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SENATE

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TULE RIVER TRIBE RESERVED WATER RIGHTS SETTLEMENT ACT OF 2023

NOVEMBER 6, 2023.—Ordered to be printed

Mr. SCHATZ, from the Committee on Indian Affairs,
submitted the following

R E P O R T

[To accompany S. 306]

[Including cost estimate of the Congressional Budget Office]

The Committee on Indian Affairs, to which was referred the bill (S. 306) to approve the settlement of the water right claims of the Tule River Tribe, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The purpose of S. 306 is to recognize the federally reserved Indian water rights of the Tule River Indian Tribe and to authorize, ratify, and confirm a 2007 water settlement agreement between the Tribe and downstream state-based water users, the Tule River Association, and the South Tule Independent Ditch Company (“2007 Agreement”). The bill would also authorize funding to construct a water storage facility, establish operating rules for the facility to ensure continual drinking water for the Tribe, guarantee water deliveries to downstream state-based users, and transfer certain lands into trust status for the Tribe.

BACKGROUND

The Tule River Indian Reservation was created by a series of three Executive Orders issued between 1873 and 1878 that enlarged, and subsequently shrank, the Reservation to its current

state.¹ The Reservation is comprised of approximately 86 square miles on the western slope of the Sierra Nevada Mountains, east of Porterville in California's Central Valley. Only about one percent of the Reservation is functionally habitable, and most of that portion is constrained to the lower reach of the South Fork of the Tule River on the western third of the Reservation.

The Tule River's South Fork flows through the Reservation into the Tule River at Lake Success Reservoir, and the Tribe generally draws its water from surface flow available from the South Fork and its tributaries as well as limited groundwater supplies from aquifers and springs.² Current drought conditions and river level decreases are forcing the Tribe to rely on bottled water and trucked water to meet the basic needs of its Reservation residents.³ This state of water insecurity interferes with Tribal members' participation in work, school, and other aspects of daily life; prevents the Tribe from providing much-needed on-reservation housing to additional Tribal members; and recently forced the Tribe to relocate its primary economic driver—the Eagle Mountain Casino—to Porterville.⁴

According to the Tribe, the parties assessed the Tribe's current and future needs for domestic, commercial, municipal, industrial, and agricultural purposes, and concluded that the Tribe cannot meet its needs without a water storage facility to serve the Reservation and quantification of its federally reserved water rights, which were affirmed in principle in a 1922 agreement between the Secretary of the Interior and the South Tule Independent Ditch Company.⁵

In 2007, the Tribe entered into a water settlement agreement with the Tule River Association and the South Tule Independent Ditch Company.

NEED FOR LEGISLATION

S. 306 will address the Tribe's ongoing water insecurity and resolve, fully and finally, all of the Tribe's claims to water rights in the State of California by authorizing, ratifying, and confirming the 2007 settlement agreement between the Tribe and the state-based Tule River Association and South Tule Independent Ditch Company, and by providing funding and land to effect the settlement.

SUMMARY OF THE BILL

S. 306 authorizes, ratifies, and confirms the 2007 Agreement, as amended; ratifies, confirms, declares valid, and quantifies the Tribe's water right as 5,828 acre-feet per year of surface water from the South Fork of the Tule River; establishes the Tule River Indian Tribe Settlement Trust Fund and its subaccounts; authorizes a mandatory appropriation of \$518,000,000 for the Tule River Tribe Water Development Projects Account and \$50,000,000 for the

¹ Exec. Order of January 9, 1873; Exec. Order of October 3, 1873; Exec. Order of August 2, 1878; Exec. Order of June 2, 1911.

² Native American Rights Fund, *Tule River Indian Tribe: Water Settlement Technical Report*, pp. 1-1, 1-4, 2-1, 2-2 (2013).

³ See Navarro, Elisa, *Tule River Tribe Faces Constant Water Woes*, August 27, 2022, at <https://abc30.com/tule-river-indian-tribe-water-woes-shortage-drought/12170447/>.

⁴ *Id.*

⁵ These rights form the basis of the Tribe's pending claims for damages against the United States for failure to protect the Tribe's water rights and adequately develop its water resources.

Tule River Tribe O&M Account; provides for certain federal and Tribally-owned fee lands to be transferred and placed in trust for the Tribe as part of the Tule River Reservation; and places certain requirements on the Secretary of the Interior.

LEGISLATIVE HISTORY

Senators Padilla (D–CA) and Feinstein (D–CA) introduced S. 306 on February 15, 2023. It was referred to the Committee on the same day. On March 29, 2023, the Committee met at a duly convened business meeting to consider S. 306 with three other bills. The Committee passed three of the four bills, including S. 306, en bloc by voice vote and ordered the bills to be reported favorably.

117th Congress. On September 15, 2022, Senator Padilla (D–CA) introduced a substantially similar predecessor bill, S. 4870, and the Senate referred the bill to the Committee on Indian Affairs on the same day. The Committee held a hearing on the bill on November 16, 2022. The Committee took no further action before the conclusion of the 117th Congress.

SECTION-BY-SECTION ANALYSIS OF S. 306 AS ORDERED REPORTED

Section 1—Short title; Table of Contents

This section sets forth the short title as the “Tule River Tribe Reserved Water Rights Settlement Act of 2023” and includes a table of contents.

Section 2—Purposes

This section sets forth the 5-fold purpose of the bill to: (1) resolve the water rights claims of the Tule River Tribe, and the United States as its trustee, in the State of California; (2) authorize, ratify, and confirm the Agreement entered into by the Tribe, the South Tule Independent Ditch Company, and the Tule River Association; (3) authorize and direct the Secretary to execute the Agreement and take other actions necessary to carry it out; (4) authorize funding to implement the Agreement; and (5) authorize the transfer of certain lands to the Tribe, to be held in trust.

Section 3—Definitions

This section provides definitions for various terms used throughout the bill.

Section 4—Ratification of 2007 Agreement

This section authorizes, ratifies, and confirms the Agreement and certain specified amendments; requires the Secretary to execute the Agreement once the parties agree to amendments regarding the Tribe’s priority date, and the Tribe either moves forward with the Phase I Reservoir or selects a substitute site and meets Operation Rules requirements; and authorizes the Secretary to make modifications consistent with congressional approval requirements and federal law.

This section also requires the Secretary and the Tribe to comply with federal environmental laws as applicable, affirms that execution of the 2007 Agreement does not constitute a major federal action for purposes of the National Environmental Policy Act, and

provides for the Tribe's costs for related compliance activities to be paid from the settlement Trust Fund.

Section 5—Tribal Water Right

This section ratifies, confirms, declares valid, and quantifies the Tribe's water right as 5,828 acre-feet per year of surface water from the South Fork of the Tule River; requires the Tribe's water right to be held in trust by the United States for the use and benefit of the Tribe; and protects the right from being subject to loss through non-use, forfeiture, abandonment, or other operation of law.

This section also authorizes use of the Tribal Water Right in accordance with the terms of the 2007 Agreement; prohibits alienation and forfeiture; and provides that authorizations of the Act satisfy Non-Intercourse Act requirements.

Section 6—Tule River Tribe Trust accounts

This section establishes the Tule River Indian Tribe Settlement Trust Fund and its subaccounts, and it requires the Secretary to: (1) deposit funds pursuant to section 7(a)(1) and section 7(a)(2); (2) manage the Trust Fund in accordance with the American Indian Trust Fund Management Reform Act of 1994 and other federal laws governing the deposit and investment of Tribal funds; (3) invest the funds with earnings accruing to the Tribe; and (4) make most funds available to the Tribe on the enforceability date, with \$20,000,000 made available immediately to the Tribe for activities related to the Phase I Reservoir and Operational Rules.

This section permits withdrawals from the Trust Fund for certain specified purposes pursuant to Tribal management or expenditure plans approved and enforced by the Secretary, requires annual reporting regarding withdrawals, and limits federal liability for expenditures and investments made by the Tribe after withdrawal. It also prohibits per capita distribution of any portion of the Trust Funds; confirms the Tribe will retain title, control, and operation of any project constructed with trust funds; and makes the Tribe responsible for the operation, maintenance, and replacement costs of such projects.

Section 7—Funding

This section authorizes a mandatory appropriation of \$518,000,000 for the Tule River Tribe Water Development Projects Account and \$50,000,000 for the Tule River Tribe O&M Account, and it provides for adjustments to address cost fluctuation and market volatility.

Section 8—Transfer of land into trust

This section provides that certain specified Bureau of Land Management lands, Forest Service lands, and Tribally-owned fee lands will be transferred and placed into trust for the Tribe as part of the Tule River Reservation, subject to valid existing rights, contracts, leases, permits, and other enumerated encumbrances.

This section also clarifies that parcels are withdrawn from disposal under public land laws, patents under mining law, and disposition under mineral and geothermal leasing; directs the Secretary to issue all trust deeds within 10 years of the enforceability

date; prohibits Class II or III gaming on the transferred lands; and provides that associated water rights become part of the Tribe's holdings but not part of Tribe's water rights allocation.

Section 9—Satisfaction of claims

This section provides that benefits realized under the Act shall serve as full satisfaction of any claim of the Tribe against the United States that the Tribe waives and releases under the Act.

Section 10—Waivers and releases of claims

This section requires the parties to execute waivers and releases of claims related to the Tribe's water rights and creation or reduction of the reservation, while reserving certain rights and retaining certain claims. This section also preserves the Tribe's authority to enforce Tribal laws, including environmental and jurisdictional laws; preserves the United States' authority to fulfill its trust responsibilities and enforce its laws, including environmental and jurisdictional laws; clarifies that the Act does not waive individual Tribal member claims; and states that the Act does not confer jurisdiction on any state court to interpret federal health, safety, or environmental laws or determine the duties of any party thereunder, or conduct judicial review of any federal agency action.

This section further provides for tolling of claims and defenses between the enactment and enforceability dates, and provides for termination of the agreement if the Secretary's statement of findings is not issued within 8 years of the enactment date, or a later date mutually agreed upon by the Tribe and the United States with notice to the State.

Section 11—Enforceability date

This section requires the Secretary of the Interior to publish a statement of findings in the Federal Register to render the settlement agreement enforceable.

Section 12—Binding effect; Judicial approval; enforceability

This section provides procedures for seeking the federal district court decree of the Tribe's water rights, establishes the court's jurisdiction, and provides standards for the court to resolve an impasse between the parties regarding Operation Rules.

Section 13—Miscellaneous provisions

This section affirms the federal government's sovereign immunity is not waived; states that the land and water rights of other Tribes, and the water rights of the United States, are not quantified or diminished; and confirms that the Act does not affect laws or regulations in effect prior to enactment regarding pre-enforcement review of federal environmental enforcement actions. This section also provides that the Act controls over the Agreement in the event of a conflict.

Section 14—Antideficiency

This section states that the United States shall not be liable for failure to perform if adequate appropriations are not provided by Congress.

COST AND BUDGETARY CONSIDERATIONS

At a Glance			
S. 306, Tule River Tribe Reserved Water Rights Settlement Act of 2023			
As Ordered Reported by the Senate Committee on Indian Affairs on March 29, 2023			
By Fiscal Year, Millions of Dollars	2023	2023-2028	2023-2033
Direct Spending (Outlays)	0	20	804
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	0	20	804
Spending Subject to Appropriation (Outlays)	0	1	not estimated
Increases <i>net direct spending</i> in any of the four consecutive 10-year periods beginning in 2034? Increases <i>on-budget deficits</i> in any of the four consecutive 10-year periods beginning in 2034?	< \$2.5 billion < \$5 billion	Statutory pay-as-you-go procedures apply?	Yes
		Mandate Effects	
		Contains intergovernmental mandate?	Yes, Cannot Determine Costs
		Contains private-sector mandate?	No

The bill would:

- Secure water rights for the Tule River Tribe of California by ratifying a 2007 agreement between the tribe and other parties
- Establish and appropriate funds for the Tule River Indian Tribe Settlement Trust Fund to be administered by the Department of the Interior until its transfer to the tribe
 - Transfer federal land to a trust for the benefit of the Tule Tribe Reservation
 - Impose intergovernmental mandates as defined by the Unfunded Mandates Reform Act

Estimated budgetary effects would mainly stem from:

- The transfer of the trust fund's ownership to the Tule River Tribe, which would be recorded as a federal expenditure

Bill summary: S. 306 would secure up to 5,828 acre-feet of water annually for the Tule River Tribe of California by ratifying the Tule River Tribe Reserved Water Rights Settlement Agreement reached in 2007 by the Tule River Tribe, the Tule River Association, and the South Tule Independent Ditch Company. The bill would appropriate funds to capitalize the Tule River Indian Tribe Settlement Trust Fund, an interest-bearing fund that would be administered by the Department of the Interior (DOI). After the parties have satisfied certain conditions, the federal government would transfer the trust fund (including any interest credited to the fund) to the tribe for use in constructing water projects for the Tule Tribe Reservation in Tulare County, California.

Estimated Federal cost: The estimated budgetary effect of S. 306 is shown in Table 1. The costs of the legislation fall within budget function 300 (natural resources and environment).

TABLE 1.—ESTIMATED BUDGETARY EFFECTS OF S. 306

By fiscal year, millions of dollars—														
	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2023– 2028	2023– 2033	
INCREASES IN DIRECT SPENDING														
Tule River Indian Tribe Settlement														
Trust Fund:														
Estimated Budget Authority ...	0	645	0	0	0	0	0	0	0	0	0	645	645	
Estimated Outlays	0	5	5	5	5	0	0	0	625	0	0	20	645	
Interest Credited to the Trust Fund:														
Estimated Budget Authority ...	0	23	23	18	18	18	19	20	20	0	0	100	159	
Estimated Outlays	0	0	0	0	0	0	0	0	159	0	0	0	159	
Total Changes In Direct Spending:														
Estimated Budget Authority ...	0	668	23	18	18	18	19	20	20	0	0	745	804	
Estimated Outlays	0	5	5	5	5	0	0	0	784	0	0	20	804	

CBO estimates that implementing S. 306 would increase spending subject to appropriation by less than \$500,000 in any year over the 2023–2028 period.

Basis of estimate: For this estimate, CBO assumes that the bill will be enacted early in fiscal year 2024 and that the amounts appropriated in the bill would thus be deposited in the trust fund in that year. Using information from DOI and based on the bill's specifications, CBO expects that the following conditions would be met eight years after enactment:

- The settlement, including amendments required to conform to the bill's provisions, would be finalized and executed;
- All waivers and releases of claims required under the bill would be executed; and
- All appeals would have been exhausted and the courts would have approved the agreement as binding on all parties.

Finally, DOI would publish a statement of findings in the *Federal Register* that the bill's conditions have been met, and ownership of the trust fund would be transferred to the tribe.

Direct spending: CBO estimates that enacting the bill would increase direct spending by \$804 million over the 2023–2033 period.

Tule River Indian Tribe Settlement Trust Fund: S. 306 would establish a trust fund consisting of two interest-bearing accounts: the Tule River Tribe Water Development Projects Account and the Tule River Tribe Operation, Maintenance, and Replacement Account. The bill would appropriate \$568 million to capitalize those accounts—\$518 million for water projects and \$50 million for operation, maintenance, and replacement. S. 306 also would appropriate additional amounts to account for inflation over the period from November 2020 until those amounts are deposited into the fund. Based on the assumption that the bill will be enacted early in 2024, CBO estimates that the total amount deposited in the fund would be \$645 million.

Under the bill, the tribe would have immediate access to \$20 million from the trust fund to complete technical studies for future water infrastructure projects. Otherwise, the federal government would retain ownership until 2031, when all settlement conditions are expected to be satisfied. Deposited amounts would be credited with interest earnings. In 2031, the federal government would transfer ownership of the trust fund to the tribe; the amount transferred (including any interest earnings) would be considered a federal expenditure. Based on CBO's projections of interest rates and the assumption that all of the conditions would be met by 2031,

CBO estimates that interest earnings would total \$159 million. Accordingly, CBO estimates that the total amount transferred in 2031 would be \$784 million.

The federal government would retain fiduciary responsibility over the contents of the trust fund until the money is needed by the tribe to plan, design, construct, and maintain water projects; those subsequent actions would not affect the federal budget.

Land Held in Trust: Within 10 years after the settlement conditions are met, S. 306 would direct DOI to transfer about 11,640 acres to be held in trust for the benefit of the tribe as part of the Tule Tribe Reservation in California. That amount consists of 9,037 acres from the Forest Service; 1,837 acres owned by the tribe; and 765 acres from the Bureau of Land Management.

Using information from those agencies, CBO estimates that, starting in 2031, implementing the bill's provisions would decrease offsetting receipts (and thus increase direct spending) because the Forest Service would no longer collect grazing fees on that land. Using information from the Forest Service about those fees, CBO estimates that the increase in direct spending would be insignificant in every year and over the 2023–2033 period. No federal receipts are collected from tribal land or from land administered by the Bureau of Land Management.

Spending subject to appropriation: The agencies also would incur costs to oversee environmental and technical compliance for water projects constructed by the tribe and to transfer land to the trust. Using information from the agencies and average costs to oversee activities for other water settlements, CBO estimates that carrying out those activities would have insignificant costs in every year and would total \$1 million over the 2024–2028 period; any spending would be subject to the appropriation of the estimated amounts.

Pay-As-You-Go considerations: The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. The changes in outlays that are subject to those pay-as-you-go procedures are shown in Table 2.

TABLE 2.—CBO'S ESTIMATE OF THE STATUTORY PAY-AS-YOU-GO EFFECTS OF S. 306, THE TULE RIVER TRIBE RESERVED WATER RIGHTS SETTLEMENT ACT OF 2023, AS ORDERED REPORTED BY THE SENATE COMMITTEE ON INDIAN AFFAIRS ON MARCH 29, 2023

	By fiscal year, millions of dollars—												
	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2023– 2028	2023– 2033
	INCREASES IN THE DEFICIT												
Pay-As-You-Go Effect	0	5	5	5	5	0	0	0	784	0	0	20	804

Increase in long-term net direct spending and deficits: CBO estimates that enacting S. 306 would not significantly increase net direct spending in any of the four consecutive 10-year periods beginning in 2034.

CBO estimates that enacting S. 306 would not significantly increase on-budget deficits in any of the four consecutive 10-year periods beginning in 2034.

Mandates: S. 306 contains intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA). CBO cannot

determine whether the aggregate cost of those mandates would exceed the annual threshold established in UMRA (\$99 million in 2023, adjusted annually for inflation).

S. 306 would require the Tule River Tribe to waive the right to raise claims to some water rights and for certain damage to water, land, and other resources resulting from the loss of water or water rights. The cost of the mandate would be the forgone value of awards and settlements of claims that the tribe would be prevented from raising under the bill. Because both the number of claims that could be barred or terminated and the value of forgone compensation stemming from them are uncertain, CBO has no basis for estimating the cost of the mandate.

The tribe also would be prohibited from permanently giving or selling any portion of the Tribal Water Right. Based on the tribe's stated intent to keep and use the water rights in a continuous manner for water storage, the cost for the tribe to comply with the prohibition would be small because the tribe has no foreseeable intent to give or sell the right.

By taking land into trust for the Tule River Tribe, the bill would impose a mandate on state and local governments by prohibiting them from taxing that land. Information from Tulare County about taxes and other receipts associated with the land indicate those forgone revenues would total less than \$100,000 annually.

S. 306 contain no private-sector mandates as defined in UMRA.

Estimate prepared by: Federal Costs: Aurora Swanson; Mandates: Rachel Austin.

Estimate reviewed by: Ann E. Futrell, Senior Adviser for Budget Analysis; Kathleen FitzGerald, Chief, Public and Private Mandates Unit; H. Samuel Papenfuss, Deputy Director of Budget Analysis.

Estimate approved by: Phillip L. Swagel, Director, Congressional Budget Office.

REGULATORY AND PAPERWORK IMPACT STATEMENT

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires each report accompanying a bill to evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill. The Committee believes that S. 306 will have minimal impact on regulatory or paperwork requirements.

EXECUTIVE COMMUNICATIONS

The Committee has received no communications from the Executive Branch regarding S. 306.

CHANGES IN EXISTING LAW

On February 9, 2023, the Committee unanimously approved a motion to waive subsection 12 of rule XXVI of the Standing Rules of the Senate. In the opinion of the Committee, it is necessary to dispense with subsection 12 of rule XXVI of the Standing Rules of the Senate to expedite the business of the Senate.