

JICARILLA APACHE RESERVATION RURAL WATER SYSTEM
ACT

SEPTEMBER 4, 2002.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. HANSEN, from the Committee on Resources,
submitted the following

R E P O R T

[To accompany H.R. 3223]

[Including cost estimate of the Congressional Budget Office]

The Committee on Resources, to whom was referred the bill (H.R. 3223) to authorize the Secretary of the Interior, through the Bureau of Reclamation, to construct the Jicarilla Apache Nation Municipal Water Delivery and Wastewater Collection Systems in the State of New Mexico, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Jicarilla Apache Reservation Rural Water System Act”.

SEC. 2. PURPOSES.

The purposes of this Act are as follows:

(1) To ensure a safe and adequate rural, municipal, and water supply and wastewater systems for the residents of the Jicarilla Apache Reservation in the State of New Mexico in accordance with Public Law 106-243.

(2) To authorize the Secretary of the Interior, through the Bureau of Reclamation, in consultation and collaboration with the Jicarilla Apache Nation—

(A) to plan, design, and construct the water supply, delivery, and wastewater collection systems on the Jicarilla Apache Reservation in the State of New Mexico; and

(B) to include service connections to facilities within the town of Dulce and the surrounding area, and to individuals as part of the construction.

(3) To require the Secretary, at the request of the Jicarilla Apache Nation, to enter into a self-determination contract with the Jicarilla Apache Nation

under title I of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450f et seq.) under which—

(A) the Jicarilla Apache Nation shall plan, design, and construct the water supply, delivery, and wastewater collection systems, including service connections to communities and individuals; and

(B) the Bureau of Reclamation shall provide technical assistance and oversight responsibility for said project.

(4) To establish a process in which the Jicarilla Apache Nation shall assume title and responsibility for the ownership, operation, maintenance, and replacement of the system.

SEC. 3. DEFINITIONS.

As used in this Act:

(1) ACT.—The term “Act” means the Jicarilla Apache Reservation Rural Water System Act.

(2) BIA.—The term “BIA” means the Bureau of Indian Affairs, an agency within the Department of the Interior.

(3) IRRIGATION.—The term “irrigation” means the commercial application of water to land for the purpose of establishing or maintaining commercial agriculture in order to produce field crops and vegetables for sale.

(4) RECLAMATION.—The term “Reclamation” means the Bureau of Reclamation, an agency within the Department of the Interior.

(5) REPORT.—The term “Report” means the report entitled “Planning Report/Environmental Assessment, Water and Wastewater Improvements, Jicarilla Apache Nation, Dulce, New Mexico”, dated September 2001, which was completed pursuant to Public Law 106–243.

(6) RESERVATION.—The term “Reservation” means the Jicarilla Apache Reservation in the State of New Mexico, including all lands and interests in land that are held in trust by the United States for the Tribe.

(7) RURAL WATER SUPPLY PROJECT.—The term “Rural Water Supply Project” means a municipal, domestic, rural, and industrial water supply and wastewater facility area and project identified to serve a group of towns, communities, cities, tribal reservations, or dispersed farmsteads with access to clean, safe domestic and industrial water, to include the use of livestock.

(8) STATE.—The term “State” means the State of New Mexico.

(9) SECRETARY.—The term “Secretary” means the Secretary of the Interior, acting through the Bureau of Reclamation.

(10) TRIBE.—The term “Tribe” means the Jicarilla Apache Nation.

SEC. 4. JICARILLA APACHE RESERVATION RURAL WATER SYSTEM.

(a) CONSTRUCTION.—The Secretary, in consultation and collaboration with the Tribe, shall plan, design, and construct the Rural Water Supply Project to improve the water supply, delivery, and wastewater facilities to the town of Dulce, New Mexico, and surrounding communities for the purpose of providing the benefits of clean, safe, and reliable water supply, delivery, and wastewater facilities.

(b) SCOPE OF PROJECT.—The Rural Water Supply Project shall consist of the following:

(1) Facilities to provide water supply, delivery, and wastewater services for the community of Dulce, the Mundo Ranch Development, and surrounding areas on the Reservation.

(2) Pumping and treatment facilities located on the Reservation.

(3) Distribution, collection, and treatment facilities to serve the needs of the Reservation, including, but not limited to, construction, replacement, improvement, and repair of existing water and wastewater systems, including systems owned by individual tribal members and other residents on the Reservation.

(4) Appurtenant buildings and access roads.

(5) Necessary property and property rights.

(6) Such other electrical power transmission and distribution facilities, pipelines, pumping plants, and facilities as the Secretary deems necessary or appropriate to meet the water supply, economic, public health, and environmental needs of the Reservation, including, but not limited to, water storage tanks, water lines, maintenance equipment, and other facilities for the Tribe on the Reservation.

(c) COST SHARING.—

(1) TRIBAL SHARE.—Subject to paragraph (3) and subsection (d), the tribal share of the cost of the Rural Water Supply Project is comprised of the costs to design and initiate construction of the wastewater treatment plant, to replace the diversion structure on the Navajo River, and to construct raw water settling ponds, a water treatment plant, water storage plants, a water transmission pipeline, and distribution pipelines, and has been satisfied.

(2) **FEDERAL SHARE.**—Subject to paragraph (3) and subsection (d), the Federal share of the cost of the Rural Water Supply Project shall be all remaining costs of the project identified in the Report.

(3) **OPERATION AND MAINTENANCE.**—The Federal share of the cost of operation and maintenance of the Rural Water Supply Project shall continue to be available for operation and maintenance in accordance with the Indian Self-Determination Act, as set forth in this Act.

(d) **OPERATION, MAINTENANCE, AND REPLACEMENT AFTER COMPLETION.**—Upon determination by the Secretary that the Rural Water Supply Project is substantially complete, the Tribe shall assume responsibility for and liability related to the annual operation, maintenance, and replacement cost of the project in accordance with this Act and the Operation, Maintenance, and Replacement Plan under chapter IV of the Report.

SEC. 5. GENERAL AUTHORITY.

The Secretary is authorized to enter into contracts, grants, cooperative agreements, and other such agreements and to promulgate such regulations as may be necessary to carry out the purposes and provisions of this Act and the Indian Self-Determination Act (Public Law 93–638; 25 U.S.C. 450 et seq.).

SEC. 6. PROJECT REQUIREMENTS.

(a) **PLANS.**—

(1) **PROJECT PLAN.**—Not later than 60 days after funds are made available for this purpose, the Secretary shall prepare a recommended project plan, which shall include a general map showing the location of the proposed physical facilities, conceptual engineering drawings of structures, and general standards for design for the Rural Water Supply Project.

(2) **OM&R PLAN.**—The Tribe shall develop an operation, maintenance, and replacement plan, which shall provide the necessary framework to assist the Tribe in establishing rates and fees for customers of the Rural Water Supply Project.

(b) **CONSTRUCTION MANAGER.**—The Secretary, through Reclamation and in consultation with the Tribe, shall select a project construction manager to work with the Tribe in the planning, design, and construction of the Rural Water Supply Project.

(c) **MEMORANDUM OF AGREEMENT.**—The Secretary shall enter into a memorandum of agreement with the Tribe that commits Reclamation and BIA to a transition plan that addresses operations and maintenance of the Rural Water Supply Project while the facilities are under construction and after completion of construction.

(d) **OVERSIGHT.**—The Secretary shall have oversight responsibility with the Tribe and its constructing entity and shall incorporate value engineering analysis as appropriate to the Rural Water Supply Project.

(e) **TECHNICAL ASSISTANCE.**—The Secretary shall provide such technical assistance as may be necessary to the Tribe to plan, develop, and construct the Rural Water Supply Project, including, but not limited to, operation and management training.

(f) **SERVICE AREA.**—The service area of the Rural Water Supply Project shall be within the boundaries of the Reservation.

(g) **OTHER LAW.**—The planning, design, construction, operation, and maintenance of the Rural Water Supply Project shall be subject to the provisions of the Indian Self-Determination Act (25 U.S.C. 450 et seq.).

(h) **REPORT.**—During the year that construction of the Rural Water Supply Project begins and annually until such construction is completed, the Secretary, through Reclamation and in consultation with the Tribe, shall report to Congress on the status of the planning, design, and construction of the Rural Water Supply Project.

(i) **TITLE.**—Title to the Rural Water Supply Project shall be held in trust for the Tribe by the United States and shall not be transferred or encumbered without a subsequent Act of Congress.

SEC. 7. AUTHORIZATION OF APPROPRIATIONS.

(a) **IN GENERAL.**—There is authorized to be appropriated to carry out this Act \$45,000,000 (January 2002 dollars) plus or minus such amounts, if any, as may be justified by reason of changes in construction costs as indicated by engineering cost indexes applicable to the types of construction involved for the planning, design, and construction of the Rural Water Supply Project as generally described in the Report dated September 2001.

(b) **CONDITIONS.**—Funds may not be appropriated for the construction of any project authorized under this Act until after—

(1) an appraisal investigation and a feasibility study have been completed by the Secretary and the Tribe; and

(2) the Secretary has determined that the plan required by section 6(a)(2) is completed.

(c) NEPA.—The Secretary shall not obligate funds for construction until after the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) are met with respect to Rural Water Supply Project.

SEC. 8. PROHIBITION ON USE OF FUNDS FOR IRRIGATION PURPOSES.

None of the funds made available to the Secretary for planning or construction of the Rural Water Supply Project may be used to plan or construct facilities used to supply water for the purposes of irrigation.

SEC. 9. WATER RIGHTS.

The water rights of the Tribe are part of and included in the Jicarilla Apache Tribe Water Rights Settlement Act (Public Law 102–441). These rights are adjudicated under New Mexico State law as a partial final judgment and decree entered in the Eleventh Judicial District Court of New Mexico. That Act and decree provide for sufficient water rights under “historic and existing uses” to supply water for the municipal water system. These water rights are recognized depletions within the San Juan River basin and no new depletions are associated with the Rural Water Supply Project. In consultation with the Fish and Wildlife Service, Reclamation has determined that there shall be no significant impact to endangered species as a result of water depletions associated with this project. No other water rights of the Tribe shall be impacted by the Rural Water Supply Project.

PURPOSE OF THE BILL

The purpose of H.R. 3223 is to authorize the Secretary of the Interior, through the Bureau of Reclamation, to construct the Jicarilla Apache Nation Municipal Water Delivery and Wastewater Collection Systems in the State of New Mexico, and for other purposes.

BACKGROUND AND NEED FOR LEGISLATION

Beginning in 1972 the Jicarilla Tribal Council initiated efforts to address its future water right needs. Public Law 102–441, enacted in 1992, entitled the Jicarilla Apache Nation to perpetual water rights to help secure a more permanent water supply. Since 1972, as economic conditions have changed, the village of Dulce, located on the Jicarilla Apache Reservation in New Mexico, has become the urban center of the area due to a population shift from farm and ranch land to the town. While this change has taken place there has been no concerted effort to develop a comprehensive community land use and infrastructure development plan.

The current water system for Dulce is owned by the Bureau of Indian Affairs, and consists of a piecemeal municipal water delivery and wastewater collection system on the Jicarilla Apache Reservation. This system has deteriorated over the years due to lack of capital improvements and maintenance by the Bureau of Indian Affairs. Because of this deterioration, the wastewater system and sewage lagoons operate at over 100 percent capacity during the summer months and over 500 percent capacity during the winter months. Proponents of the legislation argue that a lack of reliable potable water impedes economic development and has detrimental effects on the quality of life, including public health, and economic self-sufficiency of the Jicarilla Apache Nation.

Public Law 106–243 directed the Secretary of the Interior, through the Bureau of Reclamation, to conduct a feasibility study to determine the most feasible methods of developing a safe and adequate water supply for the Jicarilla Apache Nation. H.R. 3223 would authorize construction of the rural water supply project recommended in the planning report and environmental assessment

entitled Municipal Water and Wastewater Systems Improvement Jicarilla Apache Nation Dulce, New Mexico, prepared as a result of Public Law 106–243.

This legislation will allow the Jicarilla Apache Nation to work with the Bureau of Reclamation to plan, design, and construct the water supply, delivery, and wastewater collection system which would bring the water quality up to federal water quality standards, and allow for continued development in the area by expanding the quantity of potable water available. The Bureau of Reclamation will be responsible for the construction costs of this project, while the Jicarilla Apache Nation will assume the annual operation, maintenance, and replacement costs of the project.

COMMITTEE ACTION

H.R. 3223 was introduced on November 1, 2001, by Congressman Tom Udall (D–NM). The bill was referred to the Committee on Resources, and within the Committee to the Subcommittee on Water and Power. The Subcommittee held a legislative hearing on the bill on June 5, 2002. On June 26, 2002, the Full Resources Committee met to consider the bill. The Subcommittee on Water and Power was discharged from further consideration of the bill by unanimous consent. Mr. Tom Udall offered an amendment adopted by unanimous consent to clarify that the costs the tribe has expended to date for planning and to initiate construction constitutes its cost sharing obligation. The amendment also clarifies that the tribe will pay for operation and maintenance expenses once the Secretary determines that the project is substantially complete. The amendment was adopted by unanimous consent. No further amendments were offered and the bill as amended was ordered favorably reported to the House of Representatives by unanimous consent.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Resources' oversight findings and recommendations are reflected in the body of this report.

CONSTITUTIONAL AUTHORITY STATEMENT

Article I, section 8 of the Constitution of the United States grants Congress the authority to enact this bill.

COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out this bill. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974.

2. Congressional Budget Act. As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this bill does not

contain any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

3. General Performance Goals and Objectives. As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill is to authorize the Secretary of the Interior, through the Bureau of Reclamation, to construct the Jicarilla Apache Nation Municipal Water Delivery and Wastewater Collection Systems in the State of New Mexico, and for other purposes.

4. Congressional Budget Office Cost Estimate. Under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, August 6, 2002.

Hon. JAMES V. HANSEN,
*Chairman, Committee on Resources,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3223, the Jicarilla Apache Reservation Rural Water System Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Julie Middleton.

Sincerely,

BARRY B. ANDERSON
(For Dan L. Crippen, Director).

Enclosure.

H.R. 3223—Jicarilla Apache Reservation Rural Water System Act

Summary: H.R. 3223 would require the Secretary of the Interior through the Bureau of Reclamation to plan, design, and construct water supply, delivery, and wastewater collection systems on the Jicarilla Apache Reservation in New Mexico. In addition, the bill would require the Secretary to turn over title to the system to the tribe, who would assume responsibility for operating, maintaining and replacing it.

Assuming appropriation of the necessary funds, CBO estimates that implementing H.R. 3223 would cost \$38 million over the 2002–2007 period. H.R. 3223 would not affect direct spending or receipts; therefore, pay-as-you-go procedures would not apply.

H.R. 3223 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments. The project authorized by this legislation would benefit the Jicarilla Apache Nation. Any costs incurred by the tribe as a result of its participation in the project would be voluntary.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 3223 is shown in the following table. The costs of this legislation fall within budget function 300 (natural resources and environment).

	By fiscal year, in millions of dollars—					
	2002	2003	2004	2005	2006	2007
SPENDING SUBJECT TO APPROPRIATION						
Spending Under Current Law:						
Budget Authority	3	0	0	0	0	0
Estimated Outlays	1	2	0	0	0	0
Proposed Changes:						
Estimated Authorization Level	0	9	9	10	10	10
Estimated Outlays	0	3	6	9	10	10
Spending Under H.R. 3223:						
Estimated Authorization Level	3	9	9	10	10	10
Estimated Outlays	1	5	6	9	10	10

¹ The 2002 level is the amount appropriated for the Jicarilla Municipal Water System.

Basis of estimate: CBO estimates that the bill would authorize the appropriation of about \$48 million (including adjustments for anticipated inflation) to complete the Jicarilla project. For this estimate, CBO assumes that H.R. 3223 will be enacted by the start of fiscal year 2003 and that the necessary funds will be appropriated for each year. CBO estimates that completion of the project would cost \$38 million over the 2003–2007 period and \$10 million after 2007. Based on information from the Bureau of Reclamation, CBO expects that funds would be appropriated in roughly equal installments over the next five years.

Pay-as-you-go considerations: None.

Estimated intergovernmental and private-sector impact: H.R. 3223 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments. The project authorized by this legislation would benefit the Jicarilla Apache Nation. Any costs incurred by the tribe as a result of its participation in the project would be voluntary.

Estimate prepared by: Federal Costs: Julie Middleton; Impact on State, Local, and Tribal Governments: Marjorie Miller; and Impact on the Private Sector: Cecil McPherson.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

COMPLIANCE WITH PUBLIC LAW 104–4

This bill contains no unfunded mandates.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

CHANGES IN EXISTING LAW

If enacted, this bill would make no changes in existing law.

