

RESOLUTION OF THE
NAABIK'ÍYÁTI' STANDING COMMITTEE
25th NAVAJO NATION COUNCIL -- First Year, 2023

AN ACTION RELATING TO THE RESOURCES AND DEVELOPMENT COMMITTEE AND NAABIK'ÍYÁTI' COMMITTEE; SUPPORTING UNITED STATES SENATE BILL 1898, NAVAJO-GALLUP WATER SUPPLY PROJECT AMENDMENTS ACT OF 2023

WHEREAS:

- A. The Navajo Nation Council is the governing body of the Navajo Nation. 2 N.N.C. § 102(A).
- B. The Navajo Nation Council established the Naabik'íyáti' Committee as a Navajo Nation Council standing committee and empowered the Naabik'íyáti' Committee to coordinate all requests for information, appearances and testimony relating to proposed county, state and federal legislation impacting the Navajo Nation. 2 N.N.C. §§ 700(A), 701(A)(6).
- C. The Resources and Development Committee has oversight authority over water and land for various purposes including promoting projects to be financed by funds designated for capital improvements. 2 N.N.C. § 500(C)(5).
- D. The Navajo Nation has a government-to-government relationship with the United States government.
- E. United States Senator Ben Ray Lujan, on June 8, 2023, introduced Senate Bill 1898 which has the SHORT TITLE "Navajo-Gallup Water Supply Project Amendments Act of 2023." Senate Bill 1898 is attached as **Exhibit A**.
- F. The United States House of Representative Congresswoman Teresa Leger Fernandez on June 9, 2023 introduced House of Representatives Bill H.R. 3977. Bill H.R. 3977, is the companion bill to Senate Bill S. 1898.
- G. The Omnibus Public Land Management Act of 2009, Title X Part III (Public Law 111-11) signed on March 30, 2009, provided the authorization to construct the Navajo-Gallup Water Supply Project as the cornerstone of the Navajo Nation San Juan River Basin Water Rights Settlement between the Navajo Nation, State of New Mexico, and United States.
- H. Once constructed, the Navajo-Gallup Water Supply Project will convey a reliable municipal and industrial water supply from

the San Juan River to the eastern section of the Navajo Nation, southwestern portion of the Jicarilla Apache Nation, and the City of Gallup, New Mexico via about 300 miles of pipeline, nineteen pumping plants, and two water treatment plants.

- I. These areas currently rely on a rapidly depleting groundwater supply that is of poor quality and inadequate to meet the current and future demands of more than 43 Navajo Chapters, the City of Gallup, and the Teepee Junction area of the Jicarilla Apache Nation.
- J. The Navajo-Gallup Water Supply Project is designed to provide a long-term sustainable water supply to meet the future population needs of people in these communities through the annual delivery of 37,764 acre-feet of water from the San Juan Basin.
- K. The authorizing legislation requires that all project features be completed no later than December 31, 2024, unless the Nation, the State of New Mexico, and the Department of Interior agree to extend the completion date, and sets an indexed authorized appropriation ceiling of \$1,413,700,000 (October 2022 price level) to complete the Navajo-Gallup Water Supply Project.
- L. Current construction efforts have faced numerous delays and cost overruns and continue to be impacted by higher than usual inflation.
- M. The U.S. Bureau of Reclamation's October 2022 Working Cost Estimate to complete the Navajo-Gallup Water Supply Project is \$2,138,387,000, meaning the project needs an additional 660 million dollars in funding. The estimated completion date is now 2029.
- N. Failure to increase funding and extend the authorized timeframe for construction threaten the viability of the project.
- O. It is in the best interest of the Navajo Nation to support amendments to Public Law 111-11 in order to increase appropriations for the Navajo-Gallup Water Supply Project, extend the timeframe in which the project may be constructed, and make any other improving changes to the original legislation.

THEREFORE, BE IT RESOLVED:

- A. The Navajo Nation hereby supports Senate Bill 1898 "Navajo-Gallup Water Supply Project Amendments Act of 2023," attached as Exhibit A, as introduced by Senator Luján into the United States Senate on June 8, 2023.
- B. The Navajo Nation hereby authorizes the Speaker of the Navajo Nation Council, President of the Navajo Nation, and their designees, to advocate the Navajo Nation's support of Senate Bill 1898.

CERTIFICATION

I, hereby certify that the foregoing resolution was duly considered by the Naabik'íyáti' Committee of the 25th Navajo Nation Council at a duly called meeting in Window Rock, Navajo Nation (Arizona), at which a quorum was present and that the same was passed by a vote of 19 in Favor, and 00 Opposed, on this 12th day of October 2023.



Honorable Crystalyne Curley, Chairwoman
Naabik'íyáti' Committee

10/17/2023

Date

Motion: Honorable Vince R. James
Second: Honorable Curtis Yanito

Chairwoman Crystalyne Curley not voting

118TH CONGRESS
1ST SESSION

S. 1898

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

IN THE SENATE OF THE UNITED STATES

JUNE 8, 2023

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

A BILL

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

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

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

6 **SEC. 2. DEFINITIONS.**

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

10 (1) by striking paragraph (29);

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“(C) the Jicarilla Apache Nation Operations, Maintenance, and Replacement Trust Fund established under subsection (c)(2) of that section.”; and

(8) by adding at the end the following:

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

SEC. 3. NAVAJO-GALLUP WATER SUPPLY PROJECT.

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

(1) in subsection (a)—

(A) in the subsection heading, by striking “IN GENERAL” and inserting “AUTHORIZATION”;

(B) by striking “The Secretary” and inserting the following:

“(1) IN GENERAL.—The Secretary”;

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

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

11 “(2) ADDITIONAL SERVICE AREAS.—

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

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

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

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

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

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

18 (2) in subsection (b)—

19 (A) in the matter preceding paragraph
 20 (1)—

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

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

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

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

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

18 (C) in paragraph (2)(A)—

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

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

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

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

7 (3) in subsection (c)—

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

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

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

15 “(4) LAND TO BE TAKEN INTO TRUST.—

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

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

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

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

9 “(bb) sec. 33, T. 17 N., R.
10 17 W., New Mexico Prime Merid-
11 ian (except lot 9 and the NW $\frac{1}{4}$
12 of lot 4);

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

15 “(aa) NW $\frac{1}{4}$ and SW $\frac{1}{4}$ sec.
16 5, T. 16 N., R. 18 W.;

17 “(bb) N $\frac{1}{2}$ sec. 11, T. 16 N.,
18 R. 19 W.; and

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

21 “(III) the parcel of land on which
22 Reach 12.2 is located, including
23 NW $\frac{1}{4}$. sec. 2, T. 16 N., R. 21 W.

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

4 “(I) the parcel of land on which
5 the Cutter Lateral Water Treatment
6 Plant is located, including S½ sec. 9,
7 T. 25 N., R. 9 W., New Mexico Prime
8 Meridian; and

9 “(II) the parcel of land on which
10 the Navajo Agricultural Products In-
11 dustry turnout is located, including
12 NW¼ and NE¼ sec. 34, T. 26 N.,
13 R. 9 W., New Mexico Prime Meridian.

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

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

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

3 “(C) RESTRICTIONS.—

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

13 “(ii) PUBLIC DOMAIN LAND.—

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

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

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

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

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

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

14 “(aa) for ingress and egress;

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

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

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

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

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

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

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

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

16 (5) in subsection (e)—

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

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

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

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

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

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

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

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

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

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

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

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

3 “(2) DEFERRED CONSTRUCTION FUND.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 (1) in subsection (a)(3)(B)—

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

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

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

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

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

8 (2) in subsection (b)(3)—

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

12 (B) in subparagraph (B)—

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

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

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

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

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

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

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

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

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

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

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

14 (1) in subsection (a)—

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

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

22 “(2) ADJUSTMENTS.—

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

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

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

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

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

20 (2) in subsection (b)—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 (1) in paragraph (1)(A)—

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

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

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

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

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

(C) by adding at the end the following:

“(x) DEFERRED CONSTRUCTION
FUND.—

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

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

(2) in paragraph (2)(B)—

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

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

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

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

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

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

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

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

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

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

cluding facilities conveyed to the Nation under this subtitle and facilities owned by the United States for which the Nation is responsible for operation, maintenance, and replacement costs; and

“(B) to investigate, implement, or improve a water conservation measure (including a metering or monitoring activity) necessary for the Nation to make use of a water right of the Nation under the Agreement.

“(3) INVESTMENT.—Beginning on October 1, 2019, the Secretary shall invest amounts in the Navajo Nation Water Resources Development Trust Fund in accordance with subsection (c).

“(4) INVESTMENT EARNINGS.—Any investment earnings, including interest, credited to amounts held in the Navajo Nation Water Resources Development Trust Fund are authorized to be used in accordance with paragraph (2).

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

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

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

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

8 “(A) before December 31, 2019; and

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

11 “(i) the Partial Final Decree; and

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

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

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

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

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

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

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

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

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

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

13 “(7) FLUCTUATION IN COSTS.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 “(8) FLUCTUATION IN COSTS.—

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

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

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

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

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

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

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

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

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

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

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

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

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

20 “(1) TRIBAL MANAGEMENT PLAN.—

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

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

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

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

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

22 “(4) EXPENDITURE PLAN.—

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

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

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

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

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

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

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

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

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

○

NAVAJO NATION

Naa'bik'iyati' Committee Regular Meeting

10/12/2023
11:41:26 AM

Amd# to Amd#

New Business: [CONSENT AGENDA]

PASSED

MOT James, V

0226-23;0229-23;0233-23;0237-23

SEC Yanito, C

0216-23;0220-23;0225-23;0228-23

0235-23;0236-23;0202-23. . . .

Yeas : 19

Nays : 0

Excused : 3

Not Voting : 1

Yea : 19

Arviso, S

Claw, S

Nez, R

Tolth, G

Aseret, L

Crotty, A

Notah, N

Tso, O

Begay, H

James, V

Simonson, G

Yanito, C

Begay, N

Johnson, C

Simpson, D

Yazzie, C

Charles-Newton, E

Nez, A

Slater, C

Nay : 0

Excused : 3

Daniels, H

Parrish, S

Jesus, B

Not Voting : 1

Damon, S

Presiding Speaker: Curley, C