

115TH CONGRESS
1ST SESSION

S. 664

To approve the settlement of the water rights claims of the Navajo Nation in Utah, to authorize construction of projects in connection therewith, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 15, 2017

Mr. HATCH introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

A BILL

To approve the settlement of the water rights claims of the Navajo Nation in Utah, to authorize construction of projects in connection therewith, 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 Utah Water
5 Rights Settlement Act of 2017”.

6 **SEC. 2. PURPOSES.**

7 The purposes of this Act are—

1 (1) to eliminate controversy over the quantifica-
2 tion, allocation, distribution, and use of all waters
3 derived by or through the Navajo Nation in the
4 State of Utah pursuant to all legal theories;

5 (2) to recognize and protect the reserved water
6 rights of the Navajo Nation and all those possessing
7 water rights derived by or through the Navajo Na-
8 tion;

9 (3) to protect State appropriative water rights;

10 (4) to provide Navajo and non-Indian citizens
11 in the Upper Colorado River Basin in Utah with cer-
12 tainty regarding water rights, water management,
13 and administration that will allow them to plan for
14 their futures;

15 (5) to approve, ratify, and confirm the agree-
16 ment;

17 (6) to authorize and direct the Secretary to exe-
18 cute and perform duties under the agreement and
19 this Act;

20 (7) to authorize the actions and appropriations
21 necessary for the United States to fulfill its legal
22 and trust obligations to the tribes as provided in the
23 agreement and this Act;

24 (8) to provide sufficient water supplies and fa-
25 cilities for delivery of those supplies needed to de-

1 velop and maintain the Navajo Reservation in Utah
2 as a permanent homeland for the Navajo Nation and
3 its members; and

4 (9) to promote the economic development and
5 economic self-sufficiency of the Navajo Nation in
6 Utah.

7 **SEC. 3. FINDINGS.**

8 Congress finds the following:

9 (1) It is the policy of the United States, in
10 keeping with the trust responsibility of the United
11 States to Indian tribes, to settle Indian water rights
12 claims whenever possible without lengthy and costly
13 litigation.

14 (2) The water rights settlements described in
15 paragraph (1) typically require congressional review
16 and approval.

17 (3) The Navajo Nation and the United States,
18 acting as trustee for the Navajo Nation and allottees
19 of the Navajo Nation, claim the right to an
20 unquantified amount of water from the San Juan
21 River in the Upper Colorado River Basin in Utah.

22 (4) Consistent with the policy of the United
23 States, this Act settles the water rights claims of the
24 Navajo Nation and the United States within the
25 State of Utah, acting as trustee for the Navajo Na-

1 tion and allottees of the Navajo Nation, without liti-
2 gation.

3 (5) This Act settles the water rights claims of
4 the Navajo Nation and the United States within the
5 State of Utah, acting as trustee for the Navajo Na-
6 tion and allottees of the Navajo Nation, by providing
7 a permanent source of water for the Navajo Nation
8 in Utah, a water settlement fund to be used for the
9 construction of drinking water infrastructure, and
10 the financing of other modes of water delivery on the
11 Navajo Nation in Utah in exchange for limiting the
12 legal exposure and litigation expenses of the United
13 States and the State of Utah.

14 **SEC. 4. DEFINITIONS.**

15 (1) AFY.—The term “afy” means acre-feet per
16 year.

17 (2) AGREEMENT.—The term “agreement”
18 means the document entitled “Navajo Utah Water
19 Rights Settlement Agreement” and the exhibits at-
20 tached thereto.

21 (3) ALLOTTEE.—The term “allottee” means in-
22 dividual members of the Navajo Nation or other In-
23 dian tribe for whom the United States holds in trust
24 title to an allotment on the Navajo Nation Reserva-
25 tion in Utah.

1 (4) ALLOTMENT.—The term “allotment”
2 means—

3 (A) a parcel of land located within the
4 Reservation; or

5 (B) Bureau of Indian Affairs parcel num-
6 ber 792 634511 in San Juan County, Utah,
7 consisting of 160 acres located in Township
8 41S, Range 20E, sections 11, 12, and 14, origi-
9 nally set aside by the United States for the ben-
10 efit of an individual identified in the allotting
11 document as a Navajo Indian and held in trust
12 by the United States.

13 (5) ENFORCEABILITY DATE.—The term “en-
14 forceability date” means the date on which the Sec-
15 retary publishes in the Federal Register the state-
16 ment of findings described in section 9(a) of this
17 Act.

18 (6) GENERAL STREAM ADJUDICATION.—The
19 term “general stream adjudication” means the adju-
20 dication pending, as of the date of enactment, in the
21 Seventh Judicial District in and for Grand County,
22 State of Utah, commonly known as the “South-
23 eastern Colorado River General Adjudication”, Civil
24 No. 810704477, conducted pursuant to State law.

1 (7) INDIAN HEALTH SERVICE.—The term “In-
 2 dian Health Service” means the United States In-
 3 dian Health Service.

4 (8) INJURY TO WATER RIGHTS.—The term “in-
 5 jury to water rights” means the loss, deprivation,
 6 impairment, or diminution of water rights.

7 (9) MEMBER.—The term “member” means any
 8 person who is a duly enrolled member of the Navajo
 9 Nation.

10 (10) NAVAJO NATION OR NATION.—The term
 11 “Navajo Nation” or “Nation” means a body politic
 12 and federally recognized Indian nation, as published
 13 on the list established under section 104(a) of the
 14 Federally Recognized Indian Tribe List Act of 1994
 15 (25 U.S.C. 5131(a)), also known variously as the
 16 “Navajo Nation”, the “Navajo Nation of Arizona,
 17 New Mexico, & Utah”, and the “Navajo Nation of
 18 Indians” and other similar names, and includes all
 19 bands of Navajo Indians and chapters of the Navajo
 20 Nation and all divisions, agencies, officers, and
 21 agents thereof.

22 (11) NAVAJO WATER DEVELOPMENT
 23 PROJECTS.—The term “Navajo water development
 24 projects” means the projects constructed, in whole

1 or in part, using monies from the Navajo Water De-
2 velopment Fund.

3 (12) OM&R.—The term “OM&R” means oper-
4 ation, maintenance, and replacement.

5 (13) PARTIES.—The term “parties” means the
6 Navajo Nation, the State, and the United States.

7 (14) RECLAMATION.—The term “Reclamation”
8 means the United States Bureau of Reclamation.

9 (15) RESERVATION.—The term “Reservation”
10 means, for purposes of this agreement, the Reserva-
11 tion of the Navajo Nation as in existence on the date
12 of enactment of this Act and depicted on the map
13 attached to the agreement as Exhibit A.

14 (16) SECRETARY.—The term “Secretary”
15 means the Secretary of the United States Depart-
16 ment of the Interior or a duly authorized representa-
17 tive thereof.

18 (17) STATE.—The term “State” means the
19 State of Utah and all officers, agents, departments,
20 and political subdivisions thereof.

21 (18) UNITED STATES.—The term “United
22 States” means the United States of America and all
23 departments, agencies, bureaus, officers, and agents
24 thereof.

1 (19) UNITED STATES ACTING IN ITS TRUST CA-
2 PACITY.—The term “United States acting in its
3 trust capacity” means the United States acting for
4 the benefit of the Navajo Nation or for the benefit
5 of allottees.

6 (20) WATER RIGHTS.—The term “water rights”
7 means rights under tribal, State, and Federal law to
8 divert, pump, impound, store, use, or reuse water
9 within the State.

10 **SEC. 5. RATIFICATION OF AGREEMENT.**

11 (a) APPROVAL BY CONGRESS.—Except to the extent
12 that any provision of the agreement conflicts with this Act,
13 Congress approves, ratifies, and confirms the agreement
14 (including any amendments to the agreement that are exe-
15 cuted to make the agreement consistent with this Act).

16 (b) EXECUTION BY SECRETARY.—The Secretary is
17 authorized and directed to promptly, and no later than
18 180 days from the date that this Act becomes law, execute
19 the agreement to the extent that the agreement does not
20 conflict with this Act, including—

21 (1) any exhibits to the agreement requiring the
22 signature of the Secretary; and

23 (2) any amendments to the agreement nec-
24 essary to make the agreement consistent with this
25 Act.

1 (c) AUTHORITY OF SECRETARY.—The Secretary may
2 carry out any action that the Secretary determines is nec-
3 essary or appropriate to implement the agreement and this
4 Act.

5 (d) ENVIRONMENTAL COMPLIANCE.—

6 (1) ENVIRONMENTAL COMPLIANCE.—The Sec-
7 retary shall comply with all aspects of the National
8 Environmental Policy Act of 1969 (42 U.S.C. 4321
9 et seq.), the Endangered Species Act of 1973 (16
10 U.S.C. 1531 et seq.), and other applicable Federal
11 environmental laws and regulations.

12 (2) EXECUTION OF THE AGREEMENT.—Execu-
13 tion of the agreement by the Secretary as provided
14 for in this Act shall not constitute a major Federal
15 action under the National Environmental Policy Act
16 of 1969 (42 U.S.C. 4321 et seq.).

17 (3) LEAD AGENCY.—Reclamation, or any
18 United States or Navajo Nation agency with an
19 intergovernmental agreement with the Secretary
20 pursuant to subsection (a) of section 6, is authorized
21 to be designated as the lead or joint lead agency
22 with respect to environmental compliance for the
23 Navajo water development projects.

1 **SEC. 6. AUTHORIZATION FOR CONSTRUCTION OF NAVAJO**
2 **WATER DEVELOPMENT PROJECTS.**

3 (a) IN GENERAL.—The Secretary, acting through the
4 Commissioner of Reclamation, shall plan, design, and con-
5 struct the water diversion, delivery, and conservation fea-
6 tures of the Navajo water development projects. The Sec-
7 retary is authorized to enter into intergovernmental agree-
8 ments with other United States, State, or Navajo Nation
9 agencies as necessary or appropriate to implement this
10 section.

11 (b) LEAD AGENCY.—Reclamation, or any Federal or
12 Navajo Nation agency with an intergovernmental agree-
13 ment with the Secretary pursuant to subsection (a), is au-
14 thorized to serve as the lead agency or joint lead agencies
15 with respect to any activity to plan, design, and construct
16 the water diversion, delivery, and conservation features of
17 any Navajo water development project to be constructed
18 by that agency.

19 (c) SCOPE.—The agreement and this Act contemplate
20 a comprehensive approach to addressing identified Res-
21 ervation water needs by providing funds for domestic and
22 municipal water supply and distribution infrastructure
23 and agricultural water conservation. To allow the Navajo
24 Nation flexibility in meeting the needs of its people over
25 time as both circumstances and technologies evolve, the
26 costs to meet Reservation water needs determined in the

1 studies identified in the agreement were used to establish
2 the dollar amount of the Navajo Water Development
3 Fund. To help ensure that water supply and distribution
4 systems constructed pursuant to the agreement and this
5 Act can be successfully developed and transitioned to be
6 user-supported systems, the agreement and this Act also
7 provide for a Navajo OM&R Trust Account.

8 (d) FINAL WATER SUPPLY SYSTEM PROJECTS.—

9 (1) DESIGN REVIEW.—Prior to beginning con-
10 struction activities for any water supply system as
11 described in the agreement and constructed pursu-
12 ant to this section, the Secretary shall review the de-
13 sign of the proposed Navajo water development
14 projects and perform value-engineering analyses.

15 (2) NEGOTIATION AND AGREEMENT WITH THE
16 NAVAJO NATION.—On the basis of the review de-
17 scribed in paragraph (1), the Secretary shall nego-
18 tiate and reach agreement with the Navajo Nation
19 regarding appropriate changes to the final design so
20 that the final design meets applicable industry
21 standards, as well as changes, if any, that would
22 allow the projects to be constructed for the amounts
23 made available under subsection (a) of section 7,
24 and improve the cost-effectiveness of the projects.

1 (e) NONREIMBURSABILITY OF COSTS.—All costs in-
 2 curred by the Secretary in carrying out this section shall
 3 be nonreimbursable.

4 (f) FUNDING.—

5 (1) FEDERAL OBLIGATION.—The total amount
 6 of obligations incurred by the Secretary for plan-
 7 ning, design, and construction of the Navajo water
 8 development projects in subsections (a) through (j)
 9 of this section shall not exceed \$198,300,000, except
 10 that the total amount of \$198,300,000 shall be in-
 11 creased or decreased, as appropriate, based on ordi-
 12 nary fluctuations from June 2014, in construction
 13 cost indices applicable to the types of construction
 14 involved in the design and construction of the Nav-
 15 ajo water development projects.

16 (2) STATE COST SHARE.—The State shall con-
 17 tribute \$8,000,000 payable to the Secretary for
 18 planning, design, and construction of the Navajo
 19 water development projects in installments in each
 20 of the 3 years following the execution of the agree-
 21 ment by the Secretary as provided for in subsection
 22 (b) of section 5.

23 (3) TRANSFERS TO NAVAJO OM&R ACCOUNT.—
 24 Monies made available for the Navajo water develop-
 25 ment projects but not used for that purpose may, at

1 the discretion of the Navajo Nation, be transferred
 2 to the Navajo OM&R Trust Account established by
 3 subsection (k).

4 (g) APPLICABILITY OF THE INDIAN SELF-DETER-
 5 MINATION ACT.—

6 (1) IN GENERAL.—At the request of the Navajo
 7 Nation, and in accordance with the Indian Self-De-
 8 termination and Education Assistance Act (25
 9 U.S.C. 5301 et seq.), the Secretary shall enter into
 10 one or more agreements with the Navajo Nation to
 11 carry out the activities authorized by this section.

12 (2) OVERSIGHT COSTS.—Reclamation, or any
 13 Federal agency with an intergovernmental agree-
 14 ment with the Secretary pursuant to subsection (a),
 15 and the Navajo Nation shall negotiate the cost of
 16 any oversight activities carried out by such agencies
 17 for each agreement under this section, provided that
 18 the total cost for that oversight shall not exceed 4
 19 percent of the total project costs.

20 (h) CONVEYANCE OF TITLE TO NAVAJO WATER DE-
 21 VELOPMENT PROJECTS.—The Secretary shall convey title
 22 to those Navajo water development projects described as
 23 water supply and water distribution systems in the agree-
 24 ment and authorized in this section to the Navajo Nation
 25 when construction of each project is complete and the

1 project is operating and, if applicable, delivering potable
2 water.

3 (1) LIMITATION OF LIABILITY.—Effective on
4 the date of the conveyance authorized by this sub-
5 section, the United States shall not be held liable by
6 any court for damages arising out of any act, omis-
7 sion, or occurrence relating to the facilities conveyed
8 under this subsection, other than damages caused by
9 any intentional act or act of negligence committed
10 by the United States, or by employees or agents of
11 the United States, prior to the date of conveyance.

12 (2) OM&R OBLIGATION OF THE UNITED
13 STATES AFTER CONVEYANCE.—The United States
14 shall have no obligation to pay for the operation,
15 maintenance, or replacement costs of any Navajo
16 water development project beginning on the date on
17 which—

18 (A) title to the project is conveyed to the
19 Navajo Nation; and

20 (B) the amounts required to be deposited
21 in the Navajo OM&R Trust Account pursuant
22 to subsection (b) of section 7 have been depos-
23 ited in that account.

24 (i) TECHNICAL ASSISTANCE.—The Secretary shall
25 provide technical assistance to prepare the Navajo Nation

1 for operation of the Navajo water development projects,
2 including operation and management training.

3 (j) PROJECT MANAGEMENT COMMITTEE.—

4 (1) IN GENERAL.—The Secretary shall facilitate
5 the formation of a project management committee to
6 be composed of representatives of—

7 (A) the Navajo Nation;

8 (B) Reclamation, or any Federal agency
9 with an intergovernmental agreement with the
10 Secretary pursuant to subsection (a), the Bu-
11 reau of Indian Affairs, and the Indian Health
12 Service, as appropriate; and

13 (C) the State.

14 (2) DUTIES.—The project management com-
15 mittee shall—

16 (A) review cost factors and budgets for
17 construction, operation, and maintenance activi-
18 ties for the Navajo water development projects;

19 (B) improve management of the planning,
20 design, construction, and operation of the Nav-
21 ajo water development projects through en-
22 hanced communication; and

23 (C) seek additional ways to reduce overall
24 costs for the Navajo water development
25 projects.

1 (k) NAVAJO OM&R TRUST ACCOUNT.—The United
 2 States shall establish a trust account in the Treasury of
 3 the United States for the operation, maintenance, and re-
 4 placement of the Navajo water development projects au-
 5 thorized to be constructed in this section and described
 6 in the agreement as water supply systems and water dis-
 7 tribution systems.

8 **SEC. 7. AUTHORIZATION OF APPROPRIATIONS.**

9 (a) NAVAJO WATER DEVELOPMENT FUND.—

10 (1) IN GENERAL.—There is authorized to be
 11 appropriated to the Secretary \$198,300,000 to plan,
 12 design, and construct the Navajo water development
 13 projects to remain available until expended.

14 (2) ADJUSTMENTS.—The amount under para-
 15 graph (1) shall be adjusted by such amounts—

16 (A) as are contributed by the State pursu-
 17 ant to subsection (f)(2) of section 6; and

18 (B) as may be required by reason of
 19 changes since June 2014 in construction costs,
 20 as indicated by engineering cost indices applica-
 21 ble to the types of construction involved.

22 (3) USE.—In addition to the uses authorized
 23 under paragraph (1), amounts made available under
 24 that paragraph may be used for the conduct of re-
 25 lated activities, to comply with Federal environ-

1 mental laws, or may be transferred to the Navajo
 2 OM&R Trust Account as provided in subsection
 3 (f)(3) of section 6.

4 (b) NAVAJO OM&R TRUST ACCOUNT.—

5 (1) AUTHORIZATION OF APPROPRIATIONS.—For
 6 the purpose of assisting the Navajo Nation with the
 7 expenses of operating, maintaining, and replacing
 8 the Navajo water development projects authorized to
 9 be constructed in section 6 and described as water
 10 supply systems and water distribution systems in the
 11 agreement, there is authorized to be appropriated
 12 \$11,100,000 to be deposited in the Navajo OM&R
 13 trust account established pursuant to subsection (k)
 14 of section 6, which funds shall be retained until ex-
 15 pended.

16 (2) MANAGEMENT OF ACCOUNT.—The Sec-
 17 retary shall manage the account in accordance with
 18 the American Indian Trust Fund Management Re-
 19 form Act of 1994 (25 U.S.C. 4001 et seq.), and
 20 shall invest amounts deposited in the account in ac-
 21 cordance with that Act and—

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

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

1 (3) FLUCTUATION IN COSTS.—The amount au-
2 thorized to be appropriated in paragraph (1) shall be
3 increased or decreased, as appropriate, by such
4 amounts as may be justified by reason of ordinary
5 fluctuations in costs occurring after June 2014 as
6 indicated by applicable engineering cost indices.

7 (4) AVAILABILITY OF MONIES.—Monies appro-
8 priated to and deposited in the Navajo OM&R Trust
9 Account, and investment earnings thereon, shall be
10 made available by the Secretary to the Navajo Na-
11 tion beginning on the date on which title to and
12 OM&R responsibility for the Navajo water develop-
13 ment projects is transferred to the Navajo Nation
14 pursuant to subsection (h) of section 6 until such
15 monies are exhausted.

16 (c) PROGRAMMATIC COSTS.—There is authorized to
17 be appropriated \$1,000,000 to assist the Nation with pro-
18 grammatic costs associated with the settlement, including
19 the preparation of a hydrographic survey of historic and
20 existing water uses on the Reservation.

21 (d) OFFSET.—To the extent necessary, the Secretary
22 shall offset any direct spending authorized and any inter-
23 est earned on amounts expended pursuant to this section
24 using such additional amounts as may be made available
25 to the Secretary for the applicable fiscal year.

1 **SEC. 8. RESERVED WATER RIGHTS.**

2 (a) QUANTIFICATION.—The Navajo Nation shall have
3 the right to use water from water sources located within
4 Utah and adjacent to or encompassed within the bound-
5 aries of the Reservation resulting in depletions not to ex-
6 ceed 81,500 acre-feet annually as described in the agree-
7 ment.

8 (b) RIGHTS OF MEMBERS AND ALLOTTEES.—Any
9 entitlement to water of any member or any allottee for
10 lands within the Reservation or for any allotment shall be
11 satisfied out of the Navajo Nation water rights recognized
12 in the agreement and this Act.

13 (c) HELD IN TRUST.—The water rights of the Navajo
14 Nation and the allottees, all as described in the agreement
15 and as adjudicated in the decree, shall be held in trust
16 by the United States on behalf of the Navajo Nation and
17 allottees, respectively.

18 (d) FORFEITURE AND ABANDONMENT.—The water
19 rights of the Navajo Nation and the allottees, all as de-
20 scribed in the agreement and adjudicated in the decree,
21 shall not be subject to loss by non-use, forfeiture, aban-
22 donment, or other operation of law.

23 **SEC. 9. CONDITIONS PRECEDENT.**

24 (a) IN GENERAL.—The waivers and release contained
25 in section 10 of this Act shall become effective as of the

1 date the Secretary causes to be published in the Federal
2 Register a statement of findings that—

3 (1) to the extent that the agreement conflicts
4 with the Act, the agreement has been revised to con-
5 form with this Act;

6 (2) the agreement, so revised, including waivers
7 and releases of claims set forth in section 10, has
8 been executed by the parties, including the United
9 States;

10 (3) Congress has fully appropriated, or the Sec-
11 retary has provided from other authorized sources,
12 all funds authorized by subsections (a) and (b) of
13 section 7;

14 (4) the State has enacted any necessary legisla-
15 tion and provided the funding required under the
16 agreement and subsection (f)(2) of section 6 of this
17 Act; and

18 (5) the court has entered a final or interlocu-
19 tory decree that—

20 (A) confirms the water rights of the Nav-
21 ajo Nation;

22 (B) with respect to the water rights of the
23 Navajo Nation, is final as to all parties to the
24 general stream adjudication and from which no
25 further appeals may be taken; and

1 (C) the Secretary, in consultation with the
2 parties, has determined is consistent in all ma-
3 terial respects with the agreement and with the
4 proposed judgment and decree agreed to by the
5 parties to the agreement.

6 (b) EXPIRATION DATE.—If all the conditions prece-
7 dent described in subsection (a) have not been fulfilled to
8 allow the Secretary’s statement of findings to be published
9 in the Federal Register by October 31, 2026—

10 (1) the agreement and this Act, including waiv-
11 ers and releases of claims described in those docu-
12 ments, shall no longer be effective;

13 (2) any funds that have been appropriated pur-
14 suant to section 7 of this Act but not expended shall
15 immediately revert to the general fund of the United
16 States; and

17 (3) any funds contributed by the State pursu-
18 ant to subsection (f)(2) of section 6 of this Act but
19 not expended shall be returned immediately to the
20 State.

21 (c) EXTENSION.—The expiration date set forth in
22 subsection (b) may be extended if the Navajo Nation, the
23 State, and the United States (acting through the Sec-
24 retary) agree that an extension is reasonably necessary.

1 **SEC. 10. WAIVERS AND RELEASES.**

2 (a) CLAIMS BY THE NAVAJO NATION AND THE
3 UNITED STATES.—In return for confirmation of the Nav-
4 ajo Nation's federally reserved water rights, the water
5 rights or rights to use water of allottees in Utah, and other
6 benefits set forth in the agreement and this Act, and in
7 return for a waiver of claims by the State against the Na-
8 tion and the United States acting in its trust capacity,
9 the Nation and the United States acting in its trust capac-
10 ity hereby waive and release—

11 (1) all claims for water rights within Utah
12 based on any and all legal theories that the Navajo
13 Nation, allottees, or the United States acting in its
14 trust capacity, asserted, or could have asserted, at
15 any time in any proceeding, including to the general
16 stream adjudication, up to and including the en-
17 forceability date, except to the extent that such
18 rights are recognized in the agreement and this Act;
19 and

20 (2) all claims for damages, losses, or injuries to
21 water rights or claims of interference with, diversion,
22 or taking of water rights (including claims for injury
23 to lands resulting from such damages, losses, inju-
24 ries, interference with, diversion, or taking of water
25 rights) within Utah against the State, or any person,

1 entity, corporation, or municipality, that accrued at
2 any time up to and including the enforceability date.

3 (b) CLAIMS BY THE NAVAJO NATION AGAINST THE
4 UNITED STATES.—The Navajo Nation, on behalf of itself
5 and its members (other than members in their individual
6 capacity, including their capacity as allottees), shall exe-
7 cute a waiver and release of—

8 (1) all claims the Navajo Nation may have
9 against the United States relating in any manner to
10 claims for water rights in or water of Utah that the
11 United States acting in its trust capacity asserted,
12 or could have asserted, in any proceeding, including
13 the general stream adjudication;

14 (2) all claims the Navajo Nation may have
15 against the United States relating in any manner to
16 damages, losses, or injuries to water, water rights,
17 land, or other resources due to loss of water or
18 water rights (including damages, losses, or injuries
19 to hunting, fishing, gathering, or cultural rights due
20 to loss of water or water rights; claims relating to
21 interference with, diversion, or taking of water; or
22 claims relating to failure to protect, acquire, replace,
23 or develop water or water rights) within Utah that
24 first accrued at any time up to and including the en-
25 forceability date;

1 (3) all claims the Nation may have against the
 2 United States relating in any manner to the litiga-
 3 tion of claims relating to the Nation's water rights
 4 in proceedings in Utah; and

5 (4) all claims the Nation may have against the
 6 United States relating in any manner to the negotia-
 7 tion, execution, or the adoption of the agreement or
 8 this Act.

9 (c) CLAIMS BY THE STATE AGAINST THE NAVAJO
 10 NATION AND THE UNITED STATES.—Except as provided
 11 in subsection (e), the State waives and releases any claims
 12 that the State may have against the Navajo Nation,
 13 allottees, and the United States acting in its trust capac-
 14 ity, under Federal, State, or other law for—

15 (1) all claims for injury to water rights result-
 16 ing from the diversion or use of water on or for—

17 (A) the Reservation;

18 (B) Navajo trust land in Utah;

19 (C) Navajo fee land in Utah; or

20 (D) allotments, arising from time immemo-
 21 rial through the enforceability date;

22 (2) all claims for injury to water rights arising
 23 after the enforceability date resulting from the diver-
 24 sion or use of water on or for—

25 (A) the Navajo Reservation;

1 (B) Navajo trust land in Utah;

2 (C) Navajo fee land in Utah; or

3 (D) allotments, in a manner not in viola-
4 tion of the agreement or applicable law; and

5 (3) all claims arising out of or related in any
6 manner to the negotiation or execution of the agree-
7 ment, or the negotiation or enactment of this Act.

8 (d) RESERVATION OF RIGHTS AND RETENTION OF
9 CLAIMS BY THE NAVAJO NATION AND THE UNITED
10 STATES.—Notwithstanding the waivers and releases au-
11 thorized in this Act, the Navajo Nation, and the United
12 States acting in its trust capacity, retain—

13 (1) all claims for injuries to and the enforce-
14 ment of the agreement and the final or interlocutory
15 decree entered in the general stream adjudication,
16 through such legal and equitable remedies as may be
17 available in the decree court or the Federal District
18 Court for the District of Utah;

19 (2) all rights to use and protect water rights ac-
20 quired after the enforceability date;

21 (3) all claims relating to activities affecting the
22 quality of water, including any claims under the
23 Comprehensive Environmental Response, Compensa-
24 tion, and Liability Act of 1980 (42 U.S.C. 9601 et
25 seq. (including claims for damages to natural re-

1 sources)), the Safe Drinking Water Act (42 U.S.C.
 2 300f et seq.), and the Federal Water Pollution Con-
 3 trol Act (33 U.S.C. 1251 et seq.), the regulations
 4 implementing those Acts, and the common law;

5 (4) all claims for water rights, and claims for
 6 injury to water rights, in States other than the State
 7 of Utah;

8 (5) all claims, including environmental claims,
 9 under any laws (including regulations and the com-
 10 mon law) relating to human health, safety, or the
 11 environment; and

12 (6) all rights, remedies, privileges, immunities,
 13 and powers not specifically waived and released pur-
 14 suant to the agreement and this Act.

15 (e) RESERVATION OF RIGHTS AND RETENTION OF
 16 CLAIMS BY THE STATE.—Notwithstanding the waivers of
 17 claims and releases described in this section, the State
 18 shall retain any right to—

19 (1) assert claims for the enforcement of the
 20 agreement and the final or interlocutory decree en-
 21 tered in the general stream adjudication, through
 22 such legal and equitable remedies as may be avail-
 23 able in the State decree court or the Federal District
 24 Court for the District of Utah;

1 (2) assert claims for injury to, and seek en-
2 forcement of, the State's rights under the judgment
3 and decree entered by the court in the general
4 stream adjudication;

5 (3) assert past, present, and future claims to
6 water that are subject to the general stream adju-
7 dication or other applicable law, and that are not in-
8 consistent with the agreement;

9 (4) assert any claims for injury to water rights
10 not specifically waived herein; and

11 (5) take any action including environmental ac-
12 tions, under any laws (including regulations and the
13 common law) relating to human health, safety, or
14 the environment.

15 (f) EFFECT OF SECTION.—Nothing in the agreement
16 or this Act—

17 (1) affects the ability of the United States act-
18 ing in its sovereign capacity to take actions author-
19 ized by law, including any laws relating to health,
20 safety, or the environment, including the Com-
21 prehensive Environmental Response, Compensation,
22 and Liability Act of 1980 (42 U.S.C. 9601 et seq.),
23 the Safe Drinking Water Act (42 U.S.C. 300f et
24 seq.), the Federal Water Pollution Control Act (33
25 U.S.C. 1251 et seq.), the Solid Waste Disposal Act

1 (42 U.S.C. 6901 et seq.), and the regulations imple-
 2 menting those laws;

3 (2) affects the ability of the United States to
 4 take actions in its capacity as trustee for any other
 5 Indian tribe or allottee;

6 (3) confers jurisdiction on any State court to—

7 (A) interpret Federal law regarding health,
 8 safety, or the environment or determine the du-
 9 ties of the United States or other parties pursu-
 10 ant to such Federal law; and

11 (B) conduct judicial review of Federal
 12 agency action; or

13 (4) modifies, conflicts with, preempts, or other-
 14 wise affects—

15 (A) the Boulder Canyon Project Act (43
 16 U.S.C. 617 et seq.);

17 (B) the Boulder Canyon Project Adjust-
 18 ment Act (54 Stat. 774, chapter 643);

19 (C) the Act of April 11, 1956 (commonly
 20 known as the “Colorado River Storage Project
 21 Act”) (43 U.S.C. 620 et seq.);

22 (D) the Act of September 30, 1968 (com-
 23 monly known as the “Colorado River Basin
 24 Project Act”) (82 Stat. 885);

1 (E) the Treaty between the United States
 2 of America and Mexico respecting utilization of
 3 waters of the Colorado and Tijuana Rivers and
 4 of the Rio Grande, signed at Washington Feb-
 5 ruary 3, 1944 (59 Stat. 1219);

6 (F) the Colorado River Compact of 1922,
 7 as approved by the Presidential Proclamation of
 8 June 25, 1929 (46 Stat. 3000); and

9 (G) the Upper Colorado River Basin Com-
 10 pact as consented to by the Act of April 6,
 11 1949 (63 Stat. 31, chapter 48).

12 (g) TOLLING OF CLAIMS.—

13 (1) IN GENERAL.—Each applicable period of
 14 limitation and time-based equitable defense relating
 15 to a claim described in this section shall be tolled for
 16 the period beginning on the date of enactment of
 17 this Act and ending on the enforceability date.

18 (2) EFFECT OF SUBSECTION.—Nothing in this
 19 subsection revives any claim or tolls any period of
 20 limitation or time-based equitable defense that ex-
 21 pired before the date of enactment of this Act.

22 (3) LIMITATION.—Nothing in this section pre-
 23 cludes the tolling of any period of limitations or any
 24 time-based equitable defense under any other appli-
 25 cable law.

1 **SEC. 11. MISCELLANEOUS PROVISIONS.**

2 (a) PRECEDENT.—Nothing in this Act establishes
3 any standard for the quantification or litigation of Federal
4 reserved water rights or any other Indian water claims of
5 any other Indian tribes in any other judicial or administra-
6 tive proceeding.

7 (b) OTHER INDIAN TRIBES.—Nothing in the agree-
8 ment or this Act shall be construed in any way to quantify
9 or otherwise adversely affect the water rights, claims, or
10 entitlements to water of any Indian tribe, band, or com-
11 munity, other than the Navajo Nation.

12 **SEC. 12. AVAILABILITY OF FUNDS.**

13 If insufficient funds are appropriated to carry out
14 this Act for a fiscal year, the Secretary may use to carry
15 out this Act such amounts as are necessary from other
16 amounts available to the Secretary for that fiscal year that
17 are not otherwise obligated.

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