

**TESTIMONY OF
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U.S. DEPARTMENT OF THE INTERIOR
SENATE COMMITTEE ON INDIAN AFFAIRS**

**S. 4370, Tribal Forest Protection Act Amendments Act
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 purposes**

July 25, 2024

Chairman Schatz, Vice Chairman Murkowski, and Members of the Committee, thank you for the opportunity to present testimony on S. 4370, Tribal Forest Protection Act Amendments Act, and S. 4505, the Ohkay Owingeh Rio Chama Water Rights Settlement Act of 2024.

S. 4370, Tribal Forest Protection Act Amendments Act

The Tribal Forest Protection Act (TFPA) allows federally recognized Tribes to propose forest or rangeland projects to be conducted on lands managed by the Bureau of Land Management (BLM) and U.S. Department of Agriculture (USDA) Forest Service to reduce threats to adjacent Tribal lands, trust resources, and values. S. 4370 would amend the TFPA to provide for participation of Alaska Native Corporations (ANC), remove the requirement that projects to achieve land management goals occur on lands bordering or adjacent to Tribal lands, and extend application of TFPA to projects occurring on Indian forest land or rangeland.

On November 15, 2021, Secretary of the Interior Haaland and Secretary of Agriculture Vilsack issued Secretary’s Order 3403, *Joint Secretarial Order on Fulfilling the Trust Responsibility to Indian Tribes in the Stewardship of Federal Lands and Waters* (S.O. 3403, Order). At the Tribal Nations Summit on November 22, 2022, Secretary of Commerce Raimondo joined S.O. 3403.

S.O. 3403 affirms the trust relationship between the United States and Tribes and acknowledges that the United States would benefit from the land management expertise and practices Tribal Nations have developed over centuries. The Order is also a commitment “to ensure that Tribal governments play an integral role in decision making related to the management of [F]ederal lands and waters through consultation, capacity building, and other means consistent with applicable authority.”

The Department of the Interior (Department) recognizes that forest and ecosystem health does not stop at the border of Tribal lands. The Department is committed to improving the stewardship of our Nation’s Federal forest lands by strengthening the role of Tribal communities in Federal land management, honoring Tribal sovereignty, and supporting the priorities of Tribal Nations. S. 4370 aligns with these important Administration priorities, and the Department supports the bill.

The Department defers to the USDA regarding impacts to lands managed by the USDA Forest Service.

Background

The TFPA authorizes the Department to enter into a contract or agreement with Tribes to carry out projects to protect Indian forest land or rangeland, including proposals to restore Federal land that borders on or is adjacent to Indian forest land or rangeland. The statute defines “Indian forest land or rangeland” as “land that . . . is held in trust by, or with a restriction against alienation by, the United States for an Indian tribe or a member of an Indian tribe,” and is “forest land . . . ; or . . . has a cover of grasses, brush, or any similar vegetation; or . . . formerly had a forest cover or vegetative cover that is capable of restoration.” Covered projects must meet certain criteria, including that the BLM-managed lands involved must be adjacent to the Tribe’s trust or restricted fee lands; those lands must be under the jurisdiction of the Tribe; pose a fire, disease, or other threat to those trust lands or be in need of land restoration activities; and present or involve a feature or circumstance unique to that Tribe (including treaty rights or biological, archaeological, historical, or cultural circumstances). The TFPA requires that the Department respond to such projects within 120 days of receiving a proposal. If the Department denies a Tribe’s request to enter into an agreement, the TFPA requires the agency to provide the Tribe with an explanation for its decision, and to propose consultation with the Tribe. Under the TFPA, Tribes and the Department have engaged in mutually beneficial work to improve forest and grassland conditions and protect Tribal lands and communities from risks.

Projects proposed by a Tribe under the TFPA may be carried out through an Indian Self-Determination and Education Assistance Act (ISDEAA) funding agreement. Like the ISDEAA, the TFPA may extend to ANCs as well as federally recognized Tribes—although the reference to trust or restricted lands, and the requirement that the lands be under the jurisdiction of the Tribe, means that ANCs are practically excluded from participation under the statute.

Analysis

S. 4370 would expand the definition of “Indian forest land or rangeland” to include land in the state of Alaska that is held by an ANC under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et. seq.) or has “a special geographic, historical, or cultural significance to the Indian tribe.” The bill also removes the requirement that projects occur on Federal lands managed by the BLM or the USDA Forest Service that are adjacent to Tribal lands. Rather, S. 4370 requires Federal lands present or involve a special geographic, historic, or cultural significance to the Tribe. Expanding the definition of “Indian forest land or rangeland” provides clarity for the use of TFPA by ANCs. Further, removing the requirement that projects occur on Federal lands bordering or adjacent to Tribal lands removes ambiguity pertaining to proximity. The BLM supports these amendments to reduce the threats to Tribal forest lands and rangeland, trust resources, and values.

S. 4370 also expands the lands on which Tribes may carry out land management activities to include Indian forest land or rangeland; requires the Department to submit to Congress a report describing the Tribal requests received and agreements or contracts that have been entered into;

and authorizes the appropriation of \$15 million per year from 2025 through 2030 to carry out the Act. The TFPA has been successfully used to address management of lands administered by the BLM and USDA Forest Service that are a priority to Tribes due to their associated risks to Tribal forest land resources. The Department notes that without more specificity in the proposed bill's definition, there is a risk that expanding the TFPA to include Tribal lands could potentially result in duplicate efforts and the comingling of trustee obligations by the Bureau of Indian Affairs (BIA), USDA Forest Service, and the BLM, as the BIA administers programs including forest management and wildfire fuels reduction on lands held in trust for Tribes. However, in any format, this proposal would further Tribal ability to protect and restore forest lands across boundaries as threats to and the overall health of these lands do not stop at the boundaries of Tribal and Federal lands.

S. 4370 could allow for a TFPA project to occur in part or in whole on trust lands managed under the authority of the Bureau of Indian Affairs (BIA). We would welcome the opportunity to work with the Sponsor and the Committee on revisions to clearly define the role of the BIA for such projects. Finally, the Department would welcome the opportunity to work with the Sponsor on revisions that clarify agency financial responsibility for cross-jurisdictional projects.

The Department would welcome the opportunity to work with the Sponsor and the Committee to ensure that the expansion of the TFPA to apply to Tribal lands results in complementary, rather than duplicative, efforts.

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 purposes

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

III. Proposed Ohkay Owingeh Settlement Legislation

S. 4505 would resolve all of Ohkay Owingeh'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 Owingeh, 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 Owingeh's water rights to approximately 1,756 acre-feet 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 Owingeh 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 Owingeh 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 Owingeh would promulgate a water code, which would govern permitting of uses of its water; provide processes for protests by parties affected by Ohkay Owingeh permitting decisions; and ensure that water use under an Ohkay Owingeh 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 Owingeh 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 Owingeh 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.