

Calendar No. 663

118TH CONGRESS
2D SESSION

S. 4505

[Report No. 118–261]

To approve the settlement of water rights claims of Ohkay Owingeh in the Rio Chama Stream System, to restore the Bosque on Pueblo Land in the State of New Mexico, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 11, 2024

Mr. HEINRICH (for himself and Mr. LUJÁN) introduced the following bill;
which was read twice and referred to the Committee on Indian Affairs

DECEMBER 4, 2024

Reported by Mr. SCHATZ, without amendment

A BILL

To approve the settlement of water rights claims of Ohkay Owingeh in the Rio Chama Stream System, to restore the Bosque on Pueblo Land in the State of New Mexico, 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; TABLE OF CONTENTS.**

2 (a) SHORT TITLE.—This Act may be cited as the
3 “Ohkay Owingeh Rio Chama Water Rights Settlement Act
4 of 2024”.

5 (b) TABLE OF CONTENTS.—The table of contents for
6 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Purposes.
- Sec. 3. Definitions.
- Sec. 4. Ratification of Agreement.
- Sec. 5. Pueblo Water Rights.
- Sec. 6. Settlement Trust Fund.
- Sec. 7. Funding.
- Sec. 8. Enforceability Date.
- Sec. 9. Waivers and releases of claims.
- Sec. 10. Satisfaction of claims.
- Sec. 11. Miscellaneous provisions.
- Sec. 12. Antideficiency.

7 **SEC. 2. PURPOSES.**

8 The purposes of this Act are—

9 (1) to achieve a fair, equitable, and final settle-
10 ment of all claims to water rights in the Rio Chama
11 Stream System in the State for—

12 (A) Ohkay Owingeh; and

13 (B) the United States, acting as trustee
14 for Ohkay Owingeh;

15 (2) to authorize, ratify, and confirm the Agree-
16 ment entered into by Ohkay Owingeh, the State, and
17 various other parties to the extent that the Agree-
18 ment is consistent with this Act;

19 (3) to authorize and direct the Secretary—

20 (A) to execute the Agreement; and

1 (B) to take any other actions necessary to
2 carry out the Agreement in accordance with
3 this Act; and

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

6 **SEC. 3. DEFINITIONS.**

7 In this Act:

8 (1) ADJUDICATION.—The term “Adjudication”
9 means the general stream adjudication of water
10 rights in the Rio Chama Stream System entitled
11 “State of New Mexico ex rel. State Engineer v. Ara-
12 gon”, Civil No. 69–CV–07941–KWR/KK, pending,
13 as of the date of enactment of this Act, in the
14 United States District Court for the District of New
15 Mexico.

16 (2) AGREEMENT.—The term “Agreement”
17 means—

18 (A) the document entitled “Ohkay
19 Owingeh Rio Chama Water Rights Settlement”
20 and dated July 5, 2023, and the exhibits at-
21 tached thereto; and

22 (B) any amendment to the document re-
23 ferred to in subparagraph (A) (including an
24 amendment to an exhibit thereto) that is exe-

1 cuted to ensure that the Agreement is con-
2 sistent with this Act.

3 (3) BOSQUE.—The term “bosque” means a gal-
4 lery forest located along the riparian floodplain of a
5 stream, riverbank, or lake.

6 (4) CITY OF ESPAÑOLA.—The term “City of
7 Española” means a municipal corporation of the
8 State.

9 (5) ENFORCEABILITY DATE.—The term “En-
10 forceability Date” means the date described in sec-
11 tion 8.

12 (6) OHKAY OWINGEH; PUEBLO.—The terms
13 “Ohkay Owingeh” and “Pueblo” mean the body
14 politic and federally recognized Indian nation.

15 (7) PARTIAL FINAL JUDGMENT AND DECREE.—
16 The term “Partial Final Judgment and Decree”
17 means a final or interlocutory partial final judgment
18 and decree entered by the United States District
19 Court for the District of New Mexico with respect
20 to the water rights of Ohkay Owingeh in the Rio
21 Chama Stream System—

22 (A) that is substantially in the form de-
23 scribed in the Agreement, as amended to ensure
24 consistency with this Act; and

1 (B) from which no further appeal may be
2 taken.

3 (8) PUEBLO GRANT.—The term “Pueblo
4 Grant” means the land recognized and confirmed by
5 the Federal patent issued to Ohkay Owingeh (then
6 known as the “Pueblo of San Juan”) under the Act
7 of December 22, 1858 (11 Stat. 374, chapter V).

8 (9) PUEBLO LAND.—The term “Pueblo Land”
9 means any real property that is—

10 (A) held by the United States in trust for
11 Ohkay Owingeh within the Rio Chama Stream
12 System;

13 (B) owned by the Pueblo within the Rio
14 Chama Stream System before the Enforce-
15 ability Date; or

16 (C) acquired by the Pueblo within the Rio
17 Chama Stream System on or after the Enforce-
18 ability Date if the real property is located—

19 (i) within the exterior boundaries of
20 the Pueblo Grant; or

21 (ii) within the exterior boundaries of
22 any territory set aside for the Pueblo by
23 law, Executive order, or court decree.

1 (10) PUEBLO WATER RIGHTS.—The term
2 “Pueblo Water Rights” means the water rights of
3 Ohkay Owingeh in the Rio Chama Stream System—

4 (A) as identified in the Agreement and sec-
5 tion 5; and

6 (B) as confirmed in the Partial Final
7 Judgment and Decree.

8 (11) RIO CHAMA STREAM SYSTEM.—The term
9 “Rio Chama Stream System” means the Rio Chama
10 surface water drainage basin within the State, as il-
11 lustrated in Exhibit A to the Agreement.

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

14 (13) SIGNATORY ACEQUIA.—The term “Signa-
15 tory Acequia” means an acequia that is a signatory
16 to the Agreement.

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

19 (15) TRUST FUND.—The term “Trust Fund”
20 means the Ohkay Owingeh Water Rights Settlement
21 Trust Fund established under section 6(a).

22 **SEC. 4. RATIFICATION OF AGREEMENT.**

23 (a) RATIFICATION.—

24 (1) IN GENERAL.—Except as modified by this
25 Act, and to the extent that the Agreement does not

1 conflict with this Act, the Agreement is authorized,
2 ratified, and confirmed.

3 (2) AMENDMENTS.—If an amendment to the
4 Agreement, or to any exhibit to the Agreement re-
5 quiring the signature of the Secretary, is executed in
6 accordance with this Act to make the Agreement
7 consistent with this Act, the amendment is author-
8 ized, ratified, and confirmed.

9 (b) EXECUTION.—

10 (1) IN GENERAL.—To the extent the Agreement
11 does not conflict with this Act, the Secretary shall
12 execute the Agreement, including all exhibits thereto
13 or parts of the Agreement requiring the signature of
14 the Secretary.

15 (2) MODIFICATIONS.—Nothing in this Act pro-
16 hibits the Secretary, after execution of the Agree-
17 ment, from approving any modification to the Agree-
18 ment, including an exhibit to the Agreement, that is
19 consistent with this Act, to the extent that the modi-
20 fication does not otherwise require congressional ap-
21 proval under section 2116 of the Revised Statutes
22 (25 U.S.C. 177) or any other applicable provision of
23 Federal law.

24 (c) ENVIRONMENTAL COMPLIANCE.—

1 (1) IN GENERAL.—In implementing the Agree-
2 ment and this Act, the Secretary shall comply
3 with—

4 (A) the Endangered Species Act of 1973
5 (16 U.S.C. 1531 et seq.);

6 (B) the National Environmental Policy Act
7 of 1969 (42 U.S.C. 4321 et seq.), including the
8 implementing regulations of that Act; and

9 (C) all other applicable Federal environ-
10 mental laws and regulations.

11 (2) COMPLIANCE AND COORDINATION.—

12 (A) IN GENERAL.—In implementing the
13 Agreement and this Act, the Pueblo shall pre-
14 pare any necessary environmental documents
15 consistent with—

16 (i) the Endangered Species Act of
17 1973 (16 U.S.C. 1531 et seq.);

18 (ii) the National Environmental Policy
19 Act of 1969 (42 U.S.C. 4321 et seq.), in-
20 cluding the implementing regulations of
21 that Act; and

22 (iii) all other applicable Federal envi-
23 ronmental laws and regulations.

24 (B) AUTHORIZATIONS.—The Secretary
25 shall—

1 (i) independently evaluate the docu-
2 mentation required under subparagraph
3 (A); and

4 (ii) be responsible for the accuracy,
5 scope, and contents of that documentation.

6 (C) COORDINATION WITH ARMY CORPS OF
7 ENGINEERS.—For any bosque restoration or
8 improvement project carried out by the Pueblo
9 with funds appropriated under this Act, the
10 Pueblo shall coordinate with the Corps of Engi-
11 neers to ensure that work on the project shall
12 not interfere with or adversely affect any au-
13 thorized Federal project that is under the juris-
14 diction and authority of the Corps of Engineers.

15 (3) EFFECT OF EXECUTION.—The execution of
16 the Agreement by the Secretary under this section
17 shall not constitute a major Federal action under
18 the National Environmental Policy Act of 1969 (42
19 U.S.C. 4321 et seq.).

20 (4) COSTS.—Any costs associated with the per-
21 formance of the compliance and coordination activi-
22 ties under this subsection shall be paid from funds
23 deposited in the Trust Fund, subject to the condi-
24 tion that any costs associated with the performance
25 of Federal approval or other review of that compli-

1 ance work or costs associated with inherently Fed-
2 eral functions shall remain the responsibility of the
3 Secretary, with the exception that costs for review of
4 bosque restoration or improvement projects by the
5 Corps of Engineers described in paragraph (2)(C)
6 shall be paid from funds deposited in the Trust
7 Fund.

8 **SEC. 5. PUEBLO WATER RIGHTS.**

9 (a) TRUST STATUS OF THE PUEBLO WATER
10 RIGHTS.—The Pueblo Water Rights shall be held in trust
11 by the United States on behalf of Ohkay Owingeh in ac-
12 cordance with the Agreement and this Act.

13 (b) FORFEITURE AND ABANDONMENT.—

14 (1) IN GENERAL.—The Pueblo Water Rights
15 shall not be subject to loss through non-use, for-
16 feiture, abandonment, or other operation of law.

17 (2) STATE LAW-BASED WATER RIGHTS.—State-
18 law based water rights acquired by Ohkay Owingeh,
19 or by the United States on behalf of Ohkay
20 Owingeh, after the date for inclusion in the Partial
21 Final Judgment and Decree, shall not be subject to
22 forfeiture, abandonment, or permanent alienation
23 from the time they are acquired.

1 (c) USE.—Any use of the Pueblo Water Rights shall
2 be subject to the terms and conditions of the Agreement
3 and this Act.

4 (d) AUTHORITY OF THE PUEBLO.—

5 (1) IN GENERAL.—Ohkay Owingeh may allo-
6 cate, distribute, and lease the Pueblo Water Rights
7 for use on Pueblo Land in accordance with the
8 Agreement, this Act, and applicable Federal law, in-
9 cluding the Act of August 9, 1955 (25 U.S.C. 415
10 et seq.) (commonly known as the “Long-Term Leas-
11 ing Act”).

12 (2) USE OFF PUEBLO LAND.—

13 (A) IN GENERAL.—Ohkay Owingeh may
14 allocate, distribute, and lease the Pueblo Water
15 Rights for use off Pueblo Land in accordance
16 with the Agreement, this Act, and applicable
17 Federal law, subject to the approval of the Sec-
18 retary.

19 (B) MAXIMUM TERM OF LEASES.—The
20 maximum term of any lease, including all re-
21 newals, under this paragraph shall not exceed
22 99 years.

23 (e) ADMINISTRATION.—

1 (1) NO ALIENATION.—The Pueblo shall not
2 permanently alienate any portion of the Pueblo
3 Water Rights.

4 (2) PURCHASES OR GRANTS OF LAND FROM IN-
5 DIANS.—An authorization provided by this Act for
6 the allocation, distribution, leasing, or other ar-
7 rangement entered into pursuant to this Act shall be
8 considered to satisfy any requirement for authoriza-
9 tion of the action required by Federal law.

10 (3) PROHIBITION ON FORFEITURE.—The non-
11 use of all or any portion of the Pueblo Water Rights
12 by any water user shall not result in the forfeiture,
13 abandonment, relinquishment, or other loss of all or
14 any portion of the Pueblo Water Rights.

15 **SEC. 6. SETTLEMENT TRUST FUND.**

16 (a) ESTABLISHMENT.—The Secretary shall establish
17 a trust fund, to be known as the “Ohkay Owingeh Water
18 Rights Settlement Trust Fund”, to be managed, invested,
19 and distributed by the Secretary and to remain available
20 until expended, withdrawn, or reverted to the general fund
21 of the Treasury, consisting of the amounts deposited in
22 the Trust Fund under subsection (b), together with any
23 investment earnings, including interest, earned on those
24 amounts for the purpose of carrying out this Act.

1 (b) DEPOSITS.—The Secretary shall deposit in the
2 Trust Fund the amounts made available pursuant to sec-
3 tion 7(a).

4 (c) MANAGEMENT AND INTEREST.—

5 (1) MANAGEMENT.—On receipt and deposit of
6 funds into the Trust Fund under subsection (b), the
7 Secretary shall manage, invest, and distribute all
8 amounts in the Trust Fund in a manner that is con-
9 sistent with the investment authority of the Sec-
10 retary under—

11 (A) the first section of the Act of June 24,
12 1938 (25 U.S.C. 162a);

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

16 (C) this subsection.

17 (2) INVESTMENT EARNINGS.—In addition to
18 the amounts deposited into the Trust Fund under
19 subsection (b), any investment earnings, including
20 interest, earned on those amounts held in the Trust
21 Fund are authorized to be used in accordance with
22 subsections (e) and (g).

23 (d) AVAILABILITY OF AMOUNTS.—

24 (1) IN GENERAL.—Amounts appropriated to,
25 and deposited in, the Trust Fund, including any in-

1 vestment earnings (including interest) earned on
2 those amounts, shall be made available to Ohkay
3 Owingeh by the Secretary beginning on the Enforce-
4 ability Date, subject to the requirements of this sec-
5 tion, except for funds to be made available to Ohkay
6 Owingeh pursuant to paragraph (2).

7 (2) USE OF FUNDS.—Notwithstanding para-
8 graph (1), not more than \$100,000,000 of the
9 amounts deposited in the Trust Fund, including any
10 investment earnings, including interest, earned on
11 those amounts, shall be available to Ohkay Owingeh
12 for the following uses on the date on which the
13 amounts are deposited in the Trust Fund:

14 (A) Diversions of surface water and
15 groundwater to the Rio Chama bosque for im-
16 mediate and essential restoration and mainte-
17 nance of the bosque.

18 (B) Fulfillment of the contribution of the
19 Pueblo under the Agreement for improvements
20 to senior acequias on Pueblo Land supplying
21 water to the Pueblo and non-Indians.

22 (C) Establishment and operation of the
23 water rights management administrative de-
24 partment of the Pueblo.

25 (D) Acquisition of water rights.

1 (E) Development of water infrastructure
2 plans, preparing environmental compliance doc-
3 uments, and water project engineering and con-
4 struction.

5 (e) WITHDRAWALS.—

6 (1) WITHDRAWALS UNDER THE AMERICAN IN-
7 DIAN TRUST FUND MANAGEMENT REFORM ACT OF
8 1994.—

9 (A) IN GENERAL.—The Pueblo may with-
10 draw any portion of the amounts in the Trust
11 Fund on approval by the Secretary of a Tribal
12 management plan submitted by the Pueblo in
13 accordance with the American Indian Trust
14 Fund Management Reform Act of 1994 (25
15 U.S.C. 4001 et seq.).

16 (B) REQUIREMENTS.—In addition to the
17 requirements under the American Indian Trust
18 Fund Management Reform Act of 1994 (25
19 U.S.C. 4001 et seq.), the Tribal management
20 plan under subparagraph (A) shall require that
21 the Pueblo shall spend all amounts withdrawn
22 from the Trust Fund, and any investment earn-
23 ings (including interest) earned on those
24 amounts through the investments under the

1 Tribal management plan, in accordance with
2 this Act.

3 (C) ENFORCEMENT.—The Secretary may
4 carry out such judicial and administrative ac-
5 tions as the Secretary determines to be nec-
6 essary to enforce the Tribal management plan
7 under subparagraph (A) to ensure that
8 amounts withdrawn by the Pueblo from the
9 Trust Fund under that subparagraph are used
10 in accordance with this Act.

11 (2) WITHDRAWALS UNDER EXPENDITURE
12 PLAN.—

13 (A) IN GENERAL.—Ohkay Owingeh may
14 submit to the Secretary a request to withdraw
15 funds from the Trust Fund pursuant to an ap-
16 proved expenditure plan.

17 (B) REQUIREMENTS.—To be eligible to
18 withdraw amounts under an expenditure plan
19 under subparagraph (A), the Pueblo shall sub-
20 mit to the Secretary an expenditure plan for
21 any portion of the Trust Fund the Pueblo elects
22 to withdraw pursuant to that subparagraph,
23 subject to the condition that the amounts shall
24 be used for the purposes described in this Act.

1 (C) INCLUSIONS.—An expenditure plan
2 under subparagraph (A) shall include a descrip-
3 tion of the manner and purpose for which the
4 amounts proposed to be withdrawn from the
5 Trust Fund will be used by Ohkay Owingeh, in
6 accordance with this subsection and subsection
7 (g).

8 (D) APPROVAL.—The Secretary shall ap-
9 prove an expenditure plan submitted under sub-
10 paragraph (A) if the Secretary determines that
11 the plan—

12 (i) is reasonable; and

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

15 (E) ENFORCEMENT.—The Secretary may
16 carry out such judicial and administrative ac-
17 tions as the Secretary determines to be nec-
18 essary to enforce an expenditure plan to ensure
19 that amounts disbursed under this paragraph
20 are used in accordance with this Act.

21 (f) EFFECT OF SECTION.—Nothing in this section
22 gives Ohkay Owingeh the right to judicial review of a de-
23 termination of the Secretary relating to whether to ap-
24 prove a Tribal management plan under paragraph (1) of
25 subsection (e) or an expenditure plan under paragraph (2)

1 of that subsection, except under subchapter II of chapter
2 5, and chapter 7, of title 5, United States Code (commonly
3 known as the “Administrative Procedure Act”).

4 (g) USES.—The Trust Fund may only be used for
5 the following purposes:

6 (1) Planning, permitting, designing, engineer-
7 ing, constructing, reconstructing, replacing, rehabili-
8 tating, operating, or repairing water production,
9 treatment, or delivery infrastructure, including for
10 domestic and municipal supply or wastewater infra-
11 structure.

12 (2) Planning, permitting, designing, engineer-
13 ing, constructing, reconstructing, replacing, rehabili-
14 tating, operating, or repairing water production,
15 treatment, or delivery infrastructure, acquisition of
16 water, or on-farm improvements for irrigation, live-
17 stock, and support of agriculture.

18 (3) Planning, permitting, designing, engineer-
19 ing, constructing, reconstructing, replacing, rehabili-
20 tating, operating, monitoring or other measures for
21 watershed and endangered species habitat protec-
22 tion, bosque restoration or improvement (including
23 any required cost shares for and allowable contribu-
24 tions to a Federal project or program), land and
25 water rights acquisition, water-related Pueblo com-

1 munity welfare and economic development, and costs
2 relating to implementation of the Agreement.

3 (4) The management and administration of any
4 water rights of the Pueblo.

5 (5) Ensuring environmental compliance in the
6 development and construction of projects under this
7 Act.

8 (h) LIABILITY.—The Secretary and the Secretary of
9 the Treasury shall not be liable for the expenditure or in-
10 vestment of any amounts withdrawn from the Trust Fund
11 by the Pueblo under paragraph (1) or (2) of subsection
12 (e).

13 (i) EXPENDITURE REPORTS.—Ohkay Owingeh shall
14 annually submit to the Secretary an expenditure report
15 describing accomplishments and amounts spent from use
16 of withdrawals under a Tribal management plan or an ex-
17 penditure plan under paragraph (1) or (2) of subsection
18 (e), as applicable.

19 (j) NO PER CAPITA DISTRIBUTIONS.—No portion of
20 the Trust Fund shall be distributed on a per capita basis
21 to any member of Ohkay Owingeh.

22 (k) TITLE TO INFRASTRUCTURE.—Title to, control
23 over, and operation of any project constructed using funds
24 from the Trust Fund shall remain in Ohkay Owingeh, ex-
25 cept that title to projects that are improved with funds

1 from the Trust Fund for the mutual benefit of the Pueblo
2 and non-Indians, on property owned by non-Indians, shall
3 remain with the underlying non-Indian owner.

4 (l) OPERATION, MAINTENANCE, AND REPLACE-
5 MENT.—All operation, maintenance, and replacement
6 costs of any project constructed using funds from the
7 Trust Fund shall be the responsibility of Ohkay Owingeh.

8 **SEC. 7. FUNDING.**

9 (a) MANDATORY APPROPRIATIONS.—Out of any
10 funds in the Treasury not otherwise appropriated, the Sec-
11 retary of the Treasury shall transfer to the Secretary for
12 deposit in the Trust Fund \$745,000,000, to remain avail-
13 able until expended, withdrawn, or reverted to the general
14 fund of the Treasury.

15 (b) FLUCTUATION IN COSTS.—

16 (1) IN GENERAL.—The amount appropriated
17 under subsection (a) shall be increased or decreased,
18 as appropriate, by such amounts as may be justified
19 by reason of ordinary fluctuations in costs, as indi-
20 cated by the Bureau of Reclamation Construction
21 Cost Index–Composite Trend.

22 (2) CONSTRUCTION COSTS ADJUSTMENT.—The
23 amount appropriated under subsection (a) shall be
24 adjusted to address construction cost changes nec-
25 essary to account for unforeseen market volatility

1 that may not otherwise be captured by engineering
2 cost indices, as determined by the Secretary, includ-
3 ing repricing applicable to the types of construction
4 and current industry standards involved.

5 (3) REPETITION.—The adjustment process
6 under this subsection shall be repeated for each sub-
7 sequent amount appropriated until the applicable
8 amount, as adjusted, has been appropriated.

9 (4) PERIOD OF INDEXING.—The period of in-
10 dexing adjustment under this subsection for any in-
11 crement of funding shall start on June 1, 2023, and
12 end on the date on which the funds are deposited in
13 the Trust Fund.

14 (c) STATE COST SHARE.—Pursuant to the Agree-
15 ment, the State shall contribute—

16 (1) \$98,500,000, as adjusted for inflation pur-
17 suant to the Agreement, for Signatory Acequias
18 ditch improvements, projects, and other purposes de-
19 scribed in the Agreement;

20 (2) \$32,000,000, as adjusted for inflation pur-
21 suant to the Agreement, for the City of Española for
22 water system improvement projects; and

23 (3) \$500,000, to be deposited in an interest-
24 bearing account, to mitigate impairment to non-

1 Pueblo domestic and livestock groundwater rights as
2 a result of new Pueblo water use.

3 **SEC. 8. ENFORCEABILITY DATE.**

4 The Enforceability Date shall be the date on which
5 the Secretary publishes in the Federal Register a state-
6 ment of findings that—

7 (1) to the extent that the Agreement conflicts
8 with this Act, the Agreement has been amended to
9 conform with this Act;

10 (2) the Agreement, as amended, has been exe-
11 cuted by all parties to the Agreement, including the
12 United States;

13 (3) the United States District Court for the
14 District of New Mexico has approved the Agreement
15 and has entered a Partial Final Judgment and De-
16 cree;

17 (4) all the amounts appropriated under section
18 7(a) have been appropriated and deposited in the
19 Trust Fund;

20 (5) the State has—

21 (A) provided the funding under section
22 7(e)(1) or entered into a funding agreement
23 with the intended beneficiary for that funding;

1 (B) provided the funding under section
2 7(e)(2) or entered into a funding agreement
3 with the intended beneficiary for that funding;

4 (C) provided the funding under section
5 7(e)(3) and deposited that amount into the ap-
6 propriate funding account; and

7 (D) enacted legislation to amend State law
8 to provide that the Pueblo Water Rights may
9 be leased for a term not to exceed 99 years, in-
10 cluding renewals; and

11 (6) the waivers and releases under section 9
12 have been executed by Ohkay Owingeh and the Sec-
13 retary.

14 **SEC. 9. WAIVERS AND RELEASES OF CLAIMS.**

15 (a) WAIVERS AND RELEASES OF CLAIMS BY OHKAY
16 OWINGEH AND UNITED STATES AS TRUSTEE FOR OHKAY
17 OWINGEH.—Subject to the reservation of rights and re-
18 tention of claims under subsection (d), as consideration
19 for recognition of the Pueblo Water Rights and other ben-
20 efits described in the Agreement and this Act, Ohkay
21 Owingeh and the United States, acting as trustee for
22 Ohkay Owingeh, shall execute a waiver and release of all
23 claims for—

24 (1) water rights within the Rio Chama Stream
25 System that Ohkay Owingeh, or the United States

1 acting as trustee for Ohkay Owingeh, asserted or
2 could have asserted in any proceeding, including the
3 Adjudication, on or before the Enforceability Date,
4 except to the extent that such rights are recognized
5 in the Agreement and this Act; and

6 (2) damages, losses, or injuries to water rights
7 or claims of interference with, diversion of, or taking
8 of water rights (including claims for injury to land
9 resulting from such damages, losses, injuries, inter-
10 ference, diversion, or taking of water rights) in the
11 Rio Chama Stream System that accrued at any time
12 up to and including the Enforceability Date.

13 (b) WAIVERS AND RELEASES OF CLAIMS BY OHKAY
14 OWINGEH AGAINST THE UNITED STATES.—Subject to the
15 reservation of rights and retention of claims under sub-
16 section (d), Ohkay Owingeh shall execute a waiver and re-
17 lease of all claims against the United States (including any
18 agency or employee of the United States) for water rights
19 within the Rio Chama Stream System first arising before
20 the Enforceability Date relating to—

21 (1) water rights within the Rio Chama Stream
22 System that the United States, acting as trustee for
23 Ohkay Owingeh, asserted or could have asserted in
24 any proceeding, including the Adjudication, except to

1 the extent that such rights are recognized as part of
2 the Pueblo Water Rights under this Act;

3 (2) foregone benefits from non-Pueblo use of
4 water, on and off Pueblo Land (including water
5 from all sources and for all uses), within the Rio
6 Chama Stream System;

7 (3) damage, loss, or injury to water, water
8 rights, land, or natural resources due to loss of
9 water or water rights (including damages, losses, or
10 injuries to hunting, fishing, gathering, or cultural
11 rights due to loss of water or water rights, claims
12 relating to interference with, diversion of, or taking
13 of water, or claims relating to a failure to protect,
14 acquire, replace, or develop water, water rights, or
15 water infrastructure) within the Rio Chama Stream
16 System;

17 (4) failure to establish or provide a municipal,
18 rural, or industrial water delivery system on Pueblo
19 Land within the Rio Chama Stream System;

20 (5) damage, loss, or injury to water, water
21 rights, land, or natural resources due to construc-
22 tion, operation, and management of irrigation
23 projects on Pueblo Land or Federal land and facili-
24 ties (including damages, losses, or injuries to fish

1 habitat, wildlife, and wildlife habitat) within the Rio
2 Chama Stream System;

3 (6) failure to provide for operation, mainte-
4 nance, or deferred maintenance for any irrigation
5 system or irrigation project within the Rio Chama
6 Stream System;

7 (7) failure to provide a dam safety improvement
8 to a dam on Pueblo Land within the Rio Chama
9 Stream System;

10 (8) damage, loss, or injury to the bosque area
11 of the Rio Chama due to the construction, operation,
12 and maintenance of Abiquiu Dam and its associated
13 infrastructure and resulting Rio Chama flow man-
14 agement;

15 (9) the litigation of claims relating to any water
16 right of Ohkay Owingeh within the Rio Chama
17 Stream System;

18 (10) the taking of the bosque property of the
19 Pueblo within the Pueblo Grant on the Rio Chama
20 and Rio Grande as asserted in *Ohkay Owingeh v.*
21 *United States*, No. 22–1607L (Court of Federal
22 Claims);

23 (11) failure of the United States to acknowl-
24 edge and protect aboriginal rights to water in the
25 Rio Chama Stream System;

1 (12) the failure of the United States to develop
2 the irrigation water resources in the Rio Chama
3 Stream System on the Pueblo Grant, including fail-
4 ure to—

5 (A) construct and deliver water through
6 the Highline Canal;

7 (B) make improvements to the Chamita
8 Ditch; and

9 (C) repurchase arable land unlawfully ob-
10 tained by non-Indians;

11 (13) the failure of the United States to prevent
12 or remedy non-Indians' trespass on or seizure of ar-
13 able Pueblo lands in the Rio Chama Stream System
14 on the Pueblo Grant; and

15 (14) the negotiation, execution, or adoption of
16 the Agreement (including exhibits) and this Act.

17 (c) EFFECTIVE DATE.—The waivers and releases de-
18 scribed in subsections (a) and (b) shall take effect on the
19 Enforceability Date.

20 (d) RESERVATION OF RIGHTS AND RETENTION OF
21 CLAIMS.—Notwithstanding the waivers and releases under
22 subsection (a) and (b), the Pueblo and the United States,
23 acting as trustee for Ohkay Owingeh, shall retain all
24 claims relating to—

1 (1) the enforcement of, or claims accruing after
2 the Enforceability Date relating to, water rights rec-
3 ognized under the Agreement, this Act, or the Par-
4 tial Final Judgment and Decree entered in the Ad-
5 judication;

6 (2) activities affecting the quality of water, in-
7 cluding claims under—

8 (A) the Comprehensive Environmental Re-
9 sponse, Compensation, and Liability Act of
10 1980 (42 U.S.C. 9601 et seq.), including claims
11 for damages to natural resources;

12 (B) the Safe Drinking Water Act (42
13 U.S.C. 300f et seq.);

14 (C) the Federal Water Pollution Control
15 Act (33 U.S.C. 1251 et seq.); and

16 (D) any regulations implementing the Acts
17 described in subparagraphs (A) through (C);

18 (3) the right to use and protect water rights ac-
19 quired after the date of enactment of this Act;

20 (4) damage, loss, or injury to land or natural
21 resources that is not due to loss of water or water
22 rights, including hunting, fishing, gathering, or cul-
23 tural rights;

1 (5) all rights, remedies, privileges, immunities,
2 and powers not specifically waived and released pur-
3 suant to this Act or the Agreement; and

4 (6) loss of water or water rights in locations
5 outside of the Rio Chama Stream System.

6 (e) EFFECT OF AGREEMENT AND ACT.—Nothing in
7 the Agreement or this Act—

8 (1) reduces or extends the sovereignty (includ-
9 ing civil and criminal jurisdiction) of any govern-
10 ment entity;

11 (2) affects the ability of the United States, as
12 sovereign, to carry out any activity authorized by
13 law, including—

14 (A) the Comprehensive Environmental Re-
15 sponse, Compensation, and Liability Act of
16 1980 (42 U.S.C. 9601 et seq.);

17 (B) the Safe Drinking Water Act (42
18 U.S.C. 300f et seq.);

19 (C) the Federal Water Pollution Control
20 Act (33 U.S.C. 1251 et seq.);

21 (D) the Solid Waste Disposal Act (42
22 U.S.C. 6901 et seq.); and

23 (E) any regulations implementing the Acts
24 described in subparagraphs (A) through (D);

1 (3) affects the ability of the United States to
2 act as trustee for the Pueblo (consistent with this
3 Act), any other pueblo or Indian Tribe, or an allot-
4 tee of any other pueblo or Indian Tribe;

5 (4) confers jurisdiction on any State court—

6 (A) to interpret Federal law relating to
7 health, safety, or the environment;

8 (B) to determine the duties of the United
9 States or any other party under Federal law re-
10 lating to health, safety, or the environment;

11 (C) to conduct judicial review of any Fed-
12 eral agency action; or

13 (D) to interpret Pueblo law; or

14 (5) waives any claim of a member of Ohkay
15 Owingeh in an individual capacity that does not de-
16 rive from a right of the Pueblo.

17 (f) TOLLING OF CLAIMS.—

18 (1) IN GENERAL.—Each applicable period of
19 limitation and time-based equitable defense relating
20 to a claim described in this section shall be tolled for
21 the period beginning on the date of enactment of
22 this Act and ending on the Enforceability Date.

23 (2) EFFECT OF SUBSECTION.—Nothing in this
24 subsection revives any claim or tolls any period of

1 limitation or time-based equitable defense that ex-
2 pired before the date of enactment of this Act.

3 (3) LIMITATION.—Nothing in this section pre-
4 cludes the tolling of any period of limitation or any
5 time-based equitable defense under any other appli-
6 cable law.

7 (g) EXPIRATION.—

8 (1) IN GENERAL.—This Act shall expire in any
9 case in which the Secretary fails to publish a state-
10 ment of findings under section 8 by not later than—

11 (A) July 1, 2038; or

12 (B) such alternative later date as is agreed
13 to by Ohkay Owingeh and the Secretary, after
14 providing reasonable notice to the State.

15 (2) CONSEQUENCES.—If this Act expires under
16 paragraph (1)—

17 (A) the waivers and releases under sub-
18 sections (a) and (b) shall—

19 (i) expire; and

20 (ii) have no further force or effect;

21 (B) the authorization, ratification, con-
22 firmation, and execution of the Agreement
23 under section 4 shall no longer be effective;

1 (C) any action carried out by the Sec-
2 retary, and any contract or agreement entered
3 into, pursuant to this Act shall be void;

4 (D) any unexpended Federal funds appro-
5 priated or made available to carry out the ac-
6 tivities authorized by this Act, together with
7 any interest earned on those funds, and any
8 water rights or contracts to use water and title
9 to other property acquired or constructed with
10 Federal funds appropriated or made available
11 to carry out the activities authorized by this Act
12 shall be returned to the Federal Government,
13 unless otherwise agreed to by Ohkay Owingeh
14 and the United States and approved by Con-
15 gress; and

16 (E) except for Federal funds used to ac-
17 quire or construct property that is returned to
18 the Federal Government under subparagraph
19 (D), the United States shall be entitled to offset
20 any Federal funds made available to carry out
21 this Act that were expended or withdrawn, or
22 any funds made available to carry out this Act
23 from other Federal authorized sources, together
24 with any interest accrued on those funds,
25 against any claims against the United States—

- 1 (i) relating to—
 2 (I) water rights in the State as-
 3 sserted by—
 4 (aa) Ohkay Owingeh; or
 5 (bb) any user of the Pueblo
 6 Water Rights; or
 7 (II) any other matter covered by
 8 subsection (b); or
 9 (ii) in any future settlement of water
 10 rights of Ohkay Owingeh.

11 **SEC. 10. SATISFACTION OF CLAIMS.**

12 The benefits provided under this Act shall be in com-
 13 plete replacement of, complete substitution for, and full
 14 satisfaction of any claim of Ohkay Owingeh against the
 15 United States that is waived and released by Ohkay
 16 Owingeh pursuant to section 9(b).

17 **SEC. 11. MISCELLANEOUS PROVISIONS.**

18 (a) NO WAIVER OF SOVEREIGN IMMUNITY BY THE
 19 UNITED STATES.—Nothing in this Act waives the sov-
 20 ereign immunity of the United States.

21 (b) OTHER TRIBES NOT ADVERSELY AFFECTED.—
 22 Nothing in this Act quantifies or diminishes any land or
 23 water right, or any claim or entitlement to land or water,
 24 of an Indian Tribe, band, pueblo, or community other than
 25 Ohkay Owingeh.

1 (c) EFFECT ON CURRENT LAW.—Nothing in this Act
2 affects any provision of law (including regulations) in ef-
3 fect on the day before the date of enactment of this Act
4 with respect to pre-enforcement review of any Federal en-
5 vironmental enforcement action.

6 (d) CONFLICT.—In the event of a conflict between
7 the Agreement and this Act, this Act shall control.

8 (e) HOLD HARMLESS.—For any bosque restoration
9 or improvement project carried out by the Pueblo with
10 funds appropriated under this Act, the Pueblo shall hold
11 and save the United States free from damages due to the
12 construction or operation and maintenance of the project.

13 **SEC. 12. ANTIDEFICIENCY.**

14 The United States shall not be liable for any failure
15 to carry out any obligation or activity authorized by this
16 Act, including any obligation or activity under the Agree-
17 ment, if adequate appropriations are not provided ex-
18 pressly by Congress to carry out the purposes of this Act.

Calendar No. 663

118TH CONGRESS
2^D SESSION

S. 4505

[Report No. 118-261]

A BILL

To approve the settlement of water rights claims of Olkay Owingel in the Rio Chama Stream System, to restore the Bosque on Pueblo Land in the State of New Mexico, and for other purposes.

DECEMBER 4, 2024

Reported without amendment