

**Calendar No. 805**110<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION**S. 2814****[Report No. 110-373]**

To authorize the Secretary of the Interior to provide financial assistance to the Eastern New Mexico Rural Water Authority for the planning, design, and construction of the Eastern New Mexico Rural Water System, and for other purposes.

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**IN THE SENATE OF THE UNITED STATES**

APRIL 3, 2008

Mr. BINGAMAN (for himself and Mr. DOMENICI) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

JUNE 16, 2008

Reported by Mr. BINGAMAN, without amendment

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**A BILL**

To authorize the Secretary of the Interior to provide financial assistance to the Eastern New Mexico Rural Water Authority for the planning, design, and construction of the Eastern New Mexico Rural Water System, 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Eastern New Mexico  
3 Rural Water System Authorization Act”.

4 **SEC. 2. DEFINITIONS.**

5 In this Act:

6 (1) **AUTHORITY.**—The term “Authority” means  
7 the Eastern New Mexico Rural Water Authority, an  
8 entity formed under State law for the purposes of  
9 planning, financing, developing, and operating the  
10 System.

11 (2) **ENGINEERING REPORT.**—The term “engi-  
12 neering report” means the report entitled “Eastern  
13 New Mexico Rural Water System Preliminary Engi-  
14 neering Report” and dated October 2006.

15 (3) **PLAN.**—The term “plan” means the oper-  
16 ation, maintenance, and replacement plan required  
17 by section 4(b).

18 (4) **SECRETARY.**—The term “Secretary” means  
19 the Secretary of the Interior.

20 (5) **STATE.**—The term “State” means the State  
21 of New Mexico.

22 (6) **SYSTEM.**—

23 (A) **IN GENERAL.**—The term “System”  
24 means the Eastern New Mexico Rural Water  
25 System, a water delivery project designed to de-  
26 liver approximately 16,500 acre-feet of water

1 per year from the Ute Reservoir to the cities of  
 2 Clovis, Elida, Grady, Melrose, Portales, and  
 3 Texico and other locations in Curry, Roosevelt,  
 4 and Quay Counties in the State.

5 (B) INCLUSIONS.—The term “System” in-  
 6 cludes the major components and associated in-  
 7 frastructure identified as the “Best Technical  
 8 Alternative” in the engineering report.

9 (7) UTE RESERVOIR.—The term “Ute Res-  
 10 ervoir” means the impoundment of water created in  
 11 1962 by the construction of the Ute Dam on the Ca-  
 12 nadian River, located approximately 32 miles up-  
 13 stream of the border between New Mexico and  
 14 Texas.

15 **SEC. 3. EASTERN NEW MEXICO RURAL WATER SYSTEM.**

16 (a) FINANCIAL ASSISTANCE.—

17 (1) IN GENERAL.—The Secretary may provide  
 18 financial and technical assistance to the Authority to  
 19 assist in planning, designing, conducting related  
 20 preconstruction activities for, and constructing the  
 21 System.

22 (2) USE.—

23 (A) IN GENERAL.—Any financial assist-  
 24 ance provided under paragraph (1) shall be ob-  
 25 ligated and expended only in accordance with a

1 cooperative agreement entered into under sec-  
2 tion 5(a)(2).

3 (B) LIMITATIONS.—Financial assistance  
4 provided under paragraph (1) shall not be  
5 used—

6 (i) for any activity that is inconsistent  
7 with constructing the System; or

8 (ii) to plan or construct facilities used  
9 to supply irrigation water for irrigated ag-  
10 ricultural purposes.

11 (b) COST-SHARING REQUIREMENT.—

12 (1) IN GENERAL.—The Federal share of the  
13 total cost of any activity or construction carried out  
14 using amounts made available under this Act shall  
15 be not more than 75 percent of the total cost of the  
16 System.

17 (2) SYSTEM DEVELOPMENT COSTS.—For pur-  
18 poses of paragraph (1), the total cost of the System  
19 shall include any costs incurred by the Authority or  
20 the State on or after October 1, 2003, for the devel-  
21 opment of the System.

22 (c) LIMITATION.—No amounts made available under  
23 this Act may be used for the construction of the System  
24 until—

25 (1) a plan is developed under section 4(b); and



1           (2) COOPERATIVE AGREEMENT FOR PROVISION  
2           OF FINANCIAL ASSISTANCE.—

3           (A) IN GENERAL.—The Secretary shall  
4           enter into a cooperative agreement with the Au-  
5           thority to provide financial assistance and any  
6           other assistance requested by the Authority for  
7           planning, design, related preconstruction activi-  
8           ties, and construction of the System.

9           (B) REQUIREMENTS.—The cooperative  
10          agreement entered into under subparagraph (A)  
11          shall, at a minimum, specify the responsibilities  
12          of the Secretary and the Authority with respect  
13          to—

14                 (i) ensuring that the cost-share re-  
15                 quirements established by section 3(b) are  
16                 met;

17                 (ii) completing the planning and final  
18                 design of the System;

19                 (iii) any environmental and cultural  
20                 resource compliance activities required for  
21                 the System; and

22                 (iv) the construction of the System.

23          (b) TECHNICAL ASSISTANCE.—At the request of the  
24          Authority, the Secretary may provide to the Authority any  
25          technical assistance that is necessary to assist the Author-

1 ity in planning, designing, constructing, and operating the  
2 System.

3 (c) BIOLOGICAL ASSESSMENT.—The Secretary shall  
4 consult with the New Mexico Interstate Stream Commis-  
5 sion and the Authority in preparing any biological assess-  
6 ment under the Endangered Species Act of 1973 (16  
7 U.S.C. 1531 et seq.) that may be required for planning  
8 and constructing the System.

9 (d) EFFECT.—Nothing in this Act—

10 (1) affects or preempts—

11 (A) State water law; or

12 (B) an interstate compact relating to the  
13 allocation of water; or

14 (2) confers on any non-Federal entity the abil-  
15 ity to exercise any Federal rights to—

16 (A) the water of a stream; or

17 (B) any groundwater resource.

18 **SEC. 6. AUTHORIZATION OF APPROPRIATIONS.**

19 (a) IN GENERAL.—In accordance with the adjust-  
20 ment carried out under subsection (b), there is authorized  
21 to be appropriated to the Secretary to carry out this Act  
22 an amount not greater than \$327,000,000.

23 (b) ADJUSTMENT.—The amount made available  
24 under subsection (a) shall be adjusted to reflect changes  
25 in construction costs occurring after January 1, 2007, as

1 indicated by engineering cost indices applicable to the  
2 types of construction necessary to carry out this Act.

3 (c) NONREIMBURSABLE AMOUNTS.—Amounts made  
4 available to the Authority in accordance with the cost-  
5 sharing requirement under section 3(b) shall be non-  
6 reimbursable and nonreturnable to the United States.

7 (d) AVAILABILITY OF FUNDS.—At the end of each  
8 fiscal year, any unexpended funds appropriated pursuant  
9 to this Act shall be retained for use in future fiscal years  
10 consistent with this Act.



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