all parties towards a failed solution. In order to reduce the risk of this outcome, I have committed that the Bureau of Reclamation will carry out additional studies and analyses of the proposed water system. These studies will be completed by the end of the year and should shed light on the current cost estimate and the possibility that actual costs could be higher than expected.

In order to distribute the risk of higher costs fairly while avoiding the possibility of entirely unraveling the settlement, the Administration believes that the legislation should provide that the parties to this settlement, including the State and the United States, should share proportionately any increases in construction costs beyond those currently contemplated. The Federal government should not bear the brunt of higher costs without proportionate increases by other Aamodt settlement parties based on the percentage of overall construction costs that the parties are committing to in the Cost-Sharing Agreement. Moreover, either the Cost-Sharing Agreement should be executed before Congress ratifies it or its execution should be made a condition of beginning construction. To ensure open discussion and consideration of the reasons for any increased costs beyond those contemplated at this time, the legislation could also include language providing that the Bureau of Reclamation will consult with the State and the Pueblos regarding any cost increases.

Second, as currently written, section 103(e)(1)(C) of the bill would probably be interpreted to waive reimbursement to the Federal Government of operation, maintenance and repair (OM&R) costs associated with water to be provided from with the San Juan-Chama Project under the bill. This subsection reads “the costs associated with any water made available from the San Juan-Chama (SJC) Project which were determined nonreimbursable and nonreturnable pursuant to Pub. L. No. 88-293, 78 Stat. 171 (March 26, 1964) shall remain nonreimbursable and nonreturnable.” The current language could make both the construction and the OM&R costs nonreimbursable. We do not believe it was the intent of the parties to make the OM&R costs nonreimbursable. Reimbursement of OM&R costs should not be waived, and to make that clear the section should be amended to read:

(C) the construction costs associated with any water made available from the San Juan-Chama (SJC) Project which were determined nonreimbursable and nonreturnable pursuant to Pub. L. No. 88-293, 78 Stat. 171 (March 26, 1964) shall remain nonreimbursable and nonreturnable.

Third, the United States continues to have concerns about the language used in section 107(c)(2)(B). As amended, this provision states that “the amount authorized under subparagraph (A) shall expire after the date on which construction of the Regional Water System is completed and the amounts required to be deposited in the account have been deposited under this section by the Federal Government.” This legislative language requires clarification. First, we assume that the account referenced is the Aamodt Settlement Pueblos’ Fund, but this should be specified. Second, as introduced, H.R. 3342 provided that once the System was complete and an OM&R account was funded, “the Federal Government shall have no obligation to pay for the operation, maintenance, and replacement costs of the Regional System.” This language had the advantage of clearly specifying that any obligation to pay for the operation, maintenance, and replacement costs ended when the specified criteria were met. The new language lacks that clarity. It would be a clearer statement of Congressional intent if the language stated **both** that the Secretary is authorized to pay operation, maintenance, or replacement costs for the Regional Water System until the Regional Water System is completed and the amount authorized in section 107(c) for the Aamodt Settlement Pueblos’ Fund has been appropriated to that Fund, **and** that thereafter the Federal Government shall have no obligation to pay for the operation, maintenance, and replacement costs of the Regional System.

Fourth, the United States still has concerns with language used in section 203(f) providing generally that in the event the settlement is voided, the United States is entitled to return of certain funds and property. First, we note that similar but not identical provisions are included in section 105(d)(7)(C) and section 203(b). These provisions should be harmonized. The Administration suggests that language be added at the end of section 203(b) to clarify that the United States is entitled to recoup or obtain credit for its contributions to settlement, including any water secured for the Pueblos, in the event that the settlement fails.

Fifth, the United States notes with approval the changes made in section 203(a)(2) that ensure that the conditions precedent for the settlement to stay effective include appropriate issuance of permits by the New Mexico State Engineer to the Regional Water Authority to change the points of diversion to the mainstem of the Rio Grande for the diversion and consumptive use of water by the Pueblos and as part of the water supply for the Regional Water System.

Sixth, the Administration supports the decision to delete section 204(a)(9) of this bill, a provision to which we had objected in our testimony in the House hearing because of concerns that it would have the potential to erode important environmental safeguards and to create ambiguities as to the scope of the waivers.

Seventh and finally, the Administration supports the language added following section 203(e) regarding the process by which the Pueblos retain the right to withdraw the waivers authorized under this settlement and trigger nullification of the entire settlement agreement if the system is not substantially complete by 2021. The new language lays out a process under which substantial completion is determined by the Secretary of the Interior and, subsequently, subject to review under the Administrative Procedures Act. The new language includes (1) a definition of substantial completion; (2) a mechanism for determining when it has occurred; and (3) a clearly specified process for challenging that determination. By adopting this provision, the parties to this settlement have established a clear legal threshold for failure of the settlement. This clarity regarding the conditions and processes for determining finality will minimize the risk of futile litigation in the future.

In conclusion, I would like to emphasize that this Administration wants to avoid continued and unproductive litigation which, even when finally concluded, may leave parties injured by and hostile to its results. Neither the Pueblos nor their non-Indian neighbors benefit from continued friction in the Rio Pojoaque basin. We believe settlement can be accomplished in a manner that protects the rights of the Pueblos and also ensures that the appropriate costs of the settlement are borne proportionately. While we have some remaining concerns with the bill, the Administration is committed to working with Congress and all parties concerned in developing a settlement that the Administration can fully support. In addition, we would like to work with Congress to identify and implement clear criteria for going forward with future settlements on issues including cost-sharing and eligible costs.

Thank you for the opportunity to present these views for the record. The Office of Management and Budget advises that there is no objection, from the standpoint of the Administration's program, to the presentation of these views for your consideration and the consideration of the Congress.

Sincerely,



Michael L. Connor
Commissioner

cc: The Honorable Nick J. Rahall, II
Chairman, Committee on Natural Resources

The Honorable Doc Hastings
Ranking Member, Committee on Natural Resources

The Honorable Tom McClintock
Ranking Member, Subcommittee on Water and Power, Committee on Natural Resources

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