

## Calendar No. 182

116TH CONGRESS  
1ST SESSION**S. 1207****[Report No. 116-79]**

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

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## IN THE SENATE OF THE UNITED STATES

APRIL 11, 2019

Mr. ROMNEY (for himself, Ms. SINEMA, Ms. MCSALLY, and Ms. WARREN) introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

SEPTEMBER 9, 2019

Reported by Mr. HOEVEN, without amendment

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**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 2019”.

1 **SEC. 2. PURPOSES.**

2 The purposes of this Act are—

3 (1) to achieve a fair, equitable, and final settle-  
4 ment of all claims to water rights in the State of  
5 Utah for—

6 (A) the Navajo Nation; and

7 (B) the United States, for the benefit of  
8 the Nation;

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

13 (3) to authorize and direct the Secretary—

14 (A) to execute the Agreement; and

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

18 (4) to authorize funds necessary for the imple-  
19 mentation of the Agreement and this Act.

20 **SEC. 3. DEFINITIONS.**

21 In this Act:

22 (1) AGREEMENT.—The term “agreement”  
23 means—

24 (A) the document entitled “Navajo Utah  
25 Water Rights Settlement Agreement” dated De-

1 cember 14, 2015, and the exhibits attached  
2 thereto; and

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

7 (2) ALLOTMENT.—The term “allotment” means  
8 a parcel of land—

9 (A) granted out of the public domain that  
10 is—

11 (i) located within the exterior bound-  
12 aries of the Reservation; or

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

21 (B) held in trust by the United States—

22 (i) for the benefit of an individual, in-  
23 dividuals, or an Indian Tribe other than  
24 the Navajo Nation; or

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

3 (3) ALLOTTEE.—The term “allottee” means an  
4 individual or Indian Tribe with a beneficial interest  
5 in an allotment held in trust by the United States.

6 (4) ENFORCEABILITY DATE.—The term “en-  
7 forceability date” means the date on which the Sec-  
8 retary publishes in the Federal Register the state-  
9 ment of findings described in section 8(a).

10 (5) GENERAL STREAM ADJUDICATION.—The  
11 term “general stream adjudication” means the adju-  
12 dication pending, as of the date of enactment, in the  
13 Seventh Judicial District in and for Grand County,  
14 State of Utah, commonly known as the “South-  
15 eastern Colorado River General Adjudication”, Civil  
16 No. 810704477, conducted pursuant to State law.

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

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

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

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

20          (10) NAVAJO WATER RIGHTS.—The term “Nav-  
21          ajo water rights” means the Nation’s water rights in  
22          Utah described in the agreement and this Act.

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

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

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

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

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

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

23           (17) UNITED STATES ACTING IN ITS TRUST CA-  
24 PACITY.—The term “United States acting in its  
25 trust capacity” means the United States acting for

1 the benefit of the Navajo Nation or for the benefit  
2 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  
7 (including any amendments to the agreement that are exe-  
8 cuted to make the agreement consistent with this Act).

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

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

15 (2) any amendments to the agreement nec-  
16 essary to make the agreement consistent with this  
17 Act.

18 (c) ENVIRONMENTAL COMPLIANCE.—

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

22 (A) the Endangered Species Act of 1973  
23 (16 U.S.C. 1531 et seq.);

24 (B) the National Environmental Policy Act  
25 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  
5 for in this Act shall not constitute a major Federal  
6 action under the National Environmental Policy Act  
7 of 1969 (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  
11 shall have the right to use water from water sources  
12 located within Utah and adjacent to or encompassed  
13 within the boundaries of the Reservation resulting in  
14 depletions not to exceed 81,500 acre-feet annually as  
15 described in the agreement and as confirmed in the  
16 decree entered by the general stream adjudication  
17 court.

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

23 (A) any water use existing on an allotment  
24 as of the date of enactment of this Act and as



1 subsequently reflected in the hydrographic sur-  
2 vey report referenced in section 7(b);

3 (B) reasonable domestic and stock water  
4 uses put into use on an allotment; and

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

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

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

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

20 (6) CONFLICT.—In the event of a conflict be-  
21 tween the agreement and this Act, the provisions of  
22 this Act shall control.

23 (b) TRUST STATUS OF NAVAJO WATER RIGHTS.—  
24 The Navajo water rights—

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

4           (2) shall not be subject to forfeiture or aban-  
5 donment.

6           (c) AUTHORITY OF THE NATION.—

7           (1) IN GENERAL.—The Nation shall have the  
8 authority to allocate, distribute, and lease the Nav-  
9 ajo water rights for any use on the Reservation in  
10 accordance with the agreement, this Act, and appli-  
11 cable Tribal and Federal law.

12           (2) OFF-RESERVATION USE.—The Nation may  
13 allocate, distribute, and lease the Navajo water  
14 rights for off-Reservation use in accordance with the  
15 agreement, subject to the approval of the Secretary.

16           (3) ALLOTTEE WATER RIGHTS.—The Nation  
17 shall not object in the general stream adjudication  
18 or other applicable forum to the quantification of  
19 reasonable domestic and stock water uses on an al-  
20 lotment, and shall administer any water use on the  
21 Reservation in accordance with applicable Federal  
22 law, including recognition of—

23           (A) any water use existing on an allotment  
24 as of the date of enactment of this Act and as

1 subsequently reflected in the hydrographic sur-  
2 vey report referenced in section 7(b);

3 (B) reasonable domestic and stock water  
4 uses on an allotment; and

5 (C) any allotment water rights decreed in  
6 the general stream adjudication or other appro-  
7 priate forum.

8 (d) EFFECT.—Except as otherwise expressly provided  
9 in this section, nothing in this Act—

10 (1) authorizes any action by the Nation against  
11 the United States under Federal, State, Tribal, or  
12 local law; or

13 (2) alters or affects the status of any action  
14 brought pursuant to section 1491(a) of title 28,  
15 United States Code.

16 **SEC. 6. NAVAJO TRUST ACCOUNTS.**

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

1 (b) ACCOUNTS.—The Secretary shall establish in the  
2 Trust Fund the following Accounts:

3 (1) The Navajo Water Development Projects  
4 Account.

5 (2) The Navajo OM&R Account.

6 (c) DEPOSITS.—The Secretary shall deposit in the  
7 Trust Fund Accounts—

8 (1) in the Navajo Water Development Projects  
9 Account, the amounts made available pursuant to  
10 section 7(a)(1); and

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

13 (d) MANAGEMENT AND INTEREST.—

14 (1) MANAGEMENT.—Upon receipt and deposit  
15 of the funds into the Trust Fund Accounts, the Sec-  
16 retary shall manage, invest, and distribute all  
17 amounts in the Trust Fund in a manner that is con-  
18 sistent with the investment authority of the Sec-  
19 retary under—

20 (A) the first section of the Act of June 24,  
21 1938 (25 U.S.C. 162a);

22 (B) the American Indian Trust Fund Man-  
23 agement Reform Act of 1994 (25 U.S.C. 4001  
24 et seq.); and

25 (C) this section.

1           (2) INVESTMENT EARNINGS.—In addition to  
2 the deposits under subsection (c), any investment  
3 earnings, including interest, credited to amounts  
4 held in the Trust Fund are authorized to be appro-  
5 priated to be used in accordance with the uses de-  
6 scribed in subsection (h).

7           (e) AVAILABILITY OF AMOUNTS.—Amounts appro-  
8 priated to, and deposited in, the Trust Fund, including  
9 any investment earnings, shall be made available to the  
10 Nation by the Secretary beginning on the enforceability  
11 date and subject to the uses and restrictions set forth in  
12 this section.

13           (f) WITHDRAWALS.—

14           (1) WITHDRAWALS UNDER THE AMERICAN IN-  
15 DIAN TRUST FUND MANAGEMENT REFORM ACT OF  
16 1994.—The Nation may withdraw any portion of the  
17 funds in the Trust Fund on approval by the Sec-  
18 retary of a tribal management plan submitted by the  
19 Nation in accordance with the American Indian  
20 Trust Fund Management Reform Act of 1994 (25  
21 U.S.C. 4001 et seq.).

22           (A) REQUIREMENTS.—In addition to the  
23 requirements under the American Indian Trust  
24 Fund Management Reform Act of 1994 (25  
25 U.S.C. 4001 et seq.), the Tribal management

1 plan under this paragraph shall require that the  
2 Nation shall spend all amounts withdrawn from  
3 the Trust Fund and any investment earnings  
4 accrued through the investments under the  
5 Tribal management plan in accordance with  
6 this Act.

7 (B) ENFORCEMENT.—The Secretary may  
8 carry out such judicial and administrative ac-  
9 tions as the Secretary determines to be nec-  
10 essary to enforce the Tribal management plan  
11 to ensure that amounts withdrawn by the Na-  
12 tion from the Trust Fund under this paragraph  
13 are used in accordance with this Act.

14 (2) WITHDRAWALS UNDER EXPENDITURE  
15 PLAN.—The Nation may submit to the Secretary a  
16 request to withdraw funds from the Trust Fund pur-  
17 suant to an approved expenditure plan.

18 (A) REQUIREMENTS.—To be eligible to  
19 withdraw funds under an expenditure plan  
20 under this paragraph, the Nation shall submit  
21 to the Secretary for approval an expenditure  
22 plan for any portion of the Trust Fund that the  
23 Nation elects to withdraw pursuant to this  
24 paragraph, subject to the condition that the

1 funds shall be used for the purposes described  
2 in this Act.

3 (B) INCLUSIONS.—An expenditure plan  
4 under this paragraph shall include a description  
5 of the manner and purpose for which the  
6 amounts proposed to be withdrawn from the  
7 Trust Fund will be used by the Nation, in ac-  
8 cordance with subsections (c) and (h).

9 (C) APPROVAL.—On receipt of an expendi-  
10 ture plan under this paragraph, the Secretary  
11 shall approve the plan, if the Secretary deter-  
12 mines that the plan—

13 (i) is reasonable;

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

16 (iii) contains a schedule which de-  
17 scribed that tasks will be completed within  
18 18 months of receipt of withdrawn  
19 amounts.

20 (D) ENFORCEMENT.—The Secretary may  
21 carry out such judicial and administrative ac-  
22 tions as the Secretary determines to be nec-  
23 essary to enforce an expenditure plan to ensure  
24 that amounts disbursed under this paragraph  
25 are used in accordance with this Act.

1 (g) EFFECT OF TITLE.—Nothing in this Act gives  
2 the Nation the right to judicial review of a determination  
3 of the Secretary regarding whether to approve a Tribal  
4 management plan or an expenditure plan except under  
5 subchapter II of chapter 5, and chapter 7, of title 5,  
6 United States Code (commonly known as the “Administra-  
7 tive Procedure Act”).

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

10 (1) The Navajo Water Development Projects  
11 Account shall be used to plan, design, and construct  
12 the Navajo water development projects and for the  
13 conduct of related activities, including to comply  
14 with Federal environmental laws.

15 (2) The Navajo OM&R Account shall be used  
16 for the operation, maintenance, and replacement of  
17 the Navajo water development projects.

18 (i) LIABILITY.—The Secretary and the Secretary of  
19 the Treasury shall not be liable for the expenditure or in-  
20 vestment of any amounts withdrawn from the Trust Fund  
21 by the Nation under subsection (f).

22 (j) NO PER CAPITA DISTRIBUTIONS.—No portion of  
23 the Trust Fund shall be distributed on a per capita basis  
24 to any member of the Nation.



1 (k) EXPENDITURE REPORTS.—The Navajo Nation  
2 shall submit to the Secretary annually an expenditure re-  
3 port describing accomplishments and amounts spent from  
4 use of withdrawals under a Tribal management plan or  
5 an expenditure plan as described in this Act.

6 **SEC. 7. AUTHORIZATION OF APPROPRIATIONS.**

7 (a) AUTHORIZATION.—There are authorized to be ap-  
8 propriated to the Secretary—

9 (1) for deposit in the Navajo Water Develop-  
10 ment Projects Account of the Trust Fund estab-  
11 lished under section 6(b)(1), \$198,300,000, which  
12 funds shall be retained until expended, withdrawn,  
13 or reverted to the general fund of the Treasury; and

14 (2) for deposit in the Navajo OM&R Account of  
15 the Trust Fund established under section 6(b)(2),  
16 \$11,100,000, which funds shall be retained until ex-  
17 pended, withdrawn, or reverted to the general fund  
18 of the Treasury.

19 (b) IMPLEMENTATION COSTS.—There is authorized  
20 to be appropriated non-trust funds in the amount of  
21 \$1,000,000 to assist the United States with costs associ-  
22 ated with the implementation of the Act, including the  
23 preparation of a hydrographic survey of historic and exist-  
24 ing water uses on the Reservation and on allotments.

1 (c) STATE COST SHARE.—The State shall contribute  
2 \$8,000,000 payable to the Secretary for deposit into the  
3 Navajo Water Development Projects Account of the Trust  
4 Fund established under section 6(b)(1) in installments in  
5 each of the 3 years following the execution of the agree-  
6 ment by the Secretary as provided for in subsection (b)  
7 of section 4.

8 (d) FLUCTUATION IN COSTS.—The amount author-  
9 ized to be appropriated under subsection (a) shall be in-  
10 creased or decreased, as appropriate, by such amounts as  
11 may be justified by reason of ordinary fluctuations in costs  
12 occurring after the date of enactment of this Act as indi-  
13 cated by the Bureau of Reclamation Construction Cost  
14 Index—Composite Trend.

15 (1) REPETITION.—The adjustment process  
16 under this subsection shall be repeated for each sub-  
17 sequent amount appropriated until the amount au-  
18 thorized, as adjusted, has been appropriated.

19 (2) PERIOD OF INDEXING.—The period of in-  
20 dexing adjustment for any increment of funding  
21 shall end on the date on which funds are deposited  
22 into the Trust Fund.

23 **SEC. 8. CONDITIONS PRECEDENT.**

24 (a) IN GENERAL.—The waivers and release contained  
25 in section 9 of this Act shall become effective as of the

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

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

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

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

14 (4) the State has enacted any necessary legisla-  
15 tion and provided the funding required under the  
16 agreement and subsection (c) of section 7; and

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

19 (A) confirms the Navajo water rights con-  
20 sistent with the agreement and this Act; and

21 (B) with respect to the Navajo water  
22 rights, is final and nonappealable.

23 (b) EXPIRATION DATE.—If all the conditions prece-  
24 dent described in subsection (a) have not been fulfilled to

1 allow the Secretary's statement of findings to be published  
2 in the Federal Register by October 31, 2030—

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

6 (2) any funds that have been appropriated pur-  
7 suant to section 7 but not expended, including any  
8 investment earnings on funds that have been appro-  
9 priated pursuant to such section, shall immediately  
10 revert to the general fund of the Treasury; and

11 (3) any funds contributed by the State pursu-  
12 ant to subsection (c) of section 7 but not expended  
13 shall be returned immediately to the State.

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

18 **SEC. 9. WAIVERS AND RELEASES.**

19 (a) IN GENERAL.—

20 (1) WAIVER AND RELEASE OF CLAIMS BY THE  
21 NATION AND THE UNITED STATES ACTING IN ITS  
22 CAPACITY AS TRUSTEE FOR THE NATION.—Subject  
23 to the retention of rights set forth in subsection (c),  
24 in return for confirmation of the Navajo water  
25 rights and other benefits set forth in the agreement

1 and this Act, the Nation, on behalf of itself and the  
2 members of the Nation (other than members in their  
3 capacity as allottees), and the United States, acting  
4 as trustee for the Nation and members of the Na-  
5 tion (other than members in their capacity as  
6 allottees), are authorized and directed to execute a  
7 waiver and release of—

8 (A) all claims for water rights within Utah  
9 based on any and all legal theories that the  
10 Navajo Nation or the United States acting in  
11 its trust capacity for the Nation, asserted, or  
12 could have asserted, at any time in any pro-  
13 ceeding, including to the general stream adju-  
14 dication, up to and including the enforceability  
15 date, except to the extent that such rights are  
16 recognized in the agreement and this Act; and

17 (B) all claims for damages, losses, or inju-  
18 ries to water rights or claims of interference  
19 with, diversion, or taking of water rights (in-  
20 cluding claims for injury to lands resulting from  
21 such damages, losses, injuries, interference  
22 with, diversion, or taking of water rights) with-  
23 in Utah against the State, or any person, enti-  
24 ty, corporation, or municipality, that accrued at

1           any time up to and including the enforceability  
2           date.

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

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

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

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

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

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

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

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

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

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

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

9 (5) all claims, including environmental claims,  
10 under any laws (including regulations and common  
11 law) relating to human health, safety, or the envi-  
12 ronment; and

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

16 (d) EFFECT.—Nothing in the agreement or this  
17 Act—

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



1 U.S.C. 1251 et seq.), the Solid Waste Disposal Act  
2 (42 U.S.C. 6901 et seq.), and the regulations imple-  
3 menting those laws;

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

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

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

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

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

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

18 (B) the Boulder Canyon Project Adjust-  
19 ment Act (43 U.S.C. 618 et seq.);

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

23 (D) the Colorado River Basin Project Act  
24 (43 U.S.C. 1501 et seq.);

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

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

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

12 (e) TOLLING OF CLAIMS.—

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

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

23           (3) LIMITATION.—Nothing in this section pre-  
24 cludes the tolling of any period of limitations or any

1 time-based equitable defense under any other appli-  
2 cable law.

3 **SEC. 10. MISCELLANEOUS PROVISIONS.**

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

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

14 **SEC. 11. RELATION TO ALLOTTEES.**

15 (a) NO EFFECT ON CLAIMS OF ALLOTTEES.—Noth-  
16 ing in this Act or the agreement shall affect the rights  
17 or claims of allottees, or the United States, acting in its  
18 capacity as trustee for or on behalf of allottees, for water  
19 rights or damages related to lands allotted by the United  
20 States to allottees, except as provided in section 5(a)(2).

21 (b) RELATIONSHIP OF DECREE TO ALLOTTEES.—  
22 Allottees, or the United States, acting in its capacity as  
23 trustee for allottees, are not bound by any decree entered  
24 in the general stream adjudication confirming the Navajo  
25 water rights and shall not be precluded from making

1 claims to water rights in the general stream adjudication.  
2 Allottees, or the United States, acting in its capacity as  
3 trustee for allottees, may make claims and such claims  
4 may be adjudicated as individual water rights in the gen-  
5 eral stream adjudication.

6 **SEC. 12. ANTIDEFICIENCY.**

7       The United States shall not be liable for any failure  
8 to carry out any obligation or activity authorized by this  
9 Act (including any obligation or activity under the agree-  
10 ment) if adequate appropriations are not provided ex-  
11 pressly by Congress to carry out the purposes of this Act.



Calendar No. 182

116<sup>TH</sup> CONGRESS  
1<sup>ST</sup> Session

**S. 1207**

[Report No. 116-79]

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**A BILL**

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

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SEPTEMBER 9, 2019

Reported without amendment