

118TH CONGRESS
2D SESSION

H. R. 8685

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 HOUSE OF REPRESENTATIVES

JUNE 11, 2024

Ms. LEGER FERNANDEZ introduced the following bill; which was referred to the Committee on Natural Resources

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,*

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

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

7 (b) TABLE OF CONTENTS.—The table of contents for
8 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.

1 **SEC. 2. PURPOSES.**

2 The purposes of this Act are—

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

6 (A) Ohkay Owingeh; and

7 (B) the United States, acting as trustee
8 for Ohkay Owingeh;

9 (2) to authorize, ratify, and confirm the Agree-
10 ment entered into by Ohkay Owingeh, the State, and
11 various other parties to the extent that the Agree-
12 ment is consistent with this Act;

13 (3) to authorize and direct the Secretary—

14 (A) to execute the Agreement; and

15 (B) to take any other actions necessary to
16 carry out the Agreement in accordance with
17 this Act; and

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

1 **SEC. 3. DEFINITIONS.**

2 In this Act:

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

11 (2) AGREEMENT.—The term “Agreement”
12 means—

13 (A) the document entitled “Ohkay
14 Owingeh Rio Chama Water Rights Settlement”
15 and dated July 5, 2023, and the exhibits at-
16 tached thereto; and

17 (B) any amendment to the document re-
18 ferred to in subparagraph (A) (including an
19 amendment to an exhibit thereto) that is exe-
20 cuted to ensure that the Agreement is con-
21 sistent with this Act.

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

1 (4) CITY OF ESPAÑOLA.—The term “City of
2 Española” means a municipal corporation of the
3 State.

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

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

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

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

20 (B) from which no further appeal may be
21 taken.

22 (8) PUEBLO GRANT.—The term “Pueblo
23 Grant” means the land recognized and confirmed by
24 the Federal patent issued to Ohkay Owingeh (then

1 known as the “Pueblo of San Juan”) under the Act
2 of December 22, 1858 (11 Stat. 374, chapter V).

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

5 (A) held by the United States in trust for
6 Ohkay Owingeh within the Rio Chama Stream
7 System;

8 (B) owned by the Pueblo within the Rio
9 Chama Stream System before the Enforce-
10 ability Date; or

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

14 (i) within the exterior boundaries of
15 the Pueblo Grant; or

16 (ii) within the exterior boundaries of
17 any territory set aside for the Pueblo by
18 law, Executive order, or court decree.

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

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

24 (B) as confirmed in the Partial Final
25 Judgment and Decree.

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

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

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

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

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

15 **SEC. 4. RATIFICATION OF AGREEMENT.**

16 (a) RATIFICATION.—

17 (1) IN GENERAL.—Except as modified by this
18 Act, and to the extent that the Agreement does not
19 conflict with this Act, the Agreement is authorized,
20 ratified, and confirmed.

21 (2) AMENDMENTS.—If an amendment to the
22 Agreement, or to any exhibit to the Agreement re-
23 quiring the signature of the Secretary, is executed in
24 accordance with this Act to make the Agreement

1 consistent with this Act, the amendment is author-
2 ized, ratified, and confirmed.

3 (b) EXECUTION.—

4 (1) IN GENERAL.—To the extent the Agreement
5 does not conflict with this Act, the Secretary shall
6 execute the Agreement, including all exhibits thereto
7 or parts of the Agreement requiring the signature of
8 the Secretary.

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

18 (c) ENVIRONMENTAL COMPLIANCE.—

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

22 (A) the Endangered Species Act of 1973
23 (16 U.S.C. 1531 et seq.);

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

4 (C) all other applicable Federal environ-
5 mental laws and regulations.

6 (2) COMPLIANCE AND COORDINATION.—

7 (A) IN GENERAL.—In implementing the
8 Agreement and this Act, the Pueblo shall pre-
9 pare any necessary environmental documents
10 consistent with—

11 (i) the Endangered Species Act of
12 1973 (16 U.S.C. 1531 et seq.);

13 (ii) the National Environmental Policy
14 Act of 1969 (42 U.S.C. 4321 et seq.), in-
15 cluding the implementing regulations of
16 that Act; and

17 (iii) all other applicable Federal envi-
18 ronmental laws and regulations.

19 (B) AUTHORIZATIONS.—The Secretary
20 shall—

21 (i) independently evaluate the docu-
22 mentation required under subparagraph
23 (A); and

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

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

10 (3) EFFECT OF EXECUTION.—The execution of
11 the Agreement by the Secretary under this section
12 shall not constitute a major Federal action under
13 the National Environmental Policy Act of 1969 (42
14 U.S.C. 4321 et seq.).

15 (4) COSTS.—Any costs associated with the per-
16 formance of the compliance and coordination activi-
17 ties under this subsection shall be paid from funds
18 deposited in the Trust Fund, subject to the condi-
19 tion that any costs associated with the performance
20 of Federal approval or other review of that compli-
21 ance work or costs associated with inherently Fed-
22 eral functions shall remain the responsibility of the
23 Secretary, with the exception that costs for review of
24 bosque restoration or improvement projects by the
25 Corps of Engineers described in paragraph (2)(C)

1 shall be paid from funds deposited in the Trust
2 Fund.

3 **SEC. 5. PUEBLO WATER RIGHTS.**

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

8 (b) FORFEITURE AND ABANDONMENT.—

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

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

19 (c) USE.—Any use of the Pueblo Water Rights shall
20 be subject to the terms and conditions of the Agreement
21 and this Act.

22 (d) AUTHORITY OF THE PUEBLO.—

23 (1) IN GENERAL.—Ohkay Owingeh may allo-
24 cate, distribute, and lease the Pueblo Water Rights
25 for use on Pueblo Land in accordance with the

1 Agreement, this Act, and applicable Federal law, in-
2 cluding the Act of August 9, 1955 (25 U.S.C. 415
3 et seq.) (commonly known as the “Long-Term Leas-
4 ing Act”).

5 (2) USE OFF PUEBLO LAND.—

6 (A) IN GENERAL.—Ohkay Owingeh may
7 allocate, distribute, and lease the Pueblo Water
8 Rights for use off Pueblo Land in accordance
9 with the Agreement, this Act, and applicable
10 Federal law, subject to the approval of the Sec-
11 retary.

12 (B) MAXIMUM TERM OF LEASES.—The
13 maximum term of any lease, including all re-
14 newals, under this paragraph shall not exceed
15 99 years.

16 (e) ADMINISTRATION.—

17 (1) NO ALIENATION.—The Pueblo shall not
18 permanently alienate any portion of the Pueblo
19 Water Rights.

20 (2) PURCHASES OR GRANTS OF LAND FROM IN-
21 DIANS.—An authorization provided by this Act for
22 the allocation, distribution, leasing, or other ar-
23 rangement entered into pursuant to this Act shall be
24 considered to satisfy any requirement for authoriza-
25 tion of the action required by Federal law.

1 (3) PROHIBITION ON FORFEITURE.—The non-
2 use of all or any portion of the Pueblo Water Rights
3 by any water user shall not result in the forfeiture,
4 abandonment, relinquishment, or other loss of all or
5 any portion of the Pueblo Water Rights.

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

7 (a) ESTABLISHMENT.—The Secretary shall establish
8 a trust fund, to be known as the “Ohkay Owingeh Water
9 Rights Settlement Trust Fund”, to be managed, invested,
10 and distributed by the Secretary and to remain available
11 until expended, withdrawn, or reverted to the general fund
12 of the Treasury, consisting of the amounts deposited in
13 the Trust Fund under subsection (b), together with any
14 investment earnings, including interest, earned on those
15 amounts for the purpose of carrying out this Act.

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

19 (c) MANAGEMENT AND INTEREST.—

20 (1) MANAGEMENT.—On receipt and deposit of
21 funds into the Trust Fund under subsection (b), the
22 Secretary shall manage, invest, and distribute all
23 amounts in the Trust Fund in a manner that is con-
24 sistent with the investment authority of the Sec-
25 retary under—

1 (A) the first section of the Act of June 24,
2 1938 (25 U.S.C. 162a);

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

6 (C) this subsection.

7 (2) INVESTMENT EARNINGS.—In addition to
8 the amounts deposited into the Trust Fund under
9 subsection (b), any investment earnings, including
10 interest, earned on those amounts held in the Trust
11 Fund are authorized to be used in accordance with
12 subsections (e) and (g).

13 (d) AVAILABILITY OF AMOUNTS.—

14 (1) IN GENERAL.—Amounts appropriated to,
15 and deposited in, the Trust Fund, including any in-
16 vestment earnings (including interest) earned on
17 those amounts, shall be made available to Ohkay
18 Owingeh by the Secretary beginning on the Enforce-
19 ability Date, subject to the requirements of this sec-
20 tion, except for funds to be made available to Ohkay
21 Owingeh pursuant to paragraph (2).

22 (2) USE OF FUNDS.—Notwithstanding para-
23 graph (1), not more than \$100,000,000 of the
24 amounts deposited in the Trust Fund, including any
25 investment earnings, including interest, earned on

1 those amounts, shall be available to Ohkay Owingeh
2 for the following uses on the date on which the
3 amounts are deposited in the Trust Fund:

4 (A) Diversions of surface water and
5 groundwater to the Rio Chama bosque for im-
6 mediate and essential restoration and mainte-
7 nance of the bosque.

8 (B) Fulfillment of the contribution of the
9 Pueblo under the Agreement for improvements
10 to senior acequias on Pueblo Land supplying
11 water to the Pueblo and non-Indians.

12 (C) Establishment and operation of the
13 water rights management administrative de-
14 partment of the Pueblo.

15 (D) Acquisition of water rights.

16 (E) Development of water infrastructure
17 plans, preparing environmental compliance doc-
18 uments, and water project engineering and con-
19 struction.

20 (e) WITHDRAWALS.—

21 (1) WITHDRAWALS UNDER THE AMERICAN IN-
22 DIAN TRUST FUND MANAGEMENT REFORM ACT OF
23 1994.—

24 (A) IN GENERAL.—The Pueblo may with-
25 draw any portion of the amounts in the Trust

1 Fund on approval by the Secretary of a Tribal
2 management plan submitted by the Pueblo in
3 accordance with the American Indian Trust
4 Fund Management Reform Act of 1994 (25
5 U.S.C. 4001 et seq.).

6 (B) REQUIREMENTS.—In addition to the
7 requirements under the American Indian Trust
8 Fund Management Reform Act of 1994 (25
9 U.S.C. 4001 et seq.), the Tribal management
10 plan under subparagraph (A) shall require that
11 the Pueblo shall spend all amounts withdrawn
12 from the Trust Fund, and any investment earn-
13 ings (including interest) earned on those
14 amounts through the investments under the
15 Tribal management plan, in accordance with
16 this Act.

17 (C) ENFORCEMENT.—The Secretary may
18 carry out such judicial and administrative ac-
19 tions as the Secretary determines to be nec-
20 essary to enforce the Tribal management plan
21 under subparagraph (A) to ensure that
22 amounts withdrawn by the Pueblo from the
23 Trust Fund under that subparagraph are used
24 in accordance with this Act.

1 (2) WITHDRAWALS UNDER EXPENDITURE
2 PLAN.—

3 (A) IN GENERAL.—Ohkay Owingeh may
4 submit to the Secretary a request to withdraw
5 funds from the Trust Fund pursuant to an ap-
6 proved expenditure plan.

7 (B) REQUIREMENTS.—To be eligible to
8 withdraw amounts under an expenditure plan
9 under subparagraph (A), the Pueblo shall sub-
10 mit to the Secretary an expenditure plan for
11 any portion of the Trust Fund the Pueblo elects
12 to withdraw pursuant to that subparagraph,
13 subject to the condition that the amounts shall
14 be used for the purposes described in this Act.

15 (C) INCLUSIONS.—An expenditure plan
16 under subparagraph (A) shall include a descrip-
17 tion of the manner and purpose for which the
18 amounts proposed to be withdrawn from the
19 Trust Fund will be used by Ohkay Owingeh, in
20 accordance with this subsection and subsection
21 (g).

22 (D) APPROVAL.—The Secretary shall ap-
23 prove an expenditure plan submitted under sub-
24 paragraph (A) if the Secretary determines that
25 the plan—

1 (i) is reasonable; and
2 (ii) is consistent with, and will be used
3 for, the purposes of this Act.

4 (E) ENFORCEMENT.—The Secretary may
5 carry out such judicial and administrative ac-
6 tions as the Secretary determines to be nec-
7 essary to enforce an expenditure plan to ensure
8 that amounts disbursed under this paragraph
9 are used in accordance with this Act.

10 (f) EFFECT OF SECTION.—Nothing in this section
11 gives Ohkay Owingeh the right to judicial review of a de-
12 termination of the Secretary relating to whether to ap-
13 prove a Tribal management plan under paragraph (1) of
14 subsection (e) or an expenditure plan under paragraph (2)
15 of that subsection, except under subchapter II of chapter
16 5, and chapter 7, of title 5, United States Code (commonly
17 known as the “Administrative Procedure Act”).

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

20 (1) Planning, permitting, designing, engineer-
21 ing, constructing, reconstructing, replacing, rehabili-
22 tating, operating, or repairing water production,
23 treatment, or delivery infrastructure, including for
24 domestic and municipal supply or wastewater infra-
25 structure.

1 (2) Planning, permitting, designing, engineer-
2 ing, constructing, reconstructing, replacing, rehabili-
3 tating, operating, or repairing water production,
4 treatment, or delivery infrastructure, acquisition of
5 water, or on-farm improvements for irrigation, live-
6 stock, and support of agriculture.

7 (3) Planning, permitting, designing, engineer-
8 ing, constructing, reconstructing, replacing, rehabili-
9 tating, operating, monitoring or other measures for
10 watershed and endangered species habitat protec-
11 tion, bosque restoration or improvement (including
12 any required cost shares for and allowable contribu-
13 tions to a Federal project or program), land and
14 water rights acquisition, water-related Pueblo com-
15 munity welfare and economic development, and costs
16 relating to implementation of the Agreement.

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

19 (5) Ensuring environmental compliance in the
20 development and construction of projects under this
21 Act.

22 (h) LIABILITY.—The Secretary and the Secretary of
23 the Treasury shall not be liable for the expenditure or in-
24 vestment of any amounts withdrawn from the Trust Fund

1 by the Pueblo under paragraph (1) or (2) of subsection
2 (e).

3 (i) EXPENDITURE REPORTS.—Ohkay Owingeh shall
4 annually submit to the Secretary an expenditure report
5 describing accomplishments and amounts spent from use
6 of withdrawals under a Tribal management plan or an ex-
7 penditure plan under paragraph (1) or (2) of subsection
8 (e), as applicable.

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

12 (k) TITLE TO INFRASTRUCTURE.—Title to, control
13 over, and operation of any project constructed using funds
14 from the Trust Fund shall remain in Ohkay Owingeh, ex-
15 cept that title to projects that are improved with funds
16 from the Trust Fund for the mutual benefit of the Pueblo
17 and non-Indians, on property owned by non-Indians, shall
18 remain with the underlying non-Indian owner.

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

23 **SEC. 7. FUNDING.**

24 (a) MANDATORY APPROPRIATIONS.—Out of any
25 funds in the Treasury not otherwise appropriated, the Sec-

1 retary of the Treasury shall transfer to the Secretary for
2 deposit in the Trust Fund \$745,000,000, to remain avail-
3 able until expended, withdrawn, or reverted to the general
4 fund of the Treasury.

5 (b) FLUCTUATION IN COSTS.—

6 (1) IN GENERAL.—The amount appropriated
7 under subsection (a) shall be increased or decreased,
8 as appropriate, by such amounts as may be justified
9 by reason of ordinary fluctuations in costs, as indi-
10 cated by the Bureau of Reclamation Construction
11 Cost Index–Composite Trend.

12 (2) CONSTRUCTION COSTS ADJUSTMENT.—The
13 amount appropriated under subsection (a) shall be
14 adjusted to address construction cost changes nec-
15 essary to account for unforeseen market volatility
16 that may not otherwise be captured by engineering
17 cost indices, as determined by the Secretary, includ-
18 ing repricing applicable to the types of construction
19 and current industry standards involved.

20 (3) REPETITION.—The adjustment process
21 under this subsection shall be repeated for each sub-
22 sequent amount appropriated until the applicable
23 amount, as adjusted, has been appropriated.

24 (4) PERIOD OF INDEXING.—The period of in-
25 dexing adjustment under this subsection for any in-

1 crement of funding shall start on June 1, 2023, and
2 end on the date on which the funds are deposited in
3 the Trust Fund.

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

6 (1) \$98,500,000, as adjusted for inflation pur-
7 suant to the Agreement, for Signatory Acequias
8 ditch improvements, projects, and other purposes de-
9 scribed in the Agreement;

10 (2) \$32,000,000, as adjusted for inflation pur-
11 suant to the Agreement, for the City of Española for
12 water system improvement projects; and

13 (3) \$500,000, to be deposited in an interest-
14 bearing account, to mitigate impairment to non-
15 Pueblo domestic and livestock groundwater rights as
16 a result of new Pueblo water use.

17 **SEC. 8. ENFORCEABILITY DATE.**

18 The Enforceability Date shall be the date on which
19 the Secretary publishes in the Federal Register a state-
20 ment of findings that—

21 (1) to the extent that the Agreement conflicts
22 with this Act, the Agreement has been amended to
23 conform with this Act;

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

4 (3) the United States District Court for the
5 District of New Mexico has approved the Agreement
6 and has entered a Partial Final Judgment and De-
7 cree;

8 (4) all the amounts appropriated under section
9 7(a) have been appropriated and deposited in the
10 Trust Fund;

11 (5) the State has—

12 (A) provided the funding under section
13 7(e)(1) or entered into a funding agreement
14 with the intended beneficiary for that funding;

15 (B) provided the funding under section
16 7(e)(2) or entered into a funding agreement
17 with the intended beneficiary for that funding;

18 (C) provided the funding under section
19 7(e)(3) and deposited that amount into the ap-
20 propriate funding account; and

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

1 (6) the waivers and releases under section 9
2 have been executed by Ohkay Owingeh and the Sec-
3 retary.

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

5 (a) WAIVERS AND RELEASES OF CLAIMS BY OHKAY
6 OWINGEH AND UNITED STATES AS TRUSTEE FOR OHKAY
7 OWINGEH.—Subject to the reservation of rights and re-
8 tention of claims under subsection (d), as consideration
9 for recognition of the Pueblo Water Rights and other ben-
10 efits described in the Agreement and this Act, Ohkay
11 Owingeh and the United States, acting as trustee for
12 Ohkay Owingeh, shall execute a waiver and release of all
13 claims for—

14 (1) water rights within the Rio Chama Stream
15 System that Ohkay Owingeh, or the United States
16 acting as trustee for Ohkay Owingeh, asserted or
17 could have asserted in any proceeding, including the
18 Adjudication, on or before the Enforceability Date,
19 except to the extent that such rights are recognized
20 in the Agreement and this Act; and

21 (2) damages, losses, or injuries to water rights
22 or claims of interference with, diversion of, or taking
23 of water rights (including claims for injury to land
24 resulting from such damages, losses, injuries, inter-
25 ference, diversion, or taking of water rights) in the

1 Rio Chama Stream System that accrued at any time
2 up to and including the Enforceability Date.

3 (b) WAIVERS AND RELEASES OF CLAIMS BY OHKAY
4 OWINGEH AGAINST THE UNITED STATES.—Subject to the
5 reservation of rights and retention of claims under sub-
6 section (d), Ohkay Owingeh shall execute a waiver and re-
7 lease of all claims against the United States (including any
8 agency or employee of the United States) for water rights
9 within the Rio Chama Stream System first arising before
10 the Enforceability Date relating to—

11 (1) water rights within the Rio Chama Stream
12 System that the United States, acting as trustee for
13 Ohkay Owingeh, asserted or could have asserted in
14 any proceeding, including the Adjudication, except to
15 the extent that such rights are recognized as part of
16 the Pueblo Water Rights under this Act;

17 (2) foregone benefits from non-Pueblo use of
18 water, on and off Pueblo Land (including water
19 from all sources and for all uses), within the Rio
20 Chama Stream System;

21 (3) damage, loss, or injury to water, water
22 rights, land, or natural resources due to loss of
23 water or water rights (including damages, losses, or
24 injuries to hunting, fishing, gathering, or cultural
25 rights due to loss of water or water rights, claims

1 relating to interference with, diversion of, or taking
2 of water, or claims relating to a failure to protect,
3 acquire, replace, or develop water, water rights, or
4 water infrastructure) within the Rio Chama Stream
5 System;

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

9 (5) damage, loss, or injury to water, water
10 rights, land, or natural resources due to construc-
11 tion, operation, and management of irrigation
12 projects on Pueblo Land or Federal land and facili-
13 ties (including damages, losses, or injuries to fish
14 habitat, wildlife, and wildlife habitat) within the Rio
15 Chama Stream System;

16 (6) failure to provide for operation, mainte-
17 nance, or deferred maintenance for any irrigation
18 system or irrigation project within the Rio Chama
19 Stream System;

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

23 (8) damage, loss, or injury to the bosque area
24 of the Rio Chama due to the construction, operation,
25 and maintenance of Abiquiu Dam and its associated

1 infrastructure and resulting Rio Chama flow man-
2 agement;

3 (9) the litigation of claims relating to any water
4 right of Ohkay Owingeh within the Rio Chama
5 Stream System;

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

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

14 (12) the failure of the United States to develop
15 the irrigation water resources in the Rio Chama
16 Stream System on the Pueblo Grant, including fail-
17 ure to—

18 (A) construct and deliver water through
19 the Highline Canal;

20 (B) make improvements to the Chamita
21 Ditch; and

22 (C) repurchase arable land unlawfully ob-
23 tained by non-Indians;

24 (13) the failure of the United States to prevent
25 or remedy non-Indians’ trespass on or seizure of ar-

1 able Pueblo lands in the Rio Chama Stream System
2 on the Pueblo Grant; and

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

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

8 (d) RESERVATION OF RIGHTS AND RETENTION OF
9 CLAIMS.—Notwithstanding the waivers and releases under
10 subsections (a) and (b), the Pueblo and the United States,
11 acting as trustee for Ohkay Owingeh, shall retain all
12 claims relating to—

13 (1) the enforcement of, or claims accruing after
14 the Enforceability Date relating to, water rights rec-
15 ognized under the Agreement, this Act, or the Par-
16 tial Final Judgment and Decree entered in the Ad-
17 judication;

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

20 (A) the Comprehensive Environmental Re-
21 sponse, Compensation, and Liability Act of
22 1980 (42 U.S.C. 9601 et seq.), including claims
23 for damages to natural resources;

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

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

3 (D) any regulations implementing the Acts
4 described in subparagraphs (A) through (C);

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

7 (4) damage, loss, or injury to land or natural
8 resources that is not due to loss of water or water
9 rights, including hunting, fishing, gathering, or cul-
10 tural rights;

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

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

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

18 (1) reduces or extends the sovereignty (includ-
19 ing civil and criminal jurisdiction) of any govern-
20 ment entity;

21 (2) affects the ability of the United States, as
22 sovereign, to carry out any activity authorized by
23 law, including—

1 (A) the Comprehensive Environmental Re-
2 sponse, Compensation, and Liability Act of
3 1980 (42 U.S.C. 9601 et seq.);

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

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

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

10 (E) any regulations implementing the Acts
11 described in subparagraphs (A) through (D);

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

16 (4) confers jurisdiction on any State court—

17 (A) to interpret Federal law relating to
18 health, safety, or the environment;

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

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

24 (D) to interpret Pueblo law; or

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

4 (f) TOLLING OF CLAIMS.—

5 (1) IN GENERAL.—Each applicable period of
6 limitation and time-based equitable defense relating
7 to a claim described in this section shall be tolled for
8 the period beginning on the date of enactment of
9 this Act and ending on the Enforceability Date.

10 (2) EFFECT OF SUBSECTION.—Nothing in this
11 subsection revives any claim or tolls any period of
12 limitation or time-based equitable defense that ex-
13 pired before the date of enactment of this Act.

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

18 (g) EXPIRATION.—

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

22 (A) July 1, 2038; or

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

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

3 (A) the waivers and releases under sub-
4 sections (a) and (b) shall—

5 (i) expire; and

6 (ii) have no further force or effect;

7 (B) the authorization, ratification, con-
8 firmation, and execution of the Agreement
9 under section 4 shall no longer be effective;

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

13 (D) any unexpended Federal funds appro-
14 priated or made available to carry out the ac-
15 tivities authorized by this Act, together with
16 any interest earned on those funds, and any
17 water rights or contracts to use water and title
18 to other property acquired or constructed with
19 Federal funds appropriated or made available
20 to carry out the activities authorized by this Act
21 shall be returned to the Federal Government,
22 unless otherwise agreed to by Ohkay Owingeh
23 and the United States and approved by Con-
24 gress; and

1 (E) except for Federal funds used to ac-
2 quire or construct property that is returned to
3 the Federal Government under subparagraph
4 (D), the United States shall be entitled to offset
5 any Federal funds made available to carry out
6 this Act that were expended or withdrawn, or
7 any funds made available to carry out this Act
8 from other Federal authorized sources, together
9 with any interest accrued on those funds,
10 against any claims against the United States—

11 (i) relating to—

12 (I) water rights in the State as-
13 serted by—

14 (aa) Ohkay Owingeh; or

15 (bb) any user of the Pueblo
16 Water Rights; or

17 (II) any other matter covered by
18 subsection (b); or

19 (ii) in any future settlement of water
20 rights of Ohkay Owingeh.

21 **SEC. 10. SATISFACTION OF CLAIMS.**

22 The benefits provided under this Act shall be in com-
23 plete replacement of, complete substitution for, and full
24 satisfaction of any claim of Ohkay Owingeh against the

1 United States that is waived and released by Ohkay
2 Owingeh pursuant to section 9(b).

3 **SEC. 11. MISCELLANEOUS PROVISIONS.**

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

7 (b) OTHER TRIBES NOT ADVERSELY AFFECTED.—
8 Nothing in this Act quantifies or diminishes any land or
9 water right, or any claim or entitlement to land or water,
10 of an Indian Tribe, band, pueblo, or community other than
11 Ohkay Owingeh.

12 (c) EFFECT ON CURRENT LAW.—Nothing in this Act
13 affects any provision of law (including regulations) in ef-
14 fect on the day before the date of enactment of this Act
15 with respect to pre-enforcement review of any Federal en-
16 vironmental enforcement action.

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

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

1 **SEC. 12. ANTIDEFICIENCY.**

2 The United States shall not be liable for any failure
3 to carry out any obligation or activity authorized by this
4 Act, including any obligation or activity under the Agree-
5 ment, if adequate appropriations are not provided ex-
6 pressly by Congress to carry out the purposes of this Act.

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