

AMENDMENT NO. \_\_\_\_\_ Calendar No. \_\_\_\_\_

Purpose: In the nature of a substitute.

**IN THE SENATE OF THE UNITED STATES—115th Cong., 2d Sess.**

**S. 1012**

To provide for drought preparedness measures in the State of New Mexico, and for other purposes.

Referred to the Committee on \_\_\_\_\_ and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended to be proposed by \_\_\_\_\_

Viz:

1 Strike all after the enacting clause and insert the fol-

2 lowing:

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the

5 “New Mexico Drought Preparedness Act of 2018”.

6 (b) **TABLE OF CONTENTS.**—The table of contents of

7 this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Definitions.

Sec. 3. Water acquisition program.

Sec. 4. Water conservation.

Sec. 5. National Academy of Sciences study.

Sec. 6. Emergency funding.

Sec. 7. Secure Water Act grants and cooperative agreements.

Sec. 8. Rio Grande Pueblo irrigation infrastructure reauthorization.

Sec. 9. Effect on existing law.

1 **SEC. 2. DEFINITIONS.**

2 Except as otherwise provided in this Act, in this Act:

3 (1) **BASIN.**—The term “Basin”—

4 (A) is limited to areas within the State of  
5 New Mexico; and

6 (B) means each of—

7 (i) the Upper Rio Grande Basin;

8 (ii) the Middle Rio Grande Basin;

9 (iii) the Lower Rio Grande Basin;

10 (iv) the Lower Pecos River Basin;

11 (v) the Gila River Basin;

12 (vi) the Canadian River Basin;

13 (vii) the San Francisco River Basin;

14 and

15 (viii) the San Juan River Basin.

16 (2) **DISTRICT.**—The term “District” means the  
17 Middle Rio Grande Conservancy District.

18 (3) **PUEBLO.**—The term “Pueblo” means each  
19 of the following pueblos in the State:

20 (A) Cochiti.

21 (B) Santo Domingo.

22 (C) San Felipe.

23 (D) Santa Ana.

24 (E) Sandia.

25 (F) Isleta.

1           (4) RIO GRANDE COMPACT.—The term “Rio  
2           Grande Compact” means the compact approved by  
3           Congress under the Act of May 31, 1939 (53 Stat.  
4           785, chapter 155).

5           (5) SECRETARIES.—The term “Secretaries”  
6           means—

7                   (A) the Administrator of the Environ-  
8                   mental Protection Agency;

9                   (B) the Secretary of Commerce; and

10                   (C) the Secretary of the Interior.

11           (6) SECRETARY.—The term “Secretary” means  
12           the Secretary of the Interior.

13           (7) STATE.—The term “State” means the State  
14           of New Mexico.

15 **SEC. 3. WATER ACQUISITION PROGRAM.**

16           (a) IN GENERAL.—The Secretary, acting through the  
17           Commissioner of Reclamation, shall carry out in the Ba-  
18           sins a water acquisition program in coordination with the  
19           other appropriate Federal agencies, State agencies, and  
20           non-Federal stakeholders, under which the Secretary  
21           shall—

22                   (1) make acquisitions of water in the Basins by  
23                   lease or purchase of water rights or contractual enti-  
24                   tlements from willing lessors or sellers, consistent  
25                   with section 8 of the Act of June 17, 1902 (43

1 U.S.C. 383), the Rio Grande Compact, and applica-  
2 ble State law relating to the acquisition and admin-  
3 istration of water rights; and

4 (2) take any other actions, consistent with sec-  
5 tion 8 of the Act of June 17, 1902 (43 U.S.C. 383),  
6 the Rio Grande Compact, and applicable State law,  
7 that the Secretary determines would achieve the pur-  
8 poses of the water acquisition program described in  
9 subsection (b).

10 (b) PURPOSES.—The purposes of the water acqui-  
11 sition program are—

12 (1) to enhance stream flow to benefit fish and  
13 wildlife (including endangered species), water qual-  
14 ity, and river ecosystem restoration in the Basins;  
15 and

16 (2) to enhance stewardship and conservation of  
17 working land, water, and watersheds in the Basins,  
18 consistent with the purpose described in paragraph  
19 (1).

20 (c) COORDINATION.—To assist in developing and ad-  
21 ministering the program, the Secretary may provide funds  
22 to a federally established nonprofit entity with particular  
23 expertise in western water transactions.

1 (d) DISTRICT PROJECTS.—Subject to the Rio Grande  
2 Compact and applicable State law, the Secretary may de-  
3 velop programs to provide—

4 (1) cost-share assistance to the District or agri-  
5 cultural producers and irrigators in the District for  
6 making irrigation system improvements and increase  
7 system efficiency;

8 (2) incentives to the District for the establish-  
9 ment of a water leasing program from willing lessors  
10 for agricultural producers and irrigators in the Dis-  
11 trict to temporarily lease pre-1907 water rights (in-  
12 stead of permanent severance from irrigable lands)  
13 for the purpose of providing benefits to species listed  
14 under the Endangered Species Act of 1973 (16  
15 U.S.C. 1531 et seq.) and other river ecosystem bene-  
16 fits; and

17 (3) cost-share assistance to the District to im-  
18 plement infrastructure or operational changes that  
19 will allow for effective management of a leasing pro-  
20 gram, while maintaining adequate water deliveries to  
21 other agricultural producers and irrigators.

22 **SEC. 4. WATER CONSERVATION.**

23 (a) IN GENERAL.—The Secretary, in cooperation  
24 with the District and in consultation with the Pueblos,  
25 may provide funding and technical assistance for the in-

1 stallation of metering and measurement devices and the  
2 construction of check structures on irrigation diversions,  
3 canals, laterals, ditches, and drains—

4 (1) to ensure the conservation and efficient use  
5 of water within the District by—

6 (A) reducing actual consumptive use; or

7 (B) not increasing the use of water; and

8 (2) to improve the measurement and allocation  
9 of water acquired through the water acquisition pro-  
10 gram established under section 3.

11 (b) RIO GRANDE, SAN ACACIA AND ISLETA  
12 REACHES.—

13 (1) IN GENERAL.—The Secretary shall provide  
14 for development of a comprehensive plan for the San  
15 Acacia and Isleta reaches to plan, design, construct  
16 and prioritize projects that balance river mainte-  
17 nance, water availability, use, and delivery, and eco-  
18 system benefits, including—

19 (A) planning, permitting, and construction  
20 of a pumping station at Bosque del Apache Na-  
21 tional Wildlife Refuge for the purpose of more  
22 efficiently using water to provide—

23 (i) a stable supply for the Refuge; and

24 (ii) an efficient and reliable supply of  
25 water to the Rio Grande for the benefit of

1 the endangered silvery minnow and South-  
2 western willow flycatcher;

3 (B) planning, permitting, and construction  
4 of a river channel realignment project near the  
5 Rio Grande mile-83 for the purpose addressing  
6 river channel aggradation while maintaining  
7 floodplain connectivity;

8 (C) planning, permitting, and construction  
9 of a controlled outlet for the low flow convey-  
10 ance channel to the Rio Grande between Fort  
11 Craig, New Mexico and Rio Grande mile-60 for  
12 the purpose of water use and delivery, enhance-  
13 ment and development of habitat areas, and  
14 possible creation of a single-channel river eco-  
15 system; and

16 (D) development of a Lower Reach Plan—

17 (i) to identify additional projects and  
18 maintenance activities with water use, sedi-  
19 ment management, and delivery and eco-  
20 system benefits; and

21 (ii) to prioritize implementation of all  
22 projects and activities.

23 (2) PUBLIC PARTICIPATION.—In carrying out  
24 this subsection, the Secretary shall provide a process

1 for public participation and comment during plan  
2 development and alternative analysis.

3 **SEC. 5. NATIONAL ACADEMY OF SCIENCES STUDY.**

4 (a) DEFINITION OF BASIN.—

5 (1) IN GENERAL.—In this section, the term  
6 “basin” means the Rio Grande and the tributaries  
7 of the Rio Grande between—

8 (A) the headwaters of the Rio Grande and  
9 the Rio Chama in the State of Colorado; and

10 (B) Elephant Butte Reservoir in the State.

11 (2) EXCLUSIONS.—In this section, the term  
12 “basin” does not include Elephant Butte Reservoir,  
13 Caballo Dam, or any portion of the Rio Grande or  
14 the tributaries of the Rio Grande downstream of  
15 Elephant Butte Reservoir.

16 (b) STUDY.—Not later than 60 days after the date  
17 of enactment of this Act, the Secretary of the Army and  
18 the Secretary shall enter into an arrangement with the  
19 National Academy of Sciences to carry out a study on  
20 water and reservoir management and operation issues in  
21 the basin (including the Heron, El Vado, Abiquiu, Cochiti,  
22 and Jemez Canyon Dams and Reservoirs), which shall in-  
23 clude—

24 (1) an evaluation of existing basin reservoir au-  
25 thorizations and legal requirements;



1 (2) a summary of—

2 (A) the physical-hydrologic understanding  
3 of existing basin reservoir operations; and

4 (B) any potential constraints on basin res-  
5 ervoires in light of climate change projections;

6 (3) an identification of opportunities to opti-  
7 mize water storage and management to benefit the  
8 basin ecosystem, irrigators and municipal users, and  
9 to promote water conservation through reauthoriza-  
10 tion of, reoperation of, regulation of, or physical im-  
11 provements to the reservoirs;

12 (4) an evaluation of the physical-hydrologic fea-  
13 sibility of the identified future basin reservoir man-  
14 agement scenarios;

15 (5) an identification of water use, supply, and  
16 accounting impacts to other stakeholders in the  
17 State;

18 (6) consideration of operations such as—

19 (A) the storage of supplemental water ac-  
20 quired by and under the control of the Bureau  
21 of Reclamation;

22 (B) the carryover storage of San Juan-  
23 Chama Project contract water;

24 (C) the Pueblo Prior and Paramount oper-  
25 ation water;

1 (D) changes in timing of water released to  
2 offset municipal pumping;

3 (E) changes in the timing of storage and  
4 release of floodwaters;

5 (F) the reduction of evaporative losses  
6 from basin reservoirs;

7 (G) conservation of water resulting from  
8 irrigation operation changes by non-Indian and  
9 Pueblo irrigators;

10 (H) the impacts of management and oper-  
11 ations on recreation and hydropower;

12 (I) the impacts of management and oper-  
13 ations on the basin ecosystem and the habitats  
14 that support species listed under the Endan-  
15 gered Species Act of 1973 (16 U.S.C. 1531 et  
16 seq.); and

17 (J) any other factors the Academy deter-  
18 mines to be necessary for purposes of fully eval-  
19 uating opportunities to achieve greater water  
20 conservation, drought resiliency, and ecological  
21 health in the basin; and

22 (7) recommendations for future management  
23 scenarios and measures that Congress could take  
24 with respect to the basin, consistent with all applica-  
25 ble law, including the Act of June 17, 1902 (43

1 U.S.C. 383), and the Rio Grande Compact to assist  
2 the agencies in establishing more flexible operating  
3 procedures to improve the performance of basin res-  
4 ervoir operations in accommodating multiple pur-  
5 poses.

6 (c) COORDINATION WITH OTHER STUDIES.—To the  
7 maximum extent practicable, the study carried out under  
8 subsection (b) shall be coordinated with, and use data col-  
9 lected and analyses conducted for, other studies of the  
10 basin, including the Bureau of Reclamation Rio Grande  
11 Basin Study initiated in 2017.

12 (d) COSPONSORS.—The Secretary of the Army and  
13 the Secretary shall solicit cosponsors to contribute not less  
14 than 50 percent of the costs of the study under subsection  
15 (b), as appropriate, including State or private organiza-  
16 tions.

17 (e) PUBLIC AVAILABILITY OF STUDY.—On the date  
18 on which the National Academy of Sciences completes the  
19 study under this section, the National Academy of  
20 Sciences shall make available to the public the results of  
21 the study.

22 (f) REPORT.—Not later than 2 years after the date  
23 of enactment of this Act, the National Academy of  
24 Sciences shall submit to the Secretary of the Army and

1 the Secretary a report that contains a summary of the  
2 results of the study conducted under this section.

3 **SEC. 6. EMERGENCY FUNDING.**

4 (a) FINANCIAL ASSISTANCE.—

5 (1) IN GENERAL.—Financial assistance may be  
6 made available under the Reclamation States Emer-  
7 gency Drought Relief Act of 1991 (43 U.S.C. 2201  
8 et seq.) for eligible water projects to assist Western  
9 States and Tribal governments to address drought-  
10 related impacts to water supplies or any other imme-  
11 diate water-related crisis or conflict.

12 (2) ADDITIONAL AVAILABILITY.—Financial as-  
13 sistance may be made available under this section to  
14 organizations and entities with water delivery au-  
15 thority that are engaged in collaborative processes to  
16 restore the environment or are part of a basin-wide  
17 solution for restoration.

18 (b) TYPES OF ASSISTANCE.—Assistance under sub-  
19 section (a) may include a range of projects, including—

20 (1) the installation of pumps, temporary bar-  
21 riers, or operable gates for water diversion and fish  
22 protection;

23 (2) the installation of drought-relief ground-  
24 water wells for Indian Tribes and in wildlife refuges  
25 and other areas;

1           (3) the acquisition or assistance in the acquisi-  
2           tion of water from willing sellers to enhance stream  
3           flow for the benefit of fish and wildlife (including en-  
4           dangered species), water quality, river ecosystem res-  
5           toration, and other beneficial purposes, to be carried  
6           out in accordance with the water acquisition pro-  
7           gram established under section 3;

8           (4) agricultural and urban conservation and ef-  
9           ficiency projects;

10          (5) exchanges with any water district willing to  
11          provide water to meet the emergency water needs of  
12          other water districts in return for the delivery of  
13          equivalent quantities of water later that year or in  
14          future years;

15          (6) maintenance of cover crops to prevent pub-  
16          lic health impacts from severe dust storms;

17          (7) emergency pumping projects for critical  
18          health and safety purposes;

19          (8) activities to reduce water demand consistent  
20          with a comprehensive program for environmental  
21          restoration and settlement of water rights claims;

22          (9) the use of new or innovative on-farm water  
23          conservation technologies or methods that may—

24                 (A) assist in sustaining permanent crops in  
25                 areas with severe water shortages; and

1 (B) make water available for other bene-  
2 ficial uses;

3 (10) activities that protect, restore, or enhance  
4 fish and wildlife habitat or otherwise improve envi-  
5 ronmental conditions, including water quantity or  
6 quality concerns and improved fish passage;

7 (11) activities reducing or preventing ground-  
8 water depletion or promoting groundwater recharge;

9 (12) technical assistance to improve existing ir-  
10 rrigation practices to provide water supply benefits;

11 (13) the investigation of, and pilot projects for,  
12 brackish water development and aquifer storage and  
13 recovery;

14 (14) the lining of irrigation ditches and canals  
15 to reduce water loss and improve efficiency;

16 (15) assistance to municipal water management  
17 entities for water supply planning in preparation for  
18 and in response to dry, critically dry, and below nor-  
19 mal water years, including—

20 (A) hydrological forecasting;

21 (B) identification of alternative water sup-  
22 ply sources; and

23 (C) guidance on potential water transfer  
24 partners; and

1           (16) any other assistance the Secretary deter-  
2 mines to be necessary to increase available water  
3 supplies, maintain the health of river ecosystems, or  
4 mitigate drought impacts.

5 **SEC. 7. SECURE WATER ACT GRANTS AND COOPERATIVE**  
6 **AGREEMENTS.**

7           Section 9504(a)(1)(H) of the Omnibus Public Land  
8 Management Act of 2009 (42 U.S.C. 10364(a)(1)(H)) is  
9 amended—

10           (1) in clause (i), by striking “or” at the end;

11           (2) in clause (ii), by striking the period at the  
12 end and inserting “; or”; and

13           (3) by adding at the end the following:

14                           “(iii) to plan for or address the im-  
15 pacts of drought.”.

16 **SEC. 8. RIO GRANDE PUEBLO IRRIGATION INFRASTRUC-**  
17 **TURE REAUTHORIZATION.**

18           Section 9106 of the Omnibus Public Land Manage-  
19 ment Act of 2009 (Public Law 111–11; 123 Stat. 1304)  
20 is amended—

21           (1) in subsection (c)(4), by striking “2 years  
22 after the date of enactment of this Act” and insert-  
23 ing “December 31, 2019”; and

24           (2) in subsection (g)(2), by striking “2010  
25 through 2019” and inserting “2018 through 2026”.

1 **SEC. 9. EFFECT ON EXISTING LAW.**

2 (a) IN GENERAL.—An action taken by any of the  
3 Secretaries or another entity under this Act or an amend-  
4 ment made by this Act shall comply with applicable State  
5 laws in effect on the date of enactment of this Act, includ-  
6 ing a law described in subsection (b).

7 (b) STATE LAW.—Nothing in this Act or an amend-  
8 ment made by this Act affects, is intended to affect, or  
9 interferes with a law of the State relating to the control,  
10 appropriation, use, or distribution of water, or any vested  
11 right acquired under the law.

12 (c) RIO GRANDE COMPACT.—Nothing in this Act or  
13 an amendment made by this Act affects or is intended to  
14 affect or interfere with any obligation of a State under  
15 the Rio Grand Compact or any litigation related to the  
16 Rio Grande Compact.