

117TH CONGRESS
2D SESSION

S. 4896

To approve the settlement of water rights claims of the Pueblos of Jemez and Zia in the State of New Mexico, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 20, 2022

Mr. HEINRICH introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

A BILL

To approve the settlement of water rights claims of the Pueblos of Jemez and Zia in the State of New Mexico, and for other purposes.

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

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Pueblos of Jemez and Zia Water Rights Settlement Act
6 of 2022”.

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

- Sec. 1. Short title; table of contents.
- Sec. 2. Purposes.
- Sec. 3. Definitions.

Sec. 4. Ratification of Agreement.
 Sec. 5. Pueblo Water Right.
 Sec. 6. Settlement trust funds.
 Sec. 7. Funding.
 Sec. 8. Waivers and releases of claims.
 Sec. 9. Satisfaction of claims.
 Sec. 10. Enforceability date.
 Sec. 11. Miscellaneous provisions.
 Sec. 12. Antideficiency.

1 **SEC. 2. PURPOSES.**

2 The purposes of this Act are—

3 (1) to achieve a fair, equitable, and final settle-
 4 ment of all claims to water rights in the Jemez
 5 River Stream System in the State of New Mexico
 6 for—

7 (A) the Pueblo of Jemez;

8 (B) the Pueblo of Zia; and

9 (C) the United States, acting as trustee for
 10 the Pueblos of Jemez and Zia;

11 (2) to authorize, ratify, and confirm the Agree-
 12 ment entered into by the Pueblos, the State, and
 13 various other parties to the extent that the Agree-
 14 ment is consistent with this Act;

15 (3) to authorize and direct the Secretary—

16 (A) to execute the Agreement; and

17 (B) to take any other actions necessary to
 18 carry out the Agreement in accordance with
 19 this Act; and

20 (4) to authorize funds necessary for the imple-
 21 mentation of the Agreement and this Act.

1 **SEC. 3. DEFINITIONS.**

2 In this Act:

3 (1) **ADJUDICATION.**—The term “Adjudication”
4 means the adjudication of water rights pending be-
5 fore the United States District Court for the Dis-
6 trict of New Mexico: United States of America, on
7 its own behalf, and on behalf of the Pueblos of
8 Jemez, Santa Ana, and Zia, State of New Mexico,
9 ex rel. State Engineer, Plaintiffs, and Pueblos of
10 Jemez, Santa Ana, and Zia, Plaintiffs-in-Interven-
11 tion v. Tom Abousleman, et al., Defendants, Civil
12 No. 83–cv–01041 (KR).

13 (2) **AGREEMENT.**—The term “Agreement”
14 means—

15 (A) the document entitled “Pueblos of
16 Jemez and Zia Water Rights Settlement Agree-
17 ment” and dated May 11, 2022, and the appen-
18 dices and exhibits attached thereto; and

19 (B) any amendment to the document re-
20 ferred to in subparagraph (A) (including an
21 amendment to an appendix or exhibit) that is
22 executed to ensure that the Agreement is con-
23 sistent with this Act.

24 (3) **ENFORCEABILITY DATE.**—The term “En-
25 forceability Date” means the date described in sec-
26 tion 10.

1 (4) JEMEZ RIVER STREAM SYSTEM.—The term
 2 “Jemez River Stream System” means the geo-
 3 graphic extent of the area involved in the Adjudica-
 4 tion.

5 (5) PARTIAL FINAL JUDGMENT AND DECREE.—
 6 The term “Partial Final Judgment and Decree”
 7 means a final or interlocutory partial final judgment
 8 and decree entered by the United States District
 9 Court for the District of New Mexico with respect
 10 to the water rights of the Pueblos—

11 (A) that is substantially in the form de-
 12 scribed in the Agreement, as amended to ensure
 13 consistency with this Act; and

14 (B) from which no further appeal may be
 15 taken.

16 (6) PUEBLO.—The term “Pueblo” means either
 17 of—

18 (A) the Pueblo of Jemez; or

19 (B) the Pueblo of Zia.

20 (7) PUEBLO LAND.—The term “Pueblo Land”
 21 means any real property that is—

22 (A) held by the United States in trust for
 23 a Pueblo within the Jemez River Stream Sys-
 24 tem;

1 (B) owned by a Pueblo within the Jemez
2 River Stream System before the date on which
3 a court approves the Agreement; or

4 (C) acquired by a Pueblo on or after the
5 date on which a court approves the Agreement
6 if the real property—

7 (i) is located within the exterior
8 boundaries of the Pueblo, as recognized
9 and confirmed by a patent issued under
10 the Act of December 22, 1858 (11 Stat.
11 374, chapter V);

12 (ii) is located within the exterior
13 boundaries of any territory set aside for a
14 Pueblo by law, Executive order, or court
15 decree;

16 (iii) is owned by a Pueblo or held by
17 the United States in trust for the benefit
18 of a Pueblo outside the Jemez River
19 Stream System that is located within the
20 exterior boundaries of the Pueblo, as rec-
21 ognized and confirmed by a patent issued
22 under the Act of December 22, 1858 (11
23 Stat. 374, chapter V); or

24 (iv) is located within the exterior
25 boundaries of any real property located

1 outside the Jemez River Stream System
 2 set aside for a Pueblo by law, Executive
 3 order, or court decree if the land is within
 4 or contiguous to land held by the United
 5 States in trust for the Pueblo as of June
 6 1, 2022.

7 (8) PUEBLO TRUST FUND.—The term “Pueblo
 8 Trust Fund” means—

9 (A) the Pueblo of Jemez Settlement Trust
 10 Fund established under section 6(a); and

11 (B) the Pueblo of Zia Settlement Trust
 12 Fund established under that section.

13 (9) PUEBLO WATER RIGHT.—The term “Pueblo
 14 Water Right” means the water right of a Pueblo—

15 (A) as identified in the Agreement and sec-
 16 tion 5 of this Act; and

17 (B) as confirmed in the Partial Final
 18 Judgment and Decree.

19 (10) PUEBLOS.—The term “Pueblos” means—

20 (A) the Pueblo of Jemez; and

21 (B) the Pueblo of Zia.

22 (11) SECRETARY.—The term “Secretary”
 23 means the Secretary of the Interior.

24 (12) STATE.—The term “State” means the
 25 State of New Mexico and all officers, agents, depart-

1 ments, and political subdivisions of the State of New
2 Mexico.

3 **SEC. 4. RATIFICATION OF AGREEMENT.**

4 (a) RATIFICATION.—

5 (1) IN GENERAL.—Except as modified by this
6 Act and to the extent that the Agreement does not
7 conflict with this Act, the Agreement is authorized,
8 ratified, and confirmed.

9 (2) AMENDMENTS.—If an amendment to the
10 Agreement, or to any appendix or exhibit attached
11 to the Agreement requiring the signature of the Sec-
12 retary, is executed in accordance with this Act to
13 make the Agreement consistent with this Act, the
14 amendment is authorized, ratified, and confirmed.

15 (b) EXECUTION.—

16 (1) IN GENERAL.—To the extent the Agreement
17 does not conflict with this Act, the Secretary shall
18 execute the Agreement, including all appendices or
19 exhibits to, or parts of, the Agreement requiring the
20 signature of the Secretary.

21 (2) MODIFICATIONS.—Nothing in this Act pro-
22 hibits the Secretary, after execution of the Agree-
23 ment, from approving any modification to the Agree-
24 ment, including an appendix or exhibit to the Agree-
25 ment, that is consistent with this Act, to the extent

1 that the modification does not otherwise require con-
2 gressional approval under section 2116 of the Re-
3 vised Statutes (25 U.S.C. 177) or any other applica-
4 ble provision of Federal law.

5 (c) ENVIRONMENTAL COMPLIANCE.—

6 (1) IN GENERAL.—In implementing the Agree-
7 ment and this Act, the Secretary shall comply
8 with—

9 (A) the Endangered Species Act of 1973
10 (16 U.S.C. 1531 et seq.);

11 (B) the National Environmental Policy Act
12 of 1969 (42 U.S.C. 4321 et seq.), including the
13 implementing regulations of that Act; and

14 (C) all other applicable Federal environ-
15 mental laws and regulations.

16 (2) COMPLIANCE.—

17 (A) IN GENERAL.—In implementing the
18 Agreement and this Act, the Pueblos shall pre-
19 pare any necessary environmental documents,
20 consistent with—

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

23 (ii) the National Environmental Policy
24 Act of 1969 (42 U.S.C. 4321 et seq.), in-

1 including the implementing regulations of
2 that Act; and

3 (iii) all other applicable Federal envi-
4 ronmental laws and regulations.

5 (B) AUTHORIZATIONS.—The Secretary
6 shall—

7 (i) independently evaluate the docu-
8 mentation required under subparagraph
9 (A); and

10 (ii) be responsible for the accuracy,
11 scope, and contents of that documentation.

12 (3) EFFECT OF EXECUTION.—The execution of
13 the Agreement by the Secretary under this section
14 shall not constitute a major Federal action under
15 the National Environmental Policy Act of 1969 (42
16 U.S.C. 4321 et seq.).

17 (4) COSTS.—Any costs associated with the per-
18 formance of the compliance activities under this sub-
19 section shall be paid from funds deposited in the
20 Pueblo Trust Funds, subject to the condition that
21 any costs associated with the performance of Federal
22 approval or other review of such compliance work or
23 costs associated with inherently Federal functions
24 shall remain the responsibility of the Secretary.

1 **SEC. 5. PUEBLO WATER RIGHT.**

2 (a) TRUST STATUS OF THE PUEBLO WATER
3 RIGHT.—The Pueblo Water Right shall be held in trust
4 by the United States on behalf of the Pueblos in accord-
5 ance with the Agreement and this Act.

6 (b) FORFEITURE AND ABANDONMENT.—The Pueblo
7 Water Right shall not be subject to loss through non-use,
8 forfeiture, abandonment, or other operation of law.

9 (c) USE.—Any use of the Pueblo Water Right shall
10 be subject to the terms and conditions of the Agreement
11 and this Act.

12 (d) AUTHORITY OF THE PUEBLOS.—

13 (1) IN GENERAL.—The Pueblos shall have the
14 authority to allocate, distribute, and lease the Pueblo
15 Water Right for use on Pueblo Land in accordance
16 with the Agreement, this Act, and applicable Federal
17 law.

18 (2) USE OFF PUEBLO LAND.—The Pueblos may
19 allocate, distribute, and lease the Pueblo Water
20 Right for use off Pueblo Land in accordance with
21 the Agreement, this Act, and applicable Federal law,
22 subject to the approval of the Secretary.

23 (e) ADMINISTRATION.—

24 (1) NO ALIENATION.—The Pueblos shall not
25 permanently alienate any portion of the Pueblo
26 Water Right.

1 (2) PURCHASES OR GRANTS OF LAND FROM IN-
2 DIANS.—An authorization provided by this Act for
3 the allocation, distribution, leasing, or other ar-
4 rangement entered into pursuant to this Act shall be
5 considered to satisfy any requirement for authoriza-
6 tion of the action required by Federal law.

7 (3) PROHIBITION ON FORFEITURE.—The non-
8 use of all or any portion of the Pueblo Water Right
9 by any water user shall not result in the forfeiture,
10 abandonment, relinquishment, or other loss of all or
11 any portion of the Pueblo Water Right.

12 **SEC. 6. SETTLEMENT TRUST FUNDS.**

13 (a) ESTABLISHMENT.—The Secretary shall establish
14 2 trust funds, to be known as the “Pueblo of Jemez Settle-
15 ment Trust Fund” and the “Pueblo of Zia Settlement
16 Trust Fund”, to be managed, invested, and distributed by
17 the Secretary and to remain available until expended,
18 withdrawn, or reverted to the general fund of the Treas-
19 ury, consisting of the amounts deposited in the Pueblo
20 Trust Funds under subsection (b), together with any in-
21 vestment earnings, including interest, earned on those
22 amounts for the purpose of carrying out this Act.

23 (b) DEPOSITS.—The Secretary shall deposit in each
24 Pueblo Trust Fund the amounts made available pursuant
25 to section 7(a).

1 (c) MANAGEMENT AND INTEREST.—

2 (1) MANAGEMENT.—On receipt and deposit of
3 funds into the Pueblo Trust Funds under subsection
4 (b), the Secretary shall manage, invest, and dis-
5 tribute all amounts in the Pueblo Trust Funds in a
6 manner that is consistent with the investment au-
7 thority of the Secretary under—

8 (A) the first section of the Act of June 24,
9 1938 (25 U.S.C. 162a);

10 (B) the American Indian Trust Fund Man-
11 agement Reform Act of 1994 (25 U.S.C. 4001
12 et seq.); and

13 (C) this subsection.

14 (2) INVESTMENT EARNINGS.—In addition to
15 the deposits made to each Pueblo Trust Fund under
16 subsection (b), any investment earnings, including
17 interest, earned on those amounts held in each
18 Pueblo Trust Fund are authorized to be used in ac-
19 cordance with subsections (e) and (g).

20 (d) AVAILABILITY OF AMOUNTS.—

21 (1) IN GENERAL.—Amounts appropriated to,
22 and deposited in, each Pueblo Trust Fund, including
23 any investment earnings (including interest) earned
24 on those amounts, shall be made available to each
25 Pueblo by the Secretary beginning on the Enforce-

1 ability Date, subject to the requirements of this sec-
2 tion, except for funds to be made available to the
3 Pueblos pursuant to paragraph (2).

4 (2) USE OF FUNDS.—Notwithstanding para-
5 graph (1), \$25,000,000 of the amounts deposited in
6 each Pueblo Trust Fund shall be available to the ap-
7 propriate Pueblo for—

8 (A) developing economic water develop-
9 ment plans;

10 (B) preparing environmental compliance
11 documents;

12 (C) preparing water project engineering
13 designs;

14 (D) establishing and operating a water re-
15 source department;

16 (E) installing supplemental irrigation
17 groundwater wells; and

18 (F) developing water measurement and re-
19 porting water use plans.

20 (e) WITHDRAWALS.—

21 (1) WITHDRAWALS UNDER THE AMERICAN IN-
22 DIAN TRUST FUND MANAGEMENT REFORM ACT OF
23 1994.—

24 (A) IN GENERAL.—Each Pueblo may with-
25 draw any portion of the amounts in the Pueblo

1 Trust Fund on approval by the Secretary of a
2 Tribal management plan submitted by the
3 Pueblo in accordance with the American Indian
4 Trust Fund Management Reform Act of 1994
5 (25 U.S.C. 4001 et seq.).

6 (B) REQUIREMENTS.—In addition to the
7 requirements under the American Indian Trust
8 Fund Management Reform Act of 1994 (25
9 U.S.C. 4001 et seq.), the Tribal management
10 plan under this paragraph shall require that the
11 appropriate Pueblo shall spend all amounts
12 withdrawn from each Pueblo Trust Fund, and
13 any investment earnings (including interest)
14 earned on those amounts, through the invest-
15 ments under the Tribal management plan, in
16 accordance with this Act.

17 (C) ENFORCEMENT.—The Secretary may
18 carry out such judicial and administrative ac-
19 tions as the Secretary determines to be nec-
20 essary to enforce the Tribal management plan
21 under this paragraph to ensure that amounts
22 withdrawn by each Pueblo from the Pueblo
23 Trust Fund of the Pueblo under subparagraph
24 (A) are used in accordance with this Act.

1 (2) WITHDRAWALS UNDER EXPENDITURE
2 PLAN.—

3 (A) IN GENERAL.—Each Pueblo may sub-
4 mit to the Secretary a request to withdraw
5 funds from the Pueblo Trust Fund of the Pueb-
6 lo pursuant to an approved expenditure plan.

7 (B) REQUIREMENTS.—To be eligible to
8 withdraw amounts under an expenditure plan
9 under subparagraph (A), each Pueblo shall sub-
10 mit to the Secretary an expenditure plan for
11 any portion of the Pueblo Trust Fund that the
12 Pueblo elects to withdraw pursuant to that sub-
13 paragraph, subject to the condition that the
14 amounts shall be used for the purposes de-
15 scribed in this Act.

16 (C) INCLUSIONS.—An expenditure plan
17 under this paragraph shall include a description
18 of the manner and purpose for which the
19 amounts proposed to be withdrawn from the
20 Pueblo Trust Fund will be used by the Pueblo,
21 in accordance with this subsection and sub-
22 section (g).

23 (D) APPROVAL.—The Secretary shall ap-
24 prove an expenditure plan submitted under sub-

1 paragraph (A) if the Secretary determines that
2 the plan—

3 (i) is reasonable; and

4 (ii) is consistent with, and will be used
5 for, the purposes of this Act.

6 (E) ENFORCEMENT.—The Secretary may
7 carry out such judicial and administrative ac-
8 tions as the Secretary determines to be nec-
9 essary to enforce an expenditure plan to ensure
10 that amounts disbursed under this paragraph
11 are used in accordance with this Act.

12 (f) EFFECT OF SECTION.—Nothing in this section
13 gives the Pueblos the right to judicial review of a deter-
14 mination of the Secretary relating to whether to approve
15 a Tribal management plan under paragraph (1) of sub-
16 section (e) or an expenditure plan under paragraph (2)
17 of that subsection except under subchapter II of chapter
18 5, and chapter 7, of title 5, United States Code (commonly
19 known as the “Administrative Procedure Act”).

20 (g) USES.—Amounts from a Pueblo Trust Fund may
21 only be used by the appropriate Pueblo for the following
22 purposes:

23 (1) Planning, permitting, designing, engineer-
24 ing, constructing, reconstructing, replacing, rehabili-
25 tating, operating, or repairing water production,

1 treatment, or delivery infrastructure, including for
2 domestic and municipal use, on-farm improvements,
3 or wastewater infrastructure.

4 (2) Watershed protection and enhancement,
5 support of agriculture, water-related Pueblo commu-
6 nity welfare and economic development, and costs
7 related to implementation of the Agreement.

8 (3) Planning, permitting, designing, engineer-
9 ing, construction, reconstructing, replacing, rehabili-
10 tating, operating, or repairing water production of
11 delivery infrastructure of the Augmentation Project,
12 as set forth in the Agreement.

13 (4) Ensuring environmental compliance in the
14 development and construction of projects under this
15 Act.

16 (h) LIABILITY.—The Secretary and the Secretary of
17 the Treasury shall not be liable for the expenditure or in-
18 vestment of any amounts withdrawn from a Pueblo Trust
19 Fund by a Pueblo under paragraph (1) or (2) of sub-
20 section (e).

21 (i) EXPENDITURE REPORTS.—Each Pueblo shall an-
22 nually submit to the Secretary an expenditure report de-
23 scribing accomplishments and amounts spent from use of
24 withdrawals under a Tribal management plan or an ex-

penditure plan under paragraph (1) or (2) of subsection
(e), as applicable.

(j) NO PER CAPITA DISTRIBUTIONS.—No portion of
a Pueblo Trust Fund shall be distributed on a per capita
basis to any member of a Pueblo.

(k) TITLE TO INFRASTRUCTURE.—Title to, control
over, and operation of any project constructed using funds
from a Pueblo Trust Fund shall remain in the appropriate
Pueblo.

(l) OPERATION, MAINTENANCE, AND REPLACEMENT.—All operation, maintenance, and replacement
costs of any project constructed using funds from a Pueblo
Trust Fund shall be the responsibility of the appropriate
Pueblo.

SEC. 7. FUNDING.

(a) MANDATORY APPROPRIATION.—Out of any
money in the Treasury not otherwise appropriated, the
Secretary of the Treasury shall transfer to the Sec-
retary—

(1) for deposit in the Pueblo of Jemez Settle-
ment Trust Fund established under section 6(a)
\$290,000,000, to remain available until expended,
withdrawn, or reverted to the general fund of the
Treasury; and

1 (2) for deposit in the Pueblo of Zia Settlement
2 Trust Fund established under that section
3 \$200,000,000, to remain available until expended,
4 withdrawn, or reverted to the general fund of the
5 Treasury.

6 (b) FLUCTUATION IN COSTS.—

7 (1) IN GENERAL.—The amount appropriated
8 under subsection (a) shall be increased or decreased,
9 as appropriate, by such amounts as may be justified
10 by reason of ordinary fluctuations in costs, as indi-
11 cated by the Bureau of Reclamation Construction
12 Cost Index–Composite Trend.

13 (2) CONSTRUCTION COSTS ADJUSTMENT.—The
14 amount appropriated under subsection (a) shall be
15 adjusted to address construction cost changes nec-
16 essary to account for unforeseen market volatility
17 that may not otherwise be captured by engineering
18 cost indices, as determined by the Secretary, includ-
19 ing repricing applicable to the types of construction
20 and current industry standards involved.

21 (3) REPETITION.—The adjustment process
22 under this subsection shall be repeated for each sub-
23 sequent amount appropriated until the applicable
24 amount, as adjusted, has been appropriated.

1 (4) PERIOD OF INDEXING.—The period of in-
 2 dexing adjustment under this subsection for any in-
 3 crement of funding shall start on October 1, 2021,
 4 and end on the date on which the funds are depos-
 5 ited in the applicable Pueblo Trust Fund.

6 (c) STATE COST SHARE.—The State shall con-
 7 tribute—

8 (1) \$3,400,000, as adjusted for inflation pursu-
 9 ant to the Agreement, to the San Ysidro Community
 10 Ditch Association for capital and operating expenses
 11 of the mutual benefit Augmentation Project;

12 (2) \$16,159,000, as adjusted for inflation pur-
 13 suant to the Agreement, for Jemez River Basin
 14 Water Users Coalition acequia ditch improvements;
 15 and

16 (3) \$500,000, as adjusted for inflation, to miti-
 17 gate impairment to non-Pueblo domestic and live-
 18 stock groundwater rights as a result of new Pueblo
 19 water use.

20 **SEC. 8. WAIVERS AND RELEASES OF CLAIMS.**

21 (a) IN GENERAL.—

22 (1) WAIVERS AND RELEASES OF CLAIMS BY
 23 PUEBLOS AND UNITED STATES AS TRUSTEE FOR
 24 PUEBLOS.—Subject to the reservation of rights and
 25 retention of claims under subsection (c), as consider-

1 ation for recognition of the Pueblo Water Right and
2 other benefits described in the Agreement and this
3 Act, the Pueblos and the United States, acting as
4 trustee for the Pueblos, shall execute a waiver and
5 release of all claims for—

6 (A) water rights within the Jemez River
7 Stream System that the Pueblos, or the United
8 States acting as trustee for the Pueblos, as-
9 serted or could have asserted in any proceeding,
10 including the Adjudication, on or before the En-
11 forceability Date, except to the extent that such
12 a right is recognized in the Agreement and this
13 Act; and

14 (B) damages, losses, or injuries to water
15 rights or claims of interference with, diversion
16 of, or taking of water (including claims for in-
17 jury to land resulting from such damages,
18 losses, injuries, interference, diversion, or tak-
19 ing) in the Jemez River Stream System against
20 any party to a settlement, including the mem-
21 bers and parcientes of signatory acequias, that
22 accrued at any time up to and including the
23 Enforceability Date.

24 (2) WAIVERS AND RELEASES OF CLAIMS BY
25 PUEBLOS AGAINST UNITED STATES.—Subject to the

1 reservation of rights and retention of claims under
2 subsection (c), each Pueblo shall execute a waiver
3 and release of all claims against the United States
4 (including any agency or employee of the United
5 States) for water rights within the Jemez River
6 Stream System first arising before the Enforce-
7 ability Date relating to—

8 (A) water rights within the Jemez River
9 Stream System that the United States, acting
10 as trustee for the Pueblos, asserted or could
11 have asserted in any proceeding, including the
12 Adjudication, except to the extent that such
13 rights are recognized as part of the Pueblo
14 Water Right under this Act;

15 (B) foregone benefits from non-Pueblo use
16 of water, on and off Pueblo Land (including
17 water from all sources and for all uses), within
18 the Jemez River Stream System;

19 (C) damage, loss, or injury to water, water
20 rights, land, or natural resources due to loss of
21 water or water rights (including damages,
22 losses, or injuries to hunting, fishing, gathering,
23 or cultural rights due to loss of water or water
24 rights, claims relating to interference with, di-
25 version of, or taking of water, or claims relating

1 to a failure to protect, acquire, replace, or de-
2 velop water, water rights, or water infrastruc-
3 ture) within the Jemez River Stream System;

4 (D) a failure to establish or provide a mu-
5 nicipal, rural, or industrial water delivery sys-
6 tem on Pueblo Land within the Jemez River
7 Stream System;

8 (E) damage, loss, or injury to water, water
9 rights, land, or natural resources due to con-
10 struction, operation, and management of irriga-
11 tion projects on Pueblo Land or Federal land
12 (including damages, losses, or injuries to fish
13 habitat, wildlife, and wildlife habitat) within the
14 Jemez River Stream System;

15 (F) a failure to provide for operation,
16 maintenance, or deferred maintenance for any
17 irrigation system or irrigation project within the
18 Jemez River Stream System;

19 (G) a failure to provide a dam safety im-
20 provement to a dam on Pueblo Land within the
21 Jemez River Stream System;

22 (H) the litigation of claims relating to any
23 water right of a Pueblo within the Jemez River
24 Stream System; and

1 (I) the negotiation, execution, or adoption
2 of the Agreement (including exhibits or appen-
3 dices) and this Act.

4 (b) EFFECTIVE DATE.—The waivers and releases de-
5 scribed in subsection (a) shall take effect on the Enforce-
6 ability Date.

7 (c) RESERVATION OF RIGHTS AND RETENTION OF
8 CLAIMS.—Notwithstanding the waivers and releases under
9 subsection (a), the Pueblos and the United States, acting
10 as trustee for the Pueblos, shall retain all claims relating
11 to—

12 (1) the enforcement of, or claims accruing after
13 the Enforceability Date relating to water rights rec-
14 ognized under the Agreement relating to, any final
15 court decree or this Act;

16 (2) activities affecting the quality of water, in-
17 cluding claims under—

18 (A) the Comprehensive Environmental Re-
19 sponse, Compensation, and Liability Act of
20 1980 (42 U.S.C. 9601 et seq.), including claims
21 for damages to natural resources;

22 (B) the Safe Drinking Water Act (42
23 U.S.C. 300f et seq.);

1 (C) the Federal Water Pollution Control
2 Act (33 U.S.C. 1251 et seq.) (commonly re-
3 ferred to as the “Clean Water Act”); and

4 (D) any regulations implementing the Acts
5 described in subparagraphs (A) through (C);

6 (3) the right to use and protect water rights ac-
7 quired after the date of enactment of this Act;

8 (4) damage, loss, or injury to land or natural
9 resources that is not due to loss of water or water
10 rights, including hunting, fishing, gathering, or cul-
11 tural rights;

12 (5) all rights, remedies, privileges, immunities,
13 and powers not specifically waived and released pur-
14 suant to this Act or the Agreement; and

15 (6) loss of water or water rights in locations
16 outside of the Jemez River Stream System.

17 (d) EFFECT OF AGREEMENT AND ACT.—Nothing in
18 the Agreement or this Act—

19 (1) reduces or extends the sovereignty (includ-
20 ing civil and criminal jurisdiction) of any govern-
21 ment entity;

22 (2) affects the ability of the United States, as
23 sovereign, to carry out any activity authorized by
24 law, including—

1 (A) the Comprehensive Environmental Re-
2 sponse, Compensation, and Liability Act of
3 1980 (42 U.S.C. 9601 et seq.);

4 (B) the Safe Drinking Water Act (42
5 U.S.C. 300f et seq.);

6 (C) the Federal Water Pollution Control
7 Act (33 U.S.C. 1251 et seq.) (commonly re-
8 ferred to as the “Clean Water Act”);

9 (D) the Solid Waste Disposal Act (42
10 U.S.C. 6901 et seq.); and

11 (E) any regulations implementing the Acts
12 described in subparagraphs (A) through (D);

13 (3) affects the ability of the United States to
14 act as trustee for the Pueblos (consistent with this
15 Act), any other Pueblo or Indian Tribe, or an allot-
16 tee of any other Indian Tribe;

17 (4) confers jurisdiction on any State court—

18 (A) to interpret Federal law relating to
19 health, safety, or the environment;

20 (B) to determine the duties of the United
21 States or any other party under Federal law re-
22 garding health, safety, or the environment;

23 (C) to conduct judicial review of any Fed-
24 eral agency action; or

25 (D) to interpret Pueblo or Tribal law; or

1 (5) waives any claim of a member of a Pueblo
2 in an individual capacity that does not derive from
3 a right of the Pueblos.

4 (e) TOLLING OF CLAIMS.—

5 (1) IN GENERAL.—Each applicable period of
6 limitation and time-based equitable defense relating
7 to a claim described in this section shall be tolled for
8 the period beginning on the date of enactment of
9 this Act and ending on the Enforceability Date.

10 (2) EFFECT OF SUBSECTION.—Nothing in this
11 subsection revives any claim or tolls any period of
12 limitation or time-based equitable defense that ex-
13 pired before the date of enactment of this Act.

14 (3) LIMITATION.—Nothing in this section pre-
15 cludes the tolling of any period of limitation or any
16 time-based equitable defense under any other appli-
17 cable law.

18 (f) EXPIRATION.—

19 (1) IN GENERAL.—This Act shall expire in any
20 case in which the Secretary fails to publish a state-
21 ment of findings under section 10 by not later
22 than—

23 (A) July 1, 2030; or

1 (B) such alternative later date as is agreed
2 to by the Pueblos and the Secretary, after pro-
3 viding reasonable notice to the State.

4 (2) CONSEQUENCES.—If this Act expires under
5 paragraph (1)—

6 (A) the waivers and releases under sub-
7 section (a) shall—

8 (i) expire; and

9 (ii) have no further force or effect;

10 (B) the authorization, ratification, con-
11 firmation, and execution of the Agreement
12 under section 4 shall no longer be effective;

13 (C) any action carried out by the Sec-
14 retary, and any contract or agreement entered
15 into, pursuant to this Act shall be void;

16 (D) any unexpended Federal funds appro-
17 priated or made available to carry out the ac-
18 tivities authorized by this Act, together with
19 any interest earned on those funds, and any
20 water rights or contracts to use water and title
21 to other property acquired or constructed with
22 Federal funds appropriated or made available
23 to carry out the activities authorized by this Act
24 shall be returned to the Federal Government,
25 unless otherwise agreed to by the Pueblos and

1 the United States and approved by Congress;
 2 and

3 (E) except for Federal funds used to ac-
 4 quire or construct property that is returned to
 5 the Federal Government under subparagraph
 6 (D), the United States shall be entitled to offset
 7 any Federal funds made available to carry out
 8 this Act that were expended or withdrawn, or
 9 any funds made available to carry out this Act
 10 from other Federal authorized sources, together
 11 with any interest accrued on those funds,
 12 against any claims against the United States—

13 (i) relating to—

14 (I) water rights in the State as-
 15 serted by—

16 (aa) the Pueblos; or

17 (bb) any user of the Pueblo
 18 Water Right; or

19 (II) any other matter covered by
 20 subsection (a)(2); or

21 (ii) in any future settlement of water
 22 rights of the Pueblos.

23 **SEC. 9. SATISFACTION OF CLAIMS.**

24 The benefits provided under this Act shall be in com-
 25 plete replacement of, complete substitution for, and full

1 satisfaction of any claim of the Pueblos against the United
2 States that are waived and released by the Pueblos pursu-
3 ant to section 8(a).

4 **SEC. 10. ENFORCEABILITY DATE.**

5 The Enforceability Date shall be the date on which
6 the Secretary publishes in the Federal Register a state-
7 ment of findings that—

8 (1) to the extent that the Agreement conflicts
9 with this Act, the Agreement has been amended to
10 conform with this Act;

11 (2) the Agreement, as amended, includes the
12 waivers and releases of claims set forth in section 8,
13 and has been executed by all parties to the Agree-
14 ment, including the United States;

15 (3) the United States District Court for the
16 District of New Mexico has approved the Agreement
17 and has entered a Partial Final Judgment and De-
18 cree;

19 (4) all of the amounts appropriated under sec-
20 tion 7 have been appropriated and deposited in the
21 designated accounts of the applicable Pueblo Trust
22 Fund;

23 (5) the State has—

24 (A) provided the funding under section
25 7(c)(2) into appropriate funding accounts;

1 (B) provided the funding under section
2 7(c)(1) or entered into a funding agreement
3 with the intended beneficiaries for that funding;
4 and

5 (C) enacted legislation to amend State law
6 to provide that a Pueblo Water Right may be
7 leased for a term of not to exceed 99 years, in-
8 cluding renewals; and

9 (6) the waivers and releases under section 8(a)
10 have been executed by the Pueblos and the Sec-
11 retary.

12 **SEC. 11. MISCELLANEOUS PROVISIONS.**

13 (a) NO WAIVER OF SOVEREIGN IMMUNITY BY THE
14 UNITED STATES.—Nothing in this Act waives the sov-
15 ereign immunity of the United States.

16 (b) OTHER TRIBES NOT ADVERSELY AFFECTED.—
17 Nothing in this Act quantifies or diminishes any land or
18 water right, or any claim or entitlement to land or water,
19 of an Indian Tribe, band, or community other than the
20 Pueblos.

21 (c) EFFECT ON CURRENT LAW.—Nothing in this Act
22 affects any provision of law (including regulations) in ef-
23 fect on the day before the date of enactment of this Act
24 with respect to pre-enforcement review of any Federal en-
25 vironmental enforcement action.

1 (d) CONFLICT.—In the event of a conflict between
2 the Agreement and this Act, this Act shall control.

3 **SEC. 12. ANTIDEFICIENCY.**

4 The United States shall not be liable for any failure
5 to carry out any obligation or activity authorized by this
6 Act, including any obligation or activity under the Agree-
7 ment, if adequate appropriations are not provided ex-
8 pressly by Congress to carry out the purposes of this Act.

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