

106th CONGRESS

2d Session

S. 2508

AN ACT

To amend the Colorado Ute Indian Water Rights Settlement Act of 1988 to provide for a final settlement of the claims of the Colorado Ute Indian Tribes, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; FINDINGS; DEFINITIONS.

(a) **SHORT TITLE-** This Act may be cited as the 'Colorado Ute Settlement Act Amendments of 2000'.

(b) **FINDINGS-** Congress makes the following findings:

(1) In order to provide for a full and final settlement of the claims of the Colorado Ute Indian Tribes on the Animas and La Plata Rivers, the Tribes, the State of Colorado, and certain of the non-Indian parties to the Agreement have proposed certain modifications to the Colorado Ute Indian Water Rights Settlement Act of 1988 (Public Law 100-585; 102 Stat. 2973).

(2) The claims of the Colorado Ute Indian Tribes on all rivers in Colorado other than the Animas and La Plata Rivers have been settled in accordance with the provisions of the Colorado Ute Indian Water Rights Settlement Act of 1988 (Public Law 100-585; 102 Stat. 2973).

(3) The Indian and non-Indian communities of southwest Colorado and northwest New Mexico will be benefited by a settlement of the tribal claims on the Animas and La Plata Rivers that provides the Tribes with a firm water supply without taking water away from existing uses.

(4) The Agreement contemplated a specific timetable for the delivery of irrigation and municipal and industrial water and other benefits to the Tribes from the Animas-La Plata Project, which timetable has not been met. The provision of irrigation water can not presently be satisfied under the current implementation of the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) and the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

(5) In order to meet the requirements of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), and in particular the various biological opinions issued by the Fish and Wildlife Service, the amendments made by this Act are needed to provide for a significant reduction in the facilities and water supply contemplated under the Agreement.

(6) The substitute benefits provided to the Tribes under the amendments made by this Act, including the waiver of capital costs and the provisions of funds for natural resource enhancement, result in a

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settlement that provides the Tribes with benefits that are equivalent to those that the Tribes would have received under the Colorado Ute Indian Water Rights Settlement Act of 1988 (Public Law 100-585; 102 Stat. 2973).

(7) The requirement that the Secretary of the Interior comply with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and other national environmental laws before implementing the proposed settlement will ensure that the satisfaction of the tribal water rights is accomplished in an environmentally responsible fashion.

(8) In considering the full range of alternatives for satisfying the water rights claims of the Southern Ute Indian Tribe and Ute Mountain Ute Indian Tribe, Congress has held numerous legislative hearings and deliberations, and reviewed the considerable record including the following documents:

(A) The Final EIS No. INT-FES-80-18, dated July 1, 1980.

(B) The Draft Supplement to the FES No. INT-DES-92-41, dated October 13, 1992.

(C) The Final Supplemental to the FES No. 96-23, dated April 26, 1996;

(D) The Draft Supplemental EIS, dated January 14, 2000.

(E) The Final Supplemental EIS, dated July 2000.

(F) The Record of Decision for the Settlement of the Colorado Ute Indian Waters, September 25, 2000.

(9) In the Record of Decision referred to in paragraph (8)(F), the Secretary determined that the preferred alternative could only proceed if Congress amended the Colorado Ute Indian Water Rights Settlement Act of 1988 (Public Law 100-585; 102 Stat. 2973) so as to satisfy the Tribal water rights claim through the construction of the features authorized by this Act. The amendments to the Colorado Ute Indian Water Rights Settlement Act of 1988 set forth in this Act will provide the Ute Tribes with substitute benefits equivalent to those that the Tribes would have received under the Colorado Ute Indian Water Rights Settlement Act of 1988, in a manner consistent with paragraph (8) and the Federal Government's trust obligation.

(10) Based upon paragraph (8), it is the intent of Congress to enact legislation that implements the Record of Decision referred to in paragraph (8)(F).

(c) DEFINITIONS- In this Act:

(1) AGREEMENT- The term 'Agreement' has the meaning given that term in section 3(1) of the Colorado Ute Indian Water Rights Settlement Act of 1988 (Public Law 100-585; 102 Stat. 2973).

(2) ANIMAS-LA PLATA PROJECT- The term 'Animas-La Plata Project' has the meaning given that term in section 3(2) of the Colorado Ute Indian Water Rights Settlement Act of 1988 (Public Law 100-585; 102 Stat. 2973).

(3) DOLORES PROJECT- The term 'Dolores Project' has the meaning given that term in section 3(3) of the Colorado Ute Indian Water Rights Settlement Act of 1988 (Public Law 100-585; 102 Stat. 2974).

(4) TRIBE; TRIBES- The term 'Tribe' or 'Tribes' has the meaning given that term in section 3(6) of the Colorado Ute Indian Water Rights Settlement Act of 1988 (Public Law 100-585; 102 Stat. 2974).

SEC. 2. AMENDMENTS TO SECTION 6 OF THE COLORADO UTE INDIAN WATER RIGHTS SETTLEMENT ACT OF 1988.

Subsection (a) of section 6 of the Colorado Ute Indian Water Rights Settlement Act of 1988 (Public Law 100-585; 102 Stat. 2975) is amended to read as follows:

(a) RESERVOIR; MUNICIPAL AND INDUSTRIAL WATER-

(1) FACILITIES-

(A) IN GENERAL- After the date of enactment of this subsection, but prior to January 1, 2005, or the date established in the Amended Final Decree described in section 18(c), the Secretary, in order to settle the outstanding claims of the Tribes on the Animas and La Plata Rivers, acting through the Bureau of Reclamation, is specifically authorized to--

(i) complete construction of, and operate and maintain, a reservoir, a pumping plant, a reservoir inlet conduit, and appurtenant facilities with sufficient capacity to divert and store water from the Animas River to provide for an average annual depletion of 57,100 acre-feet of water to be used for a municipal and industrial water supply, which facilities shall--

(I) be designed and operated in accordance with the hydrologic regime necessary for the recovery of the endangered fish of the San Juan River as determined by the San Juan River Recovery Implementation Program;

(II) be operated in accordance with the Animas-La Plata Project Compact as approved by Congress in Public Law 90-537;

(III) include an inactive pool of an appropriate size to be determined by the Secretary following the completion of required environmental compliance activities; and

(IV) include those recreation facilities determined to be appropriate by agreement between the State of Colorado and the Secretary that shall address the payment of any of the costs of such facilities by the State of Colorado in addition to the costs described in paragraph (3); and

(ii) deliver, through the use of the project components referred to in clause (i), municipal and industrial water allocations--

(I) with an average annual depletion not to exceed 16,525 acre-feet of water, to the Southern Ute Indian Tribe for its present and future needs;

(II) with an average annual depletion not to exceed 16,525 acre-feet of water, to the Ute Mountain Ute Indian Tribe for its present and future needs;

(III) with an average annual depletion not to exceed 2,340 acre-feet of water, to the Navajo Nation for its present and future needs;

(IV) with an average annual depletion not to exceed 10,400 acre-feet of water, to the San Juan Water Commission for its present and future needs;

(V) with an average annual depletion of an amount not to exceed 2,600 acre-feet of water, to the Animas-La Plata Conservancy District for its present and future needs;

(VI) with an average annual depletion of an amount not to exceed 5,230 acre-feet of water, to the State of Colorado for its present and future needs; and

(VII) with an average annual depletion of an amount not to exceed 780 acre-feet of water, to the La Plata Conservancy District of New Mexico for its present and future needs.

(B) APPLICABILITY OF OTHER FEDERAL LAW- The responsibilities of the Secretary described in subparagraph (A) are subject to the requirements of Federal laws related to the protection of the environment and otherwise applicable to the construction of the proposed facilities, including the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), the Clean Water Act (42 U.S.C. 7401 et seq.), and the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.). Nothing in this Act shall be construed to predetermine or otherwise affect the outcome of any analysis conducted by the Secretary or any other Federal official under applicable laws.

(C) LIMITATION-

(i) IN GENERAL- If constructed, the facilities described in subparagraph (A) shall constitute the Animas-La Plata Project. Construction of any other project features authorized by Public Law 90-537 shall not be commenced without further express authorization from Congress.

(ii) CONTINGENCY IN APPLICATION- If the facilities described in subparagraph (A) are not constructed and operated, clause (i) shall not take effect.

(2) TRIBAL CONSTRUCTION COSTS- Construction costs allocable to the facilities that are required to deliver the municipal and industrial water allocations described in subclauses (I), (II) and (III) of paragraph (1)(A)(ii) shall be nonreimbursable to the United States.

(3) NONTRIBAL WATER CAPITAL OBLIGATIONS-

(A) IN GENERAL- Under the provisions of section 9 of the Act of August 4, 1939 (43 U.S.C. 485h), the nontribal municipal and industrial water capital repayment obligations for the facilities described in paragraph (1)(A)(i) may be satisfied upon the payment in full of the nontribal water capital obligations prior to the initiation of construction. The amount of the obligations described in the preceding sentence shall be determined by agreement between the Secretary of the Interior and the entity responsible for such repayment as to the appropriate reimbursable share of the construction costs allocated to that entity's municipal water storage. Such repayment shall be consistent with Federal reclamation law, including the Colorado River Storage Project Act of 1956 (43 U.S.C. 620 et seq.). Such agreement shall take into account the fact that the construction of certain project facilities, including those facilities required to provide irrigation water supplies from the Animas-La Plata Project, is not authorized under paragraph (1)(A)(i) and no costs associated with the design or development of such facilities, including costs associated with

environmental compliance, shall be allocable to the municipal and industrial users of the facilities authorized under such paragraph.

(B) NONTRIBAL REPAYMENT OBLIGATION SUBJECT TO FINAL COST ALLOCATION- The nontribal repayment obligation set forth in subparagraph (A) shall be subject to a final cost allocation by the Secretary upon project completion. In the event that the final cost allocation indicates that additional repayment is warranted based on the applicable entity's share of project water storage and determination of overall reimbursable cost, that entity may elect to enter into a new agreement to make the additional payment necessary to secure the full water supply identified in paragraph (1)(A)(ii). If the repayment entity elects not to enter into a new agreement, the portion of project storage relinquished by such election shall be available to the Secretary for allocation to other project purposes. Additional repayment shall only be warranted for reasonable and unforeseen costs associated with project construction as determined by the Secretary in consultation with the relevant repayment entities.

(C) REPORT- Not later than April 1, 2001, the Secretary shall report to Congress on the status of the cost-share agreements contemplated in subparagraph (A). In the event that no agreement is reached with either the Animas-La Plata Conservancy District or the State of Colorado for the water allocations set forth in subclauses (V) and (VI) of paragraph (1)(A)(ii), those allocations shall be reallocated equally to the Colorado Ute Tribes.

(4) TRIBAL WATER ALLOCATIONS-

(A) IN GENERAL- With respect to municipal and industrial water allocated to a Tribe from the Animas-La Plata Project or the Dolores Project, until that water is first used by a Tribe or used pursuant to a water use contract with the Tribe, the Secretary shall pay the annual operation, maintenance, and replacement costs allocable to that municipal and industrial water allocation of the Tribe.

(B) TREATMENT OF COSTS- A Tribe shall not be required to reimburse the Secretary for the payment of any cost referred to in subparagraph (A).

(5) REPAYMENT OF PRO RATA SHARE- Upon a Tribe's first use of an increment of a municipal and industrial water allocation described in paragraph (4), or the Tribe's first use of such water pursuant to the terms of a water use contract--

(A) repayment of that increment's pro rata share of those allocable construction costs for the Dolores Project shall be made by the Tribe; and

(B) the Tribe shall bear a pro rata share of the allocable annual operation, maintenance, and replacement costs of the increment as referred to in paragraph (4).'

SEC. 3. MISCELLANEOUS.

The Colorado Ute Indian Water Rights Settlement Act of 1988 (Public Law 100-585; 102 Stat. 2973) is amended by adding at the end the following:

SEC. 15. NEW MEXICO AND NAVAJO NATION WATER MATTERS.

(a) ASSIGNMENT OF WATER PERMIT- Upon the request of the State Engineer of the State of New

Mexico, the Secretary shall, as soon as practicable, in a manner consistent with applicable law, assign, without consideration, to the New Mexico Animas-La Plata Project beneficiaries or to the New Mexico Interstate Stream Commission in accordance with the request of the State Engineer, the Department of the Interior's interest in New Mexico State Engineer Permit Number 2883, dated May 1, 1956, in order to fulfill the New Mexico non-Navajo purposes of the Animas-La Plata Project, so long as the permit assignment does not affect the application of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) to the use of the water involved.

`(b) NAVAJO NATION MUNICIPAL PIPELINE- The Secretary is specifically authorized to construct a water line to augment the existing system that conveys the municipal water supplies, in an amount not less than 4,680 acre-feet per year, to the Navajo Indian Reservation at or near Shiprock, New Mexico. The Secretary shall comply with all applicable environmental laws with respect to such water line. Construction costs allocated to the Navajo Nation for such water line shall be nonreimbursable to the United States.

`(c) PROTECTION OF NAVAJO WATER CLAIMS- Nothing in this Act, including the permit assignment authorized by subsection (a), shall be construed to quantify or otherwise adversely affect the water rights and the claims of entitlement to water of the Navajo Nation.

SEC. 16. RESOURCE FUNDS.

`(a) AUTHORIZATION OF APPROPRIATIONS- There is authorized to be appropriated to carry out this section, \$8,000,000 for each of fiscal years 2002 through 2006. Not later than 60 days after amounts are appropriated and available to the Secretary for a fiscal year under this paragraph, the Secretary shall make a payment to each of the Tribal Resource Funds established under subsection (b). Each such payment shall be equal to 50 percent of the amount appropriated for the fiscal year involved.

`(b) FUNDS- The Secretary shall establish a--

`(1) Southern Ute Tribal Resource Fund; and

`(2) Ute Mountain Ute Tribal Resource Fund.

`(c) TRIBAL DEVELOPMENT-

`(1) INVESTMENT- The Secretary shall, in the absence of an approved tribal investment plan provided for under paragraph (2), invest the amount in each Tribal Resource Fund established under subsection (b) in accordance with the Act entitled, 'An Act to authorize the deposit and investment of Indian funds' approved June 24, 1938 (25 U.S.C. 162a). With the exception of the funds referred to in paragraph (3) (B)(i), the Secretary shall disburse, at the request of a Tribe, the principal and income in its Resource Fund, or any part thereof, in accordance with a resource acquisition and enhancement plan approved under paragraph (3).

`(2) INVESTMENT PLAN-

`(A) IN GENERAL- In lieu of the investment provided for in paragraph (1), a Tribe may submit a tribal investment plan applicable to all or part of the Tribe's Tribal Resource Fund, except with respect to the funds referred to in paragraph (3)(B)(i).

`(B) APPROVAL- Not later than 60 days after the date on which an investment plan is submitted under subparagraph (A), the Secretary shall approve such investment plan if the Secretary finds

that the plan is reasonable and sound. If the Secretary does not approve such investment plan, the Secretary shall set forth in writing and with particularity the reasons for such disapproval. If such investment plan is approved by the Secretary, the Tribal Resource Fund involved shall be disbursed to the Tribe to be invested by the Tribe in accordance with the approved investment plan, subject to subsection (d).

`(C) COMPLIANCE- The Secretary may take such steps as the Secretary determines to be necessary to monitor the compliance of a Tribe with an investment plan approved under subparagraph (B). The United States shall not be responsible for the review, approval, or audit of any individual investment under the plan. The United States shall not be directly or indirectly liable with respect to any such investment, including any act or omission of the Tribe in managing or investing such funds.

`(D) ECONOMIC DEVELOPMENT PLAN- The principal and income derived from tribal investments under an investment plan approved under subparagraph (B) shall be subject to the provisions of this section and shall be expended only in accordance with an economic development plan approved under paragraph (3)(B).

`(3) ECONOMIC DEVELOPMENT PLAN-

`(A) IN GENERAL- Each Tribe shall submit to the Secretary a resource acquisition and enhancement plan for all or any portion of its Tribal Resource Fund.

`(B) APPROVAL- Not later than 60 days after the date on which a plan is submitted under subparagraph (A), the Secretary shall approve such plan if it is consistent with the following requirements:

`(i) With respect to at least 3/4 of the funds appropriated pursuant to this section and consistent with the long-standing practice of the Tribes and other local entities and communities to work together to use their respective water rights and resources for mutual benefit, at least 3/4 of the funds appropriated pursuant to this section shall be utilized to enhance, restore, and utilize the Tribes' natural resources in partnership with adjacent non-Indian communities or entities in the area.

`(ii) The plan must be reasonably related to the protection, acquisition, enhancement, or development of natural resources for the benefit of the Tribe and its members.

`(iii) Notwithstanding any other provision of law and in order to ensure that the Federal Government fulfills the objectives of the Record of Decision referred to in section 1(b)(8) (F) of the Colorado Ute Settlement Act Amendments of 2000 by requiring that the funds referred to in clause (i) are expended directly by employees of the Federal Government, the Secretary acting through the Bureau of Reclamation shall expend not less than 1/3 of the funds referred to in clause (i) for municipal or rural water development and not less than 2/3 of the funds referred to such clause for resource acquisition and enhancement.

`(C) MODIFICATION- Subject to the provisions of this Act and the approval of the Secretary, each Tribe may modify a plan approved under subparagraph (B).

`(D) LIABILITY- The United States shall not be directly or indirectly liable for any claim or cause of action arising from the approval of a plan under this paragraph, or from the use and

expenditure by the Tribe of the principal or interest of the Funds.

`(d) **LIMITATION ON PER CAPITA DISTRIBUTIONS-** No part of the principal contained in the Tribal Resource Fund, or of the income accruing to such funds, or the revenue from any water use contract, shall be distributed to any member of either Tribe on a per capita basis.

`(e) **LIMITATION ON SETTING ASIDE FINAL CONSENT DECREE-** Neither the Tribes nor the United States shall have the right to set aside the final consent decree solely because the requirements of subsection (c) are not complied with or implemented.

`(f) **LIMITATION ON DISBURSEMENT OF TRIBAL RESOURCE FUNDS-** Any funds appropriated under this section shall be placed into the Southern Ute Tribal Resource Fund and the Ute Mountain Ute Tribal Resource Fund in the Treasury of the United States but shall not be available for disbursement under this section until the final settlement of the tribal claims as provided in section 18. The Secretary of the Interior may, in the Secretary's sole discretion, authorize the disbursement of funds prior to the final settlement in the event that the Secretary determines that substantial portions of the settlement have been completed. In the event that the funds are not disbursed under the terms of this section by December 31, 2012, such funds shall be deposited in the general fund of the Treasury.

SEC. 17. COLORADO UTE SETTLEMENT FUND.

`(a) **ESTABLISHMENT OF FUND-** There is hereby established within the Treasury of the United States a fund to be known as the 'Colorado Ute Settlement Fund'.

`(b) **AUTHORIZATION OF APPROPRIATIONS-** There is authorized to be appropriated to the Colorado Ute Settlement Fund such funds as are necessary to complete the construction of the facilities described in sections 6(a)(1)(A) and 15(b) within 7 years of the date of enactment of this section. Such funds are authorized to be appropriated for each of the first 5 fiscal years beginning with the first full fiscal year following the date of enactment of this section.

SEC. 18. FINAL SETTLEMENT.

`(a) **IN GENERAL-** The construction of the facilities described in section 6(a)(1)(A), the allocation of the water supply from those facilities to the Tribes as described in that section, and the provision of funds to the Tribes in accordance with section 16 and the issuance of an amended final consent decree as contemplated in subsection (c) shall constitute final settlement of the tribal claims to water rights on the Animas and La Plata Rivers in the State of Colorado.

`(b) **STATUTORY CONSTRUCTION-** Nothing in this section shall be construed to affect the right of the Tribes to water rights on the streams and rivers described in the Agreement, other than the Animas and La Plata Rivers, to receive the amounts of water dedicated to tribal use under the Agreement, or to acquire water rights under the laws of the State of Colorado.

`(c) **ACTION BY THE ATTORNEY GENERAL-** The Attorney General shall file with the District Court, Water Division Number 7, of the State of Colorado, such instruments as may be necessary to request the court to amend the final consent decree to provide for the amendments made to this Act under the Colorado Ute Indian Water Rights Settlement Act Amendments of 2000. The amended final consent decree shall specify terms and conditions to provide for an extension of the current January 1, 2005, deadline for the Tribes to commence litigation of their reserved rights claims on the Animas and La Plata Rivers.

SEC. 19. STATUTORY CONSTRUCTION; TREATMENT OF CERTAIN FUNDS.

(a) IN GENERAL- Nothing in the amendments made by the Colorado Ute Settlement Act Amendments of 2000 shall be construed to affect the applicability of any provision of this Act.

(b) TREATMENT OF UNCOMMITTED PORTION OF COST-SHARING OBLIGATION- The uncommitted portion of the cost-sharing obligation of the State of Colorado referred to in section 6(a)(3) shall be made available, upon the request of the State of Colorado, to the State of Colorado after the date on which payment is made of the amount specified in that section.'

Passed the Senate October 25 (legislative day, September 22), 2000.

Attest:

Secretary.

106th CONGRESS

2d Session

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AN ACT

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