

118TH CONGRESS
2D SESSION

H. R. 8945

To approve the settlement of water rights claims of the Navajo Nation in the Rio San José Stream System in the State of New Mexico, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 8, 2024

Ms. LEGER FERNANDEZ introduced the following bill; which was referred to the Committee on Natural Resources

A BILL

To approve the settlement of water rights claims of the Navajo Nation 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 “Navajo Nation Rio San José Stream System Water
6 Rights Settlement Act of 2024”.

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. Navajo Nation's Water Rights.
- Sec. 6. Navajo Nation Rio San José Settlement Trust Fund.
- Sec. 7. Funding.
- Sec. 8. Enforceability Date.
- Sec. 9. Waivers and releases of claims.
- Sec. 10. Satisfaction of claims.
- Sec. 11. Consent of United States to jurisdiction for judicial review of a Navajo Nation Water Use Permit decision.
- Sec. 12. Miscellaneous provisions.
- Sec. 13. Relation to Allottees.
- Sec. 14. Expansion of Navajo-Gallup Water Supply Project service area.
- Sec. 15. 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 general
 5 stream adjudication of the Rio San José Stream
 6 System captioned “State of New Mexico, ex rel.
 7 State Engineer v. Kerr-McGee, et al.”, No. D-1333-
 8 CV-1983-00190 and No. D-1333-CV-1983-00220
 9 (consolidated), pending in the Thirteenth Judicial
 10 District Court for the State of New Mexico, for—

11 (A) the Navajo Nation; and

12 (B) the United States, acting as trustee
 13 for the Navajo Nation;

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

19 (3) to authorize and direct the Secretary—

1 (A) to execute the Agreement; and

2 (B) to take any other actions necessary to
3 carry out the Agreement in accordance with
4 this Act; and

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

7 **SEC. 3. DEFINITIONS.**

8 In this Act:

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

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

24 (3) **AGREEMENT.**—The term “Agreement”
25 means—

1 (A) the addendum dated June 11, 2024,
2 to, and as provided in Article 17 of, the docu-
3 ment entitled “Rio San José Stream System
4 Water Rights Local Settlement Agreement
5 Among the Pueblo of Acoma, the Pueblo of La-
6 guna, the Navajo Nation, the State of New
7 Mexico, the City of Grants, the Village of
8 Milan, the Association of Community Ditches of
9 the Rio San José and Nine Individual Acequias
10 and Community Ditches” and dated May 13,
11 2022, and the attachments thereto and to the
12 addendum; and

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

18 (4) ALLOTMENT.—The term “Allotment”
19 means a parcel of land that is—

20 (A) located within—

21 (i) the Rio Puerco Basin; or

22 (ii) the Rio San José Stream System;

23 and

24 (B) held in trust by the United States for
25 the benefit of—

1 (i) 1 or more individual Indians; or

2 (ii) an Indian Tribe holding an undi-
3 vided fractional beneficial interest.

4 (5) ALLOTTEE.—The term “Allottee” means—

5 (A) an individual Indian holding a bene-
6 ficial interest in an Allotment; or

7 (B) an Indian Tribe holding an undivided
8 fractional beneficial interest in an Allotment.

9 (6) DECREE COURT.—The term “Decree
10 Court” means the Thirteenth Judicial District Court
11 of the State of New Mexico.

12 (7) ENFORCEABILITY DATE.—The term “En-
13 forceability Date” means the date described in sec-
14 tion 8.

15 (8) NAVAJO NATION; NAVAJO; NATION.—

16 (A) IN GENERAL.—The terms “Navajo
17 Nation”, “Navajo”, and “Nation” mean the
18 body politic and federally recognized Indian na-
19 tion, as published on the list required under
20 section 104(a) of the Federally Recognized In-
21 dian Tribe List Act of 1994 (25 U.S.C.
22 5131(a)), also known variously as the “Navajo
23 Nation of Arizona, New Mexico, & Utah”, and
24 the “Navajo Nation of Indians” and other simi-
25 lar names.

1 (B) INCLUSIONS.—The terms “Navajo Na-
2 tion”, “Navajo”, and “Nation” include all
3 bands of Navajo Indians and chapters of the
4 Navajo Nation and all divisions, agencies, offi-
5 cers, and agents thereof.

6 (9) NAVAJO NATION LANDS; NAVAJO LANDS.—

7 (A) IN GENERAL.—The terms “Navajo
8 Nation Lands” and “Navajo Lands” mean any
9 real property—

10 (i) in the Rio San José Stream Sys-
11 tem that is held by the United States in
12 trust for the Navajo Nation, or owned by
13 the Navajo Nation, as of the Enforceability
14 Date; or

15 (ii) in the Rio Puerco Basin that is
16 held by the United States in trust for the
17 Navajo Nation, or owned by the Navajo
18 Nation, as of the Enforceability Date.

19 (B) INCLUSIONS.—The terms “Navajo Na-
20 tion Lands” and “Navajo Lands” include land
21 placed in trust with the United States subse-
22 quent to the Enforceability Date for the Navajo
23 Nation in the Rio San José Stream System and
24 in the Rio Puerco Basin.

1 (C) EXCLUSION.—The terms “Navajo Na-
2 tion Lands” and “Navajo Lands” do not in-
3 clude Allotments.

4 (10) NAVAJO NATION WATER CODE.—The term
5 “Navajo Nation Water Code” means the water code
6 enacted in 1984 by the Navajo Nation Council
7 through Resolution CAU–34–84. (22 N.N.C. 1101
8 et seq.).

9 (11) NAVAJO NATION WATER USE PERMIT.—
10 The term “Navajo Nation Water Use Permit”
11 means a document specifying terms and conditions
12 for diversion and use of water on Navajo Nation
13 Lands issued by the Navajo Nation within the scope
14 of its authority under the Navajo Nation Water
15 Code and the Settlement Agreement.

16 (12) NAVAJO NATION’S WATER RIGHTS.—

17 (A) IN GENERAL.—The term “Navajo Na-
18 tion’s Water Rights” means all the water rights
19 set out in Articles 17.2, 17.4, and 17.5 of the
20 Agreement.

21 (B) EXCLUSIONS.—The term “Navajo Na-
22 tion’s Water Rights” does not include—

23 (i) any interest that the Nation may
24 have in an Allotment that is determined by
25 the Secretary to be patented pursuant to

1 section 1 of the Act of February 8, 1887
2 (commonly known as the “Indian General
3 Allotment Act”) (24 Stat. 388, chapter
4 119; 25 U.S.C. 331) (as in effect on the
5 day before the date of enactment of the In-
6 dian Land Consolidation Act Amendments
7 of 2000 (Public Law 106–462; 114 Stat.
8 1991)); or

9 (ii) any undivided interest that the
10 Nation may have in an Allotment that is
11 determined by the Secretary to be patented
12 pursuant to an authority other than sec-
13 tion 1 of the Act of February 8, 1887
14 (commonly known as the “Indian General
15 Allotment Act”) (24 Stat. 388, chapter
16 119; 25 U.S.C. 331) (as in effect on the
17 day before the date of enactment of the In-
18 dian Land Consolidation Act Amendments
19 of 2000 (Public Law 106–462; 114 Stat.
20 1991)).

21 (13) NAVAJO PARTIAL FINAL JUDGMENT AND
22 DECREE.—The term “Navajo Partial Final Judg-
23 ment and Decree” means a final or interlocutory
24 partial final judgment and decree entered by the De-

1 cree Court with respect to the Navajo Nation’s
2 Water Rights—

3 (A) that is substantially in the form de-
4 scribed in Article 17.14.7.2 of the Agreement,
5 as amended to ensure consistency with this Act;
6 and

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

9 (14) NAVAJO TRUST FUND.—The term “Navajo
10 Trust Fund” means the Navajo Nation Rio San
11 José Settlement Trust Fund established under sec-
12 tion 6(a).

13 (15) RIO PUERCO BASIN.—The term “Rio
14 Puerco Basin” means the area defined by the
15 United States Geological Survey Hydrologic Unit
16 Codes (HUC) 13020204 (Rio Puerco subbasin) and
17 13020205 (Arroyo Chico subbasin), including the
18 hydrologically connected groundwater.

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

24 (17) SECRETARY.—The term “Secretary”
25 means the Secretary of the Interior.

1 (18) SIGNATORY ACEQUIA.—The term “Signa-
2 tory Acequia” means an acequia that is a signatory
3 to the Agreement.

4 (19) STATE.—The term “State” means the
5 State of New Mexico and all officers, agents, depart-
6 ments, and political subdivisions of the State of New
7 Mexico.

8 **SEC. 4. RATIFICATION OF AGREEMENT.**

9 (a) RATIFICATION.—

10 (1) IN GENERAL.—Except as modified by this
11 Act, and to the extent that the Agreement does not
12 conflict with this Act, the Agreement is authorized,
13 ratified, and confirmed.

14 (2) AMENDMENTS.—If an amendment to the
15 Agreement, or to any attachment to the Agreement
16 requiring the signature of the Secretary, is executed
17 in accordance with this Act to make the Agreement
18 consistent with this Act, the amendment is author-
19 ized, ratified, and confirmed.

20 (b) EXECUTION.—

21 (1) IN GENERAL.—To the extent that the
22 Agreement does not conflict with this Act, the Sec-
23 retary shall execute the Agreement, including all at-
24 tachments to, or parts of, the Agreement requiring
25 the signature of the Secretary.

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

10 (c) ENVIRONMENTAL COMPLIANCE.—

11 (1) IN GENERAL.—In implementing the Agree-
12 ment and this Act, the Secretary shall comply
13 with—

14 (A) the Endangered Species Act of 1973
15 (16 U.S.C. 1531 et seq.);

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

19 (C) all other applicable Federal environ-
20 mental laws and regulations.

21 (2) COMPLIANCE.—

22 (A) IN GENERAL.—In implementing the
23 Agreement and this Act, the Navajo Nation
24 shall prepare any necessary environmental doc-
25 uments, consistent with—

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

3 (ii) the National Environmental Policy
4 Act of 1969 (42 U.S.C. 4321 et seq.), in-
5 cluding the implementing regulations of
6 that Act; and

7 (iii) all other applicable Federal envi-
8 ronmental laws and regulations.

9 (B) AUTHORIZATIONS.—The Secretary
10 shall—

11 (i) independently evaluate the docu-
12 mentation required under subparagraph
13 (A); and

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

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

21 (4) COSTS.—Any costs associated with the per-
22 formance of the compliance activities under this sub-
23 section shall be paid from funds deposited in the
24 Navajo Trust Fund or other sources of funding from
25 the Navajo Nation, subject to the condition that any

1 costs associated with the performance of Federal ap-
2 proval or other review of such compliance work or
3 costs associated with inherently Federal functions
4 shall remain the responsibility of the Secretary.

5 **SEC. 5. NAVAJO NATION'S WATER RIGHTS.**

6 (a) TRUST STATUS OF NAVAJO NATION'S WATER
7 RIGHTS.—The Navajo Nation's Water Rights shall be
8 held in trust by the United States on behalf of the Nation
9 in accordance with the Agreement and this Act.

10 (b) FORFEITURE AND ABANDONMENT.—

11 (1) IN GENERAL.—The Navajo Nation's Water
12 Rights shall not be subject to loss through non-use,
13 forfeiture, abandonment, or other operation of law.

14 (2) STATE-LAW BASED WATER RIGHTS.—State-
15 law based water rights acquired by the Navajo Na-
16 tion, or by the United States on behalf of the Na-
17 tion, after the date for inclusion in the Navajo Par-
18 tial Final Judgment and Decree, shall not be subject
19 to forfeiture, abandonment, or permanent alienation
20 from the time they are acquired.

21 (c) USE.—Any use of the Navajo Nation's Water
22 Rights shall be subject to the terms and conditions of the
23 Agreement and this Act.

24 (d) ALLOTMENT RIGHTS NOT INCLUDED.—Con-
25 sistent with section 13, the Navajo Nation's Water Rights

1 shall not include any water rights for an Allotment, sub-
2 ject to the condition that the Navajo Nation may allow
3 use of the Navajo Nation's Water Rights on an Allotment
4 subject to the terms and conditions of the Agreement and
5 this Act.

6 (e) ALLOTTEES NOT ADVERSELY AFFECTED.—
7 Nothing in this Act quantifies or diminishes any water
8 right, or any claim or entitlement to water, of an Allottee.

9 (f) ALLOTTEE WATER RIGHTS.—The Nation shall
10 not object in any general stream adjudication, including
11 the Adjudication, to the quantification of reasonable do-
12 mestic, stock, and irrigation water uses on an Allotment,
13 and shall administer any water use in accordance with ap-
14 plicable Federal law, including recognition of—

15 (1) any water use existing on an Allotment as
16 of the date of enactment of this Act;

17 (2) reasonable domestic, stock, and irrigation
18 water uses on an Allotment; and

19 (3) any water right decreed to the United
20 States in trust for an Allottee in a general stream
21 adjudication, including the Adjudication, for use on
22 an Allotment.

23 (g) AUTHORITY OF THE NAVAJO NATION.—

24 (1) USE ON NAVAJO LANDS.—The Navajo Na-
25 tion shall have the authority to allocate, distribute,

1 and lease the Navajo Nation’s Water Rights for use
2 on Navajo Lands in accordance with the Agreement,
3 this Act, and applicable Federal law, including the
4 first section of the Act of August 9, 1955 (69 Stat.
5 539, chapter 615; 25 U.S.C. 415) (commonly known
6 as the “Long-Term Leasing Act”).

7 (2) USE OFF NAVAJO LANDS.—

8 (A) IN GENERAL.—The Navajo Nation
9 may allocate, distribute, and lease the Navajo
10 Nation’s Water Rights for use off Navajo
11 Lands in accordance with the Agreement, this
12 Act, and applicable Federal law, subject to the
13 approval of the Secretary.

14 (B) MAXIMUM TERM.—The maximum
15 term of any lease, including all renewals, under
16 this paragraph shall not exceed 99 years.

17 (h) ADMINISTRATION.—

18 (1) NO ALIENATION.—The Navajo Nation shall
19 not permanently alienate any portion of the Navajo
20 Nation’s Water Rights.

21 (2) PURCHASES OR GRANTS OF LAND FROM IN-
22 DIANS.—An authorization provided by this Act for
23 the allocation, distribution, leasing, or other ar-
24 rangement entered into pursuant to this Act shall be

1 considered to satisfy any requirement for authoriza-
2 tion of the action required by Federal law.

3 (3) PROHIBITION ON FORFEITURE.—The non-
4 use of all or any portion of the Navajo Nation’s
5 Water Rights by any water user shall not result in
6 the forfeiture, abandonment, relinquishment, or
7 other loss of all or any portion of the Navajo Na-
8 tion’s Water Rights.

9 (4) FORBEARANCE BY NAVAJO NATION FOR
10 NON-STOCK WATER RIGHTS OF CERTAIN ALLOT-
11 MENTS.—Forbearance by the Navajo Nation in ac-
12 cordance with Article 17.13.4 of the Agreement—

13 (A) shall be considered non-use for pur-
14 poses of paragraph (3); and

15 (B) shall not result in the forfeiture, aban-
16 donment, relinquishment, or other loss of any
17 portion of the Navajo Nation’s Water Rights.

18 **SEC. 6. NAVAJO NATION RIO SAN JOSÉ SETTLEMENT**
19 **TRUST FUND.**

20 (a) ESTABLISHMENT.—The Secretary shall establish
21 a trust fund, to be known as the “Navajo Nation Rio San
22 José Water Rights Settlement Trust Fund”, to be man-
23 aged, invested, and distributed by the Secretary and to
24 remain available until expended, withdrawn, or reverted
25 to the general fund of the Treasury, consisting of the

1 amounts deposited in the Navajo Trust Fund under sub-
2 section (c), together with any investment earnings, includ-
3 ing interest, earned on those amounts, for the purpose of
4 carrying out this Act.

5 (b) ACCOUNTS.—The Secretary shall establish in the
6 Navajo Trust Fund the following accounts:

7 (1) The Navajo Nation Water Rights Settle-
8 ment Account.

9 (2) The Navajo Nation Operations and Mainte-
10 nance Account.

11 (c) DEPOSITS.—The Secretary shall deposit in the
12 Navajo Trust Fund the amounts made available pursuant
13 to section 7(a).

14 (d) MANAGEMENT AND INTEREST.—

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

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

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

1 (C) this subsection.

2 (2) INVESTMENT EARNINGS.—In addition to
3 the deposits made to the Navajo Trust Fund under
4 subsection (c), any investment earnings, including
5 interest, earned on those amounts held in the Nav-
6 ajo Trust Fund are authorized to be used in accord-
7 ance with subsections (f) and (h).

8 (e) AVAILABILITY OF AMOUNTS.—

9 (1) IN GENERAL.—Amounts appropriated to,
10 and deposited in, the Navajo Trust Fund, including
11 any investment earnings, including interest, earned
12 on those amounts, shall be made available to the Na-
13 tion by the Secretary beginning on the Enforce-
14 ability Date, subject to the requirements of this sec-
15 tion, except for funds to be made available to the
16 Nation pursuant to paragraph (2).

17 (2) USE OF FUNDS.—Notwithstanding para-
18 graph (1), up to \$15,000,000 of the amounts depos-
19 ited in the Navajo Nation Water Rights Settlement
20 Account, including any investment earnings, includ-
21 ing interest, earned on those amounts, shall be avail-
22 able to the Nation on the date on which the amounts
23 are deposited in the Navajo Nation Water Rights
24 Settlement Account for the following uses:

1 (A) Feasibility studies, planning, engineer-
2 ing, design, and related environmental, cultural,
3 and historical compliance, and obtaining rights-
4 of-way or permits for water supply infrastruc-
5 ture to serve Navajo Nation needs consistent
6 with subsection (h)(1)(B).

7 (B) Installing, on Navajo Lands, ground-
8 water wells and associated infrastructure to
9 meet immediate domestic, commercial, munic-
10 ipal and industrial water needs, and associated
11 environmental, cultural, and historical compli-
12 ance.

13 (f) WITHDRAWALS.—

14 (1) WITHDRAWALS UNDER THE AMERICAN IN-
15 DIAN TRUST FUND MANAGEMENT REFORM ACT OF
16 1994.—

17 (A) IN GENERAL.—The Navajo Nation
18 may withdraw any portion of the amounts in
19 the Navajo Trust Fund on approval by the Sec-
20 retary of a Tribal management plan submitted
21 by the Nation in accordance with the American
22 Indian Trust Fund Management Reform Act of
23 1994 (25 U.S.C. 4001 et seq.).

24 (B) REQUIREMENTS.—In addition to the
25 requirements under the American Indian Trust

1 Fund Management Reform Act of 1994 (25
2 U.S.C. 4001 et seq.), the Tribal management
3 plan under this paragraph shall require that the
4 Nation shall spend all amounts withdrawn from
5 the Navajo Trust Fund, and any investment
6 earnings, including interest, earned on those
7 amounts, through the investments under the
8 Tribal management plan, in accordance with
9 this Act.

10 (C) ENFORCEMENT.—The Secretary may
11 carry out such judicial and administrative ac-
12 tions as the Secretary determines to be nec-
13 essary to enforce the Tribal management plan
14 under this paragraph to ensure that amounts
15 withdrawn by the Nation from the Navajo
16 Trust Fund under subparagraph (A) are used
17 in accordance with this Act.

18 (2) WITHDRAWALS UNDER EXPENDITURE
19 PLAN.—

20 (A) IN GENERAL.—The Navajo Nation
21 may submit to the Secretary a request to with-
22 draw funds from the Navajo Trust Fund pursu-
23 ant to an approved expenditure plan.

24 (B) REQUIREMENTS.—To be eligible to
25 withdraw amounts under an expenditure plan

1 under subparagraph (A), the Nation shall sub-
2 mit to the Secretary an expenditure plan for
3 any portion of the Navajo Trust Fund that the
4 Nation elects to withdraw pursuant to that sub-
5 paragraph, subject to the condition that the
6 amounts shall be used for the purposes de-
7 scribed in this Act.

8 (C) INCLUSIONS.—An expenditure plan
9 under this paragraph shall include a description
10 of the manner and purpose for which the
11 amounts proposed to be withdrawn from the
12 Navajo Trust Fund will be used by the Nation,
13 in accordance with this subsection and sub-
14 section (h).

15 (D) APPROVAL.—The Secretary shall ap-
16 prove an expenditure plan submitted under sub-
17 paragraph (A) if the Secretary determines that
18 the plan—

19 (i) is reasonable; and

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

22 (E) ENFORCEMENT.—The Secretary may
23 carry out such judicial and administrative ac-
24 tions as the Secretary determines to be nec-
25 essary to enforce an expenditure plan to ensure

1 that amounts disbursed under this paragraph
2 are used in accordance with this Act.

3 (g) EFFECT OF SECTION.—Nothing in this section
4 gives the Navajo Nation the right to judicial review of a
5 determination of the Secretary relating to whether to ap-
6 prove a Tribal management plan under paragraph (1) of
7 subsection (f) or an expenditure plan under paragraph (2)
8 of that subsection except under subchapter II of chapter
9 5, and chapter 7, of title 5, United States Code (commonly
10 known as the “Administrative Procedure Act”).

11 (h) USES.—

12 (1) NAVAJO NATION WATER RIGHTS SETTLE-
13 MENT ACCOUNT.—The Navajo Nation Water Rights
14 Settlement Account may only be used for the fol-
15 lowing purposes:

16 (A) Acquiring water rights or water sup-
17 ply.

18 (B) Planning, permitting, designing, engi-
19 neering, constructing, reconstructing, replacing,
20 rehabilitating, operating, or repairing water
21 production, treatment, or delivery infrastruc-
22 ture, including for domestic and municipal use,
23 on-farm improvements, or wastewater infra-
24 structure.

1 (C) Navajo Nation's Water Rights man-
2 agement and administration.

3 (D) Watershed protection and enhance-
4 ment, support of agriculture, water-related Nav-
5 ajo community welfare and economic develop-
6 ment, and costs relating to implementation of
7 the Agreement.

8 (E) Environmental compliance in the de-
9 velopment and construction of infrastructure
10 under this Act.

11 (2) NAVAJO NATION OPERATIONS AND MAINTEN-
12 NANCE ACCOUNT.—The Navajo Nation Infra-
13 structure Operations and Maintenance Account may
14 only be used to pay costs for operation, mainte-
15 nance, and replacement of water infrastructure to
16 serve Navajo domestic, commercial, municipal, and
17 industrial water uses from any water source.

18 (i) LIABILITY.—The Secretary and the Secretary of
19 the Treasury shall not be liable for the expenditure or in-
20 vestment of any amounts withdrawn from the Navajo
21 Trust Fund by the Nation under paragraph (1) or (2) of
22 subsection (f).

23 (j) EXPENDITURE REPORTS.—The Navajo Nation
24 shall annually submit to the Secretary an expenditure re-
25 port describing accomplishments and amounts spent from

1 use of withdrawals under a Tribal management plan or
2 an expenditure plan under paragraph (1) or (2) of sub-
3 section (f), as applicable.

4 (k) NO PER CAPITA DISTRIBUTIONS.—No portion of
5 the Navajo Trust Fund shall be distributed on a per capita
6 basis to any member of Navajo Nation.

7 (l) TITLE TO INFRASTRUCTURE.—Title to, control
8 over, and operation of any project constructed using funds
9 from the Navajo Trust Fund shall remain in the Navajo
10 Nation.

11 (m) OPERATION, MAINTENANCE, AND REPLACE-
12 MENT.—All operation, maintenance, and replacement
13 costs of any project constructed using funds from the Nav-
14 ajo Trust Fund shall be the responsibility of the Nation.

15 **SEC. 7. FUNDING.**

16 (a) MANDATORY APPROPRIATIONS.—Out of any
17 money in the Treasury not otherwise appropriated, the
18 Secretary of the Treasury shall transfer to the Secretary
19 the following amounts for deposit in the following ac-
20 counts:

21 (1) THE NAVAJO NATION WATER RIGHTS SET-
22 TLEMENT ACCOUNT.—For deposit in the Navajo Na-
23 tion Water Rights Settlement Account established
24 under section 6(b)(1), \$200,271,000, to remain

1 available until expended, withdrawn, or reverted to
2 the general fund of the Treasury.

3 (2) THE NAVAJO NATION OPERATIONS AND
4 MAINTENANCE ACCOUNT.—For deposit in the Nav-
5 ajo Nation Operations and Maintenance Account es-
6 tablished under section 6(b)(2), \$23,000,000, to re-
7 main available until expended, withdrawn, or re-
8 verted to the general fund of the Treasury.

9 (b) FLUCTUATION IN COSTS.—

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

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

24 (3) REPETITION.—The adjustment process
25 under this subsection shall be repeated for each sub-

1 sequent amount appropriated until the applicable
2 amount, as adjusted, has been appropriated.

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

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

10 (1) \$3,000,000, as adjusted for inflation pursu-
11 ant to the Agreement, to the Bluewater Toltec Irri-
12 gation District and Acequia Madre del Ojo del Gallo
13 for purposes described in the Agreement; and

14 (2) if applicable, additional funding subject to
15 the provisions of Article 17.12.4 of the Agreement.

16 **SEC. 8. ENFORCEABILITY DATE.**

17 The Enforceability Date shall be the date on which
18 the Secretary publishes in the Federal Register a state-
19 ment of findings that—

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

23 (2) the Agreement, as amended, has been exe-
24 cuted by all parties to the Agreement, including the
25 United States;

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

4 (4) the State has—

5 (A) provided \$3,000,000 of funding under
6 section 7(c)(1) into the appropriate funding ac-
7 counts or entered into a funding agreement
8 with the intended beneficiaries for that funding;
9 and

10 (B) enacted legislation to amend State law
11 to provide that a Navajo Nation Water Right
12 may be leased for a term not to exceed 99
13 years, including renewals;

14 (5) the Decree Court has approved the Agree-
15 ment and has entered the Navajo Partial Final
16 Judgment and Decree; and

17 (6) the waivers and releases under section 9
18 have been executed by the Navajo Nation and the
19 Secretary.

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

21 (a) WAIVERS AND RELEASES OF CLAIMS BY THE
22 NAVAJO NATION AND UNITED STATES AS TRUSTEE FOR
23 THE NATION.—Subject to the reservation of rights and
24 retention of claims under subsection (d), as consideration
25 for recognition of the Navajo Nation’s Water Rights and

1 other benefits described in the Agreement and this Act,
2 the Navajo Nation, on behalf of the Nation and members
3 of the Nation (other than members in their capacity as
4 Allottees), and the United States, acting as trustee for the
5 Nation and members of the Nation (other than members
6 in their capacity as Allottees), shall execute a waiver and
7 release of all claims for—

8 (1) water rights within the Rio San José
9 Stream System that the Navajo Nation or the
10 United States acting as trustee for the Nation, as-
11 serted or could have asserted in any proceeding, in-
12 cluding the Adjudication, on or before the Enforce-
13 ability Date, except to the extent that such rights
14 are recognized in the Agreement and this Act; and

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

1 (b) WAIVERS AND RELEASES OF CLAIMS BY NAVAJO
2 NATION AGAINST UNITED STATES.—Subject to the res-
3 ervation of rights and retention of claims under subsection
4 (d), the Navajo Nation, on behalf of the Nation (including
5 in its capacity as an Allottee) and members of the Nation
6 (other than members in their capacity as Allottees) shall
7 execute a waiver and release of all claims against the
8 United States (including any agency or employee of the
9 United States) first arising before the Enforceability Date
10 relating to—

11 (1) water rights within the Rio San José
12 Stream System that the United States, acting as
13 trustee for the Navajo Nation, asserted or could
14 have asserted in any proceeding, including the Adju-
15 dication, except to the extent that such rights are
16 recognized as part of the Navajo Nation’s Water
17 Rights under this Act;

18 (2) foregone benefits from non-Navajo use of
19 water, on and off Navajo Lands, including water
20 from all sources and for all uses, within the Rio San
21 José Stream System;

22 (3) damage, loss, or injury to water, water
23 rights, land, or natural resources due to loss of
24 water or water rights, including damages, losses, or
25 injuries to hunting, fishing, gathering, or cultural

1 rights due to loss of water or water rights, claims
2 relating to interference with, diversion of, or taking
3 of water, or claims relating to a failure to protect,
4 acquire, replace, or develop water, water rights, or
5 water infrastructure, within the Rio San José
6 Stream System;

7 (4) a failure to provide for operation, mainte-
8 nance, or deferred maintenance for any irrigation
9 system or irrigation project within the Rio San José
10 Stream System;

11 (5) a failure to establish or provide a municipal,
12 rural, or industrial water delivery system on Navajo
13 Lands within the Rio San José Stream System;

14 (6) damage, loss, or injury to water, water
15 rights, land, or natural resources due to construc-
16 tion, operation, and management of irrigation
17 projects on Navajo Lands, including damages,
18 losses, or injuries to fish habitat, wildlife, and wild-
19 life habitat, within the Rio San José Stream System;

20 (7) a failure to provide a dam safety improve-
21 ment to a dam on Navajo Lands within the Rio San
22 José Stream System;

23 (8) the litigation of claims relating to any water
24 right of the Nation within the Rio San José Stream
25 System; and

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

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

6 (d) RESERVATION OF RIGHTS AND RETENTION OF
7 CLAIMS.—Notwithstanding the waivers and releases under
8 subsections (a) and (b), the Navajo Nation and the United
9 States, acting as trustee for the Nation, shall retain all
10 claims relating to—

11 (1) the enforcement of, or claims accruing after
12 the Enforceability Date relating to water rights rec-
13 ognized under the Agreement, this Act, or the Nav-
14 ajo Partial Final Judgment and Decree entered in
15 the Adjudication;

16 (2) activities affecting the quality of water and
17 the environment, including 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 claims for water rights, and claims for
13 injury to water rights, in basins other than the Rio
14 San José Stream System, subject to the Agreement
15 with respect to the claims of the Navajo Nation for
16 water rights in the Rio Puerco Basin;

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

20 (7) all rights, remedies, privileges, immunities,
21 powers, and claims not specifically waived and re-
22 leased pursuant to this Act or the 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 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 the Navajo Nation (consistent with
21 this Act), any other Indian Tribe, or an Allottee of
22 any other Indian Tribe;

23 (4) confers jurisdiction on any State court—

24 (A) to interpret Federal law relating to
25 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 the Navajo
7 Nation in an individual capacity that does not derive
8 from a right of the Navajo Nation.

9 (f) OFFSET RELATING TO RIO PUERCO.—The
10 United States shall be entitled to offset \$20,000,000
11 against—

12 (1) any judgment against the United States for
13 claims relating to water rights in the Rio Puerco
14 Basin, including breach of trust and damage claims
15 relating to water rights in the Rio Puerco Basin, in
16 a case brought by the Nation or any user of the
17 Navajo Nation’s Water Rights; or

18 (2) a Federal contribution to any future settle-
19 ment of water rights of the Navajo Nation in the
20 Rio Puerco Basin.

21 (g) TOLLING OF CLAIMS.—

22 (1) IN GENERAL.—Each applicable period of
23 limitation and time-based equitable defense relating
24 to a claim described in this section shall be tolled for

1 the period beginning on the date of enactment of
2 this Act and ending on the Enforceability Date.

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

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

11 (h) EXPIRATION.—

12 (1) IN GENERAL.—This Act shall expire in any
13 case in which the Secretary fails to publish a state-
14 ment of findings under section 8 by not later than—

15 (A) July 1, 2030; or

16 (B) such alternative later date as is agreed
17 to by the Navajo Nation and the Secretary,
18 after providing reasonable notice to the State.

19 (2) CONSEQUENCES.—If this Act expires under
20 paragraph (1)—

21 (A) the waivers and releases under sub-
22 sections (a) and (b) shall—

23 (i) expire; and

24 (ii) have no further force or effect;

1 (B) the authorization, ratification, con-
2 firmation, and execution of the Agreement
3 under section 4 shall no longer be effective;

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

7 (D) any unexpended Federal funds appro-
8 priated or made available to carry out the ac-
9 tivities authorized by this Act, together with
10 any interest earned on those funds, and any
11 water rights or contracts to use water and title
12 to other property acquired or constructed with
13 Federal funds appropriated or made available
14 to carry out the activities authorized by this
15 Act, shall be returned to the Federal Govern-
16 ment, unless otherwise agreed to by Navajo Na-
17 tion and the United States and approved by
18 Congress; and

19 (E) except for Federal funds used to ac-
20 quire or construct property that is returned to
21 the Federal Government under subparagraph
22 (D), the United States shall be entitled to offset
23 any Federal funds made available to carry out
24 this Act that were expended or withdrawn, or
25 any funds made available to carry out this Act

1 from other Federal authorized sources, together
2 with any interest accrued on those funds,
3 against any claims against the United States—

4 (i) relating to water rights in the
5 State asserted by—

6 (I) the Nation or any user of the
7 Navajo Nation’s Water Rights; or

8 (II) any other matter covered by
9 subsection (b); or

10 (ii) in any future settlement of water
11 rights of the Navajo Nation.

12 **SEC. 10. SATISFACTION OF CLAIMS.**

13 The benefits provided under this Act shall be in com-
14 plete replacement of, complete substitution for, and full
15 satisfaction of any claim of the Navajo Nation against the
16 United States that are waived and released by the Nation
17 pursuant to section 9(b).

18 **SEC. 11. CONSENT OF UNITED STATES TO JURISDICTION**
19 **FOR JUDICIAL REVIEW OF A NAVAJO NATION**
20 **WATER USE PERMIT DECISION.**

21 (a) CONSENT.—On the Enforceability Date, the con-
22 sent of the United States is hereby given, with the consent
23 of the Navajo Nation under Article 17.14.4 of the Agree-
24 ment, to jurisdiction in the District Court for the Thir-
25 teenth Judicial District of the State of New Mexico, and

1 in the New Mexico Court of Appeals and the New Mexico
2 Supreme Court on appeal therefrom in the same manner
3 as provided under New Mexico law, over an action filed
4 in such District Court by any party to a Navajo Nation
5 Water Use Permit administrative proceeding under Article
6 17.10.4 of the Agreement for the limited and sole purpose
7 of judicial review of a Navajo Nation Water Use Permit
8 decision under article 17.10.5 of the Agreement.

9 (b) LIMITATION.—The consent of the United States
10 for review of a Navajo Nation Water Use Permit is limited
11 to judicial review, based on the record developed through
12 the administrative process of the Navajo Nation, under a
13 standard of judicial review limited to determining whether
14 the Navajo Nation decision on the application for the Nav-
15 ajo Nation Water Use Permit—

16 (1) is supported by substantial evidence;

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

19 (3) is not in accordance with the Agreement or
20 the Navajo Partial Final Judgment and Decree; or

21 (4) shows that the Navajo Nation acted fraudu-
22 lently or outside the scope of its authority.

23 (c) NAVAJO NATION WATER CODE AND INTERPRE-
24 TATION.—

1 (1) IN GENERAL.—Navajo Nation Water Code
2 or Navajo Water Law provisions that meet the re-
3 quirements of Article 17.10 of the Agreement shall
4 be given full faith and credit in any proceeding de-
5 scribed in this section.

6 (2) PROVISIONS OF THE NAVAJO NATION
7 WATER CODE.—To the extent that a State court
8 conducting judicial review under this section must
9 interpret provisions of Navajo Nation law that are
10 not express provisions of the Navajo Nation Water
11 Code or Navajo Nation water law, the State court
12 shall certify the question of interpretation to the
13 Navajo Nation court.

14 (3) NO CERTIFICATION.—Any issues of inter-
15 pretation of standards in article 17.10.6 of the
16 Agreement are not subject to certification.

17 (4) LIMITATION.—Nothing in this section limits
18 the jurisdiction of the Decree Court to interpret and
19 enforce the Agreement.

20 **SEC. 12. MISCELLANEOUS PROVISIONS.**

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

24 (b) OTHER TRIBES NOT ADVERSELY AFFECTED.—
25 Nothing in this Act quantifies or diminishes any land or

1 water right, or any claim or entitlement to land or water,
2 of an Indian Tribe, band, Pueblo, or community other
3 than the Navajo Nation.

4 (c) EFFECT ON CURRENT LAW.—Nothing in this Act
5 affects any provision of law (including regulations) in ef-
6 fect on the day before the date of enactment of this Act
7 with respect to pre-enforcement review of any Federal en-
8 vironmental enforcement action.

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

11 **SEC. 13. RELATION TO ALLOTTEES.**

12 (a) NO EFFECT ON CLAIMS OF ALLOTTEES.—Noth-
13 ing in this Act or the Agreement shall affect the rights
14 or claims of Allottees, or the United States, acting in its
15 capacity as trustee for or on behalf of Allottees, for water
16 rights or damages relating to land allotted by the United
17 States to Allottees.

18 (b) RELATIONSHIP OF DECREE TO ALLOTTEES.—

19 (1) SEPARATE ADJUDICATION.—Notwith-
20 standing whether an Allotment is patented pursuant
21 to section 1 of the Act of February 8, 1887 (com-
22 monly known as the “Indian General Allotment
23 Act”) (24 Stat. 388, chapter 119; 25 U.S.C. 331)
24 (as in effect on the day before the date of enactment
25 of the Indian Land Consolidation Act Amendments

1 of 2000 (Public Law 106–462; 114 Stat. 1991)) or
2 section 4 of that Act (24 Stat. 389, chapter 119; 25
3 U.S.C. 334), as determined by the Secretary, when
4 adjudicated—

5 (A) water rights for Allotments shall be
6 separate from the Navajo Nation’s Water
7 Rights; and

8 (B) no water rights for Allotments shall be
9 included in the Navajo Partial Final Judgment
10 and Decree.

11 (2) ALLOTMENT WATER RIGHTS.—The Allot-
12 ment water rights adjudicated separately pursuant
13 to paragraph (1) shall not be subject to the restric-
14 tions or conditions that apply to the use of the Nav-
15 ajo Nation’s Water Rights, subject to the condition
16 that if an Allotment governed by the Act of Feb-
17 ruary 8, 1887 (commonly known as the “Indian
18 General Allotment Act”) (24 Stat. 388, chapter
19 119) becomes Navajo Nation Lands, the water
20 rights associated with that Allotment shall be sub-
21 ject to the restrictions and conditions on the Navajo
22 Nation’s Water Rights set forth in this Act and the
23 Agreement.

24 (3) ALLOTTEE WATER RIGHTS TO BE ADJU-
25 DICATED.—Allottees, or the United States, acting in

1 its capacity as trustee for Allottees, may make water
2 rights claims, and those claims may be adjudicated
3 in the Rio San José Stream System or the Rio
4 Puerco Basin.

5 **SEC. 14. EXPANSION OF NAVAJO-GALLUP WATER SUPPLY**
6 **PROJECT SERVICE AREA.**

7 (a) DEFINITION OF PROJECT.—In this section, the
8 term “Project” means the Navajo-Gallup Water Supply
9 Project authorized under section 10602 of the North-
10 western New Mexico Rural Water Projects Act (Public
11 Law 111–11; 123 Stat. 1379).

12 (b) EXPANSION OF PROJECT SERVICE AREA AU-
13 THORIZED.—The Nation may expand the service area for
14 the Project in order to deliver water supply from the
15 Project to communities of the Nation within the Rio San
16 José Basin in the State.

17 (c) APPROVAL OF FINAL DESIGN FOR EXPANSION.—
18 If water will be supplied from facilities of the Project to
19 the Rio San José Basin at a time when the Bureau of
20 Reclamation still holds title to those facilities, the Navajo
21 Nation shall—

22 (1) obtain approval, in writing, from the Com-
23 missioner of Reclamation for the final design of the
24 connection and related facilities needed to connect

1 the extension into the Rio San José area from those
2 facilities; and

3 (2) coordinate construction of the connection
4 and related facilities with the Commissioner of Rec-
5 lamation.

6 **SEC. 15. ANTIDEFICIENCY.**

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

○