

118TH CONGRESS  
2D SESSION

# S. 4505

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.

---

## IN THE SENATE OF THE UNITED STATES

JUNE 11, 2024

Mr. HEINRICH (for himself and Mr. LUJÁN) introduced the following bill;  
which was read twice and referred to the Committee on Indian Affairs

---

## 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 purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4       (a) **SHORT TITLE.**—This Act may be cited as the  
5       “Ohkay Owingeh Rio Chama Water Rights Settlement Act  
6       of 2024”.

7       (b) **TABLE OF CONTENTS.**—The table of contents for  
8       this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Purposes.
- Sec. 3. Definitions.
- Sec. 4. Ratification of Agreement.
- Sec. 5. Pueblo Water Rights.
- Sec. 6. Settlement Trust Fund.
- Sec. 7. Funding.
- Sec. 8. Enforceability Date.
- Sec. 9. Waivers and releases of claims.
- Sec. 10. Satisfaction of claims.
- Sec. 11. Miscellaneous provisions.
- Sec. 12. Antideficiency.

1 **SEC. 2. PURPOSES.**

2 The purposes of this Act are—

3 (1) to achieve a fair, equitable, and final settle-  
4 ment of all claims to water rights in the Rio Chama  
5 Stream System in the State for—

6 (A) Ohkay Owingeh; and

7 (B) the United States, acting as trustee  
8 for Ohkay Owingeh;

9 (2) to authorize, ratify, and confirm the Agree-  
10 ment entered into by Ohkay Owingeh, the State, and  
11 various other parties to the extent that the Agree-  
12 ment is consistent with this Act;

13 (3) to authorize and direct the Secretary—

14 (A) to execute the Agreement; and

15 (B) to take any other actions necessary to  
16 carry out the Agreement in accordance with  
17 this Act; and

18 (4) to authorize funds necessary for the imple-  
19 mentation of the Agreement and this Act.

1 **SEC. 3. DEFINITIONS.**

2 In this Act:

3 (1) ADJUDICATION.—The term “Adjudication”  
4 means the general stream adjudication of water  
5 rights in the Rio Chama Stream System entitled  
6 “State of New Mexico ex rel. State Engineer v. Ara-  
7 gon”, Civil No. 69–CV–07941–KWR/KK, pending,  
8 as of the date of enactment of this Act, in the  
9 United States District Court for the District of New  
10 Mexico.

11 (2) AGREEMENT.—The term “Agreement”  
12 means—

13 (A) the document entitled “Ohkay  
14 Owingeh Rio Chama Water Rights Settlement”  
15 and dated July 5, 2023, and the exhibits at-  
16 tached thereto; and

17 (B) any amendment to the document re-  
18 ferred to in subparagraph (A) (including an  
19 amendment to an exhibit thereto) that is exe-  
20 cuted to ensure that the Agreement is con-  
21 sistent with this Act.

22 (3) BOSQUE.—The term “bosque” means a gal-  
23 lery forest located along the riparian floodplain of a  
24 stream, riverbank, or lake.

1           (4) CITY OF ESPAÑOLA.—The term “City of  
2           Española” means a municipal corporation of the  
3           State.

4           (5) ENFORCEABILITY DATE.—The term “En-  
5           forceability Date” means the date described in sec-  
6           tion 8.

7           (6) OHKAY OWINGEH; PUEBLO.—The terms  
8           “Ohkay Owingeh” and “Pueblo” mean the body  
9           politic and federally recognized Indian nation.

10          (7) PARTIAL FINAL JUDGMENT AND DECREE.—  
11          The term “Partial Final Judgment and Decree”  
12          means a final or interlocutory partial final judgment  
13          and decree entered by the United States District  
14          Court for the District of New Mexico with respect  
15          to the water rights of Ohkay Owingeh in the Rio  
16          Chama Stream System—

17                 (A) that is substantially in the form de-  
18                 scribed in the Agreement, as amended to ensure  
19                 consistency with this Act; and

20                 (B) from which no further appeal may be  
21                 taken.

22          (8) PUEBLO GRANT.—The term “Pueblo  
23          Grant” means the land recognized and confirmed by  
24          the Federal patent issued to Ohkay Owingeh (then

1 known as the “Pueblo of San Juan”) under the Act  
2 of December 22, 1858 (11 Stat. 374, chapter V).

3 (9) PUEBLO LAND.—The term “Pueblo Land”  
4 means any real property that is—

5 (A) held by the United States in trust for  
6 Ohkay Owingeh within the Rio Chama Stream  
7 System;

8 (B) owned by the Pueblo within the Rio  
9 Chama Stream System before the Enforce-  
10 ability Date; or

11 (C) acquired by the Pueblo within the Rio  
12 Chama Stream System on or after the Enforce-  
13 ability Date if the real property is located—

14 (i) within the exterior boundaries of  
15 the Pueblo Grant; or

16 (ii) within the exterior boundaries of  
17 any territory set aside for the Pueblo by  
18 law, Executive order, or court decree.

19 (10) PUEBLO WATER RIGHTS.—The term  
20 “Pueblo Water Rights” means the water rights of  
21 Ohkay Owingeh in the Rio Chama Stream System—

22 (A) as identified in the Agreement and sec-  
23 tion 5; and

24 (B) as confirmed in the Partial Final  
25 Judgment and Decree.

1           (11) RIO CHAMA STREAM SYSTEM.—The term  
2           “Rio Chama Stream System” means the Rio Chama  
3           surface water drainage basin within the State, as il-  
4           lustrated in Exhibit A to the Agreement.

5           (12) SECRETARY.—The term “Secretary”  
6           means the Secretary of the Interior.

7           (13) SIGNATORY ACEQUIA.—The term “Signa-  
8           tory Acequia” means an acequia that is a signatory  
9           to the Agreement.

10          (14) STATE.—The term “State” means the  
11          State of New Mexico.

12          (15) TRUST FUND.—The term “Trust Fund”  
13          means the Ohkay Owingeh Water Rights Settlement  
14          Trust Fund established under section 6(a).

15 **SEC. 4. RATIFICATION OF AGREEMENT.**

16          (a) RATIFICATION.—

17           (1) IN GENERAL.—Except as modified by this  
18           Act, and to the extent that the Agreement does not  
19           conflict with this Act, the Agreement is authorized,  
20           ratified, and confirmed.

21           (2) AMENDMENTS.—If an amendment to the  
22           Agreement, or to any exhibit to the Agreement re-  
23           quiring the signature of the Secretary, is executed in  
24           accordance with this Act to make the Agreement

1 consistent with this Act, the amendment is author-  
2 ized, ratified, and confirmed.

3 (b) EXECUTION.—

4 (1) IN GENERAL.—To the extent the Agreement  
5 does not conflict with this Act, the Secretary shall  
6 execute the Agreement, including all exhibits thereto  
7 or parts of the Agreement requiring the signature of  
8 the Secretary.

9 (2) MODIFICATIONS.—Nothing in this Act pro-  
10 hibits the Secretary, after execution of the Agree-  
11 ment, from approving any modification to the Agree-  
12 ment, including an exhibit to the Agreement, that is  
13 consistent with this Act, to the extent that the modi-  
14 fication does not otherwise require congressional ap-  
15 proval under section 2116 of the Revised Statutes  
16 (25 U.S.C. 177) or any other applicable provision of  
17 Federal law.

18 (c) ENVIRONMENTAL COMPLIANCE.—

19 (1) IN GENERAL.—In implementing the Agree-  
20 ment and this Act, the Secretary shall comply  
21 with—

22 (A) the Endangered Species Act of 1973  
23 (16 U.S.C. 1531 et seq.);

1 (B) the National Environmental Policy Act  
2 of 1969 (42 U.S.C. 4321 et seq.), including the  
3 implementing regulations of that Act; and

4 (C) all other applicable Federal environ-  
5 mental laws and regulations.

6 (2) COMPLIANCE AND COORDINATION.—

7 (A) IN GENERAL.—In implementing the  
8 Agreement and this Act, the Pueblo shall pre-  
9 pare any necessary environmental documents  
10 consistent with—

11 (i) the Endangered Species Act of  
12 1973 (16 U.S.C. 1531 et seq.);

13 (ii) the National Environmental Policy  
14 Act of 1969 (42 U.S.C. 4321 et seq.), in-  
15 cluding the implementing regulations of  
16 that Act; and

17 (iii) all other applicable Federal envi-  
18 ronmental laws and regulations.

19 (B) AUTHORIZATIONS.—The Secretary  
20 shall—

21 (i) independently evaluate the docu-  
22 mentation required under subparagraph  
23 (A); and

24 (ii) be responsible for the accuracy,  
25 scope, and contents of that documentation.



1           (C) COORDINATION WITH ARMY CORPS OF  
2           ENGINEERS.—For any bosque restoration or  
3           improvement project carried out by the Pueblo  
4           with funds appropriated under this Act, the  
5           Pueblo shall coordinate with the Corps of Engi-  
6           neers to ensure that work on the project shall  
7           not interfere with or adversely affect any au-  
8           thorized Federal project that is under the juris-  
9           diction and authority of the Corps of Engineers.

10          (3) EFFECT OF EXECUTION.—The execution of  
11          the Agreement by the Secretary under this section  
12          shall not constitute a major Federal action under  
13          the National Environmental Policy Act of 1969 (42  
14          U.S.C. 4321 et seq.).

15          (4) COSTS.—Any costs associated with the per-  
16          formance of the compliance and coordination activi-  
17          ties under this subsection shall be paid from funds  
18          deposited in the Trust Fund, subject to the condi-  
19          tion that any costs associated with the performance  
20          of Federal approval or other review of that compli-  
21          ance work or costs associated with inherently Fed-  
22          eral functions shall remain the responsibility of the  
23          Secretary, with the exception that costs for review of  
24          bosque restoration or improvement projects by the  
25          Corps of Engineers described in paragraph (2)(C)

1 shall be paid from funds deposited in the Trust  
2 Fund.

3 **SEC. 5. PUEBLO WATER RIGHTS.**

4 (a) TRUST STATUS OF THE PUEBLO WATER  
5 RIGHTS.—The Pueblo Water Rights shall be held in trust  
6 by the United States on behalf of Ohkay Owingeh in ac-  
7 cordance with the Agreement and this Act.

8 (b) FORFEITURE AND ABANDONMENT.—

9 (1) IN GENERAL.—The Pueblo Water Rights  
10 shall not be subject to loss through non-use, for-  
11 feiture, abandonment, or other operation of law.

12 (2) STATE LAW-BASED WATER RIGHTS.—State-  
13 law based water rights acquired by Ohkay Owingeh,  
14 or by the United States on behalf of Ohkay  
15 Owingeh, after the date for inclusion in the Partial  
16 Final Judgment and Decree, shall not be subject to  
17 forfeiture, abandonment, or permanent alienation  
18 from the time they are acquired.

19 (c) USE.—Any use of the Pueblo Water Rights shall  
20 be subject to the terms and conditions of the Agreement  
21 and this Act.

22 (d) AUTHORITY OF THE PUEBLO.—

23 (1) IN GENERAL.—Ohkay Owingeh may allo-  
24 cate, distribute, and lease the Pueblo Water Rights  
25 for use on Pueblo Land in accordance with the

1 Agreement, this Act, and applicable Federal law, in-  
2 cluding the Act of August 9, 1955 (25 U.S.C. 415  
3 et seq.) (commonly known as the “Long-Term Leas-  
4 ing Act”).

5 (2) USE OFF PUEBLO LAND.—

6 (A) IN GENERAL.—Ohkay Owingeh may  
7 allocate, distribute, and lease the Pueblo Water  
8 Rights for use off Pueblo Land in accordance  
9 with the Agreement, this Act, and applicable  
10 Federal law, subject to the approval of the Sec-  
11 retary.

12 (B) MAXIMUM TERM OF LEASES.—The  
13 maximum term of any lease, including all re-  
14 newals, under this paragraph shall not exceed  
15 99 years.

16 (e) ADMINISTRATION.—

17 (1) NO ALIENATION.—The Pueblo shall not  
18 permanently alienate any portion of the Pueblo  
19 Water Rights.

20 (2) PURCHASES OR GRANTS OF LAND FROM IN-  
21 DIANS.—An authorization provided by this Act for  
22 the allocation, distribution, leasing, or other ar-  
23 rangement entered into pursuant to this Act shall be  
24 considered to satisfy any requirement for authoriza-  
25 tion of the action required by Federal law.

1           (3) PROHIBITION ON FORFEITURE.—The non-  
2           use of all or any portion of the Pueblo Water Rights  
3           by any water user shall not result in the forfeiture,  
4           abandonment, relinquishment, or other loss of all or  
5           any portion of the Pueblo Water Rights.

6 **SEC. 6. SETTLEMENT TRUST FUND.**

7           (a) ESTABLISHMENT.—The Secretary shall establish  
8           a trust fund, to be known as the “Ohkay Owingeh Water  
9           Rights Settlement Trust Fund”, to be managed, invested,  
10          and distributed by the Secretary and to remain available  
11          until expended, withdrawn, or reverted to the general fund  
12          of the Treasury, consisting of the amounts deposited in  
13          the Trust Fund under subsection (b), together with any  
14          investment earnings, including interest, earned on those  
15          amounts for the purpose of carrying out this Act.

16          (b) DEPOSITS.—The Secretary shall deposit in the  
17          Trust Fund the amounts made available pursuant to sec-  
18          tion 7(a).

19          (c) MANAGEMENT AND INTEREST.—

20                 (1) MANAGEMENT.—On receipt and deposit of  
21                 funds into the Trust Fund under subsection (b), the  
22                 Secretary shall manage, invest, and distribute all  
23                 amounts in the Trust Fund in a manner that is con-  
24                 sistent with the investment authority of the Sec-  
25                 retary under—

1 (A) the first section of the Act of June 24,  
2 1938 (25 U.S.C. 162a);

3 (B) the American Indian Trust Fund Man-  
4 agement Reform Act of 1994 (25 U.S.C. 4001  
5 et seq.); and

6 (C) this subsection.

7 (2) INVESTMENT EARNINGS.—In addition to  
8 the amounts deposited into the Trust Fund under  
9 subsection (b), any investment earnings, including  
10 interest, earned on those amounts held in the Trust  
11 Fund are authorized to be used in accordance with  
12 subsections (e) and (g).

13 (d) AVAILABILITY OF AMOUNTS.—

14 (1) IN GENERAL.—Amounts appropriated to,  
15 and deposited in, the Trust Fund, including any in-  
16 vestment earnings (including interest) earned on  
17 those amounts, shall be made available to Ohkay  
18 Owingeh by the Secretary beginning on the Enforce-  
19 ability Date, subject to the requirements of this sec-  
20 tion, except for funds to be made available to Ohkay  
21 Owingeh pursuant to paragraph (2).

22 (2) USE OF FUNDS.—Notwithstanding para-  
23 graph (1), not more than \$100,000,000 of the  
24 amounts deposited in the Trust Fund, including any  
25 investment earnings, including interest, earned on

1 those amounts, shall be available to Ohkay Owingeh  
2 for the following uses on the date on which the  
3 amounts are deposited in the Trust Fund:

4 (A) Diversions of surface water and  
5 groundwater to the Rio Chama bosque for im-  
6 mediate and essential restoration and mainte-  
7 nance of the bosque.

8 (B) Fulfillment of the contribution of the  
9 Pueblo under the Agreement for improvements  
10 to senior acequias on Pueblo Land supplying  
11 water to the Pueblo and non-Indians.

12 (C) Establishment and operation of the  
13 water rights management administrative de-  
14 partment of the Pueblo.

15 (D) Acquisition of water rights.

16 (E) Development of water infrastructure  
17 plans, preparing environmental compliance doc-  
18 uments, and water project engineering and con-  
19 struction.

20 (e) WITHDRAWALS.—

21 (1) WITHDRAWALS UNDER THE AMERICAN IN-  
22 DIAN TRUST FUND MANAGEMENT REFORM ACT OF  
23 1994.—

24 (A) IN GENERAL.—The Pueblo may with-  
25 draw any portion of the amounts in the Trust

1 Fund on approval by the Secretary of a Tribal  
2 management plan submitted by the Pueblo in  
3 accordance with the American Indian Trust  
4 Fund Management Reform Act of 1994 (25  
5 U.S.C. 4001 et seq.).

6 (B) REQUIREMENTS.—In addition to the  
7 requirements under the American Indian Trust  
8 Fund Management Reform Act of 1994 (25  
9 U.S.C. 4001 et seq.), the Tribal management  
10 plan under subparagraph (A) shall require that  
11 the Pueblo shall spend all amounts withdrawn  
12 from the Trust Fund, and any investment earn-  
13 ings (including interest) earned on those  
14 amounts through the investments under the  
15 Tribal management plan, in accordance with  
16 this Act.

17 (C) ENFORCEMENT.—The Secretary may  
18 carry out such judicial and administrative ac-  
19 tions as the Secretary determines to be nec-  
20 essary to enforce the Tribal management plan  
21 under subparagraph (A) to ensure that  
22 amounts withdrawn by the Pueblo from the  
23 Trust Fund under that subparagraph are used  
24 in accordance with this Act.

1           (2) WITHDRAWALS UNDER EXPENDITURE  
2 PLAN.—

3           (A) IN GENERAL.—Ohkay Owingeh may  
4 submit to the Secretary a request to withdraw  
5 funds from the Trust Fund pursuant to an ap-  
6 proved expenditure plan.

7           (B) REQUIREMENTS.—To be eligible to  
8 withdraw amounts under an expenditure plan  
9 under subparagraph (A), the Pueblo shall sub-  
10 mit to the Secretary an expenditure plan for  
11 any portion of the Trust Fund the Pueblo elects  
12 to withdraw pursuant to that subparagraph,  
13 subject to the condition that the amounts shall  
14 be used for the purposes described in this Act.

15           (C) INCLUSIONS.—An expenditure plan  
16 under subparagraph (A) shall include a descrip-  
17 tion of the manner and purpose for which the  
18 amounts proposed to be withdrawn from the  
19 Trust Fund will be used by Ohkay Owingeh, in  
20 accordance with this subsection and subsection  
21 (g).

22           (D) APPROVAL.—The Secretary shall ap-  
23 prove an expenditure plan submitted under sub-  
24 paragraph (A) if the Secretary determines that  
25 the plan—



1 (i) is reasonable; and

2 (ii) is consistent with, and will be used  
3 for, the purposes of this Act.

4 (E) ENFORCEMENT.—The Secretary may  
5 carry out such judicial and administrative ac-  
6 tions as the Secretary determines to be nec-  
7 essary to enforce an expenditure plan to ensure  
8 that amounts disbursed under this paragraph  
9 are used in accordance with this Act.

10 (f) EFFECT OF SECTION.—Nothing in this section  
11 gives Ohkay Owingeh the right to judicial review of a de-  
12 termination of the Secretary relating to whether to ap-  
13 prove a Tribal management plan under paragraph (1) of  
14 subsection (e) or an expenditure plan under paragraph (2)  
15 of that subsection, except under subchapter II of chapter  
16 5, and chapter 7, of title 5, United States Code (commonly  
17 known as the “Administrative Procedure Act”).

18 (g) USES.—The Trust Fund may only be used for  
19 the following purposes:

20 (1) Planning, permitting, designing, engineer-  
21 ing, constructing, reconstructing, replacing, rehabili-  
22 tating, operating, or repairing water production,  
23 treatment, or delivery infrastructure, including for  
24 domestic and municipal supply or wastewater infra-  
25 structure.

1           (2) Planning, permitting, designing, engineer-  
2           ing, constructing, reconstructing, replacing, rehabili-  
3           tating, operating, or repairing water production,  
4           treatment, or delivery infrastructure, acquisition of  
5           water, or on-farm improvements for irrigation, live-  
6           stock, and support of agriculture.

7           (3) Planning, permitting, designing, engineer-  
8           ing, constructing, reconstructing, replacing, rehabili-  
9           tating, operating, monitoring or other measures for  
10          watershed and endangered species habitat protec-  
11          tion, bosque restoration or improvement (including  
12          any required cost shares for and allowable contribu-  
13          tions to a Federal project or program), land and  
14          water rights acquisition, water-related Pueblo com-  
15          munity welfare and economic development, and costs  
16          relating to implementation of the Agreement.

17          (4) The management and administration of any  
18          water rights of the Pueblo.

19          (5) Ensuring environmental compliance in the  
20          development and construction of projects under this  
21          Act.

22          (h) LIABILITY.—The Secretary and the Secretary of  
23          the Treasury shall not be liable for the expenditure or in-  
24          vestment of any amounts withdrawn from the Trust Fund

1 by the Pueblo under paragraph (1) or (2) of subsection  
2 (e).

3 (i) EXPENDITURE REPORTS.—Ohkay Owingeh shall  
4 annually submit to the Secretary an expenditure report  
5 describing accomplishments and amounts spent from use  
6 of withdrawals under a Tribal management plan or an ex-  
7 penditure plan under paragraph (1) or (2) of subsection  
8 (e), as applicable.

9 (j) NO PER CAPITA DISTRIBUTIONS.—No portion of  
10 the Trust Fund shall be distributed on a per capita basis  
11 to any member of Ohkay Owingeh.

12 (k) TITLE TO INFRASTRUCTURE.—Title to, control  
13 over, and operation of any project constructed using funds  
14 from the Trust Fund shall remain in Ohkay Owingeh, ex-  
15 cept that title to projects that are improved with funds  
16 from the Trust Fund for the mutual benefit of the Pueblo  
17 and non-Indians, on property owned by non-Indians, shall  
18 remain with the underlying non-Indian owner.

19 (l) OPERATION, MAINTENANCE, AND REPLACE-  
20 MENT.—All operation, maintenance, and replacement  
21 costs of any project constructed using funds from the  
22 Trust Fund shall be the responsibility of Ohkay Owingeh.

23 **SEC. 7. FUNDING.**

24 (a) MANDATORY APPROPRIATIONS.—Out of any  
25 funds in the Treasury not otherwise appropriated, the Sec-

1   retary of the Treasury shall transfer to the Secretary for  
2   deposit in the Trust Fund \$745,000,000, to remain avail-  
3   able until expended, withdrawn, or reverted to the general  
4   fund of the Treasury.

5       (b) FLUCTUATION IN COSTS.—

6           (1) IN GENERAL.—The amount appropriated  
7           under subsection (a) shall be increased or decreased,  
8           as appropriate, by such amounts as may be justified  
9           by reason of ordinary fluctuations in costs, as indi-  
10          cated by the Bureau of Reclamation Construction  
11          Cost Index–Composite Trend.

12          (2) CONSTRUCTION COSTS ADJUSTMENT.—The  
13          amount appropriated under subsection (a) shall be  
14          adjusted to address construction cost changes nec-  
15          essary to account for unforeseen market volatility  
16          that may not otherwise be captured by engineering  
17          cost indices, as determined by the Secretary, includ-  
18          ing repricing applicable to the types of construction  
19          and current industry standards involved.

20          (3) REPETITION.—The adjustment process  
21          under this subsection shall be repeated for each sub-  
22          sequent amount appropriated until the applicable  
23          amount, as adjusted, has been appropriated.

24          (4) PERIOD OF INDEXING.—The period of in-  
25          dexing adjustment under this subsection for any in-

1       crement of funding shall start on June 1, 2023, and  
2       end on the date on which the funds are deposited in  
3       the Trust Fund.

4       (c) STATE COST SHARE.—Pursuant to the Agree-  
5       ment, the State shall contribute—

6           (1) \$98,500,000, as adjusted for inflation pur-  
7       suant to the Agreement, for Signatory Acequias  
8       ditch improvements, projects, and other purposes de-  
9       scribed in the Agreement;

10          (2) \$32,000,000, as adjusted for inflation pur-  
11       suant to the Agreement, for the City of Española for  
12       water system improvement projects; and

13          (3) \$500,000, to be deposited in an interest-  
14       bearing account, to mitigate impairment to non-  
15       Pueblo domestic and livestock groundwater rights as  
16       a result of new Pueblo water use.

17 **SEC. 8. ENFORCEABILITY DATE.**

18       The Enforceability Date shall be the date on which  
19       the Secretary publishes in the Federal Register a state-  
20       ment of findings that—

21           (1) to the extent that the Agreement conflicts  
22       with this Act, the Agreement has been amended to  
23       conform with this Act;

1           (2) the Agreement, as amended, has been exe-  
2           cuted by all parties to the Agreement, including the  
3           United States;

4           (3) the United States District Court for the  
5           District of New Mexico has approved the Agreement  
6           and has entered a Partial Final Judgment and De-  
7           cree;

8           (4) all the amounts appropriated under section  
9           7(a) have been appropriated and deposited in the  
10          Trust Fund;

11          (5) the State has—

12                (A) provided the funding under section  
13                7(e)(1) or entered into a funding agreement  
14                with the intended beneficiary for that funding;

15                (B) provided the funding under section  
16                7(e)(2) or entered into a funding agreement  
17                with the intended beneficiary for that funding;

18                (C) provided the funding under section  
19                7(e)(3) and deposited that amount into the ap-  
20                propriate funding account; and

21                (D) enacted legislation to amend State law  
22                to provide that the Pueblo Water Rights may  
23                be leased for a term not to exceed 99 years, in-  
24                cluding renewals; and

1           (6) the waivers and releases under section 9  
2           have been executed by Ohkay Owingeh and the Sec-  
3           retary.

4 **SEC. 9. WAIVERS AND RELEASES OF CLAIMS.**

5           (a) WAIVERS AND RELEASES OF CLAIMS BY OHKAY  
6 OWINGEH AND UNITED STATES AS TRUSTEE FOR OHKAY  
7 OWINGEH.—Subject to the reservation of rights and re-  
8 tention of claims under subsection (d), as consideration  
9 for recognition of the Pueblo Water Rights and other ben-  
10 efits described in the Agreement and this Act, Ohkay  
11 Owingeh and the United States, acting as trustee for  
12 Ohkay Owingeh, shall execute a waiver and release of all  
13 claims for—

14           (1) water rights within the Rio Chama Stream  
15 System that Ohkay Owingeh, or the United States  
16 acting as trustee for Ohkay Owingeh, asserted or  
17 could have asserted in any proceeding, including the  
18 Adjudication, on or before the Enforceability Date,  
19 except to the extent that such rights are recognized  
20 in the Agreement and this Act; and

21           (2) damages, losses, or injuries to water rights  
22 or claims of interference with, diversion of, or taking  
23 of water rights (including claims for injury to land  
24 resulting from such damages, losses, injuries, inter-  
25 ference, diversion, or taking of water rights) in the

1 Rio Chama Stream System that accrued at any time  
2 up to and including the Enforceability Date.

3 (b) WAIVERS AND RELEASES OF CLAIMS BY OHKAY  
4 OWINGEH AGAINST THE UNITED STATES.—Subject to the  
5 reservation of rights and retention of claims under sub-  
6 section (d), Ohkay Owingeh shall execute a waiver and re-  
7 lease of all claims against the United States (including any  
8 agency or employee of the United States) for water rights  
9 within the Rio Chama Stream System first arising before  
10 the Enforceability Date relating to—

11 (1) water rights within the Rio Chama Stream  
12 System that the United States, acting as trustee for  
13 Ohkay Owingeh, asserted or could have asserted in  
14 any proceeding, including the Adjudication, except to  
15 the extent that such rights are recognized as part of  
16 the Pueblo Water Rights under this Act;

17 (2) foregone benefits from non-Pueblo use of  
18 water, on and off Pueblo Land (including water  
19 from all sources and for all uses), within the Rio  
20 Chama Stream System;

21 (3) damage, loss, or injury to water, water  
22 rights, land, or natural resources due to loss of  
23 water or water rights (including damages, losses, or  
24 injuries to hunting, fishing, gathering, or cultural  
25 rights due to loss of water or water rights, claims



1 relating to interference with, diversion of, or taking  
2 of water, or claims relating to a failure to protect,  
3 acquire, replace, or develop water, water rights, or  
4 water infrastructure) within the Rio Chama Stream  
5 System;

6 (4) failure to establish or provide a municipal,  
7 rural, or industrial water delivery system on Pueblo  
8 Land within the Rio Chama Stream System;

9 (5) damage, loss, or injury to water, water  
10 rights, land, or natural resources due to construc-  
11 tion, operation, and management of irrigation  
12 projects on Pueblo Land or Federal land and facili-  
13 ties (including damages, losses, or injuries to fish  
14 habitat, wildlife, and wildlife habitat) within the Rio  
15 Chama Stream System;

16 (6) failure to provide for operation, mainte-  
17 nance, or deferred maintenance for any irrigation  
18 system or irrigation project within the Rio Chama  
19 Stream System;

20 (7) failure to provide a dam safety improvement  
21 to a dam on Pueblo Land within the Rio Chama  
22 Stream System;

23 (8) damage, loss, or injury to the bosque area  
24 of the Rio Chama due to the construction, operation,  
25 and maintenance of Abiquiu Dam and its associated

1 infrastructure and resulting Rio Chama flow man-  
2 agement;

3 (9) the litigation of claims relating to any water  
4 right of Ohkay Owingeh within the Rio Chama  
5 Stream System;

6 (10) the taking of the bosque property of the  
7 Pueblo within the Pueblo Grant on the Rio Chama  
8 and Rio Grande as asserted in *Ohkay Owingeh v.*  
9 *United States*, No. 22–1607L (Court of Federal  
10 Claims);

11 (11) failure of the United States to acknowl-  
12 edge and protect aboriginal rights to water in the  
13 Rio Chama Stream System;

14 (12) the failure of the United States to develop  
15 the irrigation water resources in the Rio Chama  
16 Stream System on the Pueblo Grant, including fail-  
17 ure to—

18 (A) construct and deliver water through  
19 the Highline Canal;

20 (B) make improvements to the Chamita  
21 Ditch; and

22 (C) repurchase arable land unlawfully ob-  
23 tained by non-Indians;

24 (13) the failure of the United States to prevent  
25 or remedy non-Indians’ trespass on or seizure of ar-

1       able Pueblo lands in the Rio Chama Stream System  
2       on the Pueblo Grant; and

3               (14) the negotiation, execution, or adoption of  
4       the Agreement (including exhibits) and this Act.

5       (c) EFFECTIVE DATE.—The waivers and releases de-  
6       scribed in subsections (a) and (b) shall take effect on the  
7       Enforceability Date.

8       (d) RESERVATION OF RIGHTS AND RETENTION OF  
9       CLAIMS.—Notwithstanding the waivers and releases under  
10       subsection (a) and (b), the Pueblo and the United States,  
11       acting as trustee for Ohkay Owingeh, shall retain all  
12       claims relating to—

13               (1) the enforcement of, or claims accruing after  
14       the Enforceability Date relating to, water rights rec-  
15       ognized under the Agreement, this Act, or the Par-  
16       tial Final Judgment and Decree entered in the Ad-  
17       judication;

18               (2) activities affecting the quality of water, in-  
19       cluding claims under—

20                       (A) the Comprehensive Environmental Re-  
21                       sponse, Compensation, and Liability Act of  
22                       1980 (42 U.S.C. 9601 et seq.), including claims  
23                       for damages to natural resources;

24                       (B) the Safe Drinking Water Act (42  
25                       U.S.C. 300f et seq.);

1 (C) the Federal Water Pollution Control  
2 Act (33 U.S.C. 1251 et seq.); and

3 (D) any regulations implementing the Acts  
4 described in subparagraphs (A) through (C);

5 (3) the right to use and protect water rights ac-  
6 quired after the date of enactment of this Act;

7 (4) damage, loss, or injury to land or natural  
8 resources that is not due to loss of water or water  
9 rights, including hunting, fishing, gathering, or cul-  
10 tural rights;

11 (5) all rights, remedies, privileges, immunities,  
12 and powers not specifically waived and released pur-  
13 suant to this Act or the Agreement; and

14 (6) loss of water or water rights in locations  
15 outside of the Rio Chama Stream System.

16 (e) EFFECT OF AGREEMENT AND ACT.—Nothing in  
17 the Agreement or this Act—

18 (1) reduces or extends the sovereignty (includ-  
19 ing civil and criminal jurisdiction) of any govern-  
20 ment entity;

21 (2) affects the ability of the United States, as  
22 sovereign, to carry out any activity authorized by  
23 law, including—

1 (A) the Comprehensive Environmental Re-  
2 sponse, Compensation, and Liability Act of  
3 1980 (42 U.S.C. 9601 et seq.);

4 (B) the Safe Drinking Water Act (42  
5 U.S.C. 300f et seq.);

6 (C) the Federal Water Pollution Control  
7 Act (33 U.S.C. 1251 et seq.);

8 (D) the Solid Waste Disposal Act (42  
9 U.S.C. 6901 et seq.); and

10 (E) any regulations implementing the Acts  
11 described in subparagraphs (A) through (D);

12 (3) affects the ability of the United States to  
13 act as trustee for the Pueblo (consistent with this  
14 Act), any other pueblo or Indian Tribe, or an allot-  
15 tee of any other pueblo or Indian Tribe;

16 (4) confers jurisdiction on any State court—

17 (A) to interpret Federal law relating to  
18 health, safety, or the environment;

19 (B) to determine the duties of the United  
20 States or any other party under Federal law re-  
21 lating to health, safety, or the environment;

22 (C) to conduct judicial review of any Fed-  
23 eral agency action; or

24 (D) to interpret Pueblo law; or

1           (5) waives any claim of a member of Ohkay  
2 Owingeh in an individual capacity that does not de-  
3 rive from a right of the Pueblo.

4           (f) TOLLING OF CLAIMS.—

5           (1) IN GENERAL.—Each applicable period of  
6 limitation and time-based equitable defense relating  
7 to a claim described in this section shall be tolled for  
8 the period beginning on the date of enactment of  
9 this Act and ending on the Enforceability Date.

10           (2) EFFECT OF SUBSECTION.—Nothing in this  
11 subsection revives any claim or tolls any period of  
12 limitation or time-based equitable defense that ex-  
13 pired before the date of enactment of this Act.

14           (3) LIMITATION.—Nothing in this section pre-  
15 cludes the tolling of any period of limitation or any  
16 time-based equitable defense under any other appli-  
17 cable law.

18           (g) EXPIRATION.—

19           (1) IN GENERAL.—This Act shall expire in any  
20 case in which the Secretary fails to publish a state-  
21 ment of findings under section 8 by not later than—

22                   (A) July 1, 2038; or

23                   (B) such alternative later date as is agreed  
24 to by Ohkay Owingeh and the Secretary, after  
25 providing reasonable notice to the State.

1           (2) CONSEQUENCES.—If this Act expires under  
2 paragraph (1)—

3           (A) the waivers and releases under sub-  
4 sections (a) and (b) shall—

5           (i) expire; and

6           (ii) have no further force or effect;

7           (B) the authorization, ratification, con-  
8 firmation, and execution of the Agreement  
9 under section 4 shall no longer be effective;

10          (C) any action carried out by the Sec-  
11 retary, and any contract or agreement entered  
12 into, pursuant to this Act shall be void;

13          (D) any unexpended Federal funds appro-  
14 priated or made available to carry out the ac-  
15 tivities authorized by this Act, together with  
16 any interest earned on those funds, and any  
17 water rights or contracts to use water and title  
18 to other property acquired or constructed with  
19 Federal funds appropriated or made available  
20 to carry out the activities authorized by this Act  
21 shall be returned to the Federal Government,  
22 unless otherwise agreed to by Ohkay Owingeh  
23 and the United States and approved by Con-  
24 gress; and

1           (E) except for Federal funds used to ac-  
2           quire or construct property that is returned to  
3           the Federal Government under subparagraph  
4           (D), the United States shall be entitled to offset  
5           any Federal funds made available to carry out  
6           this Act that were expended or withdrawn, or  
7           any funds made available to carry out this Act  
8           from other Federal authorized sources, together  
9           with any interest accrued on those funds,  
10          against any claims against the United States—

11                           (i) relating to—

12   (I) water rights in the State as-  
13   serted by—

14   (aa) Ohkay Owingeh; or

15   (bb) any user of the Pueblo  
16   Water Rights; or

17   (II) any other matter covered by  
18   subsection (b); or

19   (ii) in any future settlement of water  
20   rights of Ohkay Owingeh.

21 **SEC. 10. SATISFACTION OF CLAIMS.**

22           The benefits provided under this Act shall be in com-  
23           plete replacement of, complete substitution for, and full  
24           satisfaction of any claim of Ohkay Owingeh against the



1 United States that is waived and released by Ohkay  
2 Owingeh pursuant to section 9(b).

3 **SEC. 11. MISCELLANEOUS PROVISIONS.**

4 (a) NO WAIVER OF SOVEREIGN IMMUNITY BY THE  
5 UNITED STATES.—Nothing in this Act waives the sov-  
6 ereign immunity of the United States.

7 (b) OTHER TRIBES NOT ADVERSELY AFFECTED.—  
8 Nothing in this Act quantifies or diminishes any land or  
9 water right, or any claim or entitlement to land or water,  
10 of an Indian Tribe, band, pueblo, or community other than  
11 Ohkay Owingeh.

12 (c) EFFECT ON CURRENT LAW.—Nothing in this Act  
13 affects any provision of law (including regulations) in ef-  
14 fect on the day before the date of enactment of this Act  
15 with respect to pre-enforcement review of any Federal en-  
16 vironmental enforcement action.

17 (d) CONFLICT.—In the event of a conflict between  
18 the Agreement and this Act, this Act shall control.

19 (e) HOLD HARMLESS.—For any bosque restoration  
20 or improvement project carried out by the Pueblo with  
21 funds appropriated under this Act, the Pueblo shall hold  
22 and save the United States free from damages due to the  
23 construction or operation and maintenance of the project.

1 **SEC. 12. ANTIDEFICIENCY.**

2       The United States shall not be liable for any failure  
3 to carry out any obligation or activity authorized by this  
4 Act, including any obligation or activity under the Agree-  
5 ment, if adequate appropriations are not provided ex-  
6 pressly by Congress to carry out the purposes of this Act.

○