

118TH CONGRESS  
1ST SESSION

# S. 1898

To amend the Northwestern New Mexico Rural Water Projects Act to make improvements to that Act, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

JUNE 8, 2023

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

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## A BILL

To amend the Northwestern New Mexico Rural Water Projects Act to make improvements to that Act, 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.**

4 This Act may be cited as the “Navajo-Gallup Water  
5 Supply Project Amendments Act of 2023”.

6 **SEC. 2. DEFINITIONS.**

7 Section 10302 of the Northwestern New Mexico  
8 Rural Water Projects Act (43 U.S.C. 407 note; Public  
9 Law 111–11) is amended—

10 (1) by striking paragraph (29);

1           (2) by redesignating paragraphs (12), (13),  
2           (14), (15), (16), (17), (18), (19), (20), (21), (22),  
3           (23), (24), (25), (26), (27), (28), and (30) as para-  
4           graphs (13), (14), (15), (16), (17), (18), (19), (20),  
5           (21), (22), (23), (24), (25), (27), (28), (30), (31),  
6           and (32), respectively;

7           (3) by inserting after paragraph (11) the fol-  
8           lowing:

9           “(12) DEFERRED CONSTRUCTION FUND.—The  
10           term ‘Deferred Construction Fund’ means the Nav-  
11           ajo Nation’s Navajo-Gallup Water Supply Project  
12           Deferred Construction Fund established by section  
13           10602(i)(1)(A).”;

14           (4) in paragraph (14) (as so redesignated)—

15           (A) in the paragraph heading, by striking  
16           “DRAFT” and inserting “FINAL ENVIRON-  
17           MENTAL”;

18           (B) by striking “Draft Impact” and insert-  
19           ing “Final Environmental”;

20           (C) by striking “draft environmental” and  
21           inserting “final environmental”; and

22           (D) by striking “March 2007” and insert-  
23           ing “July 6, 2009”;

1           (5) in paragraph (19) (as so redesignated), by  
2 striking “Draft” and inserting “Final Environ-  
3 mental”;

4           (6) by inserting after paragraph (25) (as so re-  
5 designated) the following:

6           “(26) PROJECT SERVICE AREA.—The term  
7 ‘Project Service Area’ means the area that encom-  
8 passes the 43 Nation chapters, the southwest por-  
9 tion of the Jicarilla Apache Reservation, and the  
10 City that is identified to be served by the Project,  
11 as illustrated in figure IV–5 (Drawing No. 1695–  
12 406–49) of the Final Environmental Impact State-  
13 ment.”;

14           (7) by inserting after paragraph (28) (as so re-  
15 designated) the following:

16           “(29) SETTLEMENT TRUST FUNDS.—The term  
17 ‘Settlement Trust Funds’ means—

18                   “(A) the Navajo Nation Water Resources  
19 Development Trust Fund established by sub-  
20 section (a)(1) of section 10702;

21                   “(B) the Navajo Nation Operations, Main-  
22 tenance, and Replacement Trust Fund estab-  
23 lished under subsection (b)(1) of that section;  
24 and

1           “(C) the Jicarilla Apache Nation Oper-  
 2           ations, Maintenance, and Replacement Trust  
 3           Fund established under subsection (c)(2) of  
 4           that section.”; and

5           (8) by adding at the end the following:

6           “(33) WORKING COST ESTIMATE.—The term  
 7           ‘Working Cost Estimate’ means the Bureau of Rec-  
 8           lamation document entitled ‘NGWSP October 2022  
 9           WCE’ and dated February 26, 2023, that details the  
 10          costs totaling \$2,138,387,000, at the October 2022  
 11          price level, of the Project, as configured on that  
 12          date.”.

13 **SEC. 3. NAVAJO-GALLUP WATER SUPPLY PROJECT.**

14          (a) AUTHORIZATION OF NAVAJO-GALLUP WATER  
 15          SUPPLY PROJECT.—Section 10602 of the Northwestern  
 16          New Mexico Rural Water Projects Act (Public Law 111–  
 17          11; 123 Stat. 1379) is amended—

18                 (1) in subsection (a)—

19                         (A) in the subsection heading, by striking  
 20                         “IN GENERAL” and inserting “AUTHORIZA-  
 21                         TION”;

22                         (B) by striking “The Secretary” and in-  
 23                         serting the following:

24                                 “(1) IN GENERAL.—The Secretary”;

1 (C) in paragraph (1) (as so designated), by  
2 striking “Draft Impact Statement” and insert-  
3 ing “Final Environmental Impact Statement, as  
4 further refined in, and including the facilities  
5 identified in, the Working Cost Estimate and  
6 any subsequent supplemental documents pre-  
7 pared in accordance with the National Environ-  
8 mental Policy Act of 1969 (42 U.S.C. 4321 et  
9 seq.).”; and

10 (D) by adding at the end the following:

11 “(2) ADDITIONAL SERVICE AREAS.—

12 “(A) FINDINGS.—Congress finds that—

13 “(i) expanding the Project Service  
14 Area would create opportunities to increase  
15 service for additional Nation Tribal mem-  
16 bers and would not increase the cost of the  
17 Project beyond authorization levels de-  
18 scribed in section 10609(a); and

19 “(ii) the unit operations and mainte-  
20 nance costs of the Project would be re-  
21 duced by adding more customers to the  
22 Project.

23 “(B) AUTHORIZATIONS FOR ADDITIONAL  
24 PROJECT SERVICE AREAS.—

1           “(i) NEW MEXICO.—In addition to de-  
2           livering water supply from the Project to  
3           the Nation communities in the San Juan  
4           River Basin, the Nation may expand the  
5           Project Service Area in order to deliver  
6           water supply from the Project to commu-  
7           nities of the Nation within the Rio San  
8           Jose Basin, New Mexico.

9           “(ii) ARIZONA.—In addition to deliv-  
10          ering water supply from the Project to the  
11          Nation communities of Fort Defiance and  
12          Window Rock, Arizona, and subject to sec-  
13          tion 10603(c)(1), the Nation may expand  
14          the Project Service Area in order to deliver  
15          water supply from the Project to the Na-  
16          tion community of Lupton, Arizona, within  
17          the Little Colorado River Basin, Arizona.”;

18          (2) in subsection (b)—

19                 (A) in the matter preceding paragraph

20          (1)—

21                     (i) by inserting “acquire,” before  
22                     “construct,”; and

23                     (ii) by striking “Draft Impact State-  
24                     ment” and inserting “Final Environmental  
25                     Impact Statement, as further refined in,

1 and including the facilities identified in,  
2 the Working Cost Estimate and any subse-  
3 quent supplemental documents prepared in  
4 accordance with the National Environ-  
5 mental Policy Act of 1969 (42 U.S.C.  
6 4321 et seq.)”;

7 (B) by striking paragraph (1) and insert-  
8 ing the following:

9 “(1) The water conveyance and storage facili-  
10 ties associated with the San Juan Generating Sta-  
11 tion (the coal-fired, 4-unit electric power plant and  
12 ancillary features located by the San Juan Mine  
13 near Waterflow, New Mexico), including the diver-  
14 sion dam, the intake structure, the river pumping  
15 plant, the pipeline from the river to the reservoir,  
16 the dam and associated reservoir, and any associated  
17 land, or interest in land, or ancillary features.”;

18 (C) in paragraph (2)(A)—

19 (i) by striking “River near Kirtland,  
20 New Mexico,” and inserting “Generating  
21 Station Reservoir”; and

22 (ii) by inserting “generally” before  
23 “follows United States Highway 491”;

1 (D) in paragraph (3)(A), by inserting  
2 “generally” before “follows United States High-  
3 way 550”; and

4 (E) in paragraph (5), by inserting “(in-  
5 cluding any reservoir facility)” after “treatment  
6 facility”;

7 (3) in subsection (c)—

8 (A) in the subsection heading, by inserting  
9 “AND FACILITIES” after “LAND”;

10 (B) in paragraph (1), by striking “any  
11 land or interest in land that is” and inserting  
12 “any land or facilities, or interest in land or fa-  
13 cilities, that are”; and

14 (C) by adding at the end the following:

15 “(4) LAND TO BE TAKEN INTO TRUST.—

16 “(A) IN GENERAL.—On satisfaction of the  
17 conditions described in paragraph (7) of the  
18 Agreement and after the requirements of sec-  
19 tions 10701(e) and 10703 are met, the Sec-  
20 retary shall take legal title to the following land  
21 and, subject to subparagraph (D), hold that  
22 land in trust for the benefit of the Nation:

23 “(i) Fee land of the Nation, includ-  
24 ing—

1           “(I) the parcels of land on which  
2 the Tohlakai Pumping Plant, Reach  
3 12A and Reach 12B, are located, in-  
4 cluding, in McKinley County, New  
5 Mexico—

6           “(aa) sec. 5, T. 16 N., R. 18  
7 W., New Mexico Prime Meridian;  
8 and

9           “(bb) sec. 33, T. 17 N., R.  
10 17 W., New Mexico Prime Merid-  
11 ian (except lot 9 and the NW<sup>1</sup>/<sub>4</sub>  
12 of lot 4);

13           “(II) the parcel of land on which  
14 Reach 12.1 is located, including—

15           “(aa) NW<sup>1</sup>/<sub>4</sub> and SW<sup>1</sup>/<sub>4</sub> sec.  
16 5, T. 16 N., R. 18 W.;

17           “(bb) N<sup>1</sup>/<sub>2</sub> sec. 11, T. 16 N.,  
18 R. 19 W.; and

19           “(cc) sec. 12, T. 16 N., R.  
20 20 W.; and

21           “(III) the parcel of land on which  
22 Reach 12.2 is located, including  
23 NW<sup>1</sup>/<sub>4</sub>. sec. 2, T. 16 N., R. 21 W.

1           “(ii) Public domain land managed by  
2           the Bureau of Land Management, includ-  
3           ing—

4                   “(I) the parcel of land on which  
5                   the Cutter Lateral Water Treatment  
6                   Plant is located, including S $\frac{1}{2}$  sec. 9,  
7                   T. 25 N., R. 9 W., New Mexico Prime  
8                   Meridian; and

9                   “(II) the parcel of land on which  
10                   the Navajo Agricultural Products In-  
11                   dustry turnout is located, including  
12                   NW $\frac{1}{4}$  and NE $\frac{1}{4}$  sec. 34, T. 26 N.,  
13                   R. 9 W., New Mexico Prime Meridian.

14           “(iii) The land underlying the San  
15           Juan Generating Station (the coal-fired, 4-  
16           unit electric power plant and ancillary fea-  
17           tures located by the San Juan Mine near  
18           Waterflow, New Mexico) acquired by the  
19           United States, as described in subsection  
20           (b)(1).

21           “(B) PART OF NAVAJO NATION.—The land  
22           taken into trust under subparagraph (A) shall  
23           be part of the Navajo Reservation and adminis-  
24           tered in accordance with the laws and regula-  
25           tions generally applicable to land held in trust

1 by the United States for the benefit of an In-  
2 dian Tribe.

3 “(C) RESTRICTIONS.—

4 “(i) FREE LAND OF THE NATION.—The  
5 fee land of the Nation taken into trust  
6 under subparagraph (A)(i) shall be subject  
7 to valid existing rights, contracts, and  
8 management agreements, including ease-  
9 ments and rights-of-way, unless the holder  
10 of the right, contract, lease, permit, or  
11 right-of-way requests an earlier termi-  
12 nation in accordance with existing law.

13 “(ii) PUBLIC DOMAIN LAND.—

14 “(I) IN GENERAL.—The public  
15 domain land managed by the Bureau  
16 of Land Management taken into trust  
17 under subparagraph (A)(ii) shall be  
18 subject to valid existing rights, con-  
19 tracts, leases, permits, and rights-of-  
20 way, unless the holder of the right,  
21 contract, lease, permit, or right-of-way  
22 requests an earlier termination in ac-  
23 cordance with existing law.

1                   “(II) BIA ASSUMPTION OF BENE-  
2                   FITS AND OBLIGATIONS.—The Bureau  
3                   of Indian Affairs shall—

4                   “(aa) assume all benefits  
5                   and obligations of the previous  
6                   land management agency under  
7                   the existing rights, contracts,  
8                   leases, permits, or rights-of-way  
9                   described in subclause (I); and

10                   “(bb) disburse to the Nation  
11                   any amounts that accrue to the  
12                   United States from those rights,  
13                   contracts, leases, permits, or  
14                   rights-of-ways after the date on  
15                   which the land described in  
16                   clause (ii) of subparagraph (A) is  
17                   taken into trust for the benefit of  
18                   the Nation from any sale, bonus,  
19                   royalty, or rental relating to that  
20                   land in the same manner as  
21                   amounts received from other land  
22                   held by the Secretary in trust for  
23                   the Nation.

24                   “(iii) LAND UNDERLYING THE SAN  
25                   JUAN GENERATING STATION.—

1           “(I) IN GENERAL.—The land un-  
2           derlying the San Juan Generating  
3           Station (the coal-fired, 4-unit electric  
4           power plant and ancillary features lo-  
5           cated by the San Juan Mine near Wa-  
6           terflow, New Mexico) taken into trust  
7           under subparagraph (A)(iii) shall be  
8           subject to a perpetual easement on  
9           and over all of the land underlying the  
10          San Juan Generating Station reserved  
11          to the United States for use by the  
12          Bureau of Reclamation and its con-  
13          tractors and assigns—

14                   “(aa) for ingress and egress;

15                   “(bb) to continue construc-  
16                   tion of the Project; and

17                   “(cc) for operation and  
18                   maintenance of Project facilities  
19                   located on that land.

20          “(II) RESERVED PERPETUAL  
21          EASEMENT.—The reserved perpetual  
22          easement described in subclause (I)  
23          shall remain vested in the United  
24          States unless title to the Project fa-  
25          cilities and appropriate interests in

1 land are conveyed pursuant to sub-  
2 section (f).

3 “(D) SAVINGS CLAUSE.—Nothing in this  
4 paragraph affects any—

5 “(i) water right of the Nation in exist-  
6 ence on the day before the date of enact-  
7 ment of the Navajo-Gallup Water Supply  
8 Project Amendments Act of 2023; and

9 “(ii) right or claim of the Nation to  
10 any land or interest in land in existence on  
11 the day before the date of enactment of the  
12 Navajo-Gallup Water Supply Project  
13 Amendments Act of 2023.”;

14 (4) in subsection (d)(1)(D), by striking “Draft”  
15 and inserting “Final Environmental”;

16 (5) in subsection (e)—

17 (A) by striking “The Secretary” and in-  
18 serting the following:

19 “(1) IN GENERAL.—The Secretary”; and

20 (B) by adding at the end the following:

21 “(2) RENEWABLE ENERGY AND HYDRO-  
22 ELECTRIC POWER.—

23 “(A) RENEWABLE ENERGY.—For any por-  
24 tion of the Project that does not have access to  
25 Colorado River Storage Project power, the Sec-

1           retary may use not more than \$6,250,000 of  
2           the amounts made available under section  
3           10609(a)(1) to develop renewable energy.

4           “(B) HYDROELECTRIC POWER.—Notwith-  
5           standing whether a Project facility has access  
6           to Colorado River Storage Project power, the  
7           Secretary may use not more than \$1,250,000 of  
8           the \$6,250,000 authorized to be used to develop  
9           renewable energy under subparagraph (A) to  
10          develop hydroelectric power for any Project fa-  
11          cility that can use hydraulic head to produce  
12          electricity.”;

13          (6) in subsection (h)(1), in the matter pre-  
14          ceding subparagraph (A), by inserting “, store,”  
15          after “treat”; and

16          (7) by adding at the end the following:

17          “(i) DEFERRED CONSTRUCTION OF PROJECT FA-  
18          CILITIES.—

19                 “(1) DEFERRED CONSTRUCTION OF PROJECT  
20          FACILITIES.—On mutual agreement between the Na-  
21          tion and the Secretary, and the Jicarilla Apache Na-  
22          tion if the deferred Project facilities benefit the  
23          Jicarilla Apache Nation, construction of selected  
24          Project facilities may be deferred to save operation

1 and maintenance expenses associated with that con-  
2 struction.

3 “(2) DEFERRED CONSTRUCTION FUND.—

4 “(A) ESTABLISHMENT.—There is estab-  
5 lished in the Treasury a fund, to be known as  
6 the ‘Navajo Nation’s Navajo-Gallup Water Sup-  
7 ply Project Deferred Construction Fund’, to  
8 consist of—

9 “(i) amounts that correspond to por-  
10 tions of the Project that have been de-  
11 ferred under paragraph (1); and

12 “(ii) any interest or other gains on  
13 amounts referred to in clause (i).

14 “(B) USE OF THE DEFERRED CONSTRUC-  
15 TION FUND.—The Nation may use amounts in  
16 the Deferred Construction Fund—

17 “(i) to construct Project facilities that  
18 have been deferred under paragraph (1);  
19 or

20 “(ii) to construct alternate facilities  
21 agreed on under subparagraph (C).

22 “(C) ALTERNATE FACILITIES CONSISTENT  
23 WITH THE PURPOSE OF THE PROJECT.—On  
24 agreement between the Nation and the Sec-  
25 retary, and the Jicarilla Apache Nation if the

1 deferred Project facilities benefit the Jicarilla  
2 Apache Nation, and in compliance with all ap-  
3 plicable environmental and cultural resource  
4 protection laws, facilities other than those pre-  
5 viously agreed to be deferred under paragraph  
6 (1) may be constructed if those alternate facili-  
7 ties are consistent with the purposes of the  
8 Project described in section 10601.

9 “(3) AMOUNTS TO BE DEPOSITED.—Funds allo-  
10 cated from the amounts made available under sec-  
11 tion 10609(a)(1) to build facilities referred to in  
12 paragraph (1) shall be deposited into the Deferred  
13 Construction Fund.

14 “(4) ADJUSTMENTS.—On deposit of amounts  
15 into the Deferred Construction Fund under para-  
16 graph (3), the adjustments to authorized appropria-  
17 tions under section 10609(a)(2) shall no longer  
18 apply to those amounts.

19 “(5) DEADLINE TO CONSTRUCT PROJECT FA-  
20 CILITIES.—On deposit of all amounts into the De-  
21 ferred Construction Fund for construction of Project  
22 facilities agreed on under paragraph (1), the Sec-  
23 retary shall be deemed to have met the obligation  
24 under section 10701(e)(1)(A)(ix).

1           “(6) FUTURE CONSTRUCTION OF PROJECT FA-  
 2           CILITIES.—On agreement between the Nation and  
 3           the Secretary, and the Jicarilla Apache Nation if the  
 4           deferred Project facilities benefit the Jicarilla  
 5           Apache Nation, the Nation shall use amounts depos-  
 6           ited into the Deferred Construction Fund to con-  
 7           struct—

8                   “(A) Project facilities deferred under para-  
 9                   graph (1); or

10                   “(B) alternate Project facilities described  
 11                   in paragraph (2)(C).”.

12           (b) DELIVERY AND USE OF NAVAJO-GALLUP WATER  
 13           SUPPLY PROJECT WATER.—Section 10603 of the North-  
 14           western New Mexico Rural Water Projects Act (Public  
 15           Law 111–11; 123 Stat. 1382) is amended—

16                   (1) in subsection (a)(3)(B)—

17                           (A) in clause (i), by inserting “or, if gen-  
 18                           erated on City-owned facilities, by the City”  
 19                           after “the Nation”; and

20                           (B) in clause (ii), by inserting “, except  
 21                           that the City shall retain all revenue from the  
 22                           sale of hydroelectric power that is generated on  
 23                           City-owned facilities” after “hydroelectric  
 24                           power”; and

1           (2) in subsection (g)(2), by striking “, except as  
2           provided in section 10604(f)”.

3           (c) PROJECT CONTRACTS.—Section 10604 of the  
4           Northwestern New Mexico Rural Water Projects Act  
5           (Public Law 111–11; 123 Stat. 1388) is amended—

6           (1) in subsection (a)(4), by striking “Subject to  
7           subsection (f), the” and inserting “The”;

8           (2) in subsection (b)(3)—

9           (A) in subparagraph (A), by striking “sub-  
10           paragraph (B)” and inserting “subparagraphs  
11           (B) and (C)”;

12           (B) in subparagraph (B)—

13           (i) in the subparagraph heading, by  
14           striking “MINIMUM PERCENTAGE” and in-  
15           serting “MAXIMUM PERCENTAGE”;

16           (ii) by striking “at least 25 percent”  
17           and inserting “not more than 25 percent”;  
18           and

19           (iii) by striking “, but shall in no  
20           event exceed 35 percent”; and

21           (C) by adding at the end the following:

22           “(C) MAXIMUM REPAYMENT OBLIGA-  
23           TION.—The repayment obligation of the City  
24           referred to in subparagraphs (A) and (B) shall  
25           not exceed \$76,000,000.”;

1           (3) in subsection (c)(1)(B), by inserting “sub-  
2           section (f) and” before “section 10603(g)”;

3           (4) in subsection (d)(1), by striking “Draft”  
4           and inserting “Final Environmental”;

5           (5) in subsection (e), by striking “Draft” and  
6           inserting “Final Environmental”;

7           (6) by striking subsection (f); and

8           (7) by redesignating subsection (g) as sub-  
9           section (f).

10          (d) AUTHORIZATION OF APPROPRIATIONS.—Section  
11 10609 of the Northwestern New Mexico Rural Water  
12 Projects Act (Public Law 111–11; 123 Stat. 1395; 129  
13 Stat. 528) is amended—

14           (1) in subsection (a)—

15                   (A) in paragraph (1), by striking  
16                   “\$870,000,000 for the period of fiscal years  
17                   2009 through 2024” and inserting  
18                   “\$2,175,000,000 for the period of fiscal years  
19                   2009 through 2029”;

20                   (B) by striking paragraph (2) and insert-  
21                   ing the following:

22                   “(2) ADJUSTMENTS.—

23                           “(A) IN GENERAL.—The amount under  
24                           paragraph (1) shall be adjusted by such  
25                           amounts as may be required—

1           “(i) by reason of changes since Octo-  
2           ber 2022 in construction cost changes in  
3           applicable regulatory standards, as indi-  
4           cated by engineering cost indices applicable  
5           to the types of construction involved; and

6           “(ii) to address construction cost  
7           changes necessary to account for unfore-  
8           seen market volatility that may not other-  
9           wise be captured by engineering cost indi-  
10          ces described in clause (i), as determined  
11          by the Secretary, including repricing appli-  
12          cable to the types of construction and cur-  
13          rent industry standards involved.

14          “(B) DEFERRED CONSTRUCTION FUND.—  
15          Amounts deposited in the Deferred Construc-  
16          tion Fund shall not be adjusted pursuant to  
17          this paragraph.”; and

18          (C) in paragraph (4)(B), by striking “10  
19          years” and inserting “15 years”; and  
20          (2) in subsection (b)—

21          (A) in paragraph (1), by striking  
22          “\$30,000,000, as adjusted under paragraph  
23          (3), for the period of fiscal years 2009 through  
24          2019” and inserting “\$37,500,000, as adjusted

1 under paragraph (4), for the period of fiscal  
2 years 2009 through 2032”;

3 (B) in paragraph (2), by striking “2024”  
4 and inserting “2032”; and

5 (C) in paragraph (3), by striking “The  
6 amount under paragraph (1)” and inserting  
7 “The amount under paragraphs (1) and (2)”.

8 (e) TAXATION OF CONSTRUCTION, OPERATION, AND  
9 MAINTENANCE OF PROJECT FACILITIES.—Part III of the  
10 Northwestern New Mexico Rural Water Projects Act  
11 (Public Law 111–11; 123 Stat. 1379) is amended by add-  
12 ing at the end the following:

13 **“SEC. 10610. TAXATION OF CONSTRUCTION, OPERATION,  
14 AND MAINTENANCE OF PROJECT FACILITIES.**

15 “(a) NATION LAND.—Any activity constituting the  
16 construction, operation, or maintenance of Project facili-  
17 ties—

18 “(1) shall, if the activity takes place on land  
19 that is held in trust by the United States for the  
20 benefit of the Nation, be subject to taxation by the  
21 Nation; and

22 “(2) shall not be subject to any fee, tax, assess-  
23 ment, levy, or other charge imposed by any State or  
24 political subdivision of a State.

1       “(b) OTHER LAND.—Any activity constituting the  
2 construction, operation, or maintenance of Project facili-  
3 ties—

4               “(1) shall, if the activity takes place on land  
5 other than the land described in subsection (a)(1),  
6 be subject to taxation by the State in which the land  
7 is located, or by a political subdivision of that State  
8 to the extent authorized by the laws of that State;  
9 and

10              “(2) shall not be subject to any fee, tax, assess-  
11 ment, levy, or other charge imposed by the Nation.”.

12 **SEC. 4. NAVAJO NATION WATER RIGHTS.**

13       (a) AGREEMENT.—Section 10701(e) of the North-  
14 western New Mexico Rural Water Projects Act (Public  
15 Law 111–11; 123 Stat. 1400; 129 Stat. 528) is amend-  
16 ed—

17               (1) in paragraph (1)(A)—

18                       (A) by striking clause (vii) and inserting  
19 the following:

20                               “(vii) NAVAJO NATION WATER RE-  
21 SOURCES DEVELOPMENT TRUST FUND.—

22                               Not later than December 31, 2019, the  
23 United States shall make all deposits into  
24 the Navajo Nation Water Resources Devel-

1           opment Trust Fund established by section  
2           10702(a)(1).”;

3           (B) in clause (ix), by striking “2024” and  
4           inserting “2029”; and

5           (C) by adding at the end the following:

6                   “(x)   DEFERRED   CONSTRUCTION  
7           FUND.—

8                           “(I)   IN GENERAL.—Not later  
9                           than December 31, 2029, the United  
10                           States shall make all deposits into the  
11                           Deferred Construction Fund in ac-  
12                           cordance with section 10602(i)(3).

13                           “(II)   PROJECT DEADLINE.—On  
14                           deposit of the amounts into the De-  
15                           ferred Construction Fund under sub-  
16                           clause (I), even if certain Project fa-  
17                           cilities have not yet been constructed,  
18                           the Secretary shall be deemed to have  
19                           met the deadline described in clause  
20                           (ix).”;

21           (2) in paragraph (2)(B)—

22                   (A) in clause (i), by striking “Trust Fund”  
23           and inserting “Settlement Trust Funds”; and

1 (B) in clause (ii), by striking “Trust  
2 Fund” and inserting “Settlement Trust  
3 Funds”.

4 (b) SETTLEMENT TRUST FUNDS.—Section 10702 of  
5 the Northwestern New Mexico Rural Water Projects Act  
6 (Public Law 111–11; 123 Stat. 1402) is amended to read  
7 as follows:

8 **“SEC. 10702. SETTLEMENT TRUST FUNDS.**

9 “(a) NAVAJO NATION WATER RESOURCES DEVELOP-  
10 MENT TRUST FUND.—

11 “(1) ESTABLISHMENT.—There is established in  
12 the Treasury a fund, to be known as the ‘Navajo  
13 Nation Water Resources Development Trust Fund’,  
14 consisting of—

15 “(A) such amounts as are appropriated to  
16 the Navajo Nation Water Resources Develop-  
17 ment Trust Fund under paragraph (5); and

18 “(B) any interest earned on investment of  
19 amounts in the Navajo Nation Water Resources  
20 Development Trust Fund under paragraph (3).

21 “(2) USE OF FUNDS.—The Nation may use  
22 amounts in the Navajo Nation Water Resources De-  
23 velopment Trust Fund—

24 “(A) to investigate, construct, operate,  
25 maintain, or replace water project facilities, in-

1 including facilities conveyed to the Nation under  
2 this subtitle and facilities owned by the United  
3 States for which the Nation is responsible for  
4 operation, maintenance, and replacement costs;  
5 and

6 “(B) to investigate, implement, or improve  
7 a water conservation measure (including a me-  
8 tering or monitoring activity) necessary for the  
9 Nation to make use of a water right of the Na-  
10 tion under the Agreement.

11 “(3) INVESTMENT.—Beginning on October 1,  
12 2019, the Secretary shall invest amounts in the Nav-  
13 ajo Nation Water Resources Development Trust  
14 Fund in accordance with subsection (e).

15 “(4) INVESTMENT EARNINGS.—Any investment  
16 earnings, including interest, credited to amounts  
17 held in the Navajo Nation Water Resources Develop-  
18 ment Trust Fund are authorized to be used in ac-  
19 cordance with paragraph (2).

20 “(5) AUTHORIZATION OF APPROPRIATIONS.—  
21 There are authorized to be appropriated for deposit  
22 in the Navajo Nation Water Resources Development  
23 Trust Fund—

24 “(A) \$6,000,000 for each of fiscal years  
25 2010 through 2014; and

1           “(B) \$4,000,000 for each of fiscal years  
2           2015 through 2019.

3           “(6) AVAILABILITY.—Any amount authorized to  
4           be appropriated to the Navajo Nation Water Re-  
5           sources Development Trust Fund under paragraph  
6           (5) shall not be available for expenditure or with-  
7           drawal—

8           “(A) before December 31, 2019; and

9           “(B) until the date on which the court in  
10          the stream adjudication has entered—

11          “(i) the Partial Final Decree; and

12          “(ii) the Supplemental Partial Final  
13          Decree.

14          “(7) MANAGEMENT.—The Secretary shall man-  
15          age the Navajo Nation Water Resources Develop-  
16          ment Trust Fund in accordance with subsection (d).

17          “(8) CONDITIONS FOR EXPENDITURE AND  
18          WITHDRAWAL.—After the funds become available  
19          pursuant to paragraph (6), all expenditures and  
20          withdrawals by the Nation of funds in the Navajo  
21          Nation Water Resources Development Trust Fund  
22          must comply with the requirements of subsection (f).

23          “(b) NAVAJO NATION OPERATIONS, MAINTENANCE,  
24          AND REPLACEMENT TRUST FUND.—

1           “(1) ESTABLISHMENT.—The Secretary shall es-  
2           tablish a trust fund to be known as the ‘Navajo Na-  
3           tion Operations, Maintenance, and Replacement  
4           Trust Fund’ for the purposes set forth in paragraph  
5           (2), to be managed, invested, and distributed by the  
6           Secretary, and to remain available until expended,  
7           withdrawn, or reverted to the general fund of the  
8           Treasury, consisting of the amounts deposited in the  
9           trust fund under paragraph (3), together with any  
10          interests earned on those amounts under paragraph  
11          (4).

12          “(2) USE OF FUNDS.—The Nation may use  
13          amounts in the Navajo Nation Operations, Mainte-  
14          nance, and Replacement Trust Fund to pay oper-  
15          ations, maintenance, and replacement costs of the  
16          Project allocable to the Nation under section 10604.

17          “(3) AUTHORIZATION OF APPROPRIATIONS.—  
18          There are authorized to be appropriated for deposit  
19          in the Navajo Nation Operations, Maintenance, and  
20          Replacement Trust Fund \$250,000,000.

21          “(4) INVESTMENT.—Upon deposit of funding  
22          into the Navajo Nation Operations, Maintenance,  
23          and Replacement Trust Fund pursuant to para-  
24          graph (3), the Secretary shall invest amounts depos-  
25          ited in accordance with subsection (e).

1           “(5) INVESTMENT EARNINGS.—Any investment  
2 earnings, including interest, credited to amounts  
3 held in the Navajo Nation Operations, Maintenance,  
4 and Replacement Trust Fund are authorized to be  
5 used in accordance with paragraph (2).

6           “(6) AVAILABILITY.—Any amount authorized to  
7 be appropriated to the Navajo Nation Operations,  
8 Maintenance, and Replacement Trust Fund under  
9 paragraph (3) shall not be available for expenditure  
10 or withdrawal until the Nation is responsible for  
11 payment of operation, maintenance, and replacement  
12 costs as set forth in section 10603(g).

13           “(7) FLUCTUATION IN COSTS.—

14           “(A) IN GENERAL.—The amounts author-  
15 ized to be appropriated under paragraph (3)  
16 shall be increased or decreased, as appropriate,  
17 by such amounts as may be justified by reason  
18 of ordinary fluctuations in costs occurring after  
19 October 2022 as indicated by the Bureau of  
20 Reclamation Operation and Maintenance Cost  
21 Index.

22           “(B) REPETITION.—The adjustment proc-  
23 ess under this subparagraph shall be repeated  
24 for each subsequent amount appropriated until

1 the amount authorized, as adjusted, has been  
2 appropriated.

3 “(C) PERIOD OF INDEXING.—The period  
4 of indexing adjustment under this subpara-  
5 graph for any increment of funding shall end on  
6 the date on which the funds are deposited into  
7 the Navajo Nation Operations, Maintenance,  
8 and Replacement Trust Fund.

9 “(8) MANAGEMENT.—The Secretary shall man-  
10 age the Navajo Nation Operations, Maintenance,  
11 and Replacement Trust Fund in accordance with  
12 subsection (d).

13 “(9) CONDITIONS FOR EXPENDITURE AND  
14 WITHDRAWAL.—All expenditures and withdrawals by  
15 the Nation of funds in the Navajo Nation Oper-  
16 ations, Maintenance, and Replacement Trust Fund  
17 must comply with the requirements of subsection (f).

18 “(c) JICARILLA APACHE NATION OPERATIONS,  
19 MAINTENANCE, AND REPLACEMENT TRUST FUND.—

20 “(1) PREREQUISITE TO ESTABLISHMENT.—  
21 Prior to establishment of the trust fund under para-  
22 graph (2), the Secretary shall conduct an Ability to  
23 Pay study to determine what operation, mainte-  
24 nance, and replacement costs of that section of the  
25 Project serving the Jicarilla Apache Nation are in

1 excess of the ability of the Jicarilla Apache Nation  
2 to pay.

3 “(2) ESTABLISHMENT.—Upon completion of  
4 the Ability to Pay study as set forth in paragraph  
5 (1), the Secretary shall establish a trust fund to be  
6 known as the ‘Jicarilla Apache Nation Operations,  
7 Maintenance, and Replacement Trust Fund’ for the  
8 purposes set forth in paragraph (3), to be managed,  
9 invested, and distributed by the Secretary and to re-  
10 main available until expended, withdrawn, or re-  
11 verted to the general fund of the Treasury, con-  
12 sisting of the amounts deposited in the trust fund  
13 under paragraph (4), together with any interests  
14 earned on those amounts under paragraph (5).

15 “(3) USE OF FUNDS.—The Jicarilla Apache  
16 Nation may use amounts in the Jicarilla Apache Na-  
17 tion Operations, Maintenance, and Replacement  
18 Trust Fund to pay operations, maintenance, and re-  
19 placement costs of the Project allocable to the  
20 Jicarilla Nation under section 10604.

21 “(4) AUTHORIZATION OF APPROPRIATIONS.—  
22 There are authorized to be appropriated for deposit  
23 in the Jicarilla Apache Nation Operations, Mainte-  
24 nance, and Replacement Trust Fund the amounts  
25 the Secretary has determined are in excess of the

1 ability of the Jicarilla Apache Nation to pay in the  
2 Ability to Pay study required under paragraph (1)  
3 up to a maximum of \$10,000,000.

4 “(5) INVESTMENT.—Upon deposit of funding  
5 into the Jicarilla Apache Nation Operations, Mainte-  
6 nance, and Replacement Trust Fund pursuant to  
7 paragraph (4), the Secretary shall invest amounts in  
8 the fund in accordance with subsection (e).

9 “(6) INVESTMENT EARNINGS.—Any investment  
10 earnings, including interest, credited to amounts  
11 held in the Jicarilla Apache Nation Operations,  
12 Maintenance, and Replacement Trust Fund are au-  
13 thorized to be used in accordance with paragraph  
14 (3).

15 “(7) AVAILABILITY.—Any amount authorized to  
16 be appropriated to the Jicarilla Apache Nation Op-  
17 erations, Maintenance, and Replacement Trust Fund  
18 under paragraph (4) shall not be available for ex-  
19 penditure or withdrawal until the Jicarilla Apache  
20 Nation is responsible for payment of operation,  
21 maintenance, and replacement costs as set forth in  
22 section 10603(g).

23 “(8) FLUCTUATION IN COSTS.—

24 “(A) IN GENERAL.—The amounts author-  
25 ized to be appropriated under paragraph (4)

1 shall be increased or decreased, as appropriate,  
2 by such amounts as may be justified by reason  
3 of ordinary fluctuations in costs occurring after  
4 October 2022 as indicated by the Bureau of  
5 Reclamation Operation and Maintenance Cost  
6 Index.

7 “(B) REPETITION.—The adjustment proc-  
8 ess under this subparagraph shall be repeated  
9 for each subsequent amount appropriated until  
10 the amount authorized, as adjusted, has been  
11 appropriated.

12 “(C) PERIOD OF INDEXING.—The period  
13 of indexing adjustment under this subpara-  
14 graph for any increment of funding shall end on  
15 the date on which the funds are deposited into  
16 the Jicarilla Apache Nation Operations, Mainte-  
17 nance, and Replacement Trust Fund.

18 “(9) MANAGEMENT.—The Secretary shall man-  
19 age the Jicarilla Apache Nation Operations, Mainte-  
20 nance, and Replacement Trust Fund in accordance  
21 with subsection (d).

22 “(10) CONDITIONS FOR EXPENDITURE AND  
23 WITHDRAWAL.—All expenditures and withdrawals by  
24 the Jicarilla Apache Nation of funds in the Jicarilla  
25 Apache Nation Operations, Maintenance, and Re-

1 placement Trust Fund must comply with the re-  
2 quirements of subsection (f).

3 “(d) MANAGEMENT.—The Secretary shall manage  
4 the Settlement Trust Funds, invest amounts in the Settle-  
5 ment Trust Funds pursuant to subsection (e), and make  
6 amounts available from the Settlement Trust Funds for  
7 distribution to the Nation and the Jicarilla Apache Nation  
8 in accordance with the American Indian Trust Fund Man-  
9 agement Reform Act of 1994 (25 U.S.C. 4001 et seq.).

10 “(e) INVESTMENT OF THE TRUST FUNDS.—The Sec-  
11 retary shall invest amounts in the Settlement Trust Funds  
12 in accordance with—

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

14 “(2) the first section of the Act of June 24,  
15 1938 (25 U.S.C. 162a); and

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

18 “(f) CONDITIONS FOR EXPENDITURES AND WITH-  
19 DRAWALS.—

20 “(1) TRIBAL MANAGEMENT PLAN.—

21 “(A) IN GENERAL.—On approval by the  
22 Secretary of a Tribal management plan in ac-  
23 cordance with the American Indian Trust Fund  
24 Management Reform Act of 1994 (25 U.S.C.  
25 4001 et seq.), the Nation and the Jicarilla

1 Apache Nation may withdraw all or a portion of  
2 the amounts in the Settlement Trust Funds.

3 “(B) REQUIREMENTS.—In addition to any  
4 requirements under the American Indian Trust  
5 Fund Management Reform Act of 1994 (25  
6 U.S.C. 4001 et seq.), a Tribal management  
7 plan shall require that the Nation and Jicarilla  
8 Apache Nation only use amounts in the Settle-  
9 ment Trust Funds for the purposes described in  
10 subsection (a)(2), (b)(2), or (c)(3), as applica-  
11 ble.

12 “(2) ENFORCEMENT.—The Secretary may take  
13 judicial or administrative action to enforce the provi-  
14 sions of any Tribal management plan to ensure that  
15 any amounts withdrawn from the Settlement Trust  
16 Funds are used in accordance with this subtitle.

17 “(3) NO LIABILITY.—The Secretary or the Sec-  
18 retary of the Treasury shall not be liable for the ex-  
19 penditure or investment of any amounts withdrawn  
20 from the Settlement Trust Funds by the Nation or  
21 the Jicarilla Apache Nation.

22 “(4) EXPENDITURE PLAN.—

23 “(A) IN GENERAL.—The Nation and  
24 Jicarilla Apache Nation shall submit to the Sec-  
25 retary for approval an expenditure plan for any

1           portion of the amounts in the Settlement Trust  
2           Funds made available under this section that  
3           the Nation or the Jicarilla Apache Nation does  
4           not withdraw under this subsection.

5           “(B) DESCRIPTION.—An expenditure plan  
6           submitted under subparagraph (A) shall de-  
7           scribe the manner in which, and the purposes  
8           for which, funds of the Nation or the Jicarilla  
9           Apache Nation remaining in the Settlement  
10          Trust Funds will be used.

11          “(C) APPROVAL.—On receipt of an ex-  
12          penditure plan under subparagraph (A), the  
13          Secretary shall approve the plan if the Sec-  
14          retary determines that the plan is reasonable  
15          and consistent with this subtitle.

16          “(5) ANNUAL REPORT.—The Nation and  
17          Jicarilla Apache Nation shall submit to the Sec-  
18          retary an annual report that describes any expendi-  
19          tures from the Settlement Trust Funds during the  
20          year covered by the report.

21          “(6) LIMITATION.—No portion of the amounts  
22          in the Settlement Trust Funds shall be distributed  
23          to any Nation or Jicarilla Apache Nation member on  
24          a per capita basis.”.

1           (c) WAIVERS AND RELEASES.—Section 10703 of the  
2 Northwestern New Mexico Rural Water Projects Act  
3 (Public Law 111–11; 123 Stat. 1403) is amended—

4           (1) in subsection (d)(1)(A), by striking “2025”  
5 and inserting “2030”; and

6           (2) in subsection (e)(2), in the matter preceding  
7 subparagraph (A), by striking “2025” and inserting  
8 “2030”.

○