

House Subcommittee on Water, Power and Oceans

John Fleming, Chairman
Hearing Memo

June 22, 2015

To: House Subcommittee on Water, Power and Oceans Members

From: Water, Power and Oceans Subcommittee Republican Staff

Subject: June 25, 2015, 10:00 a.m. House Water, Power and Oceans Subcommittee Legislative Hearing on H.R. 1406 (Lujan, D-NM), “*New Mexico Navajo Water Settlement Technical Corrections Act*”

Hearing Overview:

On June 25, 2015, at 10:00 a.m. in 1324 Longworth, the House Water, Power and Oceans Subcommittee will hold a legislative hearing on H.R. 1406, the “*New Mexico Navajo Water Settlement Technical Corrections Act*”, sponsored by Mr. Lujan of New Mexico. This hearing will include three other bills.

Bill Summary:

H.R. 1406 makes technical corrections and clarifications and adds some federal responsibilities to five subsections on Indian water projects in Public Law 111-11.

Background:

Title X of the Omnibus Public Land Management Act of 2009 (P.L. 111-11) included a number of Indian water rights settlements and related water supply projects. H.R. 1406 makes technical and clarifying changes that impact the Navajo Nation’s water projects in New Mexico authorized in subsections of P.L. 111-11. The bill specifically fixes misspellings, citations, and other errors.¹ In addition, one section of the legislation adds “design and planning” activities to the “construction and rehabilitation” financial responsibilities of the federal government.² The bill also shifts spending for cultural resource assessments and fish and wildlife facilities.³ The bill does not increase federal spending, however.⁴

Former Navajo Nation President Ben Shelly testified in support of a similar bill in the last Congress:

¹ Section 2 of H.R. 1406 amends Sections 10302 and 10603; <http://thomas.loc.gov/cgi-bin/query/z?c114:H.R.1406>.

² Section 2 of H.R. 1406 amends subsection 10609 of P.L. 111-11 to accomplish this change.; <http://thomas.loc.gov/cgi-bin/query/z?c114:H.R.1406>;

³ Id

⁴ <http://www.cbo.gov/publication/50047>

*The Navajo Nation urges Congress to adopt Section 4 of the bill [S. 1447], which increases the authorization for cultural resources on the Navajo-Gallup Water Supply Project from the current 2% of the total project cost to 4% of the total project cost... This project which encompasses 280 miles of large diameter pipeline and a 400-foot right-of-way, will disturb more than 12,000 acres of land in arguably the most archeologically sensitive region in North America.*⁵

Cost:

According to the Congressional Budget Office, an identical bill passed by the Senate would have “no significant effect on federal spending”.⁶

Administration Position:

The Administration supports the bill.⁷

Witnesses:

The Honorable Estevan Lopez, Commissioner
U.S. Bureau of Reclamation
U.S. Department of the Interior
Washington, DC

Mr. Jackson Brossy
Executive Director of the Navajo Nation
Washington D.C. Office

Ramseyer:

**Showing Public Law 111-11 (Omnibus Public Land Management Act of 2009)
As amended by H.R. 1406, as introduced
[text to be deleted is bracketed in red; new text in yellow]**

Subtitle B--Northwestern New Mexico Rural Water Projects

SEC. 10301. SHORT TITLE.

⁵ Submitted testimony of The Honorable Ben Shelly, President of the Navajo Nation, Committee on Indian Affairs, 113th Cong., Legislative Hearing on S. 1447 “*New Mexico Navajo Water Settlement Technical Corrections Act*” September 10, 2013.

⁶ <http://www.cbo.gov/publication/50047>

⁷ Submitted testimony of Mr. Kevin Washburn, Assistant Secretary for Indian Affairs, United States Department of the Interior, Committee on Indian Affairs, 113th Cong., Legislative Hearing on S. 1447 “*New Mexico Navajo Water Settlement Technical Corrections Act*” September 10, 2013.

This subtitle may be cited as the ``Northwestern New Mexico Rural Water Projects Act".

SEC. 10302. <<NOTE: 43 USC 407 note.>> DEFINITIONS.

In this subtitle:

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(2) Abeyta adjudication.--The term ``Abeyta adjudication" means the general stream adjudication that is the subject of the civil actions entitled ``State of New Mexico v. Abeyta and State of New Mexico v. Arellano [Arrellano]", Civil Nos. 7896-BB (D.N.M) and 7939-BB (D.N.M.) (consolidated).

* * * * *

(27) Stream adjudication.--The term ``stream adjudication" means the general stream adjudication that is the subject of New Mexico v. United States, et al., No. 75-184[5] (11th Jud. Dist., San Juan County, New Mexico) (involving claims to waters of the San Juan River and the tributaries of that river).

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SEC. 10603. DELIVERY AND USE OF NAVAJO-GALLUP WATER SUPPLY PROJECT WATER.

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(c) Conditions for Use in Arizona.--

(1) <<NOTE: Contracts.>> Requirements.--Project water shall not be delivered for use by any community of the Nation located in the State of Arizona under subsection (b)(2)(D) until--

(A) <<NOTE: Waiver.>> the Nation and the State of Arizona have entered into a water rights settlement agreement approved by an Act of Congress that settles and waives the Nation's claims to water in the Lower Basin and the Little Colorado River Basin in the State of Arizona, including those of the United States on the Nation's behalf; and

(B) the Secretary and the Navajo Nation have entered into a Navajo Reservoir water supply delivery contract for the physical delivery and diversion of water via the Project from the San Juan River system to supply uses in the State of Arizona.

(2) Accounting of uses in arizona.--

(A) In general.--Pursuant to paragraph (1) and notwithstanding any other provision of law, water may be

diverted by the Project from the San Juan River in the State of New Mexico in accordance with an appropriate permit issued under New Mexico law for use in the State of Arizona within the Navajo Reservation in the Lower Basin; provided that any depletion of water that results from the diversion of water by the Project from the San Juan River in the State of New Mexico for uses within the State of Arizona (including depletion incidental to the diversion, impounding, or conveyance of water in the

State of New Mexico for uses in the State of Arizona) shall be administered and accounted for as either--

(i) a part of, and charged against, the available consumptive use apportionment made to the State of Arizona by Article III(a) of the Compact and to the Upper Basin by Article III(a) of the Colorado River Compact, in which case any water so diverted by the Project into the Lower Basin for use within the State of Arizona shall not be credited as water reaching Lee Ferry pursuant to Articles III(c) and III(d) of the Colorado River Compact; or

(ii) subject to subparagraph (B), a part of, and charged against, the consumptive use apportionment made to the Lower Basin by Article III(a) of the Colorado River Compact, in which case it shall--

(I) be a part of the Colorado River water that is apportioned to the State of Arizona in Article II(B) of the Consolidated Decree of the Supreme Court of the United States in *Arizona v. California* (547 U.S. 150) (as may be amended or supplemented);

(II) be credited as water reaching Lee Ferry pursuant to Articles III(c) and III(d) of the Colorado River Compact; and

(III) be accounted as the water identified in section 104(a)(1)(B)(ii) of the Arizona Water Settlements Act, (118 Stat. 3478).

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SEC. 10604. PROJECT CONTRACTS.

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(f) Temporary Waivers of Payments.--

(1) In general.--On the date on which the Secretary declares a section of the Project to be substantially complete and delivery of Project water generated by and through that section of the Project can be made to the Nation, the Secretary may waive, for a period of not more than 10 years, the operation, maintenance, and replacement costs allocable to the Nation for that section of the Project that the Secretary determines are in excess of the ability of the Nation to pay.

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SEC. 10609. AUTHORIZATION OF APPROPRIATIONS.

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(b) Appropriations for Conjunctive Use Wells.--

(1) San juan wells.--There is authorized to be appropriated to the Secretary for the planning, design, construction, rehabilitation, construction or rehabilitation and operation and maintenance of conjunctive use wells under section 10606(b) \$30,000,000, as adjusted under paragraph (3), for the period of fiscal years 2009 through 2019.

(2) Wells in the little colorado and rio grande basins.--There are authorized to be appropriated to the Secretary for the planning, design, construction, rehabilitation, construction or rehabilitation and operation and maintenance of conjunctive use wells under section 10606(c) such sums as are necessary for the period of fiscal years 2009 through 2024.

(3) Adjustments.--The amount under paragraph (1) shall be adjusted by such amounts as may be required by reason of changes since 2008 in construction costs, as indicated by engineering cost indices applicable to the types of construction or rehabilitation involved.

(4) Nonreimbursable expenditures.--Amounts made available under paragraphs (1) and (2) shall be nonreimbursable to the United States.

(5) Use.--In addition to the uses authorized under paragraphs (1) and (2), amounts made available under that paragraph may be used for the conduct of related activities to comply with Federal environmental laws.

(6) Limitation.--Appropriations authorized under paragraph (1) shall not be used for operation or maintenance of any conjunctive use wells at a time in excess of 3 years after the well is declared substantially complete.

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(e) Cultural Resources.--

(1) In general.--The Secretary may use not more than 4 [2] percent of amounts made available under subsections (a), (b), and (c) for the survey, recovery, protection, preservation, and display of archaeological resources in the area of a Project facility or conjunctive use well.

(2) Nonreimbursable expenditures.--Any amounts made available under paragraph (1) shall be nonreimbursable.

(f) Fish and Wildlife Facilities.--

(1) In general.--In association with the development of the Project, the Secretary may use not more than 2 [4] percent of amounts made available under subsections (a), (b), and (c) to purchase land and construct and maintain facilities to mitigate the loss of, and improve conditions for the propagation of, fish and wildlife if any such purchase, construction, or maintenance will not affect the operation of any water project or use of water.

(2) Nonreimbursable expenditures.--Any amounts expended under paragraph (1) shall be nonreimbursable.

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SEC. 10701. <<NOTE: 43 USC 620 note.>> AGREEMENT.

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(e) Nullification.--

(1) Deadlines.--

(A) <<NOTE: Applicability.>> 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.

(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 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.

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