

**STATEMENT OF  
BRYAN NEWLAND  
ASSISTANT SECRETARY FOR INDIAN AFFAIRS  
U.S. DEPARTMENT OF THE INTERIOR**

**SENATE COMMITTEE ON INDIAN AFFAIRS**

Aanii (Hello)! Good afternoon, Chairman Schatz, Vice Chairman Murkowski, and Members of the Committee. My name is Bryan Newland. I am the Assistant Secretary for Indian Affairs at the Department of the Interior (Department). Thank you for the opportunity to present testimony regarding S. 4896, the Pueblos of Jemez and Zia Water Rights Settlement Act of 2022; S. 4898, the Pueblos of Acoma and Laguna Water Rights Settlement Act of 2022; and S. 4870, the Tule River Tribe Reserved Water Rights Settlement Act of 2022. S. 4896 and S. 4898 would approve and provide authorizations to carry out the settlement of certain water rights claims of the Acoma, Laguna, Jemez, and Zia Pueblos (Pueblos) in New Mexico, and S. 4870 would approve and provide authorizations to carry out the settlement of all water rights claims in the State of California of the Tule River Tribe.

**I. Introduction**

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.

Congress plays an important role in approving Indian water rights settlements and we stand ready to work with this Committee and Members of Congress to advance Indian water rights settlements.

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.

## **II. New Mexico Water Settlements**

### **A. Historical Context**

Before discussing the proposed settlements and the Administration's position on them, it is important to provide background on the disputes that led to the settlements. Like other Pueblos in New Mexico, the four Pueblos were agricultural people living in established villages when the Spanish explorers first came to New Mexico. Before the Pueblos' 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 Pueblo rights.

#### **1. Jemez and Zia Pueblos**

The Rio Jemez basin, located in north-central New Mexico and to the northwest of Albuquerque, is a major tributary of the Rio Grande and is home to the Pueblos of Jemez and Zia. In total, the Pueblos hold nearly 250,000 acres (approximately 89,600 acres for Jemez Pueblo and 160,000 acres for Zia Pueblo).

Historic increases in water use by non-Indians impacted, and continue to impact, the two Pueblos' ability to have access to adequate surface and groundwater supplies. Increased groundwater pumping by non-Indians, pursuant to permits issued by the State of New Mexico, make the Pueblos' access to groundwater supplies increasingly difficult.

#### **2. Acoma and Laguna Pueblos**

The Rio San Jose, located in west-central New Mexico and west of Albuquerque, is a tributary of the Rio Puerco, which flows into the Rio Grande. The area is also home to the two Pueblos of Acoma and Laguna. In total, the Pueblos hold approximately 1.064 million acres (over 563,000 acres for Acoma Pueblo and over 501,000 acres for Laguna Pueblo).

While there were small communities established by Spain and Mexico on smaller tributaries of the Rio San Jose, there were no mainstem upstream users disrupting the Pueblos' water use until the United States' acquisition of the territory. The establishment by the United States of Fort Wingate near Ojo del Gallo spring in 1862, and subsequent use of the area by the Village of San Rafael, resulted in the diversion of spring flow that had previously provided a significant contribution to Rio San Jose flows that had been available to both Pueblos. Acequias on Rio San Jose tributaries began diverting water from the system in the late 19<sup>th</sup> century to the detriment of the Pueblos. Non-Indian water users' construction of a dam on Bluewater Creek, above and upstream of Acoma Pueblo, also reduced flows to the Rio San Jose, impacting both Pueblos. As the non-Indian water users attempted to irrigate more and more acreage, they turned to groundwater. This groundwater pumping siphoned off water that would have flowed as surface water in the Rio San Jose for the Pueblos' use.

Groundwater depletions in the Rio San Jose basin increased after uranium was discovered in the Grants Mineral Belt in the 1950s. The uranium was located in the same rock formations where water was stored, and that water supplied perennial springs within the basin, many of which contributed to Rio San Jose flows. These aquifers, and those located above them, were dewatered by mining companies, resulting in depleted spring flow contributions to the Rio San Jose. Uranium milling facilities also consumed large amounts of groundwater. The growth of this mining economy and the concomitant growth of non-Indian communities, such as the City of Grants, increased water use in the Rio San Jose basin to the detriment of the Pueblos.

## **B. Water Resources of the Pueblos**

In 1983, general stream adjudication of both the Rio San Jose (to resolve the dispute over the water rights of Acoma Pueblo and Laguna Pueblo, as well as the Navajo Nation) and the Rio Jemez (to resolve the dispute over the water rights of Jemez Pueblo and Zia Pueblo, as well as Santa Ana Pueblo) were initiated in New Mexico. Negotiations regarding potential settlement of the Pueblos' water rights claims have been ongoing since 1993, when the United States established teams to negotiate comprehensive settlements of all the Navajo Nation and Pueblos' water rights in their respective basins.

The Pueblos are located in an arid region of New Mexico, and drought is a common occurrence that has impacted, and continues to impact, all four Pueblos. Recent effects of global warming and climate change are exacerbating these effects and surface water supplies are dwindling.

Since 1996, Jemez and Zia Pueblos and non-Indian water users have been operating under a negotiated irrigation rotation agreement. The lack of reliable water supply continues to impact the two Pueblos' ability to sustain their agricultural practices and to move forward with water development projects to benefit the Pueblos and their members.

For Acoma and Laguna Pueblos, the long-term pumping of groundwater and unimpeded diversion of surface water by non-Indian water users has resulted in significant impacts to the water supply. Even if the Pueblos were able to successfully curtail the water use of non-Indian junior users as part of the ongoing adjudication, the Rio San Jose system would not recover to provide the historic flow levels for the two Pueblos for several decades.

## **C. Proposed Jemez and Zia Pueblos Settlement Legislation**

Jemez and Zia Pueblos, the State of New Mexico, and non-Indian water users executed a settlement agreement earlier this year, quantifying the rights of the two Pueblos and reaching agreement on other key issues, including the requirements and parameters of a possible future Augmentation Project, which the Pueblos and non-Indian water users may construct to improve infrastructure and provide groundwater to firm up the irrigation water supply for certain agricultural acreage. The United States is not a signatory to the 2022 settlement agreement, nor is Santa Ana Pueblo, which wishes to continue to litigate its claims in the adjudication.

S. 4896 would resolve all of the Jemez and Zia Pueblos' water rights claims in the Rio Jemez Basin in New Mexico; ratify and confirm the water rights settlement agreement among the Pueblos, the State of New Mexico, and non-Indian water users and authorize the Secretary of the Interior to sign the settlement agreement; provide protections for non-Indian water users from

priority calls by the Pueblos; require the Pueblos to promulgate Pueblo Water Codes and ensure that certain uses and changes in use of the Pueblos' water rights do not impair existing non-Indian water users; and authorize funds to implement the settlement agreement.

S. 4896 ratifies and confirms the Jemez and Zia Pueblos' water rights to over 9,000 acre-feet per year (AFY)—6,055 AFY for Jemez Pueblo and 3,699.4 AFY for Zia Pueblo—from various surface water and groundwater sources on each Pueblo. These amounts include 1,200 AFY of future groundwater use for economic development for each Pueblo.

S. 4896 also protects non-Indian water users, as the Jemez and Zia Pueblos have agreed to not make priority calls for their senior rights on all decreed water rights of junior non-Indian users. In addition, the Pueblos have agreed to promulgate Pueblo water codes, which will govern permitting of uses of the Pueblos' water rights; provide processes for protests by parties affected by Pueblo permitting decisions; and ensure that water use under a Pueblo permit does not impair existing surface and groundwater rights.

Finally, S. 4896 establishes Trust Funds for both Pueblos totaling \$490 million (\$290 million for Jemez Pueblo and \$200 million for Zia Pueblo), to be indexed, that the Pueblos can use to develop water infrastructure on the two Pueblos as they determine necessary and on their own timeframe. Monies in the fund can be used by the Jemez and Zia Pueblos for: planning, permitting, designing, engineering, constructing, operating, maintaining, and repairing water production, treatment, delivery infrastructure, and the Augmentation Project; Pueblo water rights management and administration; watershed protection and enhancement; support of agriculture; water-related Pueblo community welfare and economic development; costs relating to implementation of the settlement; and environmental compliance in development and construction of infrastructure. The State of New Mexico has also agreed to contribute just over \$20 million to provide for benefits that will be realized by non-Indian water users, including \$500,000 for a fund to mitigate impairment to non-Indian domestic well and livestock well users resulting from new or changed Pueblo water uses.

#### **D. Proposed Acoma and Laguna Pueblos Settlement Legislation**

Acoma and Laguna Pueblos, the State of New Mexico, and non-Indian water users executed a settlement agreement earlier this year, setting out the water rights to be quantified for the two Pueblos and reaching agreement on other key issues, including the requirements and parameters of a possible future project to import water to Pueblo lands. The United States is not a signatory to the 2022 settlement agreement, nor is the Navajo Nation. The Nation is working with the parties to achieve settlement on its claims in the Rio San Jose basin.

S. 4898 would resolve all of the Acoma and Laguna Pueblos' water rights claims in the Rio San Jose basin in New Mexico; ratify and confirm the water rights settlement agreement among the Pueblos, the State of New Mexico, and non-Indian water users and authorize the Secretary of the Interior to sign the settlement agreement; provide protections for existing non-Indian water users from priority calls by the Pueblos; require the Pueblos to promulgate Pueblo Water Codes and ensure that certain uses and changes in use of the Pueblos' water rights do not impair existing non-Indian water users; and authorize funds to implement the settlement agreement. In addition, the Pueblos are conditionally settling their claims in the Rio Salado (Acoma Pueblo) and Rio Puerco (Laguna Pueblo) basins.

S. 4898 would ratify and confirm the Pueblos' water rights to over 20,000 acre-feet per year (AFY)—7,982 AFY for Acoma Pueblo and 12,263 AFY for Laguna Pueblo—from various surface water and groundwater resources on each Pueblo. These amounts include 1,300 AFY of future groundwater use for economic development for each Pueblo.

S. 4898 would also protect non-Indian water users, as the Acoma and Laguna Pueblos have agreed to not make priority calls for their senior rights on the water rights of junior non-Indian users in existence at the time that the settlement becomes enforceable. In addition, the Pueblos have agreed to promulgate Pueblo water codes, which will govern permitting of uses of the Pueblos' water rights; provide processes for protests by parties affected by Pueblo permitting decisions; and ensure that water use under a Pueblo permit does not impair existing surface and groundwater rights.

Finally, S. 4898 would establish Trust Funds for both Pueblos totaling \$850 million. Acoma Pueblo would receive \$311.75 million, and Laguna Pueblo would receive \$493.25 million, to be indexed, that the Pueblos can use to develop water infrastructure on the two Pueblos as they determine necessary and on their own timeframe. In addition, \$45 million is to be allocated to both Pueblos jointly to use for repairs at the existing Acomita Dam.

Of the monies that would go to each Pueblo individually, \$40 million could be spent on operation, maintenance, and repair of Pueblo water infrastructure for domestic, commercial, municipal, and industrial uses (\$14 million for Acoma Pueblo and \$26 million for Laguna Pueblo) and \$5 million could be spent on feasibility studies for water supply infrastructure to serve Pueblo domestic, commercial, municipal, and industrial water uses (\$1.75 million for Acoma Pueblo and \$3.25 million for Laguna Pueblo). The remaining \$760 million (\$296 million for Acoma Pueblo and \$464 million for Laguna Pueblo) could be used by the Pueblos for: acquiring water rights or water supply; planning, permitting, designing, engineering, constructing, operating, rehabilitating, and repairing water production, treatment, or delivery infrastructure; Pueblo water rights management and administration; watershed protection and enhancement; support of agriculture; water-related Pueblo community welfare and economic development; costs relating to implementation of the settlement; and environmental compliance in development and construction of infrastructure. The State of New Mexico has also agreed to contribute just over \$36 million to provide for benefits that would be realized by non-Indian water users, including \$500,000 for a fund to mitigate impairment to non-Indian domestic well and livestock well users resulting from new or changed Pueblo water uses.

#### **E. Department of the Interior Position on S. 4896 and S. 4898**

The Department of the Interior is pleased to support S. 4896 and S. 4898 but has identified some targeted changes that must be made to S.4898 to protect allottees. These bills are the result of over three decades of good-faith negotiations to reach consensus on key issues. The Department appreciates that each settlement is unique, and its terms must be tailored to meet the needs of the settling Tribe and other parties. The Department looks forward to continued discussions, including with the U.S. Department of Agriculture (USDA), regarding USDA's role in the settlement agreements with the Pueblos.

S. 4896 and S. 4898 are designed to meet each Pueblos' current and long-term needs for water by providing Trust Funds to be used by the Pueblos according to their needs and determinations. Rather than committing the Pueblos or the United States to construct specific water infrastructure projects, the bills would allow the Pueblos to make decisions regarding how, when, and where to develop water infrastructure on the Pueblos. This approach to settlement is consistent with Tribal sovereignty and self-determination, and with our trust responsibilities, and will help to ensure that the Pueblos can maintain their way of life.

### **III. The Tule River Reservation and the Tribe**

#### **A. Historical Context**

The aboriginal territory of the ancestors of the Tule River Tribe, the Yokuts, encompassed most of what is now the San Joaquin Valley, an agricultural mainstay in California. The influx of non-Indians into the Tribe's ancestral lands in the 1850s, after the discovery of gold and California statehood, created tremendous conflict with the Yokuts and left them dispossessed, displaced, and without title to a homeland.

The quest to provide a permanent homeland for the Yokuts' descendants, the Tule River Tribe, was fraught with difficulties and setbacks. First, the United States attempted to rectify Tribal dispossession by negotiating the Treaty of Paint Creek, which would have created the Tule River Reservation in the San Joaquin Valley near present-day Porterville, California. However, this Treaty, along with other California treaties, was never ratified by the Senate. The United States' second attempt to secure a homeland for the Tribe was the creation in 1856 of the "Tule River Indian Farm," later referred to the "Madden Farm," out of the public domain. The subsequent patenting of the farm to an unscrupulous Indian agent deprived the Tribe of title to those lands.

In 1872, the California Superintendent of Indian Affairs was ordered to find a reservation for the Tribe. A tract of 48,000 acres of steep and rocky terrain in the foothills of the Sierra Nevada Mountains was proclaimed by the Executive Order of January 9, 1873, as the Tule River Indian Reservation. In 1874, the Indian Agent at the Tule River Agency described the Reservation as containing "no first-rate tillable land" with only "about 200 acres of such as might be termed passably good for agricultural purposes, and that not lying in one body." Except for some timber land in the mountains in the extreme east of the Reservation, the balance of the Reservation was said to be "utterly valueless ... consisting of rough, rocky mountains." Not unsurprisingly, members of the Tribe were reluctant to leave the productive land they were farming at the Madden Farm to locate to the Reservation. When, by 1876, only six families had moved to the Reservation, the remaining Tule River Indians at the Madden Farm were forcibly removed to the Reservation. Now nearly 150 years later, the Tribe continues to search for an adequate and secure water supply for the domestic and municipal needs of its members.

#### **B. The Reservation Today**

Today, the Tribe's Reservation remains located on the western slope of the Sierra Nevada Mountains, in south-central California, 75 miles south of Fresno and 45 miles north of Bakersfield and is comprised of over 55,000 acres of tribal trust lands. The topography is generally steep, with elevations ranging from about 900 feet to 7,500 feet above sea level. Most of the inhabited land is along the lower reach of the South Fork Tule River on the western side of the Reservation.

The primary sources of employment on the Reservation are the Tribe's Eagle Mountain Casino, the Tribal government, and the Tule River Indian Health Center. The Tribe is in the process of relocating the Eagle Mountain Casino, due in part to water shortages, to trust lands in the City of Porterville.

### **C. Water Resources of the Tule River Reservation**

The Reservation is located almost entirely in the South Fork Tule River drainage basin. Because the Reservation is located in the Sierra Nevada headwaters of the river, there are no upstream diverters on the river above the Tribe. The South Fork Tule River, which is the primary water source on the Reservation, is flashy (flows are high during spring runoff and decrease during the summer and fall months) and subject to extended periods of drought. Groundwater is very limited due to both water quantity and quality issues.

The major water use on the Reservation is for domestic and municipal purposes. Less than 5 percent of the Reservation is suitable for agriculture, though some members graze livestock in various locations. In dry years, which are increasingly common (including this year), the Tribe has had to truck-in water and donate bottled water to its members for domestic and municipal purposes due to water shortages, with members sometimes relying on bottled water for months at a time. These shortages affect Tribal members in multiple ways, including precluding them from cooking and bathing or from going to work or attending school. In the hottest part of summer, the Tribe has to open its government buildings to provide refuge for elders that rely on water for the cooling systems in their homes. This lack of reliable water supply results in interruptions to critical services, including education programs, emergency services, elder care, and the Tribe's justice center and government functions. It has also contributed to a housing shortage that impacts the number of Tribal members who can reside on the Reservation.

### **D. Proposed Tule River Tribe Settlement Legislation**

Negotiations regarding potential settlement of the Tribe's water rights claims have been ongoing since 1996, when the United States established a team to negotiate a comprehensive settlement of all the Tribe's water rights in California. Over the course of the negotiations, the United States conducted numerous studies examining options for water development on the Reservation. The studies point to water storage as a key component of a reliable water supply.

Relying on these studies, and other studies the Tribe conducted on its own, the Tribe and the downstream water users reached a 2007 Agreement. That Agreement sets-out water allocation between the parties and addresses how water release schedules will be determined for any future water storage project the Tribe may construct on the South Fork Tule River. The 2007 Agreement identified a possible location for water storage, and included operational rules for a reservoir at that location, but allowed the Tribe to choose a different site if the planned site proved infeasible. The parties agree that the site initially identified is not feasible. The Tribe's efforts to finalize plans for an alternative site are ongoing, and the parties have yet to agree on operational rules for a reservoir at another location of the Tribe's choosing. It is important to establish these operational rules to delineate the Tribe's water right. The 2007 Agreement was amended for technical issues in 2009. The United States is not a signatory to either the 2007 Agreement or the 2009 technical amendments.

S. 4870 would resolve all of the Tribe's water rights claims in California; ratify and confirm the Tule River Tribe water rights settlement agreement among the Tribe and most downstream water users, and authorize the Secretary of the Interior to sign the agreement; direct the Attorney General of the United States to file suit in Federal Court to bind all water users in the basin; authorize funds for water development projects to implement the settlement agreement; and transfer various lands into trust for the Tribe.

S. 4870 would ratify and confirm a Tribal water right, which includes the right to up to 5,828 acre-feet per year of water flows from the South Fork Tule River, as described in the 2007 Agreement. The 2007 Agreement provided that the Tribal water right would be administered in accordance with agreed-upon operational rules for the water storage facility that the Tribe was to build, rather than according to priority date. If the parties could not agree upon operational rules, the 2007 Agreement contemplated that the parties could submit competing proposals to the court, which would be charged with assessing which proposal better satisfied the criteria set forth in the Agreement. In addition, the Tribal water right, as described in the 2007 Agreement and ratified by S. 4870, would also include the right to divert and use certain amounts of water from springs on the Reservation and the right to use groundwater on the Reservation, subject to some restrictions. S. 4870 would also direct the United States to file suit in Federal District Court in California, for the purpose of entering a decree approving the Tribe's Federal reserved water right, consistent with the 2007 Agreement, and binding all water users in the basin.

S. 4870 would establish a Trust Fund of \$568 million, to be indexed, for the Tribe to develop water infrastructure on its Reservation, as it determines necessary and on its own timeframe. Monies in the fund can be used by the Tribe to construct water development projects (\$550 million) and operate, maintain, and rehabilitate water development projects (\$18 million).

S. 4870 also would transfer approximately 825.66 acres of Bureau of Land Management land, 1,837.46 acres of fee land owned by the Tribe, and approximately 9,037 acres of Forest Service land to the United States, to be held in trust for the Tribe. As articulated in Section 6 of Joint Secretarial Order 3403, the Biden Administration strongly supports returning ancestral lands to Tribes and looks forward to continuing to work with the Committee and bill sponsors on the overall land transfer proposal.

#### **E. Department of the Interior Position on S. 4870**

The Department supports the components of S. 4870 over which it has jurisdiction, and the Administration has identified some targeted changes that must be made to address certain legal issues and ensure effective implementation of the water rights settlement that it is intended to ratify. We have worked closely with the Tule River Tribe to develop amendments that address many of these concerns and we look forward to providing technical assistance to the Committee to develop an amended bill. The Department defers to USDA regarding the transfer of National Forest System lands proposed in S. 4870 including any implications that may result should a transfer be enacted.

This bill is the result of over two decades of dedicated, good-faith negotiations to reach consensus on key issues. The Department appreciates that each settlement is unique, and its terms must be tailored to meet the needs of the settling Tribe and other parties.



S. 4870 is designed to meet the Tribe's current and long-term needs for water by providing a Trust Fund to be used by the Tribe according to its needs and determinations. Rather than committing the Tribe or the United States to construct specific water infrastructure projects, S. 4870 would allow the Tribe to make decisions regarding how, when, and where to develop water infrastructure on its Reservation. This approach to settlement is consistent with tribal sovereignty and self-determination, and with our trust responsibilities, and will help ensure that the Tribe can maintain its way of life on its Reservation.

The Administration has worked with the Tribe on revisions to certain provisions of the bill to avoid potential impediments to implementation. There are certain provisions of the 2007 Agreement that are no longer operative, and negotiated amendments are needed before the Agreement can be presented to the court for approval.

As explained above, the parties agree that the proposed water storage facility will not be built at the site identified in the 2007 Agreement and that new operational rules tailored to the new site must be adopted and incorporated in the Agreement. The current version of the bill could require the Attorney General to file suit seeking entry of the 2007 Agreement and approval of the Tribal Water Right before the parties have the opportunity to agree on the necessary amendments. This could impermissibly require the United States to file suit before there is actually a justiciable claim.

These issues can be addressed with revisions to Sections 4 (which addresses ratification) and 12 (which addresses judicial enforceability). We recommend that the bill address the need for new operational rules, rather than ratifying the inoperable provisions of the 2007 Agreement. We also recommend revising the bill to ensure that the parties seek approval of the Agreement only after the matter is ready for judicial resolution.

We also want to note that the 2007 Agreement's lack of a priority date for the Tribal water right could impair effective implementation of the Agreement and the bill. We believe that a simple amendment to the bill would address this issue, while also preserving the expectation of all interested parties.

We believe that these issues can be resolved in a way that preserves the expectations of all interested parties – including the Tribe. Toward that end, we have worked in collaboration with the Tribe on amended bill language that the Administration would support as a substitute for the introduced version.

#### **IV. Conclusion**

The Department appreciates the dedication of all parties, including the Pueblos, the State of New Mexico, and the non-Indian water users, the Tule River Tribe and the downstream water users to these prolonged negotiations and the willingness of all the parties to reach consensus on contentious issues. We support the Administration's policy regarding restoring sovereignty over critical ancestral lands under the control of the federal government, and look forward to work with Congress regarding these bills.