

Comparative Print: Changes in Existing Law for Bill number:

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Omitted text is shown ~~stricken~~, new matter that is proposed is in underlined italics, and existing text in which no change is being proposed is shown in regular roman. Typesetting and stylistic characteristics, particularly in the headings and indentations, may not conform to how the text, if adopted, would be illustrated in subsequent versions of legislation or public law.

Summary

- (1) 5 amendments.
- (2) 0 automated notifications.

Current Law(s) being amended

- [1. Omnibus Public Land Management Act of 2009, Part IV](#)
- [2. Claims Resolution Act of 2010](#)

Comparative Print: Changes in Existing Law

1. Omnibus Public Land Management Act of 2009, Part IV

PART IV—NAVAJO NATION WATER RIGHTS

Sec. 10701. AGREEMENT

(a) Agreement Approval.—

(1) **Approval by congress.**— Except to the extent that any provision of the Agreement conflicts with this subtitle, Congress approves, ratifies, and confirms the Agreement (including any amendments to the Agreement that are executed to make the Agreement consistent with this subtitle).

(2) **Execution by secretary.**— The Secretary shall enter into the Agreement to the extent that the Agreement does not conflict with this subtitle, including— 123 STAT. 1397

(A) any exhibits to the Agreement requiring the signature of the Secretary; and

(B) any amendments to the Agreement necessary to make the Agreement consistent with this subtitle.

(3) **Authority of secretary.**— The Secretary may carry out any action that the Secretary determines is necessary or appropriate to implement the Agreement, the Contract, and this section.

(4) **Administration of navajo reservoir releases.**— The State of New Mexico may administer water that has been released from storage in Navajo Reservoir in accordance with subparagraph 9.1 of the Agreement.

(b) **Water Available Under Contract.**—

(1) **Quantities of water available.**—

(A) **In general.**— Water shall be made available annually under the Contract for projects in the State of New Mexico supplied from the Navajo Reservoir and the San Juan River (including tributaries of the River) under New Mexico State Engineer File Numbers 2849, 2883, and 3215 in the quantities described in subparagraph (B).

(B) **Water quantities.**— The quantities of water referred to in subparagraph (A) are as follows:

Diversion (acre-feet/year) Depletion (acre-feet/year)

Navajo Indian Irrigation Project 508,000 270,000 Navajo-Gallup Water Supply Project 22,650 20,780 Animas-La Plata Project 4,680 2,340 Total 535,330 293,120

(C) **Maximum quantity.**— A diversion of water to the Nation under the Contract for a project described in subparagraph (B) shall not exceed the quantity of water necessary to supply the amount of depletion for the project.

(D) **Terms, conditions, and limitations.**— The diversion and use of water under the Contract shall be subject to and consistent with the terms, conditions, and limitations of the Agreement, this subtitle, and any other applicable law.

(2) **Amendments to contract.**— The Secretary, with the consent of the Nation, may amend the Contract if the Secretary determines that the amendment is—

(A) consistent with the Agreement; and

(B) in the interest of conserving water or facilitating beneficial use by the Nation or a subcontractor of the Nation.

(3) **Rights of the nation.**— The Nation may, under the Contract— 123 STAT. 1398

(A) use tail water, wastewater, and return flows attributable to a use of the water by the Nation or a subcontractor of the Nation if—

(i) the depletion of water does not exceed the quantities described in paragraph (1); and

(ii) the use of tail water, wastewater, or return flows is consistent with the terms, conditions, and limitations of the Agreement, and any other applicable law; and

(B) change a point of diversion, change a purpose or place of use, and transfer a right for depletion under this subtitle (except for a point of diversion, purpose or place of use, or right for depletion for use in the State of Arizona under section 10603(b)(2)(D)), to another

use, purpose, place, or depletion in the State of New Mexico to meet a water resource or economic need of the Nation if—

(i) the change or transfer is subject to and consistent with the terms of the Agreement, the Partial Final Decree described in paragraph 3.0 of the Agreement, the Contract, and any other applicable law; and

(ii) a change or transfer of water use by the Nation does not alter any obligation of the United States, the Nation, or another party to pay or repay project construction, operation, maintenance, or replacement costs under this subtitle and the Contract.

(c) Subcontracts.—

(1) In general.—

(A) Subcontracts between nation and third parties.— The Nation may enter into subcontracts for the delivery of Project water under the Contract to third parties for any beneficial use in the State of New Mexico (on or off land held by the United States in trust for the Nation or a member of the Nation or land held in fee by the Nation).

(B) Approval required.— A subcontract entered into under subparagraph (A) shall not be effective until approved by the Secretary in accordance with this subsection and the Contract.

(C) Submittal.— The Nation shall submit to the Secretary for approval or disapproval any subcontract entered into under this subsection.

(D) Deadline.— The Secretary shall approve or disapprove a subcontract submitted to the Secretary under subparagraph (C) not later than the later of—

(i) the date that is 180 days after the date on which the subcontract is submitted to the Secretary; and

(ii) the date that is 60 days after the date on which a subcontractor complies with —

(I) section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)); and

(II) any other requirement of Federal law.

(E) Enforcement.— A party to a subcontract may enforce the deadline described in subparagraph (D) under section 1361 of title 28, United States Code. 123 STAT. 1399

(F) Compliance with other law.— A subcontract described in subparagraph (A) shall comply with the Agreement, the Partial Final Decree described in paragraph 3.0 of the Agreement, and any other applicable law.

(G) No liability.— The Secretary shall not be liable to any party, including the Nation, for any term of, or any loss or other detriment resulting from, a lease, contract, or other agreement entered into pursuant to this subsection.

(2) Alienation.—

(A) Permanent alienation.— The Nation shall not permanently alienate any right granted to the Nation under the Contract.

(B) Maximum term.— The term of any water use subcontract (including a renewal) under this subsection shall be not more than 99 years.

(3) Nonintercourse act compliance.— This subsection—

(A) provides congressional authorization for the subcontracting rights of the Nation; and

(B) is deemed to fulfill any requirement that may be imposed by section 2116 of the Revised Statutes (25 U.S.C. 177).

(4) **Forfeiture.**— The nonuse of the water supply secured by a subcontractor of the Nation under this subsection shall not result in forfeiture, abandonment, relinquishment, or other loss of any part of a right decreed to the Nation under the Contract or this section.

(5) **No Per Capita Payments.**— No part of the revenue from a water use subcontract under this subsection shall be distributed to any member of the Nation on a per capita basis.

(d) Water Leases Not Requiring Subcontracts.—

(1) Authority of nation.—

(A) **In general.**— The Nation may lease, contract, or otherwise transfer to another party or to another purpose or place of use in the State of New Mexico (on or off land that is held by the United States in trust for the Nation or a member of the Nation or held in fee by the Nation) a water right that—

(i) is decreed to the Nation under the Agreement; and

(ii) is not subject to the Contract.

(B) **Compliance with other law.**— In carrying out an action under this subsection, the Nation shall comply with the Agreement, the Partial Final Decree described in paragraph 3.0 of the Agreement, the Supplemental Partial Final Decree described in paragraph 4.0 of the Agreement, and any other applicable law.

(2) Alienation; maximum term.—

(A) **Alienation.**— The Nation shall not permanently alienate any right granted to the Nation under the Agreement.

(B) **Maximum term.**— The term of any water use lease, contract, or other arrangement (including a renewal) under this subsection shall be not more than 99 years.

(3) **No liability.**— The Secretary shall not be liable to any party, including the Nation, for any term of, or any loss 123 STAT. 1400 or other detriment resulting from, a lease, contract, or other agreement entered into pursuant to this subsection.

(4) Nonintercourse act compliance.— This subsection—

(A) provides congressional authorization for the lease, contracting, and transfer of any water right described in paragraph (1)(A); and

(B) is deemed to fulfill any requirement that may be imposed by the provisions of section 2116 of the Revised Statutes (25 U.S.C. 177).

(5) **Forfeiture.**— The nonuse of a water right of the Nation by a lessee or contractor to the Nation under this subsection shall not result in forfeiture, abandonment, relinquishment, or other loss of any part of a right decreed to the Nation under the Contract or this section.

(e) Nullification.—

(1) Deadlines.—

(A) **In general.**— In carrying out this section, the following deadlines apply with respect to implementation of the Agreement:

(i) **Agreement.**— Not later than December 31, 2010, the Secretary shall execute the Agreement.

(ii) **Contract.**— Not later than December 31, 2010, the Secretary and the Nation shall execute the Contract.

(iii) **Partial final decree.**— Not later than December 31, 2013, the court in the stream adjudication shall have entered the Partial Final Decree described in paragraph 3.0 of the Agreement.

(iv) **Fruitland-cambridge irrigation project.**— Not later than December 31, 2016, the rehabilitation construction of the Fruitland-Cambridge Irrigation Project authorized under section 10607(a)(1) shall be completed.

(v) **Supplemental partial final decree.**— Not later than December 31, 2016, the court in the stream adjudication shall enter the Supplemental Partial Final Decree described in subparagraph 4.0 of the Agreement.

(vi) **Hogback-cudei irrigation project.**— Not later than December 31, 2019, the rehabilitation construction of the Hogback-Cudei Irrigation Project authorized under section 10607(a)(2) shall be completed.

(vii) **Trust fund.**— Not later than December 31, 2019, the United States shall make all deposits into the Trust Fund under section ~~10702~~. 10702, except for deposits made pursuant to section 10702(g).

(viii) **Conjunctive wells.**— Not later than December 31, 2019, the funds authorized to be appropriated under section 10609(b)(1) for the conjunctive use wells authorized under section 10606(b) should be appropriated.

(ix) **Navajo-gallup water supply project.**— Not later than December 31, 2024, the construction of all Project facilities shall be completed.

(B) **Extension.**— A deadline described in subparagraph (A) may be extended if the Nation, the United States (acting through the Secretary), and the State of New Mexico (acting 123 STAT. 1401 through the New Mexico Interstate Stream Commission) agree that an extension is reasonably necessary.

(2) **Revocability of agreement, contract and authorizations.**—

(A) **Petition.**— If the Nation determines that a deadline described in paragraph (1)(A) is not substantially met, the Nation may submit to the court in the stream adjudication a petition to enter an order terminating the Agreement and Contract.

(B) **Termination.**— On issuance of an order to terminate the Agreement and Contract under subparagraph (A)—

(i) the Trust Fund shall be terminated;

(ii) the balance of the Trust Fund shall be deposited in the general fund of the Treasury;

(iii) the authorizations for construction and rehabilitation of water projects under this subtitle shall be revoked and any Federal activity related to that construction and rehabilitation shall be suspended; and

(iv) this part and parts I and III shall be null and void.

(3) **Conditions not causing nullification of settlement.**—

(A) **In general.**— If a condition described in subparagraph (B) occurs, the Agreement and Contract shall not be nullified or terminated.

(B) Conditions.— The conditions referred to in subparagraph (A) are as follows:

(i) A lack of right to divert at the capacities of conjunctive use wells constructed or rehabilitated under section 10606.

(ii) A failure—

(I) to determine or resolve an accounting of the use of water under this subtitle in the State of Arizona;

(II) to obtain a necessary water right for the consumptive use of water in Arizona;

(III) to contract for the delivery of water for use in Arizona; or

(IV) to construct and operate a lateral facility to deliver water to a community of the Nation in Arizona, under the Project.

(f) Effect on Rights of Indian Tribes.—

(1) **In general.**— Except as provided in paragraph (2), nothing in the Agreement, the Contract, or this section quantifies or adversely affects the land and water rights, or claims or entitlements to water, of any Indian tribe or community other than the rights, claims, or entitlements of the Nation in, to, and from the San Juan River Basin in the State of New Mexico.

(2) **Exception.**— The right of the Nation to use water under water rights the Nation has in other river basins in the State of New Mexico shall be forborne to the extent that the Nation supplies the uses for which the water rights exist by diversions of water from the San Juan River Basin under the Project consistent with subparagraph 9.13 of the Agreement. 123 STAT. 1402

Sec. 10702. TRUST FUND

(a) Establishment.— There is established in the Treasury a fund to be known as the “Navajo Nation Water Resources Development Trust Fund”, consisting of—

(1) such amounts as are appropriated to the Trust Fund under ~~subsection (f)~~ subsections (f) and (g); and

(2) any interest earned on investment of amounts in the Trust Fund under subsection (d).

(b) Use of funds.— The Nation may use amounts in the Trust Fund—

(1) to investigate, construct, operate, maintain, or replace water project facilities, including 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

(2) 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.

(c) Management.— The Secretary shall manage the Trust Fund, invest amounts in the Trust Fund pursuant to subsection (d), and make amounts available from the Trust Fund for distribution to the Nation in accordance with the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4001 et seq.).

(d) Investment of the Trust Fund.— Beginning on October 1, 2019, the Secretary shall invest amounts in the Trust Fund in accordance with—

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

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

(3) the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4001 et seq.).

(e) Conditions for Expenditures and Withdrawals.—

(1) Tribal management plan.—

(A) In general.— Subject to paragraph (7), on approval by the Secretary of a tribal management plan in accordance with the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4001 et seq.), the Nation may withdraw all or a portion of the amounts in the Trust Fund.

(B) Requirements.— In addition to any requirements under the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4001 et seq.), the tribal management plan shall require that the Nation only use amounts in the Trust Fund for the purposes described in subsection (b), including the identification of water conservation measures to be implemented in association with the agricultural water use of the Nation.

(2) Enforcement.— The Secretary may take judicial or administrative action to enforce the provisions of any tribal management plan to ensure that any amounts withdrawn from the Trust Fund are used in accordance with this subtitle.

(3) No liability.— Neither the Secretary nor the Secretary of the Treasury shall be liable for the expenditure or investment of any amounts withdrawn from the Trust Fund by the Nation.

(4) Expenditure plan.— 123 STAT. 1403

(A) In general.— The Nation shall submit to the Secretary for approval an expenditure plan for any portion of the amounts in the Trust Fund made available under this section that the Nation does not withdraw under this subsection.

(B) Description.— The expenditure plan shall describe the manner in which, and the purposes for which, funds of the Nation remaining in the Trust Fund will be used.

(C) Approval.— On receipt of an expenditure plan under subparagraph (A), the Secretary shall approve the plan if the Secretary determines that the plan is reasonable and consistent with this subtitle.

(5) Annual report.— The Nation shall submit to the Secretary an annual report that describes any expenditures from the Trust Fund during the year covered by the report.

(6) Limitation.— No portion of the amounts in the Trust Fund shall be distributed to any Nation member on a per capita basis.

(7) Conditions.— Any amount authorized to be appropriated to the Trust Fund under subsection (f) shall not be available for expenditure or withdrawal—

(A) before December 31, 2019; and

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

(i) the Partial Final Decree; and

(ii) the Supplemental Partial Final Decree.

(f) Authorization of Appropriations.— There are authorized to be appropriated for deposit in the Trust Fund—

(1) \$6,000,000 for each of fiscal years 2010 through 2014; and

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

(g) ADJUSTED INTEREST PAYMENTS.— In addition to amounts made available under subsection (f), there is authorized to be appropriated for deposit in the Trust Fund \$6,357,674.46.

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2. Claims Resolution Act of 2010

[As Amended Through P.L. 117–342, Enacted January 5, 2023]

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TITLE V—TAOS PUEBLO INDIAN WATER RIGHTS

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SEC. 514. ADJUSTED INTEREST PAYMENTS.

“In addition to the amounts made available under section 509(c), there is authorized to be appropriated to the Secretary for deposit into the Taos Pueblo Water Development Fund established by section 505(a) \$7,794,297.52.

TITLE VI—AAMODT LITIGATION SETTLEMENT

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Subtitle B—Pojoaque Basin Indian Water Rights Settlement

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SEC. 627. INTEREST PAYMENTS.

(a) ADJUSTED INTEREST PAYMENTS.— In addition to amounts made available under section 617, there is authorized to be appropriated to the Secretary for deposit into the Aamodt Settlement Pueblos’ Fund established by section 615(a) \$4,314,709.18 for the Pueblos’ share of the costs of operating, maintaining, and replacing the Pueblo Water Facilities and the Regional Water System, as set forth in section 617(c)(1)(B).

(b) WAIVER OF PAYMENT.— To the extent monies are due or payable to the United States attributable to interest earned on amounts made available under section 617(c)(1)(A) prior to September 15, 2017, the Secretary of the Treasury shall waive payment of such monies.

Summary

- (1) 5 amendments.
- (2) 0 automated notifications.

About this report

U.S. Code release point 119-102, dated 07/12/2026

XML Database version: 0.6.32

CSS version: 2.0.2

Version of the system: Bill to Law Report Generator 2.0.3; AMPL 2.2.13

