

December 5, 2003, Discussion Draft - Navajo Nation Water Rights Settlement

Disclaimer. It is expressly understood that the governing bodies or authorities of the proposed signatories have not approved this draft settlement agreement, including the draft partial final decree, draft settlement act, draft settlement contract and draft executive summary. The New Mexico Interstate Stream Commission staff prepared the draft depletion schedule. These draft documents are provided for discussion purposes only.

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, to provide for completion and rehabilitation of existing and authorized Navajo water projects in New Mexico, and to authorize the settlement of the water rights claims of the Navajo Nation in the San Juan River Basin in New Mexico.

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.

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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 the Navajo Nation Municipal Pipeline;

(b) “Depletion” or “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;

(c) "Nation" means the Navajo Nation, a body politic and federally-recognized Indian nation, 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 of the same name 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.

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 and reliable 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 groundwater resources as its source of municipal water supply, and the groundwater

resources continue to be exhausted;

(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 uses on its reservation;

(4) the Navajo-Gallup Water Supply Project would provide 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 water delivery and repayment 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 resolution of an accounting of 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 and III of this Act.

(b) PARTICIPATION UNDER COLORADO RIVER STORAGE PROJECT. -- The Congress hereby approves 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) 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 users:

(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.

The Secretary is authorized to acquire lands, easements or other property or property rights as necessary to construct, operate and maintain the Project facilities.

(d) 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;

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

Project have been determined by the Secretary; and

(4) the City of Gallup and the Jicarilla Apache Nation have entered into repayment contracts with the United States to repay their shares of the construction costs of the Project and have entered into water delivery contracts to pay in full the operation, maintenance and replacement costs of the Project allocable to them.

(e) USE OF NAVAJO INDIAN IRRIGATION PROJECT FACILITIES. -- 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 this title. 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 construction costs of the Navajo Indian Irrigation Project.

(f) USE 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 administered through the Western Area Power Administration.

(g) REGIONAL USE OF PROJECT FACILITIES. -- Capacity of the San Juan River diversion pumping plant and San Juan River valley regional water treatment plant constructed pursuant to the authorizations contained in this section may be used to provide water that is not contracted for under the Navajo-Gallup Water Supply Project to Navajo and non-Navajo communities along the river valley to the extent that such capacity is not used in a particular year for purposes of the Navajo-Gallup Water Supply Project and the communities have or acquire rights to the use of the water; provided, that:

(1) entities that use such unused capacity have entered into contracts with the Secretary to pay the United States for the construction, operation, maintenance and

replacement costs assignable to their use of Project works, or the use is provided pursuant to subcontracts with the Navajo Nation for Project water entered into pursuant to the Settlement Contract; and

(2) payments to the United States for such use of unused capacity and any subcontracts with the Navajo Nation for delivery of Project water shall not alter the construction repayment requirements or the operation, maintenance and replacement payment requirements of the Project contractors, including the Navajo Nation.

SEC. 104. DELIVERY AND USE OF PROJECT WATER.

(a) USE 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, domestic or stock purposes, including residential uses. Hydroelectric power may be generated as an incident to the diversion of water by the Project for the foregoing uses.

(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 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 in 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 in 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 contractors and uses supplied through the Project facilities in proportions to the deliveries of water to or through the pipelines from the San Juan River and Navajo Indian Irrigation Project facilities and in proportions to the amounts of use under the allocations made in this section and otherwise.

(d) SOURCE OF WATER. -- The source of water for the Navajo-Gallup Water Supply Project allocated by subsection (b) of this section shall be the Navajo Reservoir Supply as defined in the Settlement Contract.

(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 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 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 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; nor shall 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 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 by 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).

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

SEC. 105. WATER AND REPAYMENT CONTRACTS.

(a) NAVAJO NATION SETTLEMENT CONTRACT. -- The Secretary is authorized by title III of this Act to execute the Settlement Contract, which provides for delivery of water to the Navajo Nation under the Navajo-Gallup Water Supply Project consistent with section 104 of this Act and requires that the Navajo Nation shall pay the operation, maintenance and replacement costs for the Navajo-Gallup Water Supply Project facilities that are allocable to the Nation.

(b) CONSTRUCTION COSTS ALLOCABLE TO NAVAJO NATION NONREIMBURSABLE. -- The construction costs of the Navajo-Gallup Water Supply Project facilities authorized by section 103 of this Act that are allocable to the Navajo Nation for water deliveries made for purposes authorized by this title and pursuant to the allocations set forth in section 104 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.

(c) CITY OF GALLUP WATER CONTRACT. -- 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 a

period of not fewer than 50 years to provide for the delivery of water by the Navajo-Gallup Water Supply Project to the City of Gallup consistent with subsection 104(b)(3) of this Act; provided, that:

- (1) the subcontract shall require the City of Gallup to pay in full the operation, maintenance and replacement costs for the Project facilities that are allocable to the City; and
- (2) 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 (d) of this section.

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, such as a water delivery subcontract with the Navajo Nation under the terms of the Settlement Contract approved by title III of this Act, 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 pay in full the operation, maintenance and replacement costs for the Project facilities that are allocable to the City.

(d) 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 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;

(2) determine the City of Gallup's ability to pay the construction costs of the Project facilities that are assignable for repayment to the City, considering also that the City shall pay in full the operation, maintenance and replacement costs of the Project that are allocable to the City; and

(3) determine the City of Gallup's share of the construction costs as the City's ability to pay the construction costs of the Project that are assignable for repayment to the City or 25 percent of the construction costs of the Project that are assignable for repayment to the City, whichever is greater.

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.

(e) 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 subsection 104(b)(4) of this Act. In determining the repayment provisions of the repayment contract, the Secretary shall:

(1) determine the Jicarilla Apache Nation's ability to pay the construction costs of the Project facilities that are allocable to the Jicarilla Apache Nation, considering also that the Jicarilla Apache Nation shall pay in full the operation, maintenance and replacement costs of the Project that are allocable to it and may receive income from the subcontracting of its water under 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); and

(2) determine the Jicarilla Apache Nation's share of the construction costs as the Jicarilla Apache Nation's ability to pay the construction costs of the Project that are allocable to it or 25 percent of the construction costs of the Project that are allocable to it, whichever is greater.

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 the Jicarilla Apache Nation 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.

(f) JICARILLA APACHE NATION WATER CONTRACT. -- 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 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; or in the alternative, the Secretary may include the operation, maintenance and replacement cost payment requirements in the repayment contract for the Jicarilla Apache Nation authorized in subsection (e) of this section.

SEC. 106. AUTHORIZATION OF CONJUNCTIVE USE WELLS.

(a) WELLS IN THE SAN JUAN RIVER BASIN. -- The Secretary is authorized to construct or rehabilitate wells to provide capacity for the diversion of up to 1,670 acre-feet in any one year of groundwater in 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 groundwater 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 to provide capacity for the diversion of groundwater 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 groundwater 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 groundwater in amounts of up to 680 acre-feet in any one year of groundwater in the Little Colorado River Basin in New Mexico, 80 acre-feet in any one year of groundwater in the Rio Grande Basin in New Mexico, and 770 acre-feet in any one year of groundwater in the Little Colorado River Basin in Arizona.

(c) USE OF NAVAJO-GALLUP WATER SUPPLY PROJECT FACILITIES. -- The capacities of the main pipelines and lateral pipelines of the Navajo-Gallup Water Supply Project may be used to convey groundwater pumped from conjunctive use wells authorized by this section to Navajo communities; provided, that a contract is executed by the Navajo Nation and the Secretary to provide for payment of the operation, maintenance and replacement costs associated with such use of the pipelines.

(d) LIMITATIONS. -- Diversions of groundwater by wells constructed or rehabilitated pursuant this section shall not be made in a manner inconsistent with applicable federal and state law or the water rights of the Navajo Nation for the diversion and use of groundwater in the San Juan River, Little Colorado River and Rio Grande basins and in New Mexico and Arizona, respectively.

(e) DISCLAIMER. -- Nothing in this section shall be construed to establish or be a determination of rights of the Navajo Nation to divert and use groundwater 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. 107. 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 2015 such sums as may be required for construction of the Navajo-Gallup Water Supply Project, but not more than \$463,400,000, plus or minus such amounts, if any, as may be required by reason of changes since 2003 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 2016 such sums as may be required for construction or rehabilitation of conjunctive use wells authorized by section 106 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 2003 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.

SEC. 108. COMPLIANCE WITH APPLICABLE LAWS.

(a) ENVIRONMENTAL COMPLIANCE. -- 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, 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, the Endangered Species Act of 1973, and other applicable environmental laws and regulations in implementing this title. Nothing in this Act shall be construed to predetermine or otherwise affect the outcome of the Environmental Impact Statement or the Record of Decision on the Navajo-Gallup Water Supply Project.

(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), or the Upper Colorado River Basin Compact (63 Stat. 31); except, that the Act of June 13, 1962, is amended as provided in this Act.

TITLE II – NAVAJO WATER PROJECTS IN NEW MEXICO

SEC. 201. SHORT TITLE.

This title may be cited as the "Navajo 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) uncertainties exist as to whether the authorizations for appropriations for the Navajo Nation Municipal Pipeline authorized by the Colorado Ute Settlement Act Amendments of 2000 (114 Stat. 2763A-258; Public Law 106-554, Appendix D, Title III) may be expended or sufficient for the Farmington replacement line portion of the Navajo Nation Municipal Pipeline; and

(7) the Navajo Indian Irrigation Project, the Navajo irrigation projects in the San Juan River valley in New Mexico, and the Navajo Nation Municipal Pipeline, including the Farmington replacement line, are necessary to provide for water uses needed to sustain the Navajo Reservation 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 facilities for agricultural purposes other than irrigation and for conveyance of water under 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 the additional appropriations necessary to construct the Navajo Nation Municipal Pipeline, including the Farmington replacement line.

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 267,000 acre-feet per year, whichever is less, of surface water from the San Juan River during any period of ten consecutive years;

(3) the Navajo Indian Irrigation Project water supply described in title III of this Act

is for agricultural purposes and it 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.

(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, and may use said capacity for conveyance of water for other non-agricultural purposes if sufficient capacity is available and the associated diversion and use of water is not inconsistent with applicable federal and state law and does not impair, directly or indirectly, other water uses in New Mexico. Use of Navajo Indian Irrigation Project works to convey water for non-agricultural purposes consistent with this subsection shall not be cause for the Secretary to reallocate construction costs of the Project.

(b) AUTHORIZATION OF APPROPRIATIONS -- There is hereby authorized to be appropriated to the Bureau of Reclamation through fiscal year 2015:

(1) such sums as may be required to complete construction of the Navajo Indian Irrigation Project to a total service acreage of 110,630 acres, but not more than an additional \$252,000,000 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 2003 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 \$25,400,000, plus or minus such amounts, if any, as may be required by reason of changes since 2003 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 ANY 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 regardless of whether the Navajo Nation uses the Project facilities or the water associated with the facilities in whole or in part for agriculture purposes or for non-agriculture purposes as authorized by this Act or pursuant to the Settlement Agreement and applicable laws.

(d) OWNERSHIP AND MAINTENANCE COSTS OF FACILITIES. -- The Navajo Nation shall pay all operation and maintenance costs associated with the Navajo Indian Irrigation Project facilities, except as otherwise provided in this section; provided, that construction of the Project is completed to a total serviceable acreage of 110,630 acres, or to a lesser acreage if agreed to by the Navajo Nation, and that ownership of the Project facilities, including related lands and easements acquired by the United States for the construction, operation and maintenance of the Project, has been transferred to the Navajo Nation. The Navajo Nation may utilize for this purpose monies in the

Navajo Nation Water Resources Development Trust Fund authorized by title III of this Act.

(e) 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.

(f) SHARING IN AVAILABLE WATER SUPPLY. -- Nothing in this Act shall be construed to amend section 11 of the Act of June 13, 1962.

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 Bureau of Reclamation:

(1) such sums as may be required through 2010 for rehabilitation of the Fruitland-Cambridge Irrigation Project, but not more than \$5,700,000, plus or minus such amounts, if

any, as may be required by reason of changes since 2003 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 \$12,000,000, plus or minus such amounts, if any, as may be required by reason of changes since 2003 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. NAVAJO NATION MUNICIPAL PIPELINE.

(a) CONFIRMATION OF AUTHORIZATION. -- The Secretary shall construct as a part of the Animas-La Plata Project 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, as follows:

(1) the Navajo Nation Municipal Pipeline shall have a normal capacity to convey 4,680 acre-feet of Animas-La Plata Project water to the Navajo Nation, or the quantity of water necessary to supply a depletion from the San Juan River stream system of 2,340 acre-feet, whichever is less, in any one year pursuant to the Settlement Agreement and the Settlement Contract authorized by title III of this Act; provided, that the Pipeline may be built to a greater capacity under the condition that the Secretary first enters into a repayment contract with the Navajo Nation that shall require the Nation to repay within a term of 50 years the construction costs of the Pipeline, including the Farmington replacement line, that

are allocable to providing the additional capacity;

(2) the construction costs of the Navajo Nation Municipal Pipeline, including the Farmington replacement line, shall be paid from Federal appropriations and shall be nonreimbursable; except, that if the Pipeline is built to a capacity that exceeds the normal capacity of 4,680 acre-feet per year, the Navajo Nation shall repay the costs associated with such excess capacity; and

(3) the authorization to construct the Navajo Nation Municipal Pipeline includes authorization to construct the Farmington replacement line to extend the necessary pipeline capacity through the City of Farmington to connect the pipeline to the City's water treatment plant.

(b) USE OF ANIMAS-LA PLATA PROJECT WATER. -- Water supply delivered to the Navajo Nation under the Animas-La Plata Project through the Navajo Nation Municipal Pipeline shall be used for municipal, industrial, commercial, domestic or residential subsistence agriculture purposes on Navajo lands, including lands held in trust for the Navajo Nation and its members by the United States and lands held in fee by the Navajo Nation.

(c) USE OF PIPELINE. -- The Navajo Nation Municipal Pipeline may convey Animas-La Plata Project water and non-Project water to the extent that capacity is available in a particular year, regardless of whether the pipeline capacity is increased above its normal capacity of 4,680 acre-feet of water per year.

(d) AUTHORIZATION OF ADDITIONAL APPROPRIATIONS. -- There is hereby authorized to be appropriated to the Bureau of Reclamation through fiscal year 2009 such additional sums as may be required to construct the Farmington replacement line to extend the capacity of the Navajo Nation

Municipal Pipeline to the Farmington water treatment plant, but not more than \$5,000,000, plus or minus such amounts, if any, as may be required by reason of changes since 2003 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.

(e) RESPONSIBILITY FOR PIPELINE MAINTENANCE. -- The Navajo Nation shall pay the operation, maintenance and replacement costs of the Pipeline, including the Farmington replacement line.

(f) TRANSFER OF OWNERSHIP. -- Upon completion of construction of the Navajo Nation Municipal Pipeline, including the Farmington replacement line, and completion of repayment required by a repayment contract referred to in subsection (a)(1) of this section, if any, the Secretary shall transfer to the Navajo Nation the ownership of the Navajo Nation Municipal Pipeline, including related lands, easements or other property or property rights acquired by the United States for construction, operation and maintenance of the Pipeline.

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 APPLICABLE LAWS.

(a) ENVIRONMENTAL COMPLIANCE. -- 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. The Secretary shall comply with all aspects of the National Environmental Policy Act of 1969, the Endangered Species Act of 1973, and other applicable environmental laws and regulations in implementing this title.

(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), or the Upper Colorado River Basin Compact (63 Stat. 31); except, that the Act of June 13, 1962, is amended as provided in this Act.

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) 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;

(2) 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 and the United States;

(3) 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;

(4) the United States has a trust responsibility to the Navajo Nation to protect the water resources of the Navajo Nation and to ensure that the Navajo Nation has an adequate water supply to meet the needs of a permanent homeland for the Navajo Nation and its members;

(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 the water supply under its water rights outside the boundaries of its lands consistent with state and federal law and not inconsistent with the terms of the Settlement Agreement between the Navajo Nation, the State of New Mexico and the United States and the 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; and

(3) 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, and

the President of the Navajo Nation, acting pursuant to an authorization from the Navajo Nation Council, are 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.

(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 under water rights held by the Secretary for the following projects in New Mexico supplied from Navajo Reservoir and the San Juan River, including its tributaries; 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 below identified 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	267,000
Navajo-Gallup Water Supply Project	22,650	20,780
Animas-La Plata Project	<u>4,680</u>	<u>2,340</u>
Total	535,330	290,120

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 water conservation and in the spirit of this settlement of the claims of the Navajo Nation, 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 any and all 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 return flows shall be subject to and consistent with the terms, conditions and limitations of the Settlement Agreement, the Resolution and applicable laws; and

(2) transfer diversions and 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 needs of the Nation; provided, that:

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

(B) any transfers of water use by the Navajo Nation affecting one or more of the water development projects authorized in 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 or maintenance costs as specified in titles I and II 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, impairment, or reduction of existing or future beneficial uses of water within the State of New Mexico, 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, in providing water for use in other states.

SEC. 305. SUBCONTRACTS.

(a) **AUTHORITY OF NAVAJO NATION.** -- When water made available for uses in the State of New Mexico under the Settlement Contract approved by this title is not being used by the Navajo Nation, the Nation may subcontract with third parties, subject to the approval of the Secretary in accordance with this section, to supply water for beneficial use in the State of New Mexico outside of Navajo lands, subject to and not inconsistent with the same requirements and conditions of State law, applicable Federal law, interstate compacts and international law as 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. 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.

(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 versus 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 claims to be limited to the historic and existing water uses by the Navajo Nation in the San Juan River Basin, the additional future uses authorized for water projects in the Basin in New Mexico by this Act, and additional future uses prescribed in the Settlement Agreement; and

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

SEC. 307. 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 Interstate Stream Commission, to identify and quantify historic and existing 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 2008 such sums as may be required to complete

the hydrographic survey, but not more than \$5,000,000 (in 2003 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. 308. 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) construction to increase the service area of the Navajo Indian Irrigation Project to 110,630 acres of land, or to a lesser acreage if agreed to by the Navajo Nation, and to refurbish existing irrigation facilities on the Project pursuant to the authorization provided in title II of this Act must be completed no later than December 31, 2015;

(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, 2010;

(4) 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;

(5) construction of the portion of the Navajo-Gallup Water Supply Project facilities authorized by title I of this Act that are necessary to deliver treated potable water to the

Navajo Nation communities in and near the San Juan River valley from the San Juan River point of diversion for the Project to the City of Shiprock, New Mexico, must be completed no later than December 31, 2012;

(6) construction of the Navajo-Gallup Water Supply Project facilities authorized by title I of this Act that are necessary to deliver water to Navajo Nation communities within the State of New Mexico and to the City of Gallup, New Mexico, must be completed no later than December 31, 2016;

(7) construction of conjunctive use groundwater wells authorized by title I of this Act for developing groundwater in the San Juan River Basin for use by Navajo Nation communities in New Mexico must be completed no later than December 31, 2016;

(8) construction of the Navajo Nation Municipal Pipeline pursuant to the authorization provided in title II of this Act must be completed no later than December 31, 2009;

(9) the hydrographic survey and report of historic and existing water uses in and from the San Juan River Basin in New Mexico on Navajo lands, including on lands held in trust for the Navajo Nation by the United States, held in trust for members of the Navajo Nation by the United States, or held in fee ownership by the Navajo Nation, to provide all information called for under paragraphs 6 and 7 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, as described in subparagraph 3.2 of the Settlement Agreement, must be completed no later than September 30, 2008;

(10) the Partial Final Decree described in subparagraph 3.1 of the Settlement

Agreement must be entered by the Court in the San Juan River Adjudication no later than December 31, 2010; and

(11) 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 306(c) of this Act.

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 306 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; and

(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.

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

(2) any failure to resolve 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.

(d) **RIGHTS INURE TO NAVAJO NATION.** -- The tribal rights under the Settlement Contract approved by this Act, the water rights adjudicated by 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.

SEC. 309. 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 CONTRACT. -- Execution of the Settlement Contract approved by this Act shall not constitute a major Federal action under the National Environmental Policy Act.

SEC. 310. DISCLAIMERS.

(a) 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), or the Upper Colorado River Basin Compact (63 Stat. 31); except, that the Act of June 13, 1962, is amended as provided in this Act.

(b) RIGHTS OF INDIAN TRIBES. -- Nothing in the Settlement Agreement, the Settlement

Contract 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 consistent with subparagraph 8.4 of the Settlement Agreement.