

Statement for the Record
Bureau of Reclamation
U.S. Department of the Interior
Before the
Subcommittee on Water, Power and Oceans
Committee on Natural Resources
U.S. House of Representatives
On
HR 1406, New Mexico Navajo Water
Settlement Technical Corrections Act

June 25, 2015

Chairman Fleming and members of the Subcommittee, the Bureau of Reclamation (Reclamation) submits the following views of the Department of the Interior (Department) on HR 1406, the New Mexico Navajo Water Settlement Technical Corrections Act. This bill proposes necessary amendments to the Navajo water rights settlement provision of the Omnibus Public Land Management Act of 2009 (Title X, Part IV of Public Law 111–11) (Navajo Settlement Act or Settlement Act). The Department supports this bill.

The Department continues to be fully committed to implementing this congressionally enacted water rights settlement, and we recognize and appreciate that the goal of this bill is to make targeted fixes to the statute in order to facilitate implementation. The amendments proposed in the bill are helpful. Some of these proposed amendments are technical corrections in spelling and section numbering. Others could make the work of the implementation teams on the ground easier, including through clarifications to language in the original enacted bill.

The changes to each settlement proposed by HR 1406 are discussed below.

Navajo Water Settlement

Section 2 of HR 1406 would amend the Navajo Settlement Act in several respects. The first two amendments, in Section 2(a) and (b), are non-substantive in nature and are supported by the Department.

Section 2(c) of the bill would amend section 10604(f)(1) of the Settlement Act to allow the Navajo Nation to begin delivering groundwater (non-project water) through Project facilities without triggering the Secretary’s discretion regarding the 10-year operation and maintenance (O&M) payment waiver provision of Section 10603(f)(1) of the Settlement Act. This amendment benefits the United States in that it would prevent the Navajo Nation from requesting O&M payment waivers (which if granted would require the Department to pay O&M costs) until Project water from the San Juan River is delivered to the Navajo Nation. The Navajo Nation has the responsibility for paying O&M costs of non-Project water delivery under Section 10602(h)(1) of the Settlement Act.

Section 2(d)(1) of the bill would amend Section 10609 of the Settlement Act to allow funding identified for the Conjunctive Use Wells in the San Juan River Basin and in the Little Colorado and Rio Grande Basins to be used for planning and design as well as construction and rehabilitation of wells. Without the amendment, construction and rehabilitation are the only authorized uses of the funds. Because costs are capped, this change will have no effect on the final costs of the settlement. The Department believes that using this funding for planning and design is useful, since only a coarse level of planning, and no design work, has been done for these wells.

Section 2(d)(2) of the bill would amend the Settlement Act by increasing the amount of Project funding that can be spent on cultural resources work from two to four percent of total project costs. The Project area is rich in cultural resources and significant work must be done in this area, so the proposed increase appears to be reasonable and appropriate in the Department's view. Correspondingly, section 2(d)(3) would reduce the percentage of funds that may be spent on fish and wildlife facilities from four percent to two percent. Based on current information, this change also appears to be reasonable and appropriate. Both of these proposed changes are consistent with the Project cost estimate included in the Final Environmental Impact Statement and, when taken together, they do not increase the cost of the Project.

Section 2(e) of HR 1406, the bill's final paragraph, would clarify language in Section 10701(e) of the Settlement Act that, absent amendment, could be interpreted to mean that the court in the stream adjudication¹ had jurisdiction over the Project contract between the United States and the Navajo Nation. The Department supports this clarification, which is consistent with Reclamation law.

The Department agrees that technical amendments to the Navajo Settlement Act should be made and is pleased to support HR 1406.

This concludes the Department's written statement. #

¹ State of New Mexico Eleventh Judicial District Court