

July 9, 2004, Revised Draft - Navajo Nation Water Rights Settlement

Disclaimer. It is expressly understood that the governing bodies or authorities of the proposed signatories have not approved the revised draft settlement agreement, including the revised draft partial final decree, revised draft settlement act and revised draft settlement contract. New Mexico Interstate Stream Commission staff also prepared the revised draft executive summary of the proposed settlement and the draft responses to public comments received on the December 5, 2003, discussion draft of the settlement.

APPENDIX 2

NOTE: The following legislation is subject to format review by Congressional staff.

A BILL

To authorize the construction of the Navajo-Gallup Water Supply Project in New Mexico and Arizona, to provide for completion and rehabilitation of existing and authorized Navajo Nation water projects in New Mexico, to authorize the settlement of the water rights claims of the Navajo Nation in the San Juan River Basin in New Mexico, and to enhance management of the Navajo Reservoir water supply.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SEC. 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE. -- This Act may be cited as the "San Juan River Basin in New Mexico Water Projects and Settlement Act".

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

- Sec. 1. Short title; table of contents.
- Sec. 2. Definitions.
- Sec. 3. Compliance with applicable laws.

TITLE I – NAVAJO-GALLUP WATER SUPPLY PROJECT

- Sec. 101. Short title.
- Sec. 102. Findings and purposes.
- Sec. 103. Authorization of Navajo-Gallup Water Supply Project.
- Sec. 104. Delivery and use of project water.
- Sec. 105. Repayment requirements and contracts.
- Sec. 106. Water contracts.
- Sec. 107. Authorization of conjunctive use wells.
- Sec. 108. Authorization of appropriations.
- Sec. 109. Compliance with environmental laws.

TITLE II – NAVAJO NATION WATER PROJECTS IN NEW MEXICO

- Sec. 201. Short title.
- Sec. 202. Findings and purposes.
- Sec. 203. Navajo Indian Irrigation Project.
- Sec. 204. San Juan River irrigation projects.
- Sec. 205. Animas-La Plata Project, Navajo Nation Portion.
- Sec. 206. Effective date.
- Sec. 207. Compliance with environmental laws.

TITLE III – SAN JUAN RIVER BASIN IN NEW MEXICO NAVAJO NATION WATER RIGHTS SETTLEMENT

- Sec. 301. Short title.
- Sec. 302. Findings and purposes.
- Sec. 303. Settlement Agreement and Contract approval.
- Sec. 304. Water available under Settlement Contract.
- Sec. 305. Subcontracts.
- Sec. 306. Water leases not requiring subcontracts.
- Sec. 307. Authorization of Trust Fund.
- Sec. 308. Authorization of hydrographic survey.
- Sec. 309. Conditions.
- Sec. 310. Environmental compliance.

TITLE IV – NAVAJO RESERVOIR WATER SUPPLY

- Sec. 401. Short title.
- Sec. 402. Findings and purposes.
- Sec. 403. Sharing of water shortages.
- Sec. 404. Protection of Navajo Nation domestic uses Arizona.
- Sec. 405. Authorization of Navajo Reservoir water bank.
- Sec. 406. Environmental compliance.

SEC. 2. DEFINITIONS.

As used in this Act, the term:

(a) “Animas-La Plata Project” means the project of the same name authorized by the Colorado Ute Settlement Act Amendments of 2000 (114 Stat. 2763A-258; Public Law 106-554, Appendix D, Title III) and related facilities, including Ridges Basin Dam and Reservoir and the Navajo Nation Municipal Pipeline;

(b) “Depletion” means the depletion of the flow of the San Juan River stream system within New Mexico by a particular use of water, including any depletion incident to the use, and represents the diversion from the stream system by the use less return flows to the stream system from the use;

(c) “Nation” means the Navajo Nation, a body politic and federally-recognized Indian nation as provided for in section 101(2) of the Federally Recognized Indian Tribe List of 1994 (Public Law 103-454, 25 U.S.C. 497a(2)), also known variously as the “Navajo Tribe,” the “Navajo Tribe of Arizona, New Mexico & Utah,” and the “Navajo Tribe of Indians” and other similar names, and includes all bands of Navajo Indians and chapters of the Navajo Nation;

(d) “Navajo-Gallup Water Supply Project” means the project substantially described in the March 2001 technical memorandum for the project prepared by the Navajo Nation Department of Water Resources and the April 2002 appraisal report for the project prepared by the United States Bureau of Reclamation, as conditioned, modified and limited by this Act;

(e) “Navajo Indian Irrigation Project” means the project of the same name authorized by section 2 of the Act of June 13, 1962 (76 Stat. 96; Public Law 87-483), as amended by the

Act of September 25, 1970 (84 Stat. 867; Public Law 91-416);

(f) “Navajo Nation Municipal Pipeline” means the pipeline to convey the Navajo Nation’s Animas-La Plata Project water from the City of Farmington, New Mexico, to Navajo Nation communities along the San Juan River valley in New Mexico, including the City of Shiprock, as authorized by the Colorado Ute Settlement Act Amendments of 2000 (114 Stat. 2763A-258; Public Law 106-554, Appendix D, Title III);

(g) “Navajo Reservoir” means the reservoir created by the impoundment of the San Juan River at Navajo Dam as authorized by the Act of April 11, 1956 (70 Stat. 105; Public Law 84-485);

(h) “Resolution” means the Resolution of the Upper Colorado River Commission Regarding the Use and Accounting of Upper Basin Water Supplied to the Lower Basin in New Mexico by the Proposed Navajo-Gallup Water Supply Project, dated June 17, 2003;

(i) “Secretary” means the Secretary of the Interior;

(j) “Settlement Agreement” means the agreement among the United States, the Navajo Nation and the State of New Mexico setting forth a stipulated and binding settlement agreement as to the rights of the Nation to use and administer waters of the San Juan River Basin in New Mexico, signed by the State of New Mexico and the Navajo Nation on _____; and

(k) “Settlement Contract” means the contract between the United States and the Navajo Nation setting forth certain commitments, rights and obligations of the United States and the Nation, as required by the Settlement Agreement.

SEC. 3. COMPLIANCE WITH APPLICABLE LAWS.

(a) ENVIRONMENTAL COMPLIANCE. -- Nothing in this Act shall be construed to predetermine or otherwise affect the outcome of any analysis conducted by the Secretary or any other Federal official under applicable laws, nor shall anything in this Act be construed to alter, amend or modify the authority or discretion of the Secretary or any other Federal official under any Federal law. The Secretary shall comply with all aspects of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), and other applicable environmental laws and regulations in implementing this Act.

(b) COMPLIANCE WITH FEDERAL WATER LAWS. -- Nothing in this Act shall be construed to alter, amend, repeal, construe, interpret, modify, supersede, preempt or be in conflict with the provisions of the Boulder Canyon Project Act (45 Stat. 1057), the Boulder Canyon Project Adjustment Act (54 Stat. 774), the Colorado River Storage Project Act (70 Stat. 105), the Colorado River Basin Project Act (82 Stat. 885), the Act of June 13, 1962 (76 Stat. 96), the Treaty between the United States of America and the United Mexican States (59 Stat. 1219), the Colorado River Compact of 1922 made effective by Public Proclamation of the President of the United States on June 25, 1929 (46 Stat. 3000), the Upper Colorado River Basin Compact (63 Stat. 31), the Animas-La Plata Project Compact (82 Stat. 898), the Jicarilla Apache Tribe Water Rights Settlement Act (106 Stat. 2237), or section 208 of Public Law 108-137 (117 Stat. 1827); except, that the Act of June 13, 1962, is amended as provided in this Act.

(c) RIGHTS OF INDIAN TRIBES. -- Nothing in the Settlement Agreement, the Settlement Contract, the hydrologic determination by the Secretary referenced in subsection 102(a)(5) of Title I of this Act, or this Act shall be construed in any way to quantify or otherwise adversely affect the land and water rights, claims or entitlements to water of any Indian tribe or community other than

those of the Navajo Nation in, to and from the San Juan River Basin in New Mexico; except, that the right of the Navajo Nation to use water under water rights it may have in other river basins in New Mexico shall be forborne only so long as and to the extent that the Nation supplies the uses for which said water rights may exist by diversions of water from the San Juan River Basin under the Navajo-Gallup Water Supply Project consistent with subparagraph 9.13 of the Settlement Agreement.

(d) RESPONSIBILITIES OF UNITED STATES TO INDIAN TRIBES. -- Nothing in this Act shall affect the trust responsibilities of the United States to Indian tribes, or shall be construed in any way to limit any responsibility the United States may have under treaty, statute or otherwise to provide or operate water distribution or wastewater systems on the lands of any Indian tribe.

TITLE I – NAVAJO-GALLUP WATER SUPPLY PROJECT

SEC. 101. SHORT TITLE.

This title may be cited as the "Navajo-Gallup Water Supply Project Act".

SEC. 102. FINDINGS AND PURPOSES.

(a) FINDINGS. -- Congress hereby finds and declares that:

(1) Navajo communities in northeast New Mexico and northwest Arizona lack the infrastructure necessary to provide a permanent, reliable and renewable municipal water supply needed to sustain the Navajo Reservation as a permanent homeland;

(2) the City of Gallup, New Mexico, currently relies on the mining of non-renewable ground water as its source of municipal water supply, and its supplies of ground water continue to be exhausted and are inadequate to meet its future water needs;

(3) the Jicarilla Apache Nation, which has water rights from the San Juan River Basin in New Mexico pursuant to the settlement contract between the United States and the

Jicarilla Apache Tribe authorized by the Jicarilla Apache Tribe Water Rights Settlement Act (106 Stat. 2238, Public Law 102-441), lacks the infrastructure necessary to utilize its water rights for municipal, commercial, and domestic uses on its reservation;

(4) the Navajo-Gallup Water Supply Project would provide delivery of much needed renewable water supplies to the Navajo Nation, the City of Gallup and the Jicarilla Apache Nation, and other important benefits to water users in northwest New Mexico and northeast Arizona; and

(5) the Secretary of the Interior, in accordance with the requirements of section 11 of the Act of June 13, 1962 (76 Stat. 96, 99; Public Law 87-483), has determined by hydrologic investigations that sufficient water to provide for uses in New Mexico under the Navajo-Gallup Water Supply Project is reasonably likely to be available for use in the State of New Mexico from the Upper Colorado River Basin and has transmitted such determination to Congress by letter dated _____.

(b) PURPOSES. -- The purposes of this Act are:

(1) to authorize the construction of the Navajo-Gallup Water Supply Project;

(2) to allocate the water supply for the Navajo-Gallup Water Supply Project between the Navajo Nation, the City of Gallup, and the Jicarilla Apache Nation;

(3) to authorize the Secretary of the Interior to execute the Settlement Contract for the purpose of supplying water to the Navajo Nation for delivery to Navajo communities in New Mexico via the Navajo-Gallup Water Supply Project;

(4) to authorize the Secretary of the Interior to execute Navajo-Gallup Water Supply Project repayment and water service contracts for the City of Gallup and the Jicarilla Apache

Nation; and

(5) to authorize the delivery of water by the Navajo-Gallup Water Supply Project to Navajo communities in Arizona, subject to a determination or resolution of how to account the use of Project water in Arizona within the apportionments of Colorado River System water made to the State of Arizona through compact, statute or court decree.

SEC. 103. AUTHORIZATION OF NAVAJO-GALLUP WATER SUPPLY PROJECT.

(a) GENERAL AUTHORIZATION. -- The Secretary is authorized to construct, operate and maintain the Navajo-Gallup Water Supply Project in general accordance with the March 2001 technical memorandum for the Project prepared by the Navajo Nation Department of Water Resources and the April 2002 appraisal report for the Project prepared by the Bureau of Reclamation, subject to the terms, conditions and limitations of Titles I, III and IV of this Act.

(b) PARTICIPATING PROJECT. -- The Congress hereby authorizes the Navajo-Gallup Water Supply Project as a participating project of the Colorado River Storage Project under the Act of April 11, 1956, the Colorado River Storage Project Act (70 Stat. 105; Public Law 84-485).

(c) PROJECT FACILITIES. -- The Secretary is authorized to construct, operate and maintain the following facilities of the Navajo-Gallup Water Supply Project as described in the April 2002 appraisal report for the Project prepared by the Bureau of Reclamation for the delivery of San Juan River water to Project beneficiaries:

- (1) a pumping plant on the San Juan River in the vicinity of Kirtland, New Mexico;
- (2) a main pipeline from the San Juan River near Kirtland, New Mexico, to Shiprock, New Mexico, thence to Gallup, New Mexico, largely following US Highway 491 (formerly US Highway 666), and associated pumping plants;

(3) a main pipeline from Cutter Reservoir to Ojo Encino, New Mexico, largely following US Highway 550, and associated pumping plants;

(4) lateral pipelines from the main pipelines to Navajo Nation communities in the States of New Mexico and Arizona, and associated pumping plants; and

(5) related water regulation, storage and treatment facilities, service connections to existing public water supply systems, power distribution works, and other appurtenant works, including buildings and access roads.

(d) LAND ACQUISITION. -- The Secretary is authorized to acquire by purchase, exchange or condemnation, land or interests in land as necessary to construct, operate and maintain the Navajo-Gallup Water Supply Project facilities authorized by subsection (c) of this section; provided, that nothing in this Act shall be construed to give authority to the Secretary to condemn water rights for purposes of the Project.

(e) CONDITIONS PRECEDENT TO CONSTRUCTION. -- Construction of the Navajo-Gallup Water Supply Project facilities authorized in this section shall not commence unless and until:

(1) the Settlement Agreement has been executed by the Secretary and the Settlement Contract has been executed by the Secretary and the Navajo Nation;

(2) the Bureau of Reclamation has completed an Environmental Impact Statement for the Navajo-Gallup Water Supply Project and the Secretary has issued a Record of Decision that provides for a preferred alternative substantially in accordance with the Project authorizations contained in this section; and

(3) the Secretary certifies by report to the Congress that construction, operation, maintenance and replacement costs allocable to each water contractor or beneficiary of the

Project have been determined by the Secretary.

(f) TRANSFER OF OWNERSHIP. -- The Secretary is authorized to complete the transfer of ownership of the Navajo-Gallup Water Supply Project facilities to the Navajo Nation within three years after completion of construction of the Project and after execution of a Project operations agreement approved by the Secretary and the Project beneficiaries that shall set forth:

(1) terms and conditions that the Secretary determines are necessary to provide the benefits of the Project and fulfill the purposes of this Act;

(2) requirements acceptable to the Secretary and the Project beneficiaries for the distribution of water under the Project and for the allocation and payment of annual operation, maintenance and replacement costs of the Project based on the proportionate uses of Project facilities; and

(3) the Navajo Nation as the owner and operator of the Project facilities once the transfer of ownership is complete, with responsibilities to provide for the operation, maintenance and replacement of Project facilities, and to provide for the accounting and management of water conveyance and Project finances, as necessary to administer and fulfill the conditions of repayment and water service contracts executed pursuant to sections 105 and 106 of this Act.

In transferring ownership of the Project facilities to the Navajo Nation, the Secretary also shall transfer to the Nation the ownership of land or interests in land acquired by the United States for the construction, operation and maintenance of the Project. The Secretary at least 45 days prior to the proposed date of transfer shall submit notice of the transfer of ownership of Project facilities to the Committee on Resources of the House of Representatives and to the Committees on Energy and

Natural Resources and Indian Affairs of the United States Senate.

(g) COLORADO RIVER STORAGE PROJECT POWER AND FACILITIES. -- Facilities necessary to deliver power generated by the Colorado River Storage Project to the low voltage point of Navajo-Gallup Water Supply Project facilities shall be financed by the Western Area Power Administration from revenues collected through the sale of Colorado River Storage Project power. The Navajo-Gallup Water Supply Project facilities constructed pursuant to this section are authorized to use power produced by the Colorado River Storage Project and administered through the Western Area Power Administration. The transfer of ownership to the Navajo Nation of the Navajo-Gallup Water Supply Project facilities authorized by subsection (f) of this section shall not affect the availability to the Project of Colorado River Storage Project power.

(h) REGIONAL USE OF PROJECT FACILITIES. -- Navajo-Gallup Water Supply Project facilities constructed pursuant to the authorizations contained in subsection (c) of this section may be used to treat and convey water not allocated by subsection 104(b) of this Act, or non-Project water; provided, that:

(1) capacity is available and the beneficiary of the use of non-Project water has rights to the use of the water;

(2) the beneficiary of the use of non-Project water agrees to pay the operation, maintenance and replacement costs assignable to its use of Project works; and

(3) payments to the United States, or to the Navajo Nation after transfer of ownership of Project facilities, for such use of unused capacity or for water under any subcontracts with the Navajo Nation or the Jicarilla Apache Nation shall not alter the construction repayment requirements or the operation, maintenance and replacement payment requirements of the

Project beneficiaries, including the Navajo Nation or the Jicarilla Apache Nation.

SEC. 104. DELIVERY AND USE OF PROJECT WATER.

(a) USES OF WATER. -- Water supply from the Navajo-Gallup Water Supply Project shall be delivered at Navajo Reservoir or the San Juan River below Navajo Dam as described in the April 2002 appraisal report for the Navajo-Gallup Water Supply Project prepared by the Bureau of Reclamation, and shall be used for municipal, industrial, commercial and domestic purposes, including residential outdoor uses such as yard and stock watering. The Navajo Nation may use its allocations of Project water on lands held by the United States in trust for the Navajo Nation and its members and on lands held in fee by the Navajo Nation; provided, that the Navajo Nation may transfer the purposes and places of use in accordance with the Settlement Agreement and applicable law. Hydroelectric power may be generated as an incident to the delivery of water by the Project for the foregoing uses. Water contracted for delivery that is not needed for current water demands or uses may be delivered by the Project for placement into underground storage in New Mexico only for future recovery and use if such delivery is approved by the State of New Mexico under applicable state law governing aquifer storage and recovery, subject also to the provisions of the Settlement Agreement and Titles I, III and IV of this Act.

(b) WATER ALLOCATIONS. -- The Navajo-Gallup Water Supply Project shall not divert from Navajo Reservoir and the San Juan River, in combination, more than 37,760 acre-feet, or the quantity of water necessary to supply a depletion from the San Juan River in New Mexico of 35,890 acre-feet, whichever is less, in any one year to be allocated to the Project participants as follows:

(1) delivery at the points of diversion of an amount not to exceed 22,650 acre-feet, or the quantity of water necessary to supply a depletion from the San Juan River in New Mexico

of 20,780 acre-feet, whichever is less, for use by Navajo Nation communities in the State of New Mexico pursuant to the Settlement Agreement and the Settlement Contract authorized by Title III of this Act;

(2) delivery at the point of diversion from the San Juan River of an amount not to exceed 6,410 acre-feet in any one year for use by Navajo Nation communities in the State of Arizona;

(3) delivery at the point of diversion from the San Juan River of an amount not to exceed 7,500 acre-feet in any one year for use by the City of Gallup, New Mexico; and

(4) delivery at Navajo Reservoir of an amount not to exceed 1,200 acre-feet in any one year for use by the Jicarilla Apache Nation in the southern portion of its Reservation in New Mexico to be made under its contract right to water available from Navajo Reservoir pursuant to the settlement contract between the United States and the Jicarilla Apache Tribe authorized by the Jicarilla Apache Tribe Water Rights Settlement Act (106 Stat. 2238, Public Law 102-441).

(c) WATER LOSSES. -- Pipeline leakage and other water losses from the Navajo-Gallup Water Supply Project shall be charged to the Project beneficiaries and uses supplied through each main pipeline authorized in subsections 103(c)(2) and 103(c)(3) in proportions to the amounts of water delivery under the allocations made in this section and otherwise from the San Juan River through each respective pipeline and Navajo Indian Irrigation Project facilities; except, that pipeline leakage from each lateral pipeline of the Project constructed under the authorization provided in subsection 103(c)(4) shall be charged to the Project beneficiary and use supplied by the lateral pipeline.

(d) SOURCES OF WATER. -- The sources of water for the Navajo-Gallup Water Supply Project allocated by subsection (b) of this section shall be water originating in the drainage of the San Juan River above Navajo Dam, to be supplied under New Mexico State Engineer File No. 2849, and inflow to the San Juan River arising below Navajo Dam, to be supplied under New Mexico State Engineer File No. 3215.

(e) ACCOUNTING OF USES IN NEW MEXICO. -- Pursuant to the Resolution, water diverted by the Navajo-Gallup Water Supply Project to the Lower Basin, as that term is defined in the Colorado River Compact, for use in the State of New Mexico shall be a part of the consumptive use apportionment made to the State of New Mexico by Article III(a) of the Upper Colorado River Basin Compact, other provisions of existing law to the contrary notwithstanding.

(f) ACCOUNTING OF USES IN ARIZONA. -- The depletion of water from the San Juan River stream system in New Mexico resulting from the diversion of water by the Navajo-Gallup Water Supply Project for uses within the State of Arizona, including depletion that is incident to the diversion, impounding or conveyance of water in New Mexico for the uses in Arizona, shall be accounted as a part of the Colorado River System apportionments to the State of Arizona and shall in no way increase the total quantity of water to the use of which the State of Arizona is entitled and limited under any compact, statute or court decree.

(g) CONDITIONS PRECEDENT FOR USES IN ARIZONA. -- Delivery of water by the Navajo-Gallup Water Supply Project to Navajo Nation communities within the State of Arizona authorized by subsection (b)(2) of this section shall not commence unless and until the following conditions are met:

- (1) an accounting of the use of the water within the apportionments of Colorado

River System water made to the State of Arizona through compact, statute or court decree has been determined and resolved;

(2) the Secretary, in accordance with the requirements of section 11 of the Act of June 13, 1962 (76 Stat. 96, 99; Public Law 87-483), has determined by hydrologic investigations that sufficient water is reasonably likely to be available to service a contract for such delivery of water and has transmitted such determination to Congress; and

(3) Congress has approved a water delivery contract between the Navajo Nation and the United States to provide for such delivery of water via the Project.

(h) LIMITATIONS ON TRANSFER OF ALLOCATIONS. -- The authorizations in this section to divert or deliver water from Navajo Reservoir or the San Juan River in New Mexico for uses within the State of New Mexico via the Navajo-Gallup Water Supply Project and related facilities shall not be transferable to supply uses in the State of Arizona. However, during times when the Secretary determines and allocates a shortage in the Navajo Reservoir water supply pursuant to subsection 11(a) of the Act of June 13, 1962, and section 403 of Title IV of this Act, the Navajo Nation pursuant to and consistent with section 404 of Title IV of this Act temporarily may forbear the delivery of water for its Project uses in the State of New Mexico to allow the Nation's municipal and domestic uses under the Project in Arizona to be served during the period of shortage. The authorization in this section to divert water from the San Juan River in New Mexico for uses within the State of Arizona via the Project shall not be transferable to supply uses in the State of New Mexico. Also, the authorization in this section to divert water from the San Juan River in New Mexico for uses within the State of Arizona via the Navajo-Gallup Water Supply Project shall not be transferable to serve other uses in Arizona, including other uses by the Navajo Nation or by other entities, on either

Navajo or non-Navajo lands.

(i) CONSISTENCY WITH UPPER COLORADO RIVER BASIN COMPACT. -- Uses of water from Navajo Reservoir or the San Juan River by the Navajo-Gallup Water Supply Project pursuant to the Settlement Contract or other water delivery contracts, including subcontracts, shall be consistent with the Upper Colorado River Basin Compact.

(j) SHARING IN AVAILABLE WATER SUPPLY. -- Contract deliveries of water from the Navajo Reservoir water supply to the Navajo-Gallup Water Supply Project shall be subject to the provisions of section 11 of the Act of June 13, 1962 (76 Stat. 96; Public Law 87-483) and section 403 of Title IV of this Act.

(k) RESPONSIBILITY FOR CARRIAGE OF WATER. -- The Secretary shall be responsible for the control, carriage, handling, and measurement of all water made available via the Navajo-Gallup Water Supply Project and conveyed through the facilities authorized by section 103 of this Act, including for carriage of water for the Jicarilla Apache Nation between the point of diversion at Navajo Reservoir and the Jicarilla Apache Nation's connection to the main pipeline authorized by subsection 103(c)(3), notwithstanding any provisions to the contrary in the settlement contract between the United States and the Jicarilla Apache Tribe authorized by the Jicarilla Apache Tribe Water Rights Settlement Act (106 Stat. 2238, Public Law 102-441); except, that:

(1) the United States shall not bear any water conveyance losses associated with conveying water from Navajo Reservoir or the San Juan River to the end of the main pipelines or lateral pipelines; and

(2) the Navajo Nation shall be responsible for the control, carriage, handling and measurement of water made available via the Project upon the transfer of ownership of the

Project facilities to the Nation.

(l) CONDITIONS PRECEDENT FOR JICARILLA APACHE NATION USES. -- Delivery of water by the Navajo-Gallup Water Supply Project to the Jicarilla Apache Nation for its uses authorized by subsection (b)(4) of this section shall not commence unless and until the Jicarilla Apache Nation has entered into:

(1) a repayment contract with the United States to repay its share of the construction costs of the Project pursuant to subsection 105(b) of this Act; and

(2) a water service contract with the Secretary to pay the operation, maintenance and replacement costs of the Project allocable to such uses pursuant to subsection 106(b) of this Act.

(m) CONDITIONS PRECEDENT FOR CITY OF GALLUP USES. -- Delivery of water by the Navajo-Gallup Water Supply Project to the City of Gallup for its uses authorized by subsection (b)(3) of this section shall not commence unless and until the City of Gallup has entered into:

(1) a repayment contract with the United States to repay the City's share of the construction costs of the Project pursuant to subsection 105(c) of this Act;

(2) a water delivery subcontract with the Jicarilla Apache Nation, or an alternate water source arrangement acceptable to the Secretary and the State of New Mexico; and

(3) a water service contract with the Secretary to pay the operation, maintenance and replacement costs of the Project allocable to such uses pursuant to subsection 106(c) of this Act.

SEC. 105. REPAYMENT REQUIREMENTS AND CONTRACTS.

(a) CONSTRUCTION COSTS ALLOCABLE TO NAVAJO NATION NONREIMBURSABLE. -- The

construction costs of the Navajo-Gallup Water Supply Project facilities authorized by subsection 103(c) of this Act that are allocable to the Navajo Nation for water deliveries to be made for purposes authorized by this title and pursuant to the allocations set forth in subsection 104(b) of this Act shall be paid from Federal appropriations and shall be nonreimbursable. The Navajo Nation shall have no obligation to repay any Navajo Indian Irrigation Project construction costs that might otherwise be allocable to the Nation for use of the Navajo Indian Irrigation Project facilities to convey water to Navajo communities under the Navajo-Gallup Water Supply Project.

(b) JICARILLA APACHE NATION REPAYMENT CONTRACT. -- The Secretary is authorized to enter into a repayment contract with the Jicarilla Apache Nation that shall require the Jicarilla Apache Nation to repay within a term of 50 years its share of the construction costs of the Navajo-Gallup Water Supply Project for providing capacity to deliver water to the Jicarilla Apache Nation consistent with the allocation made by subsection 104(b)(4) of this Act. In determining the repayment provisions of the repayment contract, the Secretary shall determine the Jicarilla Apache Nation's share of the construction costs based on the Jicarilla Apache Nation's ability to pay the construction costs of the Project facilities that are allocable to it, but in no event shall the Jicarilla Apache Nation's share be less than 25 percent of the construction costs of the Project that are allocable to it. The construction costs of the Project that are allocable to providing capacity to deliver water to the Jicarilla Apache Nation and that are in excess of the Jicarilla Apache Nation's share of the construction costs of the Project that are allocable to it for repayment under this subsection shall be paid from Federal appropriations and shall be nonreimbursable. Grants from other Federal sources shall not be used or credited toward the Jicarilla Apache Nation's repayment requirement. The Jicarilla Apache Nation shall have no obligation to repay any Navajo Indian

Irrigation Project construction costs that might otherwise be allocable to the Jicarilla Apache Nation for use of the Navajo Indian Irrigation Project facilities to convey water to the Jicarilla Apache Nation via the Navajo-Gallup Water Supply Project. The Jicarilla Apache Nation shall have no right to receive water from the Navajo-Gallup Water Supply Project unless the Jicarilla Apache Nation and the Secretary execute the repayment contract.

(c) CITY OF GALLUP REPAYMENT CONTRACT. -- The Secretary is authorized to enter into a repayment contract with the City of Gallup that shall require the City to repay within a term of 50 years its share of the construction costs of the Navajo-Gallup Water Supply Project for providing capacity to deliver water to the City consistent with the allocation made by subsection 104(b)(3) of this Act, notwithstanding any provisions of this Act or the Settlement Contract that may be contrary.

In determining the repayment provisions of the repayment contract, the Secretary shall:

(1) determine the construction costs of the Project facilities that are assignable for repayment to the City of Gallup as the amount of construction costs of the Project that are allocable to providing capacity to deliver water to the City less the amount of cost-share funding contributed by the State of New Mexico and the City prior to the date of execution of the repayment contract for planning and construction of regional facilities to distribute Project water to the City and surrounding Navajo communities; and

(2) determine the City of Gallup's share of the construction costs based on the City's ability to pay the construction costs of the Project that are assignable for repayment to the City, but in no event shall the City's share be less than 25 percent of the construction costs of the Project that are assignable for repayment to the City.

The construction costs of the Project that are allocable to providing capacity to deliver water to the

City of Gallup and that are in excess of the City's share of the construction costs of the Project that are assignable to the City for repayment under this subsection shall be paid from Federal appropriations and shall be nonreimbursable. Grants from other Federal sources shall not be used or credited toward the City of Gallup's repayment requirement. The City of Gallup shall have no right to receive water from the Navajo-Gallup Water Supply Project unless the City and the Secretary execute the repayment contract.

(d) CAPITAL COST ALLOCATIONS. -- The Bureau of Reclamation in January 2004 prepared an allocation of capital construction costs for the Navajo-Gallup Water Supply Project. The Secretary of the Interior shall review the cost allocations and make any appropriate adjustments to reflect the authorizations of this title and to determine the capital repayment requirements of the Project beneficiaries.

SEC. 106. WATER CONTRACTS.

(a) NAVAJO NATION WATER DELIVERY. -- Water shall be delivered to the Navajo Nation via the Navajo-Gallup Water Supply Project consistent with section 104 of this Act and the Settlement Contract approved by subsection 303(c) of Title III of this Act.

(b) JICARILLA APACHE NATION WATER SERVICE CONTRACT. -- Water shall be delivered to the Jicarilla Apache Nation pursuant to the Jicarilla Apache Nation's Settlement Contract with the Secretary executed pursuant to the Jicarilla Apache Tribe Water Rights Settlement Act (106 Stat. 2238, Public Law 102-441). The Jicarilla Apache Nation shall pay the operation, maintenance and replacement costs for Navajo-Gallup Water Supply Project facilities and Navajo Indian Irrigation Project facilities that are allocable to the Jicarilla Apache Nation for treatment and transportation of water pursuant to the allocation set forth in subsection 104(b)(4) of this Act from Navajo Reservoir

to the Jicarilla Apache Nation's connection to the main pipeline authorized in subsection 103(c)(3) of this Act. The Secretary is authorized to enter into a water service contract with the Jicarilla Apache Nation that would provide for payment of the operation, maintenance and replacement costs as required in this subsection.

(c) CITY OF GALLUP WATER DELIVERY AND SERVICE CONTRACTS. -- The Secretary is authorized to approve a water delivery subcontract between the City of Gallup and the Jicarilla Apache Nation under the terms of the Jicarilla Apache Nation's Settlement Contract with the Secretary executed pursuant to the Jicarilla Apache Tribe Water Rights Settlement Act (106 Stat. 2238, Public Law 102-441) for the delivery of water for the Navajo-Gallup Water Supply Project uses by the City of Gallup consistent with section 104 of this Act; provided, that:

(1) the period for the subcontract shall be as mutually agreed upon by the City of Gallup and the Jicarilla Apache Nation and may exceed 40 years, but shall not be more than 99 years;

(2) the Secretary, as hereby authorized, enters into a water service contract with the City of Gallup that provides for the City of Gallup to pay the operation, maintenance and replacement costs for the Project facilities that are allocable to the City for treatment and transportation of water pursuant to the allocation set forth in subsection 104(b)(3) of this Act from the San Juan River to the City of Gallup's connection to the main pipeline authorized in subsection 103(c)(2) of this Act; and

(3) no deliveries of water for use by the City of Gallup under the subcontract shall be made until the City and the Secretary execute a repayment contract as authorized by subsection 105(c) of this Act.

Nothing in this title shall be construed to prevent the City of Gallup from obtaining an alternate source of water for its portion of the Project, subject to approval of the Secretary and the State of New Mexico acting through the New Mexico Interstate Stream Commission and the New Mexico State Engineer; provided, that the City of Gallup shall enter into the repayment contract and also into the water service contract that provides for the City to pay the operation, maintenance and replacement costs of the Project facilities that are allocable to the City. Nor shall anything in this title be construed to obligate the Jicarilla Apache Nation to enter into a water delivery subcontract with the City of Gallup, to require particular terms in any such subcontract, or to prevent the Jicarilla Apache Nation from making alternative uses of its water if the Jicarilla Apache Nation and the City do not reach agreement or if the City finds an alternate water supply for part or all of its Project water demands.

(d) OPERATION, MAINTENANCE AND REPLACEMENT COST ALLOCATIONS. -- The Bureau of Reclamation in January 2004 prepared an allocation of operation, maintenance and replacement costs for the Navajo-Gallup Water Supply Project. The Secretary of the Interior shall review the cost allocations and make any appropriate adjustments to reflect the authorizations of this title and to determine the operation, maintenance and replacement payment requirements of the Project beneficiaries.

(e) WAIVERS OF PAYMENTS. -- The Secretary is authorized to waive operation, maintenance and replacement costs of the Navajo-Gallup Water Supply Project that are allocable to the Navajo Nation or the Jicarilla Apache Nation and that the Secretary determines are in excess of a tribe's ability to pay. Operation, maintenance and replacement costs waived by the Secretary shall be paid by the United States. Failure of the Secretary to waive costs due to a lack of availability of federal

funding to pay the costs shall not alter the obligations of the Navajo Nation, the Jicarilla Apache Nation or the United States under the contracts referenced in subsections (a) and (b) of this section. The authority granted the Secretary by this subsection to waive costs shall terminate upon transfer of ownership of the Project facilities to the Navajo Nation pursuant to subsection 103(f) of this Act.

(f) **SUCCESSORS AND ASSIGNS.** -- The water carriage, measurement, payment and maintenance provisions of the water service contracts approved or executed by the Secretary pursuant to this section shall be binding on the Navajo Nation as a successor and assign of the United States if the ownership of Navajo-Gallup Water Supply Project facilities is transferred to the Navajo Nation and the Navajo Nation subsequently assumes responsibility for the operation and maintenance of the Project pursuant to subsection 103(f) of this Act.

SEC. 107. AUTHORIZATION OF CONJUNCTIVE USE WELLS.

(a) **WELLS IN THE SAN JUAN RIVER BASIN.** -- The Secretary is authorized to construct or rehabilitate wells and related pipeline facilities to provide capacity for the diversion and distribution of up to 1,670 acre-feet in any one year of ground water in the San Juan River Basin in New Mexico for municipal and domestic uses in general accordance with the Navajo-Gallup Water Supply Project and conjunctive ground water development plan for the Navajo Nation described in the March 2001 technical memorandum for the Navajo-Gallup Water Supply Project prepared by the Navajo Nation Department of Water Resources.

(b) **WELLS IN THE LITTLE COLORADO AND RIO GRANDE BASINS.** -- The Secretary is authorized to construct or rehabilitate wells and related pipeline facilities to provide capacity for the diversion and distribution of ground water in areas physically located outside the San Juan River Basin in New Mexico for municipal and domestic uses in general accordance with the conjunctive

Navajo-Gallup Water Supply Project and ground water development plan for the Navajo Nation described in the March 2001 technical memorandum for the Navajo-Gallup Water Supply Project prepared by the Navajo Nation Department of Water Resources, such wells to provide capacity to divert ground water in amounts of up to 680 acre-feet in any one year of ground water in the Little Colorado River Basin in New Mexico, 80 acre-feet in any one year of ground water in the Rio Grande Basin in New Mexico, and 770 acre-feet in any one year of ground water in the Little Colorado River Basin in Arizona.

(c) LAND ACQUISITION. -- The Secretary is authorized to acquire by purchase, exchange or condemnation, land or interests in land as necessary to construct, operate and maintain the wells and related pipeline facilities authorized by subsections (a) and (b) of this section; provided, that nothing in this Act shall be construed to give authority to the Secretary to condemn water rights for these purposes.

(d) TRANSFER OF OWNERSHIP. -- The Secretary is authorized to transfer to the Navajo Nation the ownership of wells and related pipeline facilities constructed or rehabilitated pursuant to subsections (a) and (b) of this section within three years after completion of the wells and related facilities. In transferring ownership of the wells and related facilities to the Navajo Nation, the Secretary also shall transfer to the Nation the ownership of land or interests in land acquired by the United States for the construction, operation and maintenance of the wells and related facilities. The Navajo Nation shall assume responsibility to provide for the operation, maintenance and replacement of the wells and related facilities after transfer of ownership is complete.

(e) USE OF NAVAJO-GALLUP WATER SUPPLY PROJECT FACILITIES. -- The capacities of the treatment facilities, main pipelines and lateral pipelines of the Navajo-Gallup Water Supply Project

authorized by subsection 103(c) of this Act may be used to treat and convey ground water to Navajo Nation communities; provided, that the Navajo Nation provides for payment of the operation, maintenance and replacement costs associated with such use of the pipelines.

(f) LIMITATIONS. -- Diversions and uses of ground water by wells constructed or rehabilitated pursuant this section shall be made in a manner consistent with applicable federal and state law and the water rights of the Navajo Nation for the diversion and use of ground water in the San Juan River, Little Colorado River and Rio Grande basins in New Mexico and Arizona.

(g) DISCLAIMER. -- Nothing in this section shall be construed to establish or be a determination of rights of the Navajo Nation to divert and use ground water in any basin or state, and any lack of rights to divert at the capacities of wells constructed or rehabilitated pursuant to this section shall not nullify the Settlement Agreement.

SEC. 108. AUTHORIZATION OF APPROPRIATIONS.

(a) APPROPRIATIONS FOR NAVAJO-GALLUP WATER SUPPLY PROJECT. -- There is hereby authorized to be appropriated to the Bureau of Reclamation through fiscal year 2020 such sums as may be required for construction of the Navajo-Gallup Water Supply Project, but not more than \$589,600,000, plus or minus such amounts, if any, as may be required by reason of changes since 2004 in construction costs as indicated by engineering cost indices applicable to the types of construction involved therein. These sums may be expended for activities to comply with environmental laws in addition to construction activities.

(b) APPROPRIATIONS FOR CONJUNCTIVE USE WELLS. -- There is hereby authorized to be appropriated to the Bureau of Reclamation through fiscal year 2022 such sums as may be required for construction or rehabilitation of conjunctive use wells authorized by section 107 of this Act, but

not more than \$77,600,000, plus or minus such amounts, if any, as may be required by reason of changes since 2004 in construction costs as indicated by engineering cost indices applicable to the types of construction involved therein. Expenditures of Federal appropriations for the conjunctive use wells shall be nonreimbursable. These sums may be expended for activities to comply with environmental laws in addition to construction activities.

(c) CULTURAL RESOURCES. -- The Secretary is authorized to expend from funds appropriated pursuant to the authorizations contained in this section such sums as are necessary for the survey, recovery, protection, preservation and display of archeological resources in the areas of the locations of the Navajo-Gallup Water Supply Project facilities and conjunctive use wells; provided, that such expenditures shall not exceed 4 percent of the total amounts authorized to be appropriated for the Project and the wells, respectively.

(d) FISH AND WILDLIFE FACILITIES. -- In connection with the development of the Navajo-Gallup Water Supply Project, the Secretary is authorized to purchase land and construct and maintain facilities to mitigate losses of and to improve conditions for the propagation of fish and wildlife. All costs incurred pursuant to this activity shall be nonreimbursable and non-returnable.

(e) CONSTRUCTION OVERSIGHT. -- The Secretary shall establish a Navajo-Gallup Water Supply Project construction oversight board consisting of members appointed from the Bureau of Reclamation and members from each of the Project participants. In addition, the Bureau of Reclamation shall use appropriations authorized by this section to acquire the services of consulting engineers to be selected by the construction oversight board for the purpose of providing peer review on planning, engineering and construction management activities for the Navajo-Gallup Water Supply Project. The consulting engineers shall report their review findings to the construction

oversight board with recommendations for improving Project engineering and containing construction costs and operation and maintenance costs for the Project. The construction oversight board may make recommendations to the Bureau of Reclamation regarding construction of the Project. The Project beneficiaries shall not be paid or reimbursed for their participation on the construction oversight board.

SEC. 109. COMPLIANCE WITH ENVIRONMENTAL LAWS.

(a) CONSTRUCTION AND OPERATION. -- The construction and operation of the Navajo-Gallup Water Supply Project and associated conjunctive use wells are subject to the requirements of Federal laws that are related to the protection of the environment and otherwise applicable to the construction and operation of the facilities authorized by this title, including the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), and the Clean Water Act (42 U.S.C. 7401 et seq.). Nothing in this Act shall be construed to predetermine or otherwise affect the outcome of any analysis conducted by the Secretary or any other Federal official under applicable laws, including the outcome of the Environmental Impact Statement or the Record of Decision on the Navajo-Gallup Water Supply Project, nor shall anything in this Act be construed to alter, amend or modify the authority or discretion of the Secretary or any other Federal official under any Federal law.

(b) TRANSFER OF OWNERSHIP. -- Transfer of ownership to the Navajo Nation of Navajo-Gallup Water Supply Project facilities and associated conjunctive use wells shall not constitute a major federal action under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), and shall not affect the application of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) to the use of the water associated with the Project.

TITLE II – NAVAJO NATION WATER PROJECTS IN NEW MEXICO

SEC. 201. SHORT TITLE.

This title may be cited as the "Navajo Nation Water Projects in New Mexico Act".

SEC. 202. FINDINGS AND PURPOSES.

(a) FINDINGS. -- Congress hereby finds and declares that:

(1) completion of the Navajo Indian Irrigation Project authorized by the Act of June 13, 1962 (76 Stat. 96; Public Law 87-483), has not proceeded expeditiously;

(2) delays in completing the Navajo Indian Irrigation Project have resulted in increased construction costs for the Project that now exceed the current cost ceiling previously approved by Congress;

(3) existing on-farm facilities on the Navajo Indian Irrigation Project are in need of refurbishment to conserve water;

(4) the Navajo Indian Irrigation Project can be completed in compliance with the National Environmental Policy Act and the Endangered Species Act;

(5) maintenance of existing Navajo irrigation projects in the San Juan River valley in New Mexico has not proceeded expeditiously and rehabilitation is needed to make full and efficient use of the projects;

(6) appropriations to construct the Navajo Nation Municipal Pipeline, including the Farmington replacement line, were authorized by the Colorado Ute Settlement Act Amendments of 2000 (114 Stat. 2763A-258; Public Law 106-554, Appendix D, Title III);
and

(7) the Navajo Indian Irrigation Project, the Navajo Nation irrigation projects in the

San Juan River valley in New Mexico, and the Navajo Nation Municipal Pipeline are necessary to provide for water uses needed to sustain the Navajo Nation lands as a permanent homeland.

(b) PURPOSES. -- The purposes of this Act are:

(1) to authorize appropriations over and above the current cost ceiling for the Navajo Indian Irrigation Project to provide for completion of the Project as it is authorized;

(2) to authorize appropriations to refurbish existing on-farm facilities on the Navajo Indian Irrigation Project;

(3) to authorize use of Navajo Indian Irrigation Project water and works for purposes other than irrigation, including for using Project works to carry water in association with the Navajo-Gallup Water Supply Project;

(4) to authorize appropriations to rehabilitate the Fruitland-Cambridge Irrigation Project and the Hogback-Cudei Irrigation Project; and

(5) to authorize transfer of ownership of the Navajo Nation Municipal Pipeline to the Navajo Nation.

SEC. 203. NAVAJO INDIAN IRRIGATION PROJECT.

(a) AMENDMENTS TO ACT OF JUNE 13, 1962. -- The Secretary is authorized to continue to construct, operate and maintain the Navajo Indian Irrigation Project, with the following amendments to the Act of June 13, 1962 (76 Stat. 96; Public Law 87-483):

(1) irrigation works shall be constructed to serve no more than 110,630 acres of land defining the total serviceable area of the Navajo Indian Irrigation Project;

(2) the average diversion by the Navajo Indian Irrigation Project from Navajo

Reservoir shall not exceed 508,000 acre-feet per year, or the quantity of water necessary to supply an average depletion of 270,000 acre-feet per year, whichever is less, during any period of ten consecutive years for the principal purpose of irrigation of up to 110,630 acres of land; provided, that the quantities of diversion and depletion in any one year do not exceed the aforesaid ten-year average quantities, respectively, by more than 15 percent;

(3) the Navajo Indian Irrigation Project water supply described in subsection (a)(2) of this section and in Title III of this Act may be used for the following purposes, in addition to irrigation, within the area served by the Project facilities:

(A) aquaculture purposes, including rearing of fish in support of the San Juan River Basin Recovery Implementation Program authorized by the Act of October 30, 2000 (114 Stat. 1602, Public Law 106-392);

(B) domestic, industrial or commercial purposes relating to agricultural production and processing; and

(C) the generation of hydroelectric power as an incident to the diversion of water by the Project for the foregoing purposes.

The water rights of the Navajo Nation associated with the Navajo Indian Irrigation Project also may be used to implement the alternate water source provisions for Navajo Nation water uses on the San Juan River as described in subparagraph 9.2 of the Settlement Agreement, and may be used for other purposes or transferred to other places of use either within or outside the area served by the Project facilities in accordance with the Settlement Agreement and applicable law. Use of Navajo Indian Irrigation Project works to convey water for non-irrigation purposes consistent with this subsection shall not be cause for the Secretary to

reallocate, or to require repayment of, construction costs of the Project.

(4) The Secretary is authorized to use capacity of the Navajo Indian Irrigation Project works to convey water supplies for purposes of the Navajo-Gallup Water Supply Project authorized by Title I of this Act. Use of Navajo Indian Irrigation Project works to convey water for the Navajo-Gallup Water Supply Project shall not be cause for the Secretary to reallocate, or to require repayment of, construction costs of the Navajo Indian Irrigation Project.

(b) AUTHORIZATION OF APPROPRIATIONS. -- There is hereby authorized to be appropriated to the Secretary of the Interior:

(1) such sums as may be required to complete construction of the Navajo Indian Irrigation Project works to a total service acreage of 110,630 acres, but not more than an additional \$341,000,000 over and above the previously authorized cost ceiling for the Project, plus or minus such amounts, if any, as may be required by reason of changes since 2004 in construction costs as indicated by engineering cost indices applicable to the types of construction involved therein; and

(2) such additional sums as may be required to refurbish existing on-farm facilities of the Navajo Indian Irrigation Project, but not more than \$31,800,000, plus or minus such amounts, if any, as may be required by reason of changes since 2004 in refurbishment costs as indicated by engineering cost indices applicable to the types of construction involved therein.

Expenditures of Federal appropriations authorized by this subsection shall be nonreimbursable.

(c) WAIVER OF CONSTRUCTION COSTS ALLOCABLE TO NAVAJO NATION. -- The Navajo

Nation shall not be obligated to repay the United States for any Navajo Indian Irrigation Project construction costs authorized by this section or in prior authorizations.

(d) TRANSFER OF OWNERSHIP. -- The Secretary is authorized to complete the transfer of ownership of the Navajo Indian Irrigation Project works and facilities to the Navajo Nation within three years after completion of construction of the Project to a total serviceable acreage of 110,630 acres, or to a lesser acreage if agreed to by the Navajo Nation, under terms and conditions that the Secretary determines are necessary to provide the benefits of the Project and fulfill the purposes of this Act. The Secretary may transfer ownership of completed portions of the Project to the Navajo Nation prior to completion of the entire Project in accordance with terms, conditions and schedules that may be negotiated if mutually satisfactory to the Secretary and the Nation. In transferring ownership of the Project works and facilities to the Navajo Nation, the Secretary also shall transfer to the Nation the ownership of land or interests in land acquired by the United States for the construction, operation and maintenance of the Project that is not declared by the Secretary to be held in trust by the United States for the Navajo Nation pursuant to section 3 of the Act of June 13, 1962 (76 Stat. 96), as amended by section 1 of the Act of September 25, 1970 (84 Stat. 867).

(e) OPERATION AND MAINTENANCE. -- The Navajo Nation shall provide for the operation, maintenance and replacement of Project works that are transferred to the Nation's ownership; except, that the Jicarilla Apache Nation shall pay its proportionate share of the operation, maintenance and replacement costs of the Project facilities used to deliver water to the Jicarilla Apache Nation pursuant to subsection 104(b)(4) of Title I of this Act, including the main Project canal reach from Navajo Reservoir to Cutter Reservoir and Cutter Dam.

(f) RESOLUTION OF CLAIMS AGAINST UNITED STATES. -- Congress declares that this Act

does hereby resolve any outstanding claims the Navajo Nation may have against the United States arising out of past delays associated with the construction of the Navajo Indian Irrigation Project or the implementation of the Act of June 13, 1962.

(g) SHARING IN AVAILABLE WATER SUPPLY. -- Nothing in this Act shall be construed to modify section 11 of the Act of June 13, 1962 (76 Stat. 96).

SEC. 204. SAN JUAN RIVER IRRIGATION PROJECTS.

(a) IRRIGATION PROJECTS. -- The Secretary is authorized to rehabilitate existing San Juan River irrigation projects as follows:

(1) the Fruitland-Cambridge Irrigation Project shall be rehabilitated to serve no more than 3,335 acres of land defining the total serviceable area of the Project; and

(2) the Hogback-Cudei Irrigation Project shall be rehabilitated to serve no more than 8,830 acres of land defining the total serviceable area of the Project.

(b) CONDITIONS PRECEDENT TO REHABILITATION. -- Rehabilitation construction on the Fruitland-Cambridge Irrigation Project or the Hogback-Cudei Irrigation Project shall not commence unless and until the Secretary and the Navajo Nation have executed cooperative agreements which provide that the Navajo Nation shall maintain the rehabilitated facilities.

(c) AUTHORIZATION OF APPROPRIATIONS. -- There is hereby authorized to be appropriated to the Secretary of the Interior:

(1) such sums as may be required through 2012 for rehabilitation of the Fruitland-Cambridge Irrigation Project, but not more than \$7,700,000, plus or minus such amounts, if any, as may be required by reason of changes since 2004 in construction costs as indicated by engineering cost indices applicable to the types of construction involved therein; and

(2) such sums as may be required through fiscal year 2015 for rehabilitation of the Hogback-Cudei Irrigation Project, but not more than \$15,400,000, plus or minus such amounts, if any, as may be required by reason of changes since 2004 in construction costs as indicated by engineering cost indices applicable to the types of construction involved therein.

Expenditures of Federal appropriations authorized by this subsection shall be nonreimbursable.

SEC. 205. ANIMAS-LA PLATA PROJECT, NAVAJO NATION PORTION.

(a) OWNERSHIP OF NAVAJO NATION MUNICIPAL PIPELINE. -- Upon completion of the Navajo Nation Municipal Pipeline authorized by the Act of December 21, 2000, the Colorado Ute Settlement Act Amendments of 2000 (114 Stat. 2763A-258; Public Law 106-554, Appendix D, Title III), to convey Animas-La Plata Project water from the City of Farmington, New Mexico, to Navajo Nation communities along the San Juan River valley in New Mexico, including the City of Shiprock, New Mexico:

(1) the Secretary is authorized to complete the transfer of ownership of the Navajo Nation Municipal Pipeline to the Navajo Nation within three years after completion of construction of the Pipeline, including land or interests in land acquired by the United States for construction, operation and maintenance of the Pipeline;

(2) the Navajo Nation shall assume responsibility for, and provide for, the operation, maintenance and replacement of the Pipeline after transfer of ownership is complete; and

(3) the Navajo Nation may convey its Animas-La Plata Project water or non-Project water through the Pipeline.

(b) PIPELINE AND TREATMENT DISCLAIMERS. -- Participation or cooperation of the City of Farmington with delivery of water to the Navajo Nation Municipal Pipeline may be accomplished

under terms and conditions to be negotiated to the mutual satisfaction of the City and the Navajo Nation. Nothing in this Act shall be construed to require the City of Farmington to:

(1) provide or deliver treated potable water into the Navajo Nation Municipal Pipeline; or

(2) transfer to the United States or the Navajo Nation any property or other interest it may have associated with the Farmington replacement line portion of the Navajo Nation Municipal Pipeline project.

Nor shall anything in this Act be construed to prohibit the Navajo Nation from taking delivery of its Animas-La Plata Project water allocation at an alternate point of delivery, subject to applicable laws.

(c) USE OF NAVAJO NATION WATER ALLOCATION. -- Water supply delivered to the Navajo Nation under its Animas-La Plata Project water allocation through the Navajo Nation Municipal Pipeline, or any alternate point of delivery, shall be used for municipal, industrial, commercial and domestic purposes, including residential outdoor uses such as yard and stock watering. The Navajo Nation may use its allocation of Project water on lands held by the United States in trust for the Navajo Nation and its members and lands held in fee by the Navajo Nation; provided, that the Navajo Nation may transfer the purposes and places of use in accordance with the Settlement Agreement and applicable law.

SEC. 206. EFFECTIVE DATE.

This title shall become effective upon execution of the Settlement Agreement by the Secretary and upon execution of the Settlement Contract by the Secretary and the Navajo Nation.

SEC. 207. COMPLIANCE WITH ENVIRONMENTAL LAWS.

(a) CONSTRUCTION AND OPERATION. -- The construction, rehabilitation and operation of

the Navajo water projects described in this title are subject to the requirements of Federal laws that are related to the protection of the environment and otherwise applicable to the construction and operation of the facilities authorized by this title, including the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), and the Clean Water Act (42 U.S.C. 7401 et seq.). Nothing in this Act shall be construed to predetermine or otherwise affect the outcome of any analysis conducted by the Secretary or any other Federal official under applicable laws, nor shall anything in this Act be construed to alter, amend or modify the authority or discretion of the Secretary or any other Federal official under any Federal law.

(b) TRANSFERS OF OWNERSHIP. -- Transfers of Navajo Indian Irrigation Project works and facilities or the Navajo Nation Municipal Pipeline to the Navajo Nation shall not constitute major federal actions under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), and shall not affect the application of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) to the use of the water associated with the Project or the Pipeline, respectively.

TITLE III – SAN JUAN RIVER BASIN IN NEW MEXICO NAVAJO NATION WATER RIGHTS SETTLEMENT

SEC. 301. SHORT TITLE.

This title may be cited as the "San Juan River Basin in New Mexico Navajo Nation Water Rights Settlement Act".

SEC. 302. FINDINGS AND PURPOSES.

(a) FINDINGS. -- Congress hereby finds and declares that:

(1) in recognition of the commitments made by the United States to the Navajo

Nation inherent in the treaties of 1849 and 1868, including the commitment to create a permanent homeland for the Navajo people, and in recognition of the United States' trust responsibility to the Navajo Nation, this Act will protect the water resources of the Navajo Nation and secure to the Nation a perpetual water supply from the San Juan River Basin in New Mexico;

(2) the Navajo Nation has substantial and multiple claims against the State of New Mexico, the United States, and other parties, related to water rights in the San Juan River Basin in New Mexico for lands held in trust for the Nation or its members by the United States and for lands held in fee by the Nation;

(3) a full and final settlement of the water rights claims of the Navajo Nation to the use of waters of the San Juan River Basin in and from the State of New Mexico will inure to the benefit of the Navajo Nation, the State of New Mexico, the United States and other parties;

(4) the Navajo Nation and the State of New Mexico have negotiated and approved a settlement of the water rights claims of the Navajo Nation to the use of waters of the San Juan River Basin in New Mexico as expressed in this Act, and both the Navajo Nation and the New Mexico Interstate Stream Commission have adopted resolutions approving the Settlement Agreement, including its appendices;

(5) this Act, together with the Settlement Agreement between the Navajo Nation, the State of New Mexico and the United States and the Settlement Contract between the Navajo Nation and the United States, is intended to provide for the full, fair and final resolution of the water rights claims of the Navajo Nation to waters of the San Juan River Basin in the

State of New Mexico, and to secure to the Navajo Nation a perpetual water supply and actual water uses for and on its lands in northwestern New Mexico;

(6) the Navajo Nation may use, transfer or lease the water supply under its water rights on or off its lands consistent with applicable state and federal law, terms of the Settlement Agreement between the Navajo Nation, the State of New Mexico and the United States, and terms of the Settlement Contract between the Nation and the United States; and

(7) the Secretary of the Interior, in accordance with the requirements of section 11 of the Act of June 13, 1962 (76 Stat. 96, 99; Public Law 87-483), has determined by hydrologic investigations that sufficient water to implement the Settlement Agreement and to provide for uses in New Mexico under the Navajo-Gallup Water Supply Project is reasonably likely to be available for use in the State of New Mexico from the Upper Colorado River Basin and has transmitted such determination to Congress by letter dated _____.

(b) PURPOSES. -- The purposes of this Act are:

(1) to approve and incorporate by reference the Settlement Agreement;

(2) to approve and incorporate by reference the Settlement Contract;

(3) to authorize the lease and transfer by the Navajo Nation of decreed water rights for use by other parties on or off lands held by the United States in trust for the Navajo Nation and its members or held in fee by the Navajo Nation consistent with the Settlement Agreement and applicable law; and

(4) to authorize the actions and appropriations necessary for the United States to fulfill its obligations under the Settlement Contract and this Act.

SEC. 303. SETTLEMENT AGREEMENT AND CONTRACT APPROVAL.

(a) SETTLEMENT AGREEMENT. -- The Secretary, acting on behalf of the United States, is authorized to enter into the Settlement Agreement.

(b) SETTLEMENT CONTRACT. -- The Secretary, acting on behalf of the United States, is authorized to enter into the Settlement Contract, but in no event shall such contract be limited by any term of years, or be canceled, terminated or rescinded by the action of any party, except by an Act of Congress hereafter enacted.

(c) APPROVAL OF SETTLEMENT AGREEMENT AND SETTLEMENT CONTRACT. -- The Congress approves, ratifies, and hereby incorporates by reference the Settlement Agreement and the Settlement Contract.

(d) AUTHORITY OF SECRETARY. -- The Secretary of the Interior is authorized to approve or enter into such agreements and to take such measures as the Secretary may deem necessary or appropriate to fulfill the intent of the Settlement Agreement, the Settlement Contract and this Act. The Secretary shall comply with all aspects of the National Environmental Policy Act, the Endangered Species Act and other applicable federal and state laws and regulations in exercising this authority.

SEC. 304. WATER AVAILABLE UNDER SETTLEMENT CONTRACT.

(a) AMOUNTS OF WATER AVAILABLE. -- Water made available annually under the Settlement Contract approved by section 303 of this Act is in the following amounts for projects in New Mexico supplied from Navajo Reservoir and the San Juan River, including its tributaries, under New Mexico State Engineer File Nos. 2849, 2883 and 3215; provided, that the diversion to the Navajo Nation pursuant to the Settlement Contract under each of the below specified projects shall not exceed the quantity of water necessary to supply the specified amount of depletion for each

project as stated in Titles I and II of this Act:

	Diversion (acre-feet/year)	Depletion (acre-feet/year)
Navajo Indian Irrigation Project	508,000	270,000
Navajo-Gallup Water Supply Project	22,650	20,780
Animas-La Plata Project	<u>4,680</u>	<u>2,340</u>
Total	535,330	293,120

The diversion and use of water pursuant to the Settlement Contract shall be subject to and consistent with the terms, conditions and limitations of the Settlement Agreement and this Act.

(b) AMENDMENTS TO SETTLEMENT CONTRACT. -- The Secretary may, with the consent of the Navajo Nation, enter into amendments to the Settlement Contract which would in the Secretary's judgment be in the interest of conserving water or facilitating beneficial use by the Navajo Nation or its subcontractors, but the amounts of water made available for diversions and depletions under the Settlement Contract shall not exceed the amounts set forth in subsection (a) of this section.

(c) RIGHTS OF THE NAVAJO NATION. -- The Navajo Nation shall be entitled under the Settlement Contract to:

(1) use tail water, waste water and return flows attributable to uses of the water by the Nation or its contractors, as long as the water depletions do not exceed the amounts set forth in subsection (a) of this section; provided, that the use of said tail water, waste water and return flows shall be subject to and consistent with the terms, conditions and limitations of the Settlement Agreement, the Resolution and applicable laws;

(2) change points of diversions, change purposes or places of uses, and transfer rights

for depletions authorized by this Act, except for those for use in the State of Arizona authorized by Title I of this Act, to other uses or purposes in the State of New Mexico to meet water resource or economic needs of the Nation; provided, that:

(A) such changes or transfers are subject to and consistent with the terms of the Settlement Agreement and this Act; and

(B) any changes or transfers of water use by the Navajo Nation affecting one or more of the water development projects authorized by Titles I and II of this Act shall not alter the obligations of the United States, the Navajo Nation, or other parties to pay or repay project construction, operation, maintenance or replacement costs as specified in Titles I and II of this Act and the Settlement Contract; and

(3) subcontract with third parties to supply water under the Settlement Contract in accordance with the provisions of section 305 of this Act and the Settlement Contract.

(d) **CONSISTENCY WITH UPPER COLORADO RIVER BASIN COMPACT.** -- The Secretary shall operate Federal water project facilities in New Mexico consistent with Article IX of the Upper Colorado River Basin Compact so that there shall be no injury or impairment to users of water within the State of New Mexico as to their rights to receive and use water, the use of which is within the apportionment made to the State of New Mexico by Article III of the Upper Colorado River Basin Compact. The Secretary shall require as a condition of transferring to the Navajo Nation the ownership of any Federal water project facilities that the Nation shall operate such facilities consistent with the Upper Colorado River Basin Compact and the Settlement Agreement.

SEC. 305. SUBCONTRACTS.

(a) **AUTHORITY OF NAVAJO NATION.** -- The Navajo Nation shall have the authority to enter

into subcontracts with third parties to lease for delivery its water under the Settlement Contract to supply water for beneficial uses in the State of New Mexico on or off lands held by the United States in trust for the Navajo Nation or its members or lands held in fee by the Navajo Nation, subject to:

- (1) the approval of all subcontracts by the Secretary in accordance with this section and the Settlement Contract;
- (2) the transfers of associated water rights to the uses of water to be served under subcontracts consistent with the Settlement Agreement and applicable law; and
- (3) the same requirements and conditions of state law, Federal law, interstate compacts and international treaties as otherwise apply to the exercise of water rights held by non-Federal, non-Indian entities.

Nothing in this Act shall be construed to establish, address, prejudice or prevent any party from litigating whether or to what extent any of the aforementioned laws do or do not permit, govern, or apply to the use of the Nation's water designated in this Act for use in one state in an area located outside that state.

(b) **MAXIMUM TERM.** -- The Navajo Nation shall not permanently alienate any rights it has under the Settlement Contract. The maximum term of any water use subcontract, including all renewals, shall not exceed 99 years in duration.

(c) **APPROVAL OF SECRETARY.** -- The Secretary shall approve or disapprove any subcontracts submitted to him for approval within 180 days after submission or 60 days after compliance, if required, with section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)), or any other requirement of Federal law, whichever is later. Any party to a subcontract may enforce the provision of this subsection pursuant to section 1361 of title 28, United

State Code.

(d) PREEMPTION. -- The authorization provided for in this section and the approval authority of the Secretary provided for in this section shall not amend, construe, supersede or preempt any Federal law, interstate compact or international treaty that pertains to the Colorado River or its tributaries, including the appropriation, use, development, storage, regulation, allocation, conservation, exportation or quality of those waters. The provisions of section 2116 of the Revised Statutes (25 U.S.C. 177) shall not apply to any water made available under the Settlement Contract.

(e) FORFEITURE. -- The nonuse of the water supply secured herein by a subcontractor of the Navajo Nation shall in no event result in a forfeiture, abandonment, relinquishment or other loss of all or any part of the rights exercised by the Nation under the Settlement Contract or as otherwise authorized by this Act.

SEC. 306. WATER LEASES NOT REQUIRING SUBCONTRACTS.

(a) AUTHORITY OF NAVAJO NATION. -- The Navajo Nation shall have the authority, without approval of the Secretary, to lease, contract or otherwise transfer to other parties and to other purposes or places of use in the State of New Mexico, either on or off lands that are held by the United States in trust for the Navajo Nation or its members or held in fee by the Navajo Nation, water rights decreed to the Nation pursuant to the Settlement Agreement that are not subject to the Settlement Contract. The authority of the Navajo Nation under this subsection shall be subject to:

(1) the transfer of water rights to the uses of water to be served under lease, contract or other arrangement consistent with the Settlement Agreement and applicable law; and

(2) the same requirements and conditions of state law, Federal law, interstate compacts and international treaties as otherwise apply to the exercise of water rights held by

non-Federal, non-Indian entities.

Nothing in this Act shall be construed to establish, address, prejudice or prevent any party from litigating whether or to what extent any of the aforementioned laws do or do not permit, govern, or apply to the use of the Nation's water designated in this Act for use in one state in an area located outside that state.

(b) **MAXIMUM TERM.** -- The Navajo Nation shall not permanently alienate any rights decreed to the Nation pursuant to the Settlement Agreement. The maximum term of any water use lease, contract or other arrangement, including all renewals, shall not exceed 99 years in duration.

(c) **NON-INTERCOURSE ACT COMPLIANCE.** -- This section provides Congressional authorization for the lease, contracting and transfer of Navajo Nation decreed water rights, and shall be deemed to fulfill any requirement that may be imposed by the provisions of section 2116 of the Revised Statutes (25 U.S.C. 177).

(d) **FORFEITURE.** -- The nonuse of the Navajo Nation's reserved rights by a leasee or contractor to the Nation shall in no event result in a forfeiture, abandonment, relinquishment or other loss of all or any part of the rights decreed to the Nation pursuant to the Settlement Agreement.

SEC. 307. AUTHORIZATION OF TRUST FUND.

(a) **ESTABLISHMENT OF TRUST FUND.** -- There is hereby established in the Treasury a fund to be known as the Navajo Nation Water Resources Development Trust Fund (hereafter in this section referred to as the "Trust Fund").

(b) **PURPOSE OF TRUST FUND.** -- The Trust Fund is established for the purpose of providing funds to the Navajo Nation for its expenditure on the investigation, construction, operation, maintenance and replacement of capital works, and the investigation and implementation of water

conservation measures and improvements, necessary for the Navajo Nation to make use of its water rights under the Settlement Agreement, including for metering and monitoring activities. The Navajo Nation also may utilize monies in the Trust Fund to provide for required operation, maintenance and replacement of water project works and facilities constructed or transferred to Navajo Nation ownership pursuant to the authorizations contained in Titles I and II of this Act, or transferred to the Nation pursuant to Public Law 86-121.

(c) AUTHORIZATION OF APPROPRIATIONS. -- There are authorized to be appropriated for deposit in the Trust Fund for expenditure by the Navajo Nation on costs associated with water resources projects authorized by this Act and for development of other water resources projects, including projects for water supply, flood control, sediment control, recreation, fish and wildlife or other beneficial purposes:

(1) \$3 million per year in each of the first five fiscal years which commence following the date of the enactment of this Act; provided, that these sums are matched by equal contributions to the Trust Fund by the State of New Mexico; and

(2) \$2 million per year in the each of the five fiscal years next following the first five fiscal years referred to in this section; provided, that these sums are matched by equal contributions to the Trust Fund by the State of New Mexico.

(d) NO PER CAPITA PAYMENTS. -- No part of the principal of the Trust Fund, or of income accruing to such Trust Fund, or the revenue from any water use subcontract, shall be distributed to any member of the Navajo Nation on a per capita basis.

(e) CONDITIONS FOR EXPENDITURES. -- Amounts authorized to be appropriated to the Trust Fund under this section may not be expended until:

(1) a partial final decree which would quantify fully the Navajo Nation's reserved water right claims from the San Juan River Basin in New Mexico has been entered in the general stream adjudication styled *New Mexico v. United States, et al.*, No. 75-184 (11th Jud. Dist., San Juan County, New Mexico), involving claims to waters of the San Juan River and its tributaries, said partial final decree to adjudicate the rights of the Navajo Nation in the San Juan River Basin in New Mexico to divert and use water for historic, existing and future uses consistent with the Settlement Agreement and the authorizations for water projects provided by this Act; and

(2) the State of New Mexico deposits into the Trust Fund its contributions required by this section.

SEC. 308. AUTHORIZATION OF HYDROGRAPHIC SURVEY.

(a) PREPARATION OF HYDROGRAPHIC SURVEY. -- The Secretary is authorized, on behalf of the United States, to prepare a hydrographic survey cooperatively and jointly under the supervision of the Secretary and the State of New Mexico, acting through the New Mexico State Engineer, to identify and quantify historic and existing diversions and uses of water by the Navajo Nation or its members from the San Juan River Basin within the State of New Mexico, including from surface water and underground water sources, as specified by subparagraph 3.2 of the Settlement Agreement.

(b) AUTHORIZATION OF APPROPRIATIONS. -- There is hereby authorized to be appropriated to the Bureau of Indian Affairs through fiscal year 2009 such sums as may be required to complete the hydrographic survey, but not more than \$5,000,000 (in 2004 prices). Such sums shall be adjusted for inflation and shall be treated as nonreimbursable Federal expenditures. Cost-share funding by non-Federal entities shall not be required.

SEC. 309. CONDITIONS.

(a) MILESTONES. -- After enactment of this Act, in order to settle the outstanding claims of the Navajo Nation to rights in waters in and from the San Juan River Basin in New Mexico, the following milestones shall be achieved in implementing the provisions of this Act:

(1) the Settlement Agreement must be executed by the Secretary and the Settlement Contract must be executed by the Secretary and the Navajo Nation no later than December 31, 2006;

(2) the hydrographic survey and report of historic and existing diversions and uses of water in and from the San Juan River Basin in New Mexico on Navajo lands, including on lands held by the United States in trust for the Navajo Nation or its members or held in fee ownership by the Navajo Nation, to provide all information called for under paragraphs 8 and 9 of the proposed Partial Final Decree, which is Appendix 1 to the Settlement Agreement, and all information required to administer subparagraph 3.4 of the Settlement Agreement and subparagraph 7(g) of the proposed Partial Final Decree, as described in subparagraph 3.2 of the Settlement Agreement, must be completed no later than December 31, 2011;

(3) rehabilitation construction of the Fruitland-Cambridge Indian Irrigation Project to a service area of 3,335 acres of land pursuant to the authorization provided in Title II of this Act must be completed no later than December 31, 2012;

(4) the Partial Final Decree described in subparagraph 3.0 of the Settlement Agreement must be entered by the Court in the San Juan River Adjudication no later than December 31, 2015;

(5) rehabilitation construction of the Hogback-Cudei Indian Irrigation Project to a

service area of 8,830 acres of land pursuant to the authorization provided in Title II of this Act must be completed no later than December 31, 2015;

(6) the United States and the State of New Mexico must make deposits into the Navajo Nation Water Resources Development Trust Fund in the amounts and pursuant to the schedule specified in subsection 307(c) of this Act, to be completed no later than September 30, 2016;

(7) construction of the Navajo-Gallup Water Supply Project facilities authorized by Title I of this Act must be completed no later than December 31, 2020; and

(8) construction of conjunctive use wells authorized by Title I of this Act for developing ground water for use by Navajo Nation communities in the State of New Mexico must be completed no later than December 31, 2022.

The dates described in this subsection may be extended upon agreement of the Navajo Nation, the United States, acting through the Secretary, and the State of New Mexico, acting through the New Mexico Interstate Stream Commission, if reasonably necessary to provide additional time to implement the provisions of this Act.

(b) REVOCABILITY OF SETTLEMENT AND AUTHORIZATIONS. -- If the milestones specified in subsection (a) of this section are not substantially met:

(1) the Navajo Nation Water Resources Development Trust Fund described in section 307 of this Act shall be terminated;

(2) the balance of the Trust Fund shall be deposited in the general fund of the Treasury and in the general fund of the State of New Mexico in the proportions that the United States and the State of New Mexico, respectively, contributed funds to the Trust

Fund;

(3) the authorizations for construction and rehabilitation of water projects provided in Titles I and II of this Act shall be revoked and Federal activities relating to said construction and rehabilitation shall be suspended;

(4) the Navajo Nation, the United States and the State of New Mexico shall not be bound by the Settlement Agreement, and the Settlement Agreement and Settlement Contract shall be of no force or effect; and

(5) the provisions of Title IV of this Act shall be null and void.

(c) CONDITIONS NOT CAUSING NULLIFICATION OF SETTLEMENT. -- The Settlement Agreement and Settlement Contract shall not be nullified, and the Navajo Nation shall not otherwise have cause to assert past or future claims to the delivery or use of water in or from the San Juan River Basin in New Mexico, for the following conditions:

(1) the milestones specified in subsection (a) of this section are substantially met;

(2) any lack of rights to divert at the capacities of conjunctive use wells constructed or rehabilitated pursuant to Title I of this Act;

(3) any failure to determine or resolve an accounting of the use in the State of Arizona, to obtain any necessary water rights for the consumptive use of water in Arizona, to contract for the delivery of water for the use in Arizona, or to construct and operate lateral facilities to deliver water to Navajo Nation communities in Arizona, under the Navajo-Gallup Water Supply Project authorized by Title I of this Act; and

(4) any lack of rights in the State of Arizona for the diversion of ground water in Arizona for uses in New Mexico or for the use in Arizona of ground water diverted from

New Mexico to provide for the continuance of existing uses under subparagraph 7(g) of the proposed Partial Final Decree, which is Appendix 1 to the Settlement Agreement.

(d) RIGHTS INURE TO NAVAJO NATION. -- The tribal rights under the Settlement Contract approved by this Act, the water rights adjudicated by the Partial Final Decree in the general stream adjudication consistent with such contract, and other tribal water rights stipulated, adjudicated or decreed as described in the Settlement Agreement and this Act shall inure to the benefit of the Navajo Nation, and the Nation shall not be denied all or any part of such rights absent its consent unless such rights are explicitly abrogated by an Act of Congress hereafter enacted or unless the Settlement Agreement, Settlement Contract, authorizations contained in this Act and final decree are revoked as per subsection (b) of this section.

SEC. 310. ENVIRONMENTAL COMPLIANCE.

(a) COMPLIANCE WITH ENVIRONMENTAL LAWS. -- The responsibilities of the Secretary described in this Act are subject to the requirements of Federal laws that are related to the protection of the environment and otherwise applicable to the construction and operation of facilities authorized by this Act, including the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), and the Clean Water Act (42 U.S.C. 7401 et seq.). Nothing in this Act shall be construed to predetermine or otherwise affect the outcome of any analysis conducted by the Secretary or any other Federal official under applicable laws, nor shall anything in this Act be construed to alter, amend or modify the authority or discretion of the Secretary or any other Federal official under any Federal law. The Secretary shall comply with all aspects of the National Environmental Policy Act of 1969 and other applicable environmental laws and regulations in fulfilling the terms of the Settlement Contract.

(b) EXECUTION OF SETTLEMENT AGREEMENT AND SETTLEMENT CONTRACT. -- Execution of the Settlement Agreement and the Settlement Contract approved by this Act shall not constitute major Federal actions under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), and shall not affect the application of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) to the uses of water to be supplied under the Settlement Contract.

TITLE IV – NAVAJO RESERVOIR WATER SUPPLY

SEC. 401. SHORT TITLE.

This title may be cited as the "Navajo Reservoir Water Supply Act".

SEC. 402. FINDINGS AND PURPOSES.

(a) FINDINGS. -- Congress hereby finds and declares that:

(1) active management of the water resources of the San Juan River Basin in New Mexico, including the management of federal water storage and delivery facilities and the administration of water rights, will conserve water in the Basin to the benefit of the United States, the State of New Mexico, Indian tribes and other parties;

(2) the Navajo Nation and the State of New Mexico have negotiated and approved a settlement of the water rights claims of the Navajo Nation to the use of waters of the San Juan River Basin in New Mexico as expressed in this Act that relies on the administration of water rights in the Basin and the water made available from the Navajo Reservoir water supply;

(3) the United States participates in the management of the water resources of the San Juan River Basin in New Mexico in accordance with the authorizations and requirements of the Colorado River Storage Project Act (70 Stat. 105), the Colorado River Basin Project

Act (82 Stat. 885), the Act of June 13, 1962 (76 Stat. 96), the Jicarilla Apache Tribe Water Rights Settlement Act (106 Stat. 2237), the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), and other federal and state laws; and

(4) providing certainty and enhancements to the management of the Navajo Reservoir water supply in compliance with federal and state law will enable implementation of the Settlement Agreement and benefit both Navajo and non-Navajo interests.

(b) PURPOSES. -- The purposes of this Act are:

(1) to specify quantitative criteria for the Secretary of the Interior to use in implementing the shortage sharing provisions of section 11(a) of the Act of June 13, 1962 (76 Stat. 96);

(2) to authorize the Navajo Nation to use its Navajo Reservoir water supply apportionments to meet critical municipal and domestic water demands during years of shortage;

(3) to authorize the formation and operation of a top water bank in Navajo Reservoir;
and

(4) to otherwise effectuate water management and administration in New Mexico.

SEC. 403. SHARING OF AVAILABLE WATER.

(a) INFLOW BELOW NAVAJO DAM. -- The Secretary of the Interior under New Mexico State Engineer File No. 3215 shall supplement the water supply available to service Navajo Reservoir water supply contracts entered into pursuant to section 11 of the Act of June 13, 1962 (76 Stat. 96; Public Law 87-483) by making available to contractors diverting below Navajo Dam inflows to the San Juan River arising below the dam.

(b) RUNOFF ABOVE NAVAJO DAM. -- For the purpose of implementing the shortage sharing provisions of subsection 11(a) of the Act of June 13, 1962 (76 Stat. 96; Public Law 87-483), the Secretary of the Interior shall determine amounts of shortage and apportionments of water using the normal diversion requirements on the flow of the San Juan River originating above Navajo Dam that are based on:

(1) the amounts of diversion or water delivery for the current year anticipated to be necessary to irrigate lands in accordance with cropping plans prepared by contractors;

(2) the annual diversion or water delivery demands for the current year anticipated for non-irrigation uses pursuant to water delivery contracts, including the demand for delivery for uses in Arizona under the Navajo-Gallup Water Supply Project as authorized by section 104 of Title I of this Act, but excluding any current demand for surface water for placement into aquifer storage for future recovery and use; and

(3) an annual normal diversion demand of 135,000 acre-feet for the San Juan-Chama Project (initial stage) authorized by section 8 of the Act of June 13, 1962.

The Secretary shall not include in the normal diversion requirements the amounts of water that reliably can be anticipated to be diverted or delivered under contract from inflows to the San Juan River arising below Navajo Dam pursuant to New Mexico State Engineer File No. 3215, or the amounts of water anticipated to be supplied through re-use. In the event that the State of New Mexico determines that water uses under Navajo Reservoir water supply contracts or diversions by the San Juan-Chama Project must be reduced in any year for New Mexico to comply with the provisions of the Upper Colorado River Basin Compact (63 Stat. 31), including, but not limited to, Article III and Article IV of the Compact, the Secretary shall reduce the normal diversion

requirements if necessary to reflect water use or diversion limitations imposed by the State of New Mexico.

(c) ALLOCATION OF SHORTAGES. -- In the event of shortage, the Secretary of the Interior shall first make an allocation of shortage to the demand on the Navajo Reservoir water supply for delivery for uses in Arizona under the Navajo-Gallup Water Supply Project, up to the full amount of demand and excluding the amounts of water anticipated to be diverted for such uses from inflows to the San Juan River arising below Navajo Dam pursuant to New Mexico State Engineer File No. 3215. Second, the Secretary shall make an allocation of shortage to the demand on the Navajo Reservoir water supply for delivery for uses allocated pursuant to subparagraph 8.2 of the Settlement Agreement, up to the full amount of demand and excluding any amounts of water anticipated to be diverted for such uses under State Engineer File No. 3215. The remaining amount of shortage, if any, shall be allocated to the normal diversion requirements for uses in New Mexico that are determined pursuant to subsection (b) of this section in accordance with the procedure for apportioning the water supply available above Navajo Dam described in subsection 11(a) of the Act of June 13, 1962 (76 Stat. 96). To determine the occurrence and amount of any shortage to contracts entered pursuant to section 11 of the Act of June 13, 1962, the Secretary shall not include as available storage any water stored in a top water bank in Navajo Reservoir established pursuant to section 405 of this Act. During years in which the Secretary determines and allocates a shortage in the Navajo Reservoir water supply, the Secretary shall not deliver, and contractors of the water supply shall not divert, any of the water supply for placement into aquifer storage for future recovery and use.

(d) APPLICATION OF SHORTAGES. -- The Secretary shall apply the sharing and

apportionment of water determined pursuant to subsection 11(a) of the Act of June 13, 1962 (76 Stat. 96), and subsections (b) and (c) of this section on an annual volume basis, and shall not otherwise apply or enforce a percentage or volumetric shortage to the amount of water available for diversion or delivery from the Navajo Reservoir water supply or for diversion by the San Juan-Chama Project on a day to day basis; provided, that this subsection shall not be construed to affect subsection 8(f) of the Act of June 13, 1962.

(e) REVISIONS TO SHORTAGE DETERMINATIONS. -- The Secretary may revise determinations of shortages and apportionments of water under subsection 11(a) of the Act of June 13, 1962 (76 Stat. 96), and this section as water supply conditions materialize or change throughout the year.

(f) COOPERATIVE WATER SHARING AGREEMENTS. -- Nothing in the Act of June 13, 1962 (76 Stat. 96), or in this Act shall be construed to prohibit the Secretary from reallocating water, including in a year of shortage, in accordance with cooperative water agreements between water users for a sharing of water supplies either between the San Juan-Chama Project and water contractors in the San Juan River Basin or among water contractors in the San Juan River Basin, subject to applicable laws.

SEC. 404. PROTECTION OF NAVAJO NATION DOMESTIC USES IN ARIZONA.

(a) FORBEARANCE TO COVER SHORTED NAVAJO NATION DOMESTIC USES. -- During years of shortage determined per section 403 of this Act, the Navajo Nation temporarily may forbear the delivery of Navajo Reservoir water supply for uses in the State of New Mexico under the apportionments of water to the Navajo Indian Irrigation Project and the Navajo-Gallup Water Supply Project normal diversion requirements, as determined pursuant to subsection 11(a) of the Act of June

13, 1962 (76 Stat. 96), and section 403 of this Act, for the purpose of allowing an equivalent amount of delivery to be made from the Navajo Reservoir water supply to serve the Nation's municipal and domestic uses in the State of Arizona under the Navajo-Gallup Water Supply Project authorized by section 104 of Title I of this Act; provided, that the consequent delivery of water to the Navajo Nation for the municipal and domestic uses in Arizona does not exceed the amount of shortage in the Navajo Reservoir water supply allocated to the normal diversion requirement for such uses pursuant to section 403 of this Act.

(b) ACCOUNTING OF NAVAJO NATION DOMESTIC USES IN ARIZONA. -- The depletion of water from the San Juan River stream system in New Mexico resulting from the diversion of water by the Navajo-Gallup Water Supply Project for use within the State of Arizona made pursuant to subsection (a) of this section, including depletion that is incident to the diversion, impounding or conveyance of water in New Mexico for the use in Arizona, shall:

(1) be accounted as a part of the Colorado River System apportionments to the State of Arizona and shall in no way increase the total quantity of water to the use of which the State of Arizona is entitled and limited under any compact, statute or court decree; and

(2) not be accounted against the apportionment made to the State of New Mexico by Article III(a) of the Upper Colorado River Basin Compact and shall in no way decrease the total quantity of water to the use of which the State of New Mexico is entitled under the Compact.

(c) DISCLAIMER. -- Nothing in this Act shall be construed or interpreted to authorize the marketing or leasing of, or to transfer water rights for, the water supplies made available to the Navajo Nation under the Settlement Contract approved by subsection 303(c) of Title III of this Act to

non-Navajo water users in states other than New Mexico. Nor shall anything in this Act be construed or interpreted to authorize forbearance of water uses in New Mexico to allow uses to be made in states other than New Mexico that are in addition to the uses allowed pursuant to subsection (a) of this section.

SEC. 405. AUTHORIZATION OF NAVAJO RESERVOIR WATER BANK.

(a) AUTHORIZATION OF WATER BANK. -- The Secretary of the Interior, acting through the Bureau of Reclamation, is authorized to create and operate within the available capacity of Navajo Reservoir a top water bank. Water made available for the top water bank consistent with the provisions of subsections (b) and (c) of this section shall not be subject to the provisions of section 11 of the Act of June 13, 1962 (76 Stat. 96).

(b) CONDITION. -- The top water bank in Navajo Reservoir authorized by subsection (a) of this section shall be operated in a manner that is consistent with the United States' trust responsibilities to Indian tribes, and that does not impair the Secretary's ability to deliver water under contracts entered pursuant to the Act of June 13, 1962 (76 Stat. 96), and under New Mexico State Engineer File Nos. 2847, 2848, 2849 and 2917.

(c) OPERATION PARAMETERS. -- The Secretary of the Interior, acting through the Bureau of Reclamation, shall develop, in cooperation with the State of New Mexico, acting through the Interstate Stream Commission, such terms and procedures governing the storage, accounting and release of water in the top water bank in Navajo Reservoir as are necessary to satisfy the condition of subsection (b) of this section. Such terms and procedures shall include, but shall not be limited to:

- (1) storage of banked water must involve a transfer of water rights under New Mexico state law that effectively and measurably reduces withdrawals of water from Navajo

Reservoir that then may be banked without impairment to existing water rights, including storage of water under New Mexico State Engineer File No. 2849;

(2) water in the top water bank must be subject to evaporation and other losses when placed in storage and so long as it remains in storage;

(3) water in the top water bank must be released for delivery to the owner of the banked water upon call of the owner, subject to reasonable scheduling requirements for making the release; and

(4) water in the top water bank must be the first water spilled or released for flood control purposes in anticipation of spill.

(d) PAYMENT FOR SERVICES. -- The Secretary of the Interior is authorized to charge fees to water users that utilize the top water bank authorized by subsection (a) of this section in amounts sufficient to cover the costs of the United States to administer the water bank.

SEC. 406. ENVIRONMENTAL COMPLIANCE.

(a) COMPLIANCE WITH ENVIRONMENTAL LAWS. -- The responsibilities of the Secretary described in this Act are subject to the requirements of Federal laws that are related to the protection of the environment and otherwise applicable to the construction and operation of facilities authorized by this Act, including the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), and the Clean Water Act (42 U.S.C. 7401 et seq.). Nothing in this Act shall be construed to predetermine or otherwise affect the outcome of any analysis conducted by the Secretary or any other Federal official under applicable laws, nor shall anything in this Act be construed to alter, amend or modify the authority or discretion of the Secretary or any other Federal official under any Federal law.

(b) IMPLEMENTATION OF SHORTAGE SHARING. -- Implementation of the shortage sharing provisions of sections 403 and 404 of this Act shall not constitute major Federal actions under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), and shall not affect the application of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) to the diversion of water from the San Juan River stream system by the San Juan-Chama Project or the uses of water from Navajo Reservoir to be supplied under contract with the Secretary pursuant to section 11 of the Act of June 13, 1962 (76 Stat. 96).