

S. 616, S. 1898 AND S. 1987

HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS

UNITED STATES SENATE

ONE HUNDRED EIGHTEENTH CONGRESS

FIRST SESSION

—————
JULY 12, 2023
—————

Printed for the use of the Committee on Indian Affairs



U.S. GOVERNMENT PUBLISHING OFFICE

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S. 616, S. 1898 AND S. 1987

WEDNESDAY, JULY 12, 2023

U.S. SENATE,
COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 2:41 p.m. in room 628, Dirksen Senate Office Building, Hon. Brian Schatz, Chairman of the Committee, presiding.

**OPENING STATEMENT OF HON. BRIAN SCHATZ,
U.S. SENATOR FROM HAWAII**

The CHAIRMAN. Good afternoon. During today's legislative hearing, we will consider three bills: S. 616, the Leech Lake Reservation Restoration Technical Corrections Act of 2023; S. 1898, the Navajo-Gallup Water Supply Project Amendments Act of 2023; and S. 1987, Fort Belknap Indian Community Water Rights Settlement Act of 2023.

S. 616 would make express the Secretary of Agriculture's authority to transfer suitable Forest Service land located in the Chippewa National Forest in Cass County, Minnesota, to the Secretary of the Interior for the benefit of the tribe in fulfillment of the purposes of the Leech Lake Reservation Restoration Act.

S. 1898, introduced by Senators Luján and Heinrich, would amend the Navajo-San Juan River Water Rights Settlement to provide the additional time and resources needed to complete the Navajo-Gallup Water Supply Project authorized in 2009.

Lastly, Senators Tester and Daines introduced S. 1987. This bill will authorize and ratify the water rights compact entered into by the Fort Belknap Indian Community, the United States, and the State of Montana in 2001. It would also provide critical water infrastructure and funding for the tribe's water development, provide mitigation measures for non-Indian water users, and transfer certain lands into trust for the benefit of the tribe.

Before I turn to the Vice Chair for her opening statement, I would like to extend my welcome and thanks to our witnesses for joining us today. I look forward to your testimony and our discussion.

Vice Chair Murkowski?

**STATEMENT OF HON. LISA MURKOWSKI,
U.S. SENATOR FROM ALASKA**

Senator MURKOWSKI. Thank you, Mr. Chairman, for holding this hearing. You have mentioned the three bills before us. I am going

to keep my comments brief, because you have already outlined the specifics. These bills are important, as they address the complex tribal water and land issues.

Just a couple of words here about the Fort Belknap Indian Community Water Rights Settlement Act. We were in this Committee almost two years ago, back in October of 2021, talking about the need to get all the parties together to make a real push to reach agreement. So I am pleased that we are here with a settlement with broad support including from the Governor of Montana. That demonstrates great work, so congratulations on that.

I think we recognized that the Fort Belknap Indian Community is tied to one of the most consequential opinions issued by the Supreme Court on tribal water rights. This is the *Winters v. United States* case, back in 1908, but it is the basis for the Federal Government's trust responsibility to safeguard water rights for our tribes. *Winters* is the reason why Indian water settlements approved by Congress often fund infrastructure for agriculture, for drinking water, and sanitation systems on tribal lands.

Those on this Committee know that I have talked long and often about the issue of lack of access to water in Alaskan villages. We have more than 3,000 households and about 30 Native villages that suffer from a total lack of indoor plumbing: that is running water, that is sanitation. It impacts everything from the ability to bathe to disease issues as you try to move human waste in crude buckets.

We have so much more to do here. We have made some great gains, \$3.5 billion in the Bipartisan Infrastructure Law to clear the existing backlog of IHS sanitation projects, \$2.5 billion to implement existing tribal water settlements. So we recognize that is big, that is a significant step.

But it doesn't eliminate the need for the Federal Government to continue investing in tribal water projects. I think we are just seeing this need grow. Tribes are facing ballooning costs with operating and maintaining this influx of new water projects, especially when these systems come of age.

Mr. Chairman, I had a conversation with the Comptroller of the GAO, Gene Dodaro, about this. He agreed to my request, which is to launch a GAO study to examine the growing financial costs that tribes may incur for these operating systems. I am looking forward to reviewing the results when we get that back.

I think we know we have a lot more to do to provide water to Native communities, and I am glad that today's hearing includes legislation to address this significant unmet need.

The CHAIRMAN. Thank you, Vice Chair Murkowski.

I will now recognize Senator Tester.

**STATEMENT OF HON. JON TESTER,
U.S. SENATOR FROM MONTANA**

Senator TESTER. Thank you, Mr. Chairman. I want to thank you, Chairman Schatz and Ranking Member Murkowski, for having this hearing, particularly as it applies to the Fort Belknap Indian Community Water Settlement.

I would ask unanimous consent to place into the record the following letters of support: Rocky Mountain Tribal Leaders Council, The Wilderness Society, State Representative Paul Tuss, Bear Paw

Development Corporation, St. Mary's Rehabilitation Working Group, Milk River Joint Board of Control, and Blaine County Conservation District.

The CHAIRMAN. Without objection, so ordered.

Senator TESTER. And I think Senator Daines will have some more letters to be put in when he arrives.

Once again, we are here to talk about the Fort Belknap Indian Community Water Settlement, amongst one of the three bills up. I want to welcome our witnesses, President Jeffrey Stiffarm of Fort Belknap Indian Reservation. Thank you for being here, obviously for good reason. Lieutenant Governor Kristen Juras, thank you for being here, thank you for making the trek.

I think the fact that you are here, Lieutenant Governor, speaks to the fact that this Administration thinks this is an important piece of legislation for us to take up. I just want to thank you for being here in person today. It would have been a lot easier to stay in Montana. It is a pretty good hike to get here.

And it is an honor to have you both testify in front of this Committee, and what this means to not only the folks in Fort Belknap, but the entire State of Montana.

The Fort Belknap Indian Community Water Settlement has been a long time in the making. I first introduced this bill in 2012. But to be honest with you, for me it even started before that. During my State legislature days, I voted to get this bill out in the Montana legislature.

I have been working with folks on the ground like President Stiffarm for over a decade. So to say that I am pleased that we have a version that takes into account the perspectives of multiple stakeholders coming before this Committee with widespread bipartisan support is an understatement. This is a historic day for the Fort Belknap Indian Community and for folks across north central Montana.

I have said it before, and I will say it again, because my Native American friends taught me this: water is life. Water is necessary for crops, for businesses, for our homes, for life. The bipartisan settlement we are looking at today is the result of years of negotiations between the tribe, local elected officials, irrigators, State legislators, Federal agencies, and other stakeholders to hammer out a fair compromise that honors our trust and treaty responsibilities, while guaranteeing water certainty to all water users in north central Montana through the rehabilitation of the Milk River project.

This is the last water settlement to be finalized for our great State of Montana. We have to get this done, because in Montana we make good on our promises and we work together to get things done and find that common ground. That is exactly what has happened with this settlement.

For years, we have talked about moving this settlement forward. This Congress, we have a real shot. I want to thank the Chairman and Ranking Member, because you guys are helping give us that shot.

Thanks again to everybody who is here today, the folks who are testifying, even if you are not testifying for the Fort Belknap Water Settlement. And I do know that the BIA will be testifying for it, correct, Mr. Newland?

At any rate, this is so, so important to the people of Montana, to the Fort Belknap Indian Community. I look forward to the testimony and I look forward to the opportunity to ask questions.

Thank you both.

The CHAIRMAN. Thank you very much, Senator Tester.

We will now turn to Senator Smith.

**STATEMENT OF HON. TINA SMITH,
U.S. SENATOR FROM MINNESOTA**

Senator SMITH. Thank you so much, Chair Schatz and Vice Chair Murkowski, for holding this hearing today and including my bill, the Leech Lake Reservation Restoration Technical Corrections Act of 2023.

Welcome to all of our panelists. I want to particularly welcome Leech Lake Secretary-Treasurer Lenny Fineday to the Committee today, who is here to testify on the importance of this bill to Leech Lake. I want everyone to know that Secretary-Treasurer Fineday is a tremendous advocate for Leech Lake and has a distinguished background in tribal and Indian law. I am very grateful for your advocacy on this issue and so many others facing Leech Lake and all the indigenous communities in Minnesota.

In the 1940s, thousands of acres were taken illegally from Leech Lake Band's reservation in secretarial transfers. Three years ago, with support from this Committee, we passed a law to make that right. That bill, the Leech Lake Reservation Restoration Act, directed the Department of Interior to transfer the wrongly seized land from the Chippewa National Forest in Cass County, Minnesota, to be held in trust for the Leech Lake Band.

Today we are considering a technical amendment to that land transfer to make two changes. The first is to allow for ongoing implementation of the law and the second is to include in the law an additional approximately 4,400 acres. This land was also wrongly taken from the Band, which we discovered during a review of historic records undertaken as we were implementing the 2020 law.

These changes, though technical, are crucial for implementing the existing law and to fulfill our goal and our trust and treaty responsibilities of restoring illegally taken lands to Leech Lake.

I want to thank the Department of Agriculture and the Department of Interior for being here today to support the bill. I appreciate your assistance in drafting this technical correction. Also, thank you to the Forest Service for your work to implement the Leech Lake Reservation Restoration Act. Colleagues, I ask for your support for this technical correction, which will have a direct and real impact on the lives of Leech Lane Band members.

Thank you, Mr. Chair.

The CHAIRMAN. Thank you very much, Senator Smith.

We will now turn to Senator Luján.

**STATEMENT OF HON. BEN RAY LUJÁN,
U.S. SENATOR FROM NEW MEXICO**

Senator LUJÁN. Thank you, Mr. Chairman.

Chairman, thank you, and to our Vice Chair for holding this hearing in part to consider my bill amending the Navajo-San Juan Water Rights Settlement. Today I am honored to introduce a

friend, a great leader, and that is President of the Navajo Nation, Dr. Buu Nygren, who has traveled here to testify on behalf of this important water rights legislation for the Navajo Nation. Mr. President, thank you for being with us today.

He was elected in 2022, Mr. Chairman, as the youngest Navajo Nation president in history at the age of 35. Dr. Nygren is a proud graduate of Red Mesa High School near the Four Corners of the Navajo Nation. He earned his Bachelor of Science and Master's at Arizona State University, and his Ph.D. from the University of Southern California.

Dr. Nygren is married to Jasmine Blackwater Nygren, who is a former representative from the State of Arizona. Together they have a young daughter. Both proudly reside in Red Mesa, Arizona, where the president grew up. Mr. President, we welcome you here today, we welcome all of our guests here today, friends, leaders from across America.

Thank you, Mr. Chairman. I yield back.

The CHAIRMAN. Thank you very much, Senators.

We will now turn to further witness introductions. First, we have the Honorable Bryan Newland, Assistant Secretary of Indian Affairs for the Department of Interior. We are also pleased to have Mr. John Crockett, the Associate Deputy Chief for State, Private and Tribal Forestry at the U.S. Department of Agriculture. Finally, we have the Honorable Kristen Juras, Lieutenant Governor of the State of Montana.

I want to remind our witnesses that we have your full written testimony that will be made a part of the official hearing record. If you could please keep your statements to no more than five minutes.

Senator Luján has some opening remarks on the legislation. Senator Luján, I apologize.

Senator LUJÁN. Thank you, Mr. Chairman. This is the benefit of being new here. I should have followed the wisdom of my more senior colleagues and included my opening statement with my introduction of the president. I apologize to everyone and ask for their indulgence.

Mr. Chairman, the Navajo-Gallup Water Supply Project Amendments of 2023 are vital to ensuring that Congress uphold its promise to the Navajo Nation, the City of Gallup and the Jicarilla Apache Nation in New Mexico. In 2009, Congress passed the Navajo-San Juan River Water Rights Settlement Act. As a member of the U.S. House of Representatives, I was proud to carry that legislation in the House. Senator Jeff Bingaman carried that legislation here in this body.

This project authorize the Navajo-Gallup Water Supply Project to pipe water to communities in New Mexico and eastern Arizona. Without action by Congress, authorization and funding for the project will expire on December 31st, 2024, depriving roughly a quarter of a million people in northwestern New Mexico and Arizona the water promised by this settlement in 2009.

In 2023, between 30 and 40 percent of households on the Navajo Nation still live without running water. Once completed, the project will help close this water gap and provide a more sustainable supply that will improve public health and economic opportu-

nities for the region. This legislation must be signed into law this Congress to ensure work on the Navajo-Gallup Water Supply Project that began in 2009 does not grind to a halt.

I appreciate the chance to be with you all today. I hope we earn the support of everyone.

Before I yield back, Mr. Chairman, I would like to ask for unanimous consent to enter letters of support from the settlement parties and the participants into the record.

The CHAIRMAN. Without objection, so ordered.

Senator LUJÁN. With that, Mr. Chairman, I thank you again, and I urge my colleagues to support these amendments. I appreciate all my colleagues for the legislation they have been working on as well, in hopes that we can get this done together.

With that, Mr. Chairman, I yield back.

The CHAIRMAN. Thank you very much, Senator Luján.

This is the part where I ask you to keep your remarks to no more than five minutes. Now that all of the testifiers have been introduced, we will start with Secretary Newland. Please begin with your testimony.

STATEMENT OF HON. BRYAN NEWLAND, ASSISTANT SECRETARY, INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR

Mr. NEWLAND. Thank you, Mr. Chairman. Aanii, boozhoo, mino ghizhep. Good afternoon, Chairman Schatz, Vice Chair Murkowski and members of the Committee.

My name is Bryan Newland. I have the privilege of serving as the Assistant Secretary for Indian Affairs at the Department of the Interior. I appreciate the opportunity to testify on three bills today.

The United States acts as a trustee for the land and water rights of tribes, American Indians and Alaska Natives. In its role as trustee, the Federal Government has an obligation to advance the interests of the beneficiaries with the highest degree of diligence and skill.

The Administration strongly supports the resolution of Indian water rights claims through negotiated settlements. These settlements help ensure that citizens of tribal nations have reliable and safe water for drinking, for cooking, and for sanitation.

Access to clean water improves the public health and environment on reservations. It enables economic growth. It promotes tribal self-sufficiency and it helps fulfill the United States' trust responsibility to tribes. The Department stands ready to work with Congress to advance Indian water rights settlements and uphold our sacred trust responsibilities.

S. 1987 would approve and provide authorization to carry out the settlement of the Fort Belknap Indian Community's water rights in the State of Montana. The Department supports S. 1987, and does suggest some technical changes to aid in its implementation. This bill would resolve the tribe's water rights claims in Montana by recognizing the water rights established in the Montana-Fort Belknap Water Rights Compact.

S. 1987 authorizes \$1.1 billion in Federal appropriations for the design and construction of water projects that would benefit the tribes and non-Native users in Montana. The bill also authorizes

appropriations for the rehabilitation and expansion of the Fort Belknap Indian Irrigation Project and the Milk River Project. The Department does suggest a feasibility study for both projects to avoid cost gaps and guarantee completion.

S. 1987 also identifies the Bureau of Indian Affairs as the lead agency for the project, although previous water settlements typically authorized the Bureau of Reclamation for that work. The Department suggests utilizing the Bureau of Reclamation as the lead agency for improvements to that project.

We believe that this legislation would bring meaning to the legal victory that the tribes and the United States secured more than a century ago in the historic Winters case. We support S. 1987 with the technical changes just mentioned.

The Navajo-Gallup Water Supply Project was first authorized in 2009 and settled the Navajo Nation's water rights in the San Juan Basin of New Mexico. When completed, the project will provide a reliable and sustainable domestic municipal and industrial water supply from the San Juan River to 43 chapters of the Navajo Nation, including its capital in Window Rock, Arizona, as well as the City of Gallup, and the southwest portion of the Jicarilla Apache Reservation.

S. 1898 provides an additional authorization of \$725 million to complete the project; \$689 million will be used to address a cost gap; \$30 million would be used to support Navajo community connections to the water transmission line; and \$6 million would be used for renewable energy features that would save energy costs on the overall project.

This bill also extends the date by which the project must be completed to December 31st, 2029, and eliminates double taxation of goods and services.

The Department appreciates the willingness of the Navajo Nation, the Jicarilla Apache Nation, the City of Gallup and the State of New Mexico to reach consensus on these issues. We support S. 1898.

S. 616 is a technical amendment to Public Law 116-255 to authorize the transfer of additional lands in the Chippewa National Forest in Minnesota that met the same criteria listed in the original Act. This amendment is necessary to allow for the ongoing implementation and to allow for the inclusion of additional lands that the Department may identify in the future.

In addition to flexibility for ongoing implementation, S. 616 would also authorize an acre-for-acre substitution of land with the Chippewa National Forest if the Band identifies certain parcels that are unsuitable for future use. The Department supports S. 616 as well.

Chairman Schatz and Vice Chair Murkowski, members of the Committee, I want to thank you again for this opportunity to testify. As always, I look forward to answering your questions.

[The prepared statement of Mr. Newland follows:]

PREPARED STATEMENT OF HON. BRYAN NEWLAND, ASSISTANT SECRETARY, INDIAN
AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR

Aanii (Hello)! Good afternoon Chairman Schatz, Vice Chairman Murkowski, and members of the Committee. My name is Bryan Newland, and I am the Assistant Secretary for Indian Affairs at the Department of the Interior (Department).

S. 616

Thank you for the opportunity to present testimony regarding S. 616, the Leech Lake Reservation Restoration Technical Corrections Act of 2023.

In December 2020, Congress enacted the Leech Lake Band of Ojibwe Reservation Restoration Act, Public Law 116–255 (Act). The Act directed the Secretary of Agriculture to transfer approximately 11,760 acres in the Chippewa National Forest to the Secretary of the Interior to be held in trust for the Leech Lake Band of Ojibwe in Minnesota (Band). The 11,760 acres were restored to the Band after being identified as wrongfully transferred from the Band and its members.

Since the enactment of Public Law 116–255, the Department identified an additional 4,362.21 acres of land that met the same criteria as in Public Law 116–255. S. 616 amends Public Law 116–255 to authorize the transfer of any additional lands in the Chippewa National Forest in Cass County, Minnesota that are identified as having been sold without the consent of a majority of rightful landowners. This approach will allow for on-going implementation of Public Law 116–255 to continue and allow for the inclusion of any additional lands that the Department may identify as having been wrongfully transferred. S. 616 would also authorize an acre-for-acre substitution of lands within the Chippewa National Forest in Cass County, Minnesota if the Band identifies certain parcels as unsuitable for future use.

The Department supports S. 616 as it allows flexibility in the implementation of Public Law 116–255 while allowing for additional lands to be identified and restored to the Band.

S. 1898

Thank you for the opportunity to present testimony regarding S. 1898, the Navajo-Gallup Water Supply Project Amendments Act of 2023, which would amend the Northwestern New Mexico Rural Water Project Act, P.L. 111–11, Title X, Subtitle B, Part III, *amended by* P.L. 114–57 (together the 2009 Act). The Department supports S. 1898.

Introduction

The United States acts as a trustee for the land and water rights of Tribes, American Indians, and Alaska Natives. The United States has a trust responsibility to Indian Tribes and Indian people and consistent with that has charged itself with moral obligations of the highest responsibility and trust. These obligations are at their greatest when it comes to protecting the ability of Tribes, and their citizens, to maintain their existence on lands the United States holds in trust for their benefit.

The Biden Administration recognizes that water is essential for people to lead healthy, safe, and fulfilling lives on Tribal lands. Water is the among the most sacred and valuable resources for Tribal nations.

The Administration further recognizes that long-standing water crises continue to undermine public health and economic development in Indian Country. The Administration strongly supports the resolution of Indian reserved water rights claims through negotiated settlements. Indian water settlements protect the senior water rights reserved by Tribal Nations and help ensure that the citizens of these Nations have reliable and safe water for drinking, cooking, and sanitation; improve the public health and environment on reservations; enable economic growth; promote Tribal sovereignty and self-sufficiency; and help fulfill the United States' trust responsibility to Tribes.

At the same time, water rights settlements have the potential to end decades of conflict and contention among Tribal Nations and neighboring communities and promote cooperation in the management of water resources.

Congress plays an important role by enacting legislation to ratify Indian water rights settlements. We stand ready to work with this Committee and Members of Congress to advance Indian water rights settlements and uphold our sacred trust obligations to Indian country.

We have a clear charge from the President and Secretary Haaland to protect Tribal reserved water rights and improve water access and water quality on Tribal lands. 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 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.

S. 1898, a bill to amend the Northwestern New Mexico Rural Water Project Act to make improvements to the Act, and for other purposes

Background

The 2009 Act, which was part of the Omnibus Public Land Management Act of 2009, approved settlement of the Navajo Nation's water rights claims in the San Juan River Basin in New Mexico and, as the cornerstone of the settlement, directed the Secretary (acting through the Bureau of Reclamation (Reclamation)) to design, construct, operate, and maintain the Navajo Gallup Water Project (Project). When completed, the Project will provide a reliable and sustainable domestic, municipal, and industrial water supply from the San Juan River to 43 Chapters of the Navajo Nation, including the Nation's capital of Window Rock, Arizona; the city of Gallup, New Mexico; and the southwest portion of the Jicarilla Apache Reservation. All of these entities are currently relying on a shrinking supply of groundwater that is of poor quality and is inadequate to meet present domestic water needs, let alone projected needs.

The 2009 Act authorized an appropriation of \$870 million (2007 price level), adjusted annually using engineering cost indices, to plan, design, and construct the Project, which includes construction of two water transmission laterals—the Cutter and San Juan Laterals. The Department, through Reclamation, has been implementing the 2009 Act with significant success. In October 2021, Reclamation declared substantial completion of the Cutter Lateral, the smaller of the two laterals, and it transferred operation, maintenance, and replacement responsibilities for the Cutter Lateral to the Navajo Nation in June 2022. As of May 2021, the completed segments of the Project have facilitated delivery of drinking water to 6,000 people (1,500 households) in eight Navajo chapters. Reclamation has also made significant progress on the San Juan Lateral and has completed over 50 percent of the features on the lateral. Reclamation and their partners have completed or are currently constructing 285 of the 300 miles of Project water transmission pipelines. Recently, Reclamation acquired the San Juan Generating Station water system facilities that will provide both construction and operation and maintenance savings, increased operational flexibility, and reduced risks to operations for the Project.

S. 1898 Provisions and Positions of the Department of the Interior

S. 1898 would amend the Act in several ways:

Increase the authorized Project cost ceiling. S. 1898 provides an additional authorization of \$725.7 million to complete the Project. This is comprised of \$689.45 million to address a cost/funding cost gap, \$30 million for Navajo community connections to the Project water transmission line, and \$6.25 million for renewable energy features.

The 2009 Act's appropriation ceiling was based on a preliminary, 2007 appraisal-level design estimate rather than a feasibility level design estimate, which is the level of estimation that Reclamation recommends for reliability. As final design and construction of the Project progressed, the difference between the 2009 Act's appropriation ceiling and the costs estimated to complete the Project (Working Cost Estimate) became apparent. The most recent indexed authorized appropriation ceiling is \$1,413.7 million (October 2022 price level) but the Project Working Cost Estimate is \$2,138.4 million (October 2022 price level). After accounting for non-Federal funding contributions from the Project beneficiaries received through the Contributed Funds Act, Reclamation estimates the cost/funding gap is \$689.45 million. The cost increases are based on more reliable cost estimate updates, primarily associated with the two water treatment plants and the San Juan Lateral intake. Moreover, the latest Working Cost Estimate reflects the significant inflation and market volatility, at levels not seen in 40 years, which have far outpaced projected indexing used in updating the appropriation ceiling.

The Department supports the additional authorization contained in S. 1898. The additional authorization will enable Reclamation to complete the Project in accordance with requirements of the 2009 Act and is reflective of Project participant's needs and the reality of construction costs in this remote area of New Mexico. The additional authorization of \$6.25 million for renewable energy de-

velopment will enable Reclamation to construct lower cost and alternative power generation for areas on the project (notably the Cutter Lateral) where Colorado River Storage Project (CRSP) power is not available. This provision also provides up to \$1.25 million of the \$6.25 million to develop small hydro-power generation for Project facilities to help offset a portion of the Project's pumping costs. The additional authorization of \$30 million for community connections is critical to the Project's success and will ensure that water deliveries are made to all Navajo communities within the original Project service area. The Navajo Nation has agreed to provide an additional \$60 million, approximately, of its own funding to cover the full costs of connecting all existing Navajo communities to the San Juan Lateral.

Operation, Maintenance, and Replacement (OM&R) Waiver. S. 1898 provides for a \$250 million OM&R trust fund for the Navajo Nation and up to a \$10 million OM&R trust fund for the Jicarilla Apache Nation, the latter conditioned on an ability to pay analysis. The 2009 Act includes a provision allowing the Secretary to waive, for a period of not more than 10 years, the OM&R costs allocable to the Navajo Nation when the Secretary determines those costs exceed the Nation's ability to pay. Reclamation conducted an ability to pay analysis in 2020, following Reclamation practice for evaluating the enduser's ability to pay for municipal and industrial water systems, that concluded the Navajo Nation did not have the ability to pay.

The Department supports establishing a \$250 million OM&R trust fund for the Navajo Nation because it will assist the Nation in paying OM&R during the time needed to increase the customer base and economic development necessary to support full OM&R payments. While the 2009 Act did not provide OM&R assistance to the Jicarilla Apache Nation, the Department supports up to a \$10 million OM&R trust fund if the allocable OM&R costs are in excess of the Jicarilla Apache Nation's ability-to-pay.

Expand the Project service area. S. 1898 would also expand the Project to serve the Navajo Nation's four chapters in the Rio San Jose Basin (RSJB) in New Mexico and the Lupton community in Arizona to help the Navajo Nation increase the customer base and potentially lower OM&R costs. The proposed amendments do not include funding that would be needed to increase the capacity of the Crownpoint Lateral, nor additional improvements necessary to supply the RSJB.

The Department supports the expansion of the Project service area.

Cap the City of Gallup's Repayment Obligation. S. 1898 would cap the City of Gallup's (City) repayment obligation at 25 percent of its allocated construction costs, not to exceed \$76 million. Under the 2009 Act, the City is responsible for paying between 25 percent to 35 percent of its allocable costs, based on its ability to pay. Reclamation estimates that this provision would reduce the City's repayment obligation by approximately \$33 million.

The Department does not oppose the cap on the City's repayment obligation.

Project Lands Transfer. S. 1898 would transfer Navajo fee lands and Bureau of Land Management lands, upon which easements have been acquired for Project purposes, to the Navajo Nation in trust with the condition that Reclamation would retain easements for Project construction, operation, and maintenance. S. 1898 also transfers ownership of land underlying the recently acquired San Juan Generating Station water conveyance and storage facilities to the Navajo Nation in trust. S. 1898 provides for an easement for Reclamation to continue to carry out construction, operation, and maintenance necessary to incorporate those facilities into the Project until title transfer under section 10602(f) of the 2009 Act.

The Department supports the land transfer provisions of S.1898, which would take land into trust, exclusive of Project facilities. We would like to make technical changes to the Bill to clarify that Reclamation would retain ownership of Project facilities and infrastructure on the land until transferred to the Navajo Nation under section 10602(f) of the 2009 Act.

Deferred Construction. S. 1898 would authorize establishment of a Deferred Construction Fund and execution of a deferred construction agreement under which the Navajo Nation would acknowledge that full capacity of several Project features will not be needed until future demands materialize. The Navajo Nation would be able to use the Deferred Construction Fund to construct or expand facilities as higher demand requires over time.

The Department supports establishing a Deferred Construction Fund because it will allow Reclamation to first construct those water treatment and storage facilities needed to satisfy anticipated demand over the next 20-plus years, rather than immediately beginning work on the larger facilities that will not be needed until demand increases substantially. This provision is fiscally conscious and minimizes OM&R costs that would otherwise be spent on un-used Project facilities in the first years of water deliveries while providing for the later development of facilities to meet the Project's full build-out demand.

Extend Completion Deadline to December 31, 2029. S. 1898 extends the date by which the Project must be completed to December 31, 2029.

The Department supports extending the Project completion deadline. Necessary design changes, including incorporating San Juan Generating Station water system facilities into the Project, have created delays in construction and a deadline extension is necessary to allow remaining Project features to be completed.

Eliminate Double Taxation. S. 1898 would allow taxation by either the Navajo Nation or the State of New Mexico depending on the ownership of land underlying Project facilities. Currently, both the State of New Mexico and the Navajo Nation have been taxing Federal contractors on construction activities on Navajo Tribal lands.

The Department supports eliminating the double taxation that is an additional and unnecessary cost to the Project. Reclamation estimates that this provision will save approximately \$50 million.

Conclusion

The Department appreciates the dedication of all parties, including the Navajo Nation, the Jicarilla Apache Nation, the City of Gallup, and the State of New Mexico in developing S. 1898 and the willingness of all the parties to reach consensus on contentious issues. The Department supports S. 1898, as it will allow the Department to fulfill the commitments made in the 2009 Act to deliver clean drinking water to the Navajo Nation and other Project beneficiaries.

S. 1987

Thank you for the opportunity to present testimony regarding S. 1987, Fort Belknap Indian Community Water Rights Settlement Act of 2023. The Department supports S. 1987 and suggests some technical changes to aid in its implementation.

Introduction

The United States acts as a trustee for the land and water rights of Tribes, American Indians, and Alaska Natives. The United States has a trust responsibility to Indian Tribes and Indian people and consistent with that has charged itself with moral obligations of the highest responsibility and trust. These obligations are at their greatest when it comes to protecting the ability of Tribes, and their citizens, to maintain their existence on lands the United States holds in trust for their benefit.

The Biden Administration recognizes that water is essential for people to lead healthy, safe, and fulfilling lives on Tribal lands. Water is among the most sacred and valuable resources for Tribal nations.

The Administration further recognizes that long-standing water crises continue to undermine public health and economic development in Indian Country. The Administration strongly supports the resolution of Indian reserved water rights claims through negotiated settlements. Indian water settlements protect the senior water rights reserved by Tribal Nations and help ensure that the citizens of these Nations have reliable and safe water for drinking, cooking, and sanitation; improve the public health and environment on reservations; enable economic growth; promote Tribal sovereignty and self-sufficiency; and help fulfill the United States' trust responsibility to Tribes.

At the same time, water rights settlements have the potential to end decades of conflict and contention among Tribal Nations and neighboring communities and promote cooperation in the management of water resources.

Congress plays an important role by enacting legislation to ratify Indian water rights settlements. We stand ready to work with this Committee and Members of Congress to advance Indian water rights settlements and uphold our sacred trust obligations to Indian country.

We have a clear charge from the President and Secretary Haaland to protect Tribal reserved water rights and improve water access and water quality on Tribal lands. 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 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.

I. S. 1987

S. 1987, Fort Belknap Indian Community Water Rights Settlement Act of 2023 would approve and provide authorizations to carry out the settlement of the Tribes' water rights in the State of Montana (State). The Department supports resolving the Tribes' water rights claims through a comprehensive settlement.

a. Reservation and Historical Background

Congress established the Fort Belknap Indian Reservation (Reservation) in 1888 to secure a homeland for what are now the Assiniboine (Nakoda) and Gros Ventre (Aaniiih) Tribes (the Tribes). This homeland in Montana is just a small portion of the Tribes' ancestral homelands.

Not long after the Reservation was established, the Federal Government filed a lawsuit to protect the Tribes' right to water on its homelands. That lawsuit eventually reached the Supreme Court in 1908. The Supreme Court determined that the establishment of the Reservation included the senior right to water on the Reservation. *Winters v. United States*, 207 U.S. 564. In its opinion, the Court explained that the Reservation would be inadequate to fulfill the needs of the Tribes and the policy goals of the United States "without a change of conditions." The Court also noted, "[t]he lands were arid and, without irrigation, were practically valueless."

The *Winters* case has had far-reaching and long-lasting consequences for all of Indian country. It stands for the principle that the establishment of a reservation for a Tribe includes the reservation of waters necessary to make the reservation a livable homeland. The *Winters* doctrine protects Tribal rights and homelands, safeguarding the rights and interests of Tribes across the United States. Despite their legal victory in the *Winters* case, Tribes of the Fort Belknap Indian Reservation have not been able to fully put their reserved water rights to use.

Today, the Reservation is comprised of approximately 605,338 acres, including lands held in Trust for the Tribes and allotments held in trust for individual Indians, situated mainly in the Milk River Basin in north central Montana. The Milk River forms the Reservation's northern boundary. The southern boundary is from 25 to 35 miles south of the Milk River, extending on either side of the northern crest of the Little Rocky Mountains.

The low rainfall on most of the Reservation severely limits what can be grown without irrigation. Not surprisingly, the major water use on the Reservation is the Fort Belknap Indian Irrigation Project (FBIIP). The BIA owns the FBIIP, which diverts water from the Milk River and two tributaries, Threemile Creek and White Bear Creek, and includes a 634 acre-foot (af) reservoir on Threemile Creek. The FBIIP serves 10,475 assessed acres, 92 percent of which are held in trust by the United States for the benefit of the Tribes or allottees. Groundwater wells on the Reservation are primarily used for domestic and municipal purposes and, to a lesser extent, stock watering.

According to Bureau of Indian Affairs (BIA) and Tribal data, 3,351 Tribal members currently live on the Reservation. The total Tribal membership in August 2021, including members living off the Reservation, was 8,609. Most on-Reservation residents reside in three main towns: Fort Belknap Agency on the northern boundary of the Reservation, and Lodge Pole and Hays on the southern portion of the Reservation.

The primary sources of employment on the Reservation are Tribal and Federal government services. The main industry is agriculture, consisting of cattle ranches, raising alfalfa hay for feed, and larger dryland farms. The unemployment rate on the Reservation is nearly 50 percent, according to a 2019 Montana State University study.

b. Proposed Fort Belknap Indian Community Settlement Legislation

In its role as Trustee, the United States filed water rights claims for Reservation lands in the Milk River and Missouri River basins in the ongoing statewide water rights adjudication. Since 1990, the Tribes, State, and United States have engaged in negotiations to resolve the Tribes' and allottees' water rights within the State. In 2001, the Montana legislature approved the Montana-Fort Belknap Indian Commu-

nity Water Rights Compact (Compact). Congressional approval is necessary before the United States may join in the Compact.

S. 1987 would authorize, ratify, and confirm the Compact to the extent it is consistent with S. 1987. This would resolve the Tribes' water rights claims in Montana by recognizing the Tribal Water Right, which is defined by and established in the Compact. The Tribal Water Right entitles the Tribes to over 446,000 acre-feet per year (afy) of surface water, plus groundwater. Consistent with Federal law, S. 1987 protects the rights of allottees to use a portion of the Tribal Water Right for agricultural, domestic, and related uses on their allotments. In addition to the Tribal Water Rights provided by the Compact, S. 1987 includes a 20,000 afy allocation of storage from Lake Elwell, a Bureau of Reclamation (Reclamation) facility on the Marias River, also known as Tiber Reservoir. S. 1987 would also authorize funds to implement the provisions of the Compact and S. 1987.

S. 1987 authorizes \$1.17 billion in Federal appropriations for three general purposes: rehabilitation of the Fort Belknap Indian Irrigation Project; administration and development of the Tribes' water rights; and mitigation for the impacts on water users outside the Reservation. S. 1987 is a mixed project- and fund-based settlement.

S. 1987 includes two specific projects that the Department is charged with planning, designing, and constructing: (1) the rehabilitation, modernization, and expansion of the existing FBIIP; and (2) the rehabilitation and expansion of certain Milk River Project facilities to satisfy the Compact required mitigation negotiated by the Tribes and the State.

S. 1987 authorizes the appropriation of up to \$415.8 million for the rehabilitation, modernization, and expansion of the FBIIP. The Department supports rehabilitating and expanding the FBIIP to serve additional lands susceptible of sustained and economically viable irrigation. Without a feasibility level study, however, the costs of such a project cannot be reliably determined. The Tribes believe that the requested authorization will cover the costs. S. 1987 contains a provision providing that the Secretary's obligations to rehabilitate, modernize, and expand the FBIIP will be deemed satisfied if despite diligent efforts, the project cannot be completed as contemplated due solely to the authorized appropriation being insufficient. S. 1987 identifies the Bureau of Indian Affairs (BIA) as the lead agency for the rehabilitation, modernization, and expansion of FBIIP, while providing the Tribes the opportunity to perform these activities through self-determination contracts. The identification of BIA as the lead agency for the rehabilitation, modernization, and expansion of FBIIP is unusual.

Previously enacted Indian water rights settlements that have required the Secretary to plan, design, and construct major infrastructure have identified Reclamation as the lead agency for such purposes. Reclamation has the staffing and expertise and a demonstrated history of success in planning, designing, and constructing infrastructure. For these reasons and to ensure successful implementation of S. 1987, the Department suggests that Reclamation is better suited to lead the rehabilitation, modernization, and expansion of the FBIIP as well as the Milk River Project rehabilitation and expansion discussed below.

S. 1987 authorizes the appropriation of up to \$300 million to rehabilitate and expand certain Milk River Project facilities to implement the mitigation measures required by the Compact. S. 1987 identifies Reclamation as the lead agency to implement these mitigation projects. The Department testified in the 117th Congress about practical concerns regarding its ability to satisfy Compact provisions requiring mitigation of impacts on junior non-Indian and Milk River Project water users caused by the development of the Tribal Water Right. However, since the time of that testimony, Reclamation completed modeling that identifies viable alternatives to satisfy the Compact's mitigation requirement. Based on Reclamation's modeling, the Department determined that rehabilitation of the St. Mary Canal and the expansion of the Dodson South Canal will provide the 35,000 afy of mitigation required by the Compact. Again, without a feasibility level study, reliable costs of such a project cannot be determined. In an effort to avoid cost gap issues, S. 1987 provides that the Secretary's obligations to complete Milk River Project mitigation projects will be deemed satisfied if despite diligent efforts, the projects cannot be completed as contemplated due solely to the authorized appropriations being insufficient.

Because the St. Mary Canal is located on the Blackfoot Reservation, S. 1987 requires Reclamation to complete the canal's rehabilitation in coordination with the Blackfoot Tribe.

In addition to the project-based components described above, S. 1987 establishes a \$454 million trust fund for the Tribes to be used for various purposes. Some of these purposes, such as the development of domestic water infrastructure and estab-

ishment of a Tribal water resources department to administer the Tribal Water Right, are commonplace in Indian water rights settlements. S. 1987 specifically would authorize the Tribes to use their trust fund to plan, design, and construct a pipeline to transport Lake Elwell water from an off-Reservation point of diversion on the Missouri River to the southern portion of the Reservation. The Department understands that the Tribes would be required to comply with all applicable Federal and State laws when implementing this and all other provisions in the settlement.

Finally, S. 1987 transfers 10,322.58 acres of federal land and 3,519.3 acres of land currently owned by the Tribes into trust for the Tribes as part of the Reservation. In addition, S. 1987 directs the Secretary of the Interior and the Secretary of Agriculture to negotiate with the State to exchange certain State lands within the boundaries of the Reservation for federal lands elsewhere in the State.

c. Conclusion

The Department recognizes that the Tribes and State of Montana have worked hard to negotiate this settlement. The Department believes that this legislation is consistent with the Administration's priorities of protecting Tribal homelands and meeting our trust responsibility. It would also bring meaning to the legal victory the Tribes and the United States secured more than a century ago in the Winters case. We support S. 1987, but note that the Department still needs to conduct additional analysis of this settlement agreement. We also note that we recommend some technical changes to aid in its implementation.

Thank you again for the opportunity to appear before this Committee to provide the Department's views on S. 1987. We look forward to continuing working with the Committee in support of Indian water rights settlements.

Chairman Schatz, Vice Chairman Murkowski, and Members of the Committee, thank you for the opportunity to provide the Department's views. I look forward to answering any questions.

The CHAIRMAN. Thank you very much.

Mr. Crockett, please proceed with your testimony.

STATEMENT OF JOHN CROCKETT, ASSOCIATE DEPUTY CHIEF FOR STATE, PRIVATE, AND TRIBAL FORESTRY, U.S. DEPARTMENT OF AGRICULTURE

Mr. CROCKETT. Good afternoon, Chairman Schatz, Vice Chair Murkowski, and members of the Committee. Thank you for the opportunity to testify today and provide the perspective of the USDA Forest Service on two tribal bills under consideration for today.

As Associate Deputy Chief for State, Private, and Tribal Forestry, I am responsible for the administrative oversight of the Office of Tribal Relations, including coordination and collaboration with all deputy areas across the agency to fulfill our trust responsibility to tribal nations.

The Forest Service is responsible for managing millions of acres of lands and waters which are the ancestral homes of American Indians and Native American tribal nations. Many of those lands and waters lie within areas where tribes have reserved rights to hunt, fish, and pray by ratified treaties and agreements with the United States.

As part of fulfilling that trust responsibility, we fully share the Administration's commitment to strengthen the nation-to-nation responsibility. This includes a focus on co-stewardship, respectful application of indigenous knowledge, and the protection of sacred sites.

The Department of Agriculture is committed to continually improving our relationship with tribes. I appreciate the opportunity to share the Forest Service's perspective on these two bills today.

S. 616, the Leech Lake Reservation Restoration Technical Corrections Act of 2023, would amend the Leech Lake Band of Ojibwe

Reservation Restoration Act to address the illegal transfer of lands from the Department of Interior to the USDA for inclusion as part of the Chippewa National Forest. This bill would direct the USDA to transfer specified lands within the Chippewa National Forest to the Leech Lake Band of Ojibwe, specifically those lands that were sold without the consent of the majority of the rightful landowners, according to the records of the BIA.

Additionally, this bill would allow the USDA to transfer lands to tribes on a rolling basis as land is identified and surveys are completed. The technical amendments to S. 616 would address the newly identified acreage not included in the original legislation. USDA appreciates and supports the intent of this Act.

S. 1987 modifies and ratifies a specified water rights compact amongst the State of Montana and the tribes of the Fort Belknap Indian Reservation. Among other things, it requires the tribes' water rights to be held in trust for the benefit of the community and their allottees as directed by the Department of Interior and the Department of Agriculture to negotiate with the State of Montana the exchange of those specified parcels on reservation as well as off-reservation.

The USDA and other agencies within USDA support the broad goals of this legislation and stand ready to work with the bill's sponsors, the Committee, and the implementing agencies to provide additional technical assistance on this legislation.

This concludes my testimony. Thank you for the opportunity to testify. I will be happy to answer any questions when the time is ready.

[The prepared statement of Mr. Crockett follows:]

PREPARED STATEMENT OF JOHN CROCKETT, ASSOCIATE DEPUTY CHIEF FOR STATE,
PRIVATE, AND TRIBAL FORESTRY, U.S. DEPARTMENT OF AGRICULTURE

Chairman Schatz, Vice-Chair Murkowski, and Members of the Committee, thank you for the opportunity to appear before you today to discuss the views of the U.S. Department of Agriculture on bills that include provisions related to the USDA Forest Service.

S. 616, Leech Lake Reservation Restoration Technical Corrections Act of 2023

Following the passage of the Leech Lake Band of Ojibwe Reservation Restoration Act, the U.S. Department of Agriculture (USDA) Forest Service has been working closely with the Leech Lake Band of Ojibwe. In the early stages of implementation of the Act, the Forest Service and the U.S. Department of the Interior (DOI) identified additional lands that had been wrongfully transferred from the Band and its members to the Chippewa National Forest. S. 616, the Leech Lake Reservation Restoration Technical Corrections Act of 2023, would amend the Leech Lake Band of Ojibwe Reservation Restoration Act to address the wrongful transfer of lands from the DOI to the USDA for inclusion as a part of the Chippewa National Forest.

The bill would direct the USDA to transfer specified land in the Chippewa National Forest to the Leech Lake Band of Ojibwe—specifically land that was sold without the consent of a majority of the rightful landowners, according to records maintained by the Bureau of Indian Affairs. Upon agreement between the USDA and the tribe, the Department would substitute alternative National Forest System land located in Cass County, Minnesota, on an acre-for-acre basis, for those parcels of federal land to be transferred that are found to be unsuitable for the future uses of the tribe. The bill would further allow the USDA to transfer land to the tribe on a rolling basis as that land is identified and surveys are completed. Any such agreement, and any transfer of land made pursuant to such agreement, would be considered a final agency action.

The technical amendments in S. 616 would address the newly identified acreage not included in the original legislation. The USDA appreciates and supports the intent of the Leech Lake Reservation Restoration Technical Corrections Act of 2023.

S. 1987, A bill to provide for the settlement of the water rights claims of the Fort Belknap Indian Community, and for other purposes

S. 1987, a bill to provide for the settlement of the water rights claims of the Fort Belknap Indian Community, and for other purposes, modifies and ratifies a water rights compact among the State of Montana, and the Fort Belknap Indian Community, which consists of the Gros Ventre and Assiniboine Tribes (Tribes) of the Fort Belknap Reservation of Montana. Among other things, it requires the Tribe's water rights to be held in trust for the benefit of the Tribes and their allottees, and it directs DOI and USDA to negotiate with the State of Montana for the exchange of specified parcels of state land located on and off the Reservation as well as for DOI to hold received land in trust for the benefit of the Tribes.

USDA, and other agencies within USDA, support the broad goals of this legislation and stand ready to work with the bill sponsors, the Committee, and implementing agencies to provide additional technical assistance on the legislation to ensure no unintended consequences related to all USDA equities prior to further consideration before the committee and the full Senate.

That concludes my testimony. Thank you for the opportunity to testify. I am happy to answer any questions the Committee may have for me.

The CHAIRMAN. Thank you very much.

Secretary-Treasurer Fineday, please proceed with your testimony.

STATEMENT OF HON. LEONARD FINEDAY, SECRETARY-TREASURER, LEECH LAKE BAND OF OJIBWE INDIANS

Mr. FINEDAY. Thank you. Aanii and mino ghizhep, Chairman Schatz, Vice Chair, and Committee members. My name is Lenny Fineday, and I am honored to serve as Secretary-Treasurer of the Leech Lake Band of Ojibwe.

I am here today to speak to the need for S. 616 and to briefly share the appalling history of illegal takings and loss of land from our reservation.

I first want to thank Senator Smith and this Committee for the work that you have done to enact the Restoration Act back in 2020, which directs the Secretary of Agriculture to return "approximately 11,760 acres" of lands under the control of the Chippewa National Forest to the Secretary of Interior to be held in trust for the Leech Lake Band of Ojibwe.

For more than a century, the Leech Lake people have worked diligently to restore the lands our ancestors reserved for us. The Restoration Act is a culmination of generations of work to restore a very small portion of our reservation that was illegally transferred more than half a century ago.

The Restoration Act and the technical correction will enable Leech Lake to address the severe housing needs of our citizens, improve access to wild rice beds and culturally significant areas of our reservation, and restore a measure of justice to our people.

The Leech Lake Reservation was established through a series of treaties and executive orders in the mid-1800s. As this Committee knows, the United States did not give us our lands or reservation. Instead, through these treaties, we ceded millions of acres of our homelands to help establish what is now the State of Minnesota. In return, the United States promised that the Leech Lake Reservation would serve as our permanent home.

However, shortly after the last executive order was signed to finalize the boundaries of our reservation, Congress enacted a series of laws designed to take our lands, disseminate our government, and destroy our way of life. My written testimony provides a detailed history of these takings, which started with the Nelson Act of 1889, the establishment of the Chippewa National Forest at the turn of the century, and the series of administrative takings known as secretarial transfers that occurred in the 1940s and 1950s.

Today, because of these laws and administrative actions, less than 5 percent of our treaty-guaranteed homelands are in protected trust status. The Restoration Act focused on restoring the illegal secretorially transferred lands to our reservation. The need for the technical correction arose during implementation of the Restoration Act.

As the agencies worked to identify documents associated with parcels for restoration, the Bureau of Land Management's Indian Land surveyor completed a record search and review of all BIA land transfers during the 1940s and 1950s. The surveyor found that more than 16,000 acres of land currently held by the Forest Service were acquired through the illegal secretary transfer process, far more than the approximately 11,760 acres estimated in the Act.

The injustice that took place more than half a century ago was clearly underestimated. That is why we are back before the Committee today. I truly want to thank the BLM for its transparency, the Forest Service for its partnership throughout this process, and Senators Smith and Klobuchar for introducing the technical correction.

The technical correction simply amends the Restoration Act to meet the original intent of the Act, which is to restore all the lands that were wrongly taken from our reservation. The impact of Congress taking action to restore lands wrongfully taken from Leech Lake people cannot be overstated. Dispossession of Indian Lands of the Leech Lake Reservation have impacted generations of people on the Leech Lake Reservation by perpetuating historical trauma, fostering resentment toward Federal agencies and their staff charged with the care of these lands, limiting access to spiritually and culturally significant lands and resources as well as exacerbating social issues related to homelessness and overcrowded housing.

Stories of Leech Lake people showing up at their family lands only to find a U.S. Forest Service gate and learning of a transfer of their land to the Forest Service years after the action are unfortunately all too common on Leech Lake. These stories will change only through passage of the bill today.

I know that the passage of the Restoration Act in 2020 was a day many people will not forget. It marks a big step toward recognizing and correcting the social inequity and injustice that have been a lived experience for our people and our families.

I again want to thank this Committee for its work on returning these illegally transferred lands which will guarantee a governing land base for future generations. I ask this Committee to advance the bill so that we can fully accomplish the original intent of the Restoration Act.

Thank you for the opportunity to testify today. Miigwech. I am prepared to answer any questions.

[The prepared statement of Mr. Fineday follows:]

PREPARED STATEMENT OF HON. LEONARD FINEDAY, SECRETARY-TREASURER, LEECH LAKE BAND OF OJIBWE INDIANS

Good afternoon Chairman Schatz, Vice Chair Murkowski and Members of the Committee. My name is Lenny Fineday, and I am honored to serve as Secretary-Treasurer of the Leech Lake Band of Ojibwe (“Leech Lake” or “Tribe”).

The Leech Lake Band of Ojibwe is a Federally recognized Indian tribe with approximately 10,000 Tribal citizens and a Reservation located almost wholly within the Chippewa National Forest.

I’m here today to speak to the need for the Leech Lake Reservation Restoration Act Technical Correction and to briefly share the appalling history of illegal takings and loss of land from the Leech Lake Reservation.

I first want to thank Senator Smith and this Committee for your efforts to enact the Leech Lake Reservation Restoration Act (“LLRRA” or “Restoration Act”), which directs Secretary of Agriculture to return “approximately 11,760 acres” of lands under control of the Chippewa National Forest (CNF) and located within Cass County, Minnesota to the Interior Secretary to be held in trust for the benefit of the Leech Lake Band of Ojibwe.

The Restoration Act is the culmination of generations of work by hundreds of people to restore a small portion of our homelands. Restoring our homelands has been Leech Lake’s focus for more than a century.

The Restoration Act and the Technical Correction will enable Leech Lake to address the severe housing needs of our citizens, improve access to wild rice beds and culturally significant areas of our Reservation, and restore a sense of justice to our people. The Leech Lake Reservation was established through a series of treaties and executive orders dating from 1855 to 1874. As this Committee knows well, the United States did not give us our lands or Reservation. Instead, through these treaties we ceded millions of acres of our homelands to help establish what is now the State of Minnesota. In return, the United States promised that the Leech Lake Reservation, which included more than 550,000 acres of surface lands and more than 300,000 acres of lakes, would serve as our permanent home.

However, shortly after the last executive order was signed to finalize the boundaries of the Leech Lake Reservation, Congress enacted a series of laws designed to take our lands, dismantle our government, and destroy our way of life.

Below is a more detailed discussion of the history of these takings, which started with the Nelson Act of 1889, the establishment of the Minnesota Forest Reserve and later the Chippewa National Forest—which were carved out of our Reservation, the Weeks Act of 1911, and a series of administrative takings termed “Secretarial Transfers” that occurred in the 1940s and 50s.

As a result of these takings, only 29,000 of the original 550,000 acres remain in trust. This is less than five percent of the Reservation that treaties promised would be our permanent home.¹ Many Leech Lake trust/allotted lands are swamplands and not suitable for housing, infrastructure, or economic development. The U.S. Forest Service and the state of Minnesota now hold most of the usable lands within the boundaries of the Leech Lake Indian Reservation.

The Restoration Act focused restoration on the Secretarial Transfer lands that Interior illegally transferred without consent of the Indian landowners to the Chippewa National Forest through a series of transfers in the 1940s and 50s. The Interior Solicitor found that the transfers violated the Indian Reorganization Act, and the illegal transfers stopped in the late 1950s.

The Tribe and individual tribal members sought to restore the lands through various efforts, including litigation, but a federal court found that the claims were time barred²—and only Congress could accomplish the restoration.

The need for this Technical Correction arose during implementation of the Restoration Act. As the agencies worked to identify parcels for restoration, the BLM Indian Land Surveyor completed an audit of all Chippewa National Forest land holdings within Cass County. He discovered that the illegal Secretarial Transfers were more widespread than initially estimated.

¹A current day map of the Reservation and the overlapping boundaries of the Forest is retained in the Committee files.

²See *United States v. Mottaz*, 476 U.S. 834, 851 (1986).

Instead of the “approximately 11,760 acres” listed in the Restoration Act, the surveyor found 16,122 acres were acquired by the Forest Service through Secretarial Transfers. The injustice that took place more than a half century ago was clearly underestimated. And that’s why we are back before this Committee today.

I truly want to thank BLM for its transparency, the Forest Service for its partnership throughout this process, and Senators Smith and Klobuchar for introducing the Technical Correction. The Technical Correction simply amends the Restoration Act to meet the original intent of the Act, which is to restore all the lands that were wrongly taken by the United States from our Reservation.

The additional lands that would be impacted by the Technical Correction are located within Cass County. The County passed a resolution in 2017 that it did not oppose the Restoration Act and it stands by that position for purposes of the Technical Correction.

In addition, Leech Lake entered into an “Agreement Regarding Existing Electric Utility Easements on Lands Subject to the Leech Lake Band of Ojibwe Reservation Restoration Act” with Beltrami Electric Cooperative, Inc., Crow Wing Cooperative Power and Light Company, and Lake Country Power on September 17, 2020.

The Agreement clarifies the rights of the three Rural Utilities to continue to provide services to Leech Lake citizens on all lands “administratively transferred from the National Forest Service to the Secretary of the Interior and held in trust for the benefit of the Band pursuant to the Act.” These rights include their ability to access and service existing utility easements and related infrastructure to ensure that the electric transmission and distribution systems of the Rural Utilities continue to provide safe, reliable, and affordable electrical services to all residences and businesses located on the Reservation. As noted above, the Agreement applies to all lands that will be transferred pursuant to the Restoration Act, including any amendments made to the Act. We appreciate the strong relationship we have with the rural utilities and the critical services they provide throughout our Reservation.

Our lands—our Reservation—are the very foundation of the Leech Lake Tribal Government’s sovereignty. After a century of targeted takings, the Restoration Act and the Technical Correction represent the most significant pieces of land restoration in our history. The lands that would be restored to the Leech Lake Reservation will help the Tribe address the severe housing needs of our citizens, address needs for community and economic development, and provide access to places of cultural importance to better enable our citizens to exercise treaty rights, conduct ceremony, and maintain our way of life.

In closing, I want to thank the Committee for its focus on righting a portion of the historic injustices that have been inflicted on the Leech Lake Band of Ojibwe, and for helping the Tribe restore our homelands for future generations.

I ask the Committee to advance the Technical Correction so that we can fully accomplish these goals. Thank you for the opportunity to testify today.

History of Land Tenure of the Leech Lake Reservation

Before contact with European Nations, Indian tribes were independent self-governing entities vested with full authority and control over their lands, citizens, and visitors to Indian lands. The Nations of England, France, and Spain all acknowledged tribes as sovereigns and entered into treaties to establish commerce and trade agreements, form alliances, and preserve the peace.

Upon its formation, the United States also acknowledged the sovereign authority of Indian tribes and entered into hundreds of treaties. Through these treaties, Tribes ceded hundreds of millions of acres of their homelands to help build this great Nation. In return, the United States promised that the reserved lands would be the Tribe’s permanent home. Treaties also promised to provide for the education, health, public safety, and general welfare of Indian people. The U.S. Constitution specifically acknowledges these treaties and the sovereign authority of Indian tribes as separate governments.³ Tribal government land bases are the very foundation of tribal sovereignty and strong economies. However, federal policies implemented throughout the 1800s and revisited in the mid-1900s resulted in the takings and significant loss of Tribal government lands. The legacy and impacts of these taking continues to impact Tribal governments today. Many tribes have an insufficient

³The Commerce Clause provides that “Congress shall have power to . . . regulate commerce with foreign nations, and among the several states, and with the Indian tribes.” Tribal citizens are referred to in the Apportionment Clause (“Indians not taxed”) and excluded from enumeration for congressional representation. The 14th Amendment repeats the original reference to “Indians not taxed” and acknowledges that tribal citizens were not subject to the jurisdiction of the United States. By its very text, the Constitution establishes the framework for the federal government-to-government relationship with Indian tribes. The Constitution finally acknowledges that Indian treaties, and the promises made, are the supreme law of the land.

land base upon which to address the housing needs of their citizens, develop their economies to generate revenue to provide essential Tribal governmental services, or to access places of cultural importance to maintain their way of life.

Every federally recognized Indian tribe suffers from this tragic legacy. The loss of land from the Leech Lake Reservation was massive, intentional, targeted, and—like other Tribes—continues to blunt the progress of our people to this day.

The Leech Lake Indian Reservation was established through a series of treaties and executive orders from 1855 to 1874.⁴ These treaties and executive order established the Leech Lake Reservation, provided that the Reservation consisted of 588,684 acres of land and nearly 300,000 acres of our sacred lakes.⁵ Article 2 of the 1855 Treaty promises that “There shall be, and hereby is, reserved and set apart, a sufficient quantity of land for the permanent homes of the said Indians.”⁶

However, as noted above, shortly after the last executive order regarding the Leech Lake Reservation was signed, Congress enacted a series of laws designed to weaken our governments, take our lands—and more directly, our resources, and destroy our way of life.

Nelson Act of 1889

The first, and possibly the most damaging Act of Congress to adversely impact the Leech Lake Reservation was the Nelson Act of 1889.

The timber industry has a long history in Minnesota. Many lakes and rivers were dammed in order to facilitate the transportation of timber. By the late 1800s the logging industry had reached the borders of the Leech Lake Indian Reservation but could not access the large expanses of virgin white and red pine forests that it contained as the entire Leech Lake Reservation was protected by Treaty as our permanent home.

Minnesota’s timber industry saw the General Allotment Act (Dawes Act) of 1887 as a blueprint to access Ojibwe Reservation lands. They successfully lobbied Congress, and in the 50th Congress, Minnesota Congressman Knute Nelson sponsored a bill formally titled, “An Act for the relief and civilization of the Chippewa Indians of Minnesota.” Congress passed the bill and President Cleveland signed “the Nelson Act” into law on January 14, 1889. The Nelson Act was specific to Ojibwe Reservations in Minnesota, affecting the Grand Portage, Mille Lacs, Leech Lake, Boise Forte, Fond du Lac and White Earth Bands.

The Act opened the door to the Leech Lake Reservation and began the shift in ownership from communally held Tribal Government-owned land to the mixed ownership of Tribal, public, and private lands that we have today.

The United States—through the Nelson Act—sought to destroy the governing structures of the Minnesota bands, parcel out tribal governmental lands to individual Indians, and open “surplus” reservation lands to settlers and private companies in clear violation of existing treaties. A primary goal of the Nelson Act was to open the northern white pine forests to timber companies for logging.

Under the Nelson Act, the Allotment process on the Leech Lake Reservation spanned twenty-one years from approximately 1896 to 1917. By the end of the process, Leech Lake tribal citizens were allotted approximately 90,000 acres, while more than 500,000 acres were “deemed” surplus lands that were opened for settlement.⁷

The Burke Act of 1906 authorized the Interior Secretary to issue fee patents to Tribal Allottees if they were deemed by the government to be “competent and capable.” Because of the Burke Act, allotted Indian lands were often taken out of trust without the knowledge of the individual Indian, and were subjected to forced fee patents, and thus, state taxation. These lands were seized by the state due to an

⁴See Treaty with the Chippewa of February 22, 1855 (10 Stat. 1165); Treaty with the Chippewa, Mississippi, Pillager, and Lake Winnibigoshish Bands of 1863 (12 Stat. 1249); Treaty with the Chippewa, Mississippi, Pillager, and Lake Winnibigoshish Bands of 1864 (13 Stat. 693); Treaty with the Chippewa of the Mississippi of March 19, 1867 (16 Stat. 719); and Executive Orders Oct. 29, 1873, Nov. 4, 1873, and May 26, 1874.

⁵See <https://www.leechlakeneews.com/wp-content/uploads/2018/02/1855-Treaty.pdf>; *Leech Lake Band of Chippewa Indians v. Herbst*, 334 F. Supp. 1001, 1002 n.1 (D. Minn. 1971)(providing a detailed description of the boundaries of the initial Leech Lake Indian Reservation, and upholding the Tribe’s continued right to exercise treaty hunting and fishing rights on lands throughout the Reservation).

⁶Annual reports of the Commissioner of Indian Affairs from the mid- to late-1800s referred to the bands that occupied the territory at the headwaters of the Mississippi around Cass Lake, Lake Winnibigoshish, and Leech Lake as the Chippewa of the Mississippi, the Pillager Chippewas, the Lake Winnibigoshish Band, the Cass Lake Band, the Leech Lake Band, the White Oak Point Band, and the Mississippi Band. These bands are now known as the “Leech Lake Band of Ojibwe”.

⁷See Leah J. Carpenter, *Tracking the Land: Ojibwe Land Tenure and Acquisition at Grand Portage and Leech Lake*, pages 172–76 (2008).

individual's inability or failure to pay taxes. As a result, "[b]y 1937, only 45,684 acres of allotted Leech Lake remained in trust status."⁸

Establishment of the Minnesota Forest Reserve and the Chippewa National Forest

Problems were rampant with implementation of the Nelson Act, which led to a push to preserve the forest lands on the Leech Lake Reservation. The primary groups involved in this debate were the timber industry, which wanted greater access to Reservation lands for logging, and the Minnesota Federation of Women's Club, who sought to preserve the forest. Of course, the voice of the key stakeholder in this debate, the Leech Lake Band of Ojibwe, was largely ignored. At the time, Native Americans were not United States citizens and had no right to vote in federal or state elections.

These efforts led to enactment of the Morris Act of 1902. The Act amended the Nelson Act by setting aside approximately 200,000 acres of "surplus lands" within the Leech Lake Reservation for use as the "Minnesota Forest Reserve". This was the first national forest reserve created by congressional act. The Morris Act also reserved ten sections of land within the Leech Lake Reservation for the Tribe, while at the same time opening 25,000 acres of "agricultural land" to settlement. However, the timber industry also benefited from the Act, which authorized the sale of pine lands and timber within the forest reserve.

The continued push to preserve the forest led to the official establishment of the Minnesota National Forest in 1908 (eventually renamed the Chippewa National Forest). These lands were carved out of the Leech Lake Reservation for that purpose and the boundaries of the forest were essentially superimposed upon the boundaries of the Leech Lake Reservation. While the size of the Chippewa National Forest has increased over the past century, to this day, the Leech Lake Indian Reservation makes up 75 percent of the Forest.

Secretarial Transfers/Non-Consents: the "Termination Era"

The loss of Leech Lake Reservation lands slowed during the era of "Indian Reorganization." Congress enacted the Indian Reorganization Act (IRA) in 1934 to halt the federal policy of allotment and assimilation and to secure for all Indian tribes a land base on which to engage in economic development and self-determination. The IRA expressly authorized the Interior Secretary to extend indefinitely the trust status of Indian lands "and any restriction on alienation thereof" (See 25 U.S.C. 5102); restore to tribal ownership the remaining surplus lands of any Indian reservation "heretofore opened" (See 25 U.S.C. 5103); and to take additional lands into trust for the benefit of tribal governments (See 25 U.S.C. 5108). Under the BIA's brief "tribal land restoration project", approximately 5,600 acres were restored to the Leech Lake Reservation.⁹

However, this brief period of positive federal policy towards Tribal Governments was short-lived. Congress formally changed federal Indian policy in 1953 through enactment of House Concurrent Resolution No. 108. The stated purpose of the Resolution was to terminate, via legislation, the federal-tribal relationship, eliminate tribal land holdings, and relocate Native Americans from Indian lands to urban areas.

Under "Termination Era" policies, Congress ended the federal-tribal government-to-government relationship with 109 tribes and sold off the lands of these tribes. In addition, in 1952, the Bureau of Indian Affairs implemented what it called the "Voluntary Relocation Program", which encouraged Native Americans to move to urban areas throughout the United States by providing a one-way bus ticket and moving expenses. Congress formalized this policy through enactment of the Indian Relocation Act of 1956.

While Leech Lake was not a direct target for termination legislation in Congress, the Termination Era served as another means of dispossessing the Tribe of its Treaty-promised Reservation lands.

In the run-up to the Termination policy, Interior Department officials sought opportunities to reduce its "burden" of administering Indian trust land. To reach this goal, beginning in the late 1940s, the BIA began a process that prioritized "supervised sales" of allotted Indian lands.

⁸*Id.* at 177, citing Consolidated Chippewa Agency Annual Statistical Reports on Leech Lake Reservation, White Oak Point Reservation, Cass and Winnibigoshish Reservation (1936). NARA, Washington, D.C., RG75, Records of the Bureau of Indian Affairs, Records of the Statistics Division, Reports and other Records, 1933-1948, Box 15, PI-163, Entry 963.

⁹See Leah Carpenter, *Tracking the Land* at 214-15.

However, allotted lands were highly fractionated—ownership in the original allotments had passed on to numerous heirs over the generations. Heirs of an original allottee own undivided interests in the allotment. Some allotments have hundreds and even thousands of individual owners. In addition, the Indian Reorganization Act made it more difficult for the BIA to implement its new priority. The IRA requires the government to obtain the consent of all Indian landowners prior to approving a sale.

The BIA targeted Leech Lake allottees for the supervised land sales, in part because of their lands' ties to the Chippewa National Forest. The Bureau "began to advocate that the United States Department of Agriculture should be considered the primary purchaser of the fractionated allotted lands."¹⁰ The administrative process of transferring ownership of allotted Indian lands from the Interior Department to another federal agency became known as "Secretarial Transfers".

While these administrative policies impacted reservations nationwide, the impact was particularly severe at Leech Lake, again, because of its connection to the Chippewa National Forest. More than 25,000 acres of allotted Leech Lake land were sold by the Secretary of the Interior, without the full consent of the Indian owners, the bulk of which was transferred to the United States Forest Service, for inclusion in the Chippewa National Forest.¹¹

In 1979, the Interior Solicitor, in a Memorandum interpreting the Act of May 14, 1948, determined that all Secretarial Transfers required the "unanimous consent [of all heirs] before all interests in those IRA reservation allotments can be conveyed."¹² The Department acknowledged that many of the Secretarial Transfers of allotted Indian lands were sold without the consent of all the rightful, legal heirs.

The history of the Secretarial Transfers was a focus of the Minnesota Chippewa Tribe's (MCT) Section 2415 Land Claims Project. The Project's research revealed that the BIA's notification process violated federal law. The Bureau made a policy assumption to the detriment of the Indian owners/heir. If the Bureau did not receive a written response from an individual heir after an official notice to transfer the land had been sent to the heir, then it was assumed by the Bureau that it had obtained the consent. Often, however, the Bureau's notice was never received by the heir, which left that heir without a legal opportunity to respond or disapprove the proposed land sale.¹³

Just days after the Interior Solicitor's 1979 Memorandum admitted that many of the Secretarial Transfers were illegal, a Minneapolis Field Solicitor notified the Minneapolis Area Director that they would not litigate the Secretarial Transfers on behalf of the allottees, promising instead to advance legislative proposals that never came.¹⁴ This resulted in the decades long effort of Leech Lake, working with our congressional delegation, to develop and pass the Leech Lake Reservation Restoration Act and now the Technical Correction to the Act.

The CHAIRMAN. Thank you very much.
President Nygren, please proceed with your testimony.

STATEMENT OF HON. BUU NYGREN, PRESIDENT, NAVAJO NATION

Mr. NYGREN. Yá'át'ééh, Chairman Schatz, Vice Chairman Murkowski, Senator Luján, and members of the Committee. My name is Buu Nygren and I am the President of the Navajo Nation representing the voices and aspirations of the Navajo people. Thank you for the opportunity and for hearing my testimony today on the Navajo-Gallup Water Supply Project Amendments Act of 2023, S. 1898.

¹⁰Id. at 245.

¹¹Id. at 250.

¹²Id. at 248 citing Memorandum from the Solicitor, Leo M. Krulitz, to All Regional Solicitors (August 20, 1979). The Memorandum is regarding "28 U.S.C. 2415 claims: conveyances of inherited allotments pursuant to the Act of May 14, 1948, 25 U.S.C. § 483 (August 20, 1979).

¹³Id. at 249–50.

¹⁴Id. at 251, citing Letter from Elmer T. Nitzschke, Field Solicitor, to Edwin L. Demery, Minneapolis Area Director, August 24, 1979, accompanied by Solicitor's Memorandum of August 20, 1979 regarding 2415 land claims (August 24, 1979).

Thank you also again to Senator Luján and Senator Heinrich for this critical legislation, which will ensure that thousands of Navajo people have a safe, reliable drinking water supply.

The Navajo Nation provides governmental services to more than 400,000 members. Our on-reservation population accounts for over one-third of all Natives living in Indian Country. Our reservation encompasses more than 17.5 million acres, spans portions of 11 counties across the States of Arizona, New Mexico and Utah.

Unfortunately, ensuring adequate drinking water for our members continues to be a struggle. About 30 percent of Navajo households continue to lack running water. They rely on hauling water to meet their daily needs.

To address this dire situation, in 2005 the nation entered into the San Juan Settlement with the State of New Mexico. In exchange for water development projects, including the Navajo-Gallup Water Supply Project, the nation agreed to quantify its water rights and release claims to the water in the San Juan River Basin.

In 2009, Congress approved the San Juan Settlement and authorized the Bureau of Reclamation to construct the Navajo-Gallup Water Supply. The Navajo-Gallup Water Supply Project is an essential initiative to address the critical needs of the Navajo Nation and surrounding communities in western New Mexico. This region has long suffered from limited access to clean and reliable water, resulting in immense hardship for our people.

The Navajo-Gallup Water Supply Project represents a beacon of hope, promising a brighter future for our communities. The project is designed to serve a quarter million people. The areas to be served by the project currently rely on depleting groundwater supply that is poor quality and the existing supply is inadequate to meet the demands of more than 43 Navajo local governments, the City of Gallup, the Teepee Junction at the Jicarilla Apache Nation.

The 2009 Act requires the project's features to be completed no later than December 2024 unless the parties agree to extend the completion date. The project construction cost estimate of \$870 million as provided in 2009 was based on an appraisal level, designs and cost estimate. A number of elements have increased the project's cost beyond what the 2009 Act anticipated. Among the factors are greater expenses than expected for water treatment plans to meet Safe Drinking Water Act requirements, engineering challenges in diverting water from the San Juan River, and a 40-year high inflation rate.

Since 2009, Reclamation has developed a project working cost estimate based on final detailed design and engineering. The current working estimate shows that the revised construction ceiling of \$2.175 billion will adequately support the completion of this critical project.

This legislation amends the 2009 Act in a number of important ways to ensure the Act can be fully implemented. Let me highlight some of the most important amendments to this legislation.

First, this bill increase project funding by increasing the appropriation ceiling to allow for completion of the project. Second, the bill extends the completion deadline for the project from 2024 to 2029. Third, the bill allows for deferral of construction facilities to save operation and maintenance costs associated with the facility.

Finally, the bill creates operation and maintenance trust funds for the Navajo Nation and the Jicarilla Apache.

The completion of the Navajo-Gallup Water Supply Project will bring transformative changes in the lives of our people. If S. 1898 is not enacted, the San Juan Settlement and the completion of the project will be threatened. Failure here would further increase the costs of the project, worsen the drinking water crisis, bring uncertainty to all the water users in the San Juan River Basin in Mexico.

Therefore, I respectfully urge this esteemed Committee to support S. 1898 and provide additional funding needed to complete this critical initiative. Let us come together to create a future in which our people thrive, our culture flourishes, and our land is sustained for generations to come.

[Speaking in Native tongue.]

[The prepared statement of Mr. Nygren follows:]

PREPARED STATEMENT OF HON. BUU NYGREN, PRESIDENT, NAVAJO NATION

Yá'át'ééh, Chairman Schatz, Vice Chairwoman Murkowski and members of the Committee. My name is Buu Nygren and I am the President of the Navajo Nation ("Nation"). Thank you for the opportunity to testify in support of the Navajo-Gallup Water Supply Project Amendments Act of 2023, S. 1898. Thank you also to Senators Lujan and Heinrich for sponsoring this legislation, which is critical to ensuring implementation of the Navajo Nation San Juan River Basin Water Rights Settlement in New Mexico (the "San Juan Settlement") and the completion of the Navajo-Gallup Water Supply Project (the "Project"). Their leadership will help secure a reliable water supply for the Navajo Nation and other water users in the State of New Mexico.

The Navajo Nation and the San Juan Settlement

The Nation is the largest Native American tribe in the country. We provide critical governmental services to more than 400,000 members, almost half of whom reside on the Navajo Nation, which encompasses more than 27,000 square miles and spans portions of 11 counties across the states of Arizona, New Mexico, and Utah. Unfortunately, ensuring adequate drinking water for our members continues to be a struggle with approximately 30 percent of Navajo households lacking running water and relying on hauling water to meet their daily needs.

To address this dire need, in 2005, the Nation entered into the San Juan Settlement with the State of New Mexico. Specifically, in exchange for water development projects, including the Project, the Nation agreed, among other things, to quantify its water rights and release claims to water in the San Juan River Basin in New Mexico. Ultimately, the parties recognized that in the absence of a settlement, final resolution of the proceedings in the San Juan River Adjudication would take many years, entail great expense, and prolong uncertainty concerning the availability of water supplies in the San Juan River Basin in New Mexico.

In 2009, Congress approved and ratified the San Juan Settlement and authorized the Bureau of Reclamation to construct, operate and maintain the Project in substantial accordance with the preferred alternative outlined in the Draft Environmental Impact Statement, which Reclamation completed in July 2009. *See*, Omnibus Public Land Management Act of 2009, Title X, Part III (Public Law 111-11) (the "2009 Act"). Consistent with the San Juan Settlement and the 2009 Act, the Nation agreed to execute waivers and releases of claims against the United States relating to water in the San Juan River Basin in exchange for the benefits of the San Juan Settlement and legislation. The waivers can be nullified if the Project is not completed under the timeline set forth in the legislation.

On December 17, 2010, the United States, the Nation, and the State of New Mexico executed the San Juan Settlement. On November 1, 2013, the San Juan River adjudication court entered two Partial Final Judgments and Decrees ("decrees") adjudicating the water rights of the Navajo Nation.

The Project

The Project, once fully constructed, will convey a reliable municipal and industrial water supply from the San Juan River to the eastern section of the Nation, the

southwestern portion of the Jicarilla Apache Nation, and the City of Gallup, New Mexico through two pipelines approximately totaling 300 miles, nineteen pumping plants, and two water treatment plants. The areas currently rely on a rapidly depleting groundwater supply that is of poor quality and inadequate to meet the current and future demands of more than 43 Navajo chapters, the City of Gallup, and the Teepee Junction area of the Jicarilla Apache Nation. Of specific concern is that the City of Gallup's groundwater levels have dropped over 200 feet over the past decade and, as noted, nearly 30 percent of the Nation's households rely on hauling water.

The Project is designed to serve a 2040 population of approximately 250,000 through the annual delivery of 37,764 acre-feet of water from the San Juan Basin. The 2009 Act requires that all project features be completed no later than December 31, 2024, unless the Nation, the State of New Mexico, and the Department of the Interior agree to extend the completion date.

The Project's Construction Cost Estimate of \$870 million as provided in the 2009 Act was based on Appraisal-Level designs and cost estimates. Appraisal Level studies are typically only conducted at a level to determine if there is a Reclamation interest in a proposed project and if a viable project alternative may be recommended by Reclamation for feasibility level of study. Appraisal Level studies are based primarily on existing data and information, and they only include designs and cost estimates for major features that can be used to compare potential project alternatives.

A number of elements have created conditions that have increased the Project's cost beyond what was anticipated in the 2009 Act. Among the factors are greater expenses than expected for compliant water treatment plants to meet Safe Drinking Water Act requirements, engineering challenges in diverting water from the San Juan River, and market volatility that the indexing provided for under the 2009 Act did not completely reflect (including a 40-year high in the inflation rate). Since 2009, Reclamation has developed a Project Working Cost Estimate based on actual contract awards, required Project revisions, and final detailed design and engineering. The greatly improved quality and accuracy of the design and cost data that has gone into the current Working Cost Estimate supports the revised construction ceiling of \$2,175,000,000 (with indexing), which will adequately support the completion of this critical Project.

In 2012, construction on the Project began and is anticipated to be completed in 2029. Reclamation and its partners have made significant progress, completing certain portions of the Project. In October 2020, the Cutter Lateral, one of the two pipelines, was completed and the Navajo Tribal Utility Authority began making initial water deliveries to Nation communities. By May 2021, Project water was being delivered to approximately 6,000 people in eight Navajo Chapters. Much work, however, is left to be done to serve the remaining population who need a reliable water supply. Although progress has been made on the Project, Reclamation does not anticipate that construction will be completed until 2029. This timeline is problematic because the 2009 Act requires the completion of all Project features by no later than December 31, 2024.

Amendments to the 2009 Act

To address the appropriations shortfall and ensure full implementation of the 2009 Act, S. 1898 makes the following amendments to the 2009 Act:

- increases project funding by increasing the appropriations ceiling to \$2,175,000,000 for the Project. It would also update provisions on adjustments to the appropriations ceiling to reflect changes in construction cost and applicable regulatory standards and to accommodate unforeseen market volatility, including repricing for the types of construction and current industry standards involved.
- increases appropriations for conjunctive use wells in the San Juan River Basin to \$37,500,000 from \$30,000,000 and allows appropriations for conjunctive use wells in the Little Colorado River and Rio Grande Basins, as well as the San Juan River Basin, to be available through fiscal year 2032.
- extends the completion deadline for the Project from 2024 to 2029.
- allows for deferral of construction of facilities to save operation and maintenance costs associated with such facilities. The bill would create a Deferred Construction Fund to provide funding for facilities that have been deferred and allow for alternate project facilities if the relevant parties agree. The fund would consist of amounts that correspond to portions of the Project that have been deferred.

- creates operations and maintenance trust funds for the Navajo Nation and the Jicarilla Apache Nation to use for the Project's operations, maintenance, and replacement costs. These trust funds are created as a substitute for language in the 2009 Act allowing the Secretary to waive operation, maintenance, and replacement costs for the Nation for up to 10 years after they would otherwise be required under the Nation's contract. Trust funds would be used to lower customers' operations and maintenance charges and will help develop adequate customer bases for the water projects in their early stages.
- authorizes the expansion of the service area beyond the San Juan River Basin to deliver water supply from the Project to communities within the Rio San Jose Basin in New Mexico. The Nation would also be authorized to expand the service area in Arizona beyond Fort Defiance and Window Rock to deliver water supply from the Project to the Nation community of Lupton, Arizona, within the Little Colorado River Basin, but would still be subject to section 10603(c)(1) of P.L. 111-11 limiting the delivery of water to Arizona until certain conditions are met.
- clarifies which construction activities are subject to state taxation and which ones are subject to tribal taxation, preventing double taxation.
- caps the repayment obligation of the City of Gallup for the Project at \$76,000,000.
- takes into trust land on which project facilities are located.
- authorizes the Secretary to expend funds for the development of renewable energy, including hydropower, to provide affordable energy for the Project.

The passage of S. 1898 is critical to the health and well-being of the Navajo Nation and the other communities to be served by the Project that are struggling with inadequate groundwater supplies. If S. 1898 is not enacted, the San Juan Settlement and the completion of the Project will be threatened, which would increase the cost of the Project, exacerbate the drinking water crisis on the Navajo Reservation, and bring uncertainty to all of the water users in the San Juan River Basin in New Mexico. I therefore respectfully urge the Committee to support the swift passage of S. 1898.

The CHAIRMAN. Thank you, President Nygren.
President Stiffarm, please proceed with your testimony.

STATEMENT OF HON. JEFFREY STIFFARM, PRESIDENT, FORT BELKNAP INDIAN COMMUNITY

Mr. STIFFARM. Good afternoon, everyone. I would like to thank Chairman Schatz, Vice Chairman Murkowski. Also thank you to Senator Tester and Senator Daines for working really hard with Fort Belknap.

The Winters doctrine, as said here, Fort Belknap in 1908 won the settlement before the Supreme Court that says we can't have the land without the water. It set the way for Indian nations across this Country to get their fair share of water.

And here we are today, a century later, Fort Belknap is going to be able to settle their water. We wish the tribes that got us help for all Indian Country across this great Country of ours to get their water.

We are here to testify on behalf of my people back home, the chiefs that were before me, that worked hard on this bill to get this done. Former President Andrew Werk worked very hard on this, my predecessor. I want to thank him for all his hard work and you all for helping him get this to where it is today. And it landed in my lap to provide testimony on our water that we worked hard.

It is not only going to provide clean drinking water for the people of Fort Belknap, the A'aniih and Nakoda people, but up and down the line, from Blackfeet Country all the way down to Fort Peck

Reservoir. This can provide cleaner and higher quality drinking water all the way down to Milk River.

We have worked hard with the Governor Gianforte and we are very proud and honored to have the Lieutenant Governor here to sit beside me and testify on behalf of our bill here today to get it moving forward for a future where our children and our grandchildren, that is what we are all here for, not ourselves.

The bill is about \$1.3 billion, and it is all for infrastructure and the St. Mary's project. And it is well-deserved for our community members back home that have had to live in poverty. You have all heard our stories, how we lived and we walked, of our ancestors, the lands that we sacrificed, the lives that were sacrificed to put us to where we are here today, and the hard work that we did. My team sitting behind me, my wife and my chiefs came here to support me.

It has been a long road, very difficult decisions that we had to make back home to put us to where we are today. We ceded a lot of land that we wanted, which was rightfully ours, that was taken from us. Gold was discovered in our [indiscernible] mountains.

But put that aside, we thought water was more important. And that is what we decided. That is how we brought the bill up to where it is today. We want to thank the Committee members back home that gave us the patience and understanding to come over here and travel quite a bit to talk to our Senators. I respect Senator Daines and the work he did for us, and Senator Tester. We did a lot of work.

We had to do a lot to get our bill here on the table. A lot of things that we wanted in this bill are not in here, but we are willing to do that to provide this water for our community members, our elders, our children. We have a high rate of suicides back home. My son was one of them, and it is because we don't have the general necessities that you all have here today in the city of Washington, D.C. We don't have clean drinking water; we don't have homes.

But what this bill is going to provide for our people is hope, something to fight for, something to stand for. I am glad that you are here to give me a little bit of your time to tell you about the things that we gave up to put us to where we are today, the hard work that we provided to get a settlement done.

I look forward to working with you in the future to get this completed. I am here to answer any questions. Again, I want to thank you, Mr. Chair, for being here today. [Phrase in Native tongue.]

[The prepared statement of Mr. Stiffarm follows:]

PREPARED STATEMENT OF HON. JEFFREY STIFFARM, PRESIDENT, FORT BELKNAP
INDIAN COMMUNITY

Chairman Schatz, Vice Chairman Murkowski, and Members of the Senate Committee on Indian Affairs, my name is Jeffrey Stiffarm. I serve as President of the Fort Belknap Indian Community Council. Thank you for the opportunity to testify in support of S. 1987, the "Fort Belknap Indian Community Water Rights Settlement Act of 2023." We also want to thank our Senators from Montana, Jon Tester and Steve Daines, for introducing this bipartisan bill in the Senate, as well as our Montana Congressional Representatives, Matt Rosendale and Ryan Zinke, for their support. Our bill also enjoys the support of Montana Governor Greg Gianforte. We respectfully request that the Committee work to pass S. 1987 to finally secure our Indian reserved water rights.

The Fort Belknap Indian Community (FBIC) consists of the Gros Ventre and Assiniboine Tribes (Tribes) who fought in 1908 for the right to use the water on our Ft. Belknap Reservation (Reservation), establishing the “longstanding reserved water rights doctrine,” known as the Winters doctrine, in which “the Federal Government’s reservation of land for an Indian tribe also implicitly reserves the right to use water . . . to accomplish the purpose of the reservation.” *Arizona v. Navajo Nation* case (U.S. Supreme Court, June 22, 2023).¹ Now, more than a century later, it is time for Congress to ratify our historic Indian water rights, ratified by the state of Montana in our 2001 Water Compact, and approve our Water Rights Settlement, which will provide us the ability to develop and use our Indian water rights for our agricultural lands and to provide clean and safe drinking water for our people.

In his writings as an Indian law scholar, Department of the Interior Solicitor Robert Anderson recognized the importance of Congressional action to approve Indian water rights settlements. He wrote that:

The struggle of Indian tribes to maintain their property and survival as distinct communities is revealed by examining the status and treatment of Indian water rights by the federal government. Indian reserved water rights are trust property with legal title held by the United States. They were first recognized in 1908 in *Winters v. United States*. As such, one might expect to find that by now a trustee would have developed an effective system for defining and protecting the trust corpus.²

Increasing the availability of water on our Reservation through funding for critical infrastructure that will support the FBIC’s development of its Indian water rights will give the Tribes the kind of economic opportunity that can improve the social and economic well-being of our people. In a partnership with the Federal government, we can construct, develop, restore, operate, and maintain the infrastructure required to secure the settlement promise of “wet water,” develop a sustainable agricultural economy, and provide economic self-sufficiency for our permanent homeland.

Our Indian Water Rights Settlement is structured to promote economic efficiency on our Reservation and our Tribal self-sufficiency.³ It is an agricultural infrastructure development plan and includes infrastructure to develop and ensure clean and safe drinking water to end water insecurity on our Reservation; it provides for the FBIC to develop, administer, use, manage, and enforce our reserved water rights and improve the poor economic condition of our members on the Reservation. This is an Indian water settlement—where 97 percent of our Reservation lands are trust lands, held by the United States for the benefit of the FBIC and our allottees.⁴ Our Fort Belknap Indian Irrigation Project and other Reservation irrigated lands serves primarily the trust lands of Indian people.

Brief History of the Gros Ventre and Assiniboine Tribes and the Reservation

Our Gros Ventre and Assiniboine Tribal members are resilient people. But certain stark facts about our lives when compared to our non-Indian neighbors support the conclusion that the United States has failed as our trustee to establish our permanent homeland as a self-sufficient, economically vibrant, and sustainable Reservation with healthy and thriving people.

We have 8,150 enrolled members and a large land base of 625,000 acres (nearly the size of Rhode Island), with half of the population living on the Reservation.⁵ Due to a lack of adequate housing, many of our members live in nearby towns or rural areas and drive to the Fort Belknap Reservation each day or throughout the week.⁶ The FBIC Council is responsible for providing services to these members the

¹*Arizona v. Navajo Nation*, Case No. 21–1484, 2023 WL 4110231, at *3 (S.Ct. June 22, 2023) (internal citation omitted).

²Robert T. Anderson, *Indian Water Rights and the Federal Trust Responsibility*, 46 *Natural Resources Journal*, 399–400 (Spring 2006) (internal citations omitted) [hereinafter “2006 Anderson Paper”].

³See 1990 Criteria and Procedures for Participation of Federal Government in Negotiating for Settlement of Indian Water Rights Claims, 55 *Fed. Reg.* 9223–9225 (Mar. 12, 1990) [hereinafter “1990 Criteria”].

⁴Montana Budget & Policy Center, *Policy Basics: Taxes in Indian Country Part 2: Tribal Governments* (November 2017), (citing *Tribal Nations in Montana: A Handbook for Legislators*, 2016).

⁵President Andrew Werk, Jr., President, Fort Belknap Indian Community, letter to Janet Yellen, U.S. Department of Treasury, Washington, D.C. (March 9, 2021) [hereinafter “Werk 2021 Letter to Yellen”].

⁶Werk 2021 Letter to Yellen.

same as to any other member.⁷ Poverty has become the norm fueled by economic depression and high jobless rates, lack of infrastructure, and substandard housing. The Fort Belknap Reservation economic hardship can be broken down as follows: 40 percent poverty rate; 34 percent unemployment rate; \$29,566 median household income and \$10,896 per capita income.⁸ Our very high unemployment rate can be compared to the much lower unemployment rate in the State of Montana (2.3 percent).⁹

Agriculture remains the mainstay of our Reservation economy and virtually our sole industry. Farms located on the Reservation are largely operated by Tribal members.¹⁰ However, the low level of agricultural productivity, due largely to inadequate infrastructure, is reflected in the low family incomes and standard of living currently experienced by our members.

The first tract of land set aside by the United States with the major purpose of creating a self-supporting, agrarian homeland was under the Treaty of the Blackfoot Nation in 1855.¹¹ At that time, our Gros Ventre Tribe was part of the Blackfoot Nation. The federal government's policy included the expectation that the tribes would be confined to and settle permanently within their territorial boundaries where they would abide in permanent houses and obtain their sustenance by agricultural pursuits and stock raising.

Through a series of treaties and agreements with the United States, Congress established our current, permanent homeland in 1888, the Fort Belknap Reservation for the Gros Ventre and Assiniboine Tribes.¹² The 1888 Agreement required the relinquishment of most of our Tribes' ancestral territory and resulted in a significant reduction in the lands that the Tribes could occupy and use. The federal purpose of the 1888 Agreement continued the policy of establishing an agricultural economy for the Tribes. The Agreement expressly stated that the Tribes would "obtain the means to enable them to become self-supporting, as a pastoral and agricultural people[.]"—creating an agricultural Reservation economy. Funds were provided for the purchase of cows, bulls, and other stock, and agricultural implements, among other purchases, and for "undertak[ing] the cultivation of the soil."¹³

In these negotiations we ceded millions of acres of our ancestral lands and resources. In return, through the Treaty of 1855, the 1888 Congressional Act, and other agreements, the United States promised to provide and support an agricultural economy that would sustain our Tribes on our reserved homelands. Irrigation began on our Reservation in 1889. By 1898, the Tribal members were irrigating about 30,000 acres on the Milk River, which forms the northern boundary of our Reservation, for grain, grass, and vegetables. Congress authorized the construction of irrigation systems on the Reservation, now known as the Fort Belknap Indian Irrigation Project.

Soon, non-Indian, upstream irrigators were depleting our main water supply, the Milk River. The United States, our trustee, protected a portion of our Indian water supplies and went to court to defend our right to water for our Reservation. In 1908, the U.S. Supreme Court concluded that the lands of the Fort Belknap Reservation were "practically valueless without irrigation—a barren waste[.]" *Winters v. United States*,¹⁴ and established the "Winters Doctrine." The Indian reserved water rights began with our Reservation, and we are the "Winters Tribes."

Over the next 100 plus years, the United States failed to fulfill many of its promises and commitments, including protecting and preserving our waters, and we now have the highest poverty rate of any tribal reservation in Montana.¹⁵ Because of a failure by the Federal Government to maintain and complete construction of our federal Indian Irrigation Project, we are currently irrigating only about 10,000 acres of our irrigable lands.

⁷ *Id.*

⁸ Werk 2021 Letter to Yellen, (citing the Bureau of Business and Economic Research, University of Montana, Oct. 2019, and Center for Indian Country Development, Federal Reserve Bank of Minneapolis).

⁹ U.S. Bureau of Labor Statistics, <https://data.bls.gov/timeseries/LASST300000000000003> (last visited June 28, 2023).

¹⁰ FORT BELKNAP RESERVATION: DEMOGRAPHIC AND ECONOMIC INFORMATION (Oct. 2013); see also <https://www.montana.edu/extension/aboutus/documents/2018programhighlights/Fort%20Belknap%202018%20AR-ADA.pdf>.

¹¹ Treaty of October 17, 1855, 11 Stat. 657.

¹² Agreement of May 1, 1888, 25 Stat. 113 [hereinafter "1888 Agreement"].

¹³ 1888 Agreement at Articles III, V.

¹⁴ *Winters v. United States*, 207 U.S. 564, 576 (1908).

¹⁵ U.S. Census Bureau, My Tribal Area, <https://www.census.gov/tribal/?aianihh-1150> (last visited June 27, 2023).

History of Settlement Negotiations

We spent many years negotiating with the United States through our assigned Department of the Interior, Federal Negotiations Team and the Secretary's Indian Water Rights Office (SIWRO). We came to the bargaining table in good faith that our Federal Negotiations Team was fully participating as the trustee over what is our most valuable natural resource—water. We are not a wealthy Tribal government nor wealthy people; we do not have fancy casinos or vast energy resources. A settlement of our Indian water rights will bring long overdue investments in infrastructure on our Reservation. In the 1980s, we chose settlement over litigation with the State and Federal governments when we initiated negotiations with the Montana Reserved Water Rights Compact Commission and an assigned Federal Negotiations Team. President George H. Bush established the Secretary's Office of Indian Water Rights Settlements in 1989, and the Department adopted federal regulations promoting Indian water settlements in 1990.¹⁶ This provided the structure and guidance for the negotiations and settlement of claims concerning Indian water resources over litigation, offering a promise to tribes that their right to water would be developed at long last with the support of its trustee.

We adopted the court-approved principles of practicably irrigable acreage (PIA) to quantify the volume of our Indian reserved water rights,¹⁷ and negotiated the administration of our water. Many hours of negotiations, extensive studies, dozens of public meetings across northcentral Montana, and Tribal community meetings took place to reach an agreement, not only on the quantity and administration of our water rights, but also for the mitigation of the impact on non-Indian state water users as we development of our agreed-upon reserved water rights. After more than 10 years of negotiations, we reached an agreement with the State and Federal governments, and entered into the 2001 Fort Belknap-Montana Compact ("Water Compact").¹⁸ Our Water Compact passed the Montana Legislature with a large, bipartisan majority vote.

Our Water Rights Settlement is based on long-standing, historical principles of federal policy on the reserved water rights of Indian people that ensure we will receive the full benefit of the water rights promised to us in treaties and agreements with the United States. These principles include (1) recognition of a reservation of water for reservation homelands and the promise of assistance in establishing an agricultural economy when valuable tribal lands were ceded to the United States; (2) a method of quantifying our Indian water rights based on the practicably irrigable acreage (PIA) of the reservation; and (3) the importance and obligation of the United States to honor its treaty promises and keep its word to assist us with the establishment of a viable agricultural economy in order to create a permanent homeland.

A final settlement of our Indian reserved water rights with the United States will allow us to protect this critical natural resource and will reaffirm the *Winters* rights for all tribes. Additionally, as Department Solicitor Robert Anderson has stated:

Most important is the fact that in the era of negotiated Indian water settlements, PIA is the one component that can be objectively evaluated and thus serves as a cornerstone for the settlement framework.¹⁹

Under Congressional leadership, and after 30 years of negotiations with the federal government and the State, the Indian water rights and claims of the Fort Belknap Indian Community can now be approved. Passage of our Water Rights Settlement reflects the U.S. Supreme Court reasoning that "Congress and the President exercise the 'sovereign function' of organizing and managing 'the Indian trust relationship.'"²⁰ It is long overdue.

¹⁶1990 Criteria; see also Tracy Goodluck, former Deputy Director of the Secretary's Indian Water Rights Office, Presentation at the April 11, 2019, Federal Bar Association Indian Law Conference, Albuquerque, New Mexico. [Hereinafter "Goodluck 2019 FBA Presentation"]

¹⁷*Arizona v. California*, 373 U.S. 546 (1963), decree entered, 376 U.S. 340 (1964) (quantifying the tribes' *Winters* water rights on the basis of practicably irrigable acreage (PIA), holding that PIA is the only fair and feasible way to determine the measure of an Indian reservation water right.); See also, e.g., 2006 Anderson Paper at 429 ("Most important is the fact that in the era of negotiated Indian water settlements, PIA is the one component that can be objectively evaluated and thus serves as a cornerstone for the settlement framework."); *Greely v. Confederated Salish & Kootenai Tribes*, 219 Mont. 76, 712 P.2d 754 (1985); and *In re General Adjudication of All Rights to Use Water in Big Horn River System*, 753 P.2d 76 (Wyo. 1988); *aff'd by equally divided court per curiam, Wyoming v. United States*, 492 U.S. 406 (1989), cert. denied, *Shoshone Tribe v. Wyoming*, 109 S.C. 3265 (1989).

¹⁸Mont. Code Ann. §§ 85–20–1001 through 85–20–1008 (ratified on April 16, 2001).

¹⁹2006 Anderson Paper at 429.

²⁰*Navajo Nation*, 2023 WL 4110231, at *5.

Congress has a long history of honoring and recognizing its responsibilities and obligations to Indian tribes. In 1956, Congress enacted the Colorado River Storage Project Act and made an affirming statement of its recognition of fiduciary responsibility in the following provision for the Navajo Nation’s participation in water infrastructure development:

[T]he costs allocated to irrigation of Indian-owned tribal or restricted lands within, under, or served by such project, and beyond the capability of such lands to repay, shall be determined, and, *in recognition of the fact that assistance to the Navajo Indians is the responsibility of the entire nation, such costs shall be nonreimbursable.*²¹

Assistance to the Navajo Indians, of course, was representative of the Government’s responsibility to Indian people, generally. But progress in funding the federal support for Indian water rights development has been exceedingly slow while the United States focused on and built western water infrastructure projects for the non-Indians.²²

After *Arizona v. California* adopted and reinforced the Winters doctrine for the recognition of Indian water rights in 1963, and created the practicably irrigable acreage standard for quantifying a tribe’s water rights,²³ Congress passed the Indian Self-Determination and Education Assistance Act of 1975.²⁴ President Nixon signed and introduced it as the “dawn of the self-determination age,” and described the following:

“[t]he special relationship between Indians and the Federal government is the result of solemn obligations which have been entered into by the United States Government. . . . [T]he special relationship. . . continues to carry immense moral and legal force.”²⁵

This was followed by President Jimmy Carter’s adoption of the Federal Water Policy initiative in 1978 to promote Indian water rights settlements over litigation.²⁶

Congressional frustration over the slow pace of Indian water settlements by the Department of the Interior was evident in 1989 when Senators Mark Hatfield (OR) and James McClure (ID) drilled Interior Secretary Manuel Lujan and asked: “Why can’t the administration agree that these settlements are a national obligation now to be funded?”²⁷

We urge Congress to also consider this historic trend away from the United States’ trust responsibilities to tribes as it relates to Indian water rights and development, in particular, through judicial decisions that seem counter to the historical Congressional positions, and provide the leadership to reverse such a trend in the federal government’s policies.

The decision by the U.S. Supreme Court, in *McGirt v. Oklahoma*,²⁸ should inform the Federal government’s understanding of the importance of the early Treaty promises and obligations the United States made to tribes and the importance of the Government “keeping its word.” The *McGirt* decision was followed by President Biden’s promise of a renewed “commitment to fulfilling Federal trust and treaty re-

²¹ 70 Stat. 109, 43 U.S.C. § 620e (Apr. 11, 1956) (Cost allocations, Indian lands; report to Congress) (emphasis added).

²² See, e.g., James P. Merchant & David M. Dornbusch, *The Importance of Water Supply to Indian Economic Development* (1977), stating that in 1968, 370,000 acres of Indian were irrigated (1 percent of all Indian agricultural lands), contrasted with 5.1 percent of all irrigated agricultural lands in the seventeen western states; Hearing on S. 2969, *Central Utah Completion Act* Before the Senate Committee on Energy and Natural Resources, 101st Cong. 161 (Sept. 18, 1990), (Testimony of Dennis B. Underwood, Commissioner of the Bureau of Reclamation): “The ceiling for CUP increased in 1972 and 1988. In 1990, the total cost of the Colorado River Storage Project, meaning all components, as authorized, is currently \$2,938,059,000.”; At the 2019 Federal Bar Association Indian Law Conference, Tracy Goodluck, Deputy Director of the Secretary’s Indian Water Rights Office, acknowledged what everyone knows, that “in the decades” since the 1908 *Winters* decision, “Federal policy and expenditures supported extensive development of water resources to benefit non-Indian communities across the West.”

²³ 373 U.S. 546 (1963).

²⁴ Pub. L. No. 93–638 (1975) (codified at 25 U.S.C. § 5301 *et seq.*).

²⁵ Secretary of the Interior, Order No. 3335, *Reaffirmation of the Federal Trust Responsibility to Federally Recognized Indian Tribes and Individual Indian Beneficiaries* (Aug. 20, 2014) (quoting Public Papers of the President: Richard M. Nixon, Special Message on Indian Affairs (July 8, 1970)).

²⁶ “Federal Water Policy, Message to the Congress,” Public Papers of the Presidents: Jimmy Carter, 1044–47 (June 6, 1978).

²⁷ Michael J. Clinton, *Dealing with the Federal Sovereign*, Ch. 16, Thomas R. McGuire, William B. Lord, and Mary G. Wallace (Eds.), *Indian Water in the New West* 220 (University of Arizona Press 1993).

²⁸ 140 S. Ct. 2452 (2020).

sponsibilities. . .[.]”²⁹ and the current Administration has declared a policy that will reverse the slide away from the federal obligations promised to tribes.

The promise of a true commitment to tribal sovereignty with economically viable homelands can become our reality. The promise of our early agreements with the United States, when we ceded millions of acres of land, was a permanent, livable homeland and assistance in the development and use of our reserved water rights. The United States has a continuing trust obligation and responsibility to provide the Fort Belknap Indian Community a permanent and economically sustainable homeland. Congressional approval of our Water Rights Settlement will be the fulfillment of the United States’ Treaty promises to the Gros Ventre and Assiniboine Tribes.

The Winters Doctrine and the United States’ Agricultural Promise

When the United States Supreme Court analyzed our 1888 Agreement with the United States, creating the Fort Belknap Reservation, it concluded that certain elements of the agreement were “prominent and significant.”³⁰ In particular, the Court found that the purpose and intent of this smaller reservation of land was to “enable [the Tribes] to become self-supporting, as a pastoral and agricultural people.” The high Court reasoned that “[i]f they should become such, . . . a smaller tract [of land] would be inadequate without a change of conditions. The lands were arid and, without irrigation, were practically valueless.”³¹ The Court specifically rejected the argument that the Indians deliberately gave up the means of irrigation.

The Court explained that “[t]he Indians had command of the lands and the waters—command of all their beneficial use, whether kept for. . . grazing, or turned to agriculture and the arts of civilization.”³² The Winters Court applied “a rule of interpretation of agreements and treaties with the Indians, ambiguities occurring will be resolved from the standpoint of the Indians.”³³ Therefore, under the Winters doctrine, the Court held that the establishment of the Reservation impliedly reserved the amount of water necessary to irrigate its lands and to provide water for other purposes.³⁴ Finally, the Court also held that these reserved water rights are exempted from appropriation under state law.

The Winters Doctrine has stood the test of time and for over a century has been applied to recognize tribal, Indian reserved water rights. In summary, the Winters Court created federal, Indian reserved water rights law with the following characteristics: (1) a reservation of water is to be implied when it is required to accomplish the purposes of a Treaty, Congressional Act, or Agreement between the United States and tribes establishing a tribe’s reservation of lands with the expressed right to exclusive tribal possession of the land;³⁵ (2) the amount of water must be sufficient for all their beneficial use when the purpose is to allow the Indians to become a “pastoral and civilized people,” including the development of an agriculture economy; and (3) Indian reserved water rights are exempted from appropriation under state law.

In *Arizona v. California*,³⁶ the United States Supreme Court adjudicated, in part, the water rights of five reservation tribes on the Colorado River mainstream in the Lower Colorado River Basin to determine the quantity of each tribes’ reserved water rights. The Court affirmed the validity of federally reserved Indian water rights under the Winters decision when reservations are created, explaining that such rights also include those reservations established by an Act of Congress or by Executive Order. The Court held that when the reserved water rights are necessary to fulfill the purposes for which it was created, with a new water use that did not exist prior to creation of the Indian reservation, the priority date is the date of establishment of the reservation.³⁷

The Court concluded that Indians are entitled to sufficient water to develop, preserve, produce, or sustain food and other resources of the reservation to make it livable.³⁸ The Court found that when the United States created the five reservations included in this adjudication, “it reserved not only land but also the use of enough

²⁹ Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships, 86 Fed. Reg. 7491 (Jan. 29, 2021), <https://www.federalregister.gov/documents/2021/01/29/2021-02075/tribal-consultation-and-strengthening-nation-to-nation-relationships>.

³⁰ *Winters*, 207 U.S. at 575–76.

³¹ *Id.* at 576.

³² *Id.*

³³ *Id.*

³⁴ *Id.* at 576–77.

³⁵ *Id.* at 575–76.

³⁶ 373 U.S. 546 (1963).

³⁷ *Arizona v. California*, 373 U.S. 546, 595–601 (1963).

³⁸ *Id.* at 599–600.

water from the Colorado to irrigate the irrigable portions of the reserved lands.”³⁹ This is now referred to as “practicably irrigable acreage” or PIA—the standard by which Indian water rights are quantified where the purpose of the reservation includes agricultural pursuits. Under this standard, if land within a reservation can be cultivated through irrigation and if such irrigation is practicable when applying relevant economic measures, then the tribe is entitled to the amount of water necessary for such irrigation. The Court reasoned that “[m]ost of the land in these reservations is and always has been arid, if the water necessary to sustain life is to be had, it must come from the Colorado River.”⁴⁰ The United States was aware “that most of the lands were of the desert kind—hot, scorching sands—and that water from the river would be essential to the life of the Indian people and to the animals they hunted and the crops they raised.”⁴¹

Finally, the Court rejected Arizona’s urging that the amount of water be measured by “the reasonably foreseeable needs of the Indians living on the reservation rather than by the number of irrigable acres.”⁴² The Court reasoned that the quantity of “water was intended to satisfy the future as well as the present needs of the Indian reservations and” [agreed with the Special Master who] “ruled that enough water was reserved to irrigate all the practicably irrigable acreage on the reservations.”⁴³ Rejecting the position urged by the State of Arizona, the Court explained that if the quantity of water reserved “is measured by the Indians’ ‘reasonably foreseeable needs,’” it really means that quantification would be based on the number of Indians—and the number of Indians that there will be in the future “can only be guessed.”⁴⁴ The Court also rejected the application of the equitable apportionment doctrine, explaining that it is “a method of resolving water disputes between States.”⁴⁵

FBIC Water Rights Settlement is an Infrastructure Bill

After ceding millions of acres of ancestral territory, the Gros Ventre and Assiniboine Tribes reserved the Fort Belknap Reservation in what is now northcentral Montana. These lands were reserved and set apart “as an Indian reservation as and for a permanent home and abiding place.”⁴⁶ Our Reservation lands have never been broken apart and lost to non-Indians. Our Fort Belknap Indian Irrigation Project and irrigable lands are and remain a federal Indian irrigation project. The quantification of our Indian reserved water rights is based on the well-respected and legally adopted principles of Practicably Irrigable Acreage (PIA).⁴⁷ During the negotiations of our rights, we successfully demonstrated that we have an adequate water supply with arable soils to support irrigation system infrastructure.

In 1942, the U.S. Supreme Court stated that the United States “has charged itself with moral obligations of the highest responsibility and trust.”⁴⁸ We ask Congress to consider our historical circumstances, the United States’ moral obligation, and the responsibility of the entire nation⁴⁹ in providing the costs necessary to develop the projects identified in our bill that are designed to allow us to put our Indian water rights to use.

Aaniiih Nakoda Settlement Trust Fund

Funding in our Water Rights Settlement Bill will go toward supporting and developing long overdue traditional infrastructure investments, including the development of both agricultural and domestic water supplies, that the United States promised to the Gros Ventre and Assiniboine Tribes. The Aaniiih Nakoda Settlement Trust Fund in our Water Rights Settlement Bill, S. 1987, includes three accounts and their uses, described below.

FBIC Tribal Irrigation and Other Water Resources Development Account #1 (\$119,524,134)

- Restore the Southern Tributary Irrigation Project (STIP) and Peoples Creek Irrigation Project, including construction of the Upper Peoples Creek Dam and Reservoir, on the southern portion of the Reservation.

³⁹ *Id.* at 596.

⁴⁰ *Id.* at 598.

⁴¹ *Id.* at 598–99.

⁴² *Id.* at 596.

⁴³ *Id.* at 600.

⁴⁴ *Id.* at 600–01.

⁴⁵ *Id.* at 596–97, affirmed in *Navajo Nation*, 2023 WL 4110231.

⁴⁶ *Winters*, 207 U.S. at 565.

⁴⁷ 2006 Anderson Paper at 429 (2006).

⁴⁸ *Seminole Nation v. United States*, 316 U.S. 286, 297 (1941).

⁴⁹ 43 U.S.C. § 620e.

- Develop infrastructure for stock-watering across the Reservation.
- Provide on-farm development support.
- Repair, restore, and develop wetlands across the Reservation.
- Conduct all environmental compliance activities.
- Conduct planning, studies, and design work for all activities.

The FBIC Tribal Irrigation and Other Water Resources Development account will provide funding to restore the Southern Tributary Irrigation Project, which was abandoned by the Bureau of Indian Affairs in the 1960–70s in disrepair, preventing tribal members from an irrigation resource, and the Peoples Creek Irrigation Project. This funding includes construction of the Upper Peoples Creek Dam and Reservoir on the southern portion of the Reservation, which will provide mitigation for the FBIC due to its agreement to subordinate its priority Indian water rights on the Upper Peoples Creek to upstream state irrigators on family farms. Funding would also be provided to develop infrastructure for stock-watering across the Reservation, provide on-farm development support, and restore and develop wetlands across the Reservation.

FBIC Water Resources and Water Rights Administration, Operations and Maintenance Account #2 (\$66,628,407)

- Establish, operate, and provide capital expenditures to establish a Tribal water resources and water rights department for administration, management, and regulation of the Tribal water rights, including development of a Tribal Water Code.
- Create a Tribal trust fund to provide investment earnings for the long-term support of the Tribal water resources and water rights department to administer and manage the FBIC's water rights.
- Create a Tribal trust fund to provide investment earnings to pay a portion of the annual operation and maintenance assessment costs for Tribal irrigators to ensure long-term repair and upkeep of the irrigation projects.

FBIC Water Resources and Water Rights Administration, Operations and Maintenance account supports the traditional Indian water settlement activities crucial to the establishment of a Tribal water resources and water rights department. A Tribal trust fund will be established that will allow the Tribal department to operate on the annual interest earned on the Tribal trust fund and support the costs of the regulation, administration, and enforcement of the FBIC water rights with the development of a Tribal water code, as well as support the cost of capital projects that will provide the necessary infrastructure, equipment, and data to support the Tribal department activities. Finally, this account provides funds necessary to establish an Operation and Maintenance Fund for the Tribal agricultural irrigation projects on the Reservation, using annual earned interest to support a portion of the annual operation and maintenance costs of Tribal irrigators—proven to be important for sustaining the agricultural economy on the Reservation.

FBIC Clean and Safe Domestic Water Supply and Wastewater Systems, and Lake Elwell Project, Account #3

- Construct and improve access to and the safety of a clean, domestic water supply and wastewater removal systems on the Reservation.
- Develop two new wells at 300-ft deep, and one new well at 480-ft deep to provide water for the communities of the Fort Belknap Agency, Hays, and Lodgepole.
- Develop Homesite wells.
- Construct new water treatment facilities in the Lodge Pole and Hays communities.
- Expand existing tribal domestic water delivery lines.
- Construct a Project to deliver clean and reliable water from Lake Elwell for the southern portion of the Reservation.
- Construct a Tribal wellness center to improve and ensure a healthy workforce that will assume responsibilities related to the Project activities funded under this bill.

The FBIC Clean and Safe Domestic Water Supply and Wastewater Systems, and Lake Elwell Project account supports bringing and storing clean drinking water for the Reservation. FBIC has both drinking water supply issues and water quality concerns. The cost estimates are intended to cover needed improvements to the water

facilities at each of the Reservation communities, as well as at individual homes within the rural areas of the Reservation. Renovation of the existing Fort Belknap Agency domestic water system will support the anticipated future growth in domestic water demands on the Reservation.

The Lake Elwell project will bring clean water to the southern portion of the Reservation to ensure an adequate water supply to the Tribal communities and members in this area of the Reservation, which is in need of safe and reliable drinking water. Without the funding provided in this account, the FBIC Tribal members will continue to experience water insecurity on the Reservation.

The coronavirus pandemic resulted in an awakening in America of the importance of tribal community access to reliable, clean, and drinkable water—an essential human need. It is the foundation for healthy communities and growing economies. The National Congress of American Indians issued a report in 2017 stating that tribes receive only 75 cents for every \$100 needed for drinking water, and estimated an Indian Health Service water sanitation facilities' backlog at about \$2.5 billion.⁵⁰ On January 27, 2021, President Biden issued Executive Order 14008,⁵¹ which provides that it is the policy of the Biden Administration to secure environmental justice and spur economic opportunity for disadvantaged communities that have been historically marginalized and overburdened by pollution and underinvestment in housing, transportation, water and wastewater infrastructure, and health care.

The health and wellness of our Tribal members remain a significant concern. The median age at death of American Indians residing in Montana is 16 years lower than that of white people.⁵² Diabetes is prevalent among our Tribal members. A Wellness Center is planned so that the health and well-being of our Tribal work force can be improved. Wellness Centers are highly effective in combating our prevalent tribal health conditions currently resulting in adverse health outcomes.

Fort Belknap Indian Irrigation Project System Implementation Non-trust Federal Account (\$415,832,153)

The Bill includes funding for the rehabilitation, modernization and expansion of the Bureau of Indian Affairs' Fort Belknap Indian Irrigation Project (FBIIP) on the Milk River within the Reservation. The Bill includes an expansion of the BIA's Milk River unit that will consist of an additional 16,465 acres of new irrigable lands, for a total of 26,890 acres under irrigation in the FBIIP Milk River Unit. The Tribe's Indian water rights from the Milk River is secured under the Compact for the new future irrigated lands. This will also include construction of a new off-stream water storage reservoir, the Fort Belknap Reservoir, on Three Mile Creek with a capacity of about 60,000 acre-feet, and construction of levees for flood protection of the Milk River Unit lands.

This project was originally authorized for construction in 1895, but construction of the full project was never completed. There are 358 allottee users under the FBIIP and the Tribe's original Winters water rights for 10,425 acres of historically irrigated lands will be used by the project. This project was constructed over 100 years ago and is in desperate need of rehabilitation and modernization. The construction of the project is also long past due for being completed. The BIA will be the Lead Agency for the FBIIP activities and the FBIC will be able to enter into self-determination contracts to conduct all or a portion of the activities identified for the FBIIP.

Mitigation for State Water Users

After our long-time cooperation and compromises with our non-Indian neighbors, Congressional support of the agreed-upon mitigation activities consistent with our negotiated FBIC-State-Federal Water Compact will create harmony at a time when water wars between water users are increasing. In fact, Montana has had a severe drought in recent years. Mitigation activities will stabilize the water supply, conserve water, and improve water use efficiency. Continued cooperation among the interested parties through the mitigation activities will also respect the sovereignty of the State and FBIC in our respective jurisdictions.⁵³

The Montana Reserved Water Rights Compact Commission ("Commission") was created by the State legislature to negotiate tribal water settlements with tribes and

⁵⁰ National Congress of American Indians, *Tribal Infrastructure: Investing in Indian Country for a Stronger America* at 6 (2017), <https://www.ncai.org/NCAI-InfrastructureReport-FINAL.pdf>.

⁵¹ 86 Fed. Reg. 7619 (Feb. 1, 2021).

⁵² Mont. Dep't of Public Health and Human Services, *Montana Vital Statistics 2020* at 23 (2020), <https://dphhs.mt.gov/assets/publichealth/Epidemiology/VSU/VSU2020AnnualReport.pdf>.

⁵³ 1990 Criteria.

the federal government.⁵⁴ Negotiations among our Parties were conducted in earnest throughout the 1990s. The Commission conducted no fewer than 20 meetings between 1997–2000 throughout our region, known as the Hi-Line area of north central Montana, for public information and input on the proposed Water Compact. The Commission documented over 18 negotiating sessions with the FBIC and Federal government between 1990–2000. In addition, substantial public information and drafts of the Water Compact were distributed through numerous public and FBIC outlets.⁵⁵ This extensive public and tribal information effort led to the overwhelming approval of our 2001 Water Compact by the State Legislature (94 percent approval in the House and 87.5 percent in the Senate). The FBIC Council also approved the Water Compact.

As described in the Fort Belknap-Montana Water Compact, the Parties plan improvements in the operating capabilities of the Milk River Project, where the Milk River is the FBIC's largest source of our Indian water rights and forms the northern boundary of our Reservation. These improvements will mitigate the impact of the FBIC's future water development on the Milk River Project and tributary water users. The Water Compact also provides that the FBIC will subordinate its senior water rights in the Upper Peoples Creek to upstream non-Indian irrigation water users so that they will be able to continue their historical irrigation water use.

Milk River Project Mitigation (\$300,000,000)

The water diverted from the Milk River by the FBIC is the most senior water right on the river. All water users in this basin will benefit from the mitigation activities, consistent with the Water Compact. Water Compact Article VI.B., Mitigation of Impacts on the Milk River Project, provides the following:

The Parties agree that, as a result of development and use of the Tribal Water Rights and protection of water use on tributaries, the Milk River Project and its water users will, at times, be adversely affected if no change is made to the Milk River System. . . . to the level of 35,000 Acre-Feet Per Year. . . .

Improvements in the water supply of the Milk River for the Milk River Project will mitigate the impact of the development and future use of our Tribal Water Rights in the Milk River and provide protection of water use on upstream tributaries. This is important because in the Water Compact, the State reserved the right to withdraw as a party if "Congress does not authorize and appropriate the federal share of funding for the modification to the Milk River Project or other alternatives necessary to mitigate the impact of development on the Tribal Water Right."⁵⁶

Extensive studies have been conducted to analyze the impact of FBIC's water development and use on the Milk River. Projects were identified that would provide the required mitigation for the Milk River Project and tributary water users. The Commissioner is required to restore the St. Mary Canal and associated facilities in cooperation with the State and FBIC. The Commissioner is also required to rehabilitate and enlarge the Dodson South Canal and associated facilities in cooperation with the State and FBIC.

Upper Peoples Creek (included in Trust Fund, Account #1 funding)

The second mitigation-related agreement of the Parties to the Water Compact is provided at Art. VI.C.:

The Parties agree, that, as a result of the protections provided to the Upper Peoples Creek [non-Indian] water users in the Compact and the variable natural water supply in the Peoples Creek Basin, the water supply available for development of the Tribal Water Right in the Peoples Creek may be limited. The Parties agree that such impacts can and shall be mitigated. . . . through the construction of a dam and reservoir. . . . and to seek appropriations. . . . for the benefit of the Tribes.

During the Water Compact negotiations, non-Indian, state irrigators who have historically farmed on Upper Peoples Creek, upstream of the western boundary of the Reservation, sought protection from the FBIC's agreed-to Indian water rights quantification, development, and use in the Upper Peoples Creek. Additionally, the Peoples Creek Basin has a highly variable natural water supply, resulting in limita-

⁵⁴ *Hearing on Addressing the Needs of Native Communities through Indian Water Rights Settlements Before the Senate Committee on Indian Affairs* (May 20, 2015) (Testimony of Jay Weiner, Assistant Attorney General of Montana).

⁵⁵ This information is taken from the Montana Water Rights Commission archives, provided by the State.

⁵⁶ Fort Belknap-Montana Compact, Mont. Code Ann. § 85–20–1001, Article VII.A.4.c.

tions in the development and use of the Tribal Water Rights in Peoples Creek on the Reservation.

Therefore, the FBIC agreed to allow the current irrigation of lands in Upper Peoples Creek by the non-Indian irrigators, subordinating the FBIC's senior reserved water rights. In exchange for the FBIC agreement with these state water users, the State and Federal governments agreed to mitigate the impact on the FBIC water use by constructing a dam and reservoir for the benefit of the FBIC in the Upper Peoples Creek. The dam and reservoir will significantly improve the reliability, availability, and use of the FBIC water rights from Peoples Creek on the Reservation.

State and Federal Land Transfers

The Bill authorizes the transfer of approximately 16,116 acres of federal land from the Bureau of Land Management, Bureau of Indian Affairs, including former allotments, and Bureau of Reclamation. The Bill also authorizes the Secretary of Interior and Secretary of Agriculture, Forest Service, to enter negotiations with the State to exchange approximately 21,705 acres of State trust lands for Federal lands to be transferred and held in trust for the FBIC. The total acreage to be transferred to the Tribe is approximately 37,822 acres. No private lands are included in the Federal land transfer and customary access to private lands will be retained. The federal lands to be transferred will be subject to valid existing rights and requirements and be held in trust for the Tribe. The land transfers provide for consolidation of Tribal lands both on and off the Reservation (including the submarginal land area adjacent to the western boundary of the current Reservation) for improved Tribal administration, better management of forested lands by our experienced land management department and fire response team, and the restoration and protection of the FBIC's cultural resources.

Montana Water Court Adjudication

In the 1970s, the State started a general stream adjudication of all water rights through the Montana Water Court.⁵⁷ The Legislature set up a process that would allow tribes to negotiate their water rights with the State instead of litigating them through the State Water Court. The negotiations process was carried out through the Reserved Water Rights Compact Commission ("Commission"). In 1981, the FBIC Council chose to negotiate and settle its Indian water rights with the State and United States. In 1990, the FBIC stipulated to stay proceedings in pending lawsuits in the federal court of Montana and the pending adjudication in the Montana Water Courts.

However, the State Legislature ended the activities of the Commission in 2013 and set a deadline for all remaining Indian reserved water rights claims to be filed with the Water Court by June 30, 2015. The United States, as our trustee, filed the FBIC water claims on behalf of the FBIC. Our water rights claims, therefore, are before the Montana Water Court, and it is currently uncertain when the Court will initiate the adjudication of our claims. However, an adjudication of these claims after decades of negotiations, an agreed-upon Water Compact, and a proposed Water Rights Settlement Bill before Congress would be tragic for all Parties now—resulting only in a "paper water right" for the FBIC, with no ability to develop and benefit from our Indian water. Therefore, time for Congressional approval of our Water Rights Settlement is of the essence.

The FBIC should not be required to litigate its claims after good faith bargaining with the Federal government. Yet, our Indian water rights claims have been filed, as required under federal and state law, with the Montana Water Court and its adjudication could proceed at any time. We agree with Master Rifkind who observed in his 1963 *Arizona v. Colorado* report that "Indian water rights litigation turns into sporting matches and endurance contests[,] and is followed by dozens of years of "a platoon of lawyers at work, committed to either sustaining or destroying its result."⁵⁸ The United States is too far into our settlement effort, which can now result in fair monetary compensation that will support the FBIC's development of its agreed-upon Indian reserved water rights. The United States should see that litigating the FBIC water rights claims is no longer an option and should be avoided.

In short, litigation of Indian water rights is a lengthy and costly process, with an uncertain outcome-for everyone. We are seeking a settlement that provides us with "wet water," with sufficient funding to settle our claims and allow for the develop-

⁵⁷The following historical information is taken from a Briefing Paper (June 2000) in the Montana Reserved Water Rights Commission archives (author unknown).

⁵⁸Teno Roncalio, *The Horns of a Dilemma*, Ch. 15, Thomas R. McGuire, William B. Lord, and Mary G. Wallace (Eds.), *Indian Water in the New West* 211(1993).

ment and use of our Indian water rights. That is the promise of settlement over litigation.

Conclusion

Congress has an opportunity to address more than 100 years of neglect and failure of the United States to fulfill its commitments made in treaties and agreements with the Gros Ventre and Assiniboine Tribes by passing S.1987. Indian water rights are one “of the four critical elements necessary for tribal sovereignty.”⁵⁹ Our Water Rights Settlement will provide recognition and enforceability of our reserved water rights, self-sufficiency, and economic success and supports the permanent, livable homeland for our people that was promised to us by the United States. Our Water Rights Settlement will ratify our negotiated Indian water rights and provide much-needed economic benefits for FBIC and surrounding communities.

“The federal trust responsibility is a legal obligation of the United States dictating that the federal government must protect Indian resources and assets and manage them in the Indians’ best interest.”⁶⁰ The Settlement will provide funding for the rehabilitation, modernization, expansion, and restoration of the irrigation systems that will assist us in establishing a viable agricultural economy and justifies desperately needed expenditures, including for the federal Fort Belknap Indian Irrigation Project and other irrigation projects on our Reservation.

Our Indian water settlement is structured to promote economic efficiency on our Reservation and our Tribal self-sufficiency. It is an agricultural infrastructure plan; includes the development of clean, reliable, and safe drinking water; provides for the FBIC to administer, manage, and enforce its reserved water rights, and will improve the poor economic condition of our members on the Reservation. In the end, perhaps, Charles F. Wilkinson, a renowned scholar on Indian water rights, natural resources, and other issues, explained it the most eloquently in 1993:

“[I]t has been the role of morality that has touched my mind and my heart. It is a morality that comes from a sense of community, a sense of homeland, a sense of history, and a sense of promises. It is fascinating the way an abstraction such as morality can be so intensely practical. Without that morality, there would be no *Winters* doctrine and no water settlements, because it is a sense of morality that drives Indian policy. Tribal leaders are able to express this morality in an evocative and fair way, explaining the history, the promises, and the period of neglect, explaining the importance of homelands and other values that none of us fully comprehend. This morality has carried these Indian water settlements and other aspects of Indian policy. Morality matters profoundly because it is the backdrop for all the technical matters contained in these settlements.”⁶¹

Approval of our Water Rights Settlement is an historic event—we are the *Winters* Tribes with a recognized Indian reserved water right since 1908, and we are the last tribes in Montana to achieve our water settlement with the United States. We respectfully request that Congress work to swiftly pass our Water Rights Settlement, S.1987. It is long overdue.

The CHAIRMAN. Thank you, President Stiffarm.

Lieutenant Governor Juras, welcome. Please proceed with your testimony.

STATEMENT OF HON. KRISTEN JURAS, LIEUTENANT GOVERNOR, STATE OF MONTANA

Mr. JURAS. Good afternoon, Chair Schatz, Vice Chair Murkowski and Committee members. My name is Kristen Juras, and I am the Lieutenant Governor of the State of Montana.

It is truly a privilege to appear before you on behalf of my beloved State and Governor Gianforte in support of Senate Bill 1987.

Water is one of Montana’s most valued resources. As Senator Tester noted, water is life, not only for our communities, it is the lifeblood of our number one industry, agriculture. Like many west-

⁵⁹ *City of Albuquerque v. Browner*, 97 F. 3d 415, 418 (10th Cir. 1996).

⁶⁰ Congressional Research Service, Indian Water Rights Settlements R44148 at 4 (updated Mar. 28, 2023), <https://crsreports.congress.gov/product/pdf/R/R44148/28>.

⁶¹ Charles Wilkinson, *Indian Water in the New West* 222 (1993).

ern States, we don't have enough of it, giving rise to the adage, whiskey is for drinking, water is for fighting.

But rather than fight, in the 1970s, Montana made the commitment to resolve tribal and Federal enclave reserved water rights through negotiation rather than litigation. Let me tell you, as a water rights attorney, water rights litigation often takes far longer than you expect. It is far more expensive than you expect. And most unfortunately, it pits neighbors against neighbors and even tribes against tribes.

Montana was the first and only State to form a standing water compact commission. Over the past five decades, working with our tribal and Federal partners, we have seen remarkable success. The Fort Belknap Compact is the final settlement to come before Congress for approval in a series of 18 compacts that equitably apportion water resources between the State and its people and the several Indian tribes and Federal enclaves.

The Fort Belknap Compact was overwhelmingly approved by the Montana legislature in 2001 and signed by then-Governor Judy Martz. As Vice Chair Murkowski noted, this is a particularly historic settlement given that the Fort Belknap Reservation was the site of the dispute that gave rise to the U.S. Supreme Court's seminal Indian water rights ruling, *Winters v. U.S.* Yes, President Stiffarm, it is, after a century, time to close this circle and grant this tribe the water rights that were intended for them.

Since State ratification of the compact in 2001, it has taken a significant amount of time, resources and investments from many parties in order to come before you today with a negotiated agreement that has achieved broad-based non-partisan support. President Stiffarm, thank you and the tribal council for your leadership and commitment in reaching this milestone. You are a man or courage.

I also want to thank the State's chief negotiator, Jay Weiner, the members of the State and Federal negotiating teams, and all of our staff behind each of these teams that provides critical support, including behind me, our Director of the Department of Natural Resources, Amanda Kaster, and our Natural Resource Counsel to the Governor's Office, Rachel Meredith.

In water circles, we talk about paper water, the tribe's water rights as described in the compact, versus wet water, the tribe's ability to actually put the water to use on their fields and in their homes. Without significant investment in water system infrastructure, the tribe's water rights will remain paper water rather than wet water.

That is why Senate Bill 1987 is so critical. Through significant investments in water infrastructure and projects, this legislation transforms paper water into wet water and quite frankly, without it, significant portions of the tribe's water rights will remain on paper.

The Montana legislature has also repeatedly appropriated millions of dollars in State support for Indian water rights compacts. The State has already fully funded the contemplated State contribution in S. 1987, which is intended to support the construction of a dam and reservoir on Peoples Creek. It has also previously

contributed to the repair of the St. Mary's Canal and ongoing support to the St. Mary's working group.

Section 6 of the bill provides for the transfer of approximately 22,000 acres of State trust land located within and adjacent to the reservation for Federal lands of equal value, allowing further consolidation of the tribe's land base and reducing jurisdictional conflicts between the tribes and the State.

Montana is proud to stand with its partners in advocating the passage of this meaningful water rights settlement, which brings an important chapter of Montana history to a close. Thank you again for the opportunity to testify. I stand for any questions. Thank you.

[The prepared statement of Lieutenant Governor Juras follows:]

PREPARED STATEMENT OF HON. KRISTEN JURAS, LIEUTENANT GOVERNOR, STATE OF MONTANA

Chair Schatz, Vice Chair Murkowski, and distinguished members of the Senate Committee on Indian Affairs, I thank you for the opportunity to provide written testimony today. My name is Kristen Juras, and I am the Lieutenant Governor of the State of Montana. I am here to testify on behalf of the State of Montana and Governor Greg Gianforte in support of Senate Bill 1987, a bill to provide for the settlement of the water rights of the Fort Belknap Indian Community, and to urge your approval of this legislation.

The Fort Belknap Indian Community-State of Montana water rights compact was approved by the Montana Legislature and signed by then-Governor Judy Martz in 2001. Mont. Code Ann. § 85-20-1001, *et seq.* It is now the last reserved water rights compact in Montana requiring congressional ratification, and it is a particularly historic settlement given that the Fort Belknap Reservation was the site of the dispute that gave rise to the U.S. Supreme Court's seminal Indian water rights ruling, *Winters v. U.S.*, 207 U.S. 564 (1908). Montana is very pleased to provide its support for S. 1987 and greatly appreciates the leadership and commitment demonstrated by the Fort Belknap Indian Community, Community Council President Jeffrey Stiffarm, and all tribal officials, staff, and members who have worked on this settlement over the years. The State is also appreciative of support for the settlement from essential stakeholders, such as Phillips County, Hill County, Valley County, Blaine County Conservation District, St. Mary Rehabilitation Working Group, Milk River Joint Board of Control, and the Montana Stockgrowers Association, among others.

Montana has been remarkably successful in resolving both Indian and federal reserved water rights claims through settlement negotiation. In 1979, the State created the Montana Reserved Water Rights Compact Commission ("Commission") specifically to negotiate, on behalf of the Governor, compacts with Indian tribes and federal agencies claiming reserved water rights in the state of Montana. The Commission was established as an alternative to litigation, as part of Montana's statewide water rights adjudication, and was charged with negotiating compacts "for the equitable division and apportionment of waters between the state and its people and the several Indian tribes" and the federal government. Mont. Code Ann. § 85-2-701 (2021).

Since the Commission's inception, Montana has successfully concluded compacts with each tribe and federal enclave claiming reserved water rights within state borders, for a total of 18 different compacts that have been enacted into law. *See*, Mont. Code Ann. § 85-20 Parts 2-19. Between 1992 and 2020, Congress enacted legislation ratifying water rights settlements between the State and the Northern Cheyenne Tribe, the Chippewa Cree Tribe, the Crow Tribe, the Blackfeet Tribe, and the Confederated Salish and Kootenai Tribes (CSKT). With the exception of the CSKT compact, which is presently undergoing the Montana Water Court decree process,¹ each of those compacts, along with the State's water rights compacts with the Fort Peck Tribes and the various federal enclaves in Montana administered by the Bu-

¹After passage by the Montana Legislature, ratification by Congress, and ratification by the tribe or tribes associated with the reservation, compacts proceed through the Montana Water Court adjudication process as the same is established by the Montana Water Use Act, Title 85, Chapter 1, Part 2.

reau of Land Management, the National Park Service, the U.S. Fish and Wildlife Service, and the U.S. Forest Service, have been finally decreed by the Montana Water Court and are being implemented.

Further, the Montana Legislature, in working alongside political leadership and our tribal and federal negotiating partners, has repeatedly appropriated millions of dollars in state support for Indian water rights compacts. The State has already fully funded the State's contributions contemplated by S. 1987, which are intended to support the construction of a dam and reservoir on Peoples Creek. Construction of this infrastructure effectuates one of the compromises struck in the compact, recognizing the Fort Belknap Tribes' legal entitlement to water while protecting existing off-reservation water uses that are junior in priority. Montana's commitment to such contributions has created immeasurable benefits to tribes as well as state water right holders, including irrigators, municipalities, and others. Montana's compacts frequently involve complicated and contested natural resource allocation, and by investing in mutually negotiated outcomes, Montana has resolved these disputes in a pragmatic fashion that reduces conflict and expense and creates economic drivers for reservation and regional economies.

The Fort Belknap compact is a paradigmatic example of these mutual and diverse benefits, and S. 1987 is a critical component in securing those benefits. The Tribes speak eloquently about the importance of this compact to their ability to provide clean drinking water to their members and to use the Fort Belknap Reservation's water resources for their benefit. The Milk River is the largest of the four drainages addressed in the compact. From its source on the Blackfeet Indian Reservation, and as it runs several hundred miles along Montana's Hi-Line, finally reaching its confluence with the Missouri River, the Milk River is the lifeblood of one of the earliest irrigation projects developed by the Bureau of Reclamation. The Milk River Project ("Project") irrigates over 120,000 acres and provides water to four municipalities, two rural water systems, and two tribal communities. It relies on aging infrastructure, particularly the components of the trans-basin diversion from the St. Mary River to the Milk River system located on the Blackfeet Indian Reservation. S. 1987 provides critical funding to ensure the rehabilitation of that diversion and other critical Project infrastructure, which is essential to the economic vitality of northcentral Montana, including the Fort Belknap and Blackfeet Indian Reservations.

Section 6 of S. 1987 also provides for the transfer of certain federal lands to be held in trust for the benefit of the Fort Belknap Indian Community and authorizes a federal-state land trade process to further augment consolidation of the Tribes' on-reservation land base and reduce jurisdictional conflicts between the Tribes and the State. The State supports this effort while remaining mindful of its constitutional mandate to maximize the value received from State trust lands for the benefit of Montana's schools and other public institutions. To fulfill its fiduciary obligations as trustee, it is essential that Montana have the ability to work with both the U.S. Bureau of Land Management and the U.S. Forest Service to identify suitable federal lands to trade for State trust lands identified in Section 6. S. 1987 provides that authority, which is an important component of our full support for this legislation.

In closing, I want to reiterate my appreciation for the opportunity to provide this testimony. Montana is unique in how it has approached reserved water rights within its borders, choosing to negotiate and collaborate with its tribal and federal partners, rather than pursue protracted, divisive, and expensive litigation. It is through this process that all parties can stand before you today, in support of this truly historic settlement quantifying the reserved water rights of the original *Winters*-case Tribes. This settlement implements the final reserved water rights compact in Montana and reflects the culmination of nearly a half-century of dedicated work. It provides essential support for the needs of the Fort Belknap Indian Community and its members. It ensures the continued vitality of the agricultural economy of northcentral Montana. Montana is proud to stand with its partners in advocating the passage of this meaningful water right settlement which brings a chapter of Montana history to a close.

On behalf of the State of Montana, I am proud to support the passage of S. 1987 and encourage you to do so.

The CHAIRMAN. Thank you to all the testifiers.

With the Vice Chair's concurrence, we are going to start with the introducers of these various pieces of legislation.

Senator Tester, followed by Senator Daines.

Senator TESTER. Thank you, Mr. Chairman. I appreciate your courtesy. Senator Daines and I both know this has been a long

trail, and the fact that we are here, everybody on the same page, whether it is Steve and I or the Governor's office or the tribe or the folks around the tribe in north central Montana, I just can't express my appreciation enough.

This question is for you, President Stiffarm. As you are well aware, the goal of any water settlement is to provide water infrastructure as needed, wet water, as the Lieutenant Governor said, that takes into effect things like changing climates, distance to water sources and a bunch of other things.

The goal is to avoid costly litigation. Lieutenant Governor, I did not know you are a water rights attorney. So you come at this from a real-life perspective.

President Stiffarm, can you share your perspective, your perspective as a representative of the people of Fort Belknap, on why this settlement that we are discussing today is the best way to resolve the water rights issue at Fort Belknap that was established, as has been said, by the Winters case, and how this settlement will secure water access for your tribe for the next 100 years?

Mr. STIFFARM. Thank you for the question, Senator Tester. As I stated earlier, it has been said throughout these testimonies, water is life. Without that, we are nothing. Without the work you all have done to help us secure this water settlement, it is going to mean fresh drinking water for the Fort Belknap Agency and for the communities in the south of our reservation, Hays and Lodgepole.

We are going to be able to re-do our irrigation district in the north end, which is 100 percent operated by Native American tribal members and we can have an irrigation system in the south end, for our farmers and ranchers out there. Fort Belknap's primary income is farming and ranching. So this water means a lot to us. This dam that we are going to build is going to benefit the communities all the way from Blackfeet Country down into the Fort Peck Reservoir, those farmers and ranchers that are upriver from us and downriver.

So we are bringing life to the Hi-Line, is what we are doing. I want to thank you for that.

Senator TESTER. Thank you.

Mr. JURAS. as I said before, it is a pleasure to have you here today. Thank you for your work and the Administration's work on this settlement.

As you have said, Montana has a strong record of collaborating on water settlements. Your work has carried that tradition on, thank you.

You wear many hats as Lieutenant Governor of the State of Montana. You serve as co-chair of the St. Mary's Rehabilitation Project, in that role, you know how important it is to rehabilitating the St. Mary's Canal and how critical it is to north central Montana.

As we learned with the DOI testimony, and Bryan, thank you for your testimony, the rehabilitation of St. Mary's will provide 35,000 acre-feet of water mitigation required in this compact. Could you talk about the overall importance of fixing St. Mary's? We have heard the president talk about the tribal perspective. I want you to talk about fixing St. Mary's and its potential to expand access to water across north central Montana.

Mr. JURAS. Yes, Senator Tester. The St. Mary's canal system, and we call it the Milk River Project, is critical for the Hi-Line communities and agriculture. It irrigates over 120,000 acres. It provides water for cities and towns and two rural communities. Without it, literally people would have to leave that area of the State. It would cause great economic harm if we do not maintain the viability of the St. Mary's system.

As you know, it was built in the early 1900s. We had the collapse of some structures in 2000. Thankfully, this body, Congress approved repairs. Montana also contributed to some of those repairs.

But that was just one of many repairs that makes it absolutely critical to the Montana economy, as well as the communities that that canal serves.

Senator TESTER. For the purview of the Committee, the St. Mary's project is an engineering marvel. It was built over 100 years ago, and has probably been worn out for 40 years. And it is just an amazing piece of infrastructure built several generations ago.

I want to thank everybody who has worked on this bill. I want to thank the witnesses for their testimony. I would like to quickly note for the record that there are a handful of drafting errors within this bill. I look forward to correcting these errors in a substitute amendment. We will work with the agencies here on technical assistance, trying to get this bill out the door quickly.

Lastly, I want to thank President Stiffarm and all the folks who have worked on this bill. Your predecessors, you mentioned, Andy Werk. But the truth is, it is a long list, because this has been going on a long time.

Today's hearing is a testament to hard work and determination getting done if you fight and work for common sense solutions. It hasn't been easy. Make no mistake about it, we have much work left to do.

But I remain committed, as you do, as Senator Daines does, to getting this done. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Tester.

Senator Daines?

**STATEMENT OF HON. STEVE DAINES,
U.S. SENATOR FROM MONTANA**

Senator DAINES. Chairman Schatz, thank you, as well as Vice Chair Murkowski.

Mr. JURAS. welcome. President Stiffarm, thank you. Both of you are not only colleagues who work together on important issues, I consider both of you friends. It is really good to have you here.

The Lieutenant Governor not only is a water rights attorney, she also was born in the same hometown as my grandpa. So some of these relationships go back a long way.

Today is historic, it really is. I sometimes wondered if we would ever get to this point, to have this kind of hearing. When I was first elected to the House in 2012, over a decade ago, this was one of the first issues I heard about. I heard about it from the tribe, I heard about it from the county commissioners, Phillips County, Blaine County. Both sides wanted to set me straight on their strong opinions on this compact.

Less than just a year ago, this settlement still had opposition from numerous groups. The truth of the matter is it was going nowhere. It was going nowhere. As President Stiffarm so well articulated, I think we had to put aside the concerns for only ourselves and think about the future generations. It has been a century-long battle.

President Stiffarm, I commend you and your courage, your leadership to saying, I want to solve this problem. For 10 years, the bill got introduced, it was press releases, but it wasn't actually going to get an outcome. Through your leadership and willingness to figure out a path forward, your courage, we are here.

We buckled down the last six months. The Governor's team, as well as the Department of Interior and President Stiffarm's team held the first of many intense negotiations. It got intense at times. I worked with our county commissioners. They got intense at times. Working with Montana's farming and ranching communities, as the Lieutenant Governor talked about whiskey and water, that is really true in a place that has a lot less water than whiskey.

We came to a compromise, and Senator Tester and I introduced a bipartisan bill. I am proud to say today for the first time ever we have the support of Montana's entire congressional delegation. We have the support from Governor Gianforte and his administration. We have the support of the tribe. We have the support of every affected county commission. We have the support of the agriculture groups and many more for this critically important bill.

It is hard to ever get a group aligned on anything. Yet here we are today, and again, President Stiffarm, I commend you for your leadership and vision.

Mr. Chairman, I am going to ask unanimous consent to place into the record the following letters of support: Blaine County Commission, Phillips County Commission, Hill County Commission, Valley County Commission, Governor Greg Gianforte, the Montana Stock Board Association, Montana Farm Bureau, and letters from elected officials.

The CHAIRMAN. Without objection, so ordered.

Senator DAINES. Again, this bill is a result of a lot of compromise, a century or more of work. It will be a major benefit to Montana.

It fully settles costly water rights litigation. I am grateful Lieutenant Governor Juras went to law school. I didn't. I am not a lawyer. I went to engineering school, that other school a couple hundred miles away from Missoula. It fully funds the rehabilitation of the Milk River Project which is the lifeblood for our farmers and ranchers both on and off the reservation. All you have to do is, if you were to fly over that part of the State, you can see where it is green and where it is not. It is very, very clear in terms of water being the lifeblood.

We invest in infrastructure to provide clean drinking water and irrigation for tribal and non-tribal members. And it protects existing easements and leases. The Fort Belknap Water Rights Settlement Act is truly a win. It is a win, it is a win, it is a win for Montana.

President Stiffarm, Lieutenant Governor Juras, welcome. This bill is critical for both the State and the tribe. Lieutenant Governor Juras, you spent considerable time working toward a practical solution that benefits Montana. How does the current bill protect private property rights, increase investment in agriculture, and address the complex land ownership issues that we face in Montana?

Mr. JURAS. As I noted in my testimony, it avoids expensive and lengthy and unpredictable litigation. In Montana, we follow the prior appropriation doctrine, which grants seniority to first in time, first in right. So it actually provides predictability not only for the tribes, but also for the State water rights holders, because the tribe's water rights date back prior to almost all stakeholders, and all of those rights are junior.

So until the tribe's water rights are confirmed and finalized, junior water right holders cannot finalize that. And of course, our water rights are a very important property right.

It also provides for mitigation of the impact of off-reservation water users through the rehabilitation of the St. Mary's Canal and Fresno and other water structures. Without Senate Bill 1987, the tribe's water rights will remain paper water rights and will continue to have that uncertainty.

Senator DAINES. It is a really important point, because as anybody who has dealt with water out west knows, in terms of the data, that right determines priority. The point you made about the tribe's rights predating a lot of the other rights is really important. If we don't settle that, we can never resolve this issue. So it is a really important point and why we need to get this done.

President Stiffarm, the tribe has made numerous concessions in order to get to where we are today. Thank you for your work. Your grandchildren and my grandchildren and our great-grandchildren will thank you for your work.

The bill before us is a compromise for the State, the tribe, the Federal Government, dozens of local areas and groups. There is still work to do from this point forward, but this is a really important, monumental step.

My question for you, President Stiffarm, how does the bill enhance the tribe's water resources and ensure that your members have access to clean drinking water and sustainable irrigation?

Mr. STIFFARM. Thank you for the question, Senator Daines. First, I want to thank you for those words that you shared. You keep my humble and grounded. I appreciate this.

What this water settlement is going to mean for the people of Fort Belknap and the surrounding communities is clean drinking water, water for the future as we talked about, for our children, grandchildren and great-grandchildren. That is what we are all here for, it is why we are all surviving here today, is for our children and grandchildren and for their lives, for better lives.

In the south end, we will be pumping water out of the Missouri River up into the Hays and Lodgepole communities, which doesn't have clean drinking water because of the mining devastation that we had from the Zortman and Landusky Mine, runoff from the mountains there. So we are going to be able to provide some clean drinking water in the south, in the communities.

Also infrastructure, the homes that we plan on building. Back home we have two or three generations living in one home. With some of the money we are going to be able to dig some wells and build homes for the communities. As I said, provide better, clean drinking water and irrigation systems for our farmers and ranchers up and down the Hi-Line. It is going to provide hope where there was no hope before. I want to thank you for your help.

Again, Lieutenant Governor, we are honored to be sitting next to you and listening to your testimony. [Phrase in Native tongue.]

Senator DAINES. Thank you, Mr. President.

I know I am well over time. I have a question for Mr. Newland, Chairman Schatz.

The CHAIRMAN. Go ahead.

Senator DAINES. Thank you.

It is a century in the making here, but this will be quick. I would appreciate a brief answer. The stars of the panel are here right now, but you have a really important of this, because we don't go anywhere without your assistance going forward.

First of all, thank you for all your help on this. A lot of the work now will go into working together, moving this forward. The cooperation has been noted and appreciated.

How important is it to finalize this last remaining water settlement in the State of Montana and have a bill that could be implemented at the State, Federal, and local level?

Mr. NEWLAND. Thank you, Senator, for that question. Your comment hit the nail on the head: it is a century in the making since the Winters case that the United States brought as trustee. I think getting this done will, in large measure, fulfill a big part of our trust obligation to the tribes and the people who live in their communities back home on the reservation, to get them actual wet water.

Senator DAINES. Thanks for the brief answer, and thanks for all your help.

Mr. Chairman, thanks.

The CHAIRMAN. Thank you.

Senator Smith?

Senator SMITH. Thank you, Mr. Chair.

Secretary-Treasurer Fineday, miigwech, and thank you again for being here with our Committee. I very much appreciated your testimony, as you reviewed some of the history of the illegal land transfers which is, of course, as you pointed out, part of the long legacy of taking land from the Ojibwe people in this place that is now known as Minnesota and across the Country.

Your testimony was excellent. I am wondering if there was anything in your testimony regarding that history that you would like an opportunity to highlight before I ask you one other question?

Mr. FINEDAY. Thank you, Senator, for that question. Of course, I could speak on the history here for a very long time and I am sure bore the Committee to death. I won't do that today, other than to point out very specifically these transfers that are subject to the Restoration Act and to this technical correction really arose from the termination era. Even though Leech Lake wasn't specifically targeted as a termination tribe, it was still the mindset of the Fed-

eral Government at that time in order to eliminate the burden of administering the land on our reservation.

So Congress passed an amendment to the Indian Reorganization Act on May 14th, 1948 that authorized the Secretary of Interior to issue fee patents to Indian allotments to prepare them for sale. Under the new law, the BIA also began to administratively transfer ownership of allotments to other governmental agencies, such as the United States Department of Agriculture. These administrative transfers were known as secretarial transfers.

The problem at Leech Lake and why this was specific to Leech Lake is because we have the Chippewa National Forest that is basically superimposed within the boundaries of our reservation. So the fact that the forest and the reservation are one and the same really made the administration of these transfers especially enticing to BIA officials in the 1940s and 1950s.

However, it wasn't until 1979 that the Department of Interior formally acknowledged that these transfers were illegal. The Interior Solicitor interpreted the Act of May 14th, 1948 to require "unanimous consent of all heirs before the interests in those allotments could be conveyed." And that didn't happen in this situation.

So while we can look at the overall consequences of the Termination Act and the allotment period on Indian Country, correcting this specific wrong for the illegal taking of land at Leech Lake is a much more straightforward task, just return the land.

Senator SMITH. Thank you very much.

And for the unfortunate people who have never had a chance to visit northern Minnesota and the home of Leech Lake Band, can you explain what the land is like? Particularly I am thinking about, I was just looking at a map of the tribal nation land. We have big lakes, lots of water. Not meaning to be disrespectful to our friends from Montana, or the Navajo Nation.

[Laughter.]

Mr. FINEDAY. Thank you for that question, Senator. Very importantly, the Leech Lake Reservation is an extremely resource-rich reservation. We are actually the first reservation, federally recognized reservation that the Mississippi River flows through, from its headwaters at Lake Itasca. We have several large lakes, as you mentioned, we have Lake Winnibigoshish, we have Leech Lake and we have Cass Lake as well as many other lakes. For those of you who may know one of the mottoes of Minnesota, it is that we are the land of 10,000 lakes. We have over 1,000 of those lakes within the boundaries of the Leech Lake Reservation.

We have a lot of forest land, which is very specifically unique to us as Ojibwe People as well, with our migration story, starting out in the east coast, many, many, many generations ago and receiving a prophecy to go west to the place where food grows on water. A lot of the resources on our reservation include that food that grows on water, what we call manoomin, or the good berry, or what is also known as wild rice. We protect that wild rice.

That is where this bill specifically, even though it deals with land, the lands that we are working with the Forest Service to identify will help us ensure that we are protecting wild rice beds within the lakes and rivers of the reservation. So it is a very resource-rich place. We are doing our part to do all we can to protect

and preserve it for generations to come, not just for the Leech Lake people, but for everybody to enjoy.

Senator SMITH. Thank you very much. The home of manoomin, and also the need because of so much surface water, the need for buildable land for the reservation, so that you have a place to address the severe housing shortage that you were experiencing as well.

Thank you so much, Mr. Chair.

The CHAIRMAN. Thank you, Senator Smith.

Senator Luján?

Senator LUJÁN. Thank you, Mr. Chairman.

Assistant Secretary Newland, I have a series of yes or no questions. Yes or no, does the Navajo-Gallup Water Supply Project Amendment Act of 2023 integrate all recommendations from the Interior Working Group on Indian Water Settlements provided last November?

Mr. NEWLAND. Yes.

Senator LUJÁN. So this bill has the Interior's support?

Mr. NEWLAND. Yes.

Senator LUJÁN. Much of the project is already complete with water deliveries from the Cutter Lateral having begun in 2020 and 2021. More than 50 percent of the remaining pipeline, the San Juan Lateral, is also complete. But the project needs more time and resources to get the job done.

Assistant Secretary, absent Congress' authorization to provide additional time and resources, what will happen after December 31st, 2024?

Mr. NEWLAND. The work would stop on the construction programs and the funding would run out.

Senator LUJÁN. I appreciate that.

Groundwater levels for the City of Gallup have dropped approximately 200 feet over the past 10 years. I also was proud to work with colleagues and secure congressionally directed spending in Fiscal Year 2022 for the City of Gallup to drill a new well to help meet its needs until the project can deliver water to the city. In the meantime, thousands on the Navajo Nation rely on hauling water to meet their daily needs.

Mr. President, how many Navajo households currently do not have running water?

Mr. NYGREN. Thank you, Senator. The percentages that we have been using for households across Navajo is about 30 percent. So I think in terms of New Mexico, if I were to assume, it would be in the thousands, maybe anywhere between 10,000 to 15,000 on the New Mexico side.

I know across Navajo, it is probably 50,000 to 60,000. But just on the New Mexico side, I know it is in the thousands. But I can definitely get you a more accurate number.

Senator LUJÁN. I appreciate that, Mr. President. I look forward to working with you and NTUA to get those numbers as well for the Committee. I appreciate that.

Mr. President, how has inadequate water supply affected the Navajo Nation?

Mr. NYGREN. Thank you, Senator. Having grown up without running water, hauling water myself, heating water on the stove with

a propane tank, and even to the point where in the winter, being able to chip the waters, because the 55-gallon barrels get frozen.

And in summers, using a hose to suck out the water out of the gallons, or even at times when we didn't have a big enough vehicle, we would haul water from the city, whether it was Farmington or Gallup or Cortez in five-gallon buckets from outside the gas stations. They usually had a spigot. Filling those buckets up takes a lot of work and effort to bring it home.

So I do truly understand the struggles of not growing up with running water or electricity. I know that if those were there, life would be a little easier. You would have a lot more time to focus on school, you would have a lot more time to focus on spending time with your family.

The quality of life and the quality of your health would go up dramatically, because when you don't have enough water and you are constantly thinking about, how can I conserve, how can I use less, how can I make sure that we have enough to bathe, how can I make sure we have enough to cook with, it is a tough decision. Because Farmington, from my home community, was about 70 miles. I know a lot of my constituents still today on the reservation travel long distances.

Then there are times when, as you mentioned earlier, the groundwater levels and things like that are very low, and the quality is poor. Still to this day we have Navajo people that are, just like myself, even though I am only 36 years old, hauled water, windmill water that is supposed to be for livestock. I know a lot of our people are still doing that as of today.

So I think that it has really made it tough for people to stop worrying about the basic essentials of life. If we can cover those basic necessities, we can start moving forward into building ourselves up even stronger. Thank you, Senator.

Senator LUJÁN. It means a lot that you are here, Mr. President. I think the power of your testimony and stories that have been shared already, I think what is best is just to let that sink in, to understand where so many across the Country can turn on a spigot in the comfort of their home, and there is water. We have to do better.

I yield back.

The CHAIRMAN. Thank you very much, Senator Luján.

Vice Chair Murkowski?

Senator MURKOWSKI. Thank you, Mr. Chairman. Thank you all for the testimony today. As Senator Luján has just mentioned, when you are talking about something as basic as water, we know that we have room to improve and hopefully the measures in front of us will allow for that.

A couple of questions. I am going to start with you, Secretary Newland, and Mr. Crockett. With regard to the Leech Lake bill, the Interior Department, I think we are agreeing on the facts here in terms of what happened. Interior illegally sold off land that belonged to members of the Leech Lake Band. It shouldn't have happened. The tribe needs to be made whole. I think we are absolutely in agreement there.

You state that the bill, S. 616, would also authorize an acre-for-acre substitution of lands within the Chippewa National Forest if the Band identifies certain parcels as unsuitable for future use.

So I am just trying to wrap my head around how this actually works in terms of a process. Would the tribe have the ability to turn back their entitlement lands that were identified as wrongly transferred and then pick other National Forest system land if they view that their entitlement parcels are unsuitable for future use?

I guess what I am trying to figure out is, who determines what is unsuitable? Is that the tribe? What does that mean within DOI's view?

Then Mr. Crockett, I am going to ask you a similar question.

Mr. NEWLAND. Thank you, Madam Vice Chair. I don't want to misspeak on that, as I think that would be a legal conclusion about that term. If it is okay with you, I would like to provide a written answer as a follow-up.

Senator MURKOWSKI. That is good. What I am also trying to understand is not only the definition, but who determines. Is it DOI or is the tribe that determines if it is unsuitable?

Mr. NEWLAND. Again, Madam Vice Chairman, I am not prepared to answer that question. I would be happy to follow up.

Senator MURKOWSKI. Let me ask you then, Associate Deputy Chief for State, Private, and Tribal Forestry, you have a big, long title there, but it is USDA, it is Forestry. I am trying to understand whether or not Forest Service has specific views on this new authority that we have within this legislation that allows the Department to substitute alternative National Forest system lands for the acres that the tribe is entitled to.

Again, if you have a better handle on how the process works, I am eager to hear that as well.

Mr. CROCKETT. Sure, thank you for the question.

I will share my understanding of it. So my understanding is the tribe and the Forest Service work together to collaboratively determine the suitability for the acres that are identified. I don't think they are going back and saying, all right, we already had this acre, and want to exchange it for a different acre. They are looking at the acres that were identified under the original legislation, the 11,000 acres. And as they are adding to the 4,000-plus acres under the proposed legislation, they work hand in hand to determine suitability.

As you heard Mr. Fineday talk about the cultural, economic and residential needs, those are going to be some of the driving factors that they are going to be looking at. Then the Forest Service will look at those and make sure that they are in alignment with the Forest Service plan for the Chippewa National Forest. That process helps to determine the suitability.

Senator MURKOWSKI. So have there been discussions yet between Forest Service and the tribe on which lands we might be talking about, whether there are maps or surveys or appraisals that would be transferred to Interior?

Mr. CROCKETT. There have been conversations. I also think it is important to make sure that we are connecting the 11,000 acres in the legislation from a few years ago with the 4,000 acres that are being proposed under the technical amendments. So for the 11,000

acres, yes, they have maps they have identified, they are about 95 percent complete through that process and ready to go public. So they have had a conversation around that.

For the acres that are being proposed, no map exists for it. They are in conversations around it. They haven't identified the acre-for-acre opportunity there. So that part would still have to happen.

Senator MURKOWSKI. Just recognizing that things around here don't necessarily move very quickly, it seems to me that if there were identified areas or maps that we are talking about, the process moves forward a little bit more quickly, rather than, it seems a bit open-ended, I guess, as I am looking at the process that has been laid out.

I am a little bit over time, but I wanted to ask the Lieutenant Governor a question. This is something that I could ask anyone on the panel here this afternoon. But I think we have recognized that when we are talking about any of these water projects, we have seen costs escalate considerably due to inflation.

It is my understanding that the original cost, the original amount authorized under the 2009 Act was \$870 million. Congress needs to provide another \$750 million to build additional water treatment plants. Inflation added on, I guess the question I would ask you, as the Lieutenant Governor here, is we are looking at a settlement that authorizes repair for the canals. The bill says that the Secretary's obligation to complete the project will be deemed fulfilled even if they can't complete the project due to insufficient appropriations.

So the worry that I have in the back of my head is that reclamation cost estimates or inflation could potentially force the settlement parties to come back to Congress for more funding to complete the project. Is this a concern? Is this a worry? Can you give some assurance here today on whether or not the estimates are going to hold and we are not going to be in a situation where you are having to come back here after all of this great work with a negotiated process?

Mr. JURAS. Vice Chair Murkowski, in Section 14 under Funding, there is also a clause that relates to fluctuations in cost that provides that the amounts authorized to be appropriated will be increased or decreased by the cost of inflation. So that should help address some of those concerns.

With regard to the Fresno and the St. Mary's units of the Milk River Project, the Bureau of Reclamation has done, this has been in the works for several years, projecting those costs. We feel good about the cost for those particular projects. I am not as familiar with the Lake Elwell.

But I do know this is a somewhat unique approach in that plans are going to be submitted to the Secretary of Interior as these projects are proposed to go forward. There will be an opportunity to address costs within the appropriations.

But of course, to the extent they exceed that and the cost of inflation built in, the tribes will be required to come back and request additional funding. Or else scale down the projects, or perhaps not fill one of the projects.

Senator MURKOWSKI. So you raise an issue that I would like to finish off my question back to you, Secretary Newland. This relates

to the fact that it is kind of unusual that the tribe is designated as lead agency for repairing and expanding the BIA irrigation system that is going to serve the tribe. I guess the question is, how unusual is this? Is this the first time we have seen it? It is usually the Bureau of Rec that leads these projects. Is this a good thing, bad thing?

Mr. NEWLAND. Thank you, Madam Vice Chair.

The more recent settlements typically designate the Bureau of Reclamation as the lead agency for that work. As we highlighted in our submitted testimony, that remains our suggestion to the Committee, is to designate Bureau of Reclamation for that work.

Their expertise and experience of doing this work under many of the recent settlements, their ability to bring them to completion I think demonstrates that that will be a better course.

Senator MURKOWSKI. Good. I appreciate that. I thank you for the willingness to again, we are trying to figure out how we find resolution not to throw more roadblocks in. I appreciate that.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Luján?

Senator LUJÁN. Just to follow up on the Vice Chair's comments, I very much appreciate that line of questioning. With the water settlement I was proud to carry in the House back in 2009 for the Aamodt Water Settlement for Four Pueblos in the community where I live, later on the Bureau of Reclamation came back and said they were going to smart-size the project. I thought, well, that sounds pretty good. Well, smart-sizing means cutting. It is a horrible term.

But because of the authorities inherently given them, they look at the scope of the project that was needed, as Congress passed, and then they go in and they smart-size it, they chop the project, there is not enough water, not enough lateral as opposed to coming back and trying to find more funding.

So I very much appreciate what you were just asking there. If there is a chance to pursue it, Mr. Chairman, to look into that more, I would very much be interested in that.

The CHAIRMAN. Thank you very much, Senator Luján.

I do not have any questions. I will submit a couple for the record, but I really want to thank this esteemed panel, especially our tribal leaders and our State leaders. I know it is a long journey, and none of you seem intimidated, but it can be an intimidating process.

So we really appreciate your coming before the Committee. We are going to try to get these bills marked up and enacted as expeditiously as possible.

If there are no more questions for our witnesses, members may also submit follow-up written questions for the record. The hearing record will remain open for two weeks.

I want to thank all the witnesses for their time and their testimony. This hearing is adjourned.

[Whereupon, at 4:04 p.m., the hearing was adjourned.]

A P P E N D I X

BLAINE COUNTY COMMISSIONERS

June 28, 2023

RE: GROS VENTRE AND ASSINIBOINE TRIBES OF THE FORT BELKNAP INDIAN
COMMUNITY WATER RIGHTS SETTLEMENT ACT OF 2023 (SETTLEMENT ACT)

President Stiffarm and Council Members,

First, we would like to thank you for meeting with the Commissioners numerous times over the past years to discuss the Fort Belknap Water Settlement. We appreciate all the work you have put into completing the project. Next, thank you for removing the private leases from S. 1987. Also, clarification that the State Lands exchange will come from Federal Lands throughout Montana eases our concern about the financial impact on Blaine County related to PILT payments. Lastly, the addition of funds to help with the St. Mary Rehabilitation Project is invaluable to the hi-line communities and counties.

Your continued work to preserve the source of a water supply to communities, and the irrigation and recreational rights of county residents along the Milk River is appreciated, and we offer our support on S. 1987—The Gros Ventre and Assiniboiné Tribes of the Fort Belknap Indian Community Water Rights Settlement Act.

Sincerely,

SHANE FOX; MILES G. HUTTON; DOLORES PLUMAGE

OFFICE OF THE GOVERNOR—STATE OF MONTANA

June 14, 2023

Hon. Steve Daines;
Hon. Jon Tester,
U.S. Senators,
Hart Senate Office Building,
Washington, DC.

Senators Daines and Tester:

I write today to offer my support for the Fort Belknap Indian Community (FBIC) Water Rights Settlement Act as presently drafted. As you both know, work to federally ratify the FBIC's water compact has been in process for decades. The State of Montana firmly supports bringing finality to this matter for the benefit of the FBIC as well as Montana water users.

The product before you is the result of extensive coordination between the federal government, the FBIC, and the State of Montana, with valuable input from local leaders, farmers, ranchers, and other water users. I urge for the passage of this version of the bill, without further modification.

It is essential that the State of Montana continues to have a seat at the table as this bill moves through the legislative process. I ask that you advocate to the Chairman and Vice Chairman for a witness to appear on behalf of the State of Montana once a hearing is scheduled before the Senate Committee on Indian Affairs.

Thank you for your partnership to bring certainty to water users in northcentral Montana.

Sincerely,

GREG GIANFORTE, GOVERNOR

COUNTY OF HILL—HILL COUNTY COURTHOUSE

June 14, 2023

RE: LETTER OF SUPPORT: FT. BELKNAP INDIAN COMMUNITY WATER RIGHTS
SETTLEMENT ACT

To Whom It May Concern,

The Board of Hill County Commissioners are writing this letter in support of the Ft. Belknap Indian Community Water Rights Settlement Act. We have been meeting with Kristal HawleyFox and her team for over a year now discussing the importance of this critical infrastructure as well as the economic resources this would provide to the Hi-Line.

We, as a Commission, are very much in full support of this project for this will be vital to the growth of Hill County and our dear neighbors in Ft. Belknap now and for future generations.

Please let us know if we can provide more information. Thank you for your consideration.

Sincerely,

MARK PETERSON, CHAIR
JAKE STRISSEL, COMMISSIONER
SHERI WILLIAMS, COMMISSIONER

MONTANA STATE SENATE

Dear Senator Daines, Senator Tester, Representative Rosendale, and Representative Zinke:

I support the Montana federal delegation introduction of the Fort Belknap Indian Community Water Rights Settlement Act of 2023 (S. 1987).

As a Montana legislator representing Senate District 17, which partially encompasses the St. Mary system in northern Montana, I strongly endorse the legislation.

Finally, there is a solid plan to update the 100 year old system, fulfill water compact authorities and bring consensus to provide many resources, which are driven by the availability of water, to the water users and the communities of northern Montana.

Gratefully,

SENATOR MIKE LANG

MONTANA FARM BUREAU FEDERATION
July 10, 2023

Hon. Jon Tester,
U.S. Senate,
Hart Office Building,
Washington, DC.

Dear Senator Tester,

The Montana Farm Bureau Federation (MFBF) thanks and applauds you for your leadership and persistence on developing the Fort Belknap Indian Community (FBIC) Water Settlement Act of 2023 (S. 1987). After more than twenty years of negotiating and bringing parties together to work toward this critical settlement, achievement of this task should be celebrated!

As previously mentioned, negotiating agreements on this scale is no simple task, but finalizing this last Indian Water Rights Settlement in Montana is of utmost importance to farmers and ranchers in the state as we move toward final adjudication. Furthermore, passage of your legislation will avoid costly litigation which would otherwise occur between FBIC, the federal government, and water users such as irrigators. As the state's largest general agriculture organization representing farmers and ranchers from all over the state including the hi-line, it is incredibly important to us that farmers have long term certainty about one of their most important resources; water. This legislation provides them with just that.

Additionally, this legislation will provide \$300 million for Milk River Project infrastructure repairs and to restore the St. Mary's canal, which our members have been asking for since 2004. This project provides irrigation to hundreds of individual farms and more than 100,000 acres of farmland. In recent years, it has become apparent that repairs and maintenance are absolutely imperative but the funds necessary to make them a reality have been difficult to secure. Improving the project will not only benefit farmers and citizens living in the area, but also the economy of the entire state.

Again, MFBF appreciates your efforts to settle this agreement. Agriculture is still Montana's number one economic driver and as a semi-arid state, access to irrigation water is critical for our continued success. Thank you for sponsoring the Fort Belknap Indian Community Water Settlement Act of 2023. We hope to see it cross the finish line in Congress as soon as possible, so that we are one step closer to a final decree and ultimate protection of all Montana water rights.

Sincerely,

CYNTHIA JOHNSON, PRESIDENT

MONTANA STOCKGROWERS ASSOCIATION
June 23, 2023

Hon. Jon Tester,
U.S. Senate,
Hart Office Building,
Washington, DC.

Dear Senator Tester,

The Montana Stockgrowers Association (MSGA) would like to thank you for your leadership and perseverance in negotiating a framework for the Fort Belknap Indian Community (FBIC) Water Settlement Act of 2023 in Congress. Fort Belknap Indian Community will be the last settlement in Montana to ensure that historical water use by all water users on and off the reservation are protected. The success of Montana’s agriculture industry is dependent upon water and water right certainty. It is easily the single most important resource for people across Montana, which is why MSGA supports this agreement.

The long-term economic impact and improved critical infrastructure this water settlement will provide will make significant improvements to irrigation systems, as well as provide certainty to tribal, agricultural, residential and business water users. Specifically, the \$275 million to fully rehabilitate and restore the St. Mary Canal to its full capacity will have a positive impact on ranchers across the Hi-Line and will create a sustainable water supply for the Milk River.

Additionally, the Act affirms Montanans’ Constitutional protection that the water of the State of Montana belongs to all the people for their common benefit (Article IX, Section 3), it will prevent years of costly litigation for Montana water users, and provide much needed certainty for all parties involved. MSGA applauds the bi-partisan effort and we look forward to the passage and implementation of this Act.

Sincerely,

RAYLEE A. HONEYCUTT, EXECUTIVE VICE PRESIDENT

PHILLIPS COUNTY
April 10, 2023

President Stiffarm,

Thank you for inviting our Commission to meet with you on Tuesday, March 21, 2023 in Fort Belknap to discuss the Fort Belknap Water Compact. We appreciate the work you have done on this compact and want to thank you for removing the Grinnell Land from your proposed legislative draft. By removing the proposed acquisition of the Grinnell Land and adding that the State Lands exchange would be from Federal Lands throughout Montana not just in Phillips County, we may now support the revised legislative draft of the Fort Belknap Water Compact. We appreciate your continued work to preserve the irrigation and recreational rights of Phillips and Blaine County residents.

Sincerely,

JOHN F. CARNAHAN;
BRUCE CHRISTOFFERSON;
RICHARD DUNBAR, COMMISSIONERS

VALLEY COUNTY COMMISSION
May 3, 2023

Hon. Jon Tester,
U.S. Senate,
Hart Office Building,
Washington, DC.

Dear Senator Tester,

We support the “Gros Venture and Assiniboine Tribes of the Fort Belknap Indian Community Water Rights Settlement Act of 2023” (Settlement Act) that will provide very important infrastructure funding that will benefit the Milk River Project and state water users across the Hi-Line.

We understand that the FBIC leadership has made a difficult decision to remove the transfer of the Grihnell Lands from the Settlement Bill, which had created a barrier to the Settlement Act's approval. Now, the Settlement Act includes significant funding that supports the restoration of the St. Mary Canal infrastructure vital to improving the water supply in the Milk River in support of Milk River irrigators. This project will provide protection for our current Milk River water users as the FBIC obtains funds under the Settlement Act for its water infrastructure projects that will allow the development and use of FBIC's Indian water rights secured by a decade of negotiations resulting in the 2001 F. Belknap-Montana Water Compact.

The Settlement Act is a win-win for the State and water users along the Hi-Line and for the FBIC. It will provide critical support for our agricultural economy and have long-term economic benefits throughout our region. It will at long last provide certainty to our irrigators related to their water rights. We support the 2023 Water Settlement Bill and encourage your support in ensuring its passage in Congress.

Sincerely,

MARY ARMSTRONG, CHAIR

BEAR PAW DEVELOPMENT CORPORATION
July 10, 2023

Members of Montana's Congressional Delegation:

On behalf of Bear Paw Development Corporation, I am pleased to provide you with this letter of support for S. 1987, or the Fort Belknap Indian Community Water Rights Settlement Act of 2023. This legislation is the culmination of decades of work by many and provides certainty for both tribal and non-tribal entities in the Milk River Basin concerning water from the Milk River for purposes of irrigation, municipal use, economic development and recreation.

Importantly, S. 1987 will provide \$300 million of non-reimbursable funds for critically important infrastructure repairs to the St. Mary/Milk River Project to assure that water from this source continues to flow along the Hi-Line, assuring the viability of these areas in northern Montana for the foreseeable future. Knowing the Milk River would run dry without water from the St. Mary System in seven of every ten years, the absolute importance of this rehabilitation effort cannot be overstated.

It is clear the benefits of this legislation are significant, both for the Gros Ventre and Assiniboine people at Fort Belknap, but also for the Hi-Line and the communities of northern Montana that are reliant upon an intact, up-to-date water delivery system that will benefit the economy of our region for generations.

Without hesitation or reservation, our organization strongly supports S. 1987 and urges its passage.

Best regards,

PAUL TUSS, EXECUTIVE DIRECTOR

BLAINE COUNTY CONSERVATION DISTRICT
April 28, 2023

RE: FORT BELKNAP COMMUNITY WATER RIGHTS SETTLEMENT ACT 2023

Dear President Stiffarm:

By unanimous vote, the Blaine County Conservation District Board of Supervisors wish to go on record in support of your language of the "Gros Ventre and Assiniboine Tribes of the Fort Belknap Indian Community Water Rights Settlement Act of 2023". Congressional passage of this Act, containing Federal ratification of the 2001 Water Compact between the State of Montana and the Fort Belknap Indian Community, will help assure the physical and legal availability of water for agricultural, residential, and business users throughout the Milk River watershed.

That assurance will better enable our District to work with the Montana Department of Natural Resources and Conservation and the U.S. Natural Resources and Conservation Service on projects that enhance water conservation, quality, and infrastructure, both on and off the reservation. We urge the Montana Congressional Delegation to speed passage of this bill through the current session of Congress so that the important work of implementing this act can begin soon.

Sincerely,

BRUCE ANDERSON, BOARD CHAIR

MILK RIVER JOINT BOARD OF CONTROL
April 3, 2023

RE: FORT BELKNAP COMMUNITY WATER RIGHTS SETTLEMENT ACT 2023

Dear President Stiffarm:

On behalf of the Milk River Joint Board of Control (MRJBOC), I write to fully support your 2023 language of the "Gros Ventre and Assiniboine Tribes of the Fort Belknap Indian Community Water Rights Settlement Act of 2023". This bill would provide certainty for irrigators, support the development and rehabilitation of important water infrastructure and result in long-term economic benefits throughout our region on and off the reservation.

Without Congressional passage of this settlement, the Montana Water Court may soon begin adjudicating water rights in the Milk River Basin. This would undo the agreements and solutions that your team has been working so hard on and we have supported since the 2001 Water Compact between the State of Montana and the Fort Belknap Indian Community. Litigation would not only be costly for the stakeholders, but it would also waste resources and jeopardize existing water uses and businesses in the basin.

We are long-standing neighbors of the Fort Belknap Indian Community and commend your team's efforts to work tirelessly to settle the water rights. Settlement will spur economic development on the reservation and allow the hi-line and surrounding areas to continue operations with the full rehabilitation of the St. Mary canal. We praise your negotiation efforts and support them fully. If we can help any further, please do not hesitate to reach out to Jennifer Patrick or myself.

Sincerely,

WADE I. JONES, BOARD CHAIRMAN

ROCKY MOUNTAIN TRIBAL LEADERS COUNCIL
June 30, 2023

Hon. Steve Daines;
 Hon. Jon Tester,
 U.S. Senators,
 Hart Senate Office Building,
 Washington, DC.

Senators Daines and Tester:

We are writing to inform you that the Rocky Mountain Tribal Leaders Council is giving its full-throated endorsement to the Fort Belknap Indian Community Water Rights Settlement. This formal Letter of Support affirms our sacred commitment to the Fort Belknap Community's protection of the Milk River Watershed, as well as the settlement's guarantees that our native brothers and sisters will have access with certainty.

We urge the U.S. Senate to quickly ratify the Fort Belknap Indian Community Water Rights Settlement Act of 2023 to allow investment in and maintenance of this crucial water supply, assuring us that this critical lifeline is maintained well into the future. The Fort Belknap Indian Community Water Rights Settlement will create an ongoing economic boom for the region once infrastructure projects funded by the Act commence on waterways, irrigation and drinking water systems in the Milk River Watershed.

The Ft. Belknap Indian Community Water Rights Settlement marks the far too long-awaited achievement of ensuring every federally recognized tribe in Montana is protected by a formal water rights agreement. It stands as an example of what can be accomplished when hope and history rhyme and the first people of this land finally have negotiating partners, who informed by history, seek to heal the scars of this nations and our state's soul.

Sincerely,

GERALD GRAY, CHAIRMAN

ST. MARY REHABILITATION WORKING GROUP
April 25, 2023

Dear Senator Tester, Senator Daines, Representative Rosendale, and Representative Zinke:

St. Mary Rehabilitation Working Group strongly supports Congressional passage of the Gros Ventre and Assiniboine Tribes of the Fort Belknap Indian Community Water Rights Settlement Act of 2023. The Ft. Belknap Indian Community (FBIC) will be the last tribe in Montana to secure a Congressionally approved water rights settlement. This is a significant achievement for the State of Montana and provides the certainty we all need to manage our water supply into the future.

The Act will ratify the 2001 Ft. Belknap-Montana Water Compact, which was approved by the Montana Legislature with an overwhelming majority of 95 percent in support. The Act will also provide critical water infrastructure funding that will support FBIC's development of their water supply and make significant improvements to their irrigation and domestic water systems, and support important mitigation activities that protect non-tribal, state-based water users across the Hi-Line.

Specifically, the Act will provide \$275 million for the Bureau of Reclamation to fully rehabilitate and restore the St. Mary Canal to its full capacity of 850 cubic feet/second, providing a sustainable water supply for the Milk River. This crucial component of the Settlement Act will address a major problem for water users across the Hi-Line. The additional water supply will provide protection for Milk River Project users and communities who may be impacted from the FBIC's Indian water rights development and ensure the overdue restoration of the St. Mary Canal.

Finally, the Act will generate significant long-term economic benefits for both the Tribes and our local businesses as critical project infrastructure funds are implemented. This will give an economic boost to our communities across the region. We need your leadership in the United States Congress and strong support for the passage of this important Act.

Sincerely,

DAVE PETERSON, COORDINATOR

MONTANA HOUSE OF REPRESENTATIVES
July 10, 2023

Senators Tester and Daines:

I am pleased to add my support for the Fort Belknap Indian Community Water Rights Settlement Act of 2023 (S. 1987) and thank you for your work to champion its passage during this session of Congress.

S. 1987 not only affirms the senior water rights of the Fort Belknap Indian Community for the Gros Ventre and Assiniboine people, but it also significantly and importantly invests hundreds of millions of dollars into updating and modernizing the infrastructure that is needed along the Hi-Line to deliver water through the St. Mary/Milk River System to communities that include Havre, Chinook, Harlem and Fort Belknap. This water is critical for the drinking water supplies for these communities and helps to irrigate more than 120,000 acres in northern Montana.

The Milk River would run dry in seven out of every ten years were it not for water from the St. Mary/Milk River System. Thus, it is of paramount importance that the funds included in S. 1987 for the repair and rehabilitation of this System be expeditiously appropriated for this cause. To indicate that the economy of northern Montana would be devastated without the proper functioning of this System is not overstating the case.

Thank you for your strong advocacy for the passage of S. 1987. Please add my equally strong support and let me know if there is anything I can assist with to advance this important legislation.

Sincerely,

REP. PAUL TUSS, HOUSE DISTRICT 28

WILD MONTANA

Hon. Brian Schatz, Chairman;
Hon. Lisa Murkowski, Vice Chairman,
Senate Committee on Indian Affairs,
Hart Senate Office Building,
Washington, DC.

Dear Chairman Schatz and Vice Chairman Murkoski,

On behalf of Wild Montana and our more than 3,400 members, thank you for the opportunity to submit this written testimony in support of S. 1987, the Fort Belknap Indian Community Water Rights Settlement Act of 2023.

In 2019, Wild Montana was honored to visit the Fort Belknap Reservation and discuss water rights settlement with members of the Council and with other tribal

leaders. With the help of the Fort Belknap Indian Community, we gained a deeper understanding of the importance of protecting the headwaters that are a key part of the water rights settlement and essential to the communities within the Fort Belknap Reservation.

The FBIC Water Settlement will ratify the FBIC Water Rights Compact with the State of Montana as well as provide critical investment and resources for water infrastructure development. Wild Montana enthusiastically supports S. 1987, and it is our sincere hope that the committee and its members will take the necessary steps to move the bill through the Senate Committee on Indian Affairs to the floor for a full Senate vote.

Wild Montana appreciates the time and consideration of the members and staff of the Senate Committee on Indian Affairs and we welcome your communication.

Sincerely,

JOHN TODD, EXECUTIVE DIRECTOR

Sincerely,

JOHN TODD, EXECUTIVE DIRECTOR

THE WILDERNESS SOCIETY
July 10, 2023

Hon. Brian Schatz, Chairman;
Hon. Lisa Murkowski, Vice Chairman,
Senate Committee on Indian Affairs,
Hart Senate Office Building,
Washington, DC.

Dear Chairman Schatz and Vice Chairman Murkoski,

On behalf of our more than one million members and supporters, The Wilderness Society (TWS) writes to express our support for the Fort Belknap Indian Community Water Rights Settlement Act of 2023 as sponsored by Senator Jon Tester on his and Senator Steve Daines behalf.

This bill is the result of close to 40 years of negotiations between the Fort Belknap Indian Community (FBIC), the State of Montana, local governments, non-Indian water users, and the federal government. It settles the FBIC's water rights established in the 1908 Supreme Court case *Winters v. United States*.

In 2001, FBIC entered a water rights compact approved by an overwhelmingly bipartisan margin in the Montana State Legislature. Recently, the FBIC negotiated updates to the settlement with the federal government and local communities. The result of these negotiations is the widely supported Gros Ventre and Assiniboine Tribes of the Fort Belknap Indian Community Water Rights Settlement Act of 2023.

The bipartisan settlement proposed in this legislation is a great example of the work we like to support, work that provides the tribes and the communities with the certainty they need.

Sincerely,

BILL HODGE, MONTANA STATE DIRECTOR

CITY OF GALLUP
June 5, 2023

Hon. Martin Heinrich;
Hon. Ben Ray Luján,
U.S. Senate,
Hart Senate Office Building,
Washington, DC.

Dear Senators Heinrich and Luján:

In March of 2009, Congress passed the *Omnibus Public Land Management Act of 2009* (PL. 111-11) authorizing construction and operation and maintenance of the Navajo-Gallup Water Supply Project, as part of a settlement to resolve the Navajo Nation's water rights claims in the San Juan Basin in New Mexico. Currently, the City's 23,350 customers, consisting of roughly 50 percent Native American (predominantly Navajo) rely completely on groundwater for water supply. When Navajo Gallup Water Supply project is completed, it will replace the groundwater with renewable surface water. Due to a significant change needed in the scope of this project, and urgent needs brought to light by the COVID-19 pandemic, additional time and resources are needed to complete the Project.

The City of Gallup fully supports the Legislative Amendments to PL 111–11. If the amendments are not approved with an extension to 2029 and an increase in appropriations, then the City and its surrounding communities will continue to rely on a diminishing groundwater supply. This will require the city to further draw down the groundwater making it more difficult and significantly more expensive to pump water from very deep wells and with potential damage to underground aquifers. The City looked forward to the original delivery of surface water on December 31, 2024, to relieve its reliance on groundwater. Given current circumstances, the new surface water delivery date of 2029 is more important than ever.

The City has reviewed the draft of the Navajo Gallup Water Supply Project Amendments Act of 2023, which will address the challenges we describe in this letter, and we strongly support its introduction. The City looks forward to working with you and the other Project Participants in advancing this critical legislation.

Sincerely,

LOUIS BONAGUIDI, MAYOR

JICARILLA APACHE NATION
May 26, 2023

Hon. Martin Heinrich;
Hon. Ben Ray Luján,
U.S. Senate,
Hart Senate Office Building,
Washington, DC.

Dear Senators Heinrich and Luján:

As part of the Navajo Nation's water settlement, Congress passed the *Omnibus Public Land Management Act of 2009* (Pub. L. 111–11) authorizing construction, operation and maintenance of the Navajo Gallup Water Supply Project ("Project"). When the Project is complete, it will serve not only Navajo Nation communities, but also the southern portion of the Jicarilla Apache Nation and the City of Gallup. Due to circumstances that were not foreseen in 2009, additional time and resources are needed to complete the Project as authorized by Congress.

The participants in the Project are the Navajo Nation, the Jicarilla Apache Nation, the City of Gallup, and the State of New Mexico through the New Mexico Interstate Stream Commission. The Jicarilla Apache Nation has reviewed the draft of the Navajo-Gallup Water Supply Project Amendments Act of 2023 in substantially the same form as the current bill and supports its introduction by the delegation and advancing forward to enacting it into law.

The Jicarilla Apache Nation thanks you for your work and for your support of projects important to the Nation and its people.

Sincerely,

EDWARD VELARDE, PRESIDENT

THE NAVAJO NATION
May 31, 2023

Hon. Martin Heinrich;
Hon. Ben Ray Luján,
U.S. Senate,
Hart Senate Office Building,
Washington, DC.

Dear Senators Heinrich and Luján:

In March of 2009, Congress passed the *Omnibus Public Land Management Act of 2009* (PL. 111–11), which included an authorization to construct the Navajo-Gallup Water Supply Project ("Project") as part of a settlement to resolve the Navajo Nation's water rights claims in the San Juan Basin in New Mexico. Once constructed, the Project will convey a desperately needed reliable municipal and industrial water supply from the San Juan River to the eastern section of the Navajo Nation, southwestern portion of the Jicarilla Apache Nation, and the city of Gallup, New Mexico. These communities rely on a depleting groundwater supply that is of poor quality and inadequate to meet the current and future demands of more than 40 Navajo chapters, the city of Gallup, and the Teepee Junction area of the Jicarilla Apache Nation.

The Project Participants are the Navajo Nation, the Jicarilla Apache Nation, and the City of Gallup, New Mexico. The State of New Mexico, through the New Mexico Interstate Stream Commission, is a member of the Project Construction Committee with the other Project Participants.

Due to unforeseen circumstances, additional time and resources are needed to complete the Project.

The Navajo Nation has reviewed the draft of the Navajo-Gallup Water Supply Project Amendments Act of 2023, which will address these outstanding issues, and supports its introduction. The Navajo Nation looks forward to working with you and the other Project Participants in advancing this critical legislation.

Sincerely,

DR. BUU NYGREN, PRESIDENT

NEW MEXICO INTERSTATE STREAM COMMISSION

May 16, 2023

Hon. Martin Heinrich;
Hon. Ben Ray Luján,
U.S. Senate,
Hart Senate Office Building,
Washington, DC.

Dear Senators Heinrich and Luján:

In March 2009, Congress passed the *Omnibus Public Land Management Act of 2009* (Pub. L. 111–11). This Act included an authorization to construct, operate and maintain the Navajo-Gallup Water Supply Project (“Project”), as part of a settlement to resolve the Navajo Nation’s water rights claims in the San Juan River Basin in New Mexico.

Due to circumstances that were not foreseen in 2009, additional time and resources are needed to complete the Project as authorized by Congress.

The participants in the Projects are the Navajo Nation, the Jicarilla Apache Nation, the City of Gallup, and the State of New Mexico through the New Mexico Interstate Stream Commission (NMISC). The State of New Mexico, through the NMISC, is a member of the Project Construction Committee with the other Project Participants.

The NMISC has reviewed the draft of the Navajo-Gallup Water Supply Project Amendments Act of 2023 in substantially the same form as the current bill, and supports¹ its introduction by the delegation and advancing forward to enacting it into law.

Sincerely,

MARK SANCHEZ, CHAIR

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. TINA SMITH TO
JOHN CROCKETT

Question 1. Can you describe the Department of Agriculture’s role in the determination of which parcels of land to transfer to the Bureau of Indian Affairs to be taken into trust for the Leech Lake Band pursuant to the Leech Lake Band of Ojibwe Reservation Restoration Act, P.L. 116–255?

Answer. Serving under the U.S. Department of Agriculture (USDA) Forest Service, the Chippewa National Forest (Forest) is committed to working in partnership with the Leech Lake Band of Ojibwe (Band) to implement the *Leech Lake Band of Ojibwe Reservation Restoration Act* (Act), P.L. 116–255. Engagement with the Band has included regularly scheduled meetings of key Forest staff and Band staff; discussions during monthly consultation and collaboration meetings; and numerous additional online and in-person meetings. Further, the Forest worked closely with key USDA Forest Service Eastern Regional Office and Washington Office staff throughout the process of selecting proposed parcels.

Together, the Forest and the Band explored and identified the benefits of transferring larger contiguous parcels to consolidate ownership, along with enabling the Band to invest in future generations through economic and residential development. Fewer miles of fragmented ownership boundaries will be most beneficial to the Band, the Forest Service, and private landowners. Collaboration related to the pro-

¹The State of New Mexico, through the NMISC, does not have the authority to support section 10610 of the proposed amendments, but does support all other provisions in the proposed Act.

posed parcels for transfer took into consideration legislative language that made provisions for honoring any existing private property rights such as easements, permits, or other encumbrances.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. TINA SMITH TO
HON. LEONARD FINEDAY

Question 1. Can you describe the process under P.L. 116–255 between the Departments of Agriculture and the Interior and the Leech Lake Band to determine which parcels of land to transfer into trust for the Band?

Answer. The Leech Lake Reservation Restoration Act (“LLRRA” or “Act”), Public Law 116–255, was signed into law on December 20, 2020. The purpose of the Act was to restore “approximately 11,760 acres” of lands illegally transferred from the Interior Department to the U.S. Department of Agriculture—Chippewa National Forest (“CNF”) in the 1940s and 1950s. The lands to be restored are limited to lands that remain under control of CNF and are located within Cass County, Minnesota.

The LLRRA did not include a map of the parcels that were illegally transferred. Instead, under the Act, the Secretary of Agriculture was directed to complete a plan of survey “not later than 180 days after the date of enactment.”

The Act further provides that “as soon as practicable after the date of enactment of this Act, [the Secretary will] submit a map and legal description of the Federal land to the Committee on Natural Resources of the House of Representatives; and the Committee on Indian Affairs of the Senate.” This provision contemplates that a map of parcels to be restored to the Reservation would be developed in partnership between the Leech Lake Band of Ojibwe (“Leech Lake” or “Band”) and the Chippewa National Forest.

Finally, the Act defines the term “Federal land” to mean “the *approximately* 11,760 acres of Federal land located in the Chippewa National Forest in Cass County, Minnesota, the boundaries of which shall be depicted on the map, and described in the legal description, submitted” to Congress. The Act used the term “approximately”, because the number of acres of illegal transfers that took place in the 1940s and 1950s was merely an estimate that would be confirmed through implementation of the Act. This is further evidence of Congress’ intent that the final map would be developed by the federal land agencies in coordination with the Band. These provisions also make clear that it was not the intent of Congress to restore the exact parcels that were illegally transferred in the mid-1900s.

In June of 2021, the Band and the Chippewa National Forest signed a Plan of Survey that outlined next steps to implement the Act’s requirements, which include identifying eligible parcels for transfer, researching parcel history, preparing legal descriptions, identifying title encumbrances, and finalizing the map.

As noted in our testimony, the need for the Technical Correction arose during implementation of the Restoration Act. As the agencies worked to identify parcels for restoration pursuant to the Plan of Survey, the BLM Indian Land Surveyor completed an audit of all Chippewa National Forest land holdings within Cass County. He discovered that the illegal Secretarial Transfers were more widespread than initially estimated. Instead of the “approximately 11,760 acres” listed in the Restoration Act, the surveyor found 16,122 acres were acquired by the Forest Service through Secretarial Transfers. The injustice that took place more than a half century ago was clearly underestimated.

Over the past two years since signing the Plan of Survey, the Tribe has worked with the relevant federal land management agencies to jointly identify the proposed parcels to be transferred back to the Interior Department to held in trust as part of the Leech Lake Reservation. On August 11, 2023, the Chippewa National Forest released the map of parcels for public review.

The parcels identified for restoration to the Reservation depicted on the map reflect Congress’ intent that the Band receive consolidated parcels of land close to or adjacent to its existing trust lands. Additionally, the parcels identified follow the general policy of the Federal Land Policy Management Act and the U.S. Forest Service’s policy manual on landownership, which clearly states that the Forest Service should “give priority to consolidation of National Forest System lands within existing National Forest units.” U.S. Forest Service Manual 5400, *Landownership: Zero Code*, Section 5403.1, “National Forest System.”

The lands identified on the map will: enable the Band to address the longstanding and severe housing shortage on the Reservation; provide the Band and its citizens better access to places of cultural importance and areas to exercise solemn treaty rights; and will permit the Band to invest in future generations.

Question 2. Would this process change under S. 616?

Answer. No. The process for restoring the additional lands to the Leech Lake Reservation under S. 616 would be the same. The text of the LLRRA included the needed flexibility to enable the Band to work in partnership with the federal land management agencies. The language included in Section 2(b)(2) of S. 616 clarifies this same intent and ensures that land identified for restoration under the Technical Correction will follow the process that was conducted during implementation of the initial Restoration Act.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. TINA SMITH TO
HON. BRYAN NEWLAND

Question 1. Can you describe the Department of the Interior's work to determine which parcels of land will be transferred into trust for the Leech Lake Band pursuant to the Leech Lake Band of Ojibwe Reservation Restoration Act, P.L. 116-255?

Answer. The Department's Midwest Regional Office and Minnesota Agency are supportive of the United States Forest Service (USFS), Bureau of Land Management (BLM), and the Leech Lake Band of Ojibwe's efforts to ensure the implementation of the Leech Lake Reservation Restoration Act is seamless and quick. The selection of the parcels that will ultimately be transferred has been accomplished through a collaborative process between the USFS and the Leech Lake Band of Ojibwe. The Bureau of Indian Affairs has not been involved in the selection process. The BLM has reviewed the legal descriptions of the parcels and has led the partition and survey of the parcels pursuant to the Plan of Survey outlined in P.L. 116-255.

Question 2. The Department of the Interior's Solicitor Memorandum, dated August 20, 1979, states that the allotments sold through Secretarial Transfers were sold illegally, without the "unanimous consent [of all heirs]." S. 616 mistakenly refers to the "majority of rightful landowners." I intend to correct this drafting error in the future. With this change, does the Department support the bill?

Answer. The Department supports the recommended change.

