

115TH CONGRESS
1ST SESSION

S. 1012

To provide for drought preparedness measures in the State of New Mexico,
and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 2, 2017

Mr. UDALL (for himself and Mr. HEINRICH) introduced the following bill;
which was read twice and referred to the Committee on Energy and Nat-
ural Resources

A BILL

To provide for drought preparedness measures in the State
of New Mexico, 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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “New Mexico Drought Preparedness Act of 2017”.

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

- Sec. 1. Short title; table of contents.
- Sec. 2. Definitions.
- Sec. 3. Water acquisition program.
- Sec. 4. Water conservation.
- Sec. 5. Middle Rio Grande peak flow restoration.
- Sec. 6. National Academy of Sciences study.

- Sec. 7. Emergency funding.
- Sec. 8. Secure Water Act reauthorization.
- Sec. 9. Reclamation States Emergency Drought Relief Act reauthorization.
- Sec. 10. Rio Grande Pueblo irrigation infrastructure reauthorization.
- Sec. 11. Regional conservation partnership program.
- Sec. 12. Conservation reserve program.
- Sec. 13. Effect on existing law.

1 SEC. 2. DEFINITIONS.

2 Except as otherwise provided in this Act, in this Act:

3 (1) BASIN.—The term “Basin”—

4 (A) is limited to areas within the State of
5 New Mexico; and

6 (B) means each of—

7 (i) the Upper Rio Grande Basin;

8 (ii) the Middle Rio Grande Basin;

9 (iii) the Lower Rio Grande Basin;

10 (iv) the Lower Pecos River Basin;

11 (v) the Gila River Basin;

12 (vi) the Canadian River Basin;

13 (vii) the San Francisco River Basin;

14 and

15 (viii) the San Juan River Basin.

16 (2) DISTRICT.—The term “District” means the
17 Middle Rio Grande Conservancy District.

18 (3) PUEBLO.—The term “Pueblo” means each
19 of the following pueblos in the State:

20 (A) Cochiti.

21 (B) Santo Domingo.

22 (C) San Felipe.

1 (D) Santa Ana.

2 (E) Sandia.

3 (F) Isleta.

4 (4) RIO GRANDE COMPACT.—The term “Rio
5 Grande Compact” means the compact approved by
6 Congress under the Act of May 31, 1939 (53 Stat.
7 785, chapter 155).

8 (5) SECRETARIES.—The term “Secretaries”
9 means—

10 (A) the Administrator of the Environ-
11 mental Protection Agency;

12 (B) the Secretary of Commerce; and

13 (C) the Secretary of the Interior.

14 (6) SECRETARY.—The term “Secretary” means
15 the Secretary of the Interior.

16 (7) STATE.—The term “State” means the State
17 of New Mexico.

18 **SEC. 3. WATER ACQUISITION PROGRAM.**

19 (a) IN GENERAL.—The Secretary, acting through the
20 Commissioner of Reclamation, shall carry out in the Ba-
21 sins a water acquisition program in coordination with the
22 other appropriate Federal agencies, State agencies, and
23 non-Federal stakeholders, under which the Secretary
24 shall—

1 (1) make acquisitions of water in the Basins by
2 lease or purchase of water rights or contractual enti-
3 tlements from willing lessors or sellers, consistent
4 with section 8 of the Act of June 17, 1902 (43
5 U.S.C. 383), the Rio Grande Compact, and applica-
6 ble State law relating to the acquisition and admin-
7 istration of water rights; and

8 (2) take any other actions, consistent with sec-
9 tion 8 of the Act of June 17, 1902 (43 U.S.C. 383),
10 the Rio Grande Compact, and applicable State law,
11 that the Secretary determines would achieve the pur-
12 poses of the water acquisition program described in
13 subsection (b).

14 (b) PURPOSES.—The purposes of the water acquisi-
15 tion program are—

16 (1) to enhance stream flow to benefit fish and
17 wildlife (including endangered species), water qual-
18 ity, and river ecosystem restoration in the Basins;
19 and

20 (2) to enhance stewardship and conservation of
21 working land, water, and watersheds in the Basins,
22 consistent with the purpose described in paragraph
23 (1).

24 (c) COORDINATION.—To assist in developing and ad-
25 ministering the program, the Secretary may provide funds

1 to a federally established nonprofit entity with particular
2 expertise in western water transactions.

3 (d) DISTRICT PROJECTS.—Subject to the Rio Grande
4 Compact and applicable State law, the Secretary may de-
5 velop programs to provide—

6 (1) cost-share assistance to the District or agri-
7 cultural producers and irrigators in the District for
8 making irrigation system improvements and increase
9 system efficiency;

10 (2) incentives to the District for the establish-
11 ment of a water leasing program from willing lessors
12 for agricultural producers and irrigators in the Dis-
13 trict to temporarily lease pre-1907 water rights (in-
14 stead of permanent severance from irrigable lands)
15 for the purpose of providing benefits to species listed
16 under the Endangered Species Act of 1973 (16
17 U.S.C. 1531 et seq.) and other river ecosystem bene-
18 fits; and

19 (3) cost-share assistance to the District to im-
20 plement infrastructure or operational changes that
21 will allow for effective management of a leasing pro-
22 gram, while maintaining adequate water deliveries to
23 other agricultural producers and irrigators.

1 **SEC. 4. WATER CONSERVATION.**

2 (a) IN GENERAL.—The Secretary, in cooperation
 3 with the District and in consultation with the Pueblos,
 4 may provide funding and technical assistance for the in-
 5 stallation of metering and measurement devices and the
 6 construction of check structures on irrigation diversions,
 7 canals, laterals, ditches, and drains—

8 (1) to ensure the conservation and efficient use
 9 of water within the District by—

10 (A) reducing actual consumptive use; or

11 (B) not increasing the use of water; and

12 (2) to improve the measurement and allocation
 13 of water acquired through the water acquisition pro-
 14 gram established under section 3.

15 (b) RIO GRANDE, SAN ACACIA AND ISLETA
 16 REACHES.—

17 (1) IN GENERAL.—The Secretary shall provide
 18 for development of a comprehensive plan for the San
 19 Acacia and Isleta reaches to plan, design, construct
 20 and prioritize projects that balance river mainte-
 21 nance, water availability, use, and delivery, and eco-
 22 system benefits, including—

23 (A) planning, permitting, and construction
 24 of a pumping station at Bosque del Apache Na-
 25 tional Wildlife Refuge for the purpose of more
 26 efficiently using water to provide—

1 (i) a stable supply for the refuge; and
2 (ii) an efficient and reliable supply of
3 water to the Rio Grande for the benefit of
4 the endangered silvery minnow and South-
5 western willow flycatcher;

6 (B) planning, permitting, and construction
7 of a river channel realignment project near the
8 Rio Grande mile-83 for the purpose addressing
9 river channel aggradation while maintaining
10 floodplain connectivity;

11 (C) planning, permitting, and construction
12 of a controlled outlet for the low flow convey-
13 ance channel to the Rio Grande between Fort
14 Craig, New Mexico and Rio Grande mile-60 for
15 the purpose of water use and delivery, enhance-
16 ment and development of habitat areas, and
17 possible creation of a single-channel river eco-
18 system; and

19 (D) development of a Lower Reach Plan—

20 (i) to identify additional projects and
21 maintenance activities with water use, sedi-
22 ment management, and delivery and eco-
23 system benefits; and

24 (ii) to prioritize implementation of all
25 projects and activities.

1 (2) PUBLIC PARTICIPATION.—In carrying out
 2 this subsection, the Secretary shall provide a process
 3 for public participation and comment during plan
 4 development and alternative analysis.

5 **SEC. 5. MIDDLE RIO GRANDE PEAK FLOW RESTORATION.**

6 (a) TEMPORARY DEVIATION.—During the 5-year pe-
 7 riod beginning on the date of enactment of this Act, the
 8 Secretary of the Army shall continue the temporary devi-
 9 ation in the operation of Cochiti Lake and Jemez Canyon
 10 Dam, that was initiated in 2009 and terminated in 2013,
 11 to continue to evaluate the benefits of the deviation.

12 (b) FEASIBILITY STUDY AND REPORT.—Not later
 13 than 1 year after the date of enactment of this Act, the
 14 Secretary of the Army and the Secretary shall—

15 (1) conduct a feasibility study to address
 16 Cochiti Dam operation limitations on the timing,
 17 magnitude, and duration of flows that support feder-
 18 ally listed species in the Middle Rio Grande, con-
 19 sistent with subsection (c); and

20 (2) submit to Congress a feasibility report on
 21 the reauthorization of the purposes of Cochiti Dam.

22 (c) GOALS.—The deviation described in subsection
 23 (a) shall provide for the detention and release of native
 24 Rio Grande water and San Juan-Chama Project water
 25 with the goals of—

1 (1) restoring natural river processes to the Rio
2 Grande, including a spring peak flow to the Rio
3 Grande;

4 (2) increasing the spawning and recruitment of
5 endangered Rio Grande silvery minnows;

6 (3) creating overbanking flows that are nec-
7 essary—

8 (A) to maintain a healthy bosque; and

9 (B) to support habitat for the South-
10 western willow flycatcher and other wildlife;

11 (4) maintaining channel capacity; and

12 (5) increasing water operational flexibility and
13 efficiencies in meeting irrigation and municipal and
14 industrial purposes, if the increased water oper-
15 ational flexibility and efficiencies enhance the goals
16 described in paragraphs (1) and (4).

17 (d) MONITORING.—The Secretary of the Army, in co-
18 operation with the Secretary and other Federal and non-
19 Federal stakeholders shall—

20 (1) monitor the environmental effects, benefits,
21 and results of the deviation mandated under this
22 section; and

23 (2) compile any data necessary to evaluate the
24 need for further amendment to the authorizations

1 and water control manuals for Cochiti Lake or
2 Jemez Canyon Dam.

3 (e) APPROVAL REQUIRED.—Before implementing the
4 proposed deviation under this section, as required by the
5 applicable water control manuals, the Secretary of the
6 Army shall first obtain approval from—

- 7 (1) Pueblo de Cochiti;
- 8 (2) Pueblo of Santa Ana; and
- 9 (3) the Rio Grande Compact Commission.

10 (f) REPORTS.—The Secretary of the Army shall pre-
11 pare and submit to Congress—

- 12 (1) for each year in which the deviations are
13 being carried out under this section, annual reports
14 that describe the data compiled under subsection
15 (d)(2); and

- 16 (2) at the end of the period described in sub-
17 section (a), a final, cumulative report that summa-
18 rizes the data obtained during that period.

19 **SEC. 6. NATIONAL ACADEMY OF SCIENCES STUDY.**

20 (a) DEFINITION OF BASIN.—

- 21 (1) IN GENERAL.—In this section, the term
22 “basin” means the Rio Grande and the tributaries
23 of the Rio Grande between—

- 24 (A) the headwaters of the Rio Grande and
25 the Rio Chama in the State of Colorado; and

1 (B) Elephant Butte Reservoir in the State.

2 (2) EXCLUSIONS.—In this section, the term
3 “basin” does not include Elephant Butte Reservoir,
4 Caballo Dam, or any portion of the Rio Grande or
5 the tributaries of the Rio Grande downstream of
6 Elephant Butte Reservoir.

7 (b) STUDY.—Not later than 60 days after the date
8 of enactment of this Act, the Secretary of the Army and
9 the Secretary shall enter into an arrangement with the
10 National Academy of Sciences to carry out a study on
11 water and reservoir management and operation issues in
12 the basin (including the Heron, El Vado, Abiquiu, Cochiti,
13 and Jemez Canyon Dams and Reservoirs), which shall in-
14 clude—

15 (1) an evaluation of existing basin reservoir au-
16 thorizations and legal requirements;

17 (2) a summary of—

18 (A) the physical-hydrologic understanding
19 of existing basin reservoir operations; and

20 (B) any potential constraints on basin res-
21 ervoirs in light of climate change projections;

22 (3) an identification of opportunities to opti-
23 mize water storage and management to benefit the
24 basin ecosystem, irrigators and municipal users, and
25 to promote water conservation through reauthoriza-

tion of, reoperation of, regulation of, or physical improvements to the reservoirs;

(4) an evaluation of the physical-hydrologic feasibility of the identified future basin reservoir management scenarios;

(5) an identification of water use, supply, and accounting impacts to other stakeholders in the State;

(6) consideration of operations such as—

(A) the storage of supplemental water acquired by and under the control of the Bureau of Reclamation;

(B) the carryover storage of San Juan-Chama Project contract water;

(C) the Pueblo Prior and Paramount operation water;

(D) changes in timing of water released to offset municipal pumping;

(E) changes in the timing of storage and release of floodwaters;

(F) the reduction of evaporative losses from basin reservoirs;

(G) conservation of water resulting from irrigation operation changes by non-Indian and Pueblo irrigators;

1 (H) the impacts of management and oper-
2 ations on recreation and hydropower;

3 (I) the impacts of management and oper-
4 ations on the basin ecosystem and the habitats
5 that support species listed under the Endan-
6 gered Species Act of 1973 (16 U.S.C. 1531 et
7 seq.); and

8 (J) any other factors the Academy deter-
9 mines to be necessary for purposes of fully eval-
10 uating opportunities to achieve greater water
11 conservation, drought resiliency, and ecological
12 health in the basin; and

13 (7) recommendations for future management
14 scenarios and measures that Congress could take
15 with respect to the basin, consistent with all applica-
16 ble law, including the Act of June 17, 1902 (43
17 U.S.C. 383), and the Rio Grande Compact to assist
18 the agencies in establishing more flexible operating
19 procedures to improve the performance of basin res-
20 ervoir operations in accommodating multiple pur-
21 poses.

22 (c) COSPONSORS.—The Secretary of the Army and
23 the Secretary may solicit cosponsors for the study under
24 subsection (b), as appropriate, including State or private
25 organizations.

1 (d) PUBLIC AVAILABILITY OF STUDY.—On the date
2 on which the National Academy of Sciences completes the
3 study under this section, the National Academy of
4 Sciences shall make available to the public the results of
5 the study.

6 (e) REPORT.—Not later than 2 years after the date
7 of enactment of this Act, the National Academy of
8 Sciences shall submit to the Secretary of the Army and
9 the Secretary a report that contains a summary of the
10 results of the study conducted under this section.

11 **SEC. 7. EMERGENCY FUNDING.**

12 (a) FINANCIAL ASSISTANCE.—

13 (1) IN GENERAL.—Financial assistance may be
14 made available under the Reclamation States Emer-
15 gency Drought Relief Act of 1991 (43 U.S.C. 2201
16 et seq.), title XII of the Food Security Act of 1985
17 (16 U.S.C. 3801 et seq.), and any other applicable
18 Federal law (including regulations), to each applica-
19 ble program at the discretion of the Secretaries for
20 eligible water projects to assist western States and
21 tribal governments to address drought-related im-
22 pacts to water supplies or any other immediate
23 water-related crisis or conflict.

24 (2) ADDITIONAL AVAILABILITY.—Financial as-
25 sistance may be made available under this section to

1 organizations and entities with water delivery au-
2 thority that are engaged in collaborative processes to
3 restore the environment or are part of a basin-wide
4 solution for restoration.

5 (b) TYPES OF ASSISTANCE.—Assistance under sub-
6 section (a) may include a range of projects, including—

7 (1) the installation of pumps, temporary bar-
8 riers, or operable gates for water diversion and fish
9 protection;

10 (2) the installation of drought-relief ground-
11 water wells for Indian tribes and in wildlife refuges
12 and other areas;

13 (3) the acquisition or assistance in the acquisi-
14 tion of water from willing sellers to enhance stream
15 flow for the benefit of fish and wildlife (including en-
16 dangered species), water quality, river ecosystem res-
17 toration, and other beneficial purposes, to be carried
18 out in accordance with the water acquisition pro-
19 gram established under section 3;

20 (4) agricultural and urban conservation and ef-
21 ficiency projects;

22 (5) exchanges with any water district willing to
23 provide water to meet the emergency water needs of
24 other water districts in return for the delivery of

1 equivalent quantities of water later that year or in
2 future years;

3 (6) maintenance of cover crops to prevent pub-
4 lic health impacts from severe dust storms;

5 (7) emergency pumping projects for critical
6 health and safety purposes;

7 (8) activities to reduce water demand consistent
8 with a comprehensive program for environmental
9 restoration and settlement of water rights claims;

10 (9) the use of new or innovative on-farm water
11 conservation technologies or methods that may—

12 (A) assist in sustaining permanent crops in
13 areas with severe water shortages; and

14 (B) make water available for other bene-
15 ficial uses;

16 (10) activities that protect, restore, or enhance
17 fish and wildlife habitat or otherwise improve envi-
18 ronmental conditions, including water quantity or
19 quality concerns and improved fish passage;

20 (11) activities reducing or preventing ground-
21 water depletion or promoting groundwater recharge;

22 (12) technical assistance to improve existing ir-
23 rigation practices to provide water supply benefits;

1 (13) the investigation of, and pilot projects for,
2 brackish water development and aquifer storage and
3 recovery;

4 (14) the lining of irrigation ditches and canals
5 to reduce water loss and improve efficiency;

6 (15) assistance to municipal water management
7 entities for water supply planning in preparation for
8 and in response to dry, critically dry, and below nor-
9 mal water years, including—

10 (A) hydrological forecasting;

11 (B) identification of alternative water sup-
12 ply sources; and

13 (C) guidance on potential water transfer
14 partners; and

15 (16) any other assistance the Secretary deter-
16 mines to be necessary to increase available water
17 supplies, maintain the health of river ecosystems, or
18 mitigate drought impacts.

19 **SEC. 8. SECURE WATER ACT REAUTHORIZATION.**

20 Section 9504(a) of the Omnibus Public Land Man-
21 agement Act of 2009 (42 U.S.C. 10364(a)) is amended—

22 (1) in paragraph (1)(H)—

23 (A) in clause (i), by striking “or” at the
24 end;

1 (B) in clause (ii), by striking the period at
 2 the end and inserting “; or”; and

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

4 “(iii) to plan for or address the im-
 5 pacts of drought.”; and

6 (2) in paragraph (3)(E), by adding at the end
 7 the following:

8 “(v) AUTHORITY OF COMMIS-
 9 SIONER.—The Commissioner of Reclama-
 10 tion may, at the discretion of the Commis-
 11 sioner, waive any cost-share require-
 12 ments.”.

13 **SEC. 9. RECLAMATION STATES EMERGENCY DROUGHT RE-**
 14 **LIEF ACT REAUTHORIZATION.**

15 Section 301 of the Reclamation States Emergency
 16 Drought Relief Act of 1991 (43 U.S.C. 2241) is amended
 17 by striking “2017” and inserting “2022”.

18 **SEC. 10. RIO GRANDE PUEBLO IRRIGATION INFRASTRUC-**
 19 **TURE REAUTHORIZATION.**

20 Section 9106 of the Omnibus Public Land Manage-
 21 ment Act of 2009 (Public Law 111–11; 123 Stat. 1304)
 22 is amended—

23 (1) in subsection (c)(4), by striking “2 years
 24 after the date of enactment of this Act” and insert-
 25 ing “December 31, 2018”; and

1 (2) in subsection (g)(2), by striking “2010
2 through 2019” and inserting “2017 through 2025”.

3 **SEC. 11. REGIONAL CONSERVATION PARTNERSHIP PRO-**
4 **GRAM.**

5 The Secretary of Agriculture may allocate financial
6 assistance made available under subtitle I of title XII of
7 the Food Security Act of 1985 (16 U.S.C. 3871 et seq.)
8 to establish special conservation initiatives at the local,
9 State, or regional level to assist producers in implementing
10 eligible activities on agricultural land in the western States
11 for the purposes of—

12 (1) mitigating the effects of drought on agricul-
13 tural production and the environment;

14 (2) improving water quality and quantity, in-
15 cluding reducing groundwater depletion;

16 (3) restoring, enhancing, and preserving fish
17 and wildlife habitat; and

18 (4) promoting innovative and collaborative con-
19 servation tools and approaches.

20 **SEC. 12. CONSERVATION RESERVE PROGRAM.**

21 (a) CONSERVATION PRIORITY AREAS.—Section
22 1231(f) of the Food Security Act of 1985 (16 U.S.C.
23 3831(f)) is amended—

24 (1) in paragraph (2), by striking “or” and all
25 that follows through the period at the end and in-

1 serting “, water quantity, or habitat impacts related
2 to agricultural production activities.”;

3 (2) in paragraph (3), by striking “or” and all
4 that follows through the period at the end and in-
5 serting “, water quantity, or habitat impacts related
6 to agricultural production activities.”; and

7 (3) in paragraph (4), by striking “water quality
8 and habitat benefits” and inserting “water quality,
9 water quantity, and habitat benefits”.

10 (b) SPECIAL CONSERVATION RESERVE ENHANCE-
11 MENT PROGRAM.—Section 1234(g)(2)(B) of the Food Se-
12 curity Act of 1985 (16 U.S.C. 3834(g)(2)(B)) is amended
13 by inserting “, including improving water conservation and
14 drought mitigation” before the period at the end.

15 **SEC. 13. EFFECT ON EXISTING LAW.**

16 (a) IN GENERAL.—An action taken by any of the
17 Secretaries or another entity under this Act or an amend-
18 ment made by this Act shall comply with applicable State
19 laws in effect on the date of enactment of this Act, includ-
20 ing a law described in subsection (b).

21 (b) STATE LAW.—Nothing in this Act or an amend-
22 ment made by this Act affects, is intended to affect, or
23 interferes with a law of the State relating to the control,
24 appropriation, use, or distribution of water, or any vested
25 right acquired under the law.

1 (c) RIO GRANDE COMPACT.—Nothing in this Act or
2 an amendment made by this Act affects or is intended to
3 affect or interfere with any obligation of a State under
4 the Rio Grand Compact or any litigation related to the
5 Rio Grande Compact.

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