

On May 2, Senators Tom Udall (D-NM) and Martin Heinrich (D-NM) introduced the New Mexico Drought Preparedness Act of 2017 (S. 1012). Section 3 authorizes \$30M for the Secretary of Interior to carry out a water acquisition program in basins in New Mexico through lease, purchase or contract from willing lessors or sellers, consistent with state law, to enhance: (1) streamflow for fish and wildlife (including endangered species), water quality, and river ecosystem restoration; and (2) to “enhance stewardship and conservation of working land, water, and watersheds in the Basins...” The Secretary may provide funds to a federally established nonprofit entity with particular expertise in western water transactions.

Section 4 authorizes \$18M so the Secretary of the Interior may, in cooperation with water districts and Pueblos, provide funding and technical assistance for the installation of metering and measurement devices and the construction of check structures on irrigation diversions, canals, laterals, ditches and drains intended to ensure efficient use, reduce actual consumptive use, or not increase the use of water, and improve the measurement and allocation of acquired water. Further, the Secretary “shall” provide for the development of a comprehensive plan for the San Acacia and Isleta reaches to balance river maintenance, water availability, use and deliver, as well as ecosystem benefits.

Section 5 addresses Middle Rio Grande peak flow restoration and directs the Secretary of the Army to continue existing temporary deviations in operations of Cochoiti Lake and Jemez Canyon Dam, and evaluate the benefits with a report to Congress, while a permanent reauthorization of the reservoirs is pursued. The goal is to restore natural river processes, including a Spring peak flow, as a means of increasing the spawning and recruitment of the endangered Rio Grande silvery minnow and overbanking flows necessary to maintain a healthy bosque and Southwestern willow flycatcher habitat, as well as channel capacity, and to increase irrigation and municipal water projects operational flexibility. The Secretary is to first obtain approval for any deviation from the Cochitit and Santa Ana Pueblos and the Rio Grande Compact Commission.

Section 6 directs the Secretary of the Army to enter into an arrangement with the National Academy of Sciences to carry out a study on water and reservoir management and operation issues for Rio Grande reservoirs, including: (1) an evaluation of reservoir authorizations and legal requirements; (2) physical-hydrologic understanding; (3) potential constraints in light of climate change projections; (4) opportunities to optimize storage; (5) identified water use, supply and accounting impacts; (6) operational considerations; and (7) recommendations for future management. The report merits “due deference.”

Section 7 would authorize emergency financial assistance under the Reclamation States Emergency Drought Relief Act of 1991, Title XII of the Food Security Act of 1985, and other federal laws to assist New Mexico and other western states with eligible water projects to assist in addressing “drought-related impacts to water supplies or any other immediate water-related crisis or conflict.” Financial assistance would also be available to organizations and entities, including tribal governments, engaged in collaborative processes for environmental restoration.

Eligible water projects include: (1) installing pumps, temporary barriers or gates for water diversion and fish protection; (2) drought-relief ground-water wells for Indian tribes and wildlife refuges; (3) acquisition of water from willing sellers; (4) agricultural and urban conservation projects with multiple benefits; (5) emergency temporary water exchanges; (6) planting cover crops; (7) emergency pumping projects; (8) reducing demand consistent with a comprehensive program for environmental restoration and settlement of water rights claims; (9) innovative on-farm water conservation; (10) protect, restore or enhance fish and wildlife habitat or other environmental improvements; (11) promoting groundwater recharge and reducing groundwater depletion; (12) technical assistance for irrigation improvement practices; (13) brackish water development and aquifer storage and recovery; (14) lining ditches and

canals; (15) municipal water supply planning assistance, including hydrological forecasting, identification of alternative water supplies, and guidance on potential water transfer partners; and (16) any other “assistance the Secretary determines to be necessary to increase available water supplies, maintain the health of river ecosystems, or mitigate drought impacts.”

Section 8 reauthorizes the Secure Water Act (Section 9504 of the Omnibus Public Land Management Act of 2009) and provides that the Commissioner of the Bureau of Reclamation “may” waive cost-sharing requirement to address emergency drought situations and prioritize projects that “expeditiously yield multiple water supply benefits..., prevent any other immediate water-related crisis or conflict,” and demonstrate “innovative conservation tools or methods that balance instream and out-of-stream water supply needs, including water conservation and water marketing.” It also raised the authorized ceiling by \$100M. Section 9 authorizes another \$100M under the Reclamation States Emergency Drought Relief Act. Section 10 extends the Rio Grande Pueblo Irrigation Infrastructure Reauthorization through 2014, and authorizes another \$6M.

The Secretary of Agriculture, under Section 11, may allocate financial assistance consistent with the Food Security Act of 1985 to establish “special conservation initiatives at the local, state or regional level to assist producers in implementing eligible activities on agricultural land in the western States” for: (1) mitigating the effects of drought on agriculture and the environment; (2) improving water quality and quantity, including reducing groundwater depletion; (3) restoring, enhancing, and preserving fish and wildlife habitat; and (4) promoting innovative and collaborative conservation tools and approaches.

Section 12 expands authority under the Conservation Reserve Program to cover “water quantity, or habitat impacts related to agricultural production activities...,” as well as the Special Conservation Reserve Enhancement Program “including improving water conservation and drought mitigation.”

Of particular note, Section 13 declares: “An action taken by any of the Secretaries or other entity under this Act or an amendment made by this Act shall comply with applicable State laws...” It further declares: “Nothing in this Act or an amendment made by this Act affects, is intended to affect, or interferes with a law of the State relating to the control, appropriation, use, or distribution of water, or any vested right acquired under the law.”

A May 10 hearing to receive testimony on the bill was cancelled and will be rescheduled.

Also on the hearing schedule was S.677, the Water Supply Permitting Coordination Act, introduced by Senator John Barrasso on March 21, to authorize the Secretary of the Interior, through the Bureau of Reclamation, to coordinate federal and state permitting processes related to the construction of new surface water storage projects on lands under the jurisdiction of the Departments of Agriculture and the Interior. Consistent with state law, a State “may” choose to participate and designate State agencies as a cooperating agency, subject to the processes outlined in the act, with respect to any state review, analysis, opinion, permit, license or other approval for a qualifying project.

In general, Reclamation would serve as a point of contact for project applicants, State agencies, Indian tribes and others. It would coordinate preparation of unified environmental documentation and coordinate federal agency reviews, beginning with a preapplication meeting to explain applicable processes, data requirements, and submission necessary to complete required federal agency reviews. Reclamation would establish a schedule and timeframe for agency action, and consult with the cooperating agencies to set deadlines and a project schedule. Reclamation would also prepare a unified environmental review document, maintain a consolidated administrative record, ensure that all project data is submitted and maintained in generally accessible electronic format (to the extent practicable) and make such data available to cooperating agencies, the project applicant and the public, as well as appoint a project manager. Cooperating agency responsibilities are also detailed.