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SENATE

{ REPORT
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A BILL TO APPROVE THE SETTLEMENT OF WATER RIGHTS CLAIMS OF THE ZUNI INDIAN TRIBE IN THE ZUNI RIVER STREAM SYSTEM IN THE STATE OF NEW MEXICO, TO PROTECT THE ZUNI SALT LAKE, AND FOR OTHER PURPOSES

DECEMBER 4, 2024.—Ordered to be printed

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

R E P O R T

[To accompany S. 4643]

The Committee on Indian Affairs, to which was referred the bill (S. 4643) to approve the settlement of water rights claims of the Zuni Indian Tribe in the Zuni River Stream System in the State of New Mexico, to protect the Zuni Salt Lake, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

S. 4643 would resolve the water rights claims of the Zuni Tribe in the Zuni River Basin, a tributary of the Little Colorado River, in New Mexico and provide for the protection of Zuni Salt Lake, a lake outside the basin that has great spiritual and cultural significance to the Tribe.

BACKGROUND AND NEED

The *A:shiwí* (Zuni people) of New Mexico rely on water from the Zuni River Basin and the Little Colorado River tributary to support their lifeways. In 2003, Congress passed S. 222, the *Zuni Indian Tribe Water Rights Settlement Act*,¹ to ratify and resolve the Zuni

¹Zuni Indian Tribe Water Rights Settlement Act of 2003, Pub. L. No. 108-34, 117 Stat. 782 (2003).

Tribe's claims in the Little Colorado River Basin in Arizona. However, Congress has not yet acted to ratify the Zuni Tribe's claims in the Zuni River Basin in New Mexico.

The Zuni River is a tributary of the Little Colorado River that originates in the Zuni Mountains of Cibola County, New Mexico at the Continental Divide. Before 1900, the Zuni River was a high desert, perennial stream flowing through the Zuni Mountains in western New Mexico to meet the Little Colorado River in eastern Arizona.² However, at the turn of the century, the Zuni River was diverted by non-Indian farmers who settled upstream, and later dammed as part of the federal government's efforts to construct and maintain large-scale irrigation infrastructure across the West.³

Key to this effort was the construction of the Black Rock Dam in 1908 to hold 15,000 acre-feet of water from the Zuni River in the Black Rock Reservoir for the Zuni Tribe. But the structure was plagued almost immediately by an unstable foundation and a high degree of siltation, severely limiting its utility and burying a sacred spring. The dam and reservoir are currently inoperable and hold no water, failing their original purpose to provide sufficient water to support an irrigation-based agricultural economy on Zuni Tribal lands.

In addition, clear cutting of the forests in the Zuni Mountains caused severe erosion and additional siltation in the Zuni River, compounding water supply and flow problems. As a consequence of this and upstream groundwater pumping and diversions by junior water users, the Zuni Tribe's ability to use millennia-old traditional farming methods have been stymied, as has its ability to rehabilitate its domestic water system.

The Zuni Salt Lake is a high desert lake located about 60 miles south of Zuni Pueblo in Western New Mexico.⁴ The lake is sacred to the Tribe and its salt has been traded extensively by the Zuni Tribe and other Pueblos since time immemorial, used for both religious and culinary purposes. The Zuni Salt Lake was not part of the Zuni Tribe's original reservation, but the United States returned the lake and 5,000 surrounding acres to the Zuni Tribe in 1985 following enactment of Public Law 95-280 in 1978.⁵ Recognizing the site's significance, the National Park Service listed Zuni Salt Lake on the National Register of Historic Places in 1999.⁶ Past proposals to develop fossil fuels such as coal near the Zuni Salt Lake endangered water levels and the aquifer below the lake as well as the surrounding landscape.⁷ However, the larger area around the lake is comprised of a patchwork of private, State, Tribal, and Federal land, presenting challenges to comprehensive protection efforts.

²U.S. PARK SERV., HAER NM-7, INDEX TO PHOTOGRAPHS at 1-56 (1995).

³U.S. GEOLOGICAL SURVEY, WATER-SUPPLY PAPER 2227, *WATER RESOURCES OF THE ZUNI TRIBAL LANDS, MCKINLEY, AND CIBOLA CNTYS., NM.* (1985).

⁴U.S. GEOLOGICAL SURV., FEATURE ID 923719, SUMMARY REPORT: ZUNI SALT LAKE (1981), <https://edit.nationalmap.gov/apps/gaz-domestic/public/search/names/923719>.

⁵See Pub. L. No. 95-280, § 1, 92 Stat. 244 (1978) (describing the lands to be acquired into trust for the Zuni Indian Tribe of New Mexico).

⁶*New Mexico—Catron County—Historic Districts*, NATIONAL REGISTER OF HISTORIC PLACES, <https://www.nationalregisterofhistoricplaces.com/NM/Catron/state.html> (last visited Oct. 17, 2024).

⁷*E.g. Protection of Native American Sacred Places as They are Affected by Department of Defense Undertakings: Hearing Before the S. Comm. on Indian Affrs.*, 107th Cong., 2d Sess. 19-25 (2002) (statement of Malcom Bowekaty, Governor, Pueblo of Zuni).

SUMMARY OF S. 4643 AS ORDERED REPORTED

S. 4643 would resolve the Zuni Tribe’s water rights claims in the Zuni River Basin in New Mexico and authorize funding for water-related infrastructure projects. Specifically, the bill would ratify and confirm the May 1, 2023 *Settlement Agreement to Quantify and Protect the Water Rights of the Zuni Indian Tribe in the Zuni River Basin and to Protect the Zuni Salt Lake* (Agreement) between the Zuni Tribe and the State of New Mexico; authorize and direct the Secretary of the Interior to sign the Agreement; and authorize funds to implement the Agreement.

The bill would establish two interest-bearing trust funds to develop water infrastructure for domestic, municipal, and irrigation or agricultural uses:

- the Zuni Tribe Water Rights Settlement Trust Account (\$655 million); and
- the Zuni Tribe Operation, Maintenance, and Replacement Trust Account (\$29.5 million).

These accounts are intended to safeguard water resources and sustainable uses for the Zuni Tribe by providing funding for replacing the Tribe’s aged municipal water system, which is currently dependent on two wells located over 10 miles away from Zuni Pueblo and has significant levels of contaminants (including radionuclides and arsenic); replacing outdated sewage lagoons with a modern wastewater treatment facility that will allow the re-use of wastewater; redesigning and rehabilitating the five irrigation units and associated reservoirs to adapt to climatic conditions and traditional irrigation practices; restoring the channels of the Zuni River and the Rio Nutria, a tributary of the Zuni River, for traditional and cultural purposes; repairing and upgrading livestock watering facilities to allow for more efficient and even use of the Zuni Tribe’s range lands by Tribal ranchers; and rehabilitating and developing additional wells and community water hauling stations in areas outside of the Zuni Tribe’s main village area.

The bill would also transfer approximately 4,822 acres of land managed by the Bureau of Land Management (BLM) surrounding the Zuni Salt Lake into trust for the Zuni Tribe upon the enforceability date of the Agreement. S. 4643 would further protect the Zuni Salt Lake and Sanctuary, comprised of 217,037 acres of private, State, Tribal, and Federal lands around the Zuni Salt Lake, by withdrawing 92,364 acres of BLM land from development and taking 4,756 acres of BLM land into trust for the benefit of the Zuni Tribe.

SECTION-BY-SECTION ANALYSIS OF S. 4643 AS ORDERED REPORTED

Section 1—Short title; table of contents

Section 1(a) sets forth the short title of the bill as the “Zuni Indian Tribe Water Rights Settlement Act of 2024.”

Section 1(b) sets forth the table of contents.

Section 2—Definitions

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

Title I—Zuni Indian Tribe Water Rights Settlement Agreement

Section 101—Purposes

This section sets forth the four-fold purpose of the bill to:

- Achieve an equitable final settlement of all claims to water rights in the Zuni River Stream System for the Zuni Tribe and the United States acting as its trustee;
- Authorize, ratify, and confirm the Settlement Agreement to Quantify and Protect the Water Rights of the Zuni Indian Tribe in the Zuni River Basin in New Mexico (Agreement) entered into by the Zuni Tribe, the State of New Mexico, and various other parties;
- Authorize and direct the Secretary of the Interior to execute and carry out the Agreement; and
- Authorize funding to implement the Agreement.

Section 102—Definitions

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

Section 103—Ratification of the agreement

Section 103(a)–(b) authorizes, ratifies, and confirms the Agreement and conforming amendments; directs the Secretary of the Interior to execute the Agreement and amendments, and authorizes the Secretary of the Interior to make modifications consistent with congressional approval requirements and federal law.

Section 103(c) requires the Secretary of the Interior and the Zuni Tribe to comply with applicable federal environmental laws, affirms that execution of the Agreement does not constitute a major federal action under the National Environmental Policy Act, and provides for the Zuni Tribe’s costs for related compliance activities to be paid from the Zuni Tribe Settlement Trust Fund.

Section 104—Tribal water rights

Section 104(a) clarifies that the Zuni Tribe’s Water Rights are to be held in trust by the United States.

Section 104(b) protects these rights from loss through non-use, forfeiture, abandonment, or other operation of law, and preserves after-acquired State-law based water rights.

Section 104(c) clarifies that any use of the Zuni Tribe’s Water Rights shall be subject to the Agreement and title I of this bill.

Section 104(d) affirms that the Zuni Tribe’s Water Rights do not include any water rights for an allotment.

Section 104(e) affirms that nothing in this title quantifies or diminishes the water rights, or claims to water rights, of allottees.

Section 104(f) clarifies that any use of water on an allotment shall be accounted for out of the Zuni Tribe’s Water Rights recognized in the Agreement.

Section 104(g) prohibits the Zuni Tribe from objecting to the adjudication of certain water uses on an allotment, and directs the Zuni Tribe to administer any water use on Zuni lands in accordance with applicable Federal law, including those on an allotment or decreed to the United States in trust for an allottee.

Section 104(h) authorizes the Zuni Tribe to allocate, distribute, and lease its water rights on and off Zuni lands, and clarifies that

any uses off Zuni lands are subject to the terms of the Agreement, this title, and maximum lease terms not to exceed 99 years.

Section 104(i) prohibits alienation and forfeiture of the Zuni Tribe's Water Rights, and provides that authorizations of this title satisfy the requirements for federal authorization of purchases or grants of land from Indians.

Section 105—Settlement trust fund

Section 105(a) directs the Secretary of the Interior to establish an interest-bearing trust fund, the Zuni Tribe Settlement Trust Fund, in Treasury and requires the Secretary of the Interior to manage, invest, and distribute the Zuni Tribe Settlement Trust Fund, including investment earnings, until the funds are expended, withdrawn, or reverted to the Treasury.

Section 105(b) directs the Secretary of the Interior to establish two accounts within the Zuni Tribe Settlement Trust Fund: (1) the Zuni Tribe Water Rights Settlement Trust Account; and (2) the Zuni Tribe Operations, Maintenance, & Replacement Trust Account.

Section 105(c) directs the Secretary of the Interior to deposit a total of \$685 million in mandatory funds into the Zuni Tribe Settlement Trust Fund, consisting of (1) the Zuni Tribe Water Rights Settlement Trust Account (\$655.5 million); and (2) the Zuni Tribe Operations, Maintenance, & Replacement Trust Account (\$29.5 million).

Section 105(d) requires the Secretary of the Interior to: (1) manage, invest, and distribute all amounts in the Zuni Tribe Settlement 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; and (2) authorizes the use of investment earnings accruing to the Zuni Tribe.

Section 105(e) requires the Secretary of the Interior to make most funds available to the Zuni Tribe on the enforceability date, with the exception of \$50 million in specified funds, including investment earnings, made available upon deposit for specific uses.

Section 105(f) permits withdrawals from the Zuni Tribe Settlement Trust Fund for certain specified purposes pursuant to Tribal management and expenditure plans submitted by the Zuni Tribe, approved and enforced by the Secretary of the Interior in accordance with the American Indian Trust Fund Management Reform Act of 1994, and a requirement that the Zuni Tribe spend all amounts withdrawn, including investment earnings, on purposes described in this title.

Section 105(g) clarifies that the Secretary of the Interior's decision to approve a Tribal management or expenditure plan is final and not subject to judicial review, except for under the Administrative Procedure Act.

Section 105(h) authorizes specific uses of the Zuni Tribe Settlement Trust Fund within the two subaccounts:

- (1) Five specific uses of the Zuni Tribe Water Rights Settlement Trust Account:
 - Water production, treatment, or delivery infrastructure for domestic, municipal, or wastewater use;

- Water production, treatment, or delivery infrastructure and acquisition of water for irrigation, livestock, and agriculture;
 - Watershed and endangered species habitat protection, land and water rights acquisition, community welfare and economic development, and implementation of the Agreement;
 - Environmental compliance for projects authorized by this title;
 - Management and administration of Zuni Tribal water rights;
- (2) One specific use of the Zuni Tribe Operation, Maintenance, & Replacement Trust Account:
- Operation, maintenance, and replacement of water infrastructure for domestic, commercial, municipal, industrial, irrigation, and livestock uses.

Section 105(i) limits federal liability for expenditures and investments of amounts withdrawn from the Zuni Tribe Settlement Trust Fund under a Tribal management plan or Tribal expenditure plan.

Section 105(j) requires the Zuni Tribe to submit an annual expenditure report to the Secretary of the Interior regarding withdrawals from the Zuni Tribe Settlement Trust Fund under a Tribal management plan or Tribal expenditure plan.

Section 105(k) prohibits per capita distribution of any portion of the Zuni Tribe Settlement Trust Fund.

Section 105(l) confirms the Zuni Tribe will retain title, control, and operation of any project infrastructure constructed with funds from the Zuni Tribe Settlement Trust Fund.

Section 105(m) clarifies that the Zuni Tribe is responsible for the operation, maintenance, and replacement costs of any project infrastructure constructed with funds from the Zuni Tribe Settlement Trust Fund.

Section 106—Funding

Section 106(a) directs a total of \$685 million in mandatory funds for the Zuni Tribe Settlement Trust Fund, consisting of (1) the Zuni Tribe Water Rights Settlement Trust Account (\$655.5 million); and (2) the Zuni Tribe Operations, Maintenance, & Replacement Trust Account (\$29.5 million).

Section 106(b) provides for adjustments of the Zuni Tribe Settlement Trust Fund to address cost fluctuation and market volatility.

Section 106(c) requires the State of New Mexico to contribute \$750,000 for the development and execution of monitoring plans, and \$500,000 for deposit into an interest-bearing account to mitigate impairment to non-Indian domestic and livestock groundwater rights resulting from the Zuni Tribe's water use.

Section 107—Waivers and releases of claims

Section 107(a)–(c) requires the parties to execute waivers and releases of claims related to the Zuni Tribe's water rights in the Zuni River Stream System before and including the enforceability date, and clarifies that such waivers and releases shall take effect on the enforceability date.

Section 107(d)–(e) reserves to the United States and the Zuni Tribe's claims to enforce water rights and water quality claims ac-

cruing after the enforceability date; preserves the sovereignty and jurisdiction of the United States and Tribal government entities; preserves the United States' authority to fulfill its trust responsibilities and enforce its laws, including environmental laws; clarifies that the bill does not confer jurisdiction on any State court to interpret federal health, safety, or environmental laws or determine the duties of any party thereunder, conduct judicial review of any federal agency action, or interpret Zuni Tribal law; and clarifies that the bill does not waive individual Zuni Tribal member claims.

Section 107(f)–(g) provides for tolling of claims and equitable defenses between the enactment and enforceability dates, and provides for termination of the agreement if the Secretary of the Interior's statement of findings is not issued by July 1, 2030, or a later date mutually agreed upon by the Zuni Tribe and the United States with notice to the State of New Mexico.

Section 108—Satisfaction of claims

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

Section 109—Enforceability date

This section establishes the enforceability date as the day on which the Secretary of the Interior publishes a statement of findings, including enumerated requirements, in the Federal Register.

Section 110—Miscellaneous provisions

Section 110(a)–(c) clarifies that nothing in the bill: waives the United States' sovereign immunity; quantifies or diminishes land and water rights of other Tribes; or affects laws or regulations in effect prior to enactment regarding pre-enforcement review of federal environmental enforcement actions.

Section 110(d) provides that in the event of a conflict between title 1 of this bill and the Agreement, title 1 shall control.

Section 111—Relation to allottees

This section clarifies that nothing in the bill or the Agreement affects the rights or claims of Zuni allottees, the United States as trustee for Zuni allottees, or allotments.

Section 112—Antideficiency

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

Title II—Zuni Salt Lake and Sanctuary Protection

Section 201—Definitions

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

Section 202—Withdrawal of certain Federal land in New Mexico

Section 202(a) withdraws, subject to valid existing rights, 92,364 acres of Federal land located within the boundary of the 217,037 acre Zuni Salt Lake and Sanctuary from mineral development.

Section 202(b) withdraws, subject to valid existing rights, any Federal land located within this boundary that is acquired after the date of enactment.

Section 202(c) reserves the Federal land withdrawn for three specific purposes: (1) the protection of the Zuni Salt Lake and Sanctuary; (2) the protection of the quality and quantity of the Zuni Salt Lake’s water supply; and (3) the protection of any cultural resources associated with the Zuni Salt Lake and Sanctuary.

Section 203—Management of Federal land

Section 203(a) requires the Secretary of the Interior, through the BLM, to manage the Federal land withdrawn for the purposes described in Section 202(c), in accordance with the Federal Land Policy and Management Act of 1976 and in consultation with the Zuni Tribe.

Section 203(b) applies specific use restrictions to the Federal land withdrawn, including motor vehicle use, new water wells, expanded grazing uses, issuance of rights-of-way and leases, timber sales or free use, and casual collecting.

Section 204—Transfer of land into trust

Section 204(a) directs the Secretary of the Interior to take the “Tribal Acquisition Area” into trust for the Zuni Tribe, subject to valid existing rights, contracts, leases, and rights-of-way; directs the Bureau of Indian Affairs to assume all land management responsibilities for these valid existing rights; clarifies ownership of, disposal of, and liability for personal property on land taken into trust; terminates the withdrawal of Federal lands from mineral development upon the date that land is taken into trust; and takes into trust any water rights associated with the land taken into trust for the Zuni Tribe, but clarifies that those water rights are not included in this bill.

Section 204(b) directs the Secretary of the Interior to take legal title of the Potential Future Acquisition Areas, pending certain conditions are met.

Section 205—Maps and legal descriptions

Section 205(a) directs the Secretary of the Interior to publish in the Federal Register maps and legal descriptions of the Federal land withdrawn and the land taken into trust for the Zuni Tribe.

Section 205(b) clarifies the legal effect of the maps and legal descriptions published in the Federal Register.

Section 205(c) requires that copies of the maps and legal descriptions be available for public inspection in appropriate BLM offices.

LEGISLATIVE HISTORY

On July 9, 2024, Senator Heinrich (D–NM) and Senator Luján (D–NM) introduced S. 4643, the *Zuni Indian Tribe Water Rights Settlement Act of 2024*. The Senate referred the bill to the Committee on Indian Affairs on the same day. On September 25, 2024,

the Committee held a legislative hearing to receive testimony on S. 4643. On November 18, 2024, the Committee met at a duly convened business meeting and ordered S. 4643 reported favorably, without amendment.

On July 8, 2024, Representatives Vazquez (D–NM), Leger Fernandez (D–NM), and Stansbury (D–NM) introduced H.R. 8951, an identical companion bill in the House of Representatives. Representative Gallego (D–AZ) joined as a cosponsor after introduction. On July 8, 2024, the bill was referred to the House Committee on Natural Resources. On July 17, 2024, the bill was further referred to the Subcommittee on Water, Wildlife, and Fisheries. On July 23, 2024, the Subcommittee held a legislative hearing to receive testimony on H.R. 8951. To date, the House of Representatives has taken no further action on the bill.

COST AND BUDGETARY CONSIDERATIONS

The cost estimate from the Congressional Budget Office requested on S. 4643 has not yet been received. Due to time constraints, the CBO letter will be printed in the Congressional Record.

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. 4643, as reported, will have minimal impact on regulatory or paperwork requirements.

EXECUTIVE TESTIMONY

Written statement of Bryan Newland, Assistant Secretary for Indian Affairs, U.S. Department of the Interior, before the U.S. Senate Committee on Indian Affairs, delivered on September 25, 2024, follows below:

Chairman Schatz, Vice Chairman Murkowski, and members of the Committee. My name is Bryan Newland, and I am the Assistant Secretary for Indian Affairs at the Department of the Interior (Department). Thank you for the opportunity to present testimony on the following bills concerning Indian water rights settlements . . .

Indian Water Rights Settlements Bills

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.

S. 4643, Zuni Indian Tribe Water Rights Settlement Act of 2024

S. 4643 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 settle-

ment 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.

S. 4643 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.

S. 4643 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).

S. 4643 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, S. 4643 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. S. 4643 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 S. 4643 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 S. 4643

The Department of the Interior is pleased to support S. 4643. This bill is the result of decades of litigation and over a decade of good-faith negotiations. S. 4643 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.

EXECUTIVE COMMUNICATIONS

The Committee has received no communications from the Executive Branch regarding S. 4643.

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.

