

Written Statement
By
The Honorable Larry Phillips, Jr.
Governor
Ohkay Owingeh
Before the
United States House Committee on Natural Resources, Subcommittee on Water, Wildlife and
Fisheries

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

July 23, 2024

Chairman Bentz, Ranking Member Huffman, and Honorable Members of the Subcommittee:

Introduction

I am Larry Phillips, Jr., Governor of Ohkay Owingeh, a federally recognized Tribe in Northern New Mexico. I thank you for convening this hearing and inviting me to testify. The welfare of the people of Ohkay Owingeh is one of my primary responsibilities as Governor. I submit this testimony on their behalf. We respectfully ask that Congress enact H.R. 8685, the Ohkay Owingeh Rio Chama Water Rights Settlement Act of 2024.

At the outset, I wish to acknowledge and respect a Pueblo ancestor, Po'Pay, who has been given the great honor of being recognized by the State of New Mexico with a statue in the United States Capitol. Born at Ohkay Owingeh in 1630, Po'pay lived with a desire to protect the lives and health of his people, along with other Native people, and to preserve culture and traditions so that my children and their children know and understand not just their heritage, but who they are.

In 1680, Po'pay led a coordinated revolt by all Pueblos against Spanish invaders. The invaders had enslaved us, taken our homes for themselves, and suppressed with violence and executions our efforts to practice our culture and honor our history. Po'pay was whipped for having engaged in traditional Pueblo practices; the statue in the Capitol shows the scars on his back. Together with his neighbors, Po'pay drove the Spanish out of New Mexico and restored Pueblo authority. For a period of 12 years, the Pueblos enjoyed again the ability to govern themselves consistent with their traditions.

Po'pay gave us the opportunity to restore and maintain our traditions in the face of outside challenges and enabled my ancestors to address the return of the Spanish with a renewed strength. Po'pay taught us how to both respect ourselves and our own culture and accept the new reality of a different culture living in our lands. In many respects, the water settlement you are considering is an extension of Po'pay and his teachings, as we have accepted and embraced the needs of our neighbors as part of this settlement, both politically and culturally. This water

settlement reflects our sacred promise to our future generations to protect our lands and waters for their benefit.

Background of the Water Rights Settlement and Damage to the Bosque

This bill implements an agreement that settles a water rights lawsuit filed by New Mexico to establish rights to the waters of the Rio Chama Stream System. The State sought to quantify the Pueblo's water rights. After many years of litigation, we negotiated the quantifications that are established in the settlement agreement, which will provide adequate water for our needs now and into the future from the Rio Chama source on our lands. Because of the cultural importance we place on water, however, this settlement is much broader in scope, and more important than just those numbers, more important than simply assigning limits to our water uses.

This same agreement also settles a second lawsuit, one that we filed in the U.S. Court of Federal Claims seeking to restore the damage to our cultural resources caused by the United States and the damage to our people from being deprived the right to fully exercise their religious beliefs and practices. By destroying the bosque on our lands, the United States violated the constitutional principle that property shall not be taken without due process and adequate compensation. Our bosque is at the center of our cultural and religious practices. It is a sacred place. By taking our bosque and preventing our tribal members from being able to fully exercise their religious practices, the United States violated its duty to protect the resources of the Pueblo.

In the 1950s and 1960s, the Bureau of Reclamation and Army Corps of Engineers channelized that portion of the Rio Grande that flows through Ohkay Owingeh's homeland. With bulldozers and other heavy machinery, the U.S. agencies destroyed the ancient meandering ribbons of the Rio Grande and transformed the river into something very different than what the Creator gave us. The river became narrow and bounded on both sides by levees. The U.S. intended to speed the flow and increase the amount of water to be delivered through our lands to benefit junior water users in southern New Mexico. The U.S. succeeded in achieving its goals. Not surprisingly, the side channels, wetlands, robust plant- and tree-life, and the animals of the bosque, all gradually began to disappear. The groundwater table dropped. Over the last 70 years, this bosque has withered and begun its path to complete destruction.

To compound the problem, in the 1960s the Army Corps constructed a dam on the Rio Chama. The dam succeeded in its purposes of regulating Rio Chama flows and storing water for release to farmers south of us. The loss of flood flows in the Chama, which farmers had demanded, and the decrease of water in the river led to the same disaster as occurred on the Rio Grande: the slow death of the bosque.

The intentional destruction of the bosque is consequential not just because the U.S. destroyed a large swath of two healthy and vibrant rivers. This bosque is fundamental to Ohkay Owingeh traditional and cultural practices. The Ohkay Owingeh national symbol contains images of materials from the bosque. Our ceremonies are built upon, and our regalia is made up of

materials from the bosque. Our world revolves around the bosque. The harm to our people from the loss of our ability to fully practice and exercise our religion is nearly immeasurable.

Ohkay Owingeh people cannot sit by while our critical resources wither and die. We must hold the U.S. to its responsibility to address the damages it has caused. Although the full extent of the harm suffered by the Ohkay Owingeh people is incalculable, this settlement will provide funding to allow us to mitigate those damages.

The bosque restoration project is supported by the State of New Mexico, City of Espanola, and the many *parciantes* on the acequias (the small farmers) in the Rio Chama. They support the bosque restoration project because they understand its importance to Ohkay Owingeh. But they also support bosque restoration because they know that a healthy, restored, and fully functioning bosque has benefits for all of New Mexico, including improved water quality, groundwater recharge, habitat for birds, fish, and plants, including species listed on the Endangered Species Act. Bosque restoration and the benefits that brings to the entire region is just one more way through this settlement that we take care of our needs and at the same time, ensure benefits to our neighbors and our State.

Separate and apart from our settlement, the U.S. Army Corps of Engineers, through the Espanola Project authorized in the Water Resources Development Act of 2018, Public Law 115-270, 132 Stat. 3830, Section 1401(4), has undertaken a bosque restoration project that includes a small part of our lands. This initial authorization will restore a small portion of our bosque. The authorization contained in this bill, H.R. 8685, will provide the means to finish the job.

This settlement is created by the people who live in that region. We will share our water resources. We will protect and conserve our water. We will respond together to the crises that will inevitably come. We will celebrate together our successes as small farmers. Ohkay Owingeh's neighbors, the signatories to this agreement, have agreed to work with the Pueblo to enable us to restore the health of the bosque, the most precious of our cultural resources. This agreement is a product of all of us: our thinking, our work, our preparation for an increasingly uncertain future. Now we ask Congress to partner with these citizens of the United States and support us in managing our water resources fairly, for the benefit of all in the region.

Specific Provisions of H.R. 8685

As authorized by H.R. 8685, the Pueblo agrees to limitations on its current and future water uses; we waive our rights to a senior priority to permit sharing our water resource with our neighbors during dry periods; the Pueblo retains its ability to acquire water rights and lands in the future from willing sellers. We are asking Congress to approve the agreement and to appropriate \$745 million for Pueblo development of water infrastructure. The Legislation reflects an agreement by the State of New Mexico for its cost share: \$98.5 million for irrigation improvements, \$32 million for the City of Espanola water infrastructure, and \$500,000 for mitigation of well impairments. The legislation in Section 5 confirms and establishes as Ohkay Owingeh's federal water rights. The provisions of the agreement are summarized here:

- Irrigation – the Pueblo will have sufficient surface water to irrigate our farmlands of 310.45 acres. The agreement authorizes irrigation of an additional 1,562 acres formerly owned and irrigated by the Pueblo; these lands and water rights must be reacquired by the Pueblo from willing sellers.
- The Pueblo will have sufficient water for livestock.
- The Pueblo will have a right to the use of 981-acre feet per year (afy) from groundwater wells for current and future domestic, commercial, and municipal purposes; most of that water use is subject to offsets (the Pueblo must replace the water it depletes from the system) to protect downstream users and to ensure state compliance with the Rio Grande Compact.
- The Pueblo will have the right to restore the Rio Chama bosque by diverting water from the river during high-flow events under specified water conditions. The Pueblo in addition may apply 250 afy to the bosque at any time by diversions from the Rio Chama, or the use of groundwater or irrigation return flows. The Pueblo expects high flow events to allow significant improvements to the bosque, and the yearly use of 250 af to be sufficient to maintain the health of the bosque in between flood events.
- As mentioned previously, the Pueblo will waive its senior priority right to water and the parties will fairly allocate among themselves water available during times of shortage. The shortage sharing schedule will be in the form of an annual agreement, binding on all parties, and enforceable by the New Mexico State Engineer.
- The parties have agreed to pursue water storage in existing reservoirs as a joint effort.
- Ohkay Owingeh and the City of Espanola have agreed to avoid interference with each other's groundwater wells.
- The State and Pueblo will exercise their respective sovereign authorities over management of water resources. The Pueblo, pursuant to its laws, will administer water within the Pueblo Grant. The State, pursuant to its laws, will administer water outside the Grant. The administration of water rights will be conducted by both governments in a public manner with full timely disclosure to the public. The State has agreed to provide a fund to mitigate impairment to domestic and livestock wells that might arise from Pueblo water use.
- Proposed federal funding for the Pueblo may be used to acquire water rights, plan for and develop water-related infrastructure, administration of water rights, and bosque restoration.

The second part of the agreement provides funding for restoration of the Rio Chama and Rio Grande bosque within the Pueblo Grant. The damage to the rivers' riparian areas caused by the Bureau of Reclamation and Army Corps of Engineers is significant, continuing, and increasingly

devastating to our cultural practices. The U.S. was focused on getting water to farmers through the dam at Abiquiu and the channelization of the Rio Grande and acted with disregard to the vast damage to people of Ohkay Owingeh.

Ohkay Owingeh fully understands that S. 4505 authorizes a fund-based settlement, which means that we are prepared to bear the risk of underestimating the cost of constructing the water infrastructure and restoring the bosque.

Ohkay Owingeh people were farmers and hunters a thousand years ago. We still are. We were people who learned from our ancestors, followed our traditional ways; we still do. We speak Tewa, our language. We hold our ceremonies. We also build industrial parks, establish businesses with operations throughout the country, build houses, run a government, educate our children in our schools, and provide our community with health care, public services, and jobs. Ours is a complex world. Our ancestors are part of our daily lives. Yet we live in the 21st century.

On behalf of my people, our ancestors who were stewards of the natural resources of northern New Mexico, and our children and grandchildren, we urge this Committee to endorse our carefully crafted plan to restore and maintain our primary cultural resource, the bosque. River restoration is in the broad public interest. Restoration will return to the people of New Mexico an environmental paradise. And restoration will assure Ohkay Owingeh that its traditional practices will continue.

Thank you.

Respectfully submitted,

Larry Phillips Jr.
Governor, Ohkay Owingeh