

**TESTIMONY OF
U.S. DEPARTMENT OF THE INTERIOR
COMMITTEE ON NATURAL RESOURCES
SUBCOMMITTEE ON WATER, WILDLIFE, AND FISHERIES
U.S. HOUSE OF REPRESENTATIVES**

- H.R. 1304, Rio San José and Rio Jemez Water Settlements Act of 2023
H.R. 3977, Navajo-Gallup Water Supply Project Amendments Act of 2023
H.R. 6599, Technical Corrections to the Northwestern New Mexico Rural Water Projects Act, Taos Pueblo Indian Water Rights Settlement Act, and Aamodt Litigation Settlement Act
H.R. 7240, Fort Belknap Indian Community Water Rights Settlement Act of 2024
H.R. 8685, Ohkay Owingeh Rio Chama Water Rights Settlement Act of 2024
H.R. 8791, Fort Belknap Indian Community Water Rights Settlement Act of 2024
H.R. 8920, Tule River Tribe Reserved Water Rights Settlement Act of 2024
H.R. 8940, Northeastern Arizona Indian Water Rights Settlement Act of 2024
H.R. 8945, Navajo Nation Rio San José Stream System Water Rights Settlement Act of 2024
H.R. 8949, Yavapai-Apache Nation Water Rights Settlement Act of 2024
H.R. 8951, Zuni Indian Tribe Water Rights Settlement Act of 2024
H.R. 8953, Crow Tribe Water Rights Settlement Amendments Act of 2024**

Thank you for the opportunity to present the Department of the Interior's (Department) testimony on the following bills concerning Indian water rights settlements.

At the core of the United States' trust and treaty obligations is our responsibility to ensure that Indian Tribes have the right to continue to exist in their homelands. Everyone should understand that water is essential to meet this obligation. Without access to water in their homelands, Tribes cannot remain in their homelands, and we cannot fulfill our most solemn obligation to American Indian and Alaska Native people.

The Biden Administration recognizes that water is a sacred and valuable resource for Tribal Nations and that long-standing water crises continue to undermine public health and economic development in Indian Country. This Administration strongly supports the resolution of Indian water rights claims through negotiated settlements. Indian water settlements help to ensure that Tribal Nations have safe, reliable water supplies; improve environmental and health concerns on reservations; enable economic growth; promote Tribal sovereignty and self-sufficiency; and help advance the United States' trust relationship with Tribes. At the same time, water rights settlements have the potential to end decades of controversy and contention among Tribal Nations and neighboring communities and promote cooperation in the management of water resources.

Indian water rights settlements play a pivotal role in this Administration's commitment to putting equity at the center of everything we do to improve the lives of everyday people—including Tribal Nations. We have a clear charge from President Biden and Secretary Haaland to improve water access and water quality on Tribal lands. Access to water is fundamental to human

existence, economic development, and the future of communities—especially Tribal communities.

To that end, the Biden Administration’s policy on negotiated Indian water settlements continues to be based on the following principles: the United States will participate in settlements consistent with its legal and moral trust responsibilities to Tribal Nations; Tribes should receive equivalent benefits for rights, which they, and the United States as trustee, may release as part of the settlement; Tribes should realize value from confirmed water rights resulting from a settlement; and settlements should contain appropriate cost-sharing proportionate to the benefits received by all parties benefiting from the settlement. In addition, settlements should provide finality and certainty to all parties involved.

Congressional enactment of these settlements should be considered within the context of all Tribal priorities and the availability of all resources. That is why the Administration encourages Congress to consider mandatory funding for this and other pending Indian water rights settlements, which was also requested in the 2025 President’s Budget, included in the enacted Bipartisan Infrastructure Law, and already proposed in some of the bills we are discussing today.

H.R. 1304, Rio San José and Rio Jemez Water Settlements Act of 2023

H.R. 1304 would approve and provide authorizations to carry out the settlement of certain water rights claims of the Acoma, Laguna, Jemez, and Zia Pueblos (Pueblos) in New Mexico.

I. Background

A. Historical Context

Like other Pueblos in New Mexico, the Pueblos of Acoma, Laguna, Jemez, and Zia Pueblos were agricultural people living in established villages when the Spanish explorers first came to New Mexico. Before the Pueblos’ lands became part of the United States, they fell under the jurisdiction first of Spain, and later of Mexico, both of which recognized and protected the rights of Pueblos to use water. When the United States asserted its sovereignty over Pueblo lands and what is now the State of New Mexico, it did so under the terms of the Treaty of Guadalupe Hidalgo, which protected rights recognized by prior sovereigns, including Pueblo rights.

B. Acoma and Laguna Pueblos and Their Water Resources

The Rio San Jose, located in west-central New Mexico and west of Albuquerque, is a tributary of the Rio Puerco, which flows into the Rio Grande. The area is also home to the Pueblos of Acoma and Laguna. In total, the Pueblos hold approximately 1.064 million acres (over 563,000 acres for Acoma Pueblo and over 501,000 acres for Laguna Pueblo).

While there were small communities established by Spain and Mexico on smaller tributaries of the Rio San Jose, there were no mainstem upstream users disrupting the Pueblos’ water use until the United States’ acquisition of the territory. The United States’ establishment of Fort Wingate near Ojo del Gallo spring in 1862, and subsequent use of the area by the Village of San Rafael,

resulted in the diversion of spring flow that had previously provided a significant contribution to Rio San Jose flows and had been available to both Pueblos. Acequias on Rio San Jose tributaries began diverting water from the system in the late 19th century to the detriment of the Pueblos. Non-Indian water users' construction of a dam on Bluewater Creek, above and upstream of Acoma Pueblo, also reduced flows to the Rio San Jose, impacting both Pueblos. As the non-Indian water users began to irrigate more and more acreage, they turned to groundwater. This groundwater pumping siphoned off water that would have flowed as surface water in the Rio San Jose for the Pueblos' use.

Groundwater depletions in the Rio San Jose basin increased after uranium was discovered in the Grants Mineral Belt in the 1950s. The uranium was located in the same rock formations where water was stored, and that water supplied perennial springs within the basin, many of which contributed to Rio San Jose flows. These aquifers, and those located above them, were dewatered by mining companies, resulting in depleted spring flow contributions to the Rio San Jose. Uranium milling facilities also consumed large amounts of groundwater. The growth of this mining economy and the concomitant growth of non-Indian communities, such as the City of Grants, increased water use in the Rio San Jose basin to the detriment of the Pueblos.

The long-term pumping of groundwater and unimpeded diversion of surface water by non-Indian water users has resulted in significant impacts to the water supply. Even if the Pueblos were able to successfully curtail the water use of non-Indian junior users as part of the ongoing adjudication, the Rio San Jose system would not recover to provide the historic flow levels for the two Pueblos for several decades.

In 1983, general stream adjudication of the Rio San Jose (to resolve the dispute over the water rights of Acoma Pueblo and Laguna Pueblo, as well as the Navajo Nation) was initiated in New Mexico. Negotiations regarding potential settlement of the Pueblos' water rights claims have been ongoing since 1993, when the United States established teams to negotiate comprehensive settlements of all the Navajo Nation's and Pueblos' water rights in the Rio San Jose basin. H.R. 1304 addresses the water rights of the Pueblos of Acoma and Laguna. Separate legislation, H.R. 8945, addresses the rights of the Navajo Nation.

C. Jemez and Zia Pueblos and Their Water Resources

The Rio Jemez basin, located in north-central New Mexico and to the northwest of Albuquerque, is a major tributary of the Rio Grande and is home to the Pueblos of Jemez and Zia. In total, the Pueblos hold nearly 250,000 acres (approximately 89,600 acres for Jemez Pueblo and 160,000 acres for Zia Pueblo).

The Rio Jemez basin is an arid region of New Mexico, and drought is a common occurrence that has impacted, and continues to impact, the Pueblos. Recent effects of global warming and climate change are exacerbating these effects and surface water supplies are dwindling. Historic increases in water use by non-Indians impacted, and continue to impact, the Pueblos' ability to access adequate surface and groundwater supplies. Increased groundwater pumping by non-Indians, pursuant to permits issued by the State of New Mexico, make the Pueblos' access to groundwater supplies increasingly difficult.

Since 1996, Jemez and Zia Pueblos and non-Indian water users have been operating under a negotiated irrigation rotation agreement. The lack of a reliable water supply continues to impact the Pueblos' ability to sustain their agricultural practices and to move forward with water development projects to benefit the Pueblos and their members.

The general stream adjudication of the Rio Jemez (to resolve the water rights of the Pueblos of Jemez, Zia, and Santa Ana) began in 1983. Negotiations to resolve the water rights of the Pueblos also began in 1983. Jemez and Zia Pueblos reached a settlement of their water rights, but the Santa Ana Pueblo has elected to continue to litigate its water rights claims.

II. Proposed Acoma and Laguna Pueblos Settlement Legislation

Acoma and Laguna Pueblos, the State of New Mexico, and non-Indian water users executed a settlement agreement in 2022, quantifying the two Pueblos' water rights and resolving other key issues, including the requirements and parameters of a possible future project to import water to Pueblo lands. The United States is not a signatory to the settlement agreement.

Title I of H.R. 1304 would resolve all of the Acoma and Laguna Pueblos' water rights claims in the Rio San Jose basin in New Mexico; ratify and confirm the water rights settlement agreement among the Pueblos, the State of New Mexico, and non-Indian water users; authorize the Secretary of the Interior to sign the settlement; and authorize funds to implement the settlement agreement. In addition, the Pueblos are conditionally settling their claims in the Rio Salado (Acoma Pueblo) and Rio Puerco (Laguna Pueblo) basins.

Title I of H.R. 1304 would ratify and confirm the Pueblos' water rights to over 20,000 acre-feet per year (AFY)—7,982 AFY for Acoma Pueblo and 12,263 AFY for Laguna Pueblo—from various surface water and groundwater resources on each Pueblo. These amounts include 1,300 AFY of future groundwater use for economic development for each Pueblo.

Title I of H.R. 1304 would also protect non-Indian water users, as the Acoma and Laguna Pueblos would agree not to make priority calls for their senior rights against the water rights of junior non-Indian users in existence at the time that the settlement becomes enforceable. In addition, the Pueblos would agree to promulgate Pueblo water codes, which will govern permitting of uses of the Pueblos' water rights; provide processes for protests by parties affected by Pueblo permitting decisions; and ensure that water use under a Pueblo permit does not impair existing surface and groundwater rights.

Finally, Title I of H.R. 1304 would establish trust funds for both Pueblos totaling \$850 million, to be indexed. Acoma Pueblo would receive \$311.75 million, and Laguna Pueblo would receive \$493.25 million. The Pueblos could use their trust funds to develop water infrastructure on Pueblo lands as they determine necessary and on their own timeframe. In addition, \$45 million is to be allocated to both Pueblos jointly to use for repairs at the existing Acomita Dam.

Of the monies that would go to each Pueblo individually, \$40 million could be spent on operation, maintenance, and repair of Pueblo water infrastructure for domestic, commercial, municipal, and industrial uses (\$14 million for Acoma Pueblo and \$26 million for Laguna

Pueblo) and \$5 million could be spent on feasibility studies for water supply infrastructure to serve Pueblo domestic, commercial, municipal, and industrial water uses (\$1.75 million for Acoma Pueblo and \$3.25 million for Laguna Pueblo). The remaining \$760 million (\$296 million for Acoma Pueblo and \$464 million for Laguna Pueblo) could be used by the Pueblos for: acquiring water rights or water supply; planning, permitting, designing, engineering, constructing, operating, rehabilitating, and repairing water production, treatment, or delivery infrastructure; Pueblo water rights management and administration; watershed protection and enhancement; support of agriculture; water-related Pueblo community welfare and economic development; costs relating to implementation of the settlement; and environmental compliance in development and construction of infrastructure. The State of New Mexico has also agreed to contribute just over \$36 million to provide for the benefit of non-Indian water users, including \$500,000 for a fund to mitigate impairment to non-Indian domestic well and livestock well users resulting from new or changed Pueblo water uses.

III. Proposed Jemez and Zia Pueblos Settlement Legislation

Jemez and Zia Pueblos, the State of New Mexico, and non-Indian water users executed a settlement agreement in 2022, quantifying the rights of the Pueblos and resolving other key issues, including the requirements and parameters of a possible future Augmentation Project, which the Pueblos and non-Indian water users may construct to improve infrastructure and provide groundwater to firm up the irrigation water supply for certain agricultural acreage. The United States is not a signatory to the settlement agreement.

Title II of H.R. 1304 would resolve all of the Jemez and Zia Pueblos' water rights claims in the Rio Jemez Basin in New Mexico; ratify and confirm the water rights settlement agreement among the Pueblos, the State of New Mexico, and non-Indian water users and authorize the Secretary of the Interior to sign the settlement agreement; and authorize funds to implement the settlement agreement.

Title II of H.R. 1304 ratifies and confirms the Jemez and Zia Pueblos' water rights to over 9,000 acre-feet per year (AFY)—6,055 AFY for Jemez Pueblo and 3,699.4 AFY for Zia Pueblo—from various surface water and groundwater sources on each Pueblo. These amounts include 1,200 AFY of future groundwater use for economic development for each Pueblo.

Title II of H.R. 1304 also protects non-Indian water users, as the Jemez and Zia Pueblos would agree to not make priority calls for their senior rights on all decreed water rights of junior non-Indian users. In addition, the Pueblos would agree to promulgate Pueblo water codes, which will govern permitting of uses of the Pueblos' water rights; provide processes for protests by parties affected by Pueblo permitting decisions; and ensure that water use under a Pueblo permit does not impair existing surface and groundwater rights.

Finally, Title II of H.R. 1304 establishes Trust Funds for both Pueblos totaling \$490 million, to be indexed, (\$290 million for Jemez Pueblo and \$200 million for Zia Pueblo). The Pueblos could use their trust funds to develop water infrastructure on Pueblo lands as they determine necessary and on their own timeframe. Monies in the fund could be used by the Jemez and Zia Pueblos for: planning, permitting, designing, engineering, constructing, operating, maintaining, and repairing

water production, treatment, delivery infrastructure, and the Augmentation Project; Pueblo water rights management and administration; watershed protection and enhancement; support of agriculture; water-related Pueblo community welfare and economic development; costs relating to implementation of the settlement; and environmental compliance in development and construction of infrastructure. The State of New Mexico has also agreed to contribute just over \$20 million to provide for the benefits of non-Indian water users, including \$500,000 for a fund to mitigate impairment to non-Indian domestic well and livestock well users resulting from new or changed Pueblo water uses.

IV. Department of the Interior Position on H.R. 1304

The Department is pleased to support H.R. 1304. This bill is the result of over three decades of good-faith negotiations to reach consensus on key issues. The Department looks forward to continued discussions with the U.S. Department of Agriculture (USDA), regarding USDA's role in implementing Title I of the bill. Finally, the Department has been working with the settlement parties on some minor technical changes to the bill that would clarify some issues and conform it more closely to other pending Indian water rights settlements in New Mexico. We look forward to working with the settlement parties and the Subcommittee on these technical changes.

H.R. 1304 is designed to meet all four Pueblos' current and long-term needs for water by providing trust funds that could be used by the Pueblos according to their needs and their own decisions. Rather than committing the Pueblos or the United States to construct specific water infrastructure projects, H.R.1304 would allow the Pueblos to make decisions regarding how, when, and where to develop water infrastructure. This approach to settlement is consistent with Tribal sovereignty and self-determination, and with our trust responsibilities, and will help to ensure that the Pueblos can maintain their way of life.

H.R. 6599, Technical Corrections to the Northwestern New Mexico Rural Water Projects Act, Taos Pueblo Indian Water Rights Settlement Act, and Aamodt Litigation Settlement Act

H.R. 6599 would amend the Omnibus Public Land Management Act of 2009 and the Claims Resolution Act of 2010 to authorize funding for deposit into the Navajo Nation Water Resources Development Trust Fund, the Taos Pueblo Water Development Fund, and the Aamodt Settlement Pueblos' Fund equivalent to the amounts that would have accrued to the trust funds if the Department had the authority to invest the funds upon appropriation.

In the 111th Congress, four Indian water rights settlements (the Taos Pueblo Indian Water Rights Settlement Act, Pub. L. No. 111-291; the Aamodt Litigation Settlement Act, Pub. L. No. 111-291; the Duck Valley settlement, Pub. L. No. 111-11; and the Crow Tribe Water Rights Settlement Act of 2010, Pub. L. No. 111-291) included provisions authorizing an investment of monies into the settlement trust funds after the enforceability date. The enforceability date is effective when the Secretary finds that all conditions for the full effectiveness and enforceability of the settlement had occurred and publishes that finding in the Federal Register. The Northwestern New Mexico Rural Water Projects Act, Pub. L. No. 111-11, (Navajo Settlement), also allowed for the investment of monies into the Navajo Nation Resources Development Trust Fund, only upon a specified date certain ten years after the enactment date.

These provisions prohibited the Department from investing trust fund monies before the enforceability date or a date certain. However, the Department mistakenly started investing trust fund monies when they were appropriated, which was before the enforceability date. When the Department discovered this error, the Department's Solicitor's Office determined that the interest amounts earned prior to the date that the funds were authorized to be invested were contrary to the Antideficiency Act and, in accordance with 31 U.S.C. § 3302, must be returned to Treasury. The Department then returned all interest monies accrued prior to the authorized date back to Treasury.

The issue that H.R. 6599 addresses is a provision in certain Indian water rights settlements that prohibited investment until the enforceability date was reached. This provision is not common in Indian water rights settlements. Similar provisions appeared in other settlements enacted in 2009-2010, including the Crow Tribe Water Rights Settlement Act of 2010; the Taos Pueblo Indian Water Rights Settlement Act; the Aamodt Litigation Settlement Act; and the Navajo-Gallup Water Supply Project and Navajo Nation Water Rights. In each of these settlements, funds were inadvertently invested and returned to Treasury. The Department supported similar legislation to resolve this issue, and thus supports H.R. 6599 to correct this issue for the Northwestern New Mexico Rural Water Projects Act, the Taos Pueblo Indian Water Rights Settlement Act, and the Aamodt Litigation Settlement Act.

H.R. 8685, Ohkay Owingeh Rio Chama Water Rights Settlement Act of 2024

H.R. 8685 would approve and provide authorizations to carry out the settlement of all water rights claims of the Ohkay Owingeh in the Rio Chama basin in New Mexico.

I. Background

A. Historical Context

Like other Pueblos in New Mexico, Ohkay Owingeh were agricultural people living in established villages when the Spanish explorers first came to New Mexico. Before Ohkay Owingeh's lands became part of the United States, they fell under the jurisdiction first of Spain, and later of Mexico, both of which recognized and protected the rights of the Pueblos to use water. When the United States asserted its sovereignty over Pueblo lands and what is now the State of New Mexico, it did so under the terms of the Treaty of Guadalupe Hidalgo, which protected rights recognized by prior sovereigns, including Ohkay Owingeh's rights.

B. Ohkay Owingeh and the Rio Chama

The Rio Chama, located in north-central New Mexico and to the northwest of Albuquerque, is a major tributary of the Rio Grande. The river originates in Colorado, just above the New Mexico border, and runs about 130 miles to its confluence with the Rio Grande. Ohkay Owingeh, located 28 miles north of Santa Fe, has approximately 13,244 acres in the Rio Chama, Rio Grande, and Rio Santa Cruz basins. Ohkay Owingeh has approximately 2,880 enrolled members, of which about 2,205 reside on Ohkay Owingeh lands.

Ohkay Owingeh is located in an arid region of New Mexico, and drought is a common occurrence that has impacted, and continues to impact, Ohkay Owingeh lands. Since time immemorial, Ohkay Owingeh has made use of the water in the Rio Chama basin. However, the supply of water in the Rio Chama available to Ohkay Owingeh has been reduced over time by diversions by neighboring non-Indian water users. Consequently, Ohkay Owingeh is facing water shortages that impact its ability to provide sustainable water for its current and future water needs. Additionally, a portion of Ohkay Owingeh's lands lie within the "bosque," or forested habitat, along the Rio Chama and Rio Grande, which is of great historical and cultural significance to Ohkay Owingeh. The bosque areas within Ohkay Owingeh's lands were altered as a result of flood control and irrigation projects constructed by the United States on both the Rio Chama and Rio Grande in the mid-1900s. Recent effects of global warming and climate change are exacerbating these effects and surface water supplies are dwindling. Ohkay Owingeh seeks funding as part of the proposed settlement to remedy the damage to its lands that lie within these bosque areas and to also develop Ohkay Owingeh's water resources for various uses, including domestic and municipal purposes for current and future population.

In the late 1940s, a general stream adjudication of the Rio Chama was initiated in New Mexico state court and was eventually removed to Federal District Court in 1969. Negotiations regarding potential settlement of Ohkay Owingeh's water rights claims have been ongoing since 2015, when the United States established a negotiation team.

II. Proposed Ohkay Owingeh Settlement Legislation

H.R. 8685 would resolve all of Ohkay Owingeh's water rights claims in the Rio Chama basin in New Mexico; ratify and confirm the water rights settlement agreement signed in 2023 by Ohkay Owingeh, the State of New Mexico, and non-Indian water users; authorize the Secretary of the Interior to sign the settlement agreement; and provide funding to implement the settlement.

H.R. 8685 would ratify and confirm Ohkay Owingeh's water rights to approximately 1,756 acre-feet per (AFY) from surface water and groundwater sources. These amounts include 771 AFY of future groundwater use for economic development and an important right to 250 AFY of water to provide for bosque health and restoration on Ohkay Owingeh lands, as well as water to continue irrigated farming in the Rio Chama basin.

H.R. 8685 would also protect non-Indian water users, as Ohkay Owingeh would not make priority calls for its senior rights against other settlement parties, owners of domestic wells and livestock rights, and any non-signatory water users who cooperate in shortage sharing. In addition, Ohkay Owingeh would promulgate a water code, which would govern permitting of uses of its water; provide processes for protests by parties affected by Ohkay Owingeh permitting decisions; and ensure that water use under an Ohkay Owingeh permit would not impair existing surface and groundwater rights.

Finally, H.R. 8685 would establish a trust fund totaling \$745 million, to be indexed, that Ohkay Owingeh could use to develop water infrastructure as it determines necessary and on its own timeframe. Monies in the fund could be used for:

- 1) Planning, permitting, designing, engineering, constructing, reconstructing, replacing, rehabilitating, operating, or repairing water production, treatment, or delivery infrastructure, including for domestic and municipal supply or wastewater infrastructure;
- 2) Planning, permitting, designing, engineering, constructing, reconstructing, replacing, rehabilitating, operating, or repairing water production, treatment, or delivery infrastructure, acquisition of water, or on-farm improvements for irrigation, livestock, and support of agriculture;
- 3) Planning, permitting, designing, engineering, constructing, reconstructing, replacing, rehabilitating, operating, monitoring, or other measures for watershed and endangered species habitat protection, bosque restoration or improvement (including any required cost shares for and allowable contributions to a Federal project or program), land and water rights acquisition, water-related Ohkay Owingeh community welfare and economic development, and costs relating to implementation of the settlement agreement;
- 4) The management and administration of water rights; and
- 5) Ensuring environmental compliance for projects developed with settlement funds.

The State of New Mexico would contribute \$131 million to provide for benefits to non-Indian water users, including \$500,000 for a fund to mitigate impairment to non-Indian domestic and livestock well users resulting from new or changed water uses by Ohkay Owingeh.

III. Department of the Interior Position on H.R. 8685

The Department is pleased to support H.R. 8685. This bill is the result of multiple decades of litigation and nearly a decade of good-faith negotiations to reach consensus on key issues. H.R. 8685 is designed to meet Ohkay Owingeh's current and long-term needs for water by providing a trust fund to be used by Ohkay Owingeh according to its needs and its own decisions. Rather than committing Ohkay Owingeh or the United States to construct specific water infrastructure projects, the bill would allow Ohkay Owingeh to make decisions regarding how, when, and where to develop water infrastructure. H.R. 8685 would also allow Ohkay Owingeh to restore and protect its culturally important bosque lands. This approach to settlement is consistent with Tribal sovereignty and self-determination, and with our trust responsibilities, and will help to ensure that Ohkay Owingeh can maintain its way of life.

H.R. 8920, Tule River Tribe Reserved Water Rights Settlement Act of 2024

H.R. 8920 would approve and provide authorizations to carry out the settlement of all water rights claims in the State of California of the Tule River Tribe.

I. Background – the Tule River Reservation and the Tribe

A. Historical Context

The aboriginal territory of the ancestors of the Tule River Tribe, the Yokuts, encompassed most of what is now the San Joaquin Valley, an agricultural mainstay in California. The influx of non-Indians into the Tribe’s ancestral lands in the 1850s, after the discovery of gold and California statehood, created tremendous conflict with the Yokuts and left them dispossessed, displaced, and without title to a homeland.

The quest to provide a permanent homeland for the Yokuts’ descendants, the Tule River Tribe, was fraught with difficulties and setbacks. First, the United States attempted to rectify Tribal dispossession by negotiating the Treaty of Paint Creek, which would have created the Tule River Reservation in the San Joaquin Valley near present-day Porterville, California. However, this Treaty, along with other California treaties, was never ratified by the Senate. The United States’ second attempt to secure a homeland for the Tribe was the creation in 1856 of the “Tule River Indian Farm,” later referred to the “Madden Farm,” out of the public domain. The subsequent patenting of the farm to an unscrupulous Indian agent deprived the Tribe of title to those lands.

In 1872, the California Superintendent of Indian Affairs was ordered to find a reservation for the Tribe. A tract of 48,000 acres of steep and rocky terrain in the foothills of the Sierra Nevada Mountains was proclaimed by the Executive Order of January 9, 1873, as the Tule River Indian Reservation. In 1874, the Indian Agent at the Tule River Agency described the Reservation as containing “no first-rate tillable land” with only “about 200 acres of such as might be termed passably good for agricultural purposes, and that not lying in one body.” Except for some timber land in the mountains in the extreme east of the Reservation, the balance of the Reservation was said to be “utterly valueless ... consisting of rough, rocky mountains.” Unsurprisingly, members of the Tribe were reluctant to leave the productive land they were farming at the Madden Farm to locate to the Reservation. When, by 1876, only six families had moved to the Reservation, the remaining Tule River Indians at the Madden Farm were forcibly removed to the Reservation. Now nearly 150 years later, the Tribe continues to search for an adequate and secure water supply for the domestic and municipal needs of its members.

B. The Reservation Today

Today, the Tribe’s Reservation remains located on the western slope of the Sierra Nevada Mountains, in south-central California, 75 miles south of Fresno and 45 miles north of Bakersfield and is comprised of over 55,000 acres of tribal trust lands. The topography is generally steep, with elevations ranging from about 900 feet to 7,500 feet above sea level. Most of the inhabited land is along the lower reach of the South Fork Tule River on the western side of the Reservation.

The primary sources of employment on the Reservation are the Tribe's Eagle Mountain Casino, the Tribal government, and the Tule River Indian Health Center. The Tribe is in the process of relocating the Eagle Mountain Casino, due in part to water shortages, to trust lands in the City of Porterville.

C. Water Resources of the Tule River Reservation

The Reservation is located almost entirely in the South Fork Tule River drainage basin. Because the Reservation is located in the Sierra Nevada headwaters of the river, there are no upstream diverters on the river above the Tribe. The South Fork Tule River, which is the primary water source on the Reservation, is flashy (flows are high during spring runoff and decrease during the summer and fall months) and subject to extended periods of drought. Groundwater is very limited due to both water quantity and quality issues.

The major water use on the Reservation is for domestic and municipal purposes. Less than 5 percent of the Reservation is suitable for agriculture, though some members graze livestock in various locations. In dry years, which are increasingly common (including this year), the Tribe has had to truck-in water and donate bottled water to its members for domestic and municipal purposes due to water shortages, with members sometimes relying on bottled water for months at a time. These shortages affect Tribal members in multiple ways, including precluding them from cooking and bathing or from going to work or attending school. In the hottest part of summer, the Tribe has to open its government buildings to provide refuge for elders that rely on water for the cooling systems in their homes. This lack of reliable water supply results in interruptions to critical services, including education programs, emergency services, elder care, and the Tribe's justice center and government functions. It has also contributed to a housing shortage that impacts the number of Tribal members who can reside on the Reservation.

II. Proposed Tule River Tribe Settlement Legislation

Negotiations regarding potential settlement of the Tribe's water rights claims have been ongoing since 1996, when the United States established a team to negotiate a comprehensive settlement of all the Tribe's water rights in California. Over the course of the negotiations, the United States conducted numerous studies examining options for water development on the Reservation. The studies point to water storage as a key component of a reliable water supply.

Relying on these studies, and other studies the Tribe conducted on its own, the Tribe and the downstream water users reached a 2007 Agreement. That Agreement sets-out water allocation between the parties and addresses how water release schedules will be determined for any future water storage project the Tribe may construct on the South Fork Tule River. The 2007 Agreement identified a possible location for water storage and included operational rules for a reservoir at that location but allowed the Tribe to choose a different site if the planned site proved infeasible. The Tribe's efforts to finalize plans for the reservoir's location are ongoing. If the Tribe selects an alternative site, the parties will need to establish operational rules, which are relevant for delineating the Tribe's water right. The 2007 Agreement was amended for technical issues in 2009. The United States is not a signatory to either the 2007 Agreement or the 2009 technical amendments.

H.R. 8920 would resolve all of the Tribe's water rights claims in California; ratify and confirm the Tule River Tribe water rights settlement agreement among the Tribe and most downstream water users, and authorize the Secretary of the Interior to sign the agreement; provide a mechanism for the parties to obtain federal court approval of a settlement that would bind all water users in the basin; authorize funds for water development projects to implement the settlement agreement; and transfer various lands into trust for the Tribe.

H.R. 8920 would ratify and confirm a Tribal water right, which includes the right to up to 5,828 acre-feet per year of water flows from the South Fork Tule River, as described in the 2007 Agreement. The 2007 Agreement provided that the Tribal water right would be administered in accordance with agreed-upon operational rules for the water storage facility that the Tribe was to build, rather than according to priority date. If the parties could not agree upon operational rules, the 2007 Agreement contemplated that the parties could submit competing proposals to the court, which would be charged with assessing which proposal better satisfied the criteria set forth in the Agreement. In addition, the Tribal water right, as described in the 2007 Agreement and ratified by H.R. 8920, would also include the right to divert and use certain amounts of water from springs on the Reservation and the right to use groundwater on the Reservation, subject to some restrictions. H.R. 8920 would also establish a process to authorize the parties to file suit in Federal District Court in California, for the purpose of entering a decree approving the Tribe's Federal reserved water right, consistent with the 2007 Agreement, and binding all water users in the basin.

H.R. 8920 would establish a Trust Fund of \$568 million, to be indexed. \$518 million of the trust fund could be used to develop water infrastructure on its Reservation, as the Tribe determines necessary and on its own timeframe. The remainder of trust fund (\$50 million) could only be used to pay OM&R for water projects developed by the Tribe.

H.R. 8920 also would transfer approximately 825.66 acres of Bureau of Land Management land, 1,837.46 acres of fee land owned by the Tribe, and approximately 9,037 acres of Forest Service land to the United States, to be held in trust for the Tribe.

III. Department of the Interior Position on H.R. 8920

The Department supports H.R. 8920.

H.R. 8920 is designed to meet the Tribe's current and long-term needs for water by providing a trust fund to be used by the Tribe according to its needs and its own decisions. Rather than committing the Tribe or the United States to construct specific water infrastructure projects, H.R. 8920 would allow the Tribe to make decisions regarding how, when, and where to develop water infrastructure on its Reservation. This approach to settlement is consistent with Tribal sovereignty and self-determination, and with our trust responsibilities, and will help ensure that the Tribe can maintain a viable homeland on its Reservation.

H.R. 8951, Zuni Indian Tribe Water Rights Settlement Act of 2024

H.R. 8951 would approve and provide authorizations to carry out the settlement of certain water rights claims of the Zuni Tribe in the Zuni River basin in New Mexico.

I. Background

A. Historical Context

Like other Pueblos in New Mexico, the Zuni Tribe were agricultural people living in established villages when the Spanish explorers first came to New Mexico. Before the Zuni Tribe's lands became part of the United States, they fell under the jurisdiction first of Spain, and later of Mexico, both of which recognized and protected the rights of Pueblos to use water. When the United States asserted its sovereignty over Pueblo lands in what is now the State of New Mexico, it did so under the terms of the Treaty of Guadalupe Hidalgo, which protected rights recognized by prior sovereigns, including Pueblo rights.

B. The Zuni Tribe and Zuni Basin Water Resources

The Zuni Tribe has approximately 448,000 acres in west-central New Mexico, approximately 32 miles south of Gallup, New Mexico, and approximately 15,000 acres in east-central Arizona. All of the Zuni Tribe's main villages are in New Mexico and the Tribe has approximately 11,800 enrolled members, of which about 9,323 reside on the Tribe's lands.

The Zuni River basin, located in west-central New Mexico, is a tributary to the Little Colorado River. The river originates in the western slopes of the Zuni Mountains in New Mexico and flows for about 90 miles in a southwesterly direction through the Zuni Reservation and joins the Little Colorado River, a tributary to the Colorado River, in Arizona.

The Zuni Tribe is located in an arid region of New Mexico, and drought is a common occurrence that has impacted, and continues to impact, the Tribe. Since time immemorial, the Zuni Tribe has made use of the water in the Zuni River basin. However, the supply of water in the Zuni River available to the Zuni Tribe has been reduced over time from diversions by neighboring non-Indian water users, including Ramah Dam on Cebolla Creek, which lies upstream of the Zuni Tribe. In addition, irrigation infrastructure constructed by the Department of the Interior many years ago needs to be rehabilitated and reconstructed. While the Zuni Tribe has senior water rights in the basin, it is facing water shortages that impact its ability to provide sustainable water for its current and future water needs. Recent effects of global warming and climate change are exacerbating these effects and surface water supplies are dwindling. The Zuni Tribe seeks funding as part of the proposed settlement to rehabilitate the irrigation structures on its lands and to develop the Tribe's water resources for various uses, including domestic and municipal purposes, for current and future Tribal populations.

In 2001, after a failed adjudication in state court, the United States filed suit in Federal court to adjudicate water rights in the Zuni River basin in New Mexico. The adjudication will resolve the water rights claims of non-Indians, the Zuni Tribe, the Navajo Nation, and allottees.

Negotiations originally began in 1990 and were renewed in 2013, when the United States revived its team to negotiate a comprehensive settlement of the Tribal water rights in the Zuni River basin. The Zuni Tribe has reached settlement of its claims in the basin, but the Navajo Nation has not.

II. Proposed Zuni Tribe Settlement Legislation

The Zuni Tribe and the State of New Mexico executed a settlement agreement in 2023, quantifying the rights of the Tribe and reaching agreement on other key issues. The Ramah Land and Irrigation Company, comprised of non-Indian water users upstream of the Zuni Tribe and the owner and operator of Ramah Dam, signed a letter of support for the settlement agreement in 2023, as well. The United States is not a signatory to the 2023 settlement agreement.

H.R. 8951 would resolve all of the Zuni Tribe's water rights claims in the Zuni River basin in New Mexico; ratify and confirm the water rights settlement agreement among the Tribe and the State of New Mexico; authorize the Secretary of the Interior to sign the settlement agreement; and authorize funds to implement the settlement.

H.R. 8951 would ratify and confirm the Zuni Tribe's water rights to approximately 24,809 acre-feet per year (AFY) from surface water and groundwater sources on the Pueblo, as well as 22,453 acre-feet in existing reservoir and stock pond storage. These amounts include 5,000 AFY of groundwater use for past, present, and future uses, including economic development for the Zuni Tribe. In addition, pursuant to the settlement agreement, the State closed both the Zuni River basin and the Zuni Salt Lake and Sanctuary to any future appropriations of groundwater and surface water in June and July 2023, (with the exception of new livestock and domestic wells, which will be limited to 0.5 acre-feet per year).

H.R. 8951 would also protect non-Indian water users, as the Zuni Tribe would agree to not make priority calls against non-Tribal adjudicated water rights as long as the water rights holder does not object to the Zuni's Tribe's settlement.

Finally, H.R. 8951 would establish a Trust Fund for the Zuni Tribe, totaling \$685 million, to be indexed: (1) \$655.5 million in a Water Rights Settlement Trust Account and (2) \$29.5 million in a Operation, Maintenance, & Replacement Trust Account. The Zuni Tribe could use these Trust Funds to develop water infrastructure as it determines necessary and on its own timeframe. Monies in the Water Rights Settlement Trust Account could be used by the Zuni Tribe for:

- 1) Planning, permitting, designing, engineering, constructing, reconstructing, replacing, rehabilitating, operating, or repairing water production, treatment, or delivery infrastructure, including for domestic and municipal supply, or wastewater infrastructure;
- 2) Planning, permitting, designing, engineering, constructing, reconstructing, replacing, rehabilitating, operating, or repairing water production, treatment, or delivery infrastructure, acquisition of water, or on-farm improvements for irrigation, livestock, and support of agriculture;

- 3) Planning, permitting, designing, engineering, constructing, reconstructing, replacing, rehabilitating, operating, monitoring, or other measures for watershed and endangered species habitat protection and enhancement, land and water rights acquisition, water-related Tribal community welfare and economic development, and costs relating to the implementation of the settlement agreement;
- 4) Ensuring environmental compliance in the development and construction of projects under the legislation; and
- 5) Tribal water rights management and administration.

The State of New Mexico would contribute \$1.25 million to provide for benefits of non-Indian water users. The State's commitment includes \$500,000 for a fund to mitigate impairment to non-Indian livestock and domestic well rights resulting from new or changed water uses by the Zuni Tribe and \$750,000 to develop monitoring programs to assess impacts to the Zuni Salt Lake, which has significant cultural importance to the Zuni Tribe and other Tribes and Pueblos.

There are 15 allotments within or near Zuni lands that total approximately 2,213 acres. The water rights of these allotments would not be settled at this time but would be adjudicated later in the on-going adjudication. H.R. 8951 would not in any way impose any conditions on the use of water on these allotments or alter the ability of the United States and allottees to make water rights claims for these lands in the future.

Title II of H.R. 8951 would provide for protections for the Zuni Salt Lake, a lake outside the Zuni basin that has great spiritual and cultural meaning to the Zuni Tribe and other Pueblos and Tribes in New Mexico. The legislation would transfer approximately 4,822 acres of land surrounding the Lake and managed by the Bureau of Land Management (BLM) into trust for the Zuni Tribe upon the enforceability date of the settlement. In addition, the legislation would withdraw approximately 92,364 acres of BLM land near the Zuni Salt Lake and impose various restrictions on the management of those lands to protect the Lake and its cultural values. The withdrawal would include all BLM lands that are within the closure order the State of New Mexico issued in July of 2023, closing the area around the Zuni Salt Lake and Sanctuary to any new appropriations of groundwater or surface water (with the exception of new livestock and domestic wells, which will be limited to 0.5 acre-feet per year).

III. Department of the Interior Position on H.R. 8951

The Department of the Interior is pleased to support H.R. 8951. This bill is the result of decades of litigation and over a decade of good-faith negotiations. H.R. 8951 is designed to meet the Zuni Tribe's current and long-term needs for water by providing Trust Funds to be used by the Tribe according to its needs and its own determinations. Rather than committing the Zuni Tribe or the United States to construct specific water infrastructure projects, the bill would allow the Tribe to make decisions regarding how, when, and where to develop water infrastructure on Zuni lands. This approach to settlement is consistent with Tribal sovereignty and self-determination, and with our trust responsibilities, and will help to ensure that the Zuni Tribe can maintain its way of life.