

Union Calendar No. 557

116TH CONGRESS
2^D SESSION

H. R. 644

[Report No. 116-673]

To approve the settlement of the water rights claims of the Navajo Nation
in Utah, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 17, 2019

Mr. BISHOP of Utah introduced the following bill; which was referred to the
Committee on Natural Resources

DECEMBER 18, 2020

Additional sponsors: Mr. STEWART, Mr. CURTIS, Mr. MCADAMS, Mr. LUJÁN,
and Mr. O'HALLERAN

DECEMBER 18, 2020

Reported with an amendment, committed to the Committee of the Whole
House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in *italie*]

[For text of introduced bill, see copy of bill as introduced on January 17, 2019]

A BILL

To approve the settlement of the water rights claims of the Navajo Nation in Utah, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 *This Act may be cited as the “Navajo Utah Water*
5 *Rights Settlement Act of 2020”.*

6 **SEC. 2. PURPOSES.**

7 *The purposes of this Act are—*

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

11 *(A) the Navajo Nation; and*

12 *(B) the United States, for the benefit of the*
13 *Nation;*

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

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

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

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

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

24 **SEC. 3. DEFINITIONS.**

25 *In this Act:*

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

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

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

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

13 (A) *granted out of the public domain that*
14 *is—*

15 (i) *located within the exterior bound-*
16 *aries of the Reservation; or*

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

25 (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
3 the 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*
19 *water conservation, to be constructed, in whole or in*
20 *part, using monies from the Navajo Water Develop-*
21 *ment 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
19 plan under this paragraph shall require that the
20 Nation shall spend all amounts withdrawn from
21 the 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 ACT.*—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 (43 U.S.C. 618 et seq.);*

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 Colorado River Basin Project Act*
7 *(43 U.S.C. 1501 et seq.);*

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

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

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

19 (e) *TOLLING OF CLAIMS.—*

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

9 **SEC. 10. MISCELLANEOUS PROVISIONS.**

10 (a) *PRECEDENT.*—Nothing in this Act establishes any
11 standard for the quantification or litigation of Federal re-
12 served water rights or any other Indian water claims of
13 any other Indian Tribe in any other judicial or adminis-
14 trative 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 en-
18 titlements to water of any Indian Tribe, band, or commu-
19 nity, other than the Navajo Nation.

20 **SEC. 11. RELATION TO ALLOTTEES.**

21 (a) *NO EFFECT ON CLAIMS OF ALLOTTEES.*—Nothing
22 in this Act or the agreement shall affect the rights or claims
23 of allottees, or the United States, acting in its capacity as
24 trustee for or on behalf of allottees, for water rights or dam-

1 *ages related to lands allotted by the United States to*
2 *allottees, except as provided in section 5(a)(2).*

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

Union Calendar No. 557

116TH CONGRESS
2^D Session

H. R. 644

[Report No. 116-673]

A BILL

To approve the settlement of the water rights claims of the Navajo Nation in Utah, and for other purposes.

DECEMBER 18, 2020

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed