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115TH CONGRESS
2D SESSION

S. 664

[Report No. 115–401]

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

NOVEMBER 29, 2018

Reported by Mr. HOEVEN, with an amendment and an amendment to the title
[Strike out all after the enacting clause and insert the part printed in *italic*]

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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Navajo Utah Water
3 Rights Settlement Act of 2017”.

4 **SEC. 2. PURPOSES.**

5 The purposes of this Act are—

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

10 (2) to recognize and protect the reserved water
11 rights of the Navajo Nation and all those possessing
12 water rights derived by or through the Navajo Na-
13 tion;

14 (3) to protect State appropriative water rights;

15 (4) to provide Navajo and non-Indian citizens
16 in the Upper Colorado River Basin in Utah with cer-
17 tainty regarding water rights, water management,
18 and administration that will allow them to plan for
19 their futures;

20 (5) to approve, ratify, and confirm the agree-
21 ment;

22 (6) to authorize and direct the Secretary to exe-
23 cute and perform duties under the agreement and
24 this Act;

25 (7) to authorize the actions and appropriations
26 necessary for the United States to fulfill its legal

1 and trust obligations to the tribes as provided in the
2 agreement and this Act;

3 ~~(8) to provide sufficient water supplies and fa-~~
4 ~~cilities for delivery of those supplies needed to de-~~
5 ~~velop and maintain the Navajo Reservation in Utah~~
6 ~~as a permanent homeland for the Navajo Nation and~~
7 ~~its members; and~~

8 ~~(9) to promote the economic development and~~
9 ~~economic self-sufficiency of the Navajo Nation in~~
10 ~~Utah.~~

11 **SEC. 3. FINDINGS.**

12 Congress finds the following:

13 ~~(1) It is the policy of the United States, in~~
14 ~~keeping with the trust responsibility of the United~~
15 ~~States to Indian tribes, to settle Indian water rights~~
16 ~~claims whenever possible without lengthy and costly~~
17 ~~litigation.~~

18 ~~(2) The water rights settlements described in~~
19 ~~paragraph (1) typically require congressional review~~
20 ~~and approval.~~

21 ~~(3) The Navajo Nation and the United States,~~
22 ~~acting as trustee for the Navajo Nation and allottees~~
23 ~~of the Navajo Nation, claim the right to an~~
24 ~~unquantified amount of water from the San Juan~~
25 ~~River in the Upper Colorado River Basin in Utah.~~

1 (4) Consistent with the policy of the United
 2 States, this Act settles the water rights claims of the
 3 Navajo Nation and the United States within the
 4 State of Utah, acting as trustee for the Navajo Na-
 5 tion and allottees of the Navajo Nation, without liti-
 6 gation.

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

18 **SEC. 4. DEFINITIONS.**

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

21 (2) AGREEMENT.—The term “agreement”
 22 means the document entitled “Navajo Utah Water
 23 Rights Settlement Agreement” and the exhibits at-
 24 tached thereto.

1 ~~(3)~~ ALLOTTEE.—The term “allottee” means in-
 2 dividual members of the Navajo Nation or other In-
 3 dian tribe for whom the United States holds in trust
 4 title to an allotment on the Navajo Nation Reserva-
 5 tion in Utah.

6 ~~(4)~~ ALLOTMENT.—The term “allotment”
 7 means—

8 (A) a parcel of land located within the
 9 Reservation; or

10 (B) Bureau of Indian Affairs parcel num-
 11 ber 792 634511 in San Juan County, Utah,
 12 consisting of 160 acres located in Township
 13 41S, Range 20E, sections 11, 12, and 14, origi-
 14 nally set aside by the United States for the ben-
 15 efit of an individual identified in the allotting
 16 document as a Navajo Indian and held in trust
 17 by the United States.

18 ~~(5)~~ ENFORCEABILITY DATE.—The term “en-
 19 forceability date” means the date on which the Sec-
 20 retary publishes in the Federal Register the state-
 21 ment of findings described in section 9(a) of this
 22 Act.

23 ~~(6)~~ GENERAL STREAM ADJUDICATION.—The
 24 term “general stream adjudication” means the adju-
 25 dication pending, as of the date of enactment, in the

Seventh Judicial District in and for Grand County,
State of Utah, commonly known as the “South-
eastern Colorado River General Adjudication”, Civil
No. 810704477, conducted pursuant to State law.

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

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

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

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

1 (11) NAVAJO WATER DEVELOPMENT
2 PROJECTS.—The term “Navajo water development
3 projects” means the projects constructed, in whole
4 or in part, using monies from the Navajo Water De-
5 velopment Fund.

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

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

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

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

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

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

24 (18) UNITED STATES.—The term “United
25 States” means the United States of America and all

1 departments, agencies, bureaus, officers, and agents
2 thereof.

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

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

12 **SEC. 5. RATIFICATION OF AGREEMENT.**

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

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

23 ~~(1) any exhibits to the agreement requiring the~~
24 ~~signature of the Secretary; and~~

1 ~~(2)~~ any amendments to the agreement nec-
 2 essary to make the agreement consistent with this
 3 Act.

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

8 ~~(d) ENVIRONMENTAL COMPLIANCE.~~—

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

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

20 ~~(3) LEAD AGENCY.~~—Reclamation, or any
 21 United States or Navajo Nation agency with an
 22 intergovernmental agreement with the Secretary
 23 pursuant to subsection (a) of section 6, is authorized
 24 to be designated as the lead or joint lead agency

1 with respect to environmental compliance for the
2 Navajo water development projects.

3 **SEC. 6. AUTHORIZATION FOR CONSTRUCTION OF NAVAJO**
4 **WATER DEVELOPMENT PROJECTS.**

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

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

21 (c) SCOPE.—The agreement and this Act contemplate
22 a comprehensive approach to addressing identified Res-
23 ervation water needs by providing funds for domestic and
24 municipal water supply and distribution infrastructure
25 and agricultural water conservation. To allow the Navajo

1 Nation flexibility in meeting the needs of its people over
2 time as both circumstances and technologies evolve; the
3 costs to meet Reservation water needs determined in the
4 studies identified in the agreement were used to establish
5 the dollar amount of the Navajo Water Development
6 Fund. To help ensure that water supply and distribution
7 systems constructed pursuant to the agreement and this
8 Act can be successfully developed and transitioned to be
9 user-supported systems; the agreement and this Act also
10 provide for a Navajo OM&R Trust Account.

11 (d) FINAL WATER SUPPLY SYSTEM PROJECTS.—

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

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

1 made available under subsection (a) of section 7,
2 and improve the cost-effectiveness of the projects.

3 ~~(c) NONREIMBURSABILITY OF COSTS.—All costs in-~~
4 ~~curred by the Secretary in carrying out this section shall~~
5 ~~be nonreimbursable.~~

6 ~~(f) FUNDING.—~~

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

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

1 ~~(3)~~ TRANSFERS TO NAVAJO OM&R ACCOUNT.—

2 Monies made available for the Navajo water develop-
3 ment projects but not used for that purpose may, at
4 the discretion of the Navajo Nation, be transferred
5 to the Navajo OM&R Trust Account established by
6 subsection ~~(k)~~.

7 ~~(g)~~ APPLICABILITY OF THE INDIAN SELF-DETER-
8 MINATION ACT.—

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

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

23 ~~(h)~~ CONVEYANCE OF TITLE TO NAVAJO WATER DE-
24 VELOPMENT PROJECTS.—The Secretary shall convey title
25 to those Navajo water development projects described as

1 water supply and water distribution systems in the agree-
 2 ment and authorized in this section to the Navajo Nation
 3 when construction of each project is complete and the
 4 project is operating and, if applicable, delivering potable
 5 water.

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

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

21 (A) title to the project is conveyed to the
 22 Navajo Nation; and

23 (B) the amounts required to be deposited
 24 in the Navajo OM&R Trust Account pursuant

1 to subsection (b) of section 7 have been depos-
 2 ited in that account.

3 ~~(i) TECHNICAL ASSISTANCE.—~~The Secretary shall
 4 provide technical assistance to prepare the Navajo Nation
 5 for operation of the Navajo water development projects,
 6 including operation and management training.

7 ~~(j) PROJECT MANAGEMENT COMMITTEE.—~~

8 ~~(1) IN GENERAL.—~~The Secretary shall facilitate
 9 the formation of a project management committee to
 10 be composed of representatives of—

11 ~~(A) the Navajo Nation;~~

12 ~~(B) Reclamation, or any Federal agency~~
 13 ~~with an intergovernmental agreement with the~~
 14 ~~Secretary pursuant to subsection (a), the Bu-~~
 15 ~~reau of Indian Affairs, and the Indian Health~~
 16 ~~Service, as appropriate; and~~

17 ~~(C) the State.~~

18 ~~(2) DUTIES.—~~The project management com-
 19 mittee shall—

20 ~~(A) review cost factors and budgets for~~
 21 ~~construction, operation, and maintenance activi-~~
 22 ~~ties for the Navajo water development projects;~~

23 ~~(B) improve management of the planning,~~
 24 ~~design, construction, and operation of the Nav-~~

1 ajo water development projects through en-
 2 hanced communication; and

3 ~~(C)~~ seek additional ways to reduce overall
 4 costs for the Navajo water development
 5 projects.

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

13 **SEC. 7. AUTHORIZATION OF APPROPRIATIONS.**

14 ~~(a) NAVAJO WATER DEVELOPMENT FUND.~~—

15 ~~(1) IN GENERAL.~~—There is authorized to be
 16 appropriated to the Secretary \$198,300,000 to plan,
 17 design, and construct the Navajo water development
 18 projects to remain available until expended.

19 ~~(2) ADJUSTMENTS.~~—The amount under para-
 20 graph ~~(1)~~ shall be adjusted by such amounts—

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

23 ~~(B)~~ as may be required by reason of
 24 changes since June 2014 in construction costs;

1 as indicated by engineering cost indices applica-
 2 ble to the types of construction involved.

3 ~~(3) USE.~~—In addition to the uses authorized
 4 under paragraph (1), amounts made available under
 5 that paragraph may be used for the conduct of re-
 6 lated activities, to comply with Federal environ-
 7 mental laws, or may be transferred to the Navajo
 8 OM&R Trust Account as provided in subsection
 9 ~~(f)(3)~~ of section 6.

10 ~~(b) NAVAJO OM&R TRUST ACCOUNT.~~—

11 ~~(1) AUTHORIZATION OF APPROPRIATIONS.~~—For
 12 the purpose of assisting the Navajo Nation with the
 13 expenses of operating, maintaining, and replacing
 14 the Navajo water development projects authorized to
 15 be constructed in section 6 and described as water
 16 supply systems and water distribution systems in the
 17 agreement, there is authorized to be appropriated
 18 \$11,100,000 to be deposited in the Navajo OM&R
 19 trust account established pursuant to subsection (k)
 20 of section 6, which funds shall be retained until ex-
 21 pended.

22 ~~(2) MANAGEMENT OF ACCOUNT.~~—The Sec-
 23 retary shall manage the account in accordance with
 24 the American Indian Trust Fund Management Re-
 25 form Act of 1994 (25 U.S.C. 4001 et seq.), and

1 shall invest amounts deposited in the account in ac-
 2 cordance with that Act and—

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

5 (B) the first section of the Act of June 24,
 6 1938 (25 U.S.C. 162a).

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

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

22 (e) PROGRAMMATIC COSTS.—There is authorized to
 23 be appropriated \$1,000,000 to assist the Nation with pro-
 24 grammatic costs associated with the settlement, including

1 the preparation of a hydrographic survey of historic and
2 existing water uses on the Reservation.

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

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

9 (a) QUANTIFICATION.—The Navajo Nation shall have
10 the right to use water from water sources located within
11 Utah and adjacent to or encompassed within the bound-
12 aries of the Reservation resulting in depletions not to ex-
13 ceed 81,500 acre-feet annually as described in the agree-
14 ment.

15 (b) RIGHTS OF MEMBERS AND ALLOTTEES.—Any
16 entitlement to water of any member or any allottee for
17 lands within the Reservation or for any allotment shall be
18 satisfied out of the Navajo Nation water rights recognized
19 in the agreement and this Act.

20 (c) HELD IN TRUST.—The water rights of the Navajo
21 Nation and the allottees, all as described in the agreement
22 and as adjudicated in the decree, shall be held in trust
23 by the United States on behalf of the Navajo Nation and
24 allottees, respectively.

1 (d) **FORFEITURE AND ABANDONMENT.**—The water
 2 rights of the Navajo Nation and the allottees, all as de-
 3 scribed in the agreement and adjudicated in the decree,
 4 shall not be subject to loss by non-use, forfeiture, aban-
 5 donment, or other operation of law.

6 **SEC. 9. CONDITIONS PRECEDENT.**

7 (a) **IN GENERAL.**—The waivers and release contained
 8 in section 10 of this Act shall become effective as of the
 9 date the Secretary causes to be published in the Federal
 10 Register a statement of findings that—

11 (1) to the extent that the agreement conflicts
 12 with the Act, the agreement has been revised to con-
 13 form with this Act;

14 (2) the agreement, so revised, including waivers
 15 and releases of claims set forth in section 10, has
 16 been executed by the parties, including the United
 17 States;

18 (3) Congress has fully appropriated, or the Sec-
 19 retary has provided from other authorized sources,
 20 all funds authorized by subsections (a) and (b) of
 21 section 7;

22 (4) the State has enacted any necessary legisla-
 23 tion and provided the funding required under the
 24 agreement and subsection (f)(2) of section 6 of this
 25 Act; and

1 ~~(5)~~ the court has entered a final or interlocu-
2 tory decree that—

3 ~~(A)~~ confirms the water rights of the Nav-
4 ajo Nation;

5 ~~(B)~~ with respect to the water rights of the
6 Navajo Nation, is final as to all parties to the
7 general stream adjudication and from which no
8 further appeals may be taken; and

9 ~~(C)~~ the Secretary, in consultation with the
10 parties, has determined is consistent in all ma-
11 terial respects with the agreement and with the
12 proposed judgment and decree agreed to by the
13 parties to the agreement.

14 ~~(b)~~ EXPIRATION DATE.—If all the conditions preee-
15 dent described in subsection ~~(a)~~ have not been fulfilled to
16 allow the Secretary's statement of findings to be published
17 in the Federal Register by October 31, 2026—

18 ~~(1)~~ the agreement and this Act, including waiv-
19 ers and releases of claims described in those docu-
20 ments, shall no longer be effective;

21 ~~(2)~~ any funds that have been appropriated pur-
22 suant to section 7 of this Act but not expended shall
23 immediately revert to the general fund of the United
24 States; and

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

5 ~~(e)~~ EXTENSION.—The expiration date set forth in
 6 subsection ~~(b)~~ may be extended if the Navajo Nation, the
 7 State, and the United States ~~(acting through the Sec-~~
 8 retary) agree that an extension is reasonably necessary.

9 **SEC. 10. WAIVERS AND RELEASES.**

10 ~~(a)~~ CLAIMS BY THE NAVAJO NATION AND THE
 11 UNITED STATES.—In return for confirmation of the Nav-
 12 ajo Nation's federally reserved water rights, the water
 13 rights or rights to use water of allottees in Utah, and other
 14 benefits set forth in the agreement and this Act, and in
 15 return for a waiver of claims by the State against the Na-
 16 tion and the United States acting in its trust capacity,
 17 the Nation and the United States acting in its trust capae-
 18 ity hereby waive and release—

19 ~~(1)~~ all claims for water rights within Utah
 20 based on any and all legal theories that the Navajo
 21 Nation, allottees, or the United States acting in its
 22 trust capacity, asserted, or could have asserted, at
 23 any time in any proceeding, including to the general
 24 stream adjudication, up to and including the en-
 25 forceability date, except to the extent that such

1 rights are recognized in the agreement and this Act;
2 and

3 ~~(2) all claims for damages, losses, or injuries to~~
4 ~~water rights or claims of interference with, diversion,~~
5 ~~or taking of water rights (including claims for injury~~
6 ~~to lands resulting from such damages, losses, inju-~~
7 ~~ries, interference with, diversion, or taking of water~~
8 ~~rights) within Utah against the State, or any person,~~
9 ~~entity, corporation, or municipality, that accrued at~~
10 ~~any time up to and including the enforceability date.~~

11 ~~(b) CLAIMS BY THE NAVAJO NATION AGAINST THE~~
12 ~~UNITED STATES.—The Navajo Nation, on behalf of itself~~
13 ~~and its members (other than members in their individual~~
14 ~~capacity, including their capacity as allottees), shall exe-~~
15 ~~cute a waiver and release of—~~

16 ~~(1) all claims the Navajo Nation may have~~
17 ~~against the United States relating in any manner to~~
18 ~~claims for water rights in or water of Utah that the~~
19 ~~United States acting in its trust capacity asserted,~~
20 ~~or could have asserted, in any proceeding, including~~
21 ~~the general stream adjudication;~~

22 ~~(2) all claims the Navajo Nation may have~~
23 ~~against the United States relating in any manner to~~
24 ~~damages, losses, or injuries to water, water rights,~~
25 ~~land, or other resources due to loss of water or~~

1 water rights (including damages, losses, or injuries
 2 to hunting, fishing, gathering, or cultural rights due
 3 to loss of water or water rights; claims relating to
 4 interference with, diversion, or taking of water; or
 5 claims relating to failure to protect, acquire, replace,
 6 or develop water or water rights) within Utah that
 7 first accrued at any time up to and including the en-
 8 forceability date;

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

13 (4) all claims the Nation may have against the
 14 United States relating in any manner to the negotia-
 15 tion, execution, or the adoption of the agreement or
 16 this Act.

17 (c) CLAIMS BY THE STATE AGAINST THE NAVAJO
 18 NATION AND THE UNITED STATES.—Except as provided
 19 in subsection (c), the State waives and releases any claims
 20 that the State may have against the Navajo Nation,
 21 allottees, and the United States acting in its trust capae-
 22 ity, under Federal, State, or other law for—

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

25 (A) the Reservation;

1 ~~(B) Navajo trust land in Utah;~~

2 ~~(C) Navajo fee land in Utah; or~~

3 ~~(D) allotments, arising from time immemo-~~
 4 ~~rial through the enforceability date;~~

5 ~~(2) all claims for injury to water rights arising~~
 6 ~~after the enforceability date resulting from the diver-~~
 7 ~~sion or use of water on or for—~~

8 ~~(A) the Navajo Reservation;~~

9 ~~(B) Navajo trust land in Utah;~~

10 ~~(C) Navajo fee land in Utah; or~~

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

13 ~~(3) all claims arising out of or related in any~~
 14 ~~manner to the negotiation or execution of the agree-~~
 15 ~~ment, or the negotiation or enactment of this Act.~~

16 ~~(d) RESERVATION OF RIGHTS AND RETENTION OF~~
 17 ~~CLAIMS BY THE NAVAJO NATION AND THE UNITED~~
 18 ~~STATES.—Notwithstanding the waivers and releases au-~~
 19 ~~thorized in this Act, the Navajo Nation, and the United~~
 20 ~~States acting in its trust capacity, retain—~~

21 ~~(1) all claims for injuries to and the enforce-~~
 22 ~~ment of the agreement and the final or interlocutory~~
 23 ~~decree entered in the general stream adjudication,~~
 24 ~~through such legal and equitable remedies as may be~~

1 available in the decree court or the Federal District
 2 Court for the District of Utah;

3 ~~(2) all rights to use and protect water rights ac-~~
 4 ~~quired after the enforceability date;~~

5 ~~(3) all claims relating to activities affecting the~~
 6 ~~quality of water, including any claims under the~~
 7 ~~Comprehensive Environmental Response, Compensa-~~
 8 ~~tion, and Liability Act of 1980 (42 U.S.C. 9601 et~~
 9 ~~seq. (including claims for damages to natural re-~~
 10 ~~sources)); the Safe Drinking Water Act (42 U.S.C.~~
 11 ~~300f et seq.); and the Federal Water Pollution Con-~~
 12 ~~trol Act (33 U.S.C. 1251 et seq.); the regulations~~
 13 ~~implementing those Acts; and the common law;~~

14 ~~(4) all claims for water rights; and claims for~~
 15 ~~injury to water rights; in States other than the State~~
 16 ~~of Utah;~~

17 ~~(5) all claims, including environmental claims,~~
 18 ~~under any laws (including regulations and the com-~~
 19 ~~mon law) relating to human health, safety, or the~~
 20 ~~environment; and~~

21 ~~(6) all rights, remedies, privileges, immunities,~~
 22 ~~and powers not specifically waived and released pur-~~
 23 ~~suant to the agreement and this Act.~~

24 ~~(c) RESERVATION OF RIGHTS AND RETENTION OF~~
 25 ~~CLAIMS BY THE STATE.—Notwithstanding the waivers of~~

1 claims and releases described in this section, the State
2 shall retain any right to—

3 ~~(1) assert claims for the enforcement of the~~
4 ~~agreement and the final or interlocutory decree en-~~
5 ~~tered in the general stream adjudication, through~~
6 ~~such legal and equitable remedies as may be avail-~~
7 ~~able in the State decree court or the Federal District~~
8 ~~Court for the District of Utah;~~

9 ~~(2) assert claims for injury to, and seek en-~~
10 ~~forcement of, the State's rights under the judgment~~
11 ~~and decree entered by the court in the general~~
12 ~~stream adjudication;~~

13 ~~(3) assert past, present, and future claims to~~
14 ~~water that are subject to the general stream adju-~~
15 ~~dication or other applicable law, and that are not in-~~
16 ~~consistent with the agreement;~~

17 ~~(4) assert any claims for injury to water rights~~
18 ~~not specifically waived herein; and~~

19 ~~(5) take any action including environmental ac-~~
20 ~~tions, under any laws (including regulations and the~~
21 ~~common law) relating to human health, safety, or~~
22 ~~the environment.~~

23 ~~(f) EFFECT OF SECTION.—Nothing in the agreement~~
24 ~~or this Act—~~

1 (1) affects the ability of the United States act-
 2 ing in its sovereign capacity to take actions author-
 3 ized by law, including any laws relating to health,
 4 safety, or the environment, including the Com-
 5 prehensive Environmental Response, Compensation,
 6 and Liability Act of 1980 (42 U.S.C. 9601 et seq.);
 7 the Safe Drinking Water Act (42 U.S.C. 300f et
 8 seq.); the Federal Water Pollution Control Act (33
 9 U.S.C. 1251 et seq.); the Solid Waste Disposal Act
 10 (42 U.S.C. 6901 et seq.); and the regulations imple-
 11 menting those laws;

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

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

16 (A) interpret Federal law regarding health,
 17 safety, or the environment or determine the du-
 18 ties of the United States or other parties pursu-
 19 ant to such Federal law; and

20 (B) conduct judicial review of Federal
 21 agency action; or

22 (4) modifies, conflicts with, preempts, or other-
 23 wise affects—

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

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

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

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

9 (E) the Treaty between the United States
10 of America and Mexico respecting utilization of
11 waters of the Colorado and Tijuana Rivers and
12 of the Rio Grande, signed at Washington Feb-
13 ruary 3, 1944 (59 Stat. 1219);

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

17 (G) the Upper Colorado River Basin Com-
18 pact as consented to by the Act of April 6,
19 1949 (63 Stat. 31, chapter 48).

20 (g) TOLLING OF CLAIMS.—

21 (1) IN GENERAL.—Each applicable period of
22 limitation and time-based equitable defense relating
23 to a claim described in this section shall be tolled for
24 the period beginning on the date of enactment of
25 this Act and ending on the enforceability date.

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

5 (3) ~~LIMITATION.~~—Nothing in this section pre-
 6 cludes the tolling of any period of limitations or any
 7 time-based equitable defense under any other appli-
 8 cable law.

9 **SEC. 11. MISCELLANEOUS PROVISIONS.**

10 (a) ~~PRECEDENT.~~—Nothing in this Act establishes
 11 any standard for the quantification or litigation of Federal
 12 reserved water rights or any other Indian water claims of
 13 any other Indian tribes in any other judicial or administra-
 14 tive proceeding.

15 (b) ~~OTHER INDIAN TRIBES.~~—Nothing in the agree-
 16 ment or this Act shall be construed in any way to quantify
 17 or otherwise adversely affect the water rights, claims, or
 18 entitlements to water of any Indian tribe, band, or com-
 19 munity, other than the Navajo Nation.

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

21 If insufficient funds are appropriated to carry out
 22 this Act for a fiscal year, the Secretary may use to carry
 23 out this Act such amounts as are necessary from other
 24 amounts available to the Secretary for that fiscal year that
 25 are not otherwise obligated.

1 **SECTION 1. SHORT TITLE.**

2 *This Act may be cited as the “Navajo Utah Water*
 3 *Rights Settlement Act of 2018”.*

4 **SEC. 2. PURPOSES.**

5 *The purposes of this Act are—*

6 *(1) to achieve a fair, equitable, and final settle-*
 7 *ment of all claims to water rights in the State of*
 8 *Utah for—*

9 *(A) the Navajo Nation; and*

10 *(B) the United States, for the benefit of the*
 11 *Nation;*

12 *(2) to authorize, ratify, and confirm the Agree-*
 13 *ment entered into by the Nation and the State, to the*
 14 *extent that the Agreement is consistent with this Act;*

15 *(3) to authorize and direct the Secretary—*

16 *(A) to execute the Agreement; and*

17 *(B) to take any actions necessary to carry*
 18 *out the agreement in accordance with this Act;*
 19 *and*

20 *(4) to authorize funds necessary for the imple-*
 21 *mentation of the Agreement and this Act.*

22 **SEC. 3. DEFINITIONS.**

23 *In this Act:*

24 *(1) AGREEMENT.—The term “agreement”*
 25 *means—*

1 (A) *the document entitled “Navajo Utah*
 2 *Water Rights Settlement Agreement” dated De-*
 3 *cember 14, 2015, and the exhibits attached there-*
 4 *to; and*

5 (B) *any amendment or exhibit to the docu-*
 6 *ment or exhibits referenced in subparagraph (A)*
 7 *to make the document or exhibits consistent with*
 8 *this Act.*

9 (2) *ALLOTMENT.—The term “allotment” means a*
 10 *parcel of land—*

11 (A) *granted out of the public domain that*
 12 *is—*

13 (i) *located within the exterior bound-*
 14 *aries of the Reservation; or*

15 (ii) *Bureau of Indian Affairs parcel*
 16 *number 792 634511 in San Juan County,*
 17 *Utah, consisting of 160 acres located in*
 18 *Township 41S, Range 20E, sections 11, 12,*
 19 *and 14, originally set aside by the United*
 20 *States for the benefit of an individual iden-*
 21 *tified in the allotting document as a Navajo*
 22 *Indian; and*

23 (B) *held in trust by the United States—*

1 (i) for the benefit of an individual, in-
 2 dividuals, or an Indian tribe other than the
 3 Navajo Nation; or

4 (ii) in part for the benefit of the Nav-
 5 ajo Nation as of the enforceability date.

6 (3) *ALLOTTEE*.—The term “allottee” means an
 7 individual or Indian tribe with a beneficial interest
 8 in an allotment held in trust by the United States.

9 (4) *ENFORCEABILITY DATE*.—The term “enforce-
 10 ability date” means the date on which the Secretary
 11 publishes in the Federal Register the statement of
 12 findings described in section 8(a).

13 (5) *GENERAL STREAM ADJUDICATION*.—The term
 14 “general stream adjudication” means the adjudica-
 15 tion pending, as of the date of enactment, in the Sev-
 16 enth Judicial District in and for Grand County,
 17 State of Utah, commonly known as the “Southeastern
 18 Colorado River General Adjudication”, Civil No.
 19 810704477, conducted pursuant to State law.

20 (6) *INJURY TO WATER RIGHTS*.—The term “in-
 21 jury to water rights” means an interference with,
 22 diminution of, or deprivation of water rights under
 23 Federal or State law, excluding injuries to water
 24 quality.

1 (7) *MEMBER.*—*The term “member” means any*
 2 *person who is a duly enrolled member of the Navajo*
 3 *Nation.*

4 (8) *NAVAJO NATION OR NATION.*—*The term*
 5 *“Navajo Nation” or “Nation” means a body politic*
 6 *and Federally recognized Indian nation, as published*
 7 *on the list established under section 104(a) of the Fed-*
 8 *erally Recognized Indian Tribe List Act of 1994 (25*
 9 *U.S.C. 5131(a)), also known variously as the “Navajo*
 10 *Nation”, the “Navajo Nation of Arizona, New Mexico,*
 11 *& Utah”, and the “Navajo Nation of Indians” and*
 12 *other similar names, and includes all bands of Navajo*
 13 *Indians and chapters of the Navajo Nation and all*
 14 *divisions, agencies, officers, and agents thereof.*

15 (9) *NAVAJO WATER DEVELOPMENT PROJECTS.*—
 16 *The term “Navajo water development projects” means*
 17 *projects for domestic municipal water supply, includ-*
 18 *ing distribution infrastructure and agricultural water*
 19 *conservation, to be constructed, in whole or in part,*
 20 *using monies from the Navajo Water Development*
 21 *Projects Account.*

22 (10) *NAVAJO WATER RIGHTS.*—*The term “Navajo*
 23 *water rights” means the Nation’s water rights in*
 24 *Utah described in the agreement and this Act.*

1 (11) *OM&R.*—*The term “OM&R” means oper-*
2 *ation, maintenance, and replacement.*

3 (12) *PARTIES.*—*The term “parties” means the*
4 *Navajo Nation, the State, and the United States.*

5 (13) *RESERVATION.*—*The term “Reservation”*
6 *means, for purposes of the agreement and this Act, the*
7 *Reservation of the Navajo Nation in Utah as in exist-*
8 *ence on the date of enactment of this Act and depicted*
9 *on the map attached to the agreement as Exhibit A,*
10 *including any parcel of land granted out of the public*
11 *domain and held in trust by the United States en-*
12 *tirely for the benefit of the Navajo Nation as of the*
13 *enforceability date.*

14 (14) *SECRETARY.*—*The term “Secretary” means*
15 *the Secretary of the United States Department of the*
16 *Interior or a duly authorized representative thereof.*

17 (15) *STATE.*—*The term “State” means the State*
18 *of Utah and all officers, agents, departments, and po-*
19 *litical subdivisions thereof.*

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

24 (17) *UNITED STATES ACTING IN ITS TRUST CA-*
25 *PACITY.*—*The term “United States acting in its trust*

1 *capacity” means the United States acting for the ben-*
 2 *efit of the Navajo Nation or for the benefit of allottees.*

3 **SEC. 4. RATIFICATION OF AGREEMENT.**

4 *(a) APPROVAL BY CONGRESS.—Except to the extent*
 5 *that any provision of the agreement conflicts with this Act,*
 6 *Congress approves, ratifies, and confirms the agreement (in-*
 7 *cluding any amendments to the agreement that are executed*
 8 *to make the agreement consistent with this Act).*

9 *(b) EXECUTION BY SECRETARY.—The Secretary is au-*
 10 *thorized and directed to promptly execute the agreement to*
 11 *the extent that the agreement does not conflict with this Act,*
 12 *including—*

13 *(1) any exhibits to the agreement requiring the*
 14 *signature of the Secretary; and*

15 *(2) any amendments to the agreement necessary*
 16 *to make the agreement consistent with this Act.*

17 *(c) ENVIRONMENTAL COMPLIANCE.—*

18 *(1) IN GENERAL.—In implementing the agree-*
 19 *ment and this Act, the Secretary shall comply with*
 20 *all applicable provisions of—*

21 *(A) the Endangered Species Act of 1973 (16*
 22 *U.S.C. 1531 et seq.);*

23 *(B) the National Environmental Policy Act*
 24 *of 1969 (42 U.S.C. 4321 et seq.); and*

1 (C) all other applicable environmental laws
2 and regulations.

3 (2) *EXECUTION OF THE AGREEMENT.*—*Execu-*
4 *tion of the agreement by the Secretary as provided for*
5 *in this Act shall not constitute a major Federal action*
6 *under the National Environmental Policy Act of 1969*
7 *(42 U.S.C. 4321 et seq.).*

8 **SEC. 5. NAVAJO WATER RIGHTS.**

9 (a) *CONFIRMATION OF NAVAJO WATER RIGHTS.*—

10 (1) *QUANTIFICATION.*—*The Navajo Nation shall*
11 *have the right to use water from water sources located*
12 *within Utah and adjacent to or encompassed within*
13 *the boundaries of the Reservation resulting in deple-*
14 *tions not to exceed 81,500 acre-feet annually as de-*
15 *scribed in the agreement and as confirmed in the de-*
16 *creed entered by the general stream adjudication court.*

17 (2) *SATISFACTION OF ALLOTTEE RIGHTS.*—*De-*
18 *pletions resulting from the use of water on an allot-*
19 *ment shall be accounted for as a depletion by the Nav-*
20 *ajo Nation for purposes of depletion accounting under*
21 *the agreement, including recognition of—*

22 (A) *any water use existing on an allotment*
23 *as of the date of enactment of this Act and as*
24 *subsequently reflected in the hydrographic survey*
25 *report referenced in section 7(b);*

1 (B) *reasonable domestic and stock water*
 2 *uses put into use on an allotment; and*

3 (C) *any allotment water rights that may be*
 4 *decreed in the general stream adjudication or*
 5 *other appropriate forum.*

6 (3) *SATISFACTION OF ON-RESERVATION STATE*
 7 *LAW-BASED WATER RIGHTS.—Depletions resulting*
 8 *from the use of water on the Reservation pursuant to*
 9 *State law-based water rights existing as of the date of*
 10 *enactment of this Act shall be accounted for as deple-*
 11 *tions by the Navajo Nation for purposes of depletion*
 12 *accounting under the agreement.*

13 (4) *IN GENERAL.—The Navajo water rights are*
 14 *ratified, confirmed, and declared to be valid.*

15 (5) *USE.—Any use of the Navajo water rights*
 16 *shall be subject to the terms and conditions of the*
 17 *agreement and this Act.*

18 (6) *CONFLICT.—In the event of a conflict between*
 19 *the agreement and this Act, the provisions of this Act*
 20 *shall control.*

21 (b) *TRUST STATUS OF NAVAJO WATER RIGHTS.—The*
 22 *Navajo water rights—*

23 (1) *shall be held in trust by the United States for*
 24 *the use and benefit of the Nation in accordance with*
 25 *the agreement and this Act; and*

1 (2) *shall not be subject to forfeiture or abandon-*
 2 *ment.*

3 (c) *AUTHORITY OF THE NATION.—*

4 (1) *IN GENERAL.—The Nation shall have the au-*
 5 *thority to allocate, distribute, and lease the Navajo*
 6 *water rights for any use on the Reservation in accord-*
 7 *ance with the agreement, this Act, and applicable*
 8 *tribal and Federal law.*

9 (2) *OFF-RESERVATION USE.—The Nation may*
 10 *allocate, distribute, and lease the Navajo water rights*
 11 *for off-Reservation use in accordance with the agree-*
 12 *ment, subject to the approval of the Secretary.*

13 (3) *ALLOTTEE WATER RIGHTS.—The Nation*
 14 *shall not object in the general stream adjudication or*
 15 *other applicable forum to the quantification of rea-*
 16 *sonable domestic and stock water uses on an allot-*
 17 *ment, and shall administer any water use on the Res-*
 18 *ervation in accordance with applicable Federal law,*
 19 *including recognition of—*

20 (A) *any water use existing on an allotment*
 21 *as of the date of enactment of this Act and as*
 22 *subsequently reflected in the hydrographic survey*
 23 *report referenced in section 7(b);*

24 (B) *reasonable domestic and stock water*
 25 *uses on an allotment; and*

1 (C) any allotment water rights decreed in
 2 the general stream adjudication or other appro-
 3 priate forum.

4 (d) *EFFECT.*—*Except as otherwise expressly provided*
 5 *in this section, nothing in this Act—*

6 (1) *authorizes any action by the Nation against*
 7 *the United States under Federal, State, tribal, or*
 8 *local law; or*

9 (2) *alters or affects the status of any action*
 10 *brought pursuant to section 1491(a) of title 28,*
 11 *United States Code.*

12 **SEC. 6. NAVAJO TRUST ACCOUNTS.**

13 (a) *ESTABLISHMENT.*—*The Secretary shall establish a*
 14 *trust fund, to be known as the “Navajo Utah Settlement*
 15 *Trust Fund” (referred to in this Act as the “Trust Fund”),*
 16 *to be managed, invested, and distributed by the Secretary*
 17 *and to remain available until expended, consisting of the*
 18 *amounts deposited in the Trust Fund under subsection (c),*
 19 *together with any interest earned on those amounts, for the*
 20 *purpose of carrying out this Act.*

21 (b) *ACCOUNTS.*—*The Secretary shall establish in the*
 22 *Trust Fund the following Accounts:*

23 (1) *The Navajo Water Development Projects Ac-*
 24 *count.*

25 (2) *The Navajo OM&R Account.*

1 (c) *DEPOSITS.*—*The Secretary shall deposit in the*
 2 *Trust Fund Accounts—*

3 (1) *in the Navajo Water Development Projects*
 4 *Account, the amounts made available pursuant to sec-*
 5 *tion 7(a)(1); and*

6 (2) *in the Navajo OM&R Account, the amount*
 7 *made available pursuant to section 7(a)(2).*

8 (d) *MANAGEMENT AND INTEREST.*—

9 (1) *MANAGEMENT.*—*Upon receipt and deposit of*
 10 *the funds into the Trust Fund Accounts, the Secretary*
 11 *shall manage, invest, and distribute all amounts in*
 12 *the Trust Fund in a manner that is consistent with*
 13 *the investment authority of the Secretary under—*

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

16 (B) *the American Indian Trust Fund Man-*
 17 *agement Reform Act of 1994 (25 U.S.C. 4001 et*
 18 *seq.); and*

19 (C) *this section.*

20 (2) *INVESTMENT EARNINGS.*—*In addition to the*
 21 *deposits under subsection (c), any investment earn-*
 22 *ings, including interest, credited to amounts held in*
 23 *the Trust Fund are authorized to be appropriated to*
 24 *be used in accordance with the uses described in sub-*
 25 *section (h).*

1 (e) *AVAILABILITY OF AMOUNTS.*—Amounts appro-
 2 priated to, and deposited in, the Trust Fund, including any
 3 investment earnings, shall be made available to the Nation
 4 by the Secretary beginning on the enforceability date and
 5 subject to the uses and restrictions set forth in this section.

6 (f) *WITHDRAWALS.*—

7 (1) *WITHDRAWALS UNDER THE AMERICAN IN-*
 8 *DIAN TRUST FUND MANAGEMENT REFORM ACT OF*
 9 *1994.*—The Nation may withdraw any portion of the
 10 funds in the Trust Fund on approval by the Sec-
 11 retary of a tribal management plan submitted by the
 12 Nation in accordance with the American Indian
 13 Trust Fund Management Reform Act of 1994 (25
 14 U.S.C. 4001 et seq.).

15 (A) *REQUIREMENTS.*—In addition to the re-
 16 quirements under the American Indian Trust
 17 Fund Management Reform Act of 1994 (25
 18 U.S.C. 4001 et seq.), the tribal management plan
 19 under this paragraph shall require that the Na-
 20 tion shall spend all amounts withdrawn from the
 21 Trust Fund and any investment earnings ac-
 22 crued through the investments under the tribal
 23 management plan in accordance with this Act.

24 (B) *ENFORCEMENT.*—The Secretary may
 25 carry out such judicial and administrative ac-

1 *tions as the Secretary determines to be necessary*
 2 *to enforce the tribal management plan to ensure*
 3 *that amounts withdrawn by the Nation from the*
 4 *Trust Fund under this paragraph are used in*
 5 *accordance with this Act.*

6 (2) *WITHDRAWALS UNDER EXPENDITURE*
 7 *PLAN.—The Nation may submit to the Secretary a re-*
 8 *quest to withdraw funds from the Trust Fund pursu-*
 9 *ant to an approved expenditure plan.*

10 (A) *REQUIREMENTS.—To be eligible to*
 11 *withdraw funds under an expenditure plan*
 12 *under this paragraph, the Nation shall submit to*
 13 *the Secretary for approval an expenditure plan*
 14 *for any portion of the Trust Fund that the Na-*
 15 *tion elects to withdraw pursuant to this para-*
 16 *graph, subject to the condition that the funds*
 17 *shall be used for the purposes described in this*
 18 *Act.*

19 (B) *INCLUSIONS.—An expenditure plan*
 20 *under this paragraph shall include a description*
 21 *of the manner and purpose for which the*
 22 *amounts proposed to be withdrawn from the*
 23 *Trust Fund will be used by the Nation, in ac-*
 24 *cordance with subsections (c) and (h).*

1 (C) *APPROVAL.*—On receipt of an expendi-
 2 ture plan under this paragraph, the Secretary
 3 shall approve the plan, if the Secretary deter-
 4 mines that the plan—

5 (i) is reasonable;

6 (ii) is consistent with, and will be used
 7 for, the purposes of this Act; and

8 (iii) contains a schedule which de-
 9 scribed that tasks will be completed within
 10 18 months of receipt of withdrawn amounts.

11 (D) *ENFORCEMENT.*—The Secretary may
 12 carry out such judicial and administrative ac-
 13 tions as the Secretary determines to be necessary
 14 to enforce an expenditure plan to ensure that
 15 amounts disbursed under this paragraph are
 16 used in accordance with this Act.

17 (g) *EFFECT OF TITLE.*—Nothing in this Act gives the
 18 Nation the right to judicial review of a determination of
 19 the Secretary regarding whether to approve a tribal man-
 20 agement plan or an expenditure plan except under sub-
 21 chapter II of chapter 5, and chapter 7, of title 5, United
 22 States Code (commonly known as the “Administrative Pro-
 23 cedure Act”).

24 (h) *USES.*—Amounts from the Trust Fund shall be
 25 used by the Nation for the following purposes:

1 (1) *The Navajo Water Development Projects Ac-*
 2 *count shall be used to plan, design, and construct the*
 3 *Navajo water development projects and for the con-*
 4 *duct of related activities, including to comply with*
 5 *Federal environmental laws.*

6 (2) *The Navajo OM&R Account shall be used for*
 7 *the operation, maintenance, and replacement of the*
 8 *Navajo water development projects.*

9 (i) *LIABILITY.—The Secretary and the Secretary of the*
 10 *Treasury shall not be liable for the expenditure or invest-*
 11 *ment of any amounts withdrawn from the Trust Fund by*
 12 *the Nation under subsection (f).*

13 (j) *NO PER CAPITA DISTRIBUTIONS.—No portion of*
 14 *the Trust Fund shall be distributed on a per capita basis*
 15 *to any member of the Nation.*

16 (k) *EXPENDITURE REPORTS.—The Navajo Nation*
 17 *shall submit to the Secretary annually an expenditure re-*
 18 *port describing accomplishments and amounts spent from*
 19 *use of withdrawals under a tribal management plan or an*
 20 *expenditure plan as described in this Act.*

21 **SEC. 7. AUTHORIZATION OF APPROPRIATIONS.**

22 (a) *AUTHORIZATION.—There are authorized to be ap-*
 23 *propriated to the Secretary—*

24 (1) *for deposit in the Navajo Water Development*
 25 *Projects Account of the Trust Fund established under*

1 *section 6(b)(1), \$198,300,000, which funds shall be re-*
 2 *tained until expended, withdrawn, or reverted to the*
 3 *general fund of the Treasury; and*

4 *(2) for deposit in the Navajo OM&R Account of*
 5 *the Trust Fund established under section 6(b)(2),*
 6 *\$11,100,000, which funds shall be retained until ex-*
 7 *pended, withdrawn, or reverted to the general fund of*
 8 *the Treasury.*

9 *(b) IMPLEMENTATION COSTS.—There is authorized to*
 10 *be appropriated non-trust funds in the amount of*
 11 *\$1,000,000 to assist the United States with costs associated*
 12 *with the implementation of the Act, including the prepara-*
 13 *tion of a hydrographic survey of historic and existing water*
 14 *uses on the Reservation and on allotments.*

15 *(c) STATE COST SHARE.—The State shall contribute*
 16 *\$8,000,000 payable to the Secretary for deposit into the*
 17 *Navajo Water Development Projects Account of the Trust*
 18 *Fund established under section 6(b)(1) in installments in*
 19 *each of the 3 years following the execution of the agreement*
 20 *by the Secretary as provided for in subsection (b) of section*
 21 *4.*

22 *(d) FLUCTUATION IN COSTS.—The amount authorized*
 23 *to be appropriated under subsection (a) shall be increased*
 24 *or decreased, as appropriate, by such amounts as may be*
 25 *justified by reason of ordinary fluctuations in costs occur-*

1 *ring after the date of enactment of this Act as indicated*
 2 *by the Bureau of Reclamation Construction Cost Index—*
 3 *Composite Trend.*

4 (1) *REPETITION.—The adjustment process under*
 5 *this subsection shall be repeated for each subsequent*
 6 *amount appropriated until the amount authorized, as*
 7 *adjusted, has been appropriated.*

8 (2) *PERIOD OF INDEXING.—The period of index-*
 9 *ing adjustment for any increment of funding shall*
 10 *end on the date on which funds are deposited into the*
 11 *Trust Fund.*

12 **SEC. 8. CONDITIONS PRECEDENT.**

13 (a) *IN GENERAL.—The waivers and release contained*
 14 *in section 9 of this Act shall become effective as of the date*
 15 *the Secretary causes to be published in the Federal Register*
 16 *a statement of findings that—*

17 (1) *to the extent that the agreement conflicts with*
 18 *the Act, the agreement has been revised to conform*
 19 *with this Act;*

20 (2) *the agreement, so revised, including waivers*
 21 *and releases of claims set forth in section 9, has been*
 22 *executed by the parties, including the United States;*

23 (3) *Congress has fully appropriated, or the Sec-*
 24 *retary has provided from other authorized sources, all*
 25 *funds authorized under subsection (a) of section 7;*

1 (4) *the State has enacted any necessary legisla-*
 2 *tion and provided the funding required under the*
 3 *agreement and subsection (c) of section 7; and*

4 (5) *the court has entered a final or interlocutory*
 5 *decree that—*

6 (A) *confirms the Navajo water rights con-*
 7 *sistent with the agreement and this Act; and*

8 (B) *with respect to the Navajo water rights,*
 9 *is final and nonappealable.*

10 (b) *EXPIRATION DATE.—If all the conditions precedent*
 11 *described in subsection (a) have not been fulfilled to allow*
 12 *the Secretary’s statement of findings to be published in the*
 13 *Federal Register by October 31, 2030—*

14 (1) *the agreement and this Act, including waiv-*
 15 *ers and releases of claims described in those docu-*
 16 *ments, shall no longer be effective;*

17 (2) *any funds that have been appropriated pur-*
 18 *suant to section 7 but not expended, including any*
 19 *investment earnings on funds that have been appro-*
 20 *priated pursuant to such section, shall immediately*
 21 *revert to the general fund of the Treasury; and*

22 (3) *any funds contributed by the State pursuant*
 23 *to subsection (c) of section 7 but not expended shall*
 24 *be returned immediately to the State.*

1 (c) *EXTENSION.*—*The expiration date set forth in sub-*
 2 *section (b) may be extended if the Navajo Nation, the State,*
 3 *and the United States (acting through the Secretary) agree*
 4 *that an extension is reasonably necessary.*

5 **SEC. 9. WAIVERS AND RELEASES.**

6 (a) *IN GENERAL.*—

7 (1) *WAIVER AND RELEASE OF CLAIMS BY THE*
 8 *NATION AND THE UNITED STATES ACTING IN ITS CA-*
 9 *PACITY AS TRUSTEE FOR THE NATION.*—*Subject to the*
 10 *retention of rights set forth in subsection (c), in re-*
 11 *turn for confirmation of the Navajo water rights and*
 12 *other benefits set forth in the agreement and this Act,*
 13 *the Nation, on behalf of itself and the members of the*
 14 *Nation (other than members in their capacity as*
 15 *allottees), and the United States, acting as trustee for*
 16 *the Nation and members of the Nation (other than*
 17 *members in their capacity as allottees), are author-*
 18 *ized and directed to execute a waiver and release of—*

19 (A) *all claims for water rights within Utah*
 20 *based on any and all legal theories that the Nav-*
 21 *ajo Nation or the United States acting in its*
 22 *trust capacity for the Nation, asserted, or could*
 23 *have asserted, at any time in any proceeding, in-*
 24 *cluding to the general stream adjudication, up to*
 25 *and including the enforceability date, except to*

1 *the extent that such rights are recognized in the*
 2 *agreement and this Act; and*

3 *(B) all claims for damages, losses, or inju-*
 4 *ries to water rights or claims of interference*
 5 *with, diversion, or taking of water rights (in-*
 6 *cluding claims for injury to lands resulting from*
 7 *such damages, losses, injuries, interference with,*
 8 *diversion, or taking of water rights) within Utah*
 9 *against the State, or any person, entity, corpora-*
 10 *tion, or municipality, that accrued at any time*
 11 *up to and including the enforceability date.*

12 *(b) CLAIMS BY THE NAVAJO NATION AGAINST THE*
 13 *UNITED STATES.—The Navajo Nation, on behalf of itself*
 14 *(including in its capacity as allottee) and its members*
 15 *(other than members in their capacity as allottees), shall*
 16 *execute a waiver and release of—*

17 *(1) all claims the Navajo Nation may have*
 18 *against the United States relating in any manner to*
 19 *claims for water rights in, or water of, Utah that the*
 20 *United States acting in its trust capacity for the Na-*
 21 *tion asserted, or could have asserted, in any pro-*
 22 *ceeding, including the general stream adjudication;*

23 *(2) all claims the Navajo Nation may have*
 24 *against the United States relating in any manner to*
 25 *damages, losses, or injuries to water, water rights,*

1 *land, or other resources due to loss of water or water*
 2 *rights (including damages, losses, or injuries to hunt-*
 3 *ing, fishing, gathering, or cultural rights due to loss*
 4 *of water or water rights; claims relating to inter-*
 5 *ference with, diversion, or taking of water; or claims*
 6 *relating to failure to protect, acquire, replace, or de-*
 7 *velop water or water rights) within Utah that first*
 8 *accrued at any time up to and including the enforce-*
 9 *ability date;*

10 *(3) all claims the Nation may have against the*
 11 *United States relating in any manner to the litiga-*
 12 *tion of claims relating to the Nation's water rights in*
 13 *proceedings in Utah; and*

14 *(4) all claims the Nation may have against the*
 15 *United States relating in any manner to the negotia-*
 16 *tion, execution, or adoption of the agreement or this*
 17 *Act.*

18 *(c) RESERVATION OF RIGHTS AND RETENTION OF*
 19 *CLAIMS BY THE NAVAJO NATION AND THE UNITED*
 20 *STATES.—Notwithstanding the waivers and releases au-*
 21 *thorized in this Act, the Navajo Nation, and the United*
 22 *States acting in its trust capacity for the Nation, retain—*

23 *(1) all claims for injuries to and the enforcement*
 24 *of the agreement and the final or interlocutory decree*
 25 *entered in the general stream adjudication, through*

1 *such legal and equitable remedies as may be available*
 2 *in the decree court or the Federal District Court for*
 3 *the District of Utah;*

4 (2) *all rights to use and protect water rights ac-*
 5 *quired after the enforceability date;*

6 (3) *all claims relating to activities affecting the*
 7 *quality of water, including any claims under the*
 8 *Comprehensive Environmental Response, Compensa-*
 9 *tion, and Liability Act of 1980 (42 U.S.C. 9601 et*
 10 *seq. (including claims for damages to natural re-*
 11 *sources)), the Safe Drinking Water Act (42 U.S.C.*
 12 *300f et seq.), and the Federal Water Pollution Control*
 13 *Act (33 U.S.C. 1251 et seq.), the regulations imple-*
 14 *menting those Acts, and the common law;*

15 (4) *all claims for water rights, and claims for*
 16 *injury to water rights, in states other than the State*
 17 *of Utah;*

18 (5) *all claims, including environmental claims,*
 19 *under any laws (including regulations and common*
 20 *law) relating to human health, safety, or the environ-*
 21 *ment; and*

22 (6) *all rights, remedies, privileges, immunities,*
 23 *and powers not specifically waived and released pur-*
 24 *suant to the agreement and this Act.*

25 (d) *EFFECT.—Nothing in the agreement or this Act—*

1 (1) *affects the ability of the United States acting*
 2 *in its sovereign capacity to take actions authorized by*
 3 *law, including any laws relating to health, safety, or*
 4 *the environment, including the Comprehensive Envi-*
 5 *ronmental Response, Compensation, and Liability*
 6 *Act of 1980 (42 U.S.C. 9601 et seq.), the Safe Drink-*
 7 *ing Water Act (42 U.S.C. 300f et seq.), the Federal*
 8 *Water Pollution Control Act (33 U.S.C. 1251 et seq.),*
 9 *the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.),*
 10 *and the regulations implementing those laws;*

11 (2) *affects the ability of the United States to take*
 12 *actions in its capacity as trustee for any other Indian*
 13 *tribe or allottee;*

14 (3) *confers jurisdiction on any State court to—*

15 (A) *interpret Federal law regarding health,*
 16 *safety, or the environment or determine the du-*
 17 *ties of the United States or other parties pursu-*
 18 *ant to such Federal law; and*

19 (B) *conduct judicial review of Federal agen-*
 20 *cy action; or*

21 (4) *modifies, conflicts with, preempts, or other-*
 22 *wise affects—*

23 (A) *the Boulder Canyon Project Act (43*
 24 *U.S.C. 617 et seq.);*

1 (B) *the Boulder Canyon Project Adjustment*
2 *Act* (54 Stat. 774, chapter 643);

3 (C) *the Act of April 11, 1956* (commonly
4 known as the “Colorado River Storage Project
5 Act”) (43 U.S.C. 620 *et seq.*);

6 (D) *the Act of September 30, 1968* (com-
7 monly known as the “Colorado River Basin
8 Project Act”) (82 Stat. 885);

9 (E) *the Treaty between the United States of*
10 *America and Mexico respecting utilization of*
11 *waters of the Colorado and Tijuana Rivers and*
12 *of the Rio Grande, signed at Washington Feb-*
13 *ruary 3, 1944* (59 Stat. 1219);

14 (F) *the Colorado River Compact of 1922, as*
15 *approved by the Presidential Proclamation of*
16 *June 25, 1929* (46 Stat. 3000); and

17 (G) *the Upper Colorado River Basin Com-*
18 *pact as consented to by the Act of April 6, 1949*
19 *(63 Stat. 31, chapter 48).*

20 (e) *TOLLING OF CLAIMS.*—

21 (1) *IN GENERAL.*—*Each applicable period of*
22 *limitation and time-based equitable defense relating*
23 *to a claim waived by the Navajo Nation described in*
24 *this section shall be tolled for the period beginning on*

1 *the date of enactment of this Act and ending on the*
 2 *enforceability date.*

3 (2) *EFFECT OF SUBSECTION.*—*Nothing in this*
 4 *subsection revives any claim or tolls any period of*
 5 *limitation or time-based equitable defense that ex-*
 6 *pired before the date of enactment of this Act.*

7 (3) *LIMITATION.*—*Nothing in this section pre-*
 8 *cludes the tolling of any period of limitations or any*
 9 *time-based equitable defense under any other applica-*
 10 *ble law.*

11 **SEC. 10. MISCELLANEOUS PROVISIONS.**

12 (a) *PRECEDENT.*—*Nothing in this Act establishes any*
 13 *standard for the quantification or litigation of Federal re-*
 14 *served water rights or any other Indian water claims of*
 15 *any other Indian tribe in any other judicial or administra-*
 16 *tive proceeding.*

17 (b) *OTHER INDIAN TRIBES.*—*Nothing in the agree-*
 18 *ment or this Act shall be construed in any way to quantify*
 19 *or otherwise adversely affect the water rights, claims, or en-*
 20 *titlements to water of any Indian tribe, band, or commu-*
 21 *nity, other than the Navajo Nation.*

22 **SEC. 11. RELATION TO ALLOTTEES.**

23 (a) *NO EFFECT ON CLAIMS OF ALLOTTEES.*—*Nothing*
 24 *in this Act or the agreement shall affect the rights or claims*
 25 *of allottees, or the United States, acting in its capacity as*

1 trustee for or on behalf of allottees, for water rights or dam-
 2 ages related to lands allotted by the United States to
 3 allottees, except as provided in section 5(a)(2).

4 (b) *RELATIONSHIP OF DECREE TO ALLOTTEES.*—
 5 Allottees, or the United States, acting in its capacity as
 6 trustee for allottees, are not bound by any decree entered
 7 in the general stream adjudication confirming the Navajo
 8 water rights and shall not be precluded from making claims
 9 to water rights in the general stream adjudication. Allottees,
 10 or the United States, acting in its capacity for allottees,
 11 may make claims and such claims may be adjudicated as
 12 individual water rights in the general stream adjudication.

13 **SEC. 12. ANTIDEFICIENCY.**

14 The United States shall not be liable for any failure
 15 to carry out any obligation or activity authorized by this
 16 Act (including any obligation or activity under the agree-
 17 ment) if adequate appropriations are not provided ex-
 18 pressly by Congress to carry out the purposes of this Act.

Amend the title so as to read: “A bill to approve the settlement of the water rights claims of the Navajo Nation in Utah, and for other purposes.”.

Calendar No. 706

115TH CONGRESS
2^D Session

S. 664

[Report No. 115-401]

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.

NOVEMBER 29, 2018

Reported with an amendment and an amendment to the title