

117TH CONGRESS
2D SESSION

S. 4898

To approve the settlement of water rights claims of the Pueblos of Acoma and Laguna in the Rio San José Stream System 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 Acoma and Laguna in the Rio San José Stream System 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 Acoma and Laguna Water Rights Settlement
6 Act 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 Rights.
 Sec. 6. Settlement trust funds.
 Sec. 7. Funding.
 Sec. 8. Enforceability Date.
 Sec. 9. Waivers and releases of claims.
 Sec. 10. Claims.
 Sec. 11. Consent of United States to jurisdiction for appeals from a Pueblo
 Water Right permit decision.
 Sec. 12. Miscellaneous provisions.
 Sec. 13. 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 issues and controversies concerning
 5 claims to water rights in the general stream adju-
 6 dication of the Rio San José Stream System cap-
 7 tioned “State of New Mexico, ex rel. State Engineer
 8 v. Kerr-McGee, et al.”, No. D-1333-CV-1983-
 9 00190 and No. D-1333-CV-1983-00220 (consoli-
 10 dated), pending in the Thirteenth Judicial District
 11 Court for the State of New Mexico, for—

12 (A) the Pueblo of Acoma;

13 (B) the Pueblo of Laguna; and

14 (C) the United States, acting as trustee for
 15 the Pueblos of Acoma and Laguna;

16 (2) to authorize, ratify, and confirm the agree-
 17 ment entered into by the Pueblos, the State, and
 18 various other parties to the Agreement, to the extent
 19 that the Agreement is consistent with this Act;

- 1 (3) to authorize and direct the Secretary—
2 (A) to execute the Agreement; and
3 (B) to take any other actions necessary to
4 carry out the Agreement in accordance with
5 this Act; and
6 (4) to authorize funds necessary for the imple-
7 mentation of the Agreement and this Act.

8 **SEC. 3. DEFINITIONS.**

9 In this Act:

10 (1) ACEQUIA.—The term “Acequia” means
11 each of the Bluewater Toltec Irrigation District, La
12 Acequia Madre del Ojo del Gallo, Moquino Water
13 Users Association II, Murray Acres Irrigation Asso-
14 ciation, San Mateo Irrigation Association, Seboyeta
15 Community Irrigation Association, Cubero Acequia
16 Association, Cebolletita Acequia Association, and
17 Community Ditch of San José de la Cienega.

18 (2) ADJUDICATION.—The term “Adjudication”
19 means the general adjudication of water rights enti-
20 tled “State of New Mexico, ex rel. State Engineer v.
21 Kerr-McGee, et al.”, No. D-1333-CV-1983-00190
22 and No. D-1333-CV-1983-00220 (consolidated)
23 pending, as of the date of enactment of this Act, in
24 the Decree Court.

1 (3) AGREEMENT.—The term “Agreement”
2 means—

3 (A) the document entitled “Rio San José
4 Stream System Water Rights Local Settlement
5 Agreement Among the Pueblo of Acoma, the
6 Pueblo of Laguna, the Navajo Nation, the State
7 of New Mexico, the City of Grants, the Village
8 of Milan, the Association of Community Ditches
9 of the Rio San José and Nine Individual
10 Acequias and Community Ditches” and dated
11 May 13, 2022, and the attachments thereto;
12 and

13 (B) any amendment to the document re-
14 ferred to in subparagraph (A) (including an
15 amendment to an attachment thereto) that is
16 executed to ensure that the Agreement is con-
17 sistent with this Act.

18 (4) DECREE COURT.—The term “Decree
19 Court” means the Thirteenth Judicial District Court
20 of the State of New Mexico.

21 (5) ENFORCEABILITY DATE.—The term “En-
22 forceability Date” means the date described in sec-
23 tion 8.

24 (6) PARTIAL FINAL JUDGMENT AND DECREE.—
25 The term “Partial Final Judgment and Decree”

1 means a final or interlocutory partial final judgment
 2 and decree entered by the Decree Court with respect
 3 to the water rights of the Pueblos—

4 (A) that is substantially in the form de-
 5 scribed in article 14.7.2 of the Agreement, as
 6 amended to ensure consistency with this Act;
 7 and

8 (B) from which no further appeal may be
 9 taken.

10 (7) PUEBLO.—The term “Pueblo” means either
 11 of—

12 (A) the Pueblo of Acoma; or

13 (B) the Pueblo of Laguna.

14 (8) PUEBLO LAND.—

15 (A) IN GENERAL.—The term “Pueblo
 16 Land” means any real property—

17 (i) in the Rio San José Stream Sys-
 18 tem that is held by the United States in
 19 trust for either Pueblo, or owned by either
 20 Pueblo, as of the Enforceability Date;

21 (ii) in the Rio Salado Basin that is
 22 held by the United States in trust for the
 23 Pueblo of Acoma, or owned by the Pueblo
 24 of Acoma, as of the Enforceability Date; or

1 (iii) in the Rio Puerco Basin that is
2 held by the United States in trust for the
3 Pueblo of Laguna, or owned by the Pueblo
4 of Laguna, as of the Enforceability Date.

5 (B) INCLUSIONS.—The term “Pueblo
6 Land” includes land placed in trust with the
7 United States subsequent to the Enforceability
8 Date for either Pueblo in the Rio San José
9 Stream System, for the Pueblo of Acoma in the
10 Rio Salado Basin, or for the Pueblo of Laguna
11 in the Rio Puerco Basin.

12 (9) PUEBLO TRUST FUND.—The term “Pueblo
13 Trust Fund” means—

14 (A) the Pueblo of Acoma Settlement Trust
15 Fund established by section 6(a);

16 (B) the Pueblo of Laguna Settlement
17 Trust Fund established by that section; and

18 (C) the Acomita Reservoir Works Trust
19 Fund established by that section.

20 (10) PUEBLO WATER RIGHTS.—The term
21 “Pueblo Water Rights” means—

22 (A) the respective water rights of the
23 Pueblos in the Rio San José Stream System—

24 (i) as identified in the Agreement and
25 section 5 of this Act; and

1 (ii) as confirmed in the Partial Final
2 Judgment and Decree;

3 (B) the water rights of the Pueblo of
4 Acoma in the Rio Salado Basin; and

5 (C) the water rights of the Pueblo of La-
6 guna in the Rio Puerco Basin, as identified in
7 the Agreement and section 5 of this Act.

8 (11) PUEBLOS.—The term “Pueblos” means—

9 (A) the Pueblo of Acoma; and

10 (B) the Pueblo of Laguna.

11 (12) RIO PUERCO BASIN.—The term “Rio
12 Puerco Basin” means the area defined by the
13 United States Geological Survey Hydrologic Unit
14 Codes (HUC) 13020204 (Rio Puerco subbasin) and
15 13020205 (Arroyo Chico subbasin), including the
16 hydrologically connected groundwater.

17 (13) RIO SAN JOSÉ STREAM SYSTEM.—The
18 term “Rio San José Stream System” means the geo-
19 graphic extent of the area involved in the Adjudica-
20 tion pursuant to the description filed in the Decree
21 Court on November 21, 1986.

22 (14) RIO SALADO BASIN.—The term “Rio Sa-
23 lado Basin” means the area defined by the United
24 States Geological Survey Hydrologic Unit Code

1 (HUC) 13020209 (Rio Salado subbasin), including
2 the hydrologically connected groundwater.

3 (15) SECRETARY.—The term “Secretary”
4 means the Secretary of the Interior.

5 (16) SIGNATORY ACEQUIA.—The term “Signa-
6 tory Acequia” means an acequia that is a signatory
7 to the Agreement.

8 (17) STATE.—The term “State” means the
9 State of New Mexico and all officers, agents, depart-
10 ments, and political subdivisions of the State of New
11 Mexico.

12 **SEC. 4. RATIFICATION OF AGREEMENT.**

13 (a) RATIFICATION.—

14 (1) IN GENERAL.—Except as modified by this
15 Act and to the extent the Agreement does not con-
16 flict with this Act, the Agreement is authorized, rati-
17 fied, and confirmed.

18 (2) AMENDMENTS.—If an amendment to the
19 Agreement or any attachment to the Agreement re-
20 quiring the signature of the Secretary is executed in
21 accordance with this Act to make the Agreement
22 consistent with this Act, the amendment is author-
23 ized, ratified, and confirmed.

24 (b) EXECUTION.—

1 (1) IN GENERAL.—To the extent the Agreement
2 does not conflict with this Act, the Secretary shall
3 execute the Agreement, including all attachments to
4 or parts of the Agreement requiring the signature of
5 the Secretary.

6 (2) MODIFICATIONS.—Nothing in this Act pro-
7 hibits the Secretary, after execution of the Agree-
8 ment, from approving any modification to the Agree-
9 ment, including an attachment to the Agreement,
10 that is consistent with this Act, to the extent that
11 the modification does not otherwise require congres-
12 sional approval under section 2116 of the Revised
13 Statutes (25 U.S.C. 177) or any other applicable
14 provision of Federal law.

15 (c) ENVIRONMENTAL COMPLIANCE.—

16 (1) IN GENERAL.—In implementing the Agree-
17 ment and this Act, the Secretary shall comply
18 with—

19 (A) the Endangered Species Act of 1973
20 (16 U.S.C. 1531 et seq.);

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

24 (C) all other applicable Federal environ-
25 mental laws and regulations.

1 (2) COMPLIANCE.—

2 (A) IN GENERAL.—In implementing the
3 Agreement and this Act, the Pueblos shall pre-
4 pare any necessary environmental documents
5 consistent with—

6 (i) the Endangered Species Act of
7 1973 (16 U.S.C. 1531 et seq.);

8 (ii) the National Environmental Policy
9 Act of 1969 (42 U.S.C. 4321 et seq.), in-
10 cluding the implementing regulations of
11 that Act; and

12 (iii) all other applicable Federal envi-
13 ronmental laws and regulations.

14 (B) AUTHORIZATIONS.—The Secretary
15 shall—

16 (i) independently evaluate the docu-
17 mentation required under subparagraph
18 (A); and

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

21 (3) EFFECT OF EXECUTION.—The execution of
22 the Agreement by the Secretary under this section
23 shall not constitute a major Federal action under
24 the National Environmental Policy Act of 1969 (42
25 U.S.C. 4321 et seq.).

1 (4) COSTS.—Any costs associated with the per-
2 formance of the compliance activities under sub-
3 section (c) shall be paid from funds deposited in the
4 Pueblo Trust Funds, subject to the condition that
5 any costs associated with the performance of Federal
6 approval or other review of such compliance work or
7 costs associated with inherently Federal functions
8 shall remain the responsibility of the Secretary.

9 **SEC. 5. PUEBLO WATER RIGHTS.**

10 (a) TRUST STATUS OF THE PUEBLO WATER
11 RIGHTS.—The Pueblo Water Rights shall be held in trust
12 by the United States on behalf of the Pueblos in accord-
13 ance with the Agreement and this Act.

14 (b) FORFEITURE AND ABANDONMENT.—

15 (1) IN GENERAL.—The Pueblo Water Rights
16 shall not be subject to loss through non-use, for-
17 feiture, abandonment, or other operation of law.

18 (2) STATE-LAW BASED WATER RIGHTS.—Pur-
19 suant to the Agreement, State-law based water
20 rights acquired by a Pueblo, or by the United States
21 on behalf of a Pueblo, after the date for inclusion in
22 the Partial Final Judgment and Decree, shall not be
23 subject to forfeiture, abandonment, or permanent
24 alienation from the time they are acquired.

1 (c) USE.—Any use of the Pueblo Water Rights shall
2 be subject to the terms and conditions of the Agreement
3 and this Act.

4 (d) AUTHORITY OF THE PUEBLOS.—

5 (1) IN GENERAL.—The Pueblos shall have the
6 authority to allocate, distribute, and lease the Pueblo
7 Water Rights for use on Pueblo Land in accordance
8 with the Agreement, this Act, and applicable Federal
9 law.

10 (2) USE OFF PUEBLO LAND.—The Pueblos may
11 allocate, distribute, and lease the Pueblo Water
12 Rights for use off Pueblo Land in accordance with
13 the Agreement, this Act, and applicable Federal law,
14 subject to the approval of the Secretary.

15 (e) ADMINISTRATION.—

16 (1) NO ALIENATION.—The Pueblos shall not
17 permanently alienate any portion of the Pueblo
18 Water Rights.

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

1 (3) PROHIBITION ON FORFEITURE.—The non-
2 use of all or any portion of the Pueblo Water Rights
3 by any water user shall not result in the forfeiture,
4 abandonment, relinquishment, or other loss of all or
5 any portion of the Pueblo Water Rights.

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

7 (a) ESTABLISHMENT.—The Secretary shall establish
8 2 trust funds, to be known as the “Pueblo of Acoma Set-
9 tlement Trust Fund” and the “Pueblo of Laguna Settle-
10 ment Trust Fund”, and a trust fund for the benefit of
11 both Pueblos to be known as the “Acomita Reservoir
12 Works Trust Fund”, to be managed, invested, and distrib-
13 uted by the Secretary and to remain available until ex-
14 pended, withdrawn, or reverted to the general fund of the
15 Treasury, consisting of the amounts deposited in the
16 Pueblo Trust Funds under subsection (c), together with
17 any investment earnings, including interest, earned on
18 those amounts, for the purpose of carrying out this Act.

19 (b) ACCOUNTS.—

20 (1) PUEBLO OF ACOMA SETTLEMENT TRUST
21 FUND.—The Secretary shall establish in the Pueblo
22 of Acoma Settlement Trust Fund the following ac-
23 counts:

24 (A) The Water Rights Settlement Account.

1 (B) The Water Infrastructure Operations
2 and Maintenance Account.

3 (C) The Feasibility Studies Settlement Ac-
4 count.

5 (2) PUEBLO OF LAGUNA SETTLEMENT TRUST
6 FUND.—The Secretary shall establish in the Pueblo
7 of Laguna Settlement Trust Fund the following ac-
8 counts:

9 (A) The Water Rights Settlement Account.

10 (B) The Water Infrastructure Operations
11 and Maintenance Account.

12 (C) The Feasibility Studies Settlement Ac-
13 count.

14 (c) DEPOSITS.—The Secretary shall deposit in each
15 Pueblo Trust Fund the amounts made available pursuant
16 to section 7(a).

17 (d) MANAGEMENT AND INTEREST.—

18 (1) MANAGEMENT.—On receipt and deposit of
19 funds into the Pueblo Trust Funds under subsection
20 (c), the Secretary shall manage, invest, and dis-
21 tribute all amounts in the Pueblo Trust Funds in a
22 manner that is consistent with the investment au-
23 thority of the Secretary under—

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

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

4 (C) this subsection.

5 (2) INVESTMENT EARNINGS.—In addition to
6 the deposits made to each Pueblo Trust Fund under
7 subsection (c), any investment earnings, including
8 interest, earned on those amounts held in each
9 Pueblo Trust Fund are authorized to be used in ac-
10 cordance with subsections (f) and (h).

11 (e) AVAILABILITY OF AMOUNTS.—

12 (1) IN GENERAL.—Amounts appropriated to,
13 and deposited in, each Pueblo Trust Fund, including
14 any investment earnings (including interest) earned
15 on those amounts, shall be made available to the
16 Pueblo or Pueblos by the Secretary beginning on the
17 Enforceability Date, subject to the requirements of
18 this section, except for those funds to be made avail-
19 able to the Pueblos pursuant to paragraph (2).

20 (2) USE OF FUNDS.—Notwithstanding para-
21 graph (1)—

22 (A) amounts deposited in the Feasibility
23 Studies Settlement Account of each Pueblo
24 Trust Fund, including any investment earnings,
25 including interest, earned on those amounts

1 shall be available to the Pueblo on the date on
2 which the amounts are deposited for uses de-
3 scribed in subsection (h)(3), and in accordance
4 with the Agreement;

5 (B) amounts deposited in the Acomita Res-
6 ervoir Works Trust Fund, including any invest-
7 ment earnings, including interest, earned on
8 those amounts shall be available to the Pueblos
9 on the date on which the amounts are deposited
10 for uses described in subsection (h)(4), and in
11 accordance with the Agreement; and

12 (C) up to \$15,000,000 from the Water
13 Rights Settlement Account for each Pueblo
14 shall be available for installing, on Pueblo
15 Lands, groundwater wells to meet immediate
16 domestic, commercial, municipal and industrial
17 water needs, and associated environmental, cul-
18 tural, and historical compliance.

19 (f) WITHDRAWALS.—

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

23 (A) IN GENERAL.—Each Pueblo may with-
24 draw any portion of the amounts in its respec-
25 tive Settlement Trust Fund on approval by the

1 Secretary of a Tribal management plan sub-
2 mitted by each Pueblo in accordance with the
3 American Indian Trust Fund Management Re-
4 form Act of 1994 (25 U.S.C. 4001 et seq.).

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

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

24 (2) WITHDRAWALS UNDER EXPENDITURE
25 PLAN.—

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

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

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

21 (D) APPROVAL.—The Secretary shall ap-
22 prove an expenditure plan submitted under sub-
23 paragraph (A) if the Secretary determines that
24 the plan—

25 (i) is reasonable; and

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

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

9 (3) WITHDRAWALS FROM ACOMITA RESERVOIR
10 WORKS TRUST FUND.—

11 (A) IN GENERAL.—A Pueblo may submit
12 to the Secretary a request to withdraw funds
13 from the Acomita Reservoir Works Trust Fund
14 pursuant to an approved joint expenditure plan.

15 (B) REQUIREMENTS.—

16 (i) IN GENERAL.—To be eligible to
17 withdraw amounts under a joint expendi-
18 ture plan under subparagraph (A), the
19 Pueblos shall submit to the Secretary a
20 joint expenditure plan for any portion of
21 the Acomita Reservoir Works Trust Fund
22 that the Pueblos elect to withdraw pursu-
23 ant to this subparagraph, subject to the
24 condition that the amounts shall be used

1 for the purposes described in subsection
2 (h)(4).

3 (ii) WRITTEN RESOLUTION.—Each re-
4 quest to withdraw amounts under a joint
5 expenditure plan submitted under clause
6 (i) shall be accompanied by a written reso-
7 lution from the Tribal councils of both
8 Pueblos approving the requested use and
9 disbursement of funds.

10 (C) INCLUSIONS.—A joint expenditure
11 plan under this paragraph shall include a de-
12 scription of the manner and purpose for which
13 the amounts proposed to be withdrawn from the
14 Acomita Reservoir Works Trust Fund will be
15 used by the Pueblo or Pueblos to whom the
16 funds will be disbursed, in accordance with sub-
17 section (h)(4).

18 (D) APPROVAL.—The Secretary shall ap-
19 prove a joint expenditure plan submitted under
20 subparagraph (A) if the Secretary determines
21 that the plan—

22 (i) is reasonable; and

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

1 (E) ENFORCEMENT.—The Secretary may
2 carry out such judicial and administrative ac-
3 tions as the Secretary determines to be nec-
4 essary to enforce a joint expenditure plan to en-
5 sure that amounts disbursed under this para-
6 graph are used in accordance with this Act.

7 (g) EFFECT OF SECTION.—Nothing in this section
8 gives the Pueblos the right to judicial review of a deter-
9 mination of the Secretary relating to whether to approve
10 a Tribal management plan under paragraph (1) of sub-
11 section (f) or an expenditure plan under paragraph (2)
12 or (3) of that subsection, except under subchapter II of
13 chapter 5, of title 5, United States Code, and chapter 7
14 of title 5, United States Code (commonly known as the
15 “Administrative Procedure Act”).

16 (h) USES.—

17 (1) WATER RIGHTS SETTLEMENT ACCOUNT.—

18 The Water Rights Settlement Account for each
19 Pueblo may only be used for the following purposes:

20 (A) Acquiring water rights or water sup-
21 ply.

22 (B) Planning, permitting, designing, engi-
23 neering, constructing, reconstructing, replacing,
24 rehabilitating, operating, or repairing water
25 production, treatment, or delivery infrastruc-

1 ture, including for domestic and municipal use,
2 on-farm improvements, or wastewater infra-
3 structure.

4 (C) Pueblo Water Rights management and
5 administration.

6 (D) Watershed protection and enhance-
7 ment, support of agriculture, water-related
8 Pueblo community welfare and economic devel-
9 opment, and costs relating to implementation of
10 the Agreement.

11 (E) Environmental compliance in the de-
12 velopment and construction of infrastructure
13 under this Act.

14 (2) WATER INFRASTRUCTURE OPERATIONS AND
15 MAINTENANCE TRUST ACCOUNT.—The Water Infra-
16 structure Operations and Maintenance Account for
17 each Pueblo may only be used to pay costs for oper-
18 ation and maintenance of water infrastructure to
19 serve Pueblo domestic, commercial, municipal, and
20 industrial water uses from any water source.

21 (3) FEASIBILITY STUDIES SETTLEMENT AC-
22 COUNT.—The Feasibility Studies Settlement Ac-
23 count for each Pueblo may only be used to pay costs
24 for feasibility studies of water supply infrastructure

1 to serve Pueblo domestic, commercial, municipal,
2 and industrial water uses from any water source.

3 (4) ACOMITA RESERVOIR WORKS TRUST
4 FUND.—The Acomita Reservoir Works Trust Fund
5 may only be used for planning, permitting, design-
6 ing, engineering, constructing, reconstructing, re-
7 placing, rehabilitating, maintaining, or repairing
8 Acomita reservoir, its dam, inlet works, outlet works,
9 and the North Acomita Ditch from the Acomita Res-
10 ervoir outlet on the Pueblo of Acoma through its ter-
11 minus on the Pueblo of Laguna.

12 (i) LIABILITY.—The Secretary and the Secretary of
13 the Treasury shall not be liable for the expenditure or in-
14 vestment of any amounts withdrawn from the Pueblo
15 Trust Funds by a Pueblo under paragraph (1), (2), or
16 (3) of subsection (f).

17 (j) EXPENDITURE REPORTS.—Each Pueblo shall an-
18 nually submit to the Secretary an expenditure report de-
19 scribing accomplishments and amounts spent from use of
20 withdrawals under a Tribal management plan or an ex-
21 penditure plan under paragraph (1), (2), or (3) of sub-
22 section (f), as applicable.

23 (k) NO PER CAPITA DISTRIBUTIONS.—No portion of
24 the Pueblo Trust Funds shall be distributed on a per cap-
25 ita basis to any member of a Pueblo.

1 (l) TITLE TO INFRASTRUCTURE.—Title to, control
2 over, and operation of any project constructed using funds
3 from the Pueblo Trust Funds shall remain in the appro-
4 priate Pueblo or Pueblos.

5 (m) OPERATION, MAINTENANCE, AND REPLACE-
6 MENT.—All operation, maintenance, and replacement
7 costs of any project constructed using funds from the
8 Pueblo Trust Funds shall be the responsibility of the ap-
9 propriate Pueblo or Pueblos.

10 **SEC. 7. FUNDING.**

11 (a) MANDATORY APPROPRIATIONS.—Out of any
12 money in the Treasury not otherwise appropriated, the
13 Secretary of the Treasury shall transfer to the Secretary
14 the following amounts for the following accounts:

15 (1) PUEBLO OF ACOMA SETTLEMENT TRUST
16 FUND.—

17 (A) THE WATER RIGHTS SETTLEMENT AC-
18 COUNT.—\$296,000,000, to remain available
19 until expended, withdrawn, or reverted to the
20 general fund of the Treasury.

21 (B) THE WATER INFRASTRUCTURE OPER-
22 ATIONS AND MAINTENANCE ACCOUNT.—
23 \$14,000,000, to remain available until ex-
24 pended, withdrawn, or reverted to the general
25 fund of the Treasury.

1 (C) THE FEASIBILITY STUDIES SETTLE-
2 MENT ACCOUNT.—\$1,750,000, to remain avail-
3 able until expended, withdrawn, or reverted to
4 the general fund of the Treasury.

5 (2) PUEBLO OF LAGUNA SETTLEMENT TRUST
6 FUND.—

7 (A) THE WATER RIGHTS SETTLEMENT AC-
8 COUNT.—\$464,000,000, to remain available
9 until expended, withdrawn, or reverted to the
10 general fund of the Treasury.

11 (B) THE WATER INFRASTRUCTURE OPER-
12 ATIONS AND MAINTENANCE ACCOUNT.—
13 \$26,000,000, to remain available until ex-
14 pended, withdrawn, or reverted to the general
15 fund of the Treasury.

16 (C) THE FEASIBILITY STUDIES SETTLE-
17 MENT ACCOUNT.—\$3,250,000, to remain avail-
18 able until expended, withdrawn, or reverted to
19 the general fund of the Treasury.

20 (3) ACOMITA RESERVOIR WORKS TRUST
21 FUND.—\$45,000,000, to remain available until ex-
22 pended, withdrawn, or reverted to the general fund
23 of the Treasury.

24 (b) FLUCTUATIONS IN COSTS.—

1 (1) IN GENERAL.—The amounts appropriated
2 under subsection (a) shall be increased or decreased,
3 as appropriate, by such amounts as may be justified
4 by reason of ordinary fluctuations in costs, as indi-
5 cated by the Bureau of Reclamation Construction
6 Cost Index–Composite Trend.

7 (2) CONSTRUCTION COSTS ADJUSTMENT.—The
8 amounts appropriated under subsection (a) shall be
9 adjusted to address construction cost changes nec-
10 essary to account for unforeseen market volatility
11 that may not otherwise be captured by engineering
12 cost indices, as determined by the Secretary, includ-
13 ing repricing applicable to the types of construction
14 and current industry standards involved.

15 (3) REPETITION.—The adjustment process
16 under this subsection shall be repeated for each sub-
17 sequent amount appropriated until the applicable
18 amount, as adjusted, has been appropriated.

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

24 (c) STATE COST SHARE.—Pursuant to the Agree-
25 ment, the State shall contribute—

1 (1) \$24,000,000, as adjusted for inflation pur-
2 suant to the Agreement, for the Joint Grants-Milan
3 Project for Water Re-Use, Water Conservation and
4 Augmentation of the Rio San José, the Village of
5 Milan Projects Fund, and the City of Grants
6 Projects Fund;

7 (2) \$12,000,000, as adjusted for the inflation
8 pursuant to the Agreement, for Signatory Acequias
9 Projects and Offset Projects Fund for the Associa-
10 tion of Community Ditches of the Rio San José; and

11 (3) \$500,000, as adjusted for inflation pursu-
12 ant to the Agreement, to mitigate impairment to
13 non-Pueblo domestic and livestock groundwater
14 rights as a result of new Pueblo water use.

15 **SEC. 8. ENFORCEABILITY DATE.**

16 (a) IN GENERAL.—The Enforceability Date shall be
17 the date on which the Secretary publishes in the Federal
18 Register a statement of findings that—

19 (1) to the extent that the Agreement conflicts
20 with this Act, the Agreement has been amended to
21 conform with this Act;

22 (2) the Agreement, as amended, including the
23 waivers and releases of claims set forth in section 9,
24 has been executed by all parties to the Agreement,
25 including the United States;

1 (3) all of the amounts appropriated under sec-
2 tion 7 have been appropriated and deposited in the
3 designated accounts of the Pueblo Trust Fund;

4 (4) the State has enacted legislation to amend
5 State law to provide that a Pueblo Water Right may
6 be leased for a term not to exceed 99 years, includ-
7 ing renewals;

8 (5) the State has provided—

9 (A) the funding under section 7(c)(3) into
10 appropriate funding accounts; and

11 (B) the funding under paragraphs (1) and
12 (2) of section 7(c) into appropriate funding ac-
13 counts or entered into funding agreements with
14 the intended beneficiaries for funding under
15 those paragraphs of that section; and

16 (6) the Decree Court has approved the Agree-
17 ment and has entered a Partial Final Judgment and
18 Decree.

19 (b) EXPIRATION.—

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

24 (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 sections (a) and (b) of section 9 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
24 Act, shall be returned to the Federal Govern-
25 ment, unless otherwise agreed to by the Pueblos

1 and the United States and approved by Con-
 2 gress; 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 the Pueblos or any user of
 16 the Pueblo Water Rights; or

17 (II) any other matter covered by
 18 section 9(a)(2); or

19 (ii) in any future settlement of water
 20 rights of the Pueblos.

21 **SEC. 9. WAIVERS AND RELEASES OF CLAIMS.**

22 (a) WAIVERS AND RELEASES OF CLAIMS BY PUEB-
 23 LOS AND THE UNITED STATES AS TRUSTEE FOR PUEB-
 24 LOS.—Subject to the reservation of rights and retention
 25 of claims under subsection (d), as consideration for rec-

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

5 (1) water rights within the Rio San José
6 Stream System that the Pueblos, or the United
7 States acting as trustee for the Pueblos, asserted or
8 could have asserted in any proceeding, including the
9 Adjudication, on or before the Enforceability Date,
10 except to the extent that such rights are recognized
11 in the Agreement and this Act; and

12 (2) damages, losses, or injuries to water rights
13 or claims of interference with, diversion of, or taking
14 of water rights (including claims for injury to land
15 resulting from such damages, losses, injuries, inter-
16 ference with, diversion, or taking of water rights) in
17 waters in the Rio San José Stream System against
18 any party to the Agreement, including the members
19 and parciantes of Signatory Acequias, that accrued
20 at any time up to and including the Enforceability
21 Date.

22 (b) WAIVERS AND RELEASES OF CLAIMS BY PUEB-
23 LOS AGAINST UNITED STATES.—Subject to the reserva-
24 tion of rights and retention of claims under subsection (d),
25 the Pueblos shall execute a waiver and release of all claims

1 against the United States (including any agency or em-
2 ployee of the United States) first arising before the En-
3 forceability Date relating to—

4 (1) water rights within the Rio San José
5 Stream System that the United States, acting as
6 trustee for the Pueblos, asserted or could have as-
7 serted in any proceeding, including the Adjudication,
8 except to the extent that such rights are recognized
9 as part of the Pueblo Water Rights under this Act;

10 (2) foregone benefits from non-Pueblo use of
11 water, on and off Pueblo Land (including water
12 from all sources and for all uses), within the Rio
13 San José Stream System;

14 (3) damage, loss, or injury to water, water
15 rights, land, or natural resources due to loss of
16 water or water rights (including damages, losses, or
17 injuries to hunting, fishing, gathering, or cultural
18 rights due to loss of water or water rights, claims
19 relating to interference with, diversion of, or taking
20 of water, or claims relating to a failure to protect,
21 acquire, replace, or develop water, water rights, or
22 water infrastructure) within the Rio San José
23 Stream System;

24 (4) a failure to provide operation, maintenance,
25 or deferred maintenance for any irrigation system or

1 irrigation project within the Rio San José Stream
2 System;

3 (5) a failure to establish or provide a municipal,
4 rural, or industrial water delivery system on Pueblo
5 Land within the Rio San José Stream System;

6 (6) damage, loss, or injury to water, water
7 rights, land, or natural resources due to construc-
8 tion, operation, and management of irrigation
9 projects on Pueblo Land (including damages, losses,
10 or injuries to fish habitat, wildlife, and wildlife habi-
11 tat) within the Rio San José Stream System;

12 (7) a failure to provide a dam safety improve-
13 ment to a dam on Pueblo Land within the Rio San
14 José Stream System;

15 (8) the litigation of claims relating to any water
16 right of the Pueblos within the Rio San José Stream
17 System; and

18 (9) the negotiation, execution, or adoption of
19 the Agreement (including attachments) and this Act.

20 (c) EFFECTIVE DATE.—The waivers and releases de-
21 scribed in subsections (a) and (b) shall take effect on the
22 Enforceability Date.

23 (d) RESERVATION OF RIGHTS AND RETENTION OF
24 CLAIMS.—Notwithstanding the waivers and releases under

1 subsections (a) and (b), the Pueblos and the United
2 States, acting as trustee for the Pueblos, shall retain—

3 (1) all claims relating to—

4 (A) the enforcement of, or claims accruing
5 after the Enforceability Date relating to water
6 rights recognized under, the Agreement, this
7 Act, or the Partial Final Judgment and Decree
8 entered in the Adjudication;

9 (B) activities affecting the quality of water
10 and the environment, including claims under—

11 (i) the Comprehensive Environmental
12 Response, Compensation and Liability Act
13 of 1980 (42 U.S.C. 9601 et seq.), includ-
14 ing claims for damages to natural re-
15 sources;

16 (ii) the Safe Drinking Water Act (42
17 U.S.C. 300f et seq.);

18 (iii) the Federal Water Pollution Con-
19 trol Act (33 U.S.C. 1251 et seq.) (com-
20 monly referred to as the “Clean Water
21 Act”); and

22 (iv) any regulations implementing the
23 Acts described in clauses (i) through (iii);

1 (C) the right to use and protect water
2 rights acquired after the date of enactment of
3 this Act;

4 (D) damage, loss, or injury to land or nat-
5 ural resources that is not due to loss of water
6 or water rights, including hunting, fishing,
7 gathering, or cultural rights;

8 (E) all claims for water rights, and claims
9 for injury to water rights, in basins other than
10 the Rio San José Stream System, subject to ar-
11 ticle 8.5 of the Agreement with respect to the
12 claims of the Pueblo of Laguna for water rights
13 in the Rio Puerco Basin and the claims of the
14 Pueblo of Acoma for water rights in the Rio Sa-
15 lado Basin;

16 (F) all claims relating to the Jackpile-
17 Pagate Uranium Mine in the State that are
18 not due to loss of water or water rights; and

19 (G) all rights, remedies, privileges, immu-
20 nities, and powers and claims not specifically
21 waived and released pursuant to this Act or the
22 Agreement.

23 (e) EFFECT OF AGREEMENT AND ACT.—Nothing in
24 the Agreement or this Act—

1 (1) reduces or extends the sovereignty (includ-
2 ing civil and criminal jurisdiction) of any govern-
3 ment entity, except as provided in section 11;

4 (2) affects the ability of the United States, as
5 a sovereign, to carry out any activity authorized by
6 law, including—

7 (A) the Comprehensive Environmental Re-
8 sponse, Compensation, and Liability Act of
9 1980 (42 U.S.C. 9601 et seq.);

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

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

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

17 (E) any regulations implementing the Acts
18 described in subparagraphs (A) through (D);

19 (3) affects the ability of the United States to
20 act as trustee for any other pueblo or Indian Tribe,
21 or an allottee of any other Indian Tribe;

22 (4) confers jurisdiction on any State court—

23 (A) to interpret Federal law relating to
24 health, safety, or the environment;

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

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

6 (5) waives any claim of a member of a Pueblo
7 in an individual capacity that does not derive from
8 a right of the Pueblos.

9 (f) TOLLING OF CLAIMS.—

10 (1) IN GENERAL.—Each applicable period of
11 limitation and time-based equitable defense relating
12 to a claim described in this section shall be tolled for
13 the period beginning on the date of enactment of
14 this Act and ending on the Enforceability Date.

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

19 (3) LIMITATION.—Nothing in this section pre-
20 cludes the tolling of any period of limitation or any
21 time-based equitable defense under any other appli-
22 cable law.

23 **SEC. 10. 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 9(b).

4 **SEC. 11. CONSENT OF UNITED STATES TO JURISDICTION**
 5 **FOR APPEALS FROM A PUEBLO WATER**
 6 **RIGHT PERMIT DECISION.**

7 (a) CONSENT.—On the Enforceability Date, the con-
 8 sent of the United States is hereby given, with the consent
 9 of each Pueblo under article 11.5 of the Agreement, to
 10 jurisdiction in the District Court for the Thirteenth Judi-
 11 cial District of the State of New Mexico, and in the New
 12 Mexico Court of Appeals and the New Mexico Supreme
 13 Court on appeal therefrom in the same manner as pro-
 14 vided under New Mexico law, over an action filed in such
 15 District Court by any party to a Pueblo Water Rights Per-
 16 mit administrative proceeding under article 11.4 of the
 17 Agreement for the limited and sole purpose of an appeal
 18 from the Pueblo Water Right Permit decision under arti-
 19 cle 11.5 of the Agreement.

20 (b) LIMITATION.—The consent of the United States
 21 under this Act is limited to judicial review, based on the
 22 record developed through the administrative process of the
 23 Pueblo, under a standard of judicial review limited to de-
 24 termining whether the Pueblo decision on the application
 25 for Pueblo Water Right Permit—

1 (1) is supported by substantial evidence;

2 (2) is not arbitrary, capricious, or contrary to
3 law;

4 (3) is not in accordance with this Agreement or
5 the Partial Final Judgment and Decree; or

6 (4) shows that the Pueblo acted fraudulently or
7 outside the scope of its authority.

8 (c) PUEBLO WATER CODE AND INTERPRETATION.—

9 (1) IN GENERAL.—Pueblo Water Code or Pueb-
10 lo Water Law provisions that meet the requirements
11 of article 11 of the Agreement shall be given full
12 faith and credit in any proceeding described in this
13 section.

14 (2) PROVISIONS OF THE PUEBLO WATER
15 CODE.—To the extent that a State court conducting
16 judicial review under this section must interpret pro-
17 visions of Pueblo law that are not express provisions
18 of the Pueblo Water Code, the State court shall cer-
19 tify the question of interpretation to the Pueblo
20 court.

21 (3) NO CERTIFICATION.—Any issues of inter-
22 pretation of standards in article 11.6 of the Agree-
23 ment are not subject to certification.

1 (4) LIMITATION.—Nothing in this section limits
2 the jurisdiction of the Decree Court to interpret and
3 enforce the Agreement.

4 **SEC. 12. MISCELLANEOUS PROVISIONS.**

5 (a) WAIVER OF SOVEREIGN IMMUNITY BY THE
6 UNITED STATES.—Nothing in this Act waives the sov-
7 ereign immunity of the United States.

8 (b) OTHER TRIBES NOT ADVERSELY AFFECTED.—
9 Nothing in this Act quantifies or diminishes any land or
10 water right, or any claim or entitlement to land or water,
11 of an Indian Tribe, band, or community other than the
12 Pueblos.

13 (c) EFFECT ON CURRENT LAW.—Nothing in this Act
14 affects any provision of law (including regulations) in ef-
15 fect on the day before the date of enactment of this Act
16 with respect to pre-enforcement review of any Federal en-
17 vironmental enforcement action.

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

20 **SEC. 13. ANTIDEFICIENCY.**

21 The United States shall not be liable for any failure
22 to carry out any obligation or activity authorized by this
23 Act, including any obligation or activity under the Agree-

1 ment, if adequate appropriations are not provided ex-
2 pressly by Congress to carry out the purposes of this Act.

○