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SENATE

{ REPORT
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OHKAY OWINGEH RIO CHAMA WATER RIGHTS SETTLEMENT ACT OF 2025

JUNE 4, 2026.—Ordered to be printed

Ms. MURKOWSKI, from the Committee on Indian Affairs,
submitted the following

R E P O R T

[To accompany S. 563]

[Including cost estimate of the Congressional Budget Office]

The Committee on Indian Affairs, to which was referred the bill (S. 563) to approve the settlement of water rights claims of Ohkay Owingeh in the Rio Chama Stream System, to restore the Bosque on Pueblo Land in the State of New Mexico, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The purpose of S. 563 is to ratify, confirm, and approve the water settlement agreement reached between the Ohkay Owingeh Pueblo, the State of New Mexico, the City of Española, and five acéquia associations, and to resolve the Pueblo's water rights claims in the Rio Chama Stream System in New Mexico. S. 563 also authorizes the funds necessary to carry out the settlement agreement and the Act.

BACKGROUND AND NEED

The Ohkay Owingeh Pueblo (Pueblo) is a federally recognized Tribe located in northern New Mexico whose lifeways, cultural practices, and traditional economy have long depended on waters of the Rio Grande and Rio Chama rivers, and access to those rivers' bosques (riparian forests).

In the 1950s and 1960s, the Bureau of Reclamation and U.S. Army Corps of Engineers undertook flood control and river chan-

nelization projects along portions of the Rio Grande flowing through Ohkay Owingeh’s traditional homelands. These projects were intended to speed the flow and increase the amount of water to benefit junior water users in southern New Mexico.¹ According to the Pueblo, the use of levees and other channelization projects significantly changed the character of the Rio Grande river system and resulted in negative impacts on the Pueblo’s bosque.² The Pueblo states that, over the last 70 years, the bosque has “withered and begun its path to complete destruction.”³

In the 1960s, the U.S. Army Corps of Engineers also constructed an Abiquiu Dam on the Rio Chama to regulate river flows and store water for downstream uses, including for release to southern New Mexico farmers.⁴ According to the Pueblo, the reduction in the natural flood flows and changes in river hydrology led to “the same disaster as occurred on the Rio Grande: the slow death of the bosque.”⁵

S. 563 would provide the resources and legal framework necessary to implement the settlement agreement, support water infrastructure and conservation projects, restore and maintain the Rio Chama bosque on Pueblo lands, and promote long-term certainty and stability for all parties that depend on the basin’s limited water resources. S. 563 also establishes an interest-bearing trust fund to support implementation of the settlement agreement. Funds would be used for water infrastructure and water resource projects benefiting Ohkay Owingeh Pueblo and other water users, as well as restoration and long-term maintenance of the Rio Chama bosque located on Pueblo lands.

SUMMARY

S. 563 would authorize, ratify and confirm the July 5, 2023, Ohkay Owingeh Rio Chama Water Rights Settlement among the Ohkay Owingeh Pueblo, the State of New Mexico, the City of Española, and five acéquia associations representing more than 80 community ditch and acéquias in the Rio Chama Basin. The bill would direct the Secretary of the Interior to execute the agreement, provide funding, and authorize actions necessary to implement the settlement.

The bill specifically:

- Authorizes the deposit of \$745 million in mandatory funds into the Ohkay Owingeh Settlement Trust Fund, with any investment earnings authorized to implement the Agreement;
- Provides for specific uses of the funds, subject to the approval of Tribal management and expenditure plans, and water rights; and
- Authorizes Ohkay Owingeh Pueblo to allocate, distribute, and lease its water rights on and off Ohkay Owingeh Pueblo lands.

¹ *Ohkay Owingeh Rio Chama Water Rights Settlement Act of 2024: Hearing to Receive Testimony on S. 4505 Before the S. Comm. on Indian Affs*, 118th Cong. 2 (2024) (statement of the Honorable Larry M. Phillips, Governor, Pueblo of Ohkay Owingeh).

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

LEGISLATIVE HISTORY

S. 563 was introduced by Senators Heinrich and Luján on February 13, 2025. The Committee held a business meeting on March 5, 2025, and ordered the bill to be reported favorably without amendment.

An identical companion bill, H.R. 1323 was introduced by Representatives Leger Fernandez (D–NM–3) and Stansbury (D–NM–1) in the House of Representatives on February 13, 2025. Representative Vasquez (D–NM–2) was added as a cosponsor on February 14, 2025. The bill was referred to the House Committee on Natural Resources.

In the 118th Congress, an identical bill, S. 4505, was introduced by Senators Heinrich and Luján on June 11, 2024. The Committee held a hearing on S. 4505 on July 25, 2024. The Committee held a business meeting to consider S. 4505 on September 18, 2024, and ordered the bill reported favorably, without amendment. (S. Rept. 118–261).

An identical companion bill, H.R. 8685, was introduced by Representatives Leger Fernandez (D–NM–3) and Stansbury (D–NM–1) in the House of Representatives on June 11, 2024. The House Natural Resources Subcommittee on Water, Wildlife and Fisheries held a hearing on H.R. 8685 on July 23, 2024.

COMMITTEE RECOMMENDATION

The Senate Committee on Indian Affairs in an open business meeting on March 5, 2025, by a majority voice vote of a quorum present, recommends that the Senate pass S. 563, without amendment.

SECTION-BY-SECTION ANALYSIS

Section 1—Short title

This section sets forth the short title as the “Ohkay Owingeh Rio Chama Water Rights Settlement Act of 2025.”

Section 2—Purposes

This section sets forth the purposes of the bill to: resolve the water rights claims of Ohkay Owingeh Pueblo in the Rio Chama Stream System; authorize, ratify, and confirm the Ohkay Owingeh Rio Chama Water Rights Settlement Agreement (Agreement) entered into by Ohkay Owingeh Pueblo, the State of New Mexico, and various other parties; authorize the Secretary of the Interior to execute and carry out the Agreement; and provide mandatory funding to implement the Agreement.

Section 3—Definitions

This section provides definitions for terms used in the bill.

Section 4—Ratification of Agreement

Section 4(a)–(b) authorizes, ratifies, and confirms the Agreement and conforming amendments; directs the Secretary of the Interior to execute the Agreement, and authorizes the Secretary of the Interior to make modifications consistent with congressional approval requirements and federal law.

Section 4(c) requires the Secretary of the Interior and Ohkay Owingeh Pueblo to comply with federal environmental laws as applicable, affirms that execution of the Agreement does not constitute a major federal action under the Endangered Species Act and the National Environmental Policy Act, and provides for Ohkay Owingeh Pueblo's costs for related compliance activities to be paid from the Ohkay Owingeh Water Rights Settlement Trust Fund.

Section 5—Pueblo Water Rights

Section 5(a) requires Ohkay Owingeh Pueblo's Water Rights to be held in trust by the United States.

Section 5(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 5(c) clarifies that any use of Ohkay Owingeh Pueblo Water Rights shall be subject to the Agreement and this legislation.

Section 5(d) authorizes Ohkay Owingeh Pueblo to allocate, distribute, and lease the rights on and off Ohkay Owingeh Pueblo lands, and clarifies that any uses off Ohkay Owingeh Pueblo lands are subject to the terms of the Agreement, this legislation, and maximum lease terms not to exceed 99 years.

Section 5(e) prohibits alienation and forfeiture of Ohkay Owingeh Pueblo Water Rights, and provides that authorizations in the legislation satisfy the requirements for federal authorization of purchases or grants of land from Indians.

Section 6—Settlement Trust Fund

Section 6(a) authorizes an interest-bearing trust fund, the Ohkay Owingeh Settlement Trust Fund, and requires the Secretary of the Interior to manage, invest, and distribute the Ohkay Owingeh Settlement Trust Fund, including investment earnings, until the funds are expended, withdrawn, or reverted to the Treasury.

Section 6(b) directs the Secretary of the Interior to deposit \$745 million in mandatory funds into the Ohkay Owingeh Settlement Trust Fund.

Section 6(c) requires the Secretary of the Interior to: (1) manage, invest, and distribute all amounts in the Ohkay Owingeh 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) invest the funds with earnings accruing to Ohkay Owingeh Pueblo.

Section 6(d) requires the Secretary of the Interior to make most funds available to Ohkay Owingeh Pueblo on the enforceability date, with the exception of \$100 million in specified funds, including investment earnings, made available upon deposit for specific uses.

Section 6(e) permits withdrawals from the Ohkay Owingeh Settlement Trust Fund for certain specified purposes pursuant to a Tribal management and expenditure plan submitted by Ohkay Owingeh Pueblo and 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 Ohkay

Owingehe Pueblo spend all amounts withdrawn, including investment earnings.

Section 6(f) 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 6(g) authorizes five specific uses of the Ohkay Owingehe Settlement Trust Fund:

- 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, bosque restoration or improvement, land and water rights acquisition, community welfare and economic development, and implementation of the Agreement;
- Management and administration of Ohkay Owingehe Pueblo water rights; and
- Environmental compliance for projects authorized by this legislation.

Section 6(h) limits federal liability for expenditures and investments of amounts withdrawn from the Ohkay Owingehe Settlement Trust Fund.

Section 6(i) requires Ohkay Owingehe Pueblo to submit an annual expenditure report to the Secretary of the Interior regarding withdrawals from the Ohkay Owingehe Settlement Trust Fund.

Section 6(j) prohibits per capita distribution of any portion of the Ohkay Owingehe Settlement Trust Fund.

Section 6(k) confirms Ohkay Owingehe Pueblo will retain title, control, and operation of any project constructed with funds from the Ohkay Owingehe Settlement Trust Fund.

Section 6(l) clarifies that Ohkay Owingehe Pueblo is responsible for the operation, maintenance, and replacement costs of such projects constructed with funds from the Ohkay Owingehe Settlement Trust Fund.

Section 7—Funding

Section 7(a) authorizes \$765 million in mandatory appropriations for the Ohkay Owingehe Settlement Trust Fund.

Section 7(b) provides for adjustments of the Ohkay Owingehe Settlement Trust Fund to address cost fluctuation and market volatility.

Section 7(c) requires the State of New Mexico to contribute \$98.5 million for signatory acequia ditch projects, \$32 million for City of Española water system projects, and \$500,000 to deposit into an interest-bearing account to mitigate impacts to non-Pueblo domestic and livestock groundwater rights resulting from Ohkay Owingehe Pueblo's new water use.

Section 8—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 9—Waivers and Releases of Claims

Section 9(a)–(c) requires the parties to execute waivers and releases of claims related to Ohkay Owingeh Pueblo’s water rights in the Rio Chama Stream System and the taking of the bosque property before and including the enforceability date, and clarifies that such waivers and releases shall take effect on the enforceability date.

Section 9(d)–(e) reserves the United States and Ohkay Owingeh Pueblo’s claims to enforce water rights and water quality claims accruing 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 and jurisdictional laws; clarifies 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, conduct judicial review of any federal agency action, or interpret Ohkay Owingeh Pueblo law; and clarifies that the Act does not waive individual Ohkay Owingeh Pueblo Tribal member claims.

Section 9(f)–(g) provides for tolling of claims and 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, 2038, or a later date mutually agreed upon by Ohkay Owingeh Pueblo and the United States with notice to the State of New Mexico.

Section 10—Satisfaction of Claims

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

Section 11—Miscellaneous Provisions

Section 11(a)–(c) affirms that nothing in the bill waives the United States’ sovereign immunity; quantifies or diminishes land and water rights of other Tribes; affects laws or regulations in effect prior to enactment regarding pre-enforcement review of federal environmental enforcement actions.

Section 11(d)–(e) provides that the legislation controls over the Agreement in the event of a conflict, and holds the United States harmless from any damages resulting from the construction, operation, and maintenance of the bosque restoration and improvement project that is carried out by Ohkay Owingeh Pueblo.

Section 12—Antideficiency

This section clarifies 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. 563, Ohkay Owingeh Rio Chama Water Rights Settlement Act of 2025			
As ordered reported by the Senate Committee on Indian Affairs on March 5, 2025			
By Fiscal Year, Millions of Dollars	2026	2026-2031	2026-2036
Direct Spending (Outlays)	0	41	90
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	0	41	90
Spending Subject to Appropriation (Outlays)	0	*	not estimated
Increases <i>net direct spending</i> in any of the four consecutive 10-year periods beginning in 2037?	< \$2.5 billion	Statutory pay-as-you-go procedures apply?	Yes
Increases <i>on-budget deficits</i> in any of the four consecutive 10-year periods beginning in 2037?	< \$5 billion	Mandate Effects	
		Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No
* = between zero and \$500,000.			

The bill would:

- Secure water rights for the Ohkay Owingeh Pueblo in New Mexico by ratifying a 2023 agreement between the Pueblo and other parties
- Establish and appropriate funds for the Ohkay Owingeh Water Rights Settlement Trust Fund to be administered by the Department of the Interior until its transfer to the Pueblo

Estimated budgetary effects would mainly stem from:

- Spending of appropriated amounts
- Spending of interest that is credited to the trust fund

Areas of significant uncertainty include:

- Estimating how much interest would be credited to the fund
- Anticipating when the water rights settlement would be finalized

Bill summary: S. 563 would secure Pueblo Water Rights for the Ohkay Owingeh Pueblo by ratifying the Ohkay Owingeh Rio Chama Water Rights Settlement reached in 2023 by Ohkay Owingeh, the State of New Mexico, and other parties.

The bill would appropriate funds to capitalize the Ohkay Owingeh Water Rights Settlement Trust Fund, which would be credited with interest during the period in which the trust fund is administered by the Department of the Interior (DOI) and made available to the Pueblo for specified uses.

Estimated Federal cost: The estimated budgetary effect of S. 563 is shown in Table 1. The costs of the legislation fall within budget function 300 (natural resources and environment).

TABLE 1.—ESTIMATED INCREASES IN DIRECT SPENDING UNDER S. 563

By fiscal year, millions of dollars—													
	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2026– 2031	2026– 2036
Ohkay Owingeh Water Rights Settlement Trust Fund:													
Estimated Budget Authority ...	838	0	0	0	0	0	0	0	0	0	0	838	838
Estimated Outlays	0	5	9	9	9	9	9	10	10	10	10	41	90
Interest Credited to the Trust Fund:													
Estimated Budget Authority ...	29	33	35	36	37	39	41	41	43	43	45	209	421
Estimated Outlays	0	0	0	0	0	0	0	0	0	0	0	0	0
Total Changes:													
Estimated Budget Authority ...	867	33	35	36	37	39	41	41	43	43	45	1,047	1,259
Estimated Outlays	0	5	9	9	9	9	9	10	10	10	10	41	90

CBO estimates that direct spending would increase by \$1.3 billion in 2038, the year in which CBO anticipates ownership of the trust fund would be transferred to the tribe.

CBO estimates that implementing S. 563 would increase spending subject to appropriation by less than \$500,000 in every year through 2031, totaling \$1 million over the 2026–2031 period; any related spending would be subject to the availability of appropriated funds.

Basis of estimate: For this estimate, CBO assumes that the bill will be enacted and the specified amounts deposited into the trust fund in fiscal year 2026.

Using information from DOI and based on the bill's specifications, CBO expects that the following conditions will be met by July 1, 2038:

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

If those conditions are met, CBO expects that DOI will publish findings in the *Federal Register* for the settlement, stating that the bill's conditions have been met and that ownership of the trust fund is to be transferred.

Direct spending: CBO estimates that enacting the bill would increase direct spending by \$90 million over the 2026–2036 period and \$1.3 billion after 2036.

S. 563 would establish the Ohkay Owingeh Water Rights Settlement Trust Fund and would appropriate \$745 million to capitalize it. The bill also would appropriate additional amounts to account for inflation over the period from June 2023 until those amounts are deposited into the fund. Based on the assumption that the bill will be enacted in fiscal year 2026, CBO estimates that the appropriation to account for inflation would be \$93 million; thus, we estimate that the appropriation for the fund would total \$838 million.

The amounts deposited in the trust fund would be credited with interest. Based on the interest rates that underly CBO's projections for the February 2026 baseline, CBO estimates that \$421 million would be credited to the trust fund over the 2026–2036 window. (Additional amounts would be credited after 2036 until the trust fund is transferred to the tribe.) The federal government would retain ownership of the amounts in the fund and the interest credited on that amount until 2038. At that time, CBO expects that all settlement conditions will be satisfied and DOI would transfer ownership of the fund to the Pueblo. The Pueblo would have immediate access to \$100 million from the trust fund to spend on specified purposes related to water production, treatment, or delivery infra-

structure. Based on the expectation that the settlement will be finalized in 2038 and the assumption that spending on specified activities would continue until that time, CBO estimates that the Pueblo would spend \$90 million over the 2026–2036 period and \$10 million in 2037.

In addition, and based on the outlay timing for the \$100 million available to the Pueblo, CBO estimates that the interest credited on that amount would total \$31 million over the 2026–2036 period.

When the federal government transfers ownership of the trust fund to the Pueblo, the amount transferred (including credited interest) would be considered a federal expenditure. Based on the assumption that all of the conditions would be met by 2038, CBO estimates that the following amounts would be transferred to the Pueblo in 2038:

- \$738 million (the total amount originally deposited minus the \$100 million spent from the amount that was made immediately available),
- \$421 million (total interest credited to the fund from 2026–2036, including \$31 million credited for the \$100 million that was immediately available),
- \$93 million (the amount of interest CBO estimates would be credited to the fund from 2037 through the transfer in 2038).

In total, CBO estimates that the total amount transferred in 2038 would round to \$1.3 billion.

The federal government would retain fiduciary responsibility over the trust fund until the Pueblo is ready to plan, design, construct, and maintain water projects; those subsequent actions would not affect the federal budget.

Spending subject to appropriation: The department also would incur costs to oversee environmental and technical compliance for water projects constructed by the Pueblo. Based on the average costs to oversee activities for other water settlements, CBO estimates the cost of those activities would be less than \$500,000 in any year and would total \$1 million over the 2026–2031 period; any related spending would be subject to the availability of appropriated funds.

Nonbudgetary effects: The settlement would require New Mexico to contribute \$131 million. If the federal government takes control of assets that belong to other entities, those amounts are generally considered nonbudgetary and their collection and disbursement do not affect the deficit.

Uncertainty: This estimate is subject to uncertainty because the amount of interest credited to the fund would depend on interest rates over the next 12 years. If interest rates are higher or lower than CBO currently projects, the amount of credited interest transferred to the tribe would be correspondingly more or less than CBO estimates.

In addition, the timing of when all settlement conditions are satisfied will affect the amount of interest credited to the fund. S. 563 would allow the parties to delay finalization of the settlement if additional time is needed to satisfy the required conditions. If settlement conditions are satisfied later or earlier than CBO expects, the amount of credited interest would be correspondingly more or less than CBO estimates.

Finally, the bill would provide the Pueblo with immediate access to \$100 million from the trust fund and any interest earned on that amount before the settlement conditions are finalized. If spending occurs more slowly or quickly than CBO estimates, interest credited to the fund would be correspondingly more or less than we estimated.

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 net 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. 563, THE OHKAY OWINGEH RIO CHAMA WATER RIGHTS SETTLEMENT ACT OF 2025, AS ORDERED REPORTED BY THE SENATE COMMITTEE ON INDIAN AFFAIRS ON MARCH 5, 2025

	By fiscal year, millions of dollars—												
	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2026– 2031	2026– 2036
	NET INCREASE IN THE ON-BUDGET DEFICIT												
Pay-As-You-Go Effect	0	5	9	9	9	9	9	10	10	10	10	41	90

Increase in long-term net direct spending and deficits: CBO estimates that enacting S. 563 would not increase net direct spending by more than \$2.5 billion in any of the four consecutive 10-year periods beginning in 2037.

CBO estimates that enacting S. 563 would not increase on-budget deficits by more than \$5 billion in any of the four consecutive 10-year periods beginning in 2037.

Mandates: The bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

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

EXECUTIVE TESTIMONY AND COMMUNICATIONS

The testimony provided by the U.S. Department of the Interior from the July 25, 2024, hearing on S. 4505 follows:

STATEMENT OF TRACY CANARD GOODLUCK SENIOR ADVISOR
TO THE ASSISTANT SECRETARY FOR INDIAN AFFAIRS U.S.
DEPARTMENT OF THE INTERIOR

S. 4505, A BILL TO APPROVE THE SETTLEMENT OF WATER
RIGHTS CLAIMS OF OHKAY OWINGEH IN THE RIO CHAMA
STREAM SYSTEM, TO RESTORE THE BOSQUE ON PUEBLO
LAND IN THE STATE OF NEW MEXICO, AND FOR OTHER PUR-
POSES

I. Introduction

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 the bill we are discussing today.

S. 4505 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.

II. 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

Owinge's water rights claims have been ongoing since 2015, when the United States established a negotiation team.

III. Proposed Ohkay Owinge Settlement Legislation

S. 4505 would resolve all of Ohkay Owinge'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 Owinge, 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.

S. 4505 would ratify and confirm Ohkay Owinge's water rights to approximately 1,756 acrefeet 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 Owinge lands, as well as water to continue irrigated farming in the Rio Chama basin.

S. 4505 would also protect non-Indian water users, as Ohkay Owinge 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 Owinge would promulgate a water code, which would govern permitting of uses of its water; provide processes for protests by parties affected by Ohkay Owinge permitting decisions; and ensure that water use under an Ohkay Owinge permit would not impair existing surface and groundwater rights.

Finally, S. 4505 would establish a trust fund totaling \$745 million, to be indexed, that Ohkay Owinge 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 Owinge 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.

IV. Department of the Interior Position on S. 4505

The Department is pleased to support S. 4505. This bill is the result of multiple decades of litigation and nearly a decade of good-faith negotiations to reach consensus on key issues. S. 4505 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. S. 4505 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.

CHANGES IN EXISTING LAW

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.

